

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00067

IN RE: CARY+DUKE+POVIA RPD

PROCEEDINGS: PUBLIC HEARING (VOLUME 1)

BEFORE: Amanda Rivera
Hearing Examiner

DATE: September 4, 2024

TIME: 9:00 a.m. to 4:29 p.m.

LOCATION: Board of County Commissioners
Hearing Room, Second Floor
2120 Main Street
Fort Myers, FL 33901

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Kirk Martin, P.G., Water Science Associates
Jem Frantz, Project Director, RVi Planning
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P R O C E E D I N G S

HEARING EXAMINER RIVERA: Good morning, my name is Amanda Rivera. I'm the Hearing Examiner presiding over today's case. The date is September 4th, 2024, and this is case DCI2022-00067. It is a rezoning request to the RPD district in the Northeast Lee County Planning Community.

Because it is a quasi-judicial hearing, all evidence and testimony must be taken under oath; so if you intend to speak, if you could please raise your hand.

Do you swear or affirm the testimony you will provide is the truth?

(Participants respond en masse.)

HEARING EXAMINER RIVERA: Thank you.

So the way that we're going to proceed this morning is first we're going to hear from the Applicant. They are going to present their request in the case and call any witnesses that they may have.

Following that we're going to hear from the County Staff, who is going to present their review and recommendation in this case. They are recommending approval with conditions and deviations.

After that, that's when I will call forward the cards that I have for the public comment section. At

1 that time there is only one opportunity to speak; so
2 please take notes as we go through things this morning
3 so that you can make the most of your time when you
4 come up to the podium. If you intend to speak at the
5 Board hearing on this matter, you must speak at the
6 hearing today; and the comments that you make at the
7 Board will be limited to the comments that you make
8 today. There is no time limitation for today's
9 comments; but when you speak at the Board, they do
10 impose a limitation on the time at that point.

11 With that I believe -- wait one second.

12 Oh, if you have questions -- if you have
13 questions, please be sure that you ask those when you
14 come to the podium, but realize that we are probably
15 not going to answer those at the time that you ask
16 them, but we will be saving that for the rebuttal. So
17 once we close public comment, we come back to the
18 Applicant and the Staff for their rebuttal. They'll
19 address the questions at that time before they make
20 their closing comments in this case.

21 And if you did fill out a public comment card, but
22 you do not want to speak today, you can indicate that,
23 as well; and you will receive a copy of the
24 recommendation that I release to the Board before it
25 goes to their final hearing.

1 So with that, did Staff have a notice of
2 publication to enter into the record?

3 MR. DANLEY: Yes, let me find it. Here it is.

4 HEARING EXAMINER RIVERA: Thank you.

5 (Sotto voce between Hearing Examiner Rivera and
6 Mr. Danley)

7 (Staff Exhibit 2 submitted.)

8 HEARING EXAMINER RIVERA: I'll mark that as Staff
9 Exhibit 2. Staff Exhibit 1 is the Staff Report.

10 Okay. And I am ready whenever the Applicant is
11 ready to proceed. Good morning.

12 MS. MONTGOMERY: Are you ready?

13 HEARING EXAMINER RIVERA: Yes.

14 MS. MONTGOMERY: Okay. Good morning, Neale
15 Montgomery, for the record.

16 I do, before we start, want to kind of make a
17 point of order that all the documents that were
18 provided to you by the Staff, that they would all be
19 part of the record --

20 HEARING EXAMINER RIVERA: The Staff Report is what
21 I have as Staff Exhibit 1 --

22 MS. MONTGOMERY: Well, and there's other
23 attachments in that package.

24 HEARING EXAMINER RIVERA: In the package that was
25 the Staff Report?

1 MS. MONTGOMERY: Yes.

2 HEARING EXAMINER RIVERA: Yes, everything that's
3 in the Staff Report with all attachments.

4 MS. MONTGOMERY: Okay. So with us today we have
5 several people, and I want to make sure, for the record
6 again, that all of the experts are noted in the record
7 as experts. The Applicant is Mr. Neal. He's here
8 today. I'm Neale Montgomery. Alexis Crespo is here as
9 an expert in planning; Will Hellman is here as an
10 expert in landscape architecture; Brandon Frey is here
11 as an expert in civil engineering; Mr. Treesh is here
12 as an expert in transportation planning; Shane Johnson
13 is here as an expert ecologist; and Kirk Martin is here
14 as an expert in hydrology.

15 (Sotto voce between Ms. Montgomery and Mr. Neal)

16 MS. MONTGOMERY: And Mr. Neal is here with us to
17 give us a previous overview of all the things that
18 they've accomplished.

19 MR. NEAL: Thank you, Neale.

20 Good morning, Madam Hearing Examiner. My name is
21 Pat Neal, and I'm leading the team, which is the
22 Applicant today.

23 We are the largest privately-held developer in
24 Southwest Florida. We've built about 23,000 homes
25 primarily in Sarasota and Manatee County, though we've

1 been here in Lee County for about 12 years. We build
2 mostly -- in fact, almost entirely master planned
3 communities, and we believe that we're expert in
4 creative place-making. I believe, as I said, we've
5 built about 23,000 homes, about 12 in Lee County. We
6 have a very high consumer satisfaction rate, about 93
7 percent.

8 I will also say that I've won every environmental
9 award made to members of the Legislature. I was the
10 chairman of the Senate Natural Resources Committee,
11 created the CARL fund, wrote our state's first wetland
12 law in 1983.

13 Today we'll make a very strong presentation based
14 on competent and substantial evidence, and I will say
15 that we will demonstrate the building 1,099 units on a
16 public sewer system is a far better result for Lee
17 County than the equivalent 788 homes built scattered
18 with septic -- with well and septic. We've brought a
19 very strong professional team that will be led by
20 Alexis Crespo, who I think is our next speaker. Thank
21 you.

22 HEARING EXAMINER RIVERA: Thank you.

23 MR. NEAL: It's you, Alexis -- or is it you,
24 Neale?

25 I guess it's Neale Montgomery who is going to

1 talk.

2 MS. MONTGOMERY: The request before you today is a
3 request to rezone 788 acres from AG-2 to RPD to allow
4 for a maximum of 1,099 dwelling units and private
5 on-site recreational uses and infrastructure.

6 The maximum height is 35 feet. That's the
7 standard height for a single-family home throughout Lee
8 County.

9 The site will connect to centralized water and
10 sewer services. There was a prior Comp Plan amendment
11 to allow for that extension, and the Board of County
12 Commissioners has on several occasions indicated strong
13 support for moving people off of well and septic onto
14 central water and sewer because of the improvement to
15 water quality and because of the concerns about the
16 BMAP and the condition of the Caloosahatchee River.

17 We are not asking for a change to the future land
18 use category. The property is in the Rural Land Use
19 category. You'll hear more about that later.

20 There is a policy, 29.2.4, that allows for
21 incentive density. That's through the preservation,
22 creation, and restoration of rare and unique. And,
23 again, you'll hear more about that later from our
24 experts.

25 The site is -- go east, head north on 31, and

1 where all the gas stations are, you make a right on
2 North River Road. And as you look at this aerial, you
3 can see to the north of the property, both in Lee
4 County and in Charlotte County, Babcock Ranch is a
5 prominent feature now in the area. You can also see
6 Owl Creek and other things that have been approved.

7 With that I'm going to turn it over to our expert
8 in planning and zoning, Alexis Crespo.

9 MS. CRESPO: Good morning. For the record, Alexis
10 Crespo with RVi Planning and Landscape Architecture. I
11 have been accepted as an expert in the Lee Plan and the
12 Lee County Land Development and land use planning in
13 general, and would, as Neale said, like to be accepted
14 again today.

15 HEARING EXAMINER RIVERA: Yes, thank you.

16 MS. CRESPO: I'll also note Jem Frantz, our
17 director of planning in Bonita Springs, has also worked
18 heavily on the project and may be supplementing the
19 presentation today, as well.

20 I'm going to start with a look at the subject
21 property on the Lee County Future Land Use Map. You
22 can see the property outlined in yellow.

23 The lands to the south of North River Road are
24 generally in that Rural Future Land Use category,
25 allowing one unit per acre.

1 North of the property, also within the North Olga
2 area, you have a large blue tract, which is the Babcock
3 Ranch MPD, those lands within Lee County that total
4 about 4,200 acres. And that was converted in 2018 to
5 that future land use category and removing it from the
6 DR/GR Future Land Use category. So the last remaining
7 DR/GR in this area is to our immediate north. On the
8 north side of North River Road, the remaining area
9 is -- is Rural, as noted.

10 The other key aspect on this map is that
11 conservation lands -- there's uplands, and then the
12 darker green is conservation lands, wetlands. Those
13 are publicly-owned preserve land. So when you look at
14 this immediate area, you do have portions of low
15 density and rural development; you have emerging new
16 community development, Babcock; and then the County and
17 the State has done a wonderful job of putting a lot of
18 the land in this area in long-term permanent
19 conservation, and that would be the form of the Bob
20 Janes Preserve, which is the largest Lee County
21 preserve; and then you have other smaller 20/20
22 properties in the area.

23 As Neale noted, and as we'll walk you through
24 today, this RPD is consistent with the Rural Future
25 Land Use classification. We're not proposing to amend

1 or exit the Rural Future Land Use and live within the
2 limits it provides for.

3 Another aspect of the Lee Plan framework that's
4 important to note is the subject property was brought
5 into the County's future water and sewer service area
6 just earlier this year. So we have a companion
7 Comprehensive Plan amendment that moved quicker than
8 our zoning application, and it was decided by the Board
9 of County Commissioners this was an appropriate
10 location to allow for the expansion of centralized
11 water and sewer. A lot of the reasoning for that was
12 to mitigate and prevent hundreds of septic tanks on
13 this property. It's in very close proximity to the
14 Caloosahatchee River, that you'll hear from experts
15 later the environmental impacts that that could have.
16 And that was, again, approved earlier this year.

17 You can see on the slide, as well, immediately to
18 our west, the Owl Creek property is also in the Lee
19 County Utility service area for water.

20 This is a look at the area from your community
21 planning perspective. Lee County has a strong history
22 of grassroots community planning activities, where
23 they've been incorporated into the Lee Plan, as well as
24 in some cases the Land Development Code, which is the
25 case in North Olga. The subject property is generally

1 depicted with that blue star, and we are wholly within
2 the North Olga Community Planning area. That shares
3 common policies with Northeast Lee County that includes
4 both Alva and North Olga, which we'll speak to today,
5 as well.

6 From a zoning standpoint, there has been the
7 conversion of lands to planned development in this
8 area, starting with the Babcock MPD in the red to the
9 north. So that was approved in approximately
10 2018/2019. That was an opportunity for Lee County to
11 shift some of the already approved commercial intensity
12 that was going to be developed in Charlotte County
13 under that DRI and shift it into Lee County to achieve
14 some of that tax base and achieve local goods and
15 services for some of the folks not only within the
16 project, but also in the general community.

17 And so that zoning allows for 1,630 dwelling
18 units, as well as 1.17 million square feet of
19 commercial uses, which are oriented to the north part
20 of the project -- does this work? It does, okay.

21 Those uses would go more northern, and then the
22 residential uses would be intermittent through the
23 project.

24 HEARING EXAMINER RIVERA: You may get into density
25 calculations later, but the Applicant narrative said

1 that that was 2.5 units per acre on that Babcock piece;
2 is that correct?

3 MS. CRESPO: No, it is one unit per 2.5 acres.

4 HEARING EXAMINER RIVERA: Okay. That's what I
5 thought, because I did the math, and I couldn't get
6 that to work out either. But I read it a few times --

7 MS. CRESPO: And that was a DR/GR Future Land Use
8 Map amendment. So that was at one unit per 10 acres.
9 The intent for the project was -- it is over 60 percent
10 preserve, and so to have low-density residential and
11 then the commercial uses.

12 HEARING EXAMINER RIVERA: Okay, thank you.

13 MS. CRESPO: To our immediate west is the Owl
14 Creek RPD in purple. That was the first project
15 approved in this area that utilized the rare and unique
16 bonus density allowed in Rural. It was a mechanism for
17 landowners to achieve very -- in my professional
18 opinion -- slight increases in density within the Rural
19 Future Land Use category that typically only allows one
20 unit per acre. So, again, allowing a nominal increase
21 in exchange for much higher preservation requirements,
22 and not only just preservation but upland rare and
23 unique habitat preservation. Not just saving the
24 wetlands that you have to save anyway, but really
25 restoring impacted pasture farmlands and improving --

1 improving the area, and also done to help with rural
2 character protection, because native trees is one of
3 the, I think, largest components of relating rural
4 character, especially in this area.

5 Then you'll also note, kind of moving to the west,
6 you can see a black arrow pointing to the red square.
7 That is the Babcock Mixed-Use Planned Development that
8 was also approved in the past four years or so, and
9 that fronts on the State Road 31 corridor.

10 So there are several PDs within this area that
11 have either utilized new community framework and/or the
12 rural bonus incentive density framework through the PD
13 process.

14 Getting a little bit more granular on our
15 surrounding uses, the subject property itself, you can
16 see, is partially vegetated. It has a tributary
17 running through it that we'll discuss as being fully
18 protected. It's long been in the families of the
19 owners and used for cattle-raising predominantly, as
20 well as other agricultural uses.

21 To our south we have single-family residential on
22 larger lots that line the south side of Duke Highway.
23 There is a res -- AG zone -- AG zone property here, but
24 there is no existing single-family structure. So all
25 our rural neighbors to the south are separated by the

1 Duke Highway right-of-way. We also have North Olga
2 Drive that -- that gets off North River Road, and we
3 have some single-family residences in this area.

4 To the east is largely 20/20 property. Again, we
5 have that large Bob -- Bob Janes Preserve. It's over
6 5,000 acres permanently in conservation.

7 We have agricultural property known as the
8 Broadlands that's still zoned AG-2.

9 And then it changes as you -- as you move north
10 and to the west. To the north we have the Babcock
11 Ranch MPD. Due to sensitive design, those lands are
12 intended for preserve along North River Road. We
13 looked at that application in designing our site, as
14 one of the key focuses of that was to keep the North
15 River Road and all public frontages as natural
16 vegetation so that the development would not be visible
17 and impactful to the rural character.

18 Then as you move further west, you have the Owl
19 Creek PD, and then, as I noted, the Greenwell planned
20 development. And within those you have some
21 intermittent AG-2 zoned properties. This is Serenoa
22 Court, where one of the property owners lives. And
23 then largely these lands to the south are either
24 privately owned or under Water Management District
25 ownership.

1 Just giving you an inventory of those densities
2 and intensities surrounding us. We've kind of covered
3 this, but to our north we have the Babcock MPD, which
4 is 1,630 units, just under 1.2 of commercial.

5 This is a larger view where you can see the full
6 Town of Babcock Ranch in Charlotte County that was
7 approved over two decades ago -- or almost two decades
8 ago, again, by Charlotte County as a DRI planned
9 development that's well -- well underway. You can see
10 clearly the infrastructure and development areas that
11 are coming online there. And that certainly created
12 development pressures on this area. That allows for
13 17,870 dwelling units in Charlotte County alone. The
14 1,630 in Lee would be in addition to that. Charlotte
15 County can have another 4.8 million square feet of
16 nonresidential, as well as hotel, ALF, hospital; so a
17 proper new town being developed in this immediate area
18 to the north.

19 The Owl Creek PD is approved for 380 dwelling
20 units. Again, that's using the Rural Future Land Use
21 and incentive restoration bonus there to achieve that.
22 It also is approved for 96 boat slips because it does
23 have some nice Caloosahatchee riverfront access.

24 The Greenwell MPD is largely commercial in nature.
25 It's 400,000 square feet of commercial intended to

1 serve the area and kind of as an extension of some of
2 the commercial uses in Babcock. There is also a
3 residential component with that at 122 units.

4 In terms of infrastructure availability, we have,
5 as part of this process, both the Comp Plan for the
6 water and sewer, and also for the zoning we've had to
7 obtain letters of availability from the Sheriff's
8 Office, from our School District, Solid Waste.
9 Bayshore Fire District has provided a letter of
10 availability. We did not have to get a LeeTran letter
11 as there's no LeeTran facilities in this area.

12 Something important to note on the slide there is
13 the future Shirley Lane Fire/EMS Station. This was, I
14 believe, a three-acre site conveyed by Kitson, or the
15 developer of Babcock, to Lee County. It is -- per a
16 developer's agreement, it must be conveyed by the end
17 of the year. There are funds earmarked for
18 construction of the EMS, based on information we
19 received from Kitson. So the County does intend to
20 move forward with -- with that, and long-term the goal
21 is to be an integrated fire/EMS station that we
22 should -- certainly the EMS component coming online
23 before homes in the proposed RPD.

24 Now, with all that context, I'm going to start
25 walking you through our proposed master concept plan.

1 This is an illustrative version of the plan to make it
2 a little bit more visible, what we're -- what we're
3 looking at.

4 This is, again, 788 acres. So note that in terms
5 of the scale of the -- as we're looking at this. We
6 have three points of ingress/egress to the project.
7 This was something we met with -- we met with Duke
8 Highway residents prior to even filing, and the very
9 first thing that was asked was do not have any access
10 on Duke Highway. We had a secondary residents-only
11 access on a very preliminary version of the plan, which
12 they were very adamant that -- that we remove. And we
13 trimmed it back and even eliminated even any option for
14 emergency or construction access. Nothing is -- no
15 trips are going to be coming into this or out of this
16 project from -- from Duke Highway or traveling along
17 North Olga Drive. It's all oriented to North River
18 Road.

19 We did have to get a deviation for this access
20 point because it's -- while the project overall has
21 more than the two access points required, this pod
22 technically only has one. But we worked with Bayshore
23 Fire to obtain a letter of no objection regarding that.

24 So with our three access points, then I -- as
25 you're noting along the frontage, we've located lakes

1 and very large swaths of preserve areas along that
2 frontage. I'm going to walk you through those -- the
3 dimensions of these preserve areas, as I think that's
4 very, very critical to our compliance with -- the
5 clustering and compact development provisions in your
6 Lee Plan is really maximizing and sensitively locating
7 those preserve areas, so that we can keep our
8 development footprint very small, and based on our line
9 of sight we'll show you, not visible to the traveling
10 public.

11 We have located two separate amenities within the
12 project to provide a high-quality community and on-site
13 rec for future residents. We also sensitively located
14 those so they would not be on any perimeters, as those
15 can produce noise, light, and visual impacts to
16 neighbors. So we were very careful in their locations.

17 We have no crossing of this creek. At one point
18 in time, we were examining linking the two development
19 areas, but we elected to not proceed with any type of
20 crossing. And also worked diligently with the County
21 on a maintenance easement so that they will have
22 long-term access to this area of the site in order to
23 clear overgrown brush, things that can really help when
24 hurricanes, and waterways aren't doing what they're
25 supposed to be doing. So we worked that out, which

1 we'll address in our later slides.

2 So the other thing I -- I hope that jumps out is
3 just the expansive amount of green on -- on this slide.
4 We have 60 percent open space. 50 percent of the site
5 is the preservation, either in the form of wetland
6 preservation or creation and restoration of upland
7 native habitat.

8 I've noted no Duke Highway access.

9 The minimum setback for that closest residential
10 tract to Duke Highway is 170 feet. Will Hellman is
11 going to walk you through the characteristics of that
12 buffer and the visual impact to Duke Highway upon
13 clearing of all the exotic, installing our buffer, and
14 installing the required restoration planning site. I
15 hope that will be of interest to you, as well as of the
16 public that's here and obviously concerned about their
17 quality of life.

18 We will be required to install an eight-foot
19 shared-use path. That's part of the North Olga
20 Community Plan, to allow for better connectivity. As
21 part of our enhanced buffering along the roadway, we
22 will be installing canopy trees, as well. So that will
23 make for a nice environment along the roadway and just
24 a safer way to travel. Also providing, you know,
25 better connection to the 20/20 preserves in the area

1 will also be an asset.

2 HEARING EXAMINER RIVERA: Sorry, can you go back
3 for one second?

4 MS. CRESPO: (Complies.)

5 HEARING EXAMINER RIVERA: So is the -- the intent
6 to do a unified development -- but the application
7 keeps talking about these separate pods. So you've got
8 pod one that has its dedicated access because you can't
9 cross over Trout Creek, and then pod two -- pods two
10 and three. Are they going to essentially operate as a
11 unified development, or is it going to be bifurcated
12 more so, so that they're not accessing each other? So
13 can folks that live in pod one access the amenity
14 center in pod two?

15 MS. CRESPO: That is an excellent question, and
16 I'm going to have to defer to someone with Neal
17 Communities to answer that.

18 HEARING EXAMINER RIVERA: Okay. And those amenity
19 centers, if you can also just describe briefly --
20 there's community garden requirements and things in the
21 Lee Plan that I know were discussed and promised that
22 that's going to be included, but if you can just -- I
23 didn't ever see what that's going to look like, just a
24 general intent that you would capture internally the
25 folks within the community so that you're not

1 generating interest that these folks are having to go
2 out into the greater Olga community to partake in those
3 kind of activities. So if you could just give me
4 some -- it doesn't have to be now --

5 MS. CRESPO: Okay.

6 HEARING EXAMINER RIVERA: -- but I've got those
7 questions.

8 MS. CRESPO: The intent would be for active and
9 passive rec. So the Neal Communities does a lot of dog
10 parks and passive pocket park areas throughout the
11 project. The amenity campuses would be your, you know,
12 clubhouse or at least a cabana-type facility with
13 restrooms, pool, sports courts, playground type --
14 those types of infrastructure, but there would be an
15 active rec component. And we will address you on if
16 this will be separately branded or if -- if all
17 residents will be able to use both.

18 I'm just going to walk through the deviations
19 here. We are asking for one point of ingress/egress
20 for that western pod. The justification is eliminating
21 a crossing of a creek and associated wetlands that
22 would be negatively impactful to the environment. This
23 is for a relatively small area, and we did receive
24 letters of no objection from all the required agencies,
25 including the Fire District, Sheriff's Office, and Lee

1 County Public Safety, and the Zoning Staff has also
2 recommended approval.

3 Deviation 2 relates to our roadway buffers. Our
4 intent through the site plan is to locate our
5 restoration upland native habitat along those roadways
6 so that it is a natural look. It's not -- not that
7 manicured Fort Myers look, but this is going to be
8 your -- your live oak/cabbage palm things -- things of
9 that nature to really maintain a rural character along
10 the roadway. Staff has recommended approval with a
11 condition of some supplementary plantings that we -- we
12 are in agreement with, and they have recommended
13 approval.

14 HEARING EXAMINER RIVERA: Are there -- on that I
15 had a question on Deviation 2 and how it relates to
16 Condition 11, because Condition 11 recites the 33-1673
17 requirements that Deviation 2 is deviating from. So is
18 deviation -- there's indications on the master concept
19 plan at intervals, but I'm not clear on if it's running
20 the entirety of the North River Road frontage, or if
21 it's only at those isolated spots where it's noted.

22 MS. CRESPO: It would be for the entirety of the
23 North River Road frontage where -- where necessary.

24 HEARING EXAMINER RIVERA: Okay. So then we just
25 need to put a note on 11 -- I'm not sure if we need

1 that if we're deviating from it in 2. And I may be
2 missing something, but I want to get clarity on that
3 before we --

4 MS. CRESPO: Let me go to Condition 11.

5 The intent -- and I'm sure Staff will -- the
6 intent of Deviation 11 is if our -- if what we plant
7 doesn't meet the specs of -- because we're saying we
8 want to do the native restoration in lieu of a Type D
9 buffer. I believe the condition is, yeah, but those --
10 those restoration plantings have to be big enough, tall
11 enough, spaced close enough so that they're meeting all
12 the requirements of the buffer --

13 HEARING EXAMINER RIVERA: Okay.

14 MS. CRESPO: -- so that we're not losing any plant
15 material through allowing this deviation, because
16 that's not the intent. The intent is to enhance and
17 increase the plant material in that buffer through
18 the -- through the native restoration. It just
19 wouldn't be delineated as a -- as -- a Type D buffer
20 has like a hedgerow and things like that so -- but 11
21 is to make sure we're not reducing any plantings.

22 MR. DANLEY: (Nods head.)

23 HEARING EXAMINER RIVERA: Okay.

24 MS. CRESPO: Deviation 3 is to allow for a
25 four-to-one lake bank slope. The Code does provide

1 guidance on mitigating materials to prevent erosion
2 with this type of cross section of a lake. Our goal
3 with this deviation was, again, to reduce the
4 development footprint. When you have -- the six-to-one
5 lake bank slopes require a lot of sodded area to
6 achieve that slope. We can achieve a functional lake
7 that has a smaller footprint, that correlates to more
8 open space preserve areas that can be planted with that
9 native restoration. And Staff, based on the cross
10 section provided, has recommended approval.

11 Deviation 4 is to allow certain equipment -- your
12 AC pad, pool -- pool pump, and different types of
13 equipment to be located up to four and a half feet into
14 the side yards. This used to not require a deviation,
15 from my understanding, and Brandon Frey, our engineer,
16 can speak to this in more detail. But it's more of a
17 housekeeping to memorialize this can occur. The
18 units -- this type of equipment is typically staggered
19 on different sides of the home. In the case of -- if a
20 twin villa or an attached product is done, there will
21 be encroachment on both sides, but they will be
22 separated substantially so they're not, you know,
23 touching or interfacing with each other. And Staff has
24 routinely approved this on other projects and has
25 recommended approval.

1 Deviation 5 is one we worked out. Again, it came
2 up a little bit later in our review where Staff said,
3 hey, we really need to be able to access this creek
4 system in case we want to get storm-ready or just
5 overall, you know, make sure it's being maintained
6 properly as it -- it impacts more properties than just
7 ours. So we worked with them on providing a reduced
8 easement width.

9 The intent there is to maximize their preservation
10 areas. So it's required to be 20 feet in width. It's
11 rational to think that within an easement intended for
12 maintenance of a creek system, you may go in and clear
13 all that vegetation to access the tributary or to make
14 necessary improvements. Our goal was to minimize the
15 area -- to allow the access, allow the necessary
16 maintenance, but reduce the amount of potential areas
17 for removing vegetation in that area to, again,
18 maximize preserve on-site. And so Staff felt they
19 could work within that 10-foot easement to sufficiently
20 maintain the creek system.

21 HEARING EXAMINER RIVERA: Okay. So it's 10 foot
22 and not 20 foot?

23 MS. CRESPO: Correct.

24 HEARING EXAMINER RIVERA: It's confusing on the
25 master concept map because it shows a 20-foot-wide

1 Trout Creek easement, and then it has the deviation
2 signal for Deviation 5, which ties it -- but that might
3 require clarification.

4 MS. CRESPO: We can --

5 (Discussion at lectern)

6 MS. CRESPO: It's because it's 20 foot in the
7 southern portion. We can't achieve the 20 feet in
8 certain locations. It's in the narrowest location is
9 where it is --

10 HEARING EXAMINER RIVERA: Okay. So the deviation
11 is keyed there, but it doesn't actually apply to that
12 easement, it applies only to the northern one?

13 MS. CRESPO: Correct. We should -- I'm sure we
14 will leave the record open for some minor changes so we
15 can --

16 HEARING EXAMINER RIVERA: Okay.

17 MS. CRESPO: -- remove Deviation 5 by the 20-foot
18 label. Good catch.

19 HEARING EXAMINER RIVERA: Thank you.

20 MS. CRESPO: Thank you.

21 All right, that concludes the deviation summary.

22 And to kind of summarize, the master concept plan,
23 our proposed design standards, and the water and
24 wastewater approval granted by the Board earlier this
25 year, our proposal will:

1 Eliminate the potential for 788 homes that can be
2 built by right today in the AG zoning district,
3 eliminating that type of -- I would consider it a
4 sprawling land use pattern that would connect to
5 private well and septic without rezoning approval being
6 needed.

7 The design protects the nearby wellfields in the
8 area, as we'll detail in later slides.

9 Improve flood management from the lake system, the
10 storage, and reduce runoff from the site.

11 We do have 60 percent open space, so 400 and --
12 almost 484 acres of this site, of 788 acres, are going
13 to be green space. And I think more importantly, 50
14 percent of the site is going to be actual preserve
15 area, wetland or upland preserve. So I did have to
16 explain this to the community because it's a little
17 confusing, that the 50 percent is within that 60. So
18 40 percent will be developed; 60 percent will be in
19 green space, and of that the 50 percent will actually
20 be vegetated.

21 Of that vegetation, we are restoring 328 acres of
22 rare and unique upland habitat, which Shane will walk
23 you through the planting plan of how we do that. But
24 this area is -- is beautiful, but it's impacted pasture
25 that's been grazed for decades, and so restoring

1 habitat for species in the area. Better viewsheds we
2 see as a huge benefit of this application.

3 We also have some wetlands on the site, the bulk
4 of which are being preserved. Our density count does
5 take that into effect (sic) that I'll -- which I'll
6 show you.

7 And we are protecting the Trout Creek and Otter
8 Creek floodplains through our design.

9 Compatibility is, I think, really central to this
10 case. This is the Rural Future Land Use category. We
11 are remaining in the Rural Future Land Use category.
12 We are consistent with the Lee Plan's policies relating
13 to development in Rural Future Land Use in terms of the
14 types of dwelling units, the density proposed, and the
15 restoration to achieve the .4 unit per acre increase.

16 Our perimeter setbacks range in -- in feet from
17 160 up to 800 plus feet in width that I'll show you on
18 the next slide.

19 We have limited our access to North River Road to
20 eliminate any traffic onto North Olga or Duke Highway
21 to preserve character in those communities.

22 We have limited the building height to 35 feet, so
23 this is not going to be a denser residential product,
24 but just single-family attached or detached.

25 And then I've noticed -- or noted the expanse of

1 open space.

2 So I'll walk you through those setbacks here, and
3 then Will will further show you what those will look
4 like.

5 So our nearest residential tract to North River
6 Road in that western pod is 300 feet. Some of that is
7 obviously lake, and then the other portion will be our
8 restoration preserve area along the frontage.

9 As you move east -- logically, we thought
10 increasing those setbacks. As you move east, it
11 generally gets more rural in nature, as you move away
12 from the 31 corridor. So those are now increased to
13 510 feet, again, of dedicated preserve area that will
14 be placed under conservation easement at the time of
15 DO.

16 Then as you move to the North River Road, eastern
17 portion, the setback, once again, increases to 800 feet
18 in width. I would submit to you that with 800 feet of
19 restoration plantings, you will not be able to perceive
20 a single-family home within this project as you're
21 traveling back to your home on North River Road or
22 North Olga Drive or Duke Highway.

23 To the south, we have a 160-foot setback; and then
24 as we move south and east, 380 feet of setback, again,
25 all in native preserve. And then along Duke Highway we

1 are providing 170 feet of setback in that area.

2 Our pinch point is that 60 foot at the southwest
3 corner of the site. That property is undeveloped, and
4 it is the closest property to the site clearly, but
5 still substantial setbacks are far above and beyond any
6 requirements of the Code. The typical PD setback in
7 this case would be 15 feet, approximately, and so this
8 is exponentially larger than any Code requirement for
9 structure setbacks.

10 And then from Serenoa Court, we have a minimum
11 420-foot setback in those areas, along with the
12 preserve, as well as 400 from that vantage point, as
13 well.

14 You had asked about our density calculation. So
15 we certainly worked -- worked on this with Staff to
16 make sure -- this is fairly complex with the -- with
17 the restoration, but we have partial rural and partial
18 wetland areas. We have some wetland impacts that
19 basically generate no density. Our preserve wetlands
20 generate about 51 units. The Rural at one unit per
21 acre generates, rounding up, 719 units; and then
22 through our recreation, restoration, and preservation
23 of rare and unique, we garnered another 329 units, to
24 arrive at 1,099 units. This is consistent with your
25 Rural Future Land Use policies, as well as your wetland

1 density calculation policies.

2 HEARING EXAMINER RIVERA: So just to pause here
3 for a second. There was a question, it seemed like, in
4 the community meeting notes that folks, at all three of
5 the meetings that you had, were asking if there was the
6 opportunity to come back and increase this density in
7 some way. But my understanding of the rare and unique
8 habitat is that these areas are going to be perpetually
9 conserved either under a conservation easement or
10 preservation requirements within the zoning. So is
11 there any opportunity for you to come back and increase
12 that number or alter those calculations?

13 MS. CRESPO: We would -- in order to do that, we
14 would have to go through a full public hearing process,
15 and you can see from our plan that we've really
16 maximized where we can fit that preserve. So that
17 would involve reducing the development footprint to
18 convert more -- we'd have to reduce our development
19 area to get more density, and so we'd be -- while we
20 get more units on paper, we couldn't build them unless
21 we went to a townhome product or some type of dwelling
22 unit that can fit on a smaller lot or is more
23 efficient. And I would submit that those dwelling
24 types would not be meeting all the criteria for Rural
25 and North Olga Community.

1 So it is possible, we can always ask. We have not
2 asked to do that. This is what Neal Communities
3 intends to build --

4 HEARING EXAMINER RIVERA: But the conservation
5 easement, that will be ironclad. You won't be able
6 to --

7 MS. CRESPO: Ironclad.

8 HEARING EXAMINER RIVERA: -- develop those. And
9 how many acres is that?

10 MS. CRESPO: In total 300 -- 420 will be under
11 conservation easement. There's a lot of numbers here
12 but --

13 HEARING EXAMINER RIVERA: I know. And then the
14 additional -- is the 300 that's used as the upland
15 preserves, is that including the conservation easement
16 acreage?

17 MS. CRESPO: So we -- we have to put all of our
18 preserve, whether it's rare and unique or wetlands, in
19 a conservation easement per the Lee Plan. So the --
20 the number that will be under permanent conservation is
21 420 acres. So it will be above and beyond -- it's not
22 just the rare and unique, it's all preserves go under
23 conservation easement. That is --

24 HEARING EXAMINER RIVERA: It does answer my
25 question. I'm just -- there's like ten criteria, I

1 think, under rare and unique upland, and it's so
2 specific about what has to happen on the acres that you
3 are essentially pulling the density from to utilize --
4 to get the extra density. I know that that's not
5 what's really happening, but in concept it kind of
6 is --

7 MS. CRESPO: Yes.

8 HEARING EXAMINER RIVERA: -- a TDR-ish program.
9 So I'm trying to ensure -- it seems like you can't
10 double-dip on that acre. So if you're using those
11 acres as the base to get the rare and unique upland
12 habitat, I don't think that you would then have the
13 opportunity necessarily to come back -- and you can't
14 touch the 420 acres so those are already set aside.

15 MS. CRESPO: Yeah, we would -- like I said, we
16 would -- we would have to remove some of the area from
17 the yellow. We'd have to convert what's now yellow,
18 residential, to preserve in order to get any more
19 because, yes, we have exactly what we need to achieve
20 1,099 units, and any increase would require more
21 preserve, which --

22 HEARING EXAMINER RIVERA: You would run out of
23 space --

24 MS. CRESPO: We would run out of space.

25 HEARING EXAMINER RIVERA: -- and with your height

1 requirement limitations, as well, okay.

2 MS. CRESPO: We found it everywhere we could so --

3 HEARING EXAMINER RIVERA: Thank you.

4 MS. CRESPO: All right.

5 All right. So I am going to turn it over to Will
6 Hellman. He is a registered landscape architect, and
7 he has line-of-sight depictions from these kind of, I
8 think, really critical areas of -- when you first start
9 seeing the property visibly as you're moving east on
10 North River Road, as you curve down North Olga Drive,
11 and then certainly Duke Highway so...

12 HEARING EXAMINER RIVERA: Thank you.

13 Good morning.

14 MR. HELLMAN: Good morning.

15 MS. CRESPO: I have a housekeeping item.

16 HEARING EXAMINER RIVERA: Yes.

17 MS. CRESPO: We have a book with our PowerPoint --

18 HEARING EXAMINER RIVERA: Oh, thank you.

19 MS. CRESPO: -- and the master concept plan.

20 HEARING EXAMINER RIVERA: Yes, I don't have that.

21 So I've got -- Applicant Exhibit A was the 48-hour
22 letter. That's all I have so far.

23 (Applicant Exhibit 1 submitted.)

24 HEARING EXAMINER RIVERA: Thank you. So this will
25 be Applicant Exhibit 1, is the PowerPoint presentation.

1 Thank you for that.

2 MS. CRESPO: And that also contains a revised
3 48-hour letter that we will address.

4 HEARING EXAMINER RIVERA: Okay.

5 Good morning.

6 MR. HELLMAN: Good morning. For the record, my
7 name is Will Hellman. I'm a professional landscape
8 architect with RVi Planning and Landscape Architecture.
9 I have previously been accepted by the Lee County
10 Hearing Examiner as an expert witness, and would
11 request to be accepted again today.

12 HEARING EXAMINER RIVERA: Yes, thank you.

13 MR. HELLMAN: Thank you.

14 All right. Starting out demonstrating our setback
15 and landscape buffer conditions along Duke Highway to
16 the south of the project, the minimum is -- setback, as
17 shown, is 190 feet, which includes 100 -- excuse me,
18 210 feet -- no, 170 feet of preserve and 20 feet of
19 setback, for a total of 190 feet of separation from the
20 Duke Highway right-of-way and the nearest structure --
21 accessory structure on the project site.

22 The existing conditions along Duke Highway are
23 existing native vegetation, as well as exotic
24 invasives, which you can see in the image below on the
25 bottom part of the screen -- excuse me, the nerves are

1 getting the best of me right now.

2 The existing landscape does include mature native
3 canopy trees, as well as cabbage palms. To enhance the
4 preserve, the rare and unique upland plantings are
5 depicted on this section elevation, as well as the more
6 mature landscape in closer proximity to Duke Highway.

7 HEARING EXAMINER RIVERA: So just to clarify --
8 I'm sorry -- is the photo that's on the bottom, is that
9 the existing conditions, or is that a rendering of what
10 the proposed --

11 MR. HELLMAN: That is a recent photo of the
12 existing conditions from Duke Highway looking to the
13 northeast towards the project.

14 HEARING EXAMINER RIVERA: Okay, thank you.

15 MR. HELLMAN: This second slide for Duke Highway
16 demonstrates the line of sight. So at a viewing point
17 of six feet, standing in the Duke Highway center lane
18 looking towards the project site, you can see that with
19 the existing native vegetation, as well as the 170 feet
20 of restored rare and unique upland plantings, that the
21 structures will not be visible from Duke Highway.

22 Moving up to the northwest portion of this site
23 along North River Road -- this is our narrowest setback
24 along North River Road -- 405 feet from the
25 right-of-way to the closest structure, which includes a

1 minimum of 68 feet of buffer as well as lake depth.
2 This portion of the project site currently does not
3 contain native vegetation. It's currently existing
4 pastureland and is part of the rare and unique upland
5 restoration plantings. This will be filled in with
6 plantings; and, additionally, our buffer deviations
7 include the planting of 14-foot-high native canopy
8 trees within the first 25 feet of the property
9 boundary. That's important to note on this next slide
10 here. The -- the larger trees closer to the
11 right-of-way provide a stronger buffering effect for
12 the line of sight. Again, it is a six-foot line of
13 sight looking in towards the project site.

14 And, finally, North Olga Drive, this is our
15 largest setback. It is 810 feet, which includes 100 --
16 790 feet of preserve. This is also a portion of the
17 site where there's -- minimal existing native
18 vegetation is primarily pastureland and would receive a
19 similar treatment or the same treatment with the rare
20 and unique upland plantings in the upsized 14-foot-high
21 native canopy trees within the first 25 feet adjacent
22 to the property boundary, the right-of-way. And,
23 again, the planting of those upsized native canopy
24 trees within the first 25 feet of the project boundary
25 maximize that line of sight into the project site. And

1 most notably here with the 800 feet, as Alexis had
2 noted, there will be no visibility onto the developed
3 site from North Olga Road.

4 And as far as the proposed plantings for the
5 buffer goes, I will let Shane speak to it in more
6 detail, but they are consistent with the ecologist's
7 report on the indigenous native plant communities, and
8 include plants -- as well as additional plants, as
9 shown on the screen, that maintain and enhance the
10 rural character of the project site, as well as add
11 aesthetic value to the area and offer wildlife habitat.

12 In conclusion, it is my professional opinion that
13 the Cary+Duke+Povia RPD has met and/or exceeded all the
14 applicable standards and demonstrated consistency with
15 the Lee Plan and Land Development Code. Thank you.

16 HEARING EXAMINER RIVERA: Thank you.

17 Good morning.

18 MR. TREESH: Good morning, Ted Treesh with TR
19 Transportation Consultants. I'll just briefly go over
20 the traffic study that was prepared as part of this
21 application.

22 Just summarizing this -- also included in the
23 Staff Report -- I believe it's Attachment Q in the
24 Staff Report -- is Staff's memorandum that summarizes
25 our analysis, as well.

1 This table summarizes the trip generation that
2 compares the proposed zoning that's before you this
3 morning to the trip generation of the property as it
4 could be developed today. As Alexis indicated, the
5 property could be developed with the 788 single-family
6 units based on the existing zoning.

7 This shows the trip generation of the project.
8 Top line is currently proposed, the second line is
9 based on the single-family dwelling units based on the
10 current zoning, and then the last line is just the trip
11 generation difference based on the two comparisons.

12 Obviously we did our analysis based on the top
13 line, which is the worst case, based on the 1,099
14 single-family dwelling units. Even though this project
15 includes a mix of two-family attached and
16 single-family, the TIS was based on the worst case,
17 which is all single-family units. The single-family
18 home is shown to generate higher trip generation. So
19 per the County guidelines, we're required to do it
20 based on the worst case at this point in time.

21 HEARING EXAMINER RIVERA: Do you know what the
22 difference is between a normal generation rate for a
23 two-family attached to a single-family?

24 MR. TREESH: Based on daily trip generation, a
25 single-family is just under ten trips per day. Based

1 on the ITE Trip Generation Manual, two-family attached
2 is just -- just slightly under. I believe it's around
3 seven and a half, eight trips a day. So it's just a
4 little less --

5 HEARING EXAMINER RIVERA: Okay. So --

6 MR. TREESH: -- in terms of trip generation so --

7 HEARING EXAMINER RIVERA: So when you're
8 evaluating this conservatively, you're overestimating
9 what the ultimate trip generation is expected to be?

10 MR. TREESH: Yes.

11 And, again, as this project moves forward, if
12 approved, we have to do another traffic study once the
13 project applies for a development order. At that time
14 the building product is known by the -- by the
15 developer, and then we know exactly what the project is
16 going to entail, and we can determine a more accurate
17 trip generation based on the ITE. That's when we'll
18 determine the off-site improvements that are going to
19 be needed along North River Road, and I can talk about
20 that in a minute.

21 As Alexis indicated, the access is proposed
22 directly to North River Road. We've got three access
23 drives proposed. The eastern -- or the western access
24 is servicing that isolated pod, and then the two
25 eastern access drives serve the majority of the units.

1 That serves those two pods to the east.

2 The future level of service analysis, we looked at
3 North River Road. It's shown to be at a Level of
4 Service B without the project. At build-out -- a Level
5 of Service C with the project at build-out.

6 We looked at also different roadways in the study
7 network, State Route 78 and State Route 31. As you're
8 aware, there's improvements underway on State Route 31
9 in conjunction with FDOT and the Babcock Ranch
10 Improvement District. State Route 31 is currently
11 moving forward with construction from Babcock Ranch
12 down to State Route 78 right now as part of the Babcock
13 Improvement District.

14 The second phase is -- that FDOT is picking up is
15 from State Route 78 down to State Route 80. That
16 project is just wrapping up the PD&E study. And
17 throughout this process we've been monitoring that
18 project, and we've been informed through FDOT that that
19 project has now proceeded to the funding stage, the
20 right-of-way -- for right-of-way and construction.
21 FDOT has indicated the construction of that second
22 project, from 78 down to State Route 80, is now funded
23 for construction, in fiscal year 2029 to begin
24 construction. So those improvements will be
25 constructed most likely before this project will be

1 built out.

2 HEARING EXAMINER RIVERA: Is the timeline on the
3 four-laning -- I think I read 2025; is that correct?

4 MR. TREESH: On which project?

5 HEARING EXAMINER RIVERA: On the four-laning --

6 MR. TREESH: Yes.

7 HEARING EXAMINER RIVERA: -- that's happening.

8 MR. TREESH: On 31, yes.

9 HEARING EXAMINER RIVERA: Right. 2025, okay,
10 thank you.

11 MR. TREESH: And that also includes improvements
12 to the intersection of North River Road and State Route
13 78. Right now that intersection is a traffic signal,
14 and FDOT is improving -- has improvements to that
15 intersection, as well, as part of their improvement
16 project.

17 This is a -- this is right from the FDOT website
18 for the State Route 78 project. This is kind of a
19 unique intersection improvement project that they've
20 got proposed for State Route 78. This is what they
21 call an RCUT intersection. North is to your right on
22 this drawing. North River Road is coming out to the
23 bottom of the aerial. The 7-Eleven is on the top. The
24 existing 31, you can see, is on the very top just off
25 of the green. That's the existing 31. The new 31 will

1 be approximately several hundred feet to the -- to the
2 east. So as you're coming westbound on River Road to
3 go south, you'll actually make a right turn; and then
4 you'll proceed to the north where you'll -- where
5 you'll do a U-turn to go back to the south. This is --
6 this is FDOT's new -- new intersection treatment.

7 I hear a lot of grumblings from the -- from the
8 audience. This is the intersection treatment that they
9 moved forward with in their design plans, and like it
10 or not, this -- this is what FDOT's moving forward
11 with. This is their new up-and-coming intersection
12 treatments in many areas around the state and -- you
13 can put a lot of traffic through these intersections,
14 and they've deemed this to be the intersection
15 treatment that they want to move forward with at this
16 location.

17 HEARING EXAMINER RIVERA: And this is starting
18 this year?

19 MR. TREESH: Yes.

20 HEARING EXAMINER RIVERA: Will that be -- so
21 that's going to overlap the four-lane improvements that
22 they're doing?

23 MR. TREESH: What's that?

24 HEARING EXAMINER RIVERA: That's overlapping the
25 four-lane improvements that they're doing to --

1 MR. TREESH: That's part of the four-lane
2 improvements, yes.

3 HEARING EXAMINER RIVERA: Okay. So this will be
4 done concurrently.

5 MR. TREESH: Yeah. So this -- this is actually
6 three traffic signals. There will be three signals.
7 There's a signal at each one of these intersections.

8 HEARING EXAMINER RIVERA: Can you indicate that on
9 the map? I'm trying to orient myself.

10 MR. TREESH: What's that?

11 HEARING EXAMINER RIVERA: Can you indicate it on
12 the map, where the intersection -- the signals are
13 going to be? I assume there's one, obviously, at River
14 Road and 31.

15 MR. TREESH: So there's a signal there, a signal
16 there, and a signal there.

17 HEARING EXAMINER RIVERA: And that's all approved
18 and happening through FDOT without any County
19 improvement?

20 MR. TREESH: Correct.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. TREESH: That's all being done by the Babcock
23 Improvement District in conjunction with FDOT.

24 How do I clear that?

25 MR. DANLEY: (Indicating).

1 MR. TREESH: There you go, it went away. Imagine.
2 Thank you, you did a good job. You just stood up, and
3 it went away.

4 So in summary, the analysis indicated that there
5 was no level of service issues on North River Road or
6 State Route 31 based on the build-out analysis. FDOT
7 and Babcock Ranch are improving State Route 31
8 currently down to State Route 78. They're finalizing
9 the PD&E south of 78; and as I indicated, construction
10 funding has now been financed for 2029 south of State
11 Route 78 down to State Route 80.

12 Again, we'll do a more detailed traffic analysis
13 as this project proceeds to development order if the
14 zoning is approved. They will indicate what
15 site-specific improvements are needed at the site --
16 access drives on North River Road, turn lane
17 improvements, et cetera, that will be needed at the
18 development order process. And then based on that, it
19 is our opinion that this project is consistent with the
20 Lee Plan transportation element and the Land
21 Development Code in terms of the transportation.

22 And that concludes my comments at this time. I'd
23 be more than happy to answer any questions.

24 HEARING EXAMINER RIVERA: The TIS did have one
25 segment that was failing, but I assume these

1 improvements mitigate that?

2 MR. TREESH: Yes. The -- when we did our TIS, the
3 funding for 31 south of 78 had not yet been identified
4 as a program. So with that program improvement now, we
5 can now take that funding into account, and the
6 widening of those lanes can now be accounted for. So
7 with that improvement, the level of service now
8 improves on that State Route 31 segment.

9 HEARING EXAMINER RIVERA: Okay, thank you.

10 MR. TREESH: Thank you.

11 MR. JOHNSON: Good morning.

12 HEARING EXAMINER RIVERA: Good morning.

13 MR. JOHNSON: Shane Johnson, Passarella &
14 Associates. I'm a senior ecologist with the firm. I
15 have previously been accepted as an expert in
16 environmental areas, specifically Lee County indigenous
17 vegetation, listed species issues, and wetlands, and
18 respectfully request that I be accepted once again this
19 morning.

20 HEARING EXAMINER RIVERA: Yes, thank you.

21 MR. JOHNSON: So before I begin talking about
22 existing environmental conditions, I'd like to walk you
23 through a series of aerials to provide some historical
24 context and the changes that have occurred on the
25 project over time.

1 So there's been talk of Trout Creek. That system
2 is located here on the western side of the project.
3 You can see that pretty clearly on the 1952 aerial. At
4 this time there was also another named creek system,
5 Otter Creek, which also flows from the north through
6 the property and all the way to the Caloosahatchee
7 River. So both systems are tributaries of the
8 Caloosahatchee. But what you can also see is a
9 connection from Otter Creek, it splits at this point,
10 and also connects into Trout Creek right here.

11 So a couple other things to point out. In 1952
12 portions of the property have been cleared probably for
13 agriculture at the time, cattle grazing in the
14 northwest portion of the site, and other patches that
15 you can see here have been cleared. Also, there's a
16 network of trails, which are likely logging trails used
17 to log the property at that time. And also a feature I
18 want to point out is this large marsh located in the
19 northeast portion of the site.

20 So fast-forwarding to 1958, the marsh is still
21 there in the northeast. You've got Trout Creek. This
22 segment of Otter Creek, you can see, has been converted
23 into a ditch. The rest of this system is -- looks like
24 it's fully intact and natural. The connection to Trout
25 Creek still exists and converges at this point right

1 here.

2 Also, some other ditches have been installed on
3 the property, you can see, from this wetland south to
4 the Otter Creek system. The point of these ditches is
5 to efficiently move water off the landscape, primarily
6 for agriculture and -- so they're not wet for cattle
7 grazing and other ag operations.

8 So fast-forwarding again to 1972 -- what I didn't
9 point out in the previous aerial is the Caloosahatchee
10 River has more of a natural serpentine shape; but when
11 you get to 1972, you can see it's been channelized
12 heavily; and as part of that process, they've dredged
13 the river. And a lot of that spoil material that was
14 dredged from the river at the time has been deposited;
15 and you can see the signature of this -- this
16 fingerprint, more or less, on the aerial where it's
17 been deposited in the southern area of the project site
18 and also in the northeast portion of the project. So
19 that's spoil that's been deposited there from the
20 river. And that marsh is no longer here in the
21 northeast.

22 Otter Creek has been modified even further into
23 essentially a ditch network. So at this point in time,
24 it's no longer functioning naturally as a tributary.
25 It is still conveying water, but not in its natural

1 form as it did once historically.

2 Fast-forwarding again to 1999, here I just want to
3 point out there's been some -- some ponds excavated,
4 primarily for cattle grazing, on the site. And that --
5 that flow-way system, that Otter Creek flow-way system
6 that connected to Trout Creek is no longer there. It
7 doesn't exist anymore.

8 And the current aerial, 2024.

9 So the point of showing you these historic aerials
10 is to highlight that this property has been disturbed
11 for many decades. It is not a pristine piece of
12 property. It has been disturbed at multiple levels.
13 From a hydrologic standpoint, Otter Creek. Cattle
14 grazing, which has really disrupted the wetlands
15 on-site, and has altered the topography of the wetland
16 areas and has led to spreading exotic vegetation around
17 the site, in addition to clearing native vegetation
18 that's occurred for ag operations and (unintelligible).

19 So moving on to existing conditions, so we --
20 Passarella & Associates, when we first look at a piece
21 of property, we create a vegetation or land use map,
22 also known as a FLUCCS map; and from that FLUCCS map,
23 it enables us to extract a lot of information about the
24 property.

25 So a couple of pieces of information are shown on

1 this graphic: The wetlands, which total about 70
2 acres, are shown in green. Those are primarily
3 pasture-type wetlands, like low depressional areas in
4 the pasture, again, heavily disturbed by the cattle
5 operations that currently exist throughout the site.
6 The cattle have full reign and full access to all the
7 areas on the property currently.

8 Also, you see in blue are surface waters. Again,
9 that's Trout Creek here on the west side of the
10 property. You've got some excavated ponds and what is
11 left of Otter Creek, which is just fragments of ditch
12 at this point.

13 So what we're also able to extract is where the
14 indigenous vegetation areas are versus the
15 nonindigenous. And so looking at the nonindigenous
16 areas, that represents 91 percent of the project site.
17 And going back to my discussion on the disturbance of
18 the project, that makes sense. The clearing that has
19 occurred, the cattle grazing, the deposition of dredge
20 material from the river, alterations to the hydrology,
21 that has led to this property being 91 percent
22 nonindigenous.

23 So when we talk about indigenous, per the Land
24 Development Code, that is vegetated areas that
25 contained 75 percent or less exotic vegetation. So of

1 the nonindigenous areas, most of those are
2 pasturelands -- as I mentioned, the site is currently
3 used for cattle raising -- also exotic vegetation and
4 the surface waters in blue.

5 So the remaining balance of the property is
6 indigenous, at 9 percent. So although representing a
7 small percentage of the property, the indigenous areas,
8 which are more or less scattered pockets throughout the
9 site, are pretty diverse, as you can see here in this
10 list: Palmetto prairie, pine forest, live oak, cabbage
11 palm -- which live oak and cabbage palm are considered
12 rare and unique habitat types per the Lee Plan --
13 hardwood conifer forest, which is a pine/oak mix,
14 cypress, mixed wetland forest, wetland shrub, and
15 freshwater marsh.

16 So moving on to listed species, this is a very
17 similar graphic to the last slide except it has the
18 listed species locations, the colored dots. Those
19 are -- each colored dot represents a particular species
20 that was located on the property.

21 So Passarella & Associates conducted a Lee County
22 protected species survey on the site in April, May, and
23 October 2022 in accordance with County standards. So
24 during that survey, there were a number of listed
25 species observed. I'm not expecting you to be able to

1 read the legend there. That's just to illustrate that
2 each colored dot represents an individual listed
3 species.

4 So there's American alligator, gopher tortoise
5 burrows -- which those are the most numerous on the
6 property in blue -- Everglade snail kite, crested
7 caracara, Florida sandhill crane, bald eagle, and four
8 different wading bird species observed during our
9 protected species survey.

10 Also, a few listed plant species -- royal palm,
11 golden leather fern, giant wild pine, and Florida
12 butterfly orchid were observed. These are not Lee
13 County protected species, but they are protected by the
14 Florida Department of Agriculture and Consumer
15 Services.

16 Management plans. So we, Passarella & Associates,
17 prepared two management plans that are very detailed
18 and are attached to the Staff Report. Plans were
19 prepared as part of the zoning application. And these
20 are typically provided at the time of development
21 order; but since the Applicant is proposing the density
22 increase, Staff needed to understand the mechanism on
23 how that was going to be achieved, hence the management
24 plans at this level. So, again, very detailed plans;
25 these are both attached to the Staff Report.

1 So with respect to indigenous vegetation
2 management, that plan includes methods for exotic
3 removal, intense supplemental planting plans -- which
4 I'll talk about in a little bit more detail in the next
5 slide -- establishment and protection of rare and
6 unique upland habitat -- and, really, the driving
7 policy there in the Lee Plan is 123.2.17, and I'll talk
8 a little bit more in detail about that in a minute.

9 Also, flow-way protection, we talked about Trout
10 Creek. Alexis talked about how preserving Trout Creek
11 is part of the overall conservation area.

12 Preservation maintenance and monitoring;
13 performance standards and success criteria -- this is
14 really important because this ties into the policy.
15 Certain success criteria have to be achieved in order
16 to get sign-off for the bonus density that is proposed.

17 Long-term site protection, in the form of
18 conservation easement, and wetland protection. The
19 majority of the wetlands that I showed on the previous
20 slides will be preserved and incorporated as part of
21 the overall conservation area for the project.

22 Protected species management, this is a separate
23 management plan. Again, it addresses all the listed
24 species that were observed during our protected species
25 survey on the property, and this provides specific

1 management measures for the gopher tortoise, American
2 alligator, sandhill crane, wood stork, and black bear
3 consistent with the listed policies here in the
4 slide -- but not specific to just those species. It
5 addresses all the species that were observed on the
6 property.

7 And so for the gopher tortoise specifically, the
8 intent is to keep them on-site. The ultimate decision
9 will lie with the Florida Fish and Wildlife
10 Conservation Commission when we apply for a permit; but
11 given the amount of tortoise burrows we have and the
12 tremendous amount of rare and unique upland habitat
13 we're restoring, we prefer to keep them on-site.

14 So the species management plan also includes a
15 human-wildlife coexistence plan that provides
16 educational material for residents to have a better
17 understanding of wildlife that may be utilizing the
18 property or in the area, and also methods for
19 minimizing conflicts between humans and wildlife.

20 So this graphic has a lot of colors on it, I'll
21 break this down, but essentially all the colored areas
22 that you see make up the 420 acres of on-site preserve
23 area. Again, that will be placed under conservation
24 easement to Lee County, preserved and protected in
25 perpetuity.

1 So of that 420 acres, approximately 51 acres of
2 wetlands will be retained, preserved, and enhanced.
3 Those are the green areas shown on this map.

4 Eight acres, plus or minus, of surface waters.
5 That's, again, Trout Creek, and some of the ponds that
6 were dug for cattle, and some portions of Otter Creek
7 that -- remnant portions that remain.

8 And the balance is -- really makes up the bulk of
9 the conservation area, 360 acres of uplands, and that
10 is your yellow and orange areas. The yellow and orange
11 are existing upland areas that will be preserved and
12 enhanced through exotic removal and installation of
13 supplemental plantings. And the other three colors,
14 the brown -- like the tan and the two brown colors
15 represent the -- the rare and unique uplands.

16 So of that 360 acres of uplands within the
17 conservation area, there's approximately 26 acres of
18 rare and unique upland preserve, again, that's existing
19 that we're preserving and enhancing. 2.68 acres of
20 upland restoration, again, existing uplands that we are
21 restoring through intense plantings.

22 And so the bulk of that rare and unique is really
23 the creation, and those are the tan areas that you see
24 across the site. So since, you know, 91 percent of the
25 property is not indigenous, there's a heavy load, a

1 heavy restoration component to this project, and that's
2 not only going to restore significant amounts of
3 indigenous habitat, it's going to provide significant
4 wildlife movement areas, as well.

5 So I mentioned extensive planting. The planting
6 plans are included in the indigenous management plan
7 attached to the Staff Report. There are several
8 different planting plant types. There's wetlands,
9 there's uplands, and there's also a specific planting
10 plan for the rare and unique uplands. Since that is
11 kind of its own category, it's going to be evaluated
12 separately as part of the density increase.

13 So also the bottom bullet point here, "compatible
14 soil types." I put that in there because that directly
15 relates to Policy 123.2.17. It does require that rare
16 and unique, whether it's restoration or creation, have
17 the appropriate soil types. So what that means
18 generally -- the Lee Plan doesn't specify this
19 necessarily; but from an ecological standpoint, if you
20 were creating or restoring an upland type of habitat,
21 you want to make sure it's not ponding water for
22 significant periods of time. So these are soil types
23 that are generally well drained or moderately well
24 drained.

25 So as part of the zoning application review, we

1 did provide a fairly detailed soils analysis -- that's
2 in Section 7 of our indigenous management plan -- that
3 evaluates the soil types currently on-site, and it
4 demonstrates how we do have the appropriate soil types.
5 And that was further substantiated through the
6 geotechnical report, which provided soil borings within
7 primarily the pasture areas on the site, which
8 indicated that at least the upper two, three feet of
9 the soil profile contains that sandy or sandy mix soils
10 that do drain well or moderately well.

11 So just a few points on the environmental and
12 aesthetic benefits of the project from a vegetative
13 standpoint. Again, the rare and unique has its own
14 planting plan. These are plant -- plant species and
15 plant material that you don't normally see on an
16 average project site. They're more rare, they could be
17 listed, and they're just unique in form.

18 So it's a diversified planting plan, and it helps
19 by increased diversity, and that directly relates to
20 Objective 123.2 at the bottom of the slide here, which
21 is "Maintain and enhance the biodiversity of natural
22 plant communities."

23 From a wildlife perspective, it provides cover;
24 provides additional movement area, like I provided out
25 before; interconnection of habitat -- and this relates

1 to, again, the bottom of the slide, Objective 123.1,
2 "Retain the interconnections and functionality of
3 hydroecological systems." That pertains to that
4 objective. And increase food availability.

5 So from an aesthetic standpoint, you really have a
6 heterogenous mixture of the different plant material,
7 again, unique in form and shape and size, and diversity
8 in growth forms, leaf shape/texture is aesthetically
9 pleasing.

10 HEARING EXAMINER RIVERA: And both of those
11 management plans that you talked about for the habitat,
12 for the restoration and the management, those are
13 adopted by reference in the zoning conditions. So
14 you'll be held to those metrics and the criteria for
15 the restoration as you're moving forward, but what are
16 the actual on-the-ground provisions that will be given
17 to be sure that the areas that abut the residential
18 development aren't going to be impacted or touched once
19 the folks are there and living? Will you have signage,
20 or is it going to be fenced in some way?

21 MR. JOHNSON: There's going to be signage. We
22 haven't discussed fencing yet, but there may be a fence
23 component. Once we start getting more into the
24 environmental permitting side of things, that may be a
25 requirement. We haven't crossed that bridge yet. But

1 certainly a signage component that will --

2 HEARING EXAMINER RIVERA: And then are you held --
3 because you talked about the restoration, and it's a
4 question I have in the conditioning, but are there --
5 what is the component, that enforcement capability that
6 the County has, to be sure that that restoration is
7 happening before the density is actually being built on
8 the ground? Is that work that you're going to be
9 beginning before they start going vertical on any of
10 the homes?

11 MR. JOHNSON: Right, it has to be done concurrent
12 with development, and it has to be completed within --
13 I believe it's five years. So there is -- there are
14 timing requirements, and the CC for certain phases is
15 dependent on the success of that particular phase of
16 restoration.

17 HEARING EXAMINER RIVERA: Okay.

18 MR. JOHNSON: So this is just a collage of
19 photographs. The upper left is an oak hammock. This
20 is -- these are systems that we -- this is not a
21 photograph from -- from the project site, but this is
22 an example of habitat types that we do have on the
23 project. And these are one of the target habitat, rare
24 and unique, systems that we anticipate achieving
25 throughout the site. So primarily oak hammock or

1 cabbage palm hammock mix with possibly some pine
2 flatwoods, is what we envision as far as the rare and
3 unique upland habitat on the project site.

4 So the rest of the photos here are just examples
5 of species that provide that aesthetically pleasing
6 look, different leaf textures, unique flower shapes
7 that provide not only wildlife cover, food for
8 wildlife, but are fragrant, are aromatic, and can be
9 enjoyed by the residents, as well.

10 So talking and focusing a little bit here on the
11 policy, again, this is the driving policy for the rare
12 and unique and our request for additional density.

13 So the areas that I've highlighted in blue here --
14 I think I'm missing a slide. There's a slide missing,
15 but I'll go over that here.

16 The policy has five -- five parts. So what's not
17 shown on here is parts 1, 2, and 3. There's no
18 environmental pertaining to those. Number 4, I'll just
19 read this out loud. So the indigenous preserve may
20 consist of created or restored wetlands,
21 flow-ways/creeks, or rare and unique upland habitats.
22 Management and monitoring of the indigenous preserve
23 must be in compliance with the indigenous management
24 plan required by the LDC. Monitoring timelines will be
25 extended as needed to assure that success criteria

1 established in the indigenous management plan is
2 achieved for at least five consecutive years.

3 That goes to your question about what's the
4 accountability, and Staff has that ability, to extend
5 monitoring if needed, if it's not achieving the -- the
6 required success criteria.

7 So the first part of this is -- is what we already
8 discussed. We are providing -- creating and restoring
9 wetlands and providing preservation of the wetland
10 flow-way system, Trout Creek, and the rare and unique
11 upland component. So I apologize that the slide didn't
12 make it here.

13 So under part 5 -- again, this policy has five
14 parts. So part 5 here, again, the -- the environmental
15 portions of this are highlighted in blue. So with
16 respect to rare and unique upland habitats, they must
17 comply with the minimum dimensions, which they do. You
18 can see -- especially when Alexis talked about the
19 magnitude of what we're doing and the buffers, you can
20 see how large these areas are going to be.

21 So part 5b, the soils needed to support the
22 establishment and success of the indigenous rare and
23 unique upland habitats, we talked about that, providing
24 the analysis as part of the zoning review.

25 C -- 5c, approve site-specific ecological

1 restoration plan. The ecological restoration plan must
2 include, at a minimum, a replanting plan, habitat
3 restoration plan, success criteria, and long-term
4 monitoring and maintenance. That's all built into the
5 indigenous management plan that we have prepared and is
6 attached to the Staff Report.

7 And last but not least, the site protection, which
8 is the conservation easement must be recorded within
9 five years of the development order approval, and that
10 is -- that's also baked into our management plan.

11 So before I conclude, I just want to state my own
12 personal and professional opinion. We really have a
13 tremendous opportunity, from an environmental
14 standpoint, to approve a project like this. Given the
15 magnitude of the disturbance that's occurred, you know,
16 on the property over time, the magnitude of the amount
17 of restoration that's going to occur can't be
18 overstated. It's really significant. And this is a
19 chance for a project to be approved with no
20 taxpayer-funded restoration. This is all privately
21 funded. So from an environmental standpoint, it's
22 really a special project.

23 So with that, it's my professional opinion that
24 Cary+Duke+Povia RPD has met or exceeded all the
25 applicable standards and demonstrated consistency with

1 the Lee Plan and Land Development Code.

2 HEARING EXAMINER RIVERA: So the protected species
3 that you noted, there were various on here. You
4 mentioned the gopher tortoise specifically, that those
5 were going to be retained on-site. How are all the
6 other species going to be addressed during the
7 construction phase when that's happening? I assume
8 that --

9 MR. JOHNSON: Sure.

10 HEARING EXAMINER RIVERA: -- there's a timing
11 component that's part of that.

12 MR. JOHNSON: There is, and a large part of the
13 management plan is preconstruction surveys so --
14 something I didn't mention because it's not part of the
15 zoning process, we don't just do a protected species
16 survey for the entitlement process, including zoning.
17 So for other environmental permits, we do
18 species-specific surveys for caracara, red-cockaded
19 woodpecker, Florida bonneted bat. So we've done --
20 we've spent a lot of time on this property doing
21 surveys. We have to redo that again prior to
22 construction. So if there's any nesting that is
23 observed by, say, a caracara or a bald eagle, that has
24 to be accounted for prior to construction. If any
25 modifications to the construction schedule need to be

1 made, that's the point of doing that.

2 HEARING EXAMINER RIVERA: And if species-specific
3 management plans are required, that would be adopted at
4 the time of development order or through other agency
5 permitting that you'll have to do?

6 MR. JOHNSON: Both, yes.

7 HEARING EXAMINER RIVERA: Okay, thank you.

8 MR. JOHNSON: Thanks.

9 HEARING EXAMINER RIVERA: Okay. Before we get to
10 the next witness, we're going to take a brief break to
11 give everyone a moment to stretch their legs.

12 Is 15 minutes okay?

13 THE REPORTER: (Nods head.)

14 HEARING EXAMINER RIVERA: Okay. We'll do a
15 15-minute break. I'm sorry, but the good news is you
16 get a little rest before we start. So we'll resume at
17 10:45, thank you.

18 (Recess from 10:29 a.m. to 10:45 a.m.)

19 HEARING EXAMINER RIVERA: Okay. We're back on the
20 record whenever you're ready to proceed.

21 MR. FREY: Good morning. My name is Brandon Frey,
22 and I'm the civil engineer for the Cary+Duke+Povia
23 project.

24 To give a brief background about myself, I'm a
25 registered professional engineer in the state of

1 Florida and have been working in the area as a civil
2 engineer for a little over a decade. Our team has
3 included my résumé. I have been qualified as an expert
4 previously, and I'm requesting that you qualify me as
5 an expert in these proceedings, as well.

6 HEARING EXAMINER RIVERA: Yes, thank you.

7 MR. FREY: Very good.

8 So before delving into the specifics of the
9 current plan, I think it's important to discuss how we
10 got here. We went through a number of different
11 iterations, and we met with nearby residents.

12 So around that time we also added the Povia piece
13 to the project, which is this northeastern piece here,
14 and that allowed us to make a few improvements that
15 coincided with the nearby residents' changes, you know,
16 namely, moving the accesses along North River Road to
17 better coincide with existing accesses along the
18 northern side and to be in the linear portions, which
19 we all feel is a safer alternative. It also allowed us
20 to remove the crossing across Trout Creek. There were
21 some concerns of flooding or that we would not be able
22 to maintain those conveyances, and adding the Povia
23 piece allowed us to connect to these rather than to
24 the --

25 THE REPORTER: I'm having --

1 MR. FREY: -- pod.

2 THE REPORTER: -- a hard time hearing you.

3 MR. FREY: It always happens. I'm so tall. It
4 says not to touch it though.

5 THE REPORTER: I'm sorry.

6 MR. FREY: That's okay.

7 In addition to that, we removed access to Duke
8 Highway. Our initial plan had access along there, and
9 there was concern of a permanent access. That came
10 out. There was concern of temporary access, which we
11 don't anticipate either as a component of the project.

12 So here is the plan that we ended up with. We
13 believe that this plan is not only the most efficient,
14 but provides significant setbacks to the boundaries of
15 the project. It was a purposeful move to allow
16 buffering of our project to travelers along North River
17 Road, as well as existing residents, such as those
18 along Serenoa Court -- kind of central on the north
19 side -- and along the southern side of Duke Highway.

20 Water and wastewater service will be provided by
21 Lee County Utilities. I'm sure you're aware there was
22 a Comp Plan amendment that was approved recently. And
23 surface water management will be handled via a number
24 of lakes and detention areas that will collect that
25 water, treat and attenuate it prior to discharging

1 off-site, and then, you know, eventually making its way
2 down to the Caloosahatchee River.

3 Another important note -- so Alexis touched on the
4 maintenance easement that I think you had asked a
5 question on the 10 versus 20. There's a 20-foot strip
6 down here on the southeastern portion, and the reason
7 that that's 20 feet is to allow two-directional
8 movement and to allow them to stage equipment, if they
9 should ever -- "they" being Lee County should ever need
10 to get into the creek. Once they get near the creek,
11 they only need 10 feet to be able to really just travel
12 one direction or the other.

13 I also think it's important to note that Lee
14 County has the right but not the obligation. I don't
15 know if it was 100 percent clear. We, as the
16 maintenance entity for the development, we'll be taking
17 care of all that; but if there's some emergency, some
18 neglect or something found, then Lee County has the
19 ability to come in and correct those deficiencies.

20 HEARING EXAMINER RIVERA: And that will be done
21 through an HOA or a CDD or some type of --

22 MR. FREY: That's correct.

23 HEARING EXAMINER RIVERA: -- oversight authority?

24 MR. FREY: Yeah, yeah, absolutely.

25 Another important component of the site planning

1 was the existing conveyances. It's been mentioned a
2 number of times that we have some pretty major
3 tributaries and conveyances through the property. So
4 there's Otter Creek, which you can see here on the east
5 in its new state; Trout Creek, which has been largely
6 left natural; and then there's pretty significant
7 drainage along the southern side of Serenoa. So all of
8 that water on the Serenoa Court community travels south
9 and then west along these blue arrows here to where it
10 meets Trout Creek. So we tried to maintain those flow
11 patterns as well as we could.

12 The only one that we're significantly rerouting is
13 that outer -- the Otter Creek ditch, and you can see
14 those revised flow paths here in green. So we have an
15 obligation to maintain all of the flows throughout the
16 project, the ones that come in and leave, to avoid
17 disruption from upstream or downstream residents.

18 And, you know, going back to the maintenance, I am
19 of the impression -- the opinion, rather, that these
20 flow-ways were pretty well choked with exotics; and as
21 a component of our preservation and our commitment via
22 conservation easement, we'll have to maintain them --
23 you know, remove those exotics not only initially but
24 in perpetuity, which should help even from what they're
25 seeing today.

1 HEARING EXAMINER RIVERA: Are the green arrows
2 then -- that's accepting sheet flow that's coming from
3 the north, or is that from the -- it looks like there's
4 culverts that are running under North River Road. So
5 what are the current conditions like?

6 MR. FREY: Right. So starting from the west,
7 there's a box culvert here that goes under the road,
8 and flow aggregates here on the northern side of the
9 road, and then goes under the road and into the creek.
10 On the eastern side, there are two -- two culverts that
11 go under the road and, again, just an aggregation of
12 flow that kind of point discharges onto our site. And
13 then some more minor but still important ones, these
14 arrows are really just sheet flow that collects in that
15 low-lying area, and as I mentioned with Serenoa, the
16 flow goes south, collects in a ditch that was dug, I
17 think, somewhere around the '70s or '80s, and then
18 heads west to Trout Creek.

19 HEARING EXAMINER RIVERA: Okay. I'm just trying
20 to orient myself a little bit.

21 And the Babcock property to the north, does
22 that -- their water management system operation
23 essentially marry with what you're proposing? Do
24 you -- will the Water Management District look at that
25 whenever you come in for your permitting? I assume

1 that they're looking at a holistic --

2 MR. FREY: I'm --

3 HEARING EXAMINER RIVERA: -- view of the area --

4 MR. FREY: I'm sure that they will. They'll look
5 at the flows that have always come into the property.
6 So if Babcock maintains their obligation to not disrupt
7 the patterns and location that it gets to us, and then
8 we don't disrupt it, then we've sort of daisy-chained
9 our way into a system that even in its
10 post-construction condition is cohesive.

11 HEARING EXAMINER RIVERA: Okay.

12 MR. FREY: One of the obligations that we feel is
13 a public benefit is the eight-foot shared-use path that
14 goes along our entire frontage. You know, I think it's
15 important to note that this is about two miles of
16 shared-use path. So it's not an insignificant addition
17 to the community that we believe provides a safer route
18 for joggers, cyclists, children, and other shared-use
19 path users, that would otherwise be forced to use the
20 roadway or roadside swale, which probably isn't good.

21 Probably the -- one of the larger public benefits
22 that we see as a component of this project is the
23 centralized water and sewer that's being brought to
24 this area. Currently north of the river and east of
25 31, there are only four or -- I think there are four

1 draft fire hydrants, which are just hydrants that pull
2 out of a lake or a well or something, not an enormously
3 reliable source of water for fire suppression. That
4 will be remedied by us bringing water to our site; and
5 as a -- as an aside of us bringing water to that site,
6 we'll have fire hydrants that we've located
7 strategically to coincide with intersections, which
8 are -- you know, have the highest likelihood of vehicle
9 fires from collisions, and water availability for fire
10 suppression.

11 We've also located one along Duke Highway, for
12 fire suppression in that area. And I'm not an
13 insurance expert, but it's my understanding that if
14 you're within a thousand feet of a hydrant, you're
15 eligible for insurance premium discounts. So, you
16 know, there's -- there's sort of that ancillary benefit
17 to folks, as well, once -- once this waterline goes in.
18 I was surprised to find that there was no water in this
19 area at all. So I'm excited about that.

20 It's my professional opinion that the
21 Cary+Duke+Povia RPD has met all of the applicable
22 standards and demonstrated consistency with the Lee
23 Plan and the Lee County Land Development Code. I'm
24 able to answer any questions you have now, or
25 afterwards.

1 HEARING EXAMINER RIVERA: If you could just go
2 back to the graphic with the arrows again. Can you
3 just describe generally how the water management system
4 is going to operate? Because, again, obviously
5 flooding is a concern in this area. You've got some
6 coastal high areas on-site, and you've got wetlands and
7 things that you're going to be working within. So how
8 is the post-construction or even during construction
9 movement of that water going to occur during storm
10 events or during a normal day?

11 MR. FREY: Let's handle storm events first. So I
12 think it's important to make a distinction that
13 flooding can be from two real sources. You have the
14 conveyance-type flooding, which is when a river gets
15 overwhelmed; and then you have coastal-type flooding,
16 which this area of the Caloosahatchee also experiences.
17 There's not much that anyone can do, in my opinion,
18 about coastal floodings because that's -- it's just the
19 ocean coming up. You can't fight that.

20 But there are things that we can do maintain and
21 improve conveyances throughout the site, and that's why
22 we were as purposeful as we could in avoiding creeks
23 like Trout Creek, which is a pretty major tributary in
24 the area. And, you know, there was a lot of detailed
25 analysis that was placed into Otter Creek and rerouting

1 that to ensure that it has, at a minimum, the same
2 capacity that it has today.

3 Internal to the community, we will be held to all
4 the same state, local, federal guidelines with FEMA and
5 South Florida Water Management District to avoid
6 flooding within our community.

7 Does that answer your question?

8 HEARING EXAMINER RIVERA: Well, so you mentioned
9 lakes. So there's a number of lakes that I've
10 highlighted in blue along -- so is the idea that you're
11 going to collect within the lakes and -- I mean,
12 actually it's pretty technical in terms of where are
13 the culverts going to be, where's the piping going to
14 be, and the outfall structures. How is it going to
15 flow?

16 MR. FREY: Right.

17 HEARING EXAMINER RIVERA: Generally southwest, I
18 believe, is the direction that you're going.

19 MR. FREY: Uh-huh, right. So around our community
20 picture a berm -- and not, you know, a giant mound but
21 a small berm that catches the water that runs off from
22 the lots, from the roads within the community. It
23 brought into that lake -- or those lakes for storage;
24 and there are control structures, which some of them
25 are shown here. You can see them, these black squares

1 with little arrows coming out of them. Those are the
2 areas that we have control structures that will limit
3 the discharge to the surrounding area, and that's in an
4 effort to provide water quality and nutrient reduction
5 and attenuation for those areas prior to it being
6 discharged. Does that answer --

7 HEARING EXAMINER RIVERA: Is it --

8 MR. FREY: -- your question?

9 HEARING EXAMINER RIVERA: -- sheet flowing right
10 now, the current conditions, or just anything that's
11 crossing this property is going downstream to the
12 properties to the south?

13 MR. FREY: The flows that are within -- let me go
14 back here. The flows that are going through the
15 property are pretty -- they're pretty linear, they're
16 pretty confined to those tributaries that exist; but
17 there's, you know, 700 and some odd acres of open
18 space, and that just sheet flows and, you know,
19 collects in the North River Road ditch or along this
20 southern boundary; it makes its way to the creek. It
21 all sort of eventually makes its way to these larger
22 flow paths that are there.

23 HEARING EXAMINER RIVERA: Okay. But the Water
24 Management permit that you're going to have to get is
25 going to ensure that you're not putting anyone off-site

1 in a worse position than they are right now --

2 MR. FREY: That's correct.

3 HEARING EXAMINER RIVERA: -- with the project.

4 I'm try to get to that question.

5 MR. FREY: Yeah, yes.

6 HEARING EXAMINER RIVERA: Okay. So the current
7 conditions, in your opinion, are less desirable maybe
8 than what it would be post --

9 MR. FREY: That's correct.

10 HEARING EXAMINER RIVERA: -- construction?

11 MR. FREY: Yes.

12 HEARING EXAMINER RIVERA: And that's because you
13 have these operations on-site -- and there's wet and
14 dry detention areas, I'm assuming, also?

15 MR. FREY: So we believe that surface water
16 management will be in a better condition
17 post-development than in the pre-development condition
18 because of the on-site constraints that we have, like
19 the lakes and control structures. But outside of our
20 development pods, as well, because of -- you know, for
21 instance, the rerouting of Otter Creek allowed us to
22 enlarge and provide some over-bank areas which increase
23 capacity in that portion of Otter Creek. We believe
24 that clearing out exotics, you know, makes it a little
25 easier for water to make its way through. So --

1 HEARING EXAMINER RIVERA: Okay.

2 MR. FREY: -- yes.

3 HEARING EXAMINER RIVERA: So will folks that are
4 off-site, for the off-site impacts, will they notice
5 any difference because of all the restoration work and
6 things that are happening on the site and rerouting
7 that you're talking about? Or the maintenance you
8 mentioned, that there were some constrained flow-ways,
9 you thought maybe, and you're going to be responsible,
10 I believe was your testimony, for that portion of Trout
11 Creek that's on your property through a CDD, so will
12 that improve or impede flow for folks off-site?

13 MR. FREY: I think it will improve it, yes. To
14 what extent will it be noticeable, I don't know. You
15 know, other than the coastal flooding that we
16 unfortunately saw, I'm not sure how significantly this
17 area floods. And, you know, a lot of the lands to the
18 north that we receive flow from are conservation lands
19 or lands that are sort of in a virgin and untouched
20 state.

21 So upstream of us, you know, will it get better by
22 calculation? Yes. Will it get better by walking down
23 the street and being able to recognize that? I don't
24 know.

25 HEARING EXAMINER RIVERA: Okay.

1 MR. FREY: And downstream of us I don't anticipate
2 any impacts. We're pretty close to the Caloosahatchee,
3 and we're probably more controlled by the tides than we
4 are by anything that we could or could not do.

5 HEARING EXAMINER RIVERA: Okay, thank you.

6 MR. FREY: Yes, ma'am. Is that all?

7 HEARING EXAMINER RIVERA: Yes --

8 MR. FREY: Okay.

9 HEARING EXAMINER RIVERA: -- thank you.

10 Good morning.

11 MR. MARTIN: Good morning.

12 Can you hear me okay?

13 THE REPORTER: (Nods head.)

14 MR. MARTIN: I'm shorter than he is.

15 So I'm Kirk Martin, president of Water Resource --
16 Water Science Associates, been 40 years practicing
17 water supply/water resource management and wastewater
18 management in Lee County. I have been accepted in this
19 forum and others as an expert witness in hydraulics,
20 hydrology, and water resources, and request the same
21 here.

22 HEARING EXAMINER RIVERA: Yes, thank you.

23 MR. MARTIN: Thank you.

24 My presentation is relatively short, primarily
25 focused on various issues that were raised in public

1 meetings that were held with the neighborhood, and I
2 will go forward to that. However, the first slide I'll
3 show may have something to do with your last question,
4 Madam Hearing Examiner, that may be helpful.

5 So my understanding of -- and I didn't do the
6 surface water management design, but I am addressing
7 what we -- what we put together as a water quality
8 management plan.

9 But in addition to the normal lake storage -- so
10 to your question earlier, there is more storage on the
11 property to hold water because of the lake system, but
12 the lake systems are designed to meet state and federal
13 standards for water retention, flood management, and
14 water quality. But in addition to that, what I think
15 is really cool about this project and relates to what
16 Shane talked about, is instead of discharge out of the
17 lakes into waters of the state, we go into the preserve
18 area. So there's actually a tertiary level of
19 treatment beyond just the lake system, and you get a
20 highly diffuse flow into natural waterbodies. So it's
21 really, I think, an extra level of treatment and water
22 quality storage on this site.

23 But with regard to that, we've also developed a
24 water quality management plan, and that includes seven
25 surface water management -- or surface water stations

1 where we -- where we sample for water quality. That
2 water quality sampling will be done predevelopment, as
3 a background, and biannually after that. The
4 parameters to be measured will be nutrients, salinity,
5 metals, pesticides, dissolved oxygen, and a sundry
6 other things. But that will be done biannually at
7 seven surface water sites, including the five outfalls
8 that go into the preserve areas. In addition to that,
9 we'll have two shallow monitor wells just for general
10 groundwater conditions, be tested for water levels.
11 Also, one sandstone aquifer, that's the primary source
12 of water for most people in the area for drinking, a
13 monitor well into that. And so there will be this
14 biannual water level and water quality assessment over
15 the -- over the project.

16 The next two slides are a little bit busy, but
17 there was kind of a primary issue raised with regard to
18 utilities on-site. I want to talk about septic tanks
19 versus central sewer systems. I don't want to
20 disparage septic tanks because they have their place.
21 They work very well in certain locations, but not
22 everywhere. And so essentially septic systems do not
23 promote public health and safety at this particular
24 site. Septic tank does not work well with a high water
25 table, which North Lee County is known for. Septic

1 tanks do not work well when they're proximate to
2 natural surface waterbodies -- the Caloosahatchee,
3 Trout Creek, Owl Creek. Septic tanks do not work well
4 in fine soils, which are also typical of North Lee
5 County.

6 But more importantly, I'd like to suggest that
7 septic tanks eliminate the potential benefits of the
8 proposed clustered development. That includes the
9 increased buffering and the increased preserve area,
10 the increased wildlife habitat, the improved floodplain
11 management, the increased stormwater storage I just
12 talked about, and increased improved stormwater
13 treatment. If we went to septic tanks, you can't have
14 the clustered development. You have to kind of spread
15 everybody out, and you lose all these attributes that I
16 think are a great improvement.

17 In contrast, a central sewer system does promote
18 public health and safety. Central sewer significantly
19 reduces nutrient loading to the environment. They
20 provide a valuable resource in terms of reclaimed water
21 for Lee County Utilities. They can sell that water and
22 apply it, you know, where it's needed. And they do
23 allow for the clustered development and its attendant
24 benefits of buffering, preserve, wildlife habitat,
25 floodplain management, and stormwater treatment.

1 And just as an example of that, the table I'm
2 showing you here is showing the standard loading for a
3 septic tank versus an advanced water treatment system
4 that Lee County would provide, both -- or in terms of
5 biological oxygen demand, total suspended solids,
6 nitrogen, and phosphorus. And you can see in the
7 right-hand column, basically it's a 50 to 95 percent
8 reduction, including an 89 percent reduction in
9 nitrogen, from the advanced wastewater treatment system
10 we're proposing as opposed to septic tanks.

11 And finally, this item came up kind of late -- in
12 one of the latter meetings held with the public. There
13 was concern about water use on the property. And the
14 fact that we're providing central potable water as
15 provided by Lee County Utilities, we'll be reducing
16 overall potential water use on the site because we're
17 taking the entire potable use off-site and putting it
18 somewhere else. So I'm going to suggest somewhere in
19 the 50 percent range, the potential water use on this
20 property is being eliminated by the removal of the
21 potable supply from the site.

22 In addition to that, we're proposed a centralized
23 control of the irrigation system. Again, with the
24 smaller clustered homesites, we'll be reducing overall
25 potential irrigation on the site. And for example, our

1 water use permit, which is already in process with the
2 Water Management District, the thing it's waiting on
3 is -- I think is Brandon's surface water management
4 stuff, but it's -- it's -- it's almost done.

5 But when we look at that, we're only irrigating
6 about 12 percent of the entire site. So in looking at
7 that, even our irrigation use is probably an 85 percent
8 reduction over what could happen in an agricultural
9 property. We're probably something like a 70 percent
10 reduction over what would happen if you had all
11 (unintelligible) or, you know, a ranchette-type home.

12 So overall potable use is going away; irrigation
13 use will be significantly reduced and also highly
14 controlled so we don't have people, you know,
15 willy-nilly just turning on their sprinklers when they
16 want to.

17 HEARING EXAMINER RIVERA: Irrigation water, if I
18 recall, is not being provided --

19 MR. MARTIN: I'm sorry?

20 HEARING EXAMINER RIVERA: -- by -- irrigation
21 waters are not being provided through a centralized
22 system. So I believe they're going to be using
23 on-site?

24 MR. MARTIN: It's a centralized system, but it's
25 controlled by the development. So instead of everybody

1 having their own wells and turning on their system, it
2 will be a centralized irrigation system that will
3 include -- I think it's two primary supply wells going
4 into a lake, and then that's being re-pumped into the
5 distribution system for the houses.

6 HEARING EXAMINER RIVERA: From within your
7 property though.

8 MR. MARTIN: From --

9 HEARING EXAMINER RIVERA: The irrigation water is
10 entirely self-contained --

11 MR. MARTIN: That is correct.

12 HEARING EXAMINER RIVERA: -- was my understanding.

13 MR. MARTIN: That is correct.

14 HEARING EXAMINER RIVERA: Okay.

15 MR. MARTIN: And then with that, just a
16 conclusion. In my professional opinion, this property
17 will meet all the applicable standards demonstrated in
18 the Lee County Plan and Land Development Code.

19 HEARING EXAMINER RIVERA: And if you can go back
20 for one second to the water quality slide that you
21 had --

22 MR. MARTIN: Yes, ma'am.

23 HEARING EXAMINER RIVERA: -- that shows -- I
24 assume that what you're doing is you're going to be --
25 you're going to be testing the off-site waters before

1 they enter your property, and then testing them as
2 they're leaving? Are those where the monitoring wells
3 are going to be --

4 MR. MARTIN: So right now the plan is -- I don't
5 know that we've got anything coming on the property --
6 that's actually a really good idea, honestly.

7 Right now, in order to meet Lee County -- the
8 concerns of Lee County Natural Resources, we're doing a
9 predevelopment sampling of all the potential outfall
10 stations, the original five I talked about; but once
11 the development is going -- once development occurs,
12 we'll be testing all those five sites, plus two lakes,
13 plus two shallow wells, plus one deeper well. But,
14 actually, I think your thought about the -- what's
15 coming onto the site is a really good idea. I may
16 think about that.

17 HEARING EXAMINER RIVERA: And the pre-water
18 sampling is happening now? Is that --

19 MR. MARTIN: It will happen before the
20 construction starts. It hasn't happened yet.

21 HEARING EXAMINER RIVERA: Okay. Before you can,
22 again, go vertical on anything --

23 MR. MARTIN: Correct.

24 HEARING EXAMINER RIVERA: -- you've got to get
25 that --

1 MR. MARTIN: That is correct.

2 HEARING EXAMINER RIVERA: All right, thank you.

3 MR. MARTIN: Yes, ma'am.

4 MS. CRESPO: Thank you, again, Alexis Crespo
5 representing the Applicant.

6 I'm going to go slightly out of order from the
7 book we gave you. I'm going to run through our 48-hour
8 letter and then close on -- on this. So I'm going to
9 flip to slide 90.

10 I thank you and everyone for their patience as we
11 go through our presentation. I'm hopeful that we put
12 some good information on the record that will help to
13 ease some concerns.

14 So I'll just run through again the items in our
15 48-hour letter. As you noted, we do have a Staff
16 recommendation of approval with conditions. I believe
17 we may be in total agreement with the items I'm going
18 to run through here. Staff has not had a chance to
19 look at the first item, but others we were able to work
20 through last week. So we'll certainly hear from them
21 during their presentation, but I believe we are close
22 here.

23 So the first condition I'll take up is 3.b. This
24 condition states (as read), prior to development order
25 approval for individual lots within the development,

1 any lot within 300 feet of the development perimeter
2 must be a minimum of 15,000 square feet.

3 So the intent here is to achieve compatibility and
4 protect rural character by locating larger lots along
5 the perimeter. And this, as stated in the Staff
6 Report, correlates to the North Olga Policy 29.2.2,
7 which I'll read aloud, as well, which that policy
8 guides development in North Olga by stating (as read),
9 proposed residential development adjacent to an
10 existing large lot area or commercial agriculture
11 business will provide appropriate separation, such as a
12 minimum lot size of one unit per acre for lots abutting
13 the perimeter of the property lines. For the purpose
14 of this policy, large lot residential uses are defined
15 as those residential uses with lot size equal to or
16 greater than one acre, which certainly exists generally
17 around the subject property.

18 We are proposing alter -- alternative solution to
19 achieving enhanced compatibility. We believe that the
20 extensive setbacks, restoration areas along our
21 perimeter fully achieve all of the goals, objectives,
22 and policies about protection of rural character
23 outlined throughout the Lee Plan. But just to start,
24 we wanted to put on the record that while the Lee Plan
25 provides no guidance, the Land Development Code does

1 state that abutting the property would mean -- in this
2 case those lots means properties having a boundary
3 line, or point or portion thereof, in common with no
4 intervening street right-of-way or easement, or any
5 other easement over 25 feet in width.

6 So this would be where you have proposed lots
7 direct -- directly on a lot line shared with another
8 large lot estate, which we would submit does not exist
9 in our project. We have our residential tracts, which
10 again are separated at minimum 60 feet from the
11 property line, and the only area where we're less than
12 the 300 feet from large lots over an acre is along that
13 southern stretch with -- with Duke Highway.

14 So let me explain that a little bit better. That
15 condition applies to 300 feet; and when you look in
16 these areas near Serenoa Court, where certainly there
17 are existing large lots, residential development, these
18 are 400 plus feet away; so we wouldn't trigger the
19 condition anywhere along these property lines that I'm
20 circling here. These are vacant lands. I noted this,
21 there's no residential use on this property. This
22 property is owned by the Cary family. So, really, it
23 would only be triggered along this Duke Highway line.
24 However, we submit that we do not have lots abutting
25 that property line. We have a conservation easement

1 tract that's a minimum of 170 feet, which will be
2 separating these lots from the Duke Highway
3 right-of-way. And then furthermore, in addition to our
4 conditions proposed with that preservation, we do have
5 a public roadway intervening between us and any lots.
6 There are no lots on the north side of Duke Highway
7 abutting this property.

8 So we would submit that as proposed, with our
9 conservation easement tract, we are not triggering the
10 need for additional conditioning beyond what we have
11 provided for to meet the intent of that policy.

12 HEARING EXAMINER RIVERA: Is there any -- go back
13 for a second.

14 MS. CRESPO: (Complies.)

15 HEARING EXAMINER RIVERA: Is there any
16 consideration -- because right now I think you're at
17 4,000 square feet for your single-family lots and 3,000
18 square feet for your two-family attached, and it's --
19 all just are on the -- on the master concept plan. Has
20 there been any thought given to where the two-family
21 attached are going to be? Are those also capable of
22 being along the exterior? Which also I would think --
23 to address Staff's concern and the one that you just
24 stated, which is that visual experience that off-site
25 folks are having and just the feel of having clustered

1 development that close to them when they're not used to
2 having anything right across the street, I don't know
3 if that's something that had been discussed or where
4 the lot sizes or the 15,000 square foot, either, came
5 from. And that's something Staff can talk about when
6 we get to the Staff's presentation, but there was a lot
7 in the Staff Report about being consistent with Owl
8 Creek, but their minimum lot size I think is 6,500 for
9 single-family and 3,750. So they're slightly larger
10 so --

11 MS. CRESPO: Right.

12 HEARING EXAMINER RIVERA: -- again, I just don't
13 know if there's any thought that went into that or any
14 capability to isolate where the two-family attached are
15 going to be, if that is a concern that Staff has -- and
16 it may be not their concern. I'd like to hear from
17 them before we get into depth on that, but it's a
18 question that I had for you, of whether that's
19 discussed in any detail, or if it's just capable of
20 going anywhere on the site at this point.

21 MS. CRESPO: As conditioned, it's capable of going
22 anywhere on the site. I think we're going to have
23 ample time to discuss throughout the hearing, and can
24 certainly readdress that either -- in rebuttal, if
25 there's some limitations we can place on that dwelling

1 type to further achieve this compatibility.

2 The North Olga Plan policies that guide
3 development in North Olga -- and these have been
4 implemented in the Comp Plan since around 2010/2011.
5 It really encourages the clustered development
6 approach. It does ask for the large lots where they
7 are directly on the perimeter, but in general the
8 policies cited here are directing for smaller lots,
9 multiple housing types, but clustering them so that you
10 have expansive preserve and open space located around
11 the perimeter of the property, as well as
12 environmentally sensitive areas. So we would submit
13 the guiding objectives and policies support our
14 proposal. They also allow for the rare and unique to
15 be integrated into the project, thereby ensuring the
16 compact nature of the community.

17 This issue has come up -- obviously there's been a
18 lot of growth in Lee County, and some of those areas
19 interface between the rural and urban areas. So we did
20 examine other recent PD approvals that have come
21 through the Hearing Examiner's Office to see how this
22 was addressed, and we submit our request for the
23 170-foot setback is the mechanism to address
24 compatibility here. Other projects have -- have agreed
25 to large lots on the perimeter, but the setbacks are

1 nominal compared to what we're proposing.

2 So we have Buckingham 345 here. That is a
3 proposed project adjacent to the Rural Community
4 Preserve in the Buckingham area, of course. And
5 their -- they have delineated these R-3 and R-2 tracts
6 along perimeters with larger lot sizes, and we have the
7 ordinance or resolution number referenced there, as
8 well. So they did larger lots, but they have a 30-foot
9 setback. We have 170 feet of not only setback, but
10 created restoration preserve, and as we will show you,
11 a newly proposed enhanced buffer.

12 Owl Creek, you've well noted that the lot sizes
13 are slightly larger, so we will come back and address
14 that piece of it; but this also was approved recently.
15 It used the same rural rare and unique density bonus
16 and does not require any larger lot sizes, and the
17 setback is 50 feet from the property line and 20 from
18 North River Road. So, again, we're hundreds of feet
19 beyond what was allowed in that case.

20 And then Bayshore Ranch also -- you'll note
21 2022 -- they agreed to a larger lot treatment along
22 perimeters. That's 12,750-square-foot lots, and those
23 tracts are 75 feet from property lines. They also
24 utilized the same mechanism. So ours, well above and
25 beyond any of these other examples in lieu of the

1 larger lot sizes.

2 And then lastly the Babcock Ranch MPD is in the
3 same community, approved in 2022, and there's no
4 requirement for larger lots, and there's a treatment
5 where the setback is 100 feet from -- at the smallest
6 location.

7 So we would submit, based on these other recent
8 approvals, we are exceeding that separation, the
9 preserve treatment, to land on a compatible, visually
10 rural aesthetic from our perimeters where we are
11 interfacing -- not abutting but interfacing with larger
12 lot areas that certainly exist in this area.

13 So, again, this will all be conservation easement
14 per Policy 123.2.17 of the Lee Plan. So this is not
15 just an HOA-maintained preserve that sometimes trees go
16 missing. This is a dedicated conservation easement
17 through a third party that's going to be ranging -- and
18 I think this aerial helps you see that we don't --
19 we -- the roadway is what we abut, with the exception
20 of this property here that's undeveloped, and so
21 there's separation here, as well as an intervening
22 roadway.

23 And this, again, is the pinch point where we're
24 the closest at 170 feet.

25 And then we have a 60-foot setback in the location

1 adjacent to the southwest.

2 I'm going to hand it to Will to walk through a
3 propose -- all this has laid groundwork of we believe
4 we're fully consistent with the North Olga policies,
5 Northeast Lee County policies, guiding protection of
6 rural character. We've obviously designed the site to
7 achieve that. However, we -- we heard Staff, that
8 they -- they needed a bit more, whether that's larger
9 lots -- our approach is to enhance screening in this
10 area so that there will be a very opaque wall of native
11 vegetation. And so Will is going to walk you through
12 that as the registered landscape architect.

13 MR. HELLMAN: Will Hellman on the record again.

14 So the two images that you see, the image on the
15 left is Duke Highway, looking to the northwest,
16 demonstrating existing vegetation, which includes
17 mature bald cypress in this particular image, as well
18 as the exotic invasive Brazilian pepper. Similarly,
19 the image on the right is also on Duke Highway, looking
20 to the northeast towards the property, shows existing
21 mature pine trees, as well as additional Brazilian
22 pepper, exotic invasives.

23 So understanding that a condition of development
24 is the removal of exotic invasives, we understand and
25 appreciate that there is the potential for them to

1 be -- there to be some gaps in the visual separation at
2 that time of removal.

3 So what -- we've visited the site and surveyed,
4 and there are a large number of existing mature live
5 oaks, South Florida slash pines, and cabbage palms of
6 varying height, as well as lesser qualities of bald
7 cypress and some additional native midstory trees.

8 This image up here, a created image, depicts what
9 we think it would look like as a typical condition
10 after the removal of exotic invasives. So you can see
11 it's a little bit thinner than what it would look like
12 after that 5-year grow-in, but, notably, the line of
13 sight is still obstructed by the proposed plant
14 material and existing plant material.

15 This graphic represents approximately a 5-year
16 grow-in period, which is consistent with the indigenous
17 restoration plan. The smaller trees that you see here
18 range in height from about 6 to 10 feet, which would be
19 the anticipated height after 5 years of growth from
20 their initial installed height at 5 feet.

21 To ensure that there is 100 percent opacity along
22 the frontage of Duke Highway, the additional condition
23 that we have offered includes the installation of
24 10-foot-high native canopy trees, as well as 5-foot
25 minimum high cabbage palms along the first 25 feet in

1 from the property boundary, infilling any gaps in the
2 existing vegetation after the removal of exotic
3 invasives. Again, we feel that the 10-foot-high native
4 canopy trees are consistent with the code minimum
5 landscape requirements with the LDC, and the
6 5-foot-high cabbage palms are shorter than what the LDC
7 requires, but we feel like there's more instant impact.
8 Because of the growth habits of the cabbage palm, they
9 would be installed in minimum clusters of three at
10 varying heights to maximize and create that opacity
11 along Duke Highway.

12 The condition -- the revised condition reads, "An
13 enhanced native buffer shall be provided adjacent to
14 Duke Highway with a minimum width of 25 feet and within
15 the 170-foot minimum setback. The enhanced buffer
16 shall include the following minimum plants:
17 10-foot-tall, 2-inch caliper native canopy trees and
18 5-foot clear trunk cabbage palms, planted no more than
19 15 feet on center and within 25 feet of the property
20 boundary where necessary to fill in visual gaps between
21 existing native vegetation to form a continuous, 100%
22 opaque vegetative screen within 5 years of growth. The
23 native canopy tree species will be consistent with and
24 in addition to the approved Cary+Duke+Povia RPD
25 Indigenous Preserve Management and Restoration Plan

1 Supplemental Plantings List (May 2024) within this
2 buffer. Cabbage palms will be planted in minimum
3 groups of three. The enhanced buffer will be installed
4 prior to issuance of building permits for homes within
5 300 feet of the Duke Highway right-of-way."

6 Any questions?

7 HEARING EXAMINER RIVERA: Had that been shown to
8 Staff prior to now, or no?

9 MR. DANLEY: (Shakes head.)

10 HEARING EXAMINER RIVERA: Okay. So we'll address
11 their comments to it later, thank you.

12 MR. HELLMAN: Thank you.

13 HEARING EXAMINER RIVERA: That's all I need for
14 now.

15 MS. CRESPO: All right. So thank you, Will --

16 MS. MONTGOMERY: Madam Hearing Examiner, can I ask
17 Ms. Crespo --

18 HEARING EXAMINER RIVERA: Yes.

19 MS. MONTGOMERY: -- a question before we leave
20 this topic?

21 MS. CRESPO: Yes.

22 MS. MONTGOMERY: Ms. Crespo, under Policy 29.2.2,
23 in your expert opinion, with the proposed condition and
24 the separation, does it provide what the policy talks
25 about as, quote, appropriate separation?

1 MS. CRESPO: Yes, I -- based upon not only the
2 spatial separation of 170 feet, the restoration
3 plantings that will go in that location under
4 conservation easement -- we -- we did note Staff's
5 concern, with removal of exotics, separation and
6 preserve may not be enough to block the views. I
7 believe we are even more consistent with 29.2.2 with
8 the supplemental plantings and the very specific
9 language regarding opacity of the plantings, the timing
10 of them so they're not going in concurrent with the
11 homes. I think in sum, yes, this is consistent with
12 29.2.2.

13 MS. MONTGOMERY: And when I read that policy, it
14 says, "provide an appropriate separation," and then it
15 says, "such as," and it gives you an example of large
16 lots. So "such as" is defined as for example. So
17 given the fact that that's not a requirement but a "for
18 example," does that further bolster your expert opinion
19 that this policy is addressed by the proposed plan?

20 MS. CRESPO: Yes. And I would submit that in lieu
21 of -- in lieu of the separation, enhanced buffers, the
22 condition would be 15,000-square-foot lots potentially
23 abutting Duke Highway with minimal of 15 feet
24 right-of-way buffers. I would submit that's much less
25 compatible, that that lot size is still smaller than

1 what's immediately abutting the roadway. So the
2 solution to completely screen views of these homes and
3 place them in a location where they're out -- where
4 they're not visible from Duke Highway or these folks'
5 property is -- is much more in line with the intent of
6 29.2.2, as opposed to introducing 15,000-square-foot
7 quarter -- you know, a little over quarter-acre lots
8 into this area where they would be much more visible
9 compared to the proposed scenario.

10 MS. MONTGOMERY: Thank you.

11 MS. CRESPO: Thank you.

12 With all that being said, you have a wonderful
13 Staff, and we -- this -- you know, these conditions get
14 worked out over time, and we do very much respect the
15 intent of the condition, that we needed to go further
16 with our proposal to -- to achieve the intent of the
17 condition, if we were relying on separation as our
18 metric or solution to the rural character protection.
19 So we hope over the course of this we can work on that
20 condition and be in agreement with them.

21 The next conditions I'll -- I'll hit on briefly
22 that I believe we are, again, in agreement with them
23 on. So with the level of service safety, we did get a
24 lot of public feedback about concerns about EMS. I
25 noted that Babcock is dedicating land for that within

1 less than two miles of this site. So there are
2 imminent solutions to this. We just were requesting a
3 slight rewording to tie the requirement to an
4 available -- availability letter of service, because
5 that's really the standard of -- of demonstrating
6 sufficient level of service. And level of service in
7 your Comp Plan is non-regulatory for EMS services; so
8 this is a way that Lee County Development Services
9 Staff can check that, yes, we've got a letter from Ben
10 Abes saying there's availability, and still meet the
11 intent of this.

12 HEARING EXAMINER RIVERA: Again, I'll address that
13 question with Staff.

14 MS. CRESPO: Sure.

15 Condition 16 is a trip generation cap condition.
16 We met with Staff. We -- trips are capped by your, you
17 know, worst-case scenario dwelling type and the maximum
18 number of units you can build of those highest
19 generating -- which in this case is single-family
20 detached, which is how we ran our traffic study.

21 So this just is another complex monitoring item
22 for Staff, and we discussed it with them, and they
23 agreed they could eliminate this condition entirely, as
24 the limit on units will meet the intent here of
25 limiting trips and density.

1 And that concludes our discussion on conditions.
2 So I will just do a run-through of Lee Plan and LDC
3 compliance. Again, we appreciate --

4 HEARING EXAMINER RIVERA: Will you be getting
5 into -- that was the 48-hour letter conditions. Are
6 there other discussions on conditions, or did you have
7 any additional testimony on conditions? I had a
8 question on --

9 MS. CRESPO: No --

10 HEARING EXAMINER RIVERA: -- conditions.

11 MS. CRESPO: -- I do not.

12 HEARING EXAMINER RIVERA: Okay. My question is --
13 excuse me, I need to ask a question first.

14 So the density derived from the rare and unique
15 habitat condition that was in the Oak Creek essentially
16 bound the platting of the additional density lots that
17 they were getting to the restoration work that was
18 required from the rare and unique uplands. I didn't
19 see that carried in the proposed conditions in this
20 case, but the one that you just provided did tie the
21 buffering, that you couldn't have any of the building
22 permits, I assume, along that Duke Highway corridor
23 until you got the additional buffering in place for
24 that portion. Is there an intention to tie that
25 somehow to the conditions? Because I did not see. And

1 that's a question I can ask Staff, as well, but it was
2 something that was specifically called out when this
3 was utilized in the adjoining property in Oak Creek,
4 and I didn't see it here. Because the concern, of
5 course, is you go in for your building permits before
6 the five years is up that you have to do the
7 restoration work that you need. So I'm not sure how
8 those two things coincide.

9 MS. CRESPO: The timing of it?

10 HEARING EXAMINER RIVERA: Uh-huh.

11 MS. CRESPO: We -- we can address that. I would
12 like to ask another person on the team to address it.
13 Should I --

14 HEARING EXAMINER RIVERA: It doesn't have to be
15 now. It's just --

16 MS. CRESPO: Okay.

17 HEARING EXAMINER RIVERA: -- if you weren't going
18 to -- if you were doing additional testimony on
19 conditions, that was a question that I had, I wanted to
20 get addressed, but it doesn't need to be at this point.

21 MS. CRESPO: Okay.

22 Oh, to follow up with an earlier question you
23 asked in terms of the separation of the pods, the
24 separation -- or the access is the only separating
25 measure. Folks that live in the western pod will be

1 able to use the amenities. They won't be separately
2 branded or separate communities. It will be the same
3 neighborhood just with different access points.

4 HEARING EXAMINER RIVERA: Okay. And I noted
5 they're all three gated, but I assume then that means
6 everyone within the development has gated access,
7 rights of entry to all three entrance points?

8 MS. CRESPO: Yes.

9 HEARING EXAMINER RIVERA: Okay, thank you.

10 MS. CRESPO: All right. So to summarize, we are
11 in agreement with Staff that the proposed RPD is
12 entirely consistent with your Rural Future Land Use
13 category Policy 1.4.1. We are within the density
14 limits -- this policy specifically references the
15 policy under Goal 123 related to rare and unique
16 habitat -- and we meet all the criteria under that
17 policy, as well, which we'll touch on. And this meets
18 the intent of the Rural category to limit to lower
19 density residential uses -- our density is 1.39 units
20 per acre -- and also protect wide and vast areas of
21 open space and preserve to uphold the natural resources
22 and just overall viewsheds within the community.

23 We're also consistent with the Wetland Future Land
24 Use category in terms of preservation of the majority
25 of on-site uplands, and our density calculation does

1 take into account any areas of impacts outlined under
2 1.5.1.

3 Development timing and consistency. We walked you
4 through the development in this area that's occurred,
5 largely due to Babcock Ranch and an influx of
6 population growth into this area of Lee County. The
7 area has held onto Rural future land uses and
8 low-density future land uses to uphold the character,
9 but there has been these rural subdivisions approved
10 over time. So we are -- we are the fourth of -- of PDs
11 in this area. We also showed you that the remaining
12 area is spoken for, either developed large-lot
13 residential or largely under a permanent conservation
14 easement as part of state-owned preserve. So this is
15 really one of the last pieces available in the area for
16 this Rural planned development subdivision.

17 Because of this growth, there -- there is water
18 and sewer being extended to this area by way of Owl
19 Creek. This property was also added into the service
20 area to allow for those services. So a demonstration
21 that the location and timing is appropriate.

22 FDOT is expanding State Road 31 and is starting
23 those improvements this year.

24 There's fire and EMS planned within two miles of
25 the site.

1 And we -- another piece of this policy is the
2 protection of -- of the surrounding community in terms
3 of the proposed development, which will, again, be
4 achieved through the preserves, the setbacks, the
5 limitation on building heights, et cetera.

6 We touched on water and sewer service under
7 Standard 4.1.1 and 4.1.2. Again, we have been added to
8 future service area maps 4A and B, indicative of our
9 compliance with this policy, and the developer will pay
10 all costs associated with extending utilities to this
11 property.

12 We also have achieved -- or obtained letters of
13 availability from LCU demonstrating capacity and intent
14 to serve the project.

15 Policy -- or Goal 5 is the residential land use
16 policy relating to compatibility, which again has been
17 spoken of at length today. 5.1.2 and 5.1.5 really
18 relate to protection of established residential
19 communities when new development is proposed.

20 So to summarize, we have proposed enhanced
21 buffers, as well as external preserve areas along all
22 of the roadways, limited access to any road except
23 North River Road. This is located in an area with
24 public infrastructure either available or being
25 extended at current time. And we have demonstrated

1 availability of services in line with this policy.

2 Policy 17.3.2, 3.3, and then another one in the
3 Northeast Lee County goal, requires community meetings.
4 We have met many times with the community. We've gone
5 to Alva, Inc. We've gone to the North Olga Community
6 Planning Panel. We just regularly attend those to give
7 updates and answer questions. We've also had to have
8 meetings within North Olga, which has no public meeting
9 space, so we met on the property, at the Cracker Shack.
10 So we've far exceeded these -- these requirements
11 and -- and had good turnouts at these meetings, unlike
12 some community meetings.

13 We are -- moving into the Northeast Lee County and
14 North Olga Community Plan policies, I worked at the
15 firm that adopted these into the Lee Plan back in
16 2010/2011 and -- and worked with -- with the community
17 and stakeholders on development of these policies. So
18 I do have firsthand knowledge of -- of their intent and
19 inclusion in the Lee Plan.

20 So these policies, again, speak to protection of
21 rural character, and in line with that, natural
22 resource protection through compact and clustered
23 development. We believe this is -- our proposal is
24 much more consistent with this policy than allowing 788
25 one-acre lots on well and septic in terms of the

1 natural resource protection. In terms of the
2 substantial habitat we're creating, as Shane spoke to
3 very well, we have preserved an historic area on the
4 site, and we've noted our 60 percent open space.

5 Policies under -- also under Northeast Lee County,
6 27.4.1, supporting the scenic character and quality
7 along roadways. So, again, with our enhanced buffering
8 along North River Road, no access points and -- and
9 permanent conservation on all abutting roadways, we
10 fully meet the intent of that policy.

11 Under 27.4.2, we are incorporating the required
12 eight-foot-wide multiuse path along North River Road,
13 which is consistent with that specific policy.

14 Wildlife connections, also under 27.4.3, there are
15 no impacts to that Trout Creek corridor; and based on
16 our preserve design, we have significant connected
17 areas that adjoin off-site preserves to, you know,
18 fully address this policy in terms of habitat creation
19 and corridor preservation.

20 The policy -- now getting into Goal 29, which is
21 specific for North Olga, this -- these policies allow
22 for flexibility of lot size. They want to encourage
23 different housing types, diversity but coupled with
24 balancing open space, preservation, natural resource
25 preservation. They specifically call out being able to

1 cluster to achieve these goals.

2 And we've addressed 29.2.2, where it is our
3 testimony that the substantial setbacks, supplemented
4 by restoration and enhanced buffers, will fully meet
5 the intent of 29.2.2, to preserve the rural character
6 for folks that live on the south side of Duke Highway.

7 Getting into just some supplementary policies,
8 53.1.8, 53.1.9, relate to paying our fair share to --
9 or, really, the whole cost of extending water and
10 service to this area, paying all connection fees, et
11 cetera. So that will not be on the taxpayers of Lee
12 County, and they will also have the benefit of the fire
13 hydrants infrastructure associated with this
14 improvement.

15 You've heard at length about our surface water
16 management design, as well as protection of
17 groundwater, through the proposed design of our lake
18 systems, through centralized utilities that are going
19 to go a long way in enhancing the environmental quality
20 of the project. And as Kirk noted, we will not be
21 using potable water for irrigation in line with 61.1.6.

22 61.2.1 is also an infrastructure-related policy
23 outlined in our materials, and I believe in the Staff
24 Report, as well, as already noted, the extension of
25 water and sewer services. Our impact fee amount for

1 the number of units, based on current adopted fees, is
2 \$10.3 million, and we will pay \$5.6 million in
3 connection fees to LCU, just a demonstration of
4 covering the costs of the project.

5 95.1.3 and 95.3.3, again, is another related
6 policy regarding having availability and covering the
7 costs of the project and not having this fall on the
8 taxpayers of Lee County, which is provided for in the
9 zoning and conditions. And I've noted the fire hydrant
10 public benefit around the project.

11 I know. I'm going along here. We just want our
12 record to be intact, but I am very close.

13 So policies under Goal 123. So that -- that is
14 the rare and unique goal that -- that allows us to ask
15 for the .39 -- 0.39 additional units per acre within
16 the project. So there's, you know, five different
17 criteria with some sub criteria:

18 The first one is it has to be greater than 10
19 acres in size. We far exceed that amount.

20 Direct access to an arterial road is the second
21 criteria. We have three points of access to an
22 arterial road.

23 You have to connect to centralized water and
24 sewer, which clearly is provided for in the RPD.

25 You have to provide 60 percent open space. Of

1 that, 50 percent of the site has to be preserved under
2 permanent conservation easement.

3 And then getting -- you mentioned very specific
4 details regarding that preserve. We meet or exceed in
5 all cases the minimum dimensions for open space
6 outlined in Chapter 10.

7 Shane has discussed the suitable soils for the
8 restoration plantings to ensure that they survive and
9 thrive on the property.

10 5C notes that where you have exotics or impacted
11 areas of the site, you've got to first mitigate before
12 you restore, and then monitor to make sure the exotics
13 don't return, which we've addressed will occur
14 throughout our different management plans.

15 And then 5D is ensuring that all of this stays
16 intact in perpetuity by requiring the conservation
17 easement, within a set period of time, to an acceptable
18 third party. So it's not just the developer and Lee
19 County. It is with other parties to make that very
20 difficult to ever change.

21 This is demonstration of our consistency with
22 policy 123.2.17 in terms of this is 320 acres of
23 uplands being preserved and restored, which we've
24 discussed has a lot of environmental benefit, and is
25 not just your typical wetland preservation but really

1 creating diverse habitat on the site. That does not
2 exist today.

3 Protection of wetlands through our proposed
4 design, mitigating any impacts, particularly wetlands
5 along Trout Creek, through our design to connect to
6 centralized water and sewer. We are -- and also our
7 water quality monitoring built into the conditions. We
8 are consistent with Policy 125.1.2.

9 I will rely on the criteria outlined in your Staff
10 Report, as well as our application materials, that we
11 do meet 34-145. We meet or exceed all performance
12 standards. We've enumerated those throughout the
13 presentation.

14 This is fully compliant with your Rural and
15 Wetlands Future Land Use categories and the
16 supplementary Goal 123, that allows for nominal density
17 bonus through restoration.

18 We've demonstrated and have Staff recommendation
19 of approval for all of our deviations, showing that
20 they are largely to mitigate and prevent any impacts to
21 environmentally sensitive areas on the site.

22 Again, very important, compatibility with existing
23 and planned uses in the area, achieved through
24 expensive setbacks and other limitations on density,
25 access, et cetera.

1 The site does have sufficient access. We have
2 three points of ingress/egress, and the western pod
3 does have support for the one access point from all of
4 the required agencies.

5 F) is actually traffic compatibility with existing
6 and planned uses in the area, and that's largely met
7 through, again, limiting access to just the arterial
8 roadway and not allowing any traffic onto North Olga
9 Drive or Duke Highway. And Ted has walked you through
10 the improvements in the area to facilitate additional
11 traffic from the project.

12 G), this project not only doesn't adversely impact
13 environmentally critical or sensitive areas, it creates
14 and enhances environmentally critical and sensitive
15 areas and natural resources on this site through not
16 only the habitat management plan, the water and sewer
17 connections, and the restoration.

18 The site will be served by urban services, as
19 evidenced by our letters of availability, with the
20 exception of transit, which is not available. And we
21 just have a slight modification to the EMS condition to
22 ensure that's available.

23 The proposed mix of uses is appropriate at the
24 site. The density is compliant with the Lee Plan. The
25 dwelling types are those approved in other PDs in the

1 immediate vicinity abutting this property, and the
2 compact clustered form of the project does comply with
3 the North Olga policies and the intent of the North
4 Olga Community Plan, to preserve the natural resources
5 of the community and limit the development footprint.

6 J) is safeguards and conditions to protect the
7 public interest. We believe -- we're largely in
8 agreement with Staff and believe that the supplemented
9 condition, in lieu of their 3 -- Condition 3, will meet
10 the intent of that condition, to safeguard public
11 interest and viewsheds from Duke Highway.

12 And then lastly, I've touched on the supplementary
13 deviation criteria. We have five deviations
14 recommended for approval.

15 And with that, I think now I can skip to my very
16 last slide, but I don't think I need it.

17 We'll close with, in my professional opinion, the
18 proposed RPD is entirely consistent, exceeds the
19 requirements of the Lee Plan and Land Development Code.

20 HEARING EXAMINER RIVERA: I asked my questions as
21 we went along, and I know we'll discuss those more
22 after we hear from everyone.

23 The last question I had I did not ask yet, was
24 whether any attention has been given to construction
25 traffic for the project. And I ask because I did my

1 site visit, and the second entrance point, the best I
2 can tell, is somewhat close to the curve that's made at
3 that location. So I didn't know if there's
4 any availability to limit construction traffic to the
5 westernmost access point of that pod. I know that you
6 can't do it all the way on the original pod, but if
7 there would be same way just to try to keep it, for
8 safety concerns, off of the curve as much as possible.

9 MR. FREY: Brandon Frey, for the record.

10 So your question was limiting construction traffic
11 to the western entry of that larger easternmost pod;
12 right?

13 HEARING EXAMINER RIVERA: Correct.

14 MR. FREY: I think that both entries are in a
15 tangential portion of the curve. It's not like it's
16 mid curve. I don't know what that distance is, but
17 I've got to imagine there's probably 500 feet or so
18 between the end of that curve and that entry -- that
19 eastern entry location along North River Road. So, no,
20 we haven't thought about it to a great extent.

21 The Florida Department of Transportation has
22 pretty detailed guidelines for maintenance of traffic
23 and what we need to maintain during that construction
24 period, and any required turn lanes would be, you know,
25 also installed prior to or concurrent with that first

1 phase of construction. So we haven't put an enormous
2 amount of thought into that just because all of those
3 mitigating factors that exist to help counteract, you
4 know, any unsafe conditions that I think you're
5 concerned with.

6 Does that answer your question?

7 HEARING EXAMINER RIVERA: Uh-huh, thank you.

8 MS. CRESPO: Pat Neal would like to --

9 MR. NEAL: Madam --

10 MS. CRESPO: -- address --

11 MR. NEAL: -- Hearing Examiner, of course your job
12 is to maintain the Lee Plan, but I have a job, too,
13 which is to make sure we sell homes. We believe that
14 prior to -- we believe -- we call it the 30-second
15 look. If a home -- if a person is going to buy a home,
16 they arrive at the site and make their decision whether
17 they like it there within the first 30 seconds. And
18 we, of course, have held the property way back so this
19 will be, I would say, indistinguishable from the new
20 critical habitat when it's done.

21 If you choose to condition a -- the trouble with a
22 construction road is it's invasive, dusty, ugly. We
23 think the better place for it would be through the
24 curve, that would be on the east side of the curve past
25 the construction entrance, and so we could get to the

1 back of the site for construction, rather than putting
2 the construction through the front of the property.

3 That's also the highest place. We call it Mount
4 Povia. It's 43 feet high. It's easy to maintain a
5 construction road there, and we wouldn't have to have
6 quite as much, I'll say, destruction of the environment
7 to do so.

8 So if you condition a construction road, we'd
9 prefer it be on the extreme east side of the property,
10 past the tangent of the curve. Does that help you at
11 all?

12 HEARING EXAMINER RIVERA: It answers the question,
13 thank you.

14 MR. NEAL: Thank you.

15 HEARING EXAMINER RIVERA: Did that conclude
16 Applicant's presentation?

17 MS. CRESPO: Yes.

18 Neale, do you want to close up anything?

19 MS. MONTGOMERY: (Shakes head.)

20 MS. CRESPO: We, of course, would like an
21 opportunity for rebuttal.

22 HEARING EXAMINER RIVERA: Yes.

23 (Discussion at lectern)

24 HEARING EXAMINER RIVERA: Okay. How long does
25 Staff think that you'll need for your presentation?

1 MR. DANLEY: Depending on the questioning, maybe
2 20 minutes or so --

3 HEARING EXAMINER RIVERA: Okay.

4 MR. DANLEY: -- 25 minutes.

5 HEARING EXAMINER RIVERA: Okay. So in terms of
6 the process and how we're going to proceed, then Staff
7 can go ahead now and do their presentation. We're
8 going to take a lunch break after that, probably for an
9 hour, and then we'll resume right after lunch with the
10 public comment portion. We'll begin then.

11 Good morning.

12 MR. DANLEY: Is it still morning?

13 HEARING EXAMINER RIVERA: It is, barely.

14 MR. DANLEY: Good morning for a few more minutes.

15 For the record, my name is Dirk Danley. I'm a
16 principal planner in the Zoning section of Community
17 Development. I have previously been accepted as an
18 expert in the Lee Plan and Land Development Code, and
19 would like to do so again today.

20 HEARING EXAMINER RIVERA: Yes, thank you.

21 MR. DANLEY: The Applicant's gone through a
22 significant amount of -- of the details of their
23 request so I'll try not to repeat what's already been
24 put on the record, most of which is already in the
25 Staff Report; but I did want to talk through some of

1 the salient points and kind of talk about the
2 conditions, the 48-hour letter, and just put some of
3 that stuff on the record.

4 So just from a high point, this is a request to
5 rezone approximately 788 acres -- did I give you a
6 PowerPoint?

7 HEARING EXAMINER RIVERA: You did not, thank you.
8 So that will be Staff Exhibit 3.

9 (Staff Exhibit 3 submitted.)

10 HEARING EXAMINER RIVERA: Thank you very much.

11 MR. DANLEY: So this request is to rezone
12 approximately 788 acres from agricultural to
13 residential planned development, for a maximum of 1,099
14 dwelling units and with private on-site recreation
15 facilities and supporting infrastructure. A maximum of
16 35 feet is proposed, and the connection to water and
17 sewer is required as part of this rezoning.

18 The Applicant did go through Lee Plan Policy
19 123.2.17, but we'll talk about those criteria a little
20 bit more in our presentation to allow for that
21 exceedance of one unit an acre to what they're
22 requesting of 1.39 units per acre.

23 This is the aerial of the site. It is
24 approximately 788 acres. It does not have a lot of
25 zoning history on it. It's currently used for

1 agricultural purposes, and that's been its purpose at
2 least since we have written history of it.

3 It is in the Northeast Lee County and North Olga
4 Community Plan areas.

5 The Applicant has gone into detail on the master
6 concept plan. Just to provide some context, it is
7 proposed to be placed like this within the existing
8 community. This is just being overlaid over the
9 aerials today.

10 I did want to make note of the fact that there are
11 other developments adjacent to the community and in the
12 area overall that are definitely driving the
13 development pressure within the area. And we did
14 review those as part of our Staff Report to make sure
15 that whatever is being requested in Cary+Duke+Povia was
16 compatible and consistent with those also requested
17 near it.

18 The Applicant did go through those decision-making
19 criteria. They are in the Staff Report. We do find,
20 as conditioned, that they are meeting the criteria
21 overall. We'll talk about some of them as we go
22 through, but just to begin the presentation, we are
23 recommending approval with those conditions.

24 Just to re-highlight the 123.2.17, there are five
25 base criteria to be able to exceed that one unit per

1 acre:

2 The property is, of course, in exceedance of 10
3 acres.

4 It is on North River Road, which is an arterial
5 roadway.

6 It must provide connection to water and sewer,
7 which was achieved by the Comp Plan back in 2022 --
8 this is CPA2022-00019 -- to place the property in the
9 Lee County Utilities future water and sewer areas.
10 That was approved on March 20th of this year by
11 Ordinance 24-06.

12 And then there were two more criteria -- we'll
13 talk about those a little bit later -- about the
14 environmental, but the Applicant and their
15 environmental consultants have gone into some detail on
16 that. We may have some supplementary information on
17 the back end of the presentation.

18 The property is in the Rural Future Land Use
19 category, which is categorized by low-density
20 residential uses and agricultural land. Not to sound
21 like a broken record, but they are exceeding the future
22 land use category standard density of one unit per acre
23 based on that 123.2.17.

24 There are approximately 70 acres of wetlands that
25 are designated on the property, and overall there's

1 approximately 19 acres that are proposed to be impacted
2 as part of the development.

3 Objectives 2.1 and 2.2, encourage new growth in
4 future urban areas where adequate and sufficient
5 infrastructure exists. We kind of have to back into
6 this policy a little bit because this is a rural area,
7 but as they exceed that one unit per acre, they're
8 required to provide some level of urban service. So we
9 kind of back into this policy where that -- that
10 additional policy allows for a greater density, and
11 they need that.

12 So they do have bike/pedestrian facilities.

13 They do have access to Bayshore Fire station
14 currently. The Applicant did bring up that fire
15 station that's proposed in Babcock.

16 The Sheriff's station is able to adequately serve
17 the area.

18 And the utilities will be required through
19 privately-funded improvements.

20 There is approximately 183 acres that are in
21 coastal high hazard area. They are predominantly in
22 the southwest areas of the property. There's a mix
23 of -- of FEMA flood map zones in the area, but the
24 property is kind of focused away from the coastal high
25 hazard in whatever ways it can to ensure that they're

1 not, you know, developing in those areas that would
2 have some risk of that coastal high hazard area.

3 And we'll talk about it later, but there's in
4 Goal -- I believe it's 101. It speaks to only
5 impacting wetlands that are in coastal high hazard
6 areas for -- I think it's for public purpose,
7 effectively. And in their -- in their analysis, I
8 think it's less than a quarter of an acre, of those
9 impacted wetlands that are proposed, are proposed to be
10 impacted within the coastal high hazard area.

11 Policy 5.1.5 speaks to the encroachment of
12 detrimental uses to existing and future residential
13 areas. We have some extra analysis as we talk about
14 that enhanced separation and those other conditions.
15 But overall this project is not inconsistent with what
16 Babcock has proposed, what Oak Creek's proposed, and we
17 find that this is a continuation of the development
18 pattern in the area.

19 But while we're looking at Policy 5.1.5,
20 fortunately Goal 27 and 29 give us some extra
21 parameters to work with to ensure that we're not being
22 destructive to the character of the area, or at least
23 provide minimal impacts to the area.

24 Policy 29.1.1, 27.1.1, and 27.1.6 all encourage
25 clustering to -- to get the residential uses away from

1 the external boundaries of -- of the -- of the project,
2 which is why this project has come in this way, is that
3 the Lee Plan encourages that.

4 29.1.3 speaks to maintaining enhanced design
5 standards for landscaping and signage and architectural
6 standards to promote rural character. As you're well
7 aware, the statutes prohibit us from regulating
8 single-family home architecture. So we have provided a
9 condition for basically everything else that can be
10 visible externally, that they are compliant with those
11 architectural standards that are in the Land
12 Development Code for the North Olga area.

13 Beyond that the landscaping around in the area
14 have already been significantly expanded simply by way
15 of doing the rare and unique restoration and creation.

16 This has kind of been the -- you know, the point
17 of contention between Staff and the Applicant, is how
18 to address Policy 29.2.2, does -- consider the fact
19 that residential should provide some appropriate
20 separation from existing large-lot residential uses.

21 There is an example in that Lee Plan policy about
22 one acres -- one-acre lots adjacent to a property.
23 Staff's never been of the opinion that there has been
24 abutting lots on this property, but it does provide a
25 signal to the significance of the separation that the

1 Lee Plan's looking for. And so in our opinion, you
2 know, the most -- the project is providing the
3 appropriate amount of separation, particularly along
4 the north and east side, even -- quite frankly, parts
5 of the south side, too, are pretty close. But in terms
6 of there's separation, and the purpose of that
7 separation is to reduce the visual impact. And when
8 you can't provide appropriate separation, that's why we
9 said we'll just have larger lots so the massing is
10 reduced in the area.

11 So the areas that we have issues with -- and I'll
12 note that the westernmost tract is probably the least
13 problematic because it's up against Owl Creek, which,
14 as the Applicant's already stated, they do have less so
15 of a separation requirement because they're further
16 west. They're closer to -- I guess we'll call it all
17 the action of State Road 31, and in Staff's opinion
18 they're appropriately separated with what they have,
19 but there is the southwest corner. The Applicant did
20 bring up that 60-foot choke point there, the area along
21 Duke Highway, and then the area -- I don't know how to
22 call it, in the little nook between the second and
23 third pod.

24 The Applicant did bring forth the condition to
25 propose enhanced buffering to ameliorate those

1 concerns. We haven't had a chance to look at those
2 yet. They were just provided today for the first time.
3 But in our opinion, at least, regardless of how the
4 condition gets crafted, or if we have time to work,
5 Staff and the Applicant, to kind of come to a
6 conclusion on that; but we do think that the scope of
7 the concern is not just in that -- along Duke Highway,
8 but it's along these other areas, as well. Like I
9 said, less so for the westernmost pod, but in this
10 easternmost pod.

11 So if you -- if you look in that -- that space
12 between pod 2 and pod 3 -- I don't want to scroll all
13 the way back to the aerials, but there's -- there's
14 residential uses right there right adjacent to the
15 development boundary, and we found that that's a --
16 that's a critical area for us.

17 The southwest little nook out in the -- it's not
18 actually abutting Duke Highway anymore. It's a vacant
19 lot, but it could be used for commercial agricultural
20 or could be used for a residential use. We don't know
21 who the property owner is. I can't try to assume what
22 will be placed there. But the property is entitled for
23 one of those two things so we care about that piece, as
24 well.

25 I just -- I think it's probably important to put

1 on the record, we're more than willing to have a
2 discussion about something that sufficiently addresses
3 that concern. Just with what we walked into the
4 hearing today, that -- that large lot proposal is how
5 Staff has approached it at this point.

6 Did you have any questions about that?

7 HEARING EXAMINER RIVERA: (Shakes head.)

8 MR. DANLEY: Okay.

9 So Policy 101.1.1 speaks to maintaining the
10 natural systems in the area. When you're in the
11 coastal high hazard, they are maintaining -- and, quite
12 frankly, with the preservation and restoration of rare
13 and unique habitats adjacent to it, we do find the
14 creek that runs north/south between pod 1 and, I
15 believe, pod 3, we're calling it, is being preserved;
16 and they're, quite frankly, restoring some of those
17 water movements, as the Applicant's put on the record
18 today. Additionally, with the habitat just overall
19 throughout the site, we are -- we are finding them
20 consistent with this policy, as well.

21 Policy 101.3.2, we did speak to that. It's about
22 a quarter of an acre that's proposed to be impacted,
23 and it has to go through the State processes. And
24 we've provided conditions to make sure that that goes
25 through everything appropriate at the time of

1 development order approval.

2 Staff has reviewed this case. There's a handful
3 of conditions within the Staff Report, or in our
4 conditions document, to ensure that the water quality
5 is being -- including a surface water and groundwater
6 management plan. So we do find them consistent with
7 Goal 125, as well.

8 The Lee Plan encourages housing -- to address
9 housing through a mix of housing in the area as the
10 county grows. The two types of dwelling units that
11 they're proposing today does encourage that mix of
12 uses, and we do find them consistent with this policy,
13 as well.

14 And then just -- I know the Applicant had one of
15 their representatives say that they're here to sell
16 houses, which is true; but it is also consistent with
17 Goal 159, to encourage diversified and stable economy
18 and a positive business climate. So we find the
19 request is consistent with this goal, as well.

20 This next part is -- just kind of leaving the
21 floor open for a moment, the next two pieces
22 Shane and -- I forget the other person's name -- the
23 landscape architect from the Applicant team did go
24 through a lot of this in detail. I believe that you
25 had some questions on timing and phasing. Our Staff is

1 here with any questions that you may have about that.

2 We'll kind of leave the floor open to you on that.

3 HEARING EXAMINER RIVERA: Yeah, I mean, I -- and I
4 don't know if you've reviewed the Owl Creek, but it
5 caught my eye because it was a concern that I had
6 throughout, is that you're getting the benefit of the
7 additional density, but there's a five-year look-back
8 period on that, essentially, because you've got to
9 leave time for all the restoration plantings and things
10 to grow, which I understand, but construction is going
11 to be happening simultaneous to that. And it looked
12 like in Owl Creek, the way that they tied that together
13 was that they limited the plat recordation of the
14 additional lots until they had achieved certain
15 benchmarks in the restoration planting, but I didn't
16 see that in this conditioning for this case. And so I
17 didn't know if that was something that had been looked
18 at, and it was being addressed some other way, or if it
19 was something that we needed to include so that there
20 is some tie to that happening in terms of timing.

21 MR. DANLEY: Yeah, I think I would like to
22 leave -- give Beth a chance to come and explain the
23 phasing on that.

24 HEARING EXAMINER RIVERA: Good afternoon. Now
25 we've crossed the noon mark so it's officially

1 afternoon.

2 MS. WORKMAN: Good afternoon. For the record,
3 Beth Workman. I am a principal planner in the Zoning
4 section. I reviewed the environmental and wrote the
5 Staff Report for the environmental portion of this. I
6 have been accepted as an expert in this forum before
7 for the Lee Plan and Land Development Code, I have been
8 sworn in, and I wish to be accepted as an expert today,
9 as well.

10 HEARING EXAMINER RIVERA: Yes, thank you.

11 MS. WORKMAN: Okay. To answer your question, this
12 is similar but different, and it has to do with the
13 review process that went on. So when you are reviewing
14 these type of projects -- and I've reviewed Bayshore
15 Ranch; I've also reviewed Owl Creek. So I did the
16 environmental on both of those projects utilized the
17 Lee Plan policy.

18 So in the review process, you have a phasing plan
19 that you may or may not get. Bayshore Ranch was built
20 in one phase. They did everything up front. So as
21 their development order came in, they had the whole
22 entire infrastructure put in that development order,
23 and then an internal phasing plan that tracked it. So
24 as things were released, units were released.

25 Staff cannot put conditions with building permits

1 in the condition because we have no -- it doesn't work
2 with the tracking mechanism from how our residential
3 permits are issued and the communication with
4 Development Services to make sure that we have the
5 specific restoration done to be able to build that
6 house.

7 So in Owl Creek's situation, it tied to the plat,
8 which whenever you get a development order, you have a
9 plat associated with that.

10 So in this case, our condition that Staff put in
11 was prior to the issuance of the first development
12 order. So before they do anything, that first
13 development order must recognize the 420.20 acres of
14 indigenous open space that's in substantial compliance,
15 and then it goes A through H, which lays out the
16 acreages for the rare and unique, the rare and unique
17 upland restoration, and so on.

18 HEARING EXAMINER RIVERA: Which condition number
19 are you citing?

20 MS. WORKMAN: Oh, I don't have my Staff Report.
21 I'm sorry --

22 HEARING EXAMINER RIVERA: I'm testing your brain.

23 MS. WORKMAN: -- I don't have the condition --

24 HEARING EXAMINER RIVERA: Is it the open space?
25 Okay, so it's Condition 6, which is the open space

1 requirement, okay.

2 (Document handed to Ms. Workman.)

3 MS. WORKMAN: Thank you, Dirk.

4 So that lays out that first DO. So that first
5 development order comes in, it lays everything out.
6 Within that development order the pods come in. So
7 however the Applicant wants to release the pods,
8 they'll have a phasing schedule built into that
9 development order.

10 Staff's experience on conditioning specific
11 phasing in zoning is that we have a lot of amendments
12 that come back through because when you go to build a
13 project, it doesn't always get built like it is on
14 paper. So in the development order process, you have
15 the phasing schedule that has associated the
16 restoration. So as it goes through, then amendments
17 will come in to add on to that.

18 In the case of Babcock Ranch, they have an overall
19 master plan, like this is conditioning; and then as the
20 pods come in, they cite the restoration on the first
21 development order that says this is per this
22 restoration and this much acreage that's been permitted
23 per the DO. It gets very confusing because you can --
24 there's more than one way to do this, and it depends on
25 the construction on-site.

1 So the way that Staff treated this was you submit
2 the first development order, you lay out everything on
3 that development order, with future development order
4 noted for any pods you're not going to construct on
5 that first DO; and then you lay out all of the
6 restoration -- because we already have it laid out.
7 It's conditioned in the zoning. We have management
8 plans for all this. Everything's been done except for
9 the on-ground work. So the development order is where
10 the rubber meets the road and everything gets released.

11 So as they match up their pods and their units,
12 they have their restoration that's going to be done
13 associated with that pod. So that's kind of how -- and
14 then a plat is recorded on the overall, and then
15 replats are done as things come online. And that's
16 similar to the way that Babcock is operating. It's
17 similar to the way that Owl Creek will be set up
18 without the condition of the platting.

19 We would have to work with the Applicant to put
20 that condition about platting in there. Staff would be
21 up for that because that would seal it; but with a
22 development order, you get a plat. So what's ever --
23 whichever is shown on that development order, the plat
24 rides with it.

25 HEARING EXAMINER RIVERA: Okay. And there will be

1 no opportunity for them to amend the plat with
2 various -- my concern is tracking, just as you said --

3 MS. WORKMAN: Yeah.

4 HEARING EXAMINER RIVERA: -- because it does get
5 very confusing --

6 MS. WORKMAN: Yeah.

7 HEARING EXAMINER RIVERA: -- and -- so it's
8 tracking and it's timing because those two things go in
9 tandem in these kind of cases. And the recordation of
10 the conservation easement, they've got five years to do
11 that.

12 MS. WORKMAN: Five years -- it has to be recorded
13 in a conservation easement within five years of the
14 first development order. That first development order,
15 as conditioned, lays out everything. So that starts
16 the timing of the conservation easement. That
17 conservation easement doesn't mean the work needs to be
18 done. It's just that's set aside with the plat.

19 The phasing plan within that first DO may show
20 phase one is the easternmost pod or the westernmost pod
21 that has so many units, and here's the restoration
22 that's going with that, a future DO on the rest.

23 HEARING EXAMINER RIVERA: Okay.

24 MS. WORKMAN: And then as they come online -- and
25 if you -- in talking with Development Services Staff

1 when I was writing this, as well as when we had a
2 meeting with the Applicant about this, I checked with
3 them to see how Babcock's going. Babcock comes in
4 with their -- their pod, no restoration because it's
5 all on the first DO, and they reference it and then
6 Staff tracks it. They have actual maps. And the
7 Applicant is required to provide that tracking at time
8 of each DO. And there's three different -- three
9 different housing builders in there, where with this
10 one we have Mr. Neal's --

11 HEARING EXAMINER RIVERA: Is that tracking
12 mechanism, though, is it a condition of the DO, or is
13 it a condition of the zoning? And that's -- again, I
14 just want to be sure because it was -- it was warranted
15 in the property adjacent to this one to west, and
16 they're basically dipping in the same pool in terms of
17 getting --

18 MS. WORKMAN: Right.

19 HEARING EXAMINER RIVERA: -- this density pulled
20 out. So I just want to be sure, if there's something
21 in here that needs to tie it to that, that we've --

22 MS. WORKMAN: So it has to do with how you work
23 with the Applicant. On Babcock we had a percentage
24 condition because the Applicant was up for that. We
25 have percentages. And the way that their state and

1 federal permits are going for wildlife, the acreages
2 are coming in over what is required for the units
3 because of the way the permitting process is segmented
4 with the state and the federal government. So they're
5 always working ahead of schedule on their restoration,
6 but we do have a tally going in the DOs that are coming
7 in on the individual pods.

8 On Owl Creek, it hasn't started yet. We have a
9 development order in, but that has that condition about
10 the platting. This one is similar to that. A
11 condition about the platting, I agree, would help lock
12 that in. We didn't have the opportunity to have a
13 specific percentage condition. Babcock did it because
14 there were multiple builders coming in there. So
15 you've got -- I mean, one builder comes in, they've got
16 to track it and note what the other builder is doing on
17 how you go in and color in each individual pod.

18 HEARING EXAMINER RIVERA: Okay.

19 MS. WORKMAN: The monitoring happens with that
20 first DO. That's why Staff has that all built into the
21 first development order, because for compliance
22 purposes and certificate of compliance, and then any
23 violation with Code Enforcement, it goes to that one
24 development order.

25 HEARING EXAMINER RIVERA: Okay, thank you.

1 MS. WORKMAN: Does that help you?

2 HEARING EXAMINER RIVERA: It does, thank you.

3 MS. WORKMAN: Okay.

4 HEARING EXAMINER RIVERA: I appreciate the
5 clarification.

6 MR. DANLEY: Just to continue on, there were
7 several public information meetings held by the
8 Applicant with the community. Records of those -- the
9 sign-in sheets, the meeting minutes, and everything
10 else -- are included with the Staff Report.

11 The Applicant is seeking five deviations. They've
12 gone through them to a point in their Staff Report. We
13 are recommending approval of the five deviations. If
14 you have any questions about those at this point, I'd
15 be more than happy to answer them, but we are
16 recommending approval with some conditions.

17 Just to talk about the 48-hour letter what was
18 provided there, the second condition was the original
19 one that they're providing an alternative for. And
20 just to re-summarize, we are more than willing to have
21 a discussion about something that would sufficiently
22 provide the separation or visual area that we're
23 looking for. What you saw today Staff has not seen
24 prior to this, and we would need some time to sort
25 through what -- what's possible at this point.

1 In terms of the level of service condition with
2 Public Safety, we did coordinate with Public Safety.
3 They're an important component because -- particularly
4 with EMS, they have to maintain a certain level of
5 services, the ability to say we're not going to meet
6 that level of service so we can't provide you that.
7 And so we wanted to make sure there's a condition that
8 said if they're not able to provide that -- or they
9 weren't able to get emergency services at an
10 appropriate response time, then that would have to wait
11 until that new facility was constructed.

12 Understanding that the Applicant had a concern
13 over the phrase "sufficient level of service," this
14 still does provide emergency services to have the
15 ability to say we can't provide it. And so this
16 condition, in our mind, is still equally appropriate,
17 and we're more than willing to recommend approval of
18 that change in the condition.

19 HEARING EXAMINER RIVERA: Okay. So they wouldn't
20 say that they had availability of services unless they
21 were meeting the level of service, essentially.

22 MR. DANLEY: Correct.

23 HEARING EXAMINER RIVERA: Okay, thank you.

24 MR. DANLEY: And then the last one with the
25 transportation impacts, we did coordinate with DOT.

1 The Applicant has also coordinated with DOT because
2 that's where this condition came from. Just the fact
3 that there's a maximum number of dwelling units
4 assigned to this property, this would be applicable
5 with or without the language. And so it is somewhat
6 redundant, and we are -- we are in agreement to remove
7 the condition.

8 With that, we do find this request does meet
9 decision-making criteria. We are recommending approval
10 with some of the remaining issues to be discussed.
11 I've got a short list so far of things. I'm assuming
12 that after public comment we may have more to discuss,
13 but I just wanted to make sure you and I were in
14 agreement on that.

15 The construction traffic entrance, we might need
16 to have a discussion about that with the Applicant.

17 The condition about the larger lot size with
18 separation, that's still an ongoing issue.

19 And then if we need to provide any clarification
20 on those environmental conditions to ensure that the
21 rare and unique creation is done in a timely manner,
22 we'll certainly have another discussion about that, as
23 well.

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. DANLEY: Is there anything else that you had

1 note of --

2 HEARING EXAMINER RIVERA: Let me --

3 MR. DANLEY: -- before we get to public comment?

4 HEARING EXAMINER RIVERA: I want to check that
5 before we recess. Give me one moment.

6 Okay. No, that addressed everything for now.

7 Okay. So with that, again, we're going to recess
8 for one hour. So we'll reconvene at 1:15. When we do
9 that, we will begin immediately with public comment,
10 and we will go for as long this afternoon as we can
11 get. If we don't finish today, we will reconvene on
12 Friday.

13 So thank you, everyone. I'll see you back at
14 1:15.

15 (Recess from 12:17 p.m. to 1:18 p.m.)

16 HEARING EXAMINER RIVERA: Okay. We are back on
17 the record. We are going to begin with the public
18 comment cards that I have here. As I said, there's
19 only one opportunity to speak so if you could please
20 make the most of your time at the podium. Be sure to
21 ask any questions that you may have. We'll be making a
22 note of those, as I said.

23 And I noticed a few folks came in after I
24 administered the oath this morning. So if you were not
25 here when I administered the oath, please let me know

1 that so I can have you properly sworn in before you
2 begin your testimony.

3 The first card that I have is for Glenn Dyess.
4 Good afternoon, sir.

5 MR. DYESS: Hi, Glenn Dyess, for the record.

6 I'd just like to say that, you know, every time a
7 developer comes into the town, they want to circumvent
8 the system, so to say. You know, if they want that
9 type of building, why don't they go to the area and the
10 town that wants that kind of building, instead of
11 bringing it out to the area that -- the last piece of
12 rural area we have in Lee County to build that kind of
13 system, that kind of thing out there? You know, if we
14 wanted that, we would live in an area like that. We
15 don't want that so why...

16 You know, and they say that they're going to build
17 all that, and it's not going to impact the outside
18 area? Traffic, water flow, the wildlife, it's all
19 going to be impacted. It's impacting it now with the
20 things we have up to the north, Babcock -- which is not
21 in Lee County yet -- well, a little of it is, but it's
22 already impacting us hugely.

23 And now you're talking about this other road
24 they're going to bring in there, and there's going to
25 be a right turn only to go south. That's just idiotic

1 in my -- the way I see it.

2 It just -- it doesn't work for our community. And
3 you got this many people against it, that's showing up
4 against it. It should be a no-brainer to say let's go
5 back to the table. I'm not saying don't let them build
6 something, but build what we're needing in that
7 community, or what we're looking for in that community.

8 That's all I have to say.

9 HEARING EXAMINER RIVERA: Thank you. Thank you
10 for coming today, sir.

11 Could I ask Staff or someone, can you put up an
12 aerial or a site plan or something on the screen just
13 so folks can reference it if they need to?

14 MR. DANLEY: (Complies.)

15 HEARING EXAMINER RIVERA: Thank you.

16 All right. The next card I have is for Grant
17 Fichter.

18 MS. MONTGOMERY: Madam Hearing Examiner, could we
19 have a laser pointer or something where people who
20 speak can identify where they're located?

21 HEARING EXAMINER RIVERA: Okay. Is there a
22 capability on that? Could Staff assist?

23 MR. FICHTER: Dirk, how do I get to that
24 PowerPoint?

25 (Discussion at lectern)

1 MR. FICHTER: Good afternoon, Madam Hearing
2 Examiner. Thank you for your time.

3 My name is Grant Fichter, 17281 North River Road,
4 Alva, Florida. I'm also speaking today as the
5 president of Alva, Inc., a community organization in
6 the Alva and Northeast Lee County area.

7 I brought some slides today just to try to project
8 or better present my position on some of these items
9 and my analysis of them.

10 It seems that, as we look at this, it in my
11 mind -- and, of course, I'm not an expert in planning,
12 but I can read. I have logic. I'm a professional
13 surveyor and mapper so I have professional experience
14 in a lot of areas, certainly with law and analysis of
15 law and interpretations of legal language. And it
16 seems to me that increasing density to this extent in
17 this area is at odds with the Lee Plan.

18 Now, I know there's been Lee Plan amendments, and
19 I know there's policies that have allowed us to kind
20 of, I would say, thread the needle on what's acceptable
21 and what's not. But in this specific area as it
22 relates to the Rural land designation -- and I have an
23 outline -- somewhat crude outline of the property here
24 laying overlaid on the -- the Rural -- or the future
25 land use map showing it as Rural.

1 And then, you know, in Table 1A of the Lee County
2 policy, it clearly states that in Rural Land Use areas
3 there is no bonus density. Now, there's an asterisk or
4 there's a reference to other parts of the Code, which
5 if you have -- if this is what you do for a living, you
6 can find a way, you know, to make the math work and to
7 justify this, but I'm going to go at it from layman's
8 terms and say it doesn't look like we're allowed for
9 any bonus density.

10 But let's go along with the idea that based on
11 Policy 1 -- or 2 -- I don't think that policy number is
12 quite correct, actually, but 123.2.17, which was
13 referenced in the Applicant's presentation, it is
14 allowing them to increase the density based on the rare
15 and unique habitat and other things that they're doing
16 to allow that. So I want to get some clarification --
17 or at least make the statement for your consideration
18 that it appears that we're starting with one unit per
19 acre right now currently as it is with 788 acres in
20 play. 70.31 of those acres are wetlands, which right
21 now under the Land Use Code is only one unit per 20
22 acres. So when you take that out of the equation,
23 you're leaving yourself with somewhere around 648 acres
24 at one unit per acre, and then the 3.5 per unit (sic)
25 on the wetland areas totaling 651.86 units under the

1 current guidelines, if we were to go out there and
2 break ground today.

3 So as I mentioned, the creation of the unique
4 habitat and wetland restoration is affording the
5 Applicant an additional -- what appears to be 193
6 dwellings under this interpretation of the Land
7 Development Code.

8 The overall calculation density, based on my math,
9 is right in the range of 40 percent. So I'm here just
10 to state simply that with a 40 percent or more increase
11 in density from what was initially allowed and
12 permitted at this time, we're almost doubling the
13 amount of homes that are -- that were allowed to be
14 built in that area.

15 The way these policies are being interpreted are
16 creating more and more urban sprawl and damaging far
17 more natural habitat than -- than anticipated. And I
18 think if we look at the Lee Plan, urban sprawl is
19 exactly why that document was -- one of the primary
20 reasons that document was created, to prevent this.

21 So very simply, at the end of this presentation --
22 and I have others -- I would just ask that we honor the
23 Rural Land Use plan and its goals and make sure that
24 we're weighing not just the very -- you know, favoring
25 the development to the maximum increase density, but

1 that there is some balance in how this plays out.

2 I mean, the reality is my family's been out there
3 for generations, one of the founding families of this
4 area, and a lot of developers have come out there and
5 developed land at one unit per acre with the setbacks,
6 with the green space -- they've done it all the right
7 way, and none of us could argue it. It's one unit per
8 acre. You've got 500 acres; you've got 500 units;
9 you've left green space; you've followed the Code.
10 Everyone else prior has had to walk through those same
11 doors. So to me it feels like we're making an
12 exception in an area which is obviously very sensitive,
13 and as Glenn stated, one of the most sensitive and --
14 and rural areas we have left.

15 While I think that -- I can't speak for everyone,
16 if -- if -- if the Applicant said we're going to --
17 we're going to cluster our homes, we're going to
18 preserve what we said we're going to preserve, and
19 we're going to put 788 units in there, we'd have the
20 red carpet rolled out for him. And I know that based
21 on that statement, it comes down to economics for the
22 Applicant, and I understand that. I'm not driven by
23 economics so I can't rationalize that.

24 Let's see here. The next thing -- I don't know,
25 you know, maybe -- because we have Staff here, maybe

1 you guys can summarize this for me after. I don't -- I
2 have, as I said, just some logic here that I've put
3 together.

4 I want to know, you know, when it comes to the
5 wells that will be used for irrigation, probably in the
6 sandstone aquifer -- and I understand that the
7 wellfield protection area is in that area, as well, and
8 it's likely in the upper Hawthorn aquifer. There's a
9 lot of things that aren't allowed in the wellfield
10 protection area, one of them being petroleum tanks.
11 Now, petroleum tanks aren't -- they're more closer to
12 the shallow aquifer, so why would we -- if we're not
13 worried about surface or shallow aquifer penetration or
14 contamination getting into the -- the lower aquifer,
15 why would we -- why would we prohibit fuel tanks? So
16 there must be a connection. Logically, there's a
17 connection.

18 So I see the same connection with taking these
19 wells that we're going to put in to fill up the lakes,
20 to spray irrigation on 1,099 homesites -- while I heard
21 some very good calculations and some -- some great
22 information on how that's going to be dispersed; and to
23 the extent it's being reduced as much as possible, it's
24 still happening, it's going to happen; right?

25 So with that, is there -- is there a danger for

1 adjoining wells and current people that are all on well
2 systems out there right now, is their drawdown going to
3 be so significant because of this that now we have to
4 do different wells, redrill wells, change wells, lower
5 pumps, those sort of things? That's something that
6 area of the county hasn't had to deal with because of
7 the proper land management.

8 Now, this is an image of where the wellfield
9 protection zone is located based on my research. As
10 you can see, it follows -- basically North River Road
11 is the centerline of it or the spine of it, and then it
12 extends north and south of that area, with some of the
13 area being on the subject property.

14 With this, my concern is if we're worried about
15 fuel tanks being in it, if there's -- if there's some
16 concern about contamination, wouldn't we be just as
17 concerned about pushing a sewer line through the heart
18 of that? Now, I'm sure there's someone in the room
19 that's way smarter than I am when it comes to that;
20 but, again, I'm just using simple logic. So that was
21 one thing I thought might be worth mentioning. If the
22 Staff or one of the Applicant's representatives could
23 clarify how that is rationalized, I would appreciate
24 it.

25 And then, finally, having been out there all my

1 life, you know, having seen the area change, we've had
2 a lot of subdivisions come into the area. Some of
3 them -- I'm afraid I'm missing a slide here, but I'm
4 going to go verbal on this.

5 All of them, as I said previously, have followed
6 that one-acre-per-unit rule, all of them. I've got a
7 list of them here, and they go back -- I can tell you,
8 Alex Longot, one of the first subdivisions in Lee
9 County platted records, it was still a one-acre plus
10 subdivision. Telegraph Creek, Alex Longot, Riverwind
11 Cove, North River Estates, North River Oaks, Serengeti,
12 Tyndall's subdivision, all in the North Olga Planning
13 Community, all one-acre-plus subdivisions, all
14 developers looking for a profit and capitalizing on
15 that within the guidelines they had.

16 Now, I know that the guidelines have been adjusted
17 and amended and changed, but I feel like we're
18 threading a needle here. I don't feel like it's
19 clearly -- in the Lee Plan that we clearly are allowing
20 this for these specific reasons. And to take what is
21 currently a pasture or habitat and turn it and change
22 it and plant it and tell me it's rare and unique?
23 What's sitting there right now is rare and unique in
24 the eyes of the community and in the eyes of anyone,
25 really, that knows the area.

1 So my point here being that I feel like because so
2 many of the previous landowners have had to live by
3 this set of rules, that it's only natural that
4 certainly a developer from -- that doesn't live in the
5 area, to my knowledge -- and correct me if I'm wrong --
6 to come in and capitalize on our community to the
7 extent that he is, you know, at our expense.

8 I do believe in private property rights. I
9 believe if I want to build a fence, I've got to go ask
10 the County. So private property rights end right where
11 the Land Development Code begins. I hear a lot of
12 talk -- just briefly mention private property rights,
13 how important they are, and how that is the mountain we
14 stand on to allow anyone to do anything with their
15 property. But I can tell you right now, if you go
16 build a structure on your property without a permit,
17 the County is going to let you know about it. You're
18 going to have violated some law.

19 So it isn't as if because we own the property, we
20 get to do whatever it is we want. And I want to dispel
21 that narrative that's been utilized numerous times to,
22 I think, diminish the message of the community in East
23 Lee County and Alva that isn't necessarily centered
24 around profit and financial success. There's much more
25 morally that's important in the world than those items.

1 So I think, in closing, I would like to mention
2 transportation just briefly. I know you can't weigh in
3 on it, and it doesn't matter; right? But right now
4 there's a one-mile backup getting onto -- getting onto
5 State Road 31 from North River Road. If you add 3,000
6 or 2,000 or -- 1,099 plus 2.5 vehicles, plus 3,250 new
7 people, it is going to be a parking lot from there to
8 the community. There's no doubt about it. And a turn
9 lane is not going to fix it, a widening there isn't
10 going to fix it.

11 It also should be noted, and there's a comparison,
12 that, you know, how do we -- how to we relate this to
13 adjoining communities? Well, on the north side of the
14 road we have something slated as a new community. It's
15 in North Olga, but it totally rewrote what the North
16 Olga Plan would be on that side of the road. So that
17 doesn't apply in my mind. You can't compare something
18 that completely rezoned new community, Babcock, an
19 anomaly that's supposed to be a self-sustaining city,
20 that isn't supposed to need outside services, and we're
21 going to take that and now compare it to what we're
22 doing here. And then to add to that, I believe Babcock
23 Ranch has left us a 1,300-foot or so buffer to protect
24 the natural heritage and the North River Road corridor.
25 So I wanted to make that mention.

1 To the east of it is another subdivision that had
2 to go through the process of one unit per acre, using
3 the same Land Development codes we're using right now.
4 It was approved, no community pushback, none
5 whatsoever. What's going to happen when this is
6 approved? That developer is going to go -- or that
7 owner I can almost guarantee is going to go back and
8 say, I'd like to change mine, too. And everything
9 going east from there that's been already subdivided,
10 already platted, already decided on that hasn't been
11 built is going to go back, and this is going to set
12 precedence for that density increase. So that concerns
13 me tremendously.

14 I would like to respectfully ask that you just
15 take all these things into consideration. I know your
16 job is not an easy one. I know the law is the law. I
17 understand it. I just couldn't, as a citizen and
18 someone who represents this community, and as a
19 fifth-generation Alva resident, walk through -- let
20 this process go through without my voice being heard.
21 So thank you for the venue and the opportunity to do
22 so.

23 HEARING EXAMINER RIVERA: Thank you.

24 MR. FICHTER: Have a great day.

25 (Applause.)

1 HEARING EXAMINER RIVERA: Thank you for coming.
2 And I didn't make the note at the beginning, but we
3 don't allow any kind of applause or indications. I
4 know everyone is very excited, and you're going to have
5 your turn to speak, but just out of respect for
6 everybody and all the speakers.

7 The next one I have is for Cheryl Fischer. Good
8 afternoon.

9 MS. FISCHER: Hi, good afternoon. I'm Cheryl
10 Fischer. I am actually a member of the Buckingham
11 Community Preserve Association, and we also support
12 Alva, as they support us, in trying to keep our areas
13 rural.

14 One of the things I wanted to start out with is
15 Neal Communities -- what I thought was ironic is their
16 slogan is "Where you live matters." Well, where we
17 live in rural areas matters to us. The area is not
18 just a piece of land. It's a vital part of the
19 community heritage and natural environment. It
20 provides a sanctuary for wildlife, a space for
21 agriculture, and a place where residents can enjoy the
22 tranquility and beauty of nature. Developing this land
23 would irreversibly alter its character and deprive
24 future generations of these invaluable resources.

25 The major environmental concerns must not be

1 overlooked. The construction and subsequent
2 urbanization will lead to habitat destruction, possibly
3 flooding of nearby lands, increased pollution, and a
4 strain on our already struggling water resources. You
5 all must consider the long-term environmental impact
6 and prioritize sustainable development practices.

7 I have questions about are the wells going to go
8 dry? I live in Buckingham. When they built Verandah,
9 a lot of our wells went dry. How are they going to
10 ensure that the wells do not go dry, of the residents,
11 which are all wells around the Alva area?

12 The next one is water runoff. How are you going
13 to ensure that the polluted water does not flow into
14 the Caloosahatchee and already -- affect an already
15 troubled body of water with all the nutrients?

16 Another big one, the gopher tortoises. I notice
17 on that little map there were a million dots, and I
18 guarantee you most of those are gopher tortoise holes.
19 Developers have a -- have a -- I don't know if they've
20 got this right, but they just bulldoze everything. I
21 would like to know who is going to document those holes
22 and save those.

23 I just recently read that they figure in 100 years
24 75 percent of the gopher tortoises will be gone because
25 of development because nobody -- FWC is not doing a

1 whole lot to protect them, I can assure you of that,
2 because I've called. They show up two days later when
3 they're already gone.

4 So I would like to know for sure who is going to
5 watch that, because it's expensive to move a gopher
6 tortoise or to build around it. So with all those
7 dots -- there are a lot of dots -- I would really like
8 to know who is going to document that.

9 And just all in all, rural areas are important to
10 us for a reason, and we don't want -- as he just said
11 to me when I was filling out a form, build more houses.
12 No, we don't want to build more houses in the rural
13 area. And I just think the arrogance of this sometimes
14 really gets to people -- because the thing out there
15 says representing the citizens of Lee County. We're
16 not being represented. The developers are being
17 represented, and something needs to be fixed here. And
18 thank you.

19 HEARING EXAMINER RIVERA: Thank you. Thank you
20 for --

21 MS. MONTGOMERY: Before you --

22 HEARING EXAMINER RIVERA: -- coming today.

23 MS. MONTGOMERY: -- leave --

24 HEARING EXAMINER RIVERA: I'm sorry, ma'am. Ms.
25 Fischer?

1 MS. MONTGOMERY: Ma'am?

2 MS. FISCHER: What?

3 HEARING EXAMINER RIVERA: She's coming back up.

4 MS. MONTGOMERY: Can you tell me how far from the
5 subject property you live, approximately?

6 MS. FISCHER: I live in Buckingham. I drive by
7 there every day. I ride my motorcycle down there all
8 the time. So I -- and I sell property. I'm a realtor.

9 MS. MONTGOMERY: My question was, do you know
10 approximately how far --

11 MS. FISCHER: No, I don't know the exact -- a few
12 miles.

13 MS. MONTGOMERY: And are you a wetland or a
14 wildlife ecologist?

15 MS. FISCHER: No, I'm not.

16 MS. MONTGOMERY: Okay, thank you.

17 HEARING EXAMINER RIVERA: Thank you.

18 The next card --

19 MS. FISCHER: I'm a citizen.

20 HEARING EXAMINER RIVERA: -- the next card that I
21 have is for Don Tate. Good afternoon, sir.

22 MR. TATE: Good afternoon, thank you for the time
23 and your hard work on evaluating this.

24 I started out with a pre-written speech, and since
25 the goings on this morning, none of it's valid anymore.

1 So I'm going to talk about what we -- what's important
2 as far as...

3 The -- the idea that setting a precedent is -- is
4 invaluable. Once this water and sewer is in, he's
5 going to march right down the road right to my front
6 doorstep.

7 I moved in three years ago. I live at -- on River
8 Chase Court, right in the Riverwind Cove community. My
9 house is right adjacent to North River Road. When I
10 first moved in, it was an idyllic, lazy two-lane
11 country road, which almost overnight turned into a
12 superhighway with trucks running up to Babcock Ranch.
13 We have gotten caught with our pants down with this
14 Babcock Ranch development. Not only infrastructure
15 that's in the planning and -- and we've got a bridge
16 down there that's woefully inadequate. You've got two
17 exits to get out of there as far as Bayshore Road and
18 going down to -- down to Palm Beach.

19 There's no way that this stuff is going to catch
20 up. Once you cut him loose, he's going to build that
21 thing overnight. He's got all the -- all the
22 procurement for every piece of construction necessary
23 sitting right there in a building right now to come
24 down there and throw those things up.

25 And I don't think that Lee Plan was designed for

1 barrack housing. We've just got so -- so much
2 infrastructure that's woefully behind just for us now.
3 I have a fire suppression system in my house because I
4 have to have it because the fire department is eight
5 miles away from my home, okay? So that proves already
6 it's inadequate, and now we're going to dump all these
7 extra people on it, not to mention pollution and so
8 forth.

9 So I just think that we need to pump the brakes a
10 little bit on this as far as the density goes. I don't
11 know if that's possible. I don't know how much clout
12 you have. He seems to have been able to steamroll the
13 commissioners pretty readily to get what he wants. So
14 obviously something's going to happen, but maybe we can
15 at least go back and look at it and get it in a more
16 reasonable fashion. Thank you.

17 HEARING EXAMINER RIVERA: Thank you. Thank you
18 for coming today, sir.

19 The next card I have is for Keith Cary. Good
20 afternoon.

21 MR. CARY: Good afternoon. Thank you for your
22 time this afternoon.

23 My name is Keith Cary. I'm a member of the Cary +
24 Duke Properties, LLC. We own one of the parcels that
25 are under consideration today. My family partnership

1 holds the property for the 22 adult descendents of J.C.
2 Duke, who is my great-grandfather. We have owned and
3 operated the Shady Rest Ranch for close to 100 years in
4 the North Olga community. I stand before you today as
5 the voice for all of our family's members.

6 Selling the property is not easy for anyone. Our
7 family has wrestled with this difficult decision, and
8 we have sought to make the best decision for our family
9 members and for the community. It is no longer
10 economically feasible to operate this property as a
11 cattle ranch, plus our family has grown so large that
12 we have different interests other than cattle.

13 When faced with this reality, we came together and
14 looked at options. We decided not to pursue developing
15 the property into the 788 individual ranchettes, each
16 with its own septic tank and water well. We instead
17 settled on the option that retains 473 acres, or 60
18 percent of the property, as undeveloped open space. Of
19 that acreage, 423 acres will be native habitat preserve
20 under a permanent conservation easement. We do not
21 believe that septic systems and wells are best for the
22 communities or the Caloosahatchee River.

23 Even though our family has deep roots in North
24 Olga, we all have to face the reality that the
25 character of the State Road 31 corridor has already

1 been changed with the opening of the town of Babcock
2 Ranch. State Road 31 will soon be a four-lane highway,
3 and Babcock is now selling homes in the Lee County side
4 of the community. Our property is only one mile east
5 of State Road 31. Downtown Alva is 12 miles east of
6 this property. Babcock Ranch is literally across the
7 street from our parcel.

8 Our ranch property is far from pristine, as you
9 have heard from the experts today. It has been logged
10 for timber; its trees have been used for naval stores,
11 such as, pitch, tar, and turpentine. I can take you to
12 trees on the property that still have the turpentine
13 scars. We have had massive amounts of river spoil
14 dumped on our pastures by the U.S. Corps of Engineers
15 in the '60s.

16 We feel that by partnering with Neal Communities,
17 we are bringing -- we are bringing this property back,
18 in many areas, to the original state, as you've heard
19 today: 60 percent open space, permanent conservation
20 easements, removal of exotics which have ravaged the
21 entire property, and ample boundary buffers.

22 If this property is going to be developed, which
23 it will be, this is the correct and proper way to do
24 the development and to have it occur.

25 On behalf of the Cary and Duke families, we ask

1 for your approval of this rezoning request. Thank you.

2 HEARING EXAMINER RIVERA: Thank you. Thank you
3 for coming today.

4 The next card I have is for Steven Brodkin. Good
5 afternoon.

6 MR. BRODKIN: Good afternoon. My name is Steven
7 Brodkin. I'm with the Concerned Citizens of Bayshore
8 Community. I'm vice president and secretary of that
9 group, and I'm here representing that group. We have
10 an interest in this proposed development. Bayshore
11 lies along 31, immediately west of 31, and goes over to
12 I-75.

13 We have very similar concerns as the Alva group
14 does, and we try to support each other. We're very
15 concerned about Bayshore Road traffic. The PD&E that
16 they're working on for Bayshore Road for -- I think
17 it's been almost two years now they say they're working
18 on it, but they have nothing approved yet, and it's
19 many, many years before anything will actually happen
20 there.

21 The southern section of 31 also doesn't have, as
22 far as I understand it, an approved PD&E yet, and
23 they're still working on that one. So nothing is going
24 to happen with those portions of the roadway too soon.

25 We're opposed to the rezoning in its current form.

1 The goals and objectives in the Lee Plan for North
2 Olga, desire to maintain the rural character of the
3 community. Like Goal 27 talks about maintain, enhance,
4 and support the heritage and rural character; Goal 29
5 talks about promote and support the unique rural
6 character; Objective 29.1 talks about protect and
7 enhance the rural character of the North Olga Planning
8 area.

9 And if you'd follow me for a moment, this might
10 not seem totally relevant at first, but I'll connect
11 it.

12 When the County was considering River Hall's 2012
13 Lee Plan amendment to reclassify from rural to
14 sub-outlying suburban, some county commissioners
15 visited and viewed a portion of the development already
16 developed within the Rural Land Use category, and that
17 was developed at one dwelling unit per acre. These
18 lots in the River Hall Country Club were 55 to 85 feet
19 wide and were about 11,000 to 13,000 square feet.

20 At a commission meeting, the commissioners deemed
21 the development as a nonrural community. According to
22 the News-Press article at the time, the developer and
23 County Attorney Richard Wesch's office said they think
24 the area is suburban. So they're saying that an area
25 with 11,000- to 13,000-square-foot lots, lots that are

1 55 to 85 foot wide they're deeming as suburban.

2 So now the Cary+Duke+Povia application requesting
3 1.4 dwelling units per acre with 40-foot-wide lots and
4 4,000 square foot, you know, like a third the size, the
5 Applicant is trying to claim that their plan protects
6 and enhances the rural character of the North Olga
7 Community. We say that their plans clearly have a
8 suburban character and not a rural character. This
9 would be the most dense ever in the Rural Land Use
10 category, if approved, and the most dense in North
11 Olga, if approved, in the Rural Land Use category.

12 So at Babcock they allow one unit per two and a
13 half acres, considering the whole property, way less
14 dense. Owl Creek was approved for about 1.1 dwelling
15 units per acre. We believe that was -- should not have
16 been done because most of that property is within the
17 coastal high hazard, and increasing the density there
18 just didn't make sense to us, but that's what they did.

19 The developer can develop the land at a lower
20 density consistent with the rural character of the
21 community.

22 According to the Lee County MPO, there are no
23 plans to widen County Road 78, North River Road. They
24 have no plans.

25 On the Staff Report, it predicts by not much after

1 2030, less than six years from now, the west and middle
2 access sites to development will be operating at LOS F,
3 yet the conclusion in the Staff Report is the proposed
4 project is not anticipated to adversely affect the
5 surrounding roadway network. We don't understand where
6 that conclusion comes from if within six years that
7 could be operating at level F.

8 Policy 2.2.1 states, rezoning and DRI proposals
9 will be evaluated as to the availability and proximity
10 of the road network, central sewer, waterlines,
11 community facilities, and services such as schools,
12 EMS, fire, police protection, and other facilities
13 compatible with surrounding land uses, and any other
14 relevant facts affecting the public health, safety, and
15 welfare.

16 So clearly, to us, the access points operating at
17 an LOS F, possibly, within six years will slow EMS,
18 fire, police response times. It is not consistent with
19 protecting the health, safety, and welfare of the
20 community as required in Policy 2.2.1.

21 Another point: Most of the western pod of this
22 proposed development lies in the coastal high hazard
23 area. We question, as with Owl Creek, should we be
24 increasing residential density within the coastal high
25 hazard area? We say it doesn't make sense.

1 Also, Lee Plan Policies 125.1.2, 125.1.4, address
2 water quality for new development. Policy 126.1.4
3 addresses groundwater levels. And I could read those
4 policies, but you're probably aware of them.

5 So how -- one question is how are they cleaning
6 the water? They're talking about water cleaning in the
7 lakes. From my experience in -- when you see all these
8 subdivisions, the lawns are lush and green, the foliage
9 all looks great, lush and green. It takes a lot of
10 fertilizer and pesticides to achieve that in Southwest
11 Florida between our poor soils and our climate that
12 encourages a lot of insects and diseases. So will
13 these -- I see a lot of developments where they have
14 like filter marshes, which supposedly removes a lot of
15 this. We question whether the lakes, in and of
16 themselves, are going to be enough.

17 Staff recommends a condition requiring monitoring
18 for five years. What happens after that? In the
19 future shouldn't the development be responsible for any
20 negative impacts to water quality and groundwater
21 levels, if those problems should occur? Shouldn't
22 there be monitoring beyond five years? We have a
23 problem with that.

24 There's another condition by Staff that says,
25 prior to the issuance of the first development order, a

1 monitoring schedule must be established to ensure all
2 preserve enhancement, restoration, and creation is
3 completed and demonstrates 80 percent survivability
4 within five consecutive years. Monitoring will be
5 required until 80 percent survivability is achieved.

6 So after five years, if the preserve enhancement,
7 restoration, and creation is achieved to qualify for
8 Policy 123.2.17, after that what happens if, say, a
9 hurricane or other natural or man-made disaster
10 significantly damages the rare and unique habitat
11 preserve? Does it have to be reestablished? If so, to
12 what level? Who will be responsible for that?

13 I noticed that one of the Applicant's
14 representatives said that the soil types were
15 appropriate to create these rare and unique habitats.
16 I'd like to say, I have a degree in ornamental
17 horticulture from Rutgers College of Agriculture and
18 Environmental Sciences, and I've been in the
19 horticultural business for over 45 years, involved with
20 growing and planting trees and shrubs.

21 Their expert said that the soil -- the top two to
22 three feet of soil is appropriate and drains
23 sufficiently. There's way more factors than soil
24 drainage as to whether they can successfully recreate
25 these environments. One of the factors is soil pH. I

1 don't know if they've monitored or tested the soil pH
2 from all of the spoils that have come from the river on
3 different parts of the property. Have they gone around
4 and checked soil pHs throughout the property areas that
5 they want to restore to see if they're appropriate?

6 In my experience, I've seen where over many years
7 when there's cattle producing manure, that over time
8 the soil pHs can rise; and when that occurs, you're not
9 going to -- you might be able to plant all these areas
10 for restoration, but whether they will thrive or not,
11 if the soil conditions aren't correct. There's also
12 issues of the subsoil.

13 So I guess my question to them on that would be
14 whether all of these other factors regarding the soil
15 have been tested? Because after five years, if this --
16 of creating these habitats to qualify for this policy,
17 123.2.17, if there is a disaster, how is that going to
18 be fixed? And I would question whether they can even
19 properly establish it so that they can -- the plants
20 can thrive.

21 The Staff Report talks about -- they remind us and
22 they list that for a planned development rezoning
23 request, the Hearing Examiner must find:

24 A, the proposed use or mix of uses is appropriate
25 at the proposed location. We feel that it is not.

1 The recommended conditions provide sufficient
2 safeguards to the public interest and are reasonably
3 related to the impacts on the public interest expected
4 from the proposed development. We believe that they
5 are not. And we discussed that as far as the level of
6 service, that's going to fail, even under their study,
7 probably in about six years.

8 That each requested deviation, one, enhances the
9 achievement of the objectives of the planned
10 development; and, two, preserves and promotes the
11 general intent of this Code to protect public health,
12 safety, and welfare. We do not believe that their plan
13 protects the public health, safety, and welfare.

14 So we believe that these requirements are not met.

15 The developer held their required meetings with
16 the public, but they never seriously considered input
17 from the public, from our point of view. The developer
18 is changing the face of the entire area. Current
19 residents moved here because the area was planned to be
20 rural. The development is not consistent with the
21 rural lifestyle.

22 The developer could have worked with the community
23 to come up with a plan that would be satisfactory with
24 the residents and still make a profit for the
25 developer. We always find that the profiteers and

1 deciders don't live in the vicinity of the proposed
2 development, and therefore don't suffer the
3 consequences of their actions.

4 We ask that you recommend denial of the
5 application in its current form, and recommend
6 significant changes to make the proposed development
7 more compatible with the rural community. Thank you.

8 HEARING EXAMINER RIVERA: Thank you. Thank you
9 for coming today, sir.

10 MR. BRODKIN: Can I turn in a copy of our
11 statement?

12 HEARING EXAMINER RIVERA: Certainly. I can take
13 that. You can give it to Maria, or I can take it.
14 Either one.

15 (Brodkin Exhibit 1 submitted.)

16 MS. MONTGOMERY: For the record, can you let us
17 know how far from the site you live?

18 MR. BRODKIN: I live on Durrance Road, which is
19 probably about two miles west of 31, and that's a mile
20 from the site.

21 MS. MONTGOMERY: Okay. And you used the plural a
22 lot. You kept talking about "we" so --

23 MR. BRODKIN: We -- I'm here representing the
24 Concerned Citizens of Bayshore Community. We're a
25 community group just like Alva, Inc. is a community

1 group. We have pretty much the same interests as Alva,
2 Inc., and so our board discusses this and decides upon
3 a position. And we have about, oh, maybe 150 people on
4 an email list that's always sending us support.

5 MS. MONTGOMERY: Okay, thank you.

6 HEARING EXAMINER RIVERA: The next card I have is
7 for Dave Edwards. Good afternoon.

8 MR. EDWARDS: Good afternoon, thank you for your
9 time.

10 I moved out there about 12 years ago, and I had to
11 have five acres to build a house on. That's the only
12 way the County would let me do it. And I moved out
13 there to be in a rural area, and I think about all the
14 people in the past 40 years who moved out there, built
15 out there, built their farms. They had to go by all
16 them rules, and now it's just being overrun, and it's
17 being ruined.

18 Trout Creek, I would really take a good look at
19 that one, because that's one of the most beautiful
20 pieces of property there.

21 Traffic is unbelievable. Wintertime, I was
22 probably a half a mile back trying to go to work in the
23 morning just on North River Road.

24 And like I said about the wildlife around Trout
25 Creek, I have seen a manatee in there. So there's a

1 lot there. Eagle in my front yard landing. It's just
2 unbelievable out there. The wildlife would really
3 be -- take a really good look at. And the traffic,
4 there's something that has to be done with that.
5 Traffic is worse everywhere just because of all the
6 building.

7 So I think that's it.

8 HEARING EXAMINER RIVERA: Thank you.

9 MR. EDWARDS: Please take that all into
10 consideration, thank you.

11 HEARING EXAMINER RIVERA: Thank you. Thank you
12 for coming today, sir.

13 MR. EDWARDS: Oh, I'd like to say one thing I did
14 forget that's very important.

15 HEARING EXAMINER RIVERA: Sure.

16 MR. EDWARDS: I live right beside this property.
17 I live on 13620 North River Road. This does attach to
18 my property.

19 HEARING EXAMINER RIVERA: Thank you.

20 MR. EDWARDS: And there was one more thing I was
21 worrying about, if that had like any extreme
22 flooding -- because when you build up around me, like
23 them three sections, and it creates a major flooding
24 problem, is somebody going to take care of that? And
25 do I get attached to sewer and water? No cost should

1 be to me, I don't think. Thank you.

2 HEARING EXAMINER RIVERA: Thank you.

3 The next card I have is for Jack Snider.

4 MR. SNIDER: Hello, I'm Jack Snider --

5 HEARING EXAMINER RIVERA: Good afternoon.

6 MR. SNIDER: -- a resident of Alva. I came to ask
7 a couple of questions because I didn't get
8 clarifications from the very good presentations, and it
9 may be because they're limited, and the answers are
10 there. I don't know.

11 But with the water, the way the water is going to
12 drain off of there, what happens if the engineers are
13 wrong? Case in point, in Buckingham -- which I don't
14 live in Buckingham. Case in point, there's a lot of
15 homes that are getting flooded there right now. Well,
16 who is going to protect them? Who is going to help
17 them? Is the developer going to step in and be a good
18 guy and help them? Is that plan in there? I don't
19 know.

20 Secondly, with the traffic study, obviously we
21 have problems there. Everybody is talking about it.
22 We know that that's not going to be able to stop this
23 because state law does not allow it to stop it -- not a
24 problem -- but there's still a traffic study that was
25 conducted. The information that was utilized for that

1 study, what happens if it's inaccurate? Is there a
2 correction? Is the developer going to be responsible
3 for that correction?

4 Third, with the environmental study and
5 the environ -- I'm sorry, also the animals and
6 everything else like that, what's going to happen if
7 the vegetation isn't correct, if in five years it
8 doesn't meet the height requirement? Do they have to
9 replace it? Case in point, on Palm Beach Boulevard,
10 directly across the road from Tractor Supply, there's a
11 buffer zone that was established. That buffer zone was
12 established for the animals that live there and
13 everything else like that. Right now the only thing
14 that's there are the trees and the bushes. Everything
15 else died, left, whatever. So the developer, okay, we
16 put this there, sorry the animals left? Is there a
17 contingency plan?

18 Lastly, I believe that all property owners should
19 have rights to do whatever they want with their
20 property, and it is not until they affect their
21 neighbor that their neighbor has a say, and I believe
22 there's quite a few neighbors, myself included, that
23 are here to say we don't want the densities changed.
24 We're fine with developing it, just as everybody else
25 has been around there, just don't change the densities.

1 Thank you.

2 HEARING EXAMINER RIVERA: Thank you. Thank you
3 for coming.

4 The next card I have is for Denise Eberle. Good
5 afternoon.

6 MS. EBERLE: Good afternoon, how are you?

7 Well, I'm going to be a little shorter than I
8 expected because pretty much everybody else has already
9 addressed the things I was going to address -- there's
10 a couple of outstanding things -- so I won't need my
11 PowerPoint.

12 So there is -- there is the issue of the
13 clustering, okay? Yeah, it says in the policy, you
14 know, support diverse rural economy by promoting
15 compact or clustered development. I believe that this
16 is being misrepresented. It's being abused. It's
17 not -- I don't believe it was the intent that they're
18 trying to say for a rural community.

19 So, I mean, you have, I mean, 788 acres, and, you
20 know, the base density is roughly 788 homes, one acre
21 per unit. So what they're -- what they're suggesting
22 is eight to ten units per acre. That's their
23 clustering, 4,000-square-foot properties. That's --
24 what, that's one-eighth of an acre, something like
25 that? One-tenth of an acre? That's just ridiculous,

1 and that's not what the rural community is about.
2 It's -- so my big issue there is the clustering. It's
3 being abused. It's not the intent that was meant to
4 be, especially in -- if you want to do that in an urban
5 community, fine. That's pretty much what urban
6 communities are, six to ten units per acre, but that
7 doesn't represent a rural community of one acre per
8 unit.

9 So let's see. The other issue is we don't have a
10 problem -- to address Mr. Cary's concerns. We don't
11 have a problem with you -- with him selling his
12 property. That's his -- that's his right. We all have
13 property rights. But all we want is that you follow
14 the Community Plan, adhere to the Community Plan, which
15 is one acre per unit.

16 Now, if you want to cluster that to some degree,
17 fine. You can still save a lot of preserve land. Let
18 people own some property. How about two single-family
19 homes per acre, okay? That takes up 360, 370 acres off
20 the top of my head, and it leaves 400 acres for a
21 preserve, but it still -- it still complements, more or
22 less, the rural community. What they're suggesting at
23 all is -- is totally against everything of the rural
24 community.

25 You know, the rural lifestyle -- 29.2, residential

1 land use, is to protect and enhance the rural character
2 of the North Olga Community by evaluating residential
3 development proposals for consistency with the
4 community's rural character and sense of community.
5 Rural character is defined as those characteristics
6 that convey the rural lifestyle, such as large lots.

7 Everybody around that property is single
8 residences, single-home residences with large land
9 tracts, minimum of one acre, but in that area probably
10 more.

11 The other issue, some questions I have is related
12 to State Road -- I mean, County Road 78, North River
13 Road.

14 Sorry, Mr. Neal, but your 30 seconds of your first
15 impression I'm not concerned with when it comes to your
16 property. I am concerned with the safety of our
17 community.

18 Have you been down North River Road?

19 HEARING EXAMINER RIVERA: I did. I did my site
20 visit for this.

21 MS. EBERLE: Yes, and especially that -- that
22 curve there? That's an extremely dangerous curve. Now
23 he wants to put his entrance for all construction to
24 come onto the east side of that property, right at that
25 curve. Do you know how many dump trucks that would be?

1 Do you know how much construction material that is
2 coming into that area? At least I know he doesn't want
3 the western portion used because that's probably where
4 his -- his model homes will be. But you have one mile
5 from that property to 31, which 31 is supposed to be
6 widened.

7 North River Road is restricted from widening. I
8 don't know if you know that. That is a restricted
9 road, a county road, that is never to be widened.

10 What else have we got here?

11 So I have to kind of go through things here now
12 because I'm not going through my original thing.

13 Okay. Let's go to the phone now.

14 Okay. You've already seen the diagram for the one
15 unit per acre, no density increases.

16 The development should not be improved until all
17 required conditions of Staff are met, and not before
18 the Applicant submits and gets approved of a formal
19 jurisdictional wetland determination and an
20 Environmental Resource permit from South Florida Water
21 Management District. The Applicant has not yet applied
22 for the jurisdictional wetland determination.

23 I think it's -- I think -- and here's another
24 thing related to the one unit per acre of the 788 units
25 per that property. The Applicant has the option to

1 just use that, the base density, and then he doesn't
2 have to -- then he's not required to -- for the
3 environmental enhancements, the clustering and
4 utilities would not be required, just to keep it at the
5 base density of what we're requesting, is the one acre
6 per unit.

7 I think I'm about over here, hang on.

8 Okay. I think that's about it. I pretty much
9 covered what I wanted to say.

10 HEARING EXAMINER RIVERA: Thank you, thank you for
11 coming today.

12 Yes, sir?

13 MS. EBERLE: Thank you.

14 UNIDENTIFIED SPEAKER: Before she starts asking
15 her questions, can you make sure she turns on her mic
16 because people can't hear --

17 HEARING EXAMINER RIVERA: I'm sorry.

18 MS. EBERLE: Oh, I do have a few questions I
19 forgot to ask, thank you.

20 HEARING EXAMINER RIVERA: And, Ms. Montgomery,
21 they can't hear you. Could you turn on your
22 microphone?

23 MS. MONTGOMERY: Is it working?

24 HEARING EXAMINER RIVERA: It should be, I believe.
25 Yours was earlier, I think.

1 MR. DANLEY: (Nods head.)

2 HEARING EXAMINER RIVERA: Yes, if you press the
3 button.

4 So did you have questions?

5 MS. MONTGOMERY: Okay --

6 MS. EBERLE: Well, let me ask these questions, and
7 then I'll answer you.

8 MS. MONTGOMERY: Okay. I'm sorry, I thought you
9 were done.

10 MS. EBERLE: I thought I was done, too, until
11 somebody said "questions," and then it's like, oh, I do
12 have questions.

13 So the questions I have are related to the
14 stormwater runoff, if I can find them now. And, you
15 know, it pretty much covers the same thing that was
16 brought up by another resident here.

17 How much of the preserve is going to be
18 managed with the -- how much of the preserve is going
19 to be managed with the use of herbicides, pesticides,
20 and fertilizers?

21 How much is this -- how much of this will be in
22 stormwater runoff?

23 How much of this will flow into the river,
24 creating more nutrients? I understand that maybe
25 the -- the -- the retention ponds and the lakes and

1 stuff will hold stormwater runoff, but the rest of that
2 preserve area, that has no place to go other than
3 runoff into the river. And since our river right now
4 is at a crucial time of pollution and whatever, it's
5 like the last thing it needs is more nutrients from
6 herbicides, pesticides, and fertilizers that run off
7 from that preserve property. So I guess that's my
8 question related to that.

9 HEARING EXAMINER RIVERA: Thank you.

10 MS. EBERLE: Yes, Neale?

11 MS. MONTGOMERY: You're involved in Alva. So do
12 you live -- approximately how far from the site are
13 you?

14 MS. EBERLE: I am roughly five miles from there.

15 MS. MONTGOMERY: Okay, thank you.

16 MS. EBERLE: Okay.

17 HEARING EXAMINER RIVERA: Okay. The next card I
18 have is for Connie Dennis. Is Ms. Dennis present? No?
19 Okay. Was she? I'm sorry, no? Okay.

20 Amanda Cochran?

21 MR. COCHRAN: Amanda is outside.

22 MS. COCHRAN: I'm here.

23 MR. COCHRAN: She's inside.

24 MS. COCHRAN: Thank you, I appreciate it.

25 (Discussion at lectern)

1 HEARING EXAMINER RIVERA: Good afternoon.

2 MS. COCHRAN: Good afternoon, thank you.

3 It's cold in here. I'm going to let my hair down.

4 My name is Amanda Cochran, and I am here as a
5 concerned Alva resident as it pertains to the increased
6 push for unnecessary and irresponsible future use
7 zoning changes that ultimately lead to development in a
8 rural area that is inconsistent and incompatible with
9 the Lee Plan.

10 Let me start off by, if you don't mind, me reading
11 into evidence (as read), under the correct legal
12 standard, even lay testimony in a zoning compatibility
13 is perfectly permissible and constitutes substantial,
14 competent evidence so long as it is fact-based.
15 Fact-based testimony may be relied upon as competent,
16 substantial evidence. Metropolitan Dade County versus
17 Blumenthal, 1996.

18 In this case law precedent, which has been used by
19 all Florida courts, the layperson citizen testimony
20 went to the incompatibility of the proposed development
21 with the surrounding uses and was found to be
22 sufficient, competent, substantial evidence about the
23 adjacent existing development and existing zoning
24 around the subject site. The testimony was backed up
25 by documentary information that included a diagram of

1 existing development and zoning and county planning map
2 of the general area. Later cases apply the Blumenthal
3 principle to citizen testimony and other evidence in
4 different settings, further explaining the standard,
5 including such cases as Dade County versus Walberg,
6 1999; Dade County versus Section 11, 1998; Dade County
7 versus Forty Acres Developments Group, 1997.

8 I say all of that so that you'll understand,
9 before any other questions arise, that our testimony is
10 competent and substantial.

11 The Lee County Comprehensive Plan for Northeast
12 Lee County Community Plan, in Goal 27, states (as
13 read), maintain and enhance and support the heritage
14 and rural character, natural resources, and
15 agricultural lands.

16 Policy 1.4.1, as was stated, the Rural Future Land
17 Use category are areas that are to remain predominantly
18 rural.

19 Policy 10.1.4, these areas are not to be
20 programmed to receive urban-type capital improvements.

21 I'm hoping that changes it -- okay.

22 In addition, the Lee Plan for North Olga Community
23 Plan, in Goal 29, states (as read), promote and support
24 the unique rural character, heritage, economy, quality
25 of life and natural resources in the North Olga

1 Community Plan area.

2 In addition, the Lee Plan for North Olga Community
3 Plan, in Goal 29, states (as read), promote and support
4 the unique rural character, heritage, economy -- I'm
5 sorry. The compact development also serves to protect
6 the natural rural character and natural viewsheds
7 through large buffers -- that's what Neal states, that
8 they plan to protect the rural character through
9 viewsheds, by using large buffers and setbacks.

10 I looked up the word "viewshed" as defined in the
11 dictionary, the natural environment that is visible
12 from one or more viewing points. That's important
13 because it must mean that Neal recognizes that what
14 lies inside of the development is not consistent with
15 the rural character and heritage of the area because
16 they have to protect us from it through viewsheds like
17 large buffers and setbacks.

18 Neal Communities' application claims that the
19 recently approved amendment for the water and sewer
20 removes potential impacts from up to 788 private wells
21 and septic systems. Contrary to Neal's opinion, there
22 is an important place in our system of infrastructure
23 for private wells and septic systems. Just ask the
24 hospital after the most recent hurricane.

25 And in rural areas, as the Lee Plan states, there

1 are places that should not be programmed for urban-type
2 capital improvements. And with the state-of-the-art
3 advancements of current well and septic systems, it's
4 indisputable that they are safe, efficient, and most
5 importantly, environmentally friendly.

6 We can pontificate that the reason for the recent
7 approval of the Comprehensive Plan amendment is some
8 kind of responsible push for sewer and water in a rural
9 area, but the truth is this is for financial benefit of
10 one developer from another county, who is attempting an
11 end run around established policies to exploit a
12 density incentive program that should never be
13 considered for an area long established with a maximum
14 allowable density of one dwelling per acre in an area
15 that is not contiguous to current service areas.

16 Neal also states of the recently approved
17 amendment that it provides protection to the
18 environment and benefits the public health, safety, and
19 welfare of the existing/future residents at no cost to
20 the County. That is a lofty statement for property
21 they intend to development in a way that no other
22 planned development has ever done in North Olga with
23 40-foot and 30-foot homesites, increased densities,
24 compact development, insufficient emergency services,
25 grossly inadequate roadways, and a dying river, just to

1 name a few.

2 In total, the two combined proposed developments
3 on this agricultural and environmentally sensitive land
4 will consist of almost 1,500 residential units in a
5 clustered development format on 1,133 acres of land,
6 with the smallest, again, proposed homesites consisting
7 of 40-foot and 30-foot single-family -- 40-foot
8 single-family and 30-foot homesites with attached
9 duplex dwellings. I repeat, 30-foot homesites in Alva.

10 Neal Communities has stated that the goal is to
11 develop a portion of the neighboring property into what
12 the developer refers to as attainable housing to
13 include the manufacturing of, quote, budget-conscious
14 homes with, quote, cost-efficient floor plans and,
15 quote, simplified and value engineered product. That
16 was according to the Business Observer in September of
17 2023. Who in the world would approve the development
18 of affordable housing in this section of the county
19 farthest from essential urban services and where there
20 is no public transportation?

21 If approved, this clustered home development will
22 triple the population of the north side of Alva with
23 the construction of one residential community. The
24 already stressed infrastructure cannot support this
25 massive development.

1 Additionally, this proposed development would
2 further threaten the environment in the northeast
3 section of Lee County, which will have widespread
4 consequences. Of the combined 1,133 acres, to include
5 both, there is over 190 acres of wetlands, countless
6 species, indigenous habitats, and I haven't heard
7 brought up today, historic archaeological sites.

8 The proposed planned development is inconsistent
9 and incompatible with the character as outlined in the
10 Lee County Comprehensive Plan.

11 This is a picture of the surrounding property maps
12 submitted by Neal Communities, which shows it as it is
13 today.

14 This is an image Neal Communities -- of the
15 planned development superimposed over the current map.
16 There's a lot of green on the outside.

17 Our community at large is supportive of
18 responsible development as established by the Lee Plan.
19 This is not it, not even close.

20 Back in early 2023, at the Hearing Examiner's
21 meeting for the rezoning of the now-approved
22 application titled "Greenwell State Road 31," another
23 large proposed development in Alva, several members of
24 our community showed up and packed a small room to
25 publicly speak in opposition of that proposed rezoning.

1 At the end of the hearing, Hearing Examiner Collins
2 provided the community members that were in attendance
3 with assertive words of advice. She strongly
4 recommended that the appropriate and effective time for
5 the public to become involved and to be heard is during
6 the Comprehensive Plan amendment process instead of the
7 zoning process.

8 Fast-forward to January 2024 during the Board of
9 County Commissioners' transmittal hearing for Neal
10 Communities' Comprehensive Plan amendment.
11 Approximately 65 members of the public provided comment
12 on the proposed amendment. 61 members of the public
13 were opposed to the amendment, and 4 supported it, some
14 of whom had vested interest. Public comments included
15 concerns, as today, over traffic, the ability of
16 emergency services to respond, constructing the utility
17 line under the river, general incompatibility with the
18 neighboring very low-density residential uses, life,
19 safety -- I haven't heard that word brought up today
20 either -- and a belief that septic systems are better
21 for the environment than public utilities, all valid
22 and evidence-based reasons for the amendment to have
23 been considered incompatible and inconsistent.

24 At the end of public comment on January 17th,
25 after being told by the Hearing Examiner that that's

1 where we should be involved, no discussion was made by
2 the commissioners, and the recommendation by the LPA
3 committee was not to approve, a motion was made to
4 transmit the proposed amendment. The motion passed
5 five to zero.

6 61 members of the public provided comments in
7 opposition, and there was not even the appearance of
8 concern for the public interest on the matter. And
9 here we are again today, after being completely
10 dismissed in recent decisions multiple times, and
11 coming to be heard anyway.

12 It also bears repeating that Alva -- in Alva we
13 are not antidevelopment. It's been said already. That
14 seems to be the narrative. In fact, many of the public
15 who live in Alva that have taken their day off work
16 today to come and provide public comment in opposition
17 to this proposed rezoning amendment, are builders,
18 engineers, surveyors, well drillers, and many other
19 workforce members of the building development industry.
20 So I'll say it again, our community at large is
21 supportive of responsible development as established by
22 the Lee Plan. This rezoning amendment is not that.

23 This plan ultimately is for one developer to
24 become more rich at the expense of an entire
25 historically rural community with deadly implications.

1 Property rights are the legal rights of ownership
2 on which others are not allowed to infringe without
3 proper compensation, but they do not include changing
4 the established rules for the benefit of a developer
5 from another county; changing the established rules to
6 the deadly detriment of an entire community; putting at
7 risk an entire community because the infrastructure is
8 grossly unequipped to handle even the current
9 population of the area; putting at risk further the
10 natural resources and wildlife that depend on the
11 quickly shrinking rural area.

12 Again, we support property rights that are
13 afforded to property owners as outlined in the Lee
14 Plan. Developers should not be able to manipulate the
15 land use and zoning requirements to disregard the
16 established rules of the Lee County Comp Plan.

17 Where is the justice in allowing the commercial
18 goals of an individual developer to override the rights
19 of thousands of property owners who invested themselves
20 into a way of life that is fast disappearing.

21 During these decisions, the Board of County
22 Commissioners often invoke the Bert Harris Act as their
23 basis and argument for why they have no other choice
24 but to approve these amendments and rezoning
25 applications. Please allow me to read what I

1 understand of the Bert Harris. What is the Bert Harris
2 Act? It is intended to protect --

3 MS. MONTGOMERY: Madam Hearing Examiner, I let the
4 unauthorized practice of law proceed earlier --

5 MS. COCHRAN: You let the what? I'm sorry, I
6 can't hear you.

7 MS. MONTGOMERY: You're giving legal testimony,
8 and you're not qualified, and you're not allowed, and
9 I'm going to object to further legal testimony.

10 MS. COCHRAN: So I can't give an interpretation of
11 what I believe the Bert Harris Act is? And you can
12 refute it.

13 HEARING EXAMINER RIVERA: So what is the basis of
14 the objection exactly?

15 MS. MONTGOMERY: You've got to tread softly on the
16 unauthorized --

17 MS. COCHRAN: Can I --

18 MS. MONTGOMERY: -- practice of law.

19 MS. COCHRAN: -- give my interpretation of what --
20 (Participants speaking en masse.)

21 HEARING EXAMINER RIVERA: Okay, okay, everyone,
22 please.

23 MS. MONTGOMERY: What I'm suggesting is you need
24 to tread lightly on the unauthorized practice of law.

25 MS. COCHRAN: Can I continue?

1 HEARING EXAMINER RIVERA: Okay.

2 MS. MONTGOMERY: Look up at the Hearing Examiner.

3 HEARING EXAMINER RIVERA: Excuse me -- yes.

4 So please, if you could -- and I believe you did
5 this, but if you can just elucidate in your comments
6 that you are not providing legal opinion. You are
7 providing your --

8 MS. COCHRAN: I am --

9 HEARING EXAMINER RIVERA: -- understanding.

10 MS. COCHRAN: -- providing my understanding --

11 HEARING EXAMINER RIVERA: Yes.

12 MS. COCHRAN: -- of the Bert Harris law act (sic),
13 and it is welcome to be challenged --

14 HEARING EXAMINER RIVERA: Understood.

15 MS. COCHRAN: -- and I wish that they would.

16 HEARING EXAMINER RIVERA: Okay, thank you.

17 MS. COCHRAN: What is the Bert Harris Act? It is
18 intended to protect property owners by preserving their
19 ability to maintain the existing use of their property
20 or any reasonably foreseeable use. To put it bluntly,
21 the Bert Harris Act does not apply to property owners
22 attempting to increase their property's density,
23 intensity, or uses, known as up-zoning. What the Bert
24 Harris Act is not -- despite apparent cries to the
25 contrary and noticeable misconceptions, neither the

1 Bert Harris Act, nor the U.S. Constitution, provides
2 property owners with a guarantee of maximum profits or
3 an unassailable right to approve all development
4 proposals. Local decision-makers are not bound to
5 approve developments simply because a property owner
6 invokes the name of the act.

7 Unfortunately, some commissioners and planners
8 across the state have erroneously claimed that their
9 hands are tied, using the act as a reason to approve
10 developments they might otherwise scrutinize more
11 thoroughly. With hands up and shoulders shrugged,
12 these decision-makers urge their disgruntled
13 constituents that there is nothing they can do but
14 approve the developments. This defensive declaration
15 misses of the mark.

16 In reality, the Bert Harris Act is meant to
17 protect property owners, not to grant developers the
18 power to coerce local governments into approving
19 documents. It is essential for local planning
20 commissions to understand that the act was never
21 intended to be a blanket endorsement for all
22 development proposals. Instead, it was meant to
23 balance property rights with reasonable land use
24 regulations, ensuring that property owners are
25 compensated for undue burdens without undermining local

1 land use authority.

2 This act has undoubtedly had a chilling effect on
3 land use regulations and innovation. However, local
4 planning commissions are not permitted to abuse land
5 codes and processes by taking refuge behind the Bert
6 Harris Act. It was simply never intended to assume
7 that role.

8 In recent months I have heard one commissioner in
9 particular using the Babcock Ranch development as
10 justification for the approval of recent amendments.
11 This is misleading. Babcock is an anomaly that was
12 always presented and designed to be self-sustaining,
13 which means they won't need outside urban services.
14 Additionally, Babcock paid hundreds of millions to set
15 aside thousands of acres for conservation, leaving a
16 1,300-foot buffer, as was mentioned. You can't compare
17 developing Alva and North Olga in the same way, with
18 densely compacted developments that are the equivalent
19 of urban sprawl and do not have the urban services
20 necessary to support this level of development.

21 In my opinion, this picture is the identity of
22 urban sprawl.

23 And if I can just read into the record also,
24 please -- thank you for your graciousness -- spot
25 zoning is not governed by city code but by Florida

1 common law, as established in Florida case law.
2 Although spot zoning is not explicitly prohibited by
3 state statutes, city or county land development codes,
4 it is a universally condemned practice --

5 MS. MONTGOMERY: Again, I'm going to interject.
6 I'm going to object, for the record, to continuing
7 legal testimony from someone who is not qualified.

8 HEARING EXAMINER RIVERA: You can continue.

9 MS. COCHRAN: Can I give my interpretation of spot
10 zoning?

11 HEARING EXAMINER RIVERA: Ma'am, it's up to me,
12 and I said you could continue so please continue.

13 MS. COCHRAN: Okay, thank you. I appreciate it.

14 It is a universally condemned practice by Florida
15 courts and will not survive a legal challenge, Parking
16 Facilities, Inc., versus City of Miami Beach, Florida
17 1956. The rezoning would destroy the character of the
18 neighborhood and, quote, constitute spot zoning of the
19 worst order, a practice which we all, and all other
20 courts, have universally condemned.

21 In Bird-Kendall versus Dade County, the county
22 commissioners approved a rezoning to allow what was
23 prohibited in the surrounding area. This was
24 characterized as spot zoning to the nth degree. In
25 fact, Chief Judge Schwartz wrote, "The extent of the

1 violation of this principle is so pronounced in this
2 case that the term 'spot zoning' does not do it
3 justice. Perhaps 'melanoma zoning' or, for short,
4 'melazoning' would be more appropriate."

5 Property Law: 1998 Survey of Florida Law, 23
6 Nova L.

7 As explained in Stetson Law Review, the phrase
8 "miscarriage of justice," as it applies to a zoning
9 case, has not been expressly defined. However, it has
10 been suggested that a fundamental departure from
11 controlling law, end quote, possibly constituted a
12 miscarriage of justice. The court found in
13 Bird-Kendall just such a fundamental departure from the
14 controlling law prescribing spot zoning.

15 Spot zoning is a practice in which the Florida
16 Supreme Court, and all other courts, have universally
17 condemned, Rott versus Miami Beach. Florida law has
18 long held that spot zoning is discriminatory and
19 unconstitutional. The Florida Supreme Court, in
20 characterizing the elements of spot zoning, a spot
21 zoning challenge involves the examination of the
22 following -- almost done -- number one, the size of the
23 spot; number two, the compatibility with the
24 surrounding area; number three, the benefit to the
25 owner; and, number four -- number four -- the detriment

1 to the immediate neighborhood.

2 This application is illegal spot zoning because it
3 fails these elements of the spot zoning test, and
4 therefore it is illegal spot zoning.

5 The members of the Alva community and Alva Strong
6 at large have largely consulted with experts and
7 planners and attorneys to advocate for the benefit of
8 the Citizens of Northeast Lee County regarding the
9 Cary+Duke+Povia rezoning application DCI2022-00067.

10 It is the position of the majority of our
11 community and the surrounding areas that this proposed
12 development not only fails to honor any of the
13 long-established goals with the Lee County
14 Comprehensive Plan, but also represents an
15 irresponsible overdevelopment of the last rural
16 corridor of Southwest Florida, with far-reaching
17 impacts to the infrastructure, resources, the culture,
18 and the environment.

19 Thank you very much for your time.

20 HEARING EXAMINER RIVERA: Thank you. Thank you
21 for coming.

22 MS. MONTGOMERY: Ms. Cochran, before you leave,
23 could you tell us for the record how far you are from
24 the site?

25 MS. COCHRAN: I'm at 17610 Taylor Road in North

1 Olga. I pass the site every day, and I would estimate
2 a couple of miles.

3 MS. MONTGOMERY: Thank you.

4 HEARING EXAMINER RIVERA: Thank you.

5 We were going to take a break at 2:45 to give
6 everyone a rest for a moment. We're going to go ahead
7 and break now so I don't have to cut off the next
8 speaker. So we will resume in 15 minutes. At 2:50
9 please meet back in the room.

10 (Recess from 2:36 p.m. to 2:52 p.m.)

11 HEARING EXAMINER RIVERA: Okay. We are back on
12 the record. We'll resume with public comment cards.
13 The next card I have is for Darius Cochran.

14 MR. COCHRAN: Thank you, ma'am. I want to say,
15 appreciate you guys. Y'all have been very respectful
16 to everyone here. Appreciate it.

17 HEARING EXAMINER RIVERA: Good afternoon.

18 MR. COCHRAN: And for the record, Darius L.
19 Cochran, 17610 Taylor Road.

20 UNIDENTIFIED SPEAKER: Can't hear you, Darius.

21 MR. COCHRAN: Is the mic on?

22 MS. MONTGOMERY: I'll assume you live in the same
23 place.

24 MS. COCHRAN: Is the mic on here?

25 HEARING EXAMINER RIVERA: I assume so. We can

1 ask.

2 THE REPORTER: Try to bend over.

3 MR. COCHRAN: Okay.

4 HEARING EXAMINER RIVERA: The tall folks are
5 disadvantaged.

6 MR. COCHRAN: All right, guys. For the record,
7 Darius L. Cochran, 17610 (sic) in Alva.

8 (Video played.)

9 MR. COCHRAN: Let me back up just a little bit
10 here.

11 (Video starting again.)

12 (Discussion at lectern)

13 MR. COCHRAN: Thank you, sir.

14 This is just a little demonstration of how the
15 government works and maybe why some people in Alva
16 don't really trust how they do operations.

17 What I have here is a taking for the right-of-way
18 on Bayshore Road, the second access. When you come out
19 North River Road and head south, you only have two
20 choices. Both are two-lane roads. The two-lane road
21 that goes over the bridge that we just talked about is
22 insufficient, was built in 1960 with a 50-year
23 lifespan. It's well over. It's a terrible bridge for
24 massive development. Then you have the two-lane
25 Bayshore going to I-75.

1 So -- so my family owned a store -- I think it was
2 9521 Bayshore Road. They said they're going to take
3 the property, the gas pumps, they took all the property
4 up into the eave of the -- of the property there --
5 it's a western store now across from Lawhon's gas
6 station, Marathon. And they said we're putting a
7 four-lane road in from I-75 to State Road 31, and
8 that's why they're taking that property.

9 We built the store as a Circle K -- excuse me,
10 Shop and Go. Circle K bought out Shop and Go.

11 It was property that we had as a rental for many,
12 many years. They took that away from us, the Florida
13 Department of Transportation. I want you to look at
14 the date on there. Can you read that date? It says
15 November 5, 1993. That's when they took the property
16 for the four lanes of Bayshore between I-75 and State
17 Road 31. So they -- they don't move real fast.

18 So we're basically -- we have two ways to get out,
19 and now we've got this, you know, Michigan or Missouri
20 right turn or whatever it is, go down -- we're going to
21 have all the traffic go down and do a U-turn and come
22 back around so we can head south. Great plan, great
23 plan.

24 So what we're going to do -- in 1993 we're going
25 to four-lane the road. So this week I talked to the

1 Florida Department of Transportation and --
2 Mr. Bateman, Patrick. Here's some of the stuff that we
3 spoke about. We had a conversation.

4 State Road 31, from State Road 80 to State Road
5 78, which is Bayshore, is currently going through
6 environmental review. Now, somebody over here in
7 transportation I'm certain made an accidental claim
8 that that was already funded. I'm certain they made a
9 mistake, whoever that was. So I just want to correct
10 the record for that, because unless somebody has talked
11 to Mr. Bateman over the last 72 hours, since I've
12 spoken to him, it's not funded. It's not funded at
13 all. As a matter of fact, the Department is still
14 studying the impacts of the improvements. The
15 Department is not committed to implementing
16 improvements.

17 State Road 78, from I-75 to State Road 31, is
18 continuing to go through updates after the workshop.
19 The public hearing is anticipated to be held in early
20 2025. So the design right-of-way and construction are
21 not funded at this time. I just want to make that
22 clear and correct the record, because you may take what
23 they say to be actually factual -- and I'm sure it's
24 probably an accident on their part, once again. It's
25 not funded from 75 to State Road 31, according to the

1 Florida Department of Transportation project manager
2 it's not funded. What that means, in fiscal year 2029,
3 which is about five years from now, they think it will
4 be in the budget. No certainties, no certain build
5 here at all. I was very surprised to see this. The
6 no-build, he said, because we're required to keep a
7 do-nothing alternative until the end of the
8 environmental study.

9 So I know you guys don't care about traffic, it
10 doesn't seem, when the commissioners say they can't say
11 anything about no to traffic. So we've been working on
12 this four-lane road here since 1993. It's still not
13 there.

14 So what we talked about then was from State Road
15 80 to Bayshore Road. Let me see the correspondence
16 here. Let me jump up here. Any solid update on the
17 bridge? The bridge replacement is part of State Road
18 31 from Highway 80 to Bayshore Road, the 78 project.
19 So the plan is for construction to start in fiscal year
20 2029. I want to correct that because that was wrong on
21 the information that you have, if you can look at the
22 previous record. I believe it was the transportation
23 gentleman, he said that was funded.

24 So I don't care if you put 12 lanes of highway
25 down State Road 31, you have a two-lane bridge, and you

1 have two lanes all the way to Highway 80, and you have
2 two lanes all the way to I-75. So there's no possible
3 way on the face of this earth that this project on
4 either side, either access, either southbound lanes, if
5 you go west on Bayshore, south on State Road 31 to
6 Highway 80, nothing is happening, guys. All this talk
7 about the road's coming in, the road's coming in, the
8 road's -- the road's not coming in any time soon, no
9 time soon.

10 We got this new project here that Babcock, I
11 guess, is taking and participating in up until Bayshore
12 Road from Cypress -- what's the road, Cypress up there?
13 The main entrance of Babcock down to the civic center,
14 I believe, Bayshore Road. Yeah, that may be 4-lane,
15 6-lane, 8-lane, 10-lane, 12-lane, I mean, who cares?
16 Look what happens at Fort Myers Beach. They have the
17 stop and go; they have four or five different lanes,
18 but it still goes across a little bridge.

19 This bridge is a catastrophic bridge for hurricane
20 evacuation. We're going to get jammed going to a
21 two-lane road on I-75. We're going to get jammed going
22 to Highway 80. We had a wreck last week. Both sides
23 of the river were locked down for an hour. Everybody
24 in here knows.

25 So I think common sense ought to be a category we

1 should probably add to the development code because
2 traffic, they say, we can't use. They say, well, we
3 don't care about traffic. We can't say no to traffic.
4 I mean, come on. Let's be reasonable.

5 We're happy for development in Alva. Like Grant
6 said -- who is the president of our community -- we
7 want development. Just about everybody in this room, I
8 mean, we want development; but if you're going to sit
9 here and tell us that a 30-foot lot goes with 5-acre
10 parcel, and that's compatible? It makes us wonder.

11 Anyways, I got -- to the bridge point here -- I'm
12 sorry I skip around -- but when will the bridge be
13 completed? I just threw out a -- I just threw out a
14 year. 2035, I said. Should be before 2035. Awesome.
15 So within 11 years we're pretty certain we're going to
16 have a new bridge. I doubt it because, here again, I
17 have a track record back here of what they do. See, in
18 1993 they told me the same thing. We're going to
19 four-lane the road. That's why they're going to do a
20 taking. So I've been out of the rental business -- my
21 family's been out of the rental business for 31 years
22 on that property. They paid us a little money that
23 they said they were going to give, and that's it. So
24 31 years ago they're going to four-lane that road.
25 We're going have to 75 -- go right -- right through to

1 31.

2 So 31 years on that little project. So when they
3 say 2035 the bridge will be done, yeah, I doubt it.
4 But even so, if it was done 2030, it still wouldn't
5 matter. This is a massive development. We have right
6 now on the north side of the river -- Grant, what,
7 1,500?

8 MR. FICHTER: Yes.

9 MR. COCHRAN: 1,500 people we have on a 10-,
10 12-mile stretch, 1,500 people. I mean, pretty good
11 math, 1,500 homes in this development, three or four
12 people -- that's about 5,000, 6,000; correct? So
13 you're going to take the old country, you're going to
14 take Old Florida, one of the last settlements -- I
15 believe it was the first settlement in Lee County --
16 and I think the lady is right, the vice president, said
17 that that two-lane road will always be a two-lane road.
18 I assume it's probably an historic two-lane road.

19 So you, yourself, can make a recommendation for
20 1,500 people, that it's a great idea to put 6,000
21 people there when we have a bridge that may be done by
22 2035; we have a four-lane road to Bayshore may be done
23 by 2030; we have the other project from Highway 80 to
24 31 to Bayshore, 2029 is the fiscal year for funding,
25 not funded, and they still have "do nothing" on their

1 chart. And I questioned that because everybody says,
2 oh, it's going to be done, going to be done, going to
3 be done. No, ma'am. The environmental study is not
4 even done for the taking on 31 south of the bridge.

5 So we already know all five commissioners are
6 going to say yes. You're the one that can make a
7 decision for the entire 33920. I hate to put this on
8 you, but it's on you. This is your decision, to make a
9 common-sense good decision for the community and the
10 citizens of Lee County, including Alva and North Olga.

11 I'm sorry, it's personal to us. It's personal.
12 It's our San-Cap Road, it's our Ding Darling, what
13 Captiva and Sanibel have, we want our Old Florida.

14 This man came up here and bought a 5-acre parcel.
15 They said he had to have 5 acres to build a house right
16 next-door, and you're going to say it's okay to put a
17 30- and 40-foot lot. What's Cape Coral have, 80 feet?
18 Why can't we have 80 feet? We're out in the middle of
19 nowhere, and they want to put 30- and 40-foot lot
20 sizes. What's Lehigh? A hundred feet, a quarter-acre
21 lot? Why are we so unreasonable, the citizens of Alva,
22 why are we so unreasonable that we want a normal size
23 homesite? We think children ought to have a back yard.
24 We think children ought to have a front porch and a
25 back porch. We think the best place for an animal is

1 to have a place to run outside.

2 Everybody hates storage units. Well, the reason
3 there's storage units around -- and I've sold storage
4 units sites. I'm, you know, guilty. It's a product of
5 lot size. We have thousands upon thousands of acres in
6 Southwest Florida. We don't need to stack people up
7 around here like Miami.

8 The whole trajectory of the development in Lee
9 County needs to change, and we've yelled and screamed,
10 and nobody listens because they have one thing in mind,
11 help an out-of-town developer -- I feel like the Lee
12 County Staff is working for the developer instead of
13 its citizens. I mean, we want representation. We want
14 common sense factored in as part of the Lee Plan. Any
15 way we can do that? Let's put common sense in the Lee
16 Plan. I think we ought to put it 101.

17 Here's another correspondence, State Road 78
18 project is not funded for construction. I even put a
19 red line there. The environmental study is underway,
20 and we are hoping to go to a public hearing on it in
21 the winter.

22 The State Road 31/Babcock project is supposed to
23 be ending the first day of '27, I guess.

24 This is a property right next to it, close
25 proximity. This is actually a fence post. 18990

1 Serenoa Court. That's on a 5-acre parcel right
2 next-door. Mr. Edwards came up here. He's on a 5-acre
3 parcel right next-door.

4 I want you to look at something. This is an
5 aerial. That's North River Road; that's Serenoa Court.
6 This is a Zillow -- which I don't agree with Zillow,
7 everything they say or do, but I'm going to go with
8 Zillow on this. A couple years ago this house was
9 worth a million bucks, and my guess is -- and my
10 opinion, Counselor -- is that all the talk and all this
11 around this development has shot the value of this
12 property down 300,000. I don't make this stuff. I
13 just got it off the internet. I mean, anybody can just
14 Google it and see it. This is a home right next-door
15 to the development. I mean, the house did not get
16 flooded. So you tell me, why did the house drop
17 \$300,000? Full disclosure, I am in the business.

18 Affordable housing, I know how this works. My
19 opinion is I know how this works. Affordable housing
20 is something developers do to try to get the attention
21 of the commissioners and the government to say, oh, we
22 need affordable housing. Well, let me tell you
23 something about the people I know that want to buy an
24 affordable house. They don't want to be told where
25 they live. They want to live where they want to live.

1 They want to live in maybe Lehigh or Cape Coral. They
2 may want to live in Fort Myers. They may want to --
3 they don't want to be told they have to live in a row
4 of houses that all look the same, some kind color roof,
5 same -- some of these houses off here don't even have a
6 front door. I mean, I never seen anything like that in
7 my life. I've never sold a house without a front door.
8 This is off a Neal brochure. This is what you want to
9 change it into right here, ten feet apart.

10 Ma'am, the code for an HVAC system is one foot
11 from the -- from the building. I talked to a licensed
12 contractor yesterday. You have a concrete wall, you
13 have one foot to put your air conditioner. Air
14 conditioners are three feet. If you're not careful,
15 when you walk your dog outside -- you know -- you know,
16 if you have a dog, you've got to be real careful
17 because you may encroach on the property next-door.
18 One foot, three foot, five foot between properties.
19 Their plan on their paperwork -- I'm getting it off of
20 their paperwork, and it says ten feet house to house.
21 Why on God's green earth would we want to build houses
22 out in the middle of nowhere that are ten feet apart?

23 Please, please, please, again, let's factor in
24 common sense into the Lee Plan. I think the brilliant
25 minds of the Lee County government could really put

1 that into play. Let's be different. Let's don't be
2 like Hialeah, Miami-Dade County.

3 Maybe some people want to live in those houses in
4 town, closer to public transportation -- and people can
5 live wherever they want to live, but my point is
6 there's over 4,000 homes available right now under
7 \$350,000, what we consider at this day and age probably
8 affordable housing.

9 This is a house on the Neal Communities website I
10 found yesterday. This is a house listed here at
11 \$367,554. Now, if you want a front door, I'm sorry,
12 it's going to cost you a little more. I apologize for
13 my friends and family.

14 This is over what I -- I just found -- I just
15 found 4,000 homes under \$350,000 in Southwest Florida.
16 That's my opinion, even though I did look at it
17 yesterday on MLS, but that is my opinion of how many is
18 in Southwest Florida.

19 So this house, you know, it's got a little
20 cupola -- fake cupola on the top of the garage, but I
21 don't know where the front door is.

22 Do you know where the front door is? Where's the
23 front door to this house?

24 (Participants speaking en masse.)

25 MR. COCHRAN: No, there is no front door in the

1 front.

2 You got to go through the garage?

3 MS. MONTGOMERY: Madam Hearing Examiner, I'm going
4 to ask that Mr. --

5 HEARING EXAMINER RIVERA: If you could please
6 just -- yes.

7 MS. MONTGOMERY: -- focus his attention on you and
8 not Mr. Neal?

9 MR. COCHRAN: This is what we want in Alva. This
10 is a beautiful home, a beautiful front yard for kids,
11 grandkids, Thanksgiving. You're going to have people
12 over here. And, you know, we don't need a storage unit
13 here because we have enough room. We don't have to
14 supply these storage units, you know, by the thousands
15 because a storage unit is a product of lot size. Been
16 in the business, lived here, fourth generation
17 Southwest Florida. This is a beautiful home, Galvalume
18 roof. It's got a front porch, back porch, got a
19 garage, got a little place for an outbuilding.

20 Any progress here at all? This is what they want
21 to build; this is what we want. No place in Alva.

22 I want to thank the Buckingham Preserve people, I
23 want to thank North Fort Myers people, because we're
24 all on the same page.

25 East of 75, ma'am, we've all lived out here for a

1 long, long time.

2 Some people love HOAs. I personally have a little
3 issue with them. But if you want to live in an HOA
4 with sewer and water, which the county commissioners
5 can raise, like they did last year, 45 percent over the
6 next four years. It's a government takeover of a small
7 town is what it is. And the government comes in, and
8 they tell you that you need sewer and water, got to
9 have sewer and water because septic tanks are bad; but
10 your office, your company, your business permits septic
11 tanks every single day. So when they come up here and
12 say, septic tanks are bad, you know, don't believe
13 them. Otherwise, you guys would never permit a septic
14 tank unless it was really a good idea. So the argument
15 with the septic tank/sewer and water is -- just doesn't
16 hold water.

17 Where do you think the water comes from? It
18 doesn't come from a big steel tank downtown Fort Myers.
19 They dig wells. The water comes from the ground, goes
20 up in the tank, and then it goes out to all the people;
21 and then if somebody breaks one, then it puts out
22 10,000 people at one time. In Alva if our water system
23 breaks, it takes out one family. We're
24 self-sufficient. We take care of ourselves. We have
25 the best water, the RO system, the best water you can

1 find.

2 This is that same house in Alva, beautiful, a
3 beautiful house. I did not sell it. It has nothing to
4 do with me, just a random house I found in Alva
5 probably a mile down the street.

6 So talking about sewer and water, and this is
7 where common sense -- you know, I don't know, maybe
8 it's just me. The city water and sewer, they take raw
9 sewage -- they take the raw sewage, they fill it with
10 chemicals. It's not good enough to drink, but every
11 city water and sewer plant around our area puts the raw
12 sewage, after they put the chemicals in it, right back
13 into the Caloosahatchee River. Please, somebody,
14 explain to me why that's a great idea.

15 Just read it. A portion of the activated
16 sludge -- which is raw sewage, they make pretty names
17 for it, sludge, I guess, is better than sewage --
18 collected in clarifiers is removed from the process for
19 final disposal. On the very end, they bring fertilizer
20 through a cooperative agreement with Lee County. So I
21 didn't know this. You know, we do a lot of studies,
22 and, you know, we find new things. It's very
23 interesting.

24 So Lee County developed something called
25 OrganicLee®. They even paid the money to trademark it.

1 So what it is, it's human -- it's human sewage that
2 they put chemicals in it, and then you can buy it down
3 there at the County -- or maybe they give it to you, I
4 don't know. It's called OrganicLee®, and it's human
5 waste, and they call it compost. You can put it on
6 your lawn 365 days a year without restrictions. Those
7 are just the facts. So you can get human waste --
8 here's what it's called, OrganicLee® compost.

9 I don't know about you, but I don't want human
10 waste in my yard. I don't want the fertilizer, and I
11 don't want the effluent, which is raw sewage with
12 chemicals, put back into the Caloosahatchee River.

13 I don't know why we talk about all the algae
14 blooms and all these problems with the water in the
15 Caloosahatchee River, but yet we give people fertilizer
16 that has human waste that runoff goes into the river.
17 Again, I think we ought to put common sense 101 back
18 into the Lee Plan.

19 I think some of the water-keepers, water-watchers,
20 whatever -- whatever they want to be, the scientists, I
21 think they need to look at human waste fertilizer
22 runoff into the Caloosahatchee River. I'd start right
23 there. I'd also start with all the raw sewage that you
24 put chemicals in downtown at the Lee County or city
25 plants. Right in the Billy Creek area, just pour all

1 the raw sewage that's been put in chemicals, and they
2 say it's clean water. Maybe it is, but just -- really,
3 really, I struggle with that when people really talk
4 about how horrible septic tanks are, and these city
5 sewer and water plants are just, you know, magic
6 according to these people.

7 So he can build 750 homes with city water and
8 sewer if he wants to. There's no law that says he
9 can't. You don't have to give him a bonus density just
10 because they get water and sewer out here. The LPA
11 turned it down. The five commissioners overruled the
12 LPA. So why do we have an LPA? They're going to say
13 5-0 anyway.

14 Here's some more information on the OrganicLee®
15 that's made by mixing the sludge. Maybe this is not
16 interesting to anybody, but it just caught my eye.

17 I'd like to close with this and let you know that
18 I appreciate your respect, thank you very much. You've
19 done a great job today. But there's some reasons why
20 we don't trust Lee County government, and I think we've
21 produced a few of those today.

22 In Alva we have a little issue here in downtown --
23 and I'll leave you with this. We had a
24 15-miles-per-hour speed limit going into the last
25 corner of downtown Alva, but the government thought it

1 was a great idea to bring out a "warning school
2 children playing ahead." So they probably spent about
3 \$5,000, brought this nice sign out there -- I think
4 it's aluminum -- beautiful light flashes. I guess my
5 point is we were only going 15 miles an hour. So the
6 government paid about 5 grand to put a sign up there so
7 when we see school children playing, we can speed up 5
8 miles an hour. I can't make this up, people, I can't.

9 Appreciate it.

10 HEARING EXAMINER RIVERA: Thank you. Thank you
11 for coming today, sir.

12 The next card that I have is for Pat Neal.

13 MR. NEAL: (Shakes head.)

14 HEARING EXAMINER RIVERA: You don't want to speak,
15 sir?

16 MR. NEAL: Not at this time.

17 HEARING EXAMINER RIVERA: Thank you.

18 Kathy Arnold is the next card that I have. Good
19 afternoon, ma'am.

20 MS. ARNOLD: Hello, thank you for your time.

21 My name is Kathy Arnold, and I am speaking on
22 behalf of myself and my husband, Randy Arnold. We live
23 at 14971 Terrell Drive. Our side yard runs right along
24 North Olga so we can walk to this proposal.

25 I have been to all of the meetings regarding this

1 proposed high-density community -- well, except for one
2 that was scheduled and held along the side of the road
3 at noon in the middle of summer. The first meeting
4 that I went to, the Lee planning agency determined that
5 sewers (sic) and water should not be approved for this
6 area. In my opinion, digging under the river has to be
7 an ecological nightmare. They sent their opinion to
8 the commissioners, but the commissioners did not appear
9 to agree and said, okay, sewers and water it is,
10 Mr. Neal. This was so disappointing.

11 The public outcry against this development has
12 been loud and proud. Alva is the last truly rural area
13 in Lee County.

14 We purchased our property for our retirement based
15 on the rural character of North Olga. Our field is
16 actually right next to our house that we own but allow
17 our neighbors to put their cows on, and we hand feed
18 them treats. We love that. You can bicycle here, play
19 basketball in our barn. Our grandsons can walk to our
20 house. But this potential influx tripling our
21 population, I don't think this calm, relaxing
22 atmosphere will remain.

23 The men and women who helped plan North Olga knew
24 what was needed in this crazy county. The rivers, the
25 parks, the winding country roads used by many

1 motorcycles, all this will become harder to access.

2 The traffic on 31 is already a nightmare. On my
3 way here this morning, 31 was backed up from Bayshore
4 to the Cracker Shack, no accident.

5 Why does Neal not have to abide by this
6 established plan that's been in place forever? All of
7 the existing communities that have been built in this
8 area had to follow these rules.

9 This reminds me of the student loan forgiveness
10 that's on the books. My husband and I had several
11 school loans that we signed on the dotted line for. We
12 knew it was an obligation no matter how hard it was to
13 make those payments every month. We did without a lot
14 of things and didn't have kids for six years. Why
15 should we forgive loans? Why should Neal not have to
16 play by the long-established rules?

17 Please keep North Olga rural in every sense.
18 Please say no to the high-density request. He can
19 build his neighborhood based on the same requirements
20 that we all have had to follow, one house per acre.
21 Please do not allow our home values, property values,
22 to plummet. Keep North Olga/Alva rural.

23 My only question in this whole process is what is
24 the reason for all of this discussion if this is
25 already approved for 788 homes? Why is 788 not enough?

1 Why can't 788 homes have sewers and water? Thank you.

2 HEARING EXAMINER RIVERA: Thank you. Thank you
3 for coming today, ma'am.

4 The next card I have is for Janet Klingensmith.

5 Yes, sir?

6 MR. KLINGENSMITH: She was called away, but she
7 opposes --

8 HEARING EXAMINER RIVERA: Okay. Will she return?
9 Should I put her back in the list or --

10 MR. KLINGENSMITH: No, thank you very much.

11 HEARING EXAMINER RIVERA: Okay. Thank you, sir.

12 Okay. The next card I have is -- well, this is
13 you, I guess, sir. Did you wish to speak today?

14 MR. KLINGENSMITH: Yes.

15 HEARING EXAMINER RIVERA: Okay, thank you. Good
16 afternoon.

17 MR. KLINGENSMITH: Thank you very much. Alan
18 Klingensmith, I've been in Lee County ever since the
19 Wilson Pigott Bridge was put in 60 years ago. I've
20 lived in Alva for 32 years on 18121 Traverse Drive, one
21 mile from this.

22 A few years back -- my address is Alva, but we're
23 in the North Olga Community. A few years back some
24 people came to my door, and it was a petition to create
25 North Olga. And I was naive, I didn't know anything

1 about it. I thought, well, this is representation so I
2 signed the petition, and we became North Olga. North
3 Olga turned out to be run by some big landowners, and
4 they changed the Comprehensive Plan, especially for
5 clustering, and that is kind of the issue here today.

6 This development has to have clustering to have
7 that many units. They already have Owl Creek, which
8 has got over 300 -- I don't know what the number is,
9 but it's over 300 units there, and they have -- I'm
10 assuming this is 788 today, and they're asking for
11 1,099. Well, they've already got 1,000, 788 and over
12 300 at Owl Creek.

13 The main thing over the -- the couple of years
14 we've been discussing this and going to meetings and
15 everything is the density. When we came up against
16 sewer and water, we were told by their lawyer, it has
17 nothing to do with density. It has everything to do
18 with density. You can't have this density without the
19 sewer and water. There's not enough land there,
20 buildable land, to have 788 wells and septic tanks. So
21 it's -- it's a done deal, you know. We've got -- sewer
22 and water is approved.

23 If this goes through, what I am asking for is to
24 consider peeling back the amount of density. There
25 are -- there are ways of doing it that you don't have

1 to cram so many people into such a small area.

2 That's basically what I have to say. Thank you
3 very much.

4 HEARING EXAMINER RIVERA: Thank you. Thank you
5 for coming today.

6 The next card I have is for William Fields. Good
7 afternoon --

8 MR. FIELDS: Long day, hey?

9 HEARING EXAMINER RIVERA: Good afternoon, sir.

10 MR. FIELDS: Good afternoon, it's a pleasure to be
11 here.

12 I'm amazed and so proud to be amongst so many
13 people that are so brilliant and speaking so
14 brilliantly today.

15 I live at 140 -- 104 -- whatever it is, Duke
16 Highway, right across. I'm 100 yards away from what's
17 going to happen -- what we hope doesn't happen. We
18 don't know. I mean, did you see the movie "Idiocracy"?
19 I think we're there. It's like everything points
20 against it. It's just amazing.

21 Two people are for it -- two groups are for this,
22 the buyer and the seller. Everybody else in Alva,
23 in -- in North Fort Myers, in Buckingham, all these
24 people -- I have not heard one person that's for this,
25 and we've got two people that are for it. I mean, this

1 is idiocracy at its highest level. It's almost
2 unbelievable. It's the -- the order and law has been
3 taken away from the people in this situation. I like
4 to watch westerns. I'm a western aficionado, and
5 always there's a big guy come in, and he always gets
6 beat at the end -- at least in every movie and L'Amour
7 book -- and the Louie L'Amour character gets the pretty
8 girl and the ranch. I don't know if that's real life.
9 I sometimes wonder.

10 I like money. I like money. I'm a manufacturer.
11 I own a manufacturing plant right up here in North Fort
12 Myers. We're very successful. We're successful
13 because we do correct action. I pay my people more
14 than anybody pays in this -- in this area. We take
15 exemplary care of our customers. We have risen, since
16 I've been back -- I started it 20 years ago -- and I've
17 been in Alva for 25 years, by the way. We've risen
18 from making 2,000 units to 17,000. We're now the
19 leader in making heat pumps in swimming pools. Why is
20 that? Correct action.

21 In every religion, in every scripture that's ever
22 been written, correct action is the key to get to
23 heaven in some way. You have to walk like the saints.
24 I don't even understand. Correct action isn't even
25 getting heard. We're in such an insane age that I just

1 can't believe it.

2 I was approached yesterday by two gentlemen over
3 here that work for Neal Properties. They came and
4 knocked on my door, asked me why I'm against what
5 they're doing. I said -- I didn't even have to say it.
6 He said, growth. I said, I'm not against growth,
7 although I really am. I accept it. If they've been
8 promised a certain amount, they should have it. I told
9 you, I like the old westerns. But, I said, I'm against
10 you getting more, the 1,099. He said, no, no, we get
11 that -- we got that already because of the clustering
12 and other things.

13 Well, at that point I think, well, why should I
14 even go to this meeting tomorrow, if they've already
15 got that, if it's already set in stone? Well, I phoned
16 Bill Redfern, and he says, no, it's not in stone. It's
17 not in stone until the meeting tomorrow. And they
18 might run a game on us, but it's not in stone.

19 If it's not in stone -- if they've already got it,
20 then they're correct. If they've not got it, then
21 maybe they didn't know what's going on. But I can't
22 believe that they work for Neal Properties, and they
23 don't know what's going on. And there's substantial
24 people in Neal Properties. They're not underlings.

25 This could be illegal, as far as I'm concerned,

1 because if -- if they went through my community -- and
2 maybe it's just my house they picked and only me --
3 because they mentioned, oh, you got horses instead of
4 homes. Well, that's because I like the country. I'm a
5 country boy. I don't plant much of a garden anymore,
6 but I had a great crop of passion flowers this year and
7 a great crop of papayas. I like the possums that come
8 in the yard. I like the raccoons. My wife says, you
9 ought to trap those raccoons. I ain't trapping the
10 raccoons. I love the raccoons. They're my buddies. I
11 like what we got going on. I even like the old
12 polluted river. I'd like to see something done about
13 that, but that's an even bigger priority, I think.

14 But if they knew what was going on, and I got
15 influenced -- and I'm fairly easily influenced. I've
16 got a little kid's mind in a kind of funny way. I'm
17 easily influenced. How many other people are easily
18 influenced, and how many houses did they see yesterday?
19 It makes me wonder. I expected a huge turnout here;
20 and when I seen how small it was, how much -- how much
21 manipulation has gone into making this not happen? Is
22 it legal? In any way you look at it, it's incorrect.
23 It's incorrect. It's unethical.

24 So I guess that's all I got to say. That's it.

25 HEARING EXAMINER RIVERA: Thank you.

1 MR. FIELDS: I thank you for your time, thank you
2 for your time.

3 HEARING EXAMINER RIVERA: Thank you, sir.

4 UNIDENTIFIED SPEAKER: Do you have a business card
5 (inaudible)?

6 MR. FIELDS: I do have a business card
7 (inaudible).

8 HEARING EXAMINER RIVERA: The next card that I
9 have is for Terry Paska.

10 MR. FIELDS: If it's needed, and it's possible, I
11 have a business card.

12 HEARING EXAMINER RIVERA: Your testimony was under
13 oath, sir. I believe you.

14 Good afternoon.

15 MR. PASKA: Good afternoon, Madam Examiner. I
16 feel like I'm beating a dead horse at this point, but
17 maybe I'll put a little different spin on something.

18 Can I get the pointer here?

19 MR. DANLEY: You can.

20 MR. PASKA: Here we go.

21 I live on Duke Highway so I'm very familiar with
22 the traffic patterns around here, and I'd like to
23 respond to a comment Mr. Neal made about possibly
24 changing the construction entrance -- where is the
25 pointer?

1 The entrance from Duke Highway onto North River
2 Road -- North River Road is right at this point where
3 Olga meets North River. At this point the North River
4 speed limit is 55 miles an hour, but in actuality it's
5 65. I'm the slowest car on the road. I do 60, and I
6 got cars on my bumper all the time. People are
7 constantly passing me on double yellow lines, and it's
8 just a train wreck out there.

9 Now, the double S curve there, the speed limit
10 drops to 45 miles an hour shortly past Olga. But I
11 tell you, when people see that sign off in the
12 distance, they put the hammer down, and they're doing
13 65 by the time they pass Olga. So if I'm trying to
14 pull out there, and I do 60 miles an hour, I got cars
15 right on my bumper. So it's a very hazardous
16 situation.

17 I think everybody here has seen this picture. It
18 was part of the Staff package. This -- this is what
19 Neal Communities promises to bring to our area. And
20 I'm not a great speaker so I'll just go ahead and read
21 what I prepared.

22 The word "rural" appears in the original
23 application more than 80 times, and the phrase "rural
24 character" has been used 22 times. Google defines
25 rural as having the characteristics of a countryside

1 rather than a town. Webster defines it more
2 specifically as relating to country land, people, life,
3 or agricultural. I oppose Neal Communities' proposed
4 development because it will annihilate all of that.

5 The Alva vision of the Lee County Comprehensive
6 Plan states (as read), we'll make a concerted effort to
7 ensure that development change in Alva occurs in a
8 manner that maintains the rural character and lifestyle
9 of our part of Lee County.

10 On the surface their goal aligns closely with Goal
11 33 of the North Olga Comprehensive Plan. It suggests
12 the North Olga goal is to maintain and enhance rural
13 character, natural resources, and agricultural lands in
14 an ecologically, economically, and socially sustainable
15 manner.

16 So you see what -- what these houses are going to
17 look like. This is not something I've made up. This
18 is something that was presented to the Staff. So what
19 about this looks remotely rural to you? Nowhere can
20 you find a description of rural that describes
21 clustered housing or supports 1,099 dwelling units
22 built on 788 acres as an example of rural character.
23 The rural character of the land will be utterly
24 destroyed by the so-called clustered Neal housing
25 and -- on 30- and 40-foot-wide lots.

1 And just to demonstrate -- sorry for the
2 (unintelligible), but I think this is important.

3 UNIDENTIFIED SPEAKER: That is 30 feet, the width
4 of the lot.

5 MR. PASKA: There's 30 feet. Now, there are many
6 outbuildings in our part of the county that are bigger
7 than 30 feet. So to build a house on that I think is
8 just ridiculous.

9 (Discussion at lectern)

10 MR. PASKA: Natural resources will be disrupted.
11 Working farms and a productive use of -- agricultural
12 uses mentioned in the Lee County Comprehensive Plan
13 will cease to exist with this community. The
14 ecological impact on disturbing that much land cannot
15 be quantified by anybody in the near or distance
16 future, nor can socially sustainable or --
17 sustainability or introducing so many homes in an area
18 with already overtaxed public resources.

19 The only part of Goal 33 that will be satisfied by
20 going ahead with this development is the term
21 "economically." Sadly, in this case economically is
22 strictly a euphemism for maximizing profits.

23 I'll wrap this up with saying that the USDA
24 defines urban cluster as an area having a population of
25 2,500 or more. The population of the proposed

1 development could easily see 3,000. So let's call
2 Neal's plan what it is, urban sprawl. We don't want it
3 in our neighborhood.

4 Thank you for your time.

5 HEARING EXAMINER RIVERA: Thank you. Thank you
6 for coming today, sir.

7 The next card I have is for Donalyn Moon. Good
8 afternoon.

9 MS. MOON: Good afternoon. I live on Duke
10 Highway, and I want to say I agree with all the
11 community statements that were before me.

12 The bridge -- I wasn't going to speak about the
13 bridge, but there have been numerous times -- I didn't
14 realize that the bridge was at the end of life. There
15 have been numerous times where I've been traveling to
16 go across the bridge, and the traffic was at a complete
17 standstill with dump trucks sitting on the bridge side
18 by side, four dump trucks across, and I think that
19 that's an issue that we're going to have to face. And
20 I hope some day something doesn't happen before we have
21 an opportunity to fix that, because we'll all be
22 sitting here remembering what Darius was talking about.
23 And I think that that's a really huge safety hazard
24 that we have that we should address.

25 Today I have a couple concerns for the property

1 owners of record adjacent to the Duke, Cary, and Povia
2 rezoning before us. They are regarding -- and I hate
3 to say the "B," but Bert J. Harris landowner rights and
4 the Second Amendment constitutional rights. There will
5 be several references to one acre per unit maximum
6 density. This will become evident, that one unit per
7 acre is the only feasible land use option. There is a
8 great significance to zoning -- to this zoning
9 designation with both Burt J. Harris and the Second
10 Amendment.

11 Adjacent neighbors have legal standing under Bert
12 J. Harris to claim civil rights violations. The
13 true --

14 MS. MONTGOMERY: I'm -- I'm going to interpose an
15 objection. Once again, she's not qualified to give
16 legal opinions, and I'm going to have -- object, and --

17 HEARING EXAMINER RIVERA: Certainly --

18 MS. MONTGOMERY: -- (inaudible) to a standing
19 objection.

20 HEARING EXAMINER RIVERA: Okay. The
21 Administrative Code just requires that any testimony
22 that's provided is relevant to the request at hand. So
23 if you can limit the scope and just, again, solidify
24 that you are not an attorney trying to provide a legal
25 opinion, that you are opining as an adjacent landowner,

1 is my understanding. Is that the --

2 MS. MOON: Okay. I am not an attorney, and this
3 just -- do you know what I'd like to do? Since this
4 seems to be an issue, can I submit this to you --

5 HEARING EXAMINER RIVERA: Certainly.

6 MS. MOON: -- and have -- for your review? It
7 will talk about Florida Statute 790.15, discharging a
8 firearm in public on a residential property. The
9 statute clearly defines -- defines this in subsection
10 4. I've got all of the information that will probably
11 be irrelevant.

12 HEARING EXAMINER RIVERA: Can you explain the --

13 MS. MOON: Maybe I can just give you my --

14 HEARING EXAMINER RIVERA: -- well, but can you
15 explain the relevancy of those statutes to the zoning
16 request that we're hearing today?

17 MS. MOON: Well, if this high-density development
18 comes in, there are shooting ranges that abut the
19 development, and that will influence or affect the
20 rights of the person.

21 HEARING EXAMINER RIVERA: Of the landowner?
22 Again --

23 MS. MOON: Of the landowner.

24 HEARING EXAMINER RIVERA: -- I want to --

25 MS. MOON: Of the landowner.

1 HEARING EXAMINER RIVERA: -- I'm trying to be
2 sure -- okay.

3 MS. MOON: Yes, of the landowner.

4 MS. MONTGOMERY: Madam Hearing Examiner, I'm
5 familiar with that statute, and what it prohibits them
6 from doing is shooting over someone's else property
7 that's residentially developed. One can question what
8 right they have to shoot over someone else's property
9 now, but that's not an issue that's germane to a zoning
10 hearing.

11 MS. MOON: Well, it will violate the sport
12 shooting range section. It will impose a requirement
13 for property owners exercising their Second Amendment
14 rights to prove that they are not violating the Florida
15 Statute 790.15(4) and (4)(b). So I'd just like to --
16 why don't I just submit this for your review, and I
17 think that you'll find that there will be violations
18 that will occur if we allow a high-density development
19 to come in next to the rural community that we have of
20 one-acre-plus lots.

21 HEARING EXAMINER RIVERA: Okay. If you can
22 provide it to Maria, thank you.

23 (Moon Exhibit 1 submitted.)

24 HEARING EXAMINER RIVERA: Thank you.

25 All right. The next card I have is for Michelle

1 Burns. Is Michelle here? It's either Burns or Burks,
2 I'm not sure. No? Okay.

3 Dylan Cochran?

4 UNIDENTIFIED SPEAKER: He's not here. He had to
5 leave.

6 HEARING EXAMINER RIVERA: Okay. Will he return?
7 I have a feeling we're going to go into Friday,
8 potentially. So do you want me to keep his card in the
9 stack?

10 UNIDENTIFIED SPEAKER: He couldn't stay
11 (inaudible).

12 HEARING EXAMINER RIVERA: Okay.

13 Lynn Borchering? I apologize if I mispronounced
14 the last name, ma'am.

15 MS. BORCHERING: You did very well.

16 HEARING EXAMINER RIVERA: Good afternoon.

17 MS. BORCHERING: Good afternoon, and thank you so
18 much for listening to our concerns.

19 Could you put back the original map, please?

20 MR. DANLEY: (Complies.)

21 MS. BORCHERING: Thank you.

22 My name is Linda Borchering. I live at 18901
23 Serenoa Court in Alva. Serenoa is this street that's
24 right in the middle of the development, and our
25 property would back up onto the Neal community.

1 And I agree with the points that have been made
2 already in opposition. You know, Lee County is a very
3 unique place for its balance and blends of systems, and
4 Alva is one of the last remaining agricultural
5 communities in Lee County with its peaceful, natural,
6 and preserved beauty.

7 I'm concerned about the issues that
8 overdevelopment of the area will bring to our
9 community. I do not understand how the Neal
10 development fits with our rural community. With the
11 minimum lot sizes and the two-family attached homes,
12 that does not describe the rural environment.

13 In addition to all the things that have been
14 mentioned, I'm amazed no one has mentioned the animals
15 yet, the gopher tortoises, the wood storks, the kites,
16 the alligators. We enjoy those on a daily basis. And
17 where there will be places that will preserve areas for
18 them, it will change it, too, you know. So -- you
19 know, just the construction alone is going to drive a
20 lot of those animals away.

21 I've lived in Alva for 30 years, and I saw the
22 changes that were made in Babcock and -- you know, I
23 think it's such a loss of life for the animals. You
24 know, what was once so beautiful is now just a concrete
25 jungle.

1 There have been a number of meetings for
2 soliciting residents' feedback. The community has
3 almost been unanimous to keep Alva alive, to keep Alva
4 as Lee County's rural community. However, the vote
5 from the Board of County Commissioners has almost
6 always been unanimous with a negative vote against the
7 desire of the majority of the Alva residents. When
8 will government officials and developers have the
9 common sense and wisdom to be responsible and do what
10 is right for the community instead of catering to
11 financial greed?

12 Please protect the integrity and quality of our
13 Alva life. Please keep the current zoning agricultural
14 for Alva community. Please don't pave our paradise to
15 put in a parking lot or an overdeveloped community.

16 Thank you for listening.

17 HEARING EXAMINER RIVERA: Thank you. Thank you
18 for coming today, ma'am.

19 The next card I have is for Roxanne Gause. Good
20 afternoon.

21 MS. GAUSE: Good afternoon. So I realize that --
22 and I am aware this is a zoning hearing, but I am going
23 to talk about wastewater. I did speak to one of the
24 Lee County Staff at one time about this issue, and he
25 recommended that I bring it up to the hearing officer,

1 so here we are.

2 Okay. So real quickly, I am an environmental
3 engineer. I am retired. My original first job, I
4 worked for DEP, and I used to -- I was a sanitary
5 engineer, and I used to go and visit all the wastewater
6 treatment plants in the area. It was a lot different
7 in the early '90s than it is today.

8 Okay. So basically my statement here, and what
9 I'm trying to give you, is that we're certainly missing
10 the forest for the trees. So basically the tree is
11 this individual transaction. It seems pretty small
12 compared to the size of Lee County. 1,100 houses, give
13 or take, is not a really big development, 1.4 dwelling
14 units per acre. It's on 788 acres, and the developer
15 is paying for the utility expansion, meaning the pipe
16 and the hookups. So, hey, it sounds like a good deal.

17 But there's a concern with the sanitary sewer.
18 First, it's the destruction of the rural area. Nothing
19 brings more development than water and sewer.

20 The future density increases, that's a concern.
21 The best example I can give to you is River Hall. I
22 was involved originally, what, 20 some years ago when
23 they were going to build River Hall, and there was a
24 lot of arguments and discussions on the density, and
25 finally there was an approved density. Well, since

1 that day, 20 years ago, there has been four approved
2 density increases with -- including 8,000 more units.
3 So I know that we have stated perfectly clear that this
4 is going to be conservation easement, and that there's
5 going to be no increased density. But I also know
6 that, as The News-Press put a big article in there,
7 there are loopholes for conservation easements, and
8 there are ways that they can make changes in the
9 future. And no offense, but like River Hall, I have no
10 doubt that in five years or so we will definitely be
11 seeing a request for more density.

12 And, again, the piping, the water/sewer increases
13 developments.

14 So -- oh, so here's the forest. So the
15 Caloosahatchee River is contaminated. That is a very
16 close -- it's very close proximity to this site. In
17 2017 there was a two-year BMAP study, where it was
18 discovered that there were very high levels of
19 bacteria, nitrogen, and phosphorus in the water. And
20 it was determined that human wastewater from septic
21 systems -- these are the conventional septic systems
22 that in the early '30s, '40s, '50s, '60s, when we
23 installed septic tanks, we just did it with whatever
24 the ground was. There was no raising it up. There was
25 no concern what -- the distance of dry soil between

1 where the water from the drain fields go to. So there
2 was -- and our water table is extremely high. So
3 during the summer months, those conventional septic
4 systems basically sit in water. So the nitrogen and
5 the phosphorus that comes from the food we eat and
6 expel into our -- through the toilets, that doesn't get
7 to change, and it just stays in the groundwater and
8 eventually hits the river, because that's pretty much
9 the way the groundwater flows in Lee County, either to
10 the river or to the Gulf. It's all downhill.

11 So Lee County met with -- to meet federal and
12 state regulatory requirements, they were required to
13 convert conventional septic tanks in these old
14 homesteads to municipal wastewater treatment plants.
15 There is a large study done by AECOM called "Countywide
16 Wastewater Management Plan - Septic Conversion." I
17 think it cost over \$700,000 to have that report done.
18 I'm sorry.

19 Okay. So this countywide wastewater management
20 plan stated in the -- the -- there were two BoCC
21 workshops regarding this issue: one in 2019, I would
22 assume that's when they discovered the contamination;
23 and then in 2023, which is the one I did go to where it
24 shows that it is definitely polluting the water and
25 what the County must do.

1 So human wastewater is polluting the
2 Caloosahatchee River. The cause is high-density
3 residences with old conventional poorly designed and
4 maintained septic systems. And I like to put
5 pharmaceuticals were identified in the river because
6 that's how they know it's human waste, when they do
7 these testings.

8 So the results from this management plan study,
9 and what they submitted to DEP, was that Lee County
10 must convert 3,768 old septic systems to municipal
11 sewer that are the source of the contamination by
12 Florida statute. And, of course, it's not just going
13 to pick 3,000 homes, you're going to do the
14 neighborhood. It's more cost effective. The pipes
15 have got to connect to as many houses as they can.

16 Also stated in this BoCC workshop, it was stated
17 that Lee County Utilities recommended individual
18 advanced treatment septic systems for rural areas east
19 of I-75 and on the north side of the river. So the
20 plant -- the new septic systems we have are much
21 different, and they can literally get the ground -- the
22 water that's disposed of is -- is advanced treatment.
23 It's expensive, but they can do it. So Lee County
24 Utilities recommended that in that report, and you can
25 go to the workshop, and you can hear that. So advanced

1 treatment septic systems would keep Alva rural as the
2 Lee County North Olga Plan requires.

3 So this is also part of the forest. This is where
4 it's really leading to. See, our municipal wastewater
5 treatment plant problems, the wastewater treatment
6 plant service area for the Cary Duke property is the
7 City of Fort Myers' central wastewater treatment plant.
8 Now, it's great because they're paying for pipes to
9 hook into it, but nobody talks about the plant itself
10 and what's going on. So the City of Fort Myers central
11 plant, which also includes the south wastewater
12 treatment plant, Lee County pays -- leases a percentage
13 of the capacity for that plant.

14 The reason why I'm combining the south plant is
15 because at times they are -- their influent is
16 overcapacity, so they literally put a pipe from the
17 south plant to the central plant so they can send
18 influent to the central plant for treatment. So these
19 two plants dispose 11 million -- or at least
20 essential -- dispose 11 million gallons of treated
21 effluent into the Caloosahatchee River. That's where
22 they dispose of it.

23 They also have reuse, which probably required even
24 higher, cleaner effluent than the one they dispose in
25 the river. Don't quote me on that but -- it's probably

1 about the same, but it is used for reuse so it has to
2 be pretty clean.

3 So since 2021 -- and this report is probably six
4 or eight months old so it might be even more. Since
5 2021 there's been over 70 FDEP consent orders. You
6 know what a consent order is.

7 HEARING EXAMINER RIVERA: (Nods head.)

8 MS. GAUSE: They're in trouble. They have to go
9 to DEP and explain to them why they've been bad,
10 basically. In the past four years, the Fort Myers
11 central plant has spilled over 300,000 gallons of raw
12 sewage and numerous discharges of high nutrient
13 effluent into the river. That's documented.

14 This -- this next sentence is from a letter that I
15 just got yesterday from DEP to the central plant
16 regarding -- they have a long list of problems with
17 this plant, and they -- one of the statements they said
18 they want to discuss, this facility has chronic
19 effluent exceedances. That means the water that's
20 going outside of that plant is not to standards, and it
21 goes into our river.

22 So the second thing, in 2021 the -- CDM Smith, an
23 environmental engineering company, did a capacity
24 analysis report. A capacity analysis report is done
25 every five years for every wastewater treatment plant

1 in the state of Florida, and what they do is review it
2 and see if they're getting close to capacity. This
3 study results stated, influent flows are projected to
4 continue to remain below the permitted capacity of 11
5 million gallons per day through the year of 2028, and
6 they exceed the permitted capacity in 2029. That's
7 really less than five years. I'm not sure how much --
8 it takes years for permitting and building a wastewater
9 treatment plant and --

10 MS. MONTGOMERY: Madam Hearing Examiner, at this
11 point in time I'm going to interpose an objection.
12 While this is interesting, we're connecting to Lee
13 County Utilities, and this is not germane to the zoning
14 issues before you.

15 HEARING EXAMINER RIVERA: Can you tie it to the --

16 MS. GAUSE: I'm sorry. I made a statement, Lee
17 County Utilities -- Utilities leaked a percentage of
18 the capacity of these two plants. If you go look at
19 the service area map for the wastewater treatment
20 plant, it will show that your property, the property,
21 River Hall, and all -- go to the central plant in Fort
22 Myers, or the south plant. Lee County does not have
23 its own plant to service that area. That's who
24 services it.

25 So -- so my point, I guess, here is -- I've been

1 distracted -- that, yes, they're paying for pipe and
2 stuff. They're going to send their waste to the
3 central wastewater treatment plant, but then it's just
4 going to flow back up the river. You're not really --
5 it's not -- you know, you're not really solving a
6 problem here.

7 So I want to talk about the river as part of the
8 forest. The FDEP Caloosahatchee River is not getting
9 cleaner. The five-year review that was done in 2023
10 said, recent loading calculations for the
11 Caloosahatchee River has shown an increase of 1.2
12 million pounds total nitrogen per year from the
13 original starting load. So what we've been doing just
14 hasn't been working yet. The river is getting worse.

15 In the 2023 BoCC workshop, it was stated by the
16 existing County Manager at that time, "The conclusion
17 of the 2019 workshop was that the County Commission
18 didn't create those problems, but we now own them, and
19 we have an obligation to really get about the business
20 of fixing these sources of pollution."

21 By the continuous approval of high-density
22 development, and eliminating the rural communities,
23 contamination will only increase in the Caloosahatchee
24 River, and increase the concern regarding the people's
25 health and safety of Lee County.

1 So our problem is not just affordable housing that
2 we like to use for increased development. One of my
3 main concerns, we need to make sure we have the
4 treatment capacity and the money to convert the old
5 neighborhoods that are a documented source of
6 contamination for our river. It's documented. We know
7 they are. We have to change those old conventional
8 septic systems, but we need the money to do that, and
9 we need the capacity and the plants. The existing
10 plants we have now -- until we eventually expand into
11 additional wastewater treatment plants.

12 We need to care about the health of our river, the
13 safety of the people that live here -- because of the
14 river contamination -- and the economy that is
15 dependent on the river.

16 So please consider the people of Fort Myers and
17 not just the latest developer's plan. Thank you.

18 HEARING EXAMINER RIVERA: Thank you.

19 The next card I have is for Terri Chadwell.

20 MS. CHADWELL: Well, I'm going to take all of
21 about ten minutes.

22 HEARING EXAMINER RIVERA: Good afternoon. How are
23 you doing today?

24 MS. CHADWELL: I'm good, thank you.

25 HEARING EXAMINER RIVERA: Thank you for coming.

1 MS. CHADWELL: The -- obviously, I reiterate
2 almost everything that's been said here today. We are
3 not opposed at all to the building if it maintains the
4 zoning that is in place now.

5 What I have seen -- and I live .67 miles away from
6 the projected project, on Telegraph Creek just to your
7 east. So I am directly affected by what's going on
8 here.

9 My easy little 30-minute drive to work is now a
10 good hour every morning. I think we all can remember
11 that not long ago we had a gas leak at the end of 31
12 near 80. That morning it took me -- I left my house at
13 quarter till 7:00. I got to work at 9:30. And for a
14 week all of us were three hours late getting to work.

15 And what amazed me the most out of that was it
16 didn't -- we all had to go Bayshore, and Bayshore is
17 backed up all the way to 31 or beyond. When I came
18 home in the evening, whether it was 5:30, 6:30, 7:00,
19 we're all getting off on Bayshore, everybody is going
20 west. Nobody is going east. Didn't have the same
21 problem going home as I had going the other way. Where
22 is all that traffic coming from?

23 You, sir -- was it you that said North River Road
24 cannot be widened?

25 MR. DANLEY: I did not say that.

1 MS. CHADWELL: And traffic with North River
2 Road -- it cannot be widened, and what we have there is
3 an issue -- I live in a straightaway with a
4 45-mile-an-hour zone, is the first opportunity to pass
5 east of the beginning of the S curves. I've had five
6 dump trucks go through my fence. I've had multiple
7 fatalities in front of my home. It's not exactly
8 something I want to come out and have to deal with.

9 Being in the healthcare field, I do have to deal
10 with it. I do have to come out. I do have to make
11 sure people are okay, and we do have to call 911 and
12 get help for these people. It's not their fault.
13 We've got no passing zones. You guys have extended
14 that recently and made it a little harder, but it's
15 still the first opportunity both directions for people
16 to pass. And even though it is a 45-mile, it's now a
17 superhighway, as it was called earlier.

18 I think in 2011 -- you can correct me, I do not
19 know if this is the accurate date -- we lost our no
20 through designation -- our no through truck designation
21 for Highway 78. It was an historic highway in the
22 past. That's where you found motorcycles riding, we
23 found horses going up and down either side of the road
24 getting to the carts, or going from one farm to another
25 to ride together. You don't see horses on the side of

1 North River Road anymore. Still see a few motorcycles
2 on the weekends, but that's not actually safe anymore.

3 I'm a motorcycle rider and haven't been on my bike
4 in a year. I won't ride on a Saturday or a Sunday
5 anymore out there. I can't mow my ditch on a Saturday
6 or a Sunday anymore. I waited this morning for
7 probably 30 vehicles, mostly dump trucks and semis,
8 going by my driveway at 70 miles an hour.

9 I'm all for supporting your 700 -- what is it --
10 788 homes at one to one, but we've got a little issue
11 with traffic, and until we deal with that, you have a
12 certain obligation to protect the residents that you're
13 putting in that property.

14 You're proposing that you move your entrance to
15 the east of that property. Well, that puts you right
16 in the heart of where all this traffic is moving at 70
17 miles an hour. It's not the small, little country road
18 that it used to be. I've lived there for 25 years.
19 I've owned the property for 30. I used it as a weekend
20 place before I built. But it is not the same.

21 Mr. Neal politely introduced himself to me this
22 morning and asked me if I was here to support him.

23 MR. NEAL: I did.

24 MS. MONTGOMERY: Madam Hearing Examiner, I'm going
25 to have to ask the witness to direct her comments to

1 you and not to Mr. Neal.

2 HEARING EXAMINER RIVERA: Yes, thank you.

3 MS. CHADWELL: Mr. Neal introduced himself to me
4 this morning and asked me if I was here to support him.
5 I said, I would happily support him at 788, but I could
6 not support any more.

7 I've also been a long-standing member of the
8 Verandah Country Club, is where I like to play golf.
9 It used to take me 10 minutes to get there. Now I make
10 sure I leave 30 minutes before I want to get there to
11 actually make it.

12 Neal Communities is finishing the last build-out
13 of that association or at the Verandah right now. I've
14 been looking in the Verandah for homes. The older
15 homes that were built in there actually have elbow
16 room. They're nice. They were built by Bonita Bay. I
17 can buy one of those houses. I can move there. I
18 could not buy a Neal home at this point in time because
19 of the lack of respect that we have been shown in
20 District 5. You know, it's obvious through the last
21 session that District 5 does not support this at all,
22 but yet no one seems to care.

23 Now, I really needed to be somewhere else today,
24 but I've sat here all day in order to speak for five
25 minutes -- because I'm not going into legal so you

1 don't have to really get upset with me.

2 It's just -- it's common sense. It's basic.

3 It's -- we can't do this out there anymore. We can't
4 widen our road. We can't control our traffic. If we
5 could get our no through truck designation back, we
6 might become safe again. But right now we just have
7 semis and dump trucks running the road at 70 miles an
8 hour. That's not safe for anyone.

9 So thank you for your time, and I appreciate you
10 allowing everyone the opportunity to speak today.

11 HEARING EXAMINER RIVERA: Thank you. Thank you
12 for coming today.

13 The next card I have is for William Redfern. Good
14 afternoon.

15 MR. REDFERN: Good afternoon. I arrived late and
16 was not sworn in.

17 HEARING EXAMINER RIVERA: Thank you, if you could
18 raise your right hand. Do you swear or affirm the
19 testimony you will provide is the truth?

20 MR. REDFERN: It is.

21 HEARING EXAMINER RIVERA: Yes, thank you.

22 MR. REDFERN: Thank you. My name is William
23 Redfern -- oh, just a minute.

24 (Document shown to Ms. Montgomery)

25 MR. REDFERN: I was just establishing my

1 competence a little bit with the counsel. I have here
2 a notice to surrounding property owners, so I am a
3 surrounding property owner to the subject property.

4 I have been in the movement to preserve our area
5 for years and years, and I've noticed some changes.
6 Originally when I got into this, I noticed that the
7 County was inviting, really inviting with open arms,
8 public input. They even provided dollars, grants, for
9 planning panels to develop their own community plans so
10 that the people in the area would have kind of a say-so
11 and an idea of what their future would be like, and
12 some wanted more increase in density. Yes, there are
13 places in the county that would like increases in
14 density. There are other places, like my home place,
15 that did not want increases in density, and the
16 overwhelming public citizenry was that way.

17 Now, there were a lot of stories that went on; but
18 at any rate, we didn't get it into the North Olga
19 Community Plan, okay? However, I can assure you that
20 the people of my region that I live in -- and I live
21 right on Duke Highway. I live on 14651 Duke Highway.
22 My property -- the back of my property adjoins a piece
23 of property that Mr. Cary and his family are going to
24 retain for their homestead, which is -- abuts the
25 property in question here that the Applicant, Mr. Neal,

1 is trying to densify.

2 So -- but I noticed a change, and I'm noticing the
3 change today, and that was that instead of inviting the
4 public to have input, there seems to be a shift, keep
5 them away from you. They -- they -- they talk too
6 much. They're just the darned citizens, and we really
7 need to sit and listen to these hired experts to
8 testify how they're meeting all these wonderful demands
9 for how Lee County people really want to live in the
10 future.

11 That's not the sense I get. When I talk to
12 people, and I tell them where I live, in Alva and north
13 of the river, they say that is so beautiful out there,
14 that is so cool. You live in the best area in Lee
15 County, you know. And you used to hear that if you
16 lived at Fort Myers Beach when it was so beautiful
17 before the hurricane wiped it out, or downtown Fort
18 Myers is another beautiful place. And our area, North
19 Olga, is a jewel, it's a jewel, and people love it.
20 Citizens outside our area envy that we live here. It
21 makes Mr. Cochran pretty happy because he can sell some
22 houses out there, I guess.

23 Now, I want to -- I don't want to get into a
24 little tiff here with the legal counsel that has been
25 hired by Mr. Neal to be here -- I thought you were

1 County Staff at first. I was corrected on that. Thank
2 you for that information. You were hired to represent
3 Mr. Neal, and you have interrupted some of us several
4 times. I hope you don't interrupt me.

5 I'm going to tell you my legal definition -- my
6 legal definition of the case I am going to present, and
7 that is not beyond a shadow of a doubt, as used in
8 criminal law, but what is a reasonable person led to
9 believe with the facts before them. To me that's the
10 evidence that you need to hear today and that we need
11 to present, and has been presented by the way.

12 So my questions, I guess, that I have -- and I
13 include these questions still for Mr. Danley and the
14 County Staff, too. Please listen in very closely. I
15 would like the Applicant to really present compelling
16 evidence to us, and that is reasonable evidence that an
17 increase of 311 homes on this piece of land will
18 enhance the emergency response time, beyond a vague
19 assurance that I heard that that's a long-term goal.
20 If I have a heart attack tonight, okay; but if I have a
21 heart attack in a couple of years, is that going to
22 slow down the response time to get to me, or my
23 neighbors? I'm 78 years old. It's possible, I guess.

24 My next question is how does increasing the
25 density by 311 homes enhance the ability of the public

1 to properly evacuate in a potential hurricane or flood
2 of Ian-type proportions? I don't see it. I see it
3 being much more difficult to safely vacate the area if
4 this County orders me out of there. I don't know if
5 I'm going to make it out. I'll leave earlier.

6 How does the density increase of 311 homes on this
7 property enhance the rare and endangered or threatened
8 wildlife? They say we've got 9 percent of that
9 property left as indigenous. Well, things are holding
10 on by a thread now. And 51 acres are wetlands.

11 The caracara, the gopher tortoises, all of those
12 are going to be negatively impacted by this
13 development. Even if you put 788, it's going -- it's
14 going to be a problem, but 311 more, 1,099, is more
15 impactful to those critters.

16 How does the Applicant plan to address this
17 increase in irrigation? Okay. They're saying, well,
18 we're going to have a lake, and we're going to pull it
19 out, and we're going to irrigate that land. You've
20 heard expert testimony from people who have talked
21 about fertilizers and composts that are dangerous to
22 our river, dangerous to my property. I live on the
23 good part of Otter Creek, okay? If you look in your
24 schematic, I live on the green portion of Otter Creek
25 that has not been ditched, okay? When that property

1 was ditched some years ago -- and that was every right
2 of that agricultural family to do that, every right,
3 because it was improved pastureland. But I noticed an
4 increase in silting of my creek that goes diagonally
5 through my couple of acres, and I noticed an increase
6 in exotics that I would remove myself. That is going
7 to increase.

8 By the way, monthly we will have two young ladies
9 who come to the -- on Duke Highway, and they test our
10 water quality in Otter Creek. I don't know why they're
11 doing that. I don't know why they're doing that
12 because, what, they're just keeping records? It means
13 that they think that this creek, these -- these little
14 flows, inflows, are important to preserve.

15 And so I would even ask Neal Communities, whatever
16 you do, to improve Otter Creek. Maybe try to restore
17 it. You know, the headwaters of Otter Creek come out
18 of Conservation 20/20 land across Highway 78. They go
19 through a culvert, and they come in, and then they run
20 into, you know, the -- the cow pond and then the ditch.
21 Let's improve that. Hey, would that not enhance the
22 salability of your homes, to have a beautiful creek
23 flowing through your property? Let's think
24 imaginatively instead of meeting the bottom line or the
25 shallow end of the slide rule on this thing.

1 How does the addition of 311 homes decrease
2 traffic congestion? What Ms. Cary was just talking
3 about, we're killing people now without anything there.
4 Well, we'll kill more people with 798 homes, but we'll
5 dang sure kill more people with 1,099 homes in that
6 development. Killing people, your citizens.

7 It's bad enough that you make it a little bit hard
8 for us to testify and feel welcome to testify and not
9 be challenged by private counsel.

10 And finally, in this little section, what is the
11 legal rationale in any reasonable person's definition
12 of rural character to say that the addition of these
13 homes enhances the rural character? Nonsense, and you
14 know it. You know that's true.

15 I had -- when I talked to Mr. Danley, and several
16 of my neighbors were with me, we asked for eight
17 issues -- he has a copy of that, and he knew all about
18 it. And we asked for some setbacks from Duke
19 Highway -- what is that now? What is that number? May
20 I ask that question of Staff? Am I allowed to do that?

21 HEARING EXAMINER RIVERA: The setback --

22 MR. REDFERN: Oh, was it -- was it 170? Did I
23 hear that correct --

24 HEARING EXAMINER RIVERA: That's correct.

25 MR. REDFERN: -- that they're going to put the

1 setback from Duke Highway to 170?

2 HEARING EXAMINER RIVERA: Yes, that was the
3 testimony earlier --

4 MR. REDFERN: Is that correct?

5 HEARING EXAMINER RIVERA: -- today. Yes, sir,
6 that was the --

7 MR. REDFERN: Yes, okay.

8 HEARING EXAMINER RIVERA: -- testimony earlier --

9 MR. REDFERN: Okay.

10 HEARING EXAMINER RIVERA: -- today.

11 MR. REDFERN: Okay, and that's good. I see that
12 as an improvement, thank you. But I looked at that
13 little schematic that was presented about the
14 plannings, holy smokes, let's beef that up. Let's get
15 some privacy for those people who will be looking into
16 Mr. Neal's community there. Let's beef that up.
17 There's a little -- a couple twigs along the way, it
18 looked like. It was terrible. Let's do the job
19 correctly there, whether it -- whatever it is.

20 I want to talk about public input at meetings.
21 This has been alluded to already. This community
22 and the -- the opinion of the community is important.
23 It is important. We are the receiving neighbors of the
24 new folks coming in.

25 We had meetings, many meetings with the Neal

1 people. One meeting I call the tarp meeting. We were
2 behind the Cracker Shack. They had tarp up there. It
3 was July. Man, it was hot. I felt sorry for the Neal
4 people having to present. I felt sorry for the 75, 80
5 of us that were sitting out there. Overwhelming -- I
6 wrote it down in my notes -- 75 people protested and
7 spoke to the Neal staff. Three were in support. Same
8 three, by the way, that spoke later in support at the
9 LPA. I counted them.

10 And when we spoke up, Miss Ivy -- I can't remember
11 her last name -- Ivy Matthews said, look, we are a
12 suburban footprint community, and that's what we do,
13 and that's a quote, verbatim. Well, I thanked her
14 because it was real clear now what we were dealing
15 with. We were not dealing with some enhancement of
16 rural character, really, anymore. Nobody believed that
17 anymore. It was -- the cat was out of the bag.

18 I have been to several North Olga Planning Panel
19 meetings, overwhelming support of keeping the area
20 rural.

21 I've been to an LPA meeting, similar statistics,
22 75 people against the plan and the LPA -- against
23 the -- I'm sorry -- water and sewer because many
24 misunderstood and thought this was also the density
25 increase. Oh, no, they said, this is not for density

1 increase. That will come later. This is just to
2 introduce water and sewer to that property. Well, we
3 all kind of knew where that was going to lead. It
4 would lead to here today and beyond.

5 We don't want the density increase. We do not
6 want that to happen. That has been the whole crux of
7 this. Some of the other embellishments they might do,
8 I think they have to do. I don't think they can just
9 throw up 788 houses and not preserve some land and --
10 and -- and some wildlife. I don't think they can just
11 drain wetlands. I don't think they're allowed to do
12 that. Maybe -- maybe they can. Unless -- do you have
13 to give them the density increase for them to do these
14 things? That's a rhetorical question. I don't expect
15 an answer. But do we have to -- are they holding a gun
16 to our head and saying, yeah, this is what we're going
17 to do, but we won't do it if -- if it's 788?

18 Once again, I'm a long-time resident. I've lived
19 on my property 46 years. I have worked hard to
20 preserve my little part of Otter Creek and keep
21 wildlife running through. On my way here this morning,
22 I had a bobcat run right in front of me. I love that
23 bobcat, ran right in front of me in my driveway as I
24 was going out. It's a paradise. It is a desirable
25 place for people to live. Leave it that way for us.

1 Leave it that way for the other citizens who would like
2 to come out and use this bike path they're talking
3 about, this -- this multi-use path. That would be
4 great, great. Have that run all the way into Alva and
5 beyond, connect it along 31 and into Bayshore and North
6 Fort Myers, fantastic, like other cities do all over
7 America. That's where our head should be. How can we
8 improve the lifestyle for everybody in the county? Not
9 cater to an out-of-town developer who apparently needs
10 this to make, you know, better money. I understand
11 that. I don't oppose that. I don't oppose that.

12 These -- these developers, they're coming in --
13 they're not my enemy, but they are my opponents right
14 now. And I just invite them to reason with us, kind of
15 develop some things more along the lines that
16 Mr. Cochran was showing us on the screen. That's more
17 in touch with the character of where we live.

18 And I -- and I just really thank you. There's
19 probably more things I'd like to say, but I won't take
20 up any more of your time. Thank you.

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

23 So with that -- it is almost 4:30 -- so we will
24 convene (sic) for today. We're going to reconvene
25 Friday morning at 9 a.m. in this room. So if you have

1 already spoken, there is not an opportunity to speak
2 again, but I still have a number of cards here for
3 folks that have not yet spoken that I will call then.
4 And if there are other folks that you know that wanted
5 to speak and couldn't come today, they're welcome to
6 come on Friday.

7 After we close public hearing, then it will come
8 back to the Applicant and Staff, and then we would
9 conclude prior to the Board hearing.

10 So thank you, everyone, for coming today. Please
11 stay safe and stay well, and we will see you Friday at
12 9 a.m.

13 (Proceedings concluded at 4:29 p.m.)
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1
2 CERTIFICATE OF REPORTER
3

4 STATE OF FLORIDA)

5 COUNTY OF LEE)
6

7 I, Deborah M. Bruns, Florida Professional
8 Reporter, do hereby certify that I was
9 authorized to and did report the foregoing
10 proceedings, and that the transcript, pages 1
11 through 260, is a true and correct record of my
12 stenographic notes.

13
14 Dated this 9th day of September, 2024.

15
16 

17 Deborah M. Bruns, FPR
18

19
20 (This transcript was electronically signed.)
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