

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00067

IN RE: CARY+DUKE+POVIA RPD

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PROCEEDINGS: PUBLIC HEARING (VOLUME 2)

BEFORE: Amanda Rivera
Hearing Examiner

DATE: September 6, 2024

TIME: 9:00 a.m. to 4:22 p.m.

LOCATION: Board of County Commissioners
Hearing Room, Second Floor
2120 Main Street
Fort Myers, FL 33901REPORTER: Deborah M. Bruns
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Kirk Martin, P.G., Water Science Associates
17 Jem Frantz, Project Director, RVi Planning
18 Nicholas DeFilippo, Environmental Planner, Lee County

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P R O C E E D I N G S

HEARING EXAMINER RIVERA: Good morning, my name again is Amanda Rivera. I am the Hearing Examiner that's presiding over this case. The date is September 6, 2024, and this is DCI2022-00067. This is our second day in the Cary+Duke+Povia RPD. We are in the middle of public comment so that is where we will resume.

Just as a reminder, there is only one opportunity to speak; so if I call your name, but you've previously spoken, please just indicate that, and I can move on to the next speaker.

I did administer the oath on Wednesday; but in an abundance of caution, I'm going to do so again. So if you intend to speak, if you can 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 first card that I have is for -- let's see, these are the order that we need to do --

MS. PEREZ: Uh-huh.

HEARING EXAMINER RIVERA: Okay. The first one is for Katherine Sanderford. Good morning.

MS. SANDERFORD: Good morning. Is this on?

HEARING EXAMINER RIVERA: Yes.

1 MS. SANDERFORD: Do I have to do anything with it?

2 MS. PEREZ: No, don't touch it.

3 MS. SANDERFORD: All right. Oh, I won't.

4 Yes, my name is Kathy Sanderford. I am, too, a

5 very proud -- very proud to be a part of the Alva

6 community.

7 HEARING EXAMINER RIVERA: I'm sorry -- I don't

8 want to interrupt you, ma'am, I'm so sorry.

9 Dirk, could we please pull up the aerial just so

10 we have --

11 MS. SANDERFORD: Oh, you have to do that, I'm

12 sorry.

13 (Discussion at lectern)

14 HEARING EXAMINER RIVERA: Thank you.

15 And if you could indicate just generally where you

16 live in vicinity to the project?

17 MS. SANDERFORD: Yes, ma'am.

18 HEARING EXAMINER RIVERA: Thank you.

19 MS. SANDERFORD: Yes, ma'am.

20 But, again, I'm Kathy, like I mentioned. I'm very

21 proud to be here to represent the Alva community. We

22 are a strong and passionate people that want to keep

23 the landscape the way it is as much as we can. And I

24 live at 18930 Serenoa Court, which is right in the

25 middle of the three clusters, and the biggest cluster

1 is right behind my property.

2 I'm going to go back to 1992 when my husband and I
3 were deciding where to live. We lived in Lehigh. Our
4 kids were small, and we wanted to have acreage. So we
5 looked around, prayed about it, and we drove around,
6 and we discovered North River Oaks, which is Serenoa
7 Court. Each of the properties there -- there's 12
8 properties. They're each about 5 and a half to 6
9 acres, and we loved it. We thought, well, I can't
10 believe we found this.

11 So we raised our boys there. We had events there.
12 We -- we entertain a lot. We share our property with
13 many species of animals, especially the tortoise,
14 snakes, you know, alligators, and so forth, and we
15 don't mind. That's their home. I feel like that's
16 where they -- they were there before I got there.

17 It's been a lot of fun. Even better yet, in the
18 back of our property, when you look in the pastureland,
19 you see cows. And I can't imagine the clustering or
20 the density that I'm going to see. It's scary in a way
21 because when you increase density, you increase crime,
22 and I don't remember anyone mentioning that. But that
23 is something that you have to think about when you have
24 hundreds of people in the back of your property when
25 you didn't have that before.

1 So, yeah, fast-forward to today. The development
2 they're saying now is going to be 30-foot lots. That
3 is just -- that's the size of my garage, and I just --
4 I'm in awe of that.

5 Ideally, one house -- like mine in that area,
6 should be one per five acres to keep the country
7 landscape. Because when you think of density, the
8 crowding us, the homes that look like -- well, they're
9 duplexes, basically. They're not a country look, and
10 that's a horrible thought.

11 You know, my friend mentioned that my husband has
12 been waterskiing for, well, 31 years from our home. He
13 goes to the river. I'm not sure he's going to be able
14 to do that anymore with the traffic increase.

15 And, you know, they mentioned about the difference
16 in the morning and afternoon traffic numbers. That's
17 not going to be that. You know, if you think about the
18 trucks that are going to be going in there, relatives,
19 friends, that's going to look like -- more like five
20 times that. Because just on Wednesday I went to
21 Babcock, and someone said, don't get on the road, on
22 31, because there's a wreck. Okay, so I had to wait.
23 I thought, all right. It was a truck and a small car,
24 and that happens quite often. So that's right now. I
25 can't even imagine what the season is going to look

1 like, and I can't -- I can't imagine at all what it's
2 going to look like three to five years from now.

3 Okay. I mean, I love people, and I'm not saying I
4 don't; but when you think about the density, you're
5 thinking about more noise, like I said before, more
6 crime. And when you think about that, the density
7 factor, how is that going to affect my landscape? How
8 is that going to affect my water flow -- because we
9 do -- you know, it flows to Trout Creek. How is that
10 going to affect that? It probably will. So that's
11 very hard to grasp.

12 Okay. Now, also I heard -- I think I heard like
13 300 to 400 feet behind my property line. Then I heard,
14 oh, no, no, that could be less than 100. So we're
15 talking about how are they going to do that? I know
16 they're probably going to put a berm. Okay. That's
17 just a little bit of land that's been, you know, turned
18 into like a little mound or -- not a mound, but they
19 cut it down. So, you know, we're talking anyone could
20 walk over to my property, if they really wanted to.

21 And I've just got a couple of things, maybe three
22 things, from a journal. It talks about the negative
23 implications of higher density, like noise,
24 overcrowding, lack of green spaces -- I know you talked
25 about green spaces, but I'm talking about that's not

1 that much when you consider the -- the big picture of
2 the country that we live in. Limited privacy, the
3 well-being -- it does affect the well-being and
4 satisfaction with their living environment. Rapid
5 growth, especially in the form of high-density housing,
6 has resulted in -- this is from a journal I wrote.
7 High-density housing has resulted in a negative --
8 negatives: crowded schools, congested traffic, strained
9 infrastructure, rationed national resources, such as
10 water, loss of open space and farmland, increased
11 pollution, packed recreation sites, and increased
12 concerns of safety, and that's crime.

13 Increasing density in a residential neighborhood
14 increases crime -- again, I said that. Increased
15 density increases transients and turnover residents in
16 a neighborhood. Neighbors know a lesser percentage of
17 people in their neighborhood when they don't stay long.
18 Most of the people on Wednesday -- as myself, I've been
19 at my home for 31 years. We don't come and go. But
20 when you have high-density small homes, people -- you
21 see people come and go. That's like my son's
22 neighborhood, they come and go.

23 Increase in density increases -- long-term
24 homeowners are more protective of their neighborhood
25 and the homes around them than are short-term. Well,

1 that's kind of repeating.

2 But this is what I really love: No single answer
3 will be the perfect solution for every community. As
4 long as our population and needs continue to grow, we
5 will all face tough questions about how we build and
6 maintain our communities. It will be up to every rural
7 community to discern if commercial development is right
8 for their town. Every rural community could be faced
9 with encroaching commercial development at any moment,
10 and preparing for those conversations is the right
11 solution. And that's what we're doing right now.

12 So I guess in summary, low density, one home per
13 five acres. Safety, that's traffic, that's crime. We
14 have to remember that we have to make it less difficult
15 for our emergency management, including fire trucks and
16 so forth.

17 So I was thinking about this -- excuse me. I am
18 older than I was when I moved in, granted, okay. So --
19 excuse me -- what's going to happen if something
20 emergent occurred in my home, like my husband had a
21 heart attack, or I had a heart attack? Can we be
22 certain that the emergency management, EMS, fire
23 trucks, whatever, can get to us on time? That's a
24 scary thought. That is a very scary thought.

25 And I'm a nurse, and I know the window of time

1 that you have in a situation like that, that you have
2 to have those people at your house or your -- wherever
3 you are. I was thinking, well, maybe I have to get an
4 AED, and it's probably true. I probably will.

5 So please consider these things I've mentioned,
6 okay, because they're very important, especially the
7 traffic right now. I mean, we're not even in season,
8 and, my word, it took me over an hour to get here, and
9 it used to take me about 20 minutes.

10 So I appreciate your time in hearing me, and,
11 again, we need to keep our rural home rural.

12 HEARING EXAMINER RIVERA: Thank you. Thank you
13 for coming today, ma'am.

14 The next card I have is Richard Sanderford. Did
15 he wish to speak?

16 UNIDENTIFIED SPEAKER: He's not here.

17 HEARING EXAMINER RIVERA: Okay.

18 Okay. Jimmie Cochran? Good morning.

19 MR. COCHRAN: Good morning, I'm Jim Jackson
20 Cochran. I'm a small landowner and a large taxpayer.
21 I have property in Alva.

22 My main concern is I think it would be
23 irresponsible to put more traffic on the roads until
24 the roads are built and widened, and the bridge is
25 widened. I think we would be responsible for more

1 families to be injured and killed, and I don't think we
2 want that.

3 Thank you very much.

4 HEARING EXAMINER RIVERA: Thank you. Thank you
5 for coming today, sir.

6 The next card I have is for Freida Cochran.

7 MS. COCHRAN: My name is --

8 HEARING EXAMINER RIVERA: Good morning.

9 MS. COCHRAN: -- Freida Cochran, and I live at
10 17651 Cypress Creek in Alva.

11 The traffic is so unmanageable right now; and when
12 you put all these homes at 30 feet with two cars per
13 home, probably, I don't know what you're thinking. I
14 just don't know how that is even realistic. And so
15 it's -- it's kind of imperative that you do the roads,
16 get the roads ready for such an influx. And from my
17 understanding, there's nothing planned for road
18 improvement for several years. Now, that is just a
19 recipe for disaster.

20 HEARING EXAMINER RIVERA: Thank you.

21 MS. COCHRAN: Thank you.

22 HEARING EXAMINER RIVERA: Thank you for coming
23 today, ma'am.

24 The next card I have is Linda Redfern. Good
25 morning.

1 MS. REDFERN: Good morning. My name is Linda
2 Redfern, and I'm a surrounding property owner and live
3 approximately 300 feet from the southeast boundary of
4 the subject property.

5 Otter Creek, which was mentioned yesterday (sic),
6 flows diagonally through my property, and I, and
7 others, am very concerned about what this project will
8 do to the future health of this flow-way into the
9 Caloosahatchee River, and flooding continues to remain
10 a concern because of this.

11 I oppose a zoning change for a density increase.
12 We are a rural community. I see nothing that would or
13 should compel this County Commission to grant a free
14 density increase on this property.

15 Thank you for your time.

16 HEARING EXAMINER RIVERA: Thank you. Thank you
17 for coming.

18 The next card I have is Holly Schwartz. Good
19 morning.

20 MS. SCHWARTZ: Good morning. Thank you for
21 hearing us today, Madam Hearing Examiner.

22 I -- 17520 Oak Creek Road. I would like to make a
23 few comments about the new rare and unique uplands
24 density policy. Essentially it's an incentive density
25 policy.

1 While we appreciate land being preserved and
2 restored, it comes at quite a cost to the rural
3 community. In this case it comes with the reward to
4 the developer of almost 43 percent more density than
5 the current base density allows. Unfortunately, this
6 incentive also supports urban sprawl into rural areas
7 that are supposed to be protected from urban density,
8 and therefore inconsistent with our interpretation of
9 the Northeast Lee County Planning Community guidelines
10 and the principles of the North Olga Community Plan.

11 Some of the environmental enhancements of this new
12 policy will be offset by the very large density
13 increases, including increased nutrient pollution and
14 more impervious services. This may be an argument for
15 another day, but we all know what is approved here will
16 be approved next door to that and then what's next door
17 to that. So what we aren't considering here at all is
18 the cumulative impact of these individual zoning cases
19 and what that will do to our remaining rural community
20 in terms of traffic increases, impacts to our
21 disappearing wildlife, and to the continuing downward
22 trends in impaired water quality.

23 I very much appreciate Staff's time. They spent a
24 lot of time with us explaining some of these pretty
25 confusing requirements. So -- but the requirements of

1 the rare and unique upland restoration policy, however,
2 being -- let me -- let me back up a little bit.

3 Being involved in many of these zoning cases in
4 our community, we've kind of had to educate ourselves
5 on these new policies, and this -- a real point of
6 frustration is that what's approved and negotiated here
7 sometimes changes pretty significantly from the time
8 that the Board approves it to the DO phase.

9 And so I'm going to respectfully ask for a
10 condition that if there are substantive changes made
11 after the vote to approve the zoning, then another
12 public hearing be scheduled so that the public has the
13 ability to be aware, be informed, and give their input.
14 And I don't mean just changes to the density. We get
15 that there's going to be another public hearing if
16 density changes. But I mean changes to setbacks,
17 changes to environmental restoration timelines or
18 requirements.

19 Some of the other smaller conditions that I hope
20 would be considered would be to implement dark skies
21 principles, which would entail using less than maximum
22 lumens allowed by Code, as maximum lumens lead to sky
23 glow and harm to surrounding wildlife.

24 Another example of a wildlife-friendly condition
25 would be, if there's going to be internal street

1 curbing, to use slanted curbing rather than just
2 perpendicular, vertical curbing, curbing that catches
3 small amphibians and reptiles leading to car strikes.
4 We've all -- we've all seen our share of heartbreaking
5 roadkill, and there will be many more. And since we're
6 spending so many resources on creating this rare and
7 unique habitat, it would only be proper to give -- give
8 these animals a chance to survive.

9 So I have a couple of examples of International
10 DarkSky principles and the recommended lumens and
11 examples of curbing for your review and consideration.
12 I will give that to your staff.

13 And as for questions, you said we were allowed to
14 ask a couple of questions. So all of the environmental
15 restoration and water quality monitoring reports
16 required at the DO phase and beyond, I'm wondering if
17 those will be posted on the County website, or
18 otherwise available to the public, or will we have to
19 do a public records request for those documents? First
20 question.

21 Second question. On Wednesday in the 48-hour
22 letter discussion, the Applicant showed some renderings
23 on the ground cover between the development and Duke
24 Highway. One of the slides said that there would be a
25 100 percent opaque coverage; but according to the rare

1 and unique restoration policy, they only have to meet
2 an 80 percent survivability rate. So I'm curious about
3 whether it's 100 percent or 80 percent or what the --
4 what the requirements are there.

5 And then finally, in support of some of the
6 concerns expressed on Wednesday regarding the in --
7 inadequacy of the available utilities infrastructure,
8 we would like to submit some additional information
9 regarding the Fort Myers central sewer plant in a
10 recent July 18th DEP warning letter outlining some of
11 the compliance issues of -- of this plant.

12 So this is -- we're not making this up. We're
13 just taking this from a DEP compliance letter that
14 was -- that was dated July 18th. So the facility has a
15 toxicity exceedance; the facility has had chronic
16 effluent exceedances; the facility exceeded technical
17 review criteria for total nitrogen and total
18 phosphorus; there have been multiple groundwater
19 exceedances; the facility has chronic raw water spills.

20 So -- I mean, I won't go into the whole thing, but
21 I will enter this into the record so that you have the
22 opportunity to look and decide whether this kind of
23 density is appropriate.

24 HEARING EXAMINER RIVERA: Thank you.

25 MS. SCHWARTZ: Thank you for your time.

1 HEARING EXAMINER RIVERA: Thank you. She'll take
2 it, thank you.

3 (Schwartz Exhibit 1 submitted.)

4 HEARING EXAMINER RIVERA: The next speaker is
5 James Kennedy. Good morning.

6 MR. KENNEDY: Good morning, thanks for letting
7 me -- letting me speak. Let me switch over PowerPoints
8 here real quick.

9 (Discussion at lectern)

10 MR. KENNEDY: First of all, I'd like to introduce
11 myself. My name is James Kennedy. I am the -- I am
12 the president of a fairly -- fairly newly formed
13 nonprofit, the East Lee Wildlife Stewardship Group.
14 Our group was formed in response to the immense
15 pressures that are being placed on our -- our native
16 wildlife, especially the gap in enforcement -- local
17 enforcement between the state and local laws. And we
18 have been called upon by numerous citizens to help with
19 tortoise-related issues, with other wildlife-related
20 issues, just in our -- our short existence.

21 We were actually spurred into existence by a
22 developer clearing and entombing -- which is no longer
23 legal -- gopher tortoises. I'm not casting that
24 aspersion on Neal Communities either. It's just a fact
25 in our existence.

1 I'm also a lifetime resident of Alva. I'm a
2 member of the Board of Trustees for the Alva Museum. I
3 am a partner in The Roar, East Lee News, which is a
4 paper that serves the area.

5 And as far as my experience with gopher tortoises,
6 my first science project was when I was in seventh
7 grade -- and that's been a few years ago -- and I did
8 four projects. All -- three were fairly successful,
9 and one of them actually went to international. So
10 that was the start of my amateur interest in gopher
11 tortoises. So I've been doing this for quite a few
12 years, and I -- I've spoke at the Gopher Tortoise
13 Council meeting. I've been to the annual -- I've been
14 to the meetings some time ago because I did have a
15 professional life that had me leaving the area a lot.
16 I spent 26 years in the Navy so -- this has always been
17 home. I've always been very involved in what's going
18 on, but I have had a chance to -- to refocus my
19 efforts.

20 My grandparents -- I'm one of those long-term
21 multigenerationals. I actually hate to bring that
22 stuff, but since we're all doing it, my grandparents
23 were born on Pearl Street and Goggin Street -- Goggin
24 Road in Alva. My great-grandparents got there before
25 the turn -- before the turn of the century, so I have a

1 lot in the ground in the area.

2 I've also been -- I've been able to speak for
3 people that can't always speak at these, whether they
4 have professional limitations that -- that prevent
5 them, or they're just not able to. So when -- when I
6 talk about this stuff, it's not -- it's not just my
7 point of view. It's my experience, it's my -- my --
8 you know, my lived experience. It's everything else.
9 And my -- and my actual interaction with the stuff that
10 I'm talking about.

11 Before I get into my actual presentation, just a
12 few points that -- coming over from Wednesday that I
13 wanted to touch on.

14 First and foremost, I agree with the community
15 members that have spoken out in opposition to this, and
16 again would like to note that the very small minority
17 of the voices in support have interests tied to the
18 project. This project will only benefit those with
19 financial interest, and will be a significant detriment
20 to the community. The -- the authors of this project,
21 not living in the community, will not suffer the
22 consequences. And that's a theme that's recurrent
23 throughout many of the developments in the county.

24 The Applicant stated during their presentation,
25 they -- they're -- talking about the wetlands that you

1 have to preserve, they used air quotes. That's not --
2 that's not a factor for or against. It's just odd that
3 you have to use air quotes to discuss preserving
4 wetlands.

5 The Applicant -- let's see. The planner called
6 this development a proper new town. I'm not a
7 professional planner. I'm not an expert in planning.
8 But when an expert planner once again demonstrates a
9 lack of respect, consideration, and understanding for
10 the region of the county they want to shoehorn this
11 into, it's concerning. This is not compatible with the
12 plan, and it's not compatible with the area, the letter
13 of intent -- the letter of intent or the Lee Plan and
14 the Alva Community Plan -- correction, excuse me. It's
15 not compatible with the letter or the intent of the Lee
16 Plan, the North Olga or the Alva Community Plans.

17 Not to call him out, but at the first meeting that
18 I went to when I became aware of this -- and they came
19 in, and they tried to, again, basically what they did
20 here, tried to explain how -- how wonderful and
21 beautiful this thing was going to be. He had so little
22 understanding of what rural community are -- rural
23 communities are, and what they're supposed to be, and
24 what we're supposed to be preserving, that he didn't
25 even know what the FFA was when he was asked at the

1 first meeting. Again, I don't want to call the
2 specific individual out, but I kind of wonder if he
3 knows what FFA is now, since they're still trying to
4 shoehorn this same type of development into the area.

5 It's been repeated multiple times that this --
6 that this prevents 788 homes on septic. Again, I'm not
7 an expert planner, but I can read, and that doesn't
8 really map either because not all the property would be
9 buildable. Anything built on Mount Povia is highly
10 susceptible to extreme settling events. There are
11 other homes in the area that are built on this same
12 type of river spoils. One of them sunk almost a foot
13 just right down the road. I'm sure that they would be
14 willing to show you if you actually wanted to see it.

15 This -- this development is obviously incompatible
16 with the area and the expected development slope
17 because, if it -- if it was, they wouldn't have to hide
18 it behind a 20-foot berm and heavy, heavy, heavy tree
19 cover. And I'm going to come back to the tree cover
20 later.

21 They said the preservation areas are not -- excuse
22 me. They said the preservation areas are ironclad.
23 Well, Bradenton's experience with Neal Communities
24 would indicate otherwise; or in light of the FDEP plan
25 to put golf courses in our state parks, state

1 experience would be otherwise.

2 In -- in Bradenton at 60 -- or at State Route 64
3 and Dam -- Dam Road, Dam Street, once they broke ground
4 on the project, additional units were requested --

5 MS. MONTGOMERY: I'm going to object -- Madam
6 Hearing Examiner, I'm going to object to this testimony
7 at this time. What occurs in Bradenton under
8 Bradenton's rules has nothing to do with the
9 proceedings here.

10 HEARING EXAMINER RIVERA: If you could limit your
11 comments to the request that's here in Lee County, I
12 would appreciate that. Thank you.

13 MR. KENNEDY: Sure. I -- I just think that it
14 speaks to a pattern of behavior.

15 Let's see. How does one -- or -- okay. Well,
16 this does directly affect the project here.

17 So, again, not a -- not a planner, not a -- not a
18 transportation guy, but math seems pretty simple. It
19 doesn't make sense that a two-family home results in
20 reduced trip counts. If one family makes one trip at a
21 minimum per day, wouldn't two families at least double
22 that? So the trip math doesn't work.

23 Preserve areas. All right, so this is another one
24 where, again, lay testimony, not professional. Signs
25 and fencing for the preservation areas. First of all,

1 tortoises can't read. Two, fences fragment -- or any
2 fence that prevents or protects a tortoise from going
3 into where they're not supposed to, serves to fragment
4 habitat and impede corridors. This is something else
5 I'm going to loop back around to.

6 But the minimum barrier is silt -- the minimum
7 barrier that they use to keep wildlife out of
8 construction areas is basically a silt barrier, stakes,
9 and a -- a cloth barrier. If you look at the picture
10 of the opening of my brief PowerPoint, that little --
11 little rear-end scooting through the construction area?
12 That's a gopher tortoise trying to find its home. It's
13 probably under the bulldozer. I can't really surmise.
14 I don't want to say something that's not relevant.

15 We talk about aesthetics. Which plants are going
16 to be used, and how are you -- so my question is which
17 plants are you going to use, and how are you
18 calculating the mix? You know, how much -- how much is
19 going to be wiregrass? How much is going to be Florida
20 pusley? You know, these are all -- these are all
21 important questions because then you talk about can --
22 you talk about your canopy density.

23 Tortoises actually do really well in previously
24 disturbed but established areas -- groves, pastures,
25 yards, roadsides -- as long as they're not hit by a

1 car, that is. They like lawns. That's kind of -- you
2 know, and they like pastures. Grass is -- grass for
3 them, that's a buffet.

4 But when you're talking about establishing canopy
5 areas with native canopies, the thing to keep in mind
6 about native canopies is they're subject to the fire
7 cycle, which means they burn through, it opens back up,
8 or there's the dying and shifting, right?

9 If you use a massive berm covered with native
10 trees to hide the incompatible development that you're
11 trying to put in, you're also reducing the actual
12 available area for the tortoises to effectively graze
13 and -- and breed because they incubate their eggs using
14 sunlight, right? It makes sense. If you're using
15 heavy -- heavy can -- heavy hardwood canopies, then
16 you're going to affect their ability to actually
17 successfully maintain their population through local
18 breeding.

19 So your -- the plan is to upend what's working and
20 completely recreate it. There's a lot of -- there's a
21 lot of -- there's a lot of concern there that in order
22 to fake it while you make it, that you're actually
23 going to damage what you're trying to fix.

24 Pre-survey activities. So when the -- we talk
25 about when the wildlife survey was done, the time --

1 the -- the palm trees on -- on the site -- and I'm not
2 saying that this was intentional. That would be --
3 that would be wrong. But for trees that have never
4 been harvested for cheeky (phonetic) thatching, and
5 a -- a relatively small number of what's required for
6 that prior to the wildlife survey was done, and that
7 would have directly -- that would have directly
8 impacted the presence of caracaras onboard, also
9 bonneted bats. So -- and there was no mention of -- of
10 the bats even being looked for, which are also another
11 species.

12 It was stated that the magnitude of the -- of the
13 preservation and the restoration can't be overstated.
14 Yes, it can. It was done on Wednesday by not
15 considering the damage that you'll do to the animals
16 that already live there through the excessive noise and
17 completely destroying the habitat to remake it in your
18 image.

19 This talks about court order protection, which it
20 doesn't do that, and I'll talk about that when I
21 actually get to the PowerPoint.

22 Flood mitigation. The question -- the question
23 was never really answered, and I don't -- at least the
24 way you asked it, I don't think that you ever actually
25 got an answer. Maybe I'm wrong. Maybe we're using --

1 maybe I just don't understand the words that are being
2 used, but it never sounded like there was any actual
3 acceptance that the fact that this development will
4 change the flow patterns. We talked about the historic
5 flow patterns, and we talked about how we're -- how
6 they're already disrupted. That's right. They were
7 disrupted 50 years ago. They've started to kind of
8 recover and develop a natural flow.

9 Around six months ago we had a rainstorm that
10 wasn't even a particularly -- it was a -- it was a
11 nonseasonal rainstorm. The ground was not saturated,
12 and -- you can ask the people that live right adjacent
13 to the property -- they had water flowing across the
14 street on Terrell Lane and North -- North Olga. I
15 mean, it was flowing three to four inches deep. That
16 was just -- that was just rain. That wasn't a tropical
17 storm. That wasn't a hurricane. That wasn't the
18 height of the rainy season -- the height of a normal
19 rainy season. That was just a winter storm.

20 So that -- and that was -- it's never really been
21 addressed because the developers are responsible for
22 the water on their project, not off of their project.
23 Well, if this disrupts the normal path, location,
24 flow-way, everything, it's going to affect the people
25 who don't live on the project. They're the ones that

1 are going to be responsible for it. They're the ones
2 that are going to be holding the bag. But on the site
3 flooding will be managed. Okay.

4 Otter Creek. We've -- we've established that a
5 good portion of Otter Creek is disturbed. Since we're
6 restoring things, aren't we going to restore that?

7 What's going to happen with all of that river
8 spoil that is currently occupying the Povia piece of
9 this property? Because if the project removes all of
10 that river spoil, that affects the flow, too. Are we
11 going to turn the berm into a big dam? It's a question
12 that -- that is worth consideration.

13 In 1993, after massive draining -- drainage on
14 flow-way projects in East Lee County, we experienced
15 severe flooding. Was anybody here for that? Anybody
16 remember that? Because I could park my truck -- at the
17 time I was, you know, 17. I could park my truck in the
18 middle of the road and catch fish out of the back of my
19 truck on these roads. And that was after a huge
20 investment by the County and State to improve drainage,
21 flow-way, creek maintenance, everything. It looked
22 like -- I -- I had not seen a project that big in that
23 area at that point in my life, and yet we had flooding
24 that wiped out people's homes. It lasted interminable
25 amounts -- and that was -- that was a normal rainy

1 season. It was just kind of a lie.

2 Talked about Babcock green space and using that as
3 an example. Well, that's not really a good indication
4 because that's been gradually reduced, if you pay
5 attention to it.

6 The sewer and water expansion. We keep -- we were
7 told that it was not a back door to bonus density, and
8 we all knew that that was not true, but now they're
9 citing it. The sewer and water extension is coming
10 because of this zoning request, not the other way
11 around. When we -- if this is approved, this is the
12 only reason -- if it's not approved -- if this -- if
13 this zoning request is as it should be, based on
14 incompatibility with the plan, with the wishes of the
15 community, with the best interest of the community, if
16 it was denied, then that extension will not cross
17 there. So we wouldn't be boring under a compromised
18 river and putting it at risk of having, you know, God
19 knows what dumped into it.

20 The LPA denied it because it was not contiguous.
21 The BoCC went around that. They justified it. We --
22 you know, we altered the -- we altered the path that it
23 was going to go so it wouldn't be directly past
24 Commissioner Greenwell's property so he didn't have to
25 recuse himself, which there's a really interesting

1 ethics --

2 HEARING EXAMINER RIVERA: Before she objects --

3 I'm sorry -- we're not going to --

4 MR. KENNEDY: Yes, yes.

5 HEARING EXAMINER RIVERA: -- allow personal
6 attacks on anybody so --

7 MR. KENNEDY: It wasn't --

8 HEARING EXAMINER RIVERA: -- if you can just
9 limit --

10 MR. KENNEDY: That was not a personal attack.

11 HEARING EXAMINER RIVERA: I understand, but just
12 calling somebody out by name isn't relevant, again, to
13 this proceedings --

14 MR. KENNEDY: Yes, ma'am.

15 HEARING EXAMINER RIVERA: -- but I appreciate -- I
16 understand what you're saying.

17 MR. KENNEDY: Yes, ma'am, I understand.

18 Well, anyway, it's not really clear how the Owl
19 Creek decision was allowed to stand other than that
20 people were unaware of, A, this process; and, B, what
21 it actually entailed. This has been a -- a pretty
22 educational couple of years for almost everybody
23 involved.

24 Yeah, the threatened -- the threatened impact on
25 the listed species from what's happening in Lee County

1 actually resulted in the assignment of what's called an
2 imperiled species officer. That's a dedicated officer.
3 And, you know, part of that -- the reason why I bring
4 that up is because it's apparent that on some level
5 there's recognition that we have to do better, and on
6 the surface the appeal of this project is that it -- it
7 does those things. But when I actually start my -- my
8 presentation, I want to adjust that and -- address
9 that.

10 You know, there's an obligation to preserve and
11 protect the natural resources and scenic resources of
12 the area. I mean, just because we've erred in the past
13 doesn't mean we have to carry it forward. Error
14 carried forward is multiplied, and that's -- that's
15 what approving this request as it stands is.

16 So how does the plan translate in gopher tortoise
17 and commensal species impacts?

18 So this is the -- this is the survey that
19 Passarella & Associates did, which -- I mean, I think
20 these things are really, really interesting. What you
21 notice, though, if you -- if you see, is right around
22 here you have about 30 something -- 33, 34, or
23 something burrows. Over here you have some. You know,
24 but most of them are concentrated in this area right
25 here to the south. I can't remember what they call it,

1 south pasture, something like that, or low pasture.

2 So when you -- then when you look, and you have
3 this -- I mean, if I was a -- if I was a professional
4 planner, I would be -- I would be proud of this just
5 the way it's drawn. It looks pretty. It's very
6 pretty. There's lots of green for -- for preserve
7 space, but then we talk about preserving corridors.

8 Now, if a corridor is like a hallway or a
9 passageway, then this would be a door, this would be a
10 door, this would be a door, this would be a door --
11 this right here isn't a door, but it's that really
12 awkward -- really awkward spot in the hallway at a club
13 where you're forced to walk too close to somebody that
14 you don't want to so you might avoid it.

15 And then this, the creek and everything, well,
16 that's -- that's just a natural impediment for -- at
17 least for the gopher tortoises because not only can
18 they not read, but they can't swim really well. So we
19 break up the little bit of habitat that these guys
20 have. As a matter of fact -- well, these guys over
21 here might be the only ones who actually benefit from
22 it, but that's actually pretty -- pretty low.

23 So when you -- but to go further, when you look,
24 and you talk about the buffers that we're going to
25 put -- well, that buffer would -- would extend into

1 here. And if you put heavy, heavy tree coverage to
2 protect the neighbors, like you're talking about, when
3 those trees grow -- if it's heavy to begin with, you're
4 already going to block out some of the available
5 sunlight for, like I said, the incubation and the --
6 and then you'll -- the result of -- the result of a
7 very thick hardwood hammock is that over time it
8 actually causes the more desirable forage plants to
9 thin out, to become less prevalent, which is -- you
10 know, it increases forage pressures.

11 So now these gopher tortoises, which can't read
12 and don't know that they're supposed to stay in the
13 preserve areas, they start trying to cross these roads
14 looking for one of the -- one of the three things that
15 they usually go looking for. In this case it might be
16 food. They also go looking for burrow sites, and then
17 every spring they get a little randy, and they start
18 crawling around looking for love.

19 Well, when you look at this, this kind of circular
20 fringe of preserve, and you look at where -- you look
21 in the center -- let me go ahead and move on.

22 So when you look at how it overlays with where the
23 tortoises are actually at and where they're going to
24 want to go, the reason why those burrows are in the
25 center, they kind of -- they kind of rotate around.

1 They usually have three to five burrows, which also
2 goes down significantly in hardwood hammock areas
3 because of less suitable sites.

4 But with this -- with this restored area, this
5 area right here, you're going to impact 30 to 40 out of
6 roughly 130 some odd listed gopher tortoise burrows on
7 the site. That doesn't -- that also only appeared to
8 account -- and I may be wrong on this, but that also
9 appeared to account only for the mature and the
10 juvenile -- or the senior juvenile tortoises. So I
11 don't know if that accounted for any hatchlings at all.
12 It's not really relevant as far as the age or size
13 because it still takes out a considerable area here and
14 turns a lot of what they would have used for grazing
15 into water. And, again, they like water occasionally,
16 in very small amounts, but they can't swim.

17 But you see how this pinch point down here at
18 the -- in the -- the mouse keeps disappearing. But
19 down here on the -- on the -- by the undeveloped
20 square?

21 HEARING EXAMINER RIVERA: Uh-huh.

22 MR. KENNEDY: Yeah, it -- it pinches down. So
23 they're either going to come in contact with the
24 residential area, the roadway, or they're going to be
25 hampered by whatever fencing is there.

1 And that's -- this is just the gopher tortoises.
2 I mean, this isn't -- this isn't talking about the
3 effects on the other animals, which I'll come -- come
4 back around to.

5 But you see how in space the wildlife survey looks
6 cool, the plan is pretty, but the plan doesn't really
7 do what it says it's supposed to do when you overlay it
8 with the locations or the way corridors actually work.

9 So consider this: A key pinch point for this
10 development is the -- is the preservation and
11 restoration aspect, right? And I'm going to read the
12 PowerPoint just because -- just to keep focused.

13 But a 2008 study found that 10 percent -- even a
14 10 percent loss in habitat resulted in increased
15 habitat fragmentation, and that's important because
16 fragmented corridors increase inbreeding and reduces
17 colony resiliency.

18 Again, I'm going to say that these center areas
19 that were -- where the actual development sits is going
20 to be probably more than 10 percent. I'm not great at
21 math so I might be wrong.

22 The shape of the preserve areas, if not a direct
23 fragmentation, creates a gauntlet of travel. So the
24 corridors are supposed to facilitate wildlife travel in
25 search of reproductive opportunities, feeding, just the

1 normal things that wildlife does. The way that these
2 corridors or these preserve areas are set, they don't
3 really provide corridors. They kind of make a gauntlet
4 because, just the tortoises alone, they're territorial.
5 They try and flip each other over during breeding
6 season. Do they live in -- do they live in close
7 proximity? Sure. A lot of these actually seem to live
8 close to each other. But when you actually start
9 reducing that ability -- their ability to occupy those
10 other burrows, those open areas, to feed and -- and
11 they also feed in a circular pattern typically. When
12 you -- when you make these -- these corridors like
13 this, you're -- you're taking away from their natural
14 behavior.

15 And this -- this is just -- this is -- this is if
16 we airdropped the development in place, dropped it
17 right down, if this incompatible development
18 immediately pops up, and everybody goes, wow, those
19 trees weren't there yesterday, but they're there now.
20 That's -- that -- that's the -- the optimum for this,
21 right? That's not how this is going to happen.

22 So when you do the -- the restoration and the
23 created habitat, you're going to have to bulldoze or
24 remove or mechanically -- or mechanically -- either
25 mechanically or chemically remove a lot of stuff.

1 How -- how is that -- how are those -- those
2 on-site retention efforts going to be monitored? Who's
3 going to do it? We talk about an acceptable third
4 party. Who is the acceptable third party? Acceptable
5 by who? What are the metrics?

6 So in 1980 -- 1989, Lee County tried an
7 experiment. They had a piece of land that was vacant
8 that they weren't going to use for anything, so they
9 decided, hey -- and this is before 20/20. They
10 decided, hey, we're going to -- we're going to
11 establish a gopher tortoise relocation site, and
12 they -- they relocated about 19 tortoises. Within a
13 year -- it wasn't even a year. It was about six
14 months -- I can go back and check the -- go back and
15 check the dates, but within about six months almost all
16 of the tortoises -- I think it was two remained. They
17 left. They went looking for home. Because what
18 tortoises do within -- what they found that tortoises
19 do within about 100 miles of -- of distance from where
20 they're removed from, if the climate's the same, they
21 go looking for where they were, which means they --
22 they head for the road, then they cross the road, get
23 hit by cars, whatever else.

24 Where relocations work is on islands because they
25 can't go anywhere. But they don't really work as well

1 there either because they get -- you know, I know
2 it's -- we like to -- I'm not trying to
3 anthropomorphize -- and I know I butchered that word.
4 I'm not trying to make them human, but animals get
5 depressed, too; and when you take somebody away from
6 their home, they get depressed.

7 So with this intensive site preparation, tortoises
8 tend to not go into their burrows where they're safe.
9 They normally spend about 80 percent of their time in
10 their burrows. And they -- they -- they get
11 dehydrated; they show malnutrition. All of that -- all
12 of that stress makes it easier for them to get sick.
13 So that's another thing.

14 So if a -- if a colony is -- is left alone, and
15 it's mature, it's about 98 percent stable. That's, you
16 know, with -- outside of state parks, things like that,
17 that's virtually unheard of in Florida nowadays. It
18 tends to drop off significantly after that. And when I
19 say "significantly," I'll qualify that. Studies show
20 that you can go from 90 -- from 98 percent to 6 percent
21 but -- that's within about a year, and then it starts
22 to drop off after that.

23 So the question is what mitigates this in a
24 contact-intense construction area? Because in order
25 for them to do -- in order for them to do these --

1 this -- you know, create, preserve, restore, there's
2 going to be noise, there's going to be heavy equipment
3 operation. And what doesn't get driven out by the
4 noise and the stress of the equipment being there --
5 because if it can leave, it will; and if it's too
6 stubborn -- which tortoises are -- it's going to stay.
7 Then you have vehicle strikes -- they've actually been
8 targeted by contractors -- and, again, I'm not saying
9 Neal employees would do this on purpose. This is --
10 this is experience. When tortoises cross into a
11 construction area, it's like stepping on a cockroach
12 with a bulldozer. That's what happens.

13 So how does this project satisfy the gopher
14 tortoise management plan goals? The gopher tortoise
15 management plan is a state plan, but it's affected by
16 this. Does it minimize the loss of gopher tortoises?
17 It exposes them to impact and stress mortality. Does
18 it increase and improve gopher tortoise habitat? For
19 four it looked like it did. It really seems to
20 fragment their travel and proposes to use heavy canopy
21 cover on areas that they feed and live now.

22 One of the most intense -- intensely covered
23 spots, which is heavily covered with Brazilian peppers,
24 but they come out of there onto the areas that are open
25 now to graze. I have never -- I have never been there

1 on -- near that property and not seen at least two.

2 So does it enhance and restore gopher tortoise
3 populations? Predicting higher mortality rates based
4 on the first two things, it doesn't seem like it, but I
5 could be wrong.

6 Maintain the gopher tortoise's function as a
7 keystone species. Okay, so let's talk about a keystone
8 species. A keystone species, which the gopher tortoise
9 is, is one that is relied on by its friends and
10 neighbors in the animal kingdom for some part of their
11 existence. The gopher tortoise is kind of the original
12 landlord in Florida. Over 350 different species use
13 gopher tortoise burrows for their homes. Some
14 exclusively and can't live without it, gopher mouse --
15 you know, there's -- there are impacts here that,
16 because they're not called out in the -- in the
17 specific drawing, we kind of -- we kind of gloss over
18 them, but we're supposed to look at those things
19 because we're looking at the -- part of the survey
20 criteria is the tortoise burrows and -- and the
21 presence of the tortoises. If they're there, these
22 commensals are there.

23 This one I -- you know, I kind of have -- I have a
24 question that I always have to ask the professionals,
25 is the County Plan recommends in Table H a 150-foot

1 buffer. There's no -- there's really no mention of
2 that for the tortoises. I mean, that's just like a
3 clarification point, you know, always seeking some
4 education here.

5 But for the existing buffers, there is a 25-foot
6 minimum buffer for heavy equipment operation, unless
7 you get a permit to destroy the burrow. Which, again,
8 if you destroy something's home, where are you going to
9 put it while you're building it a new one? And there's
10 mixed results on whether starter burrows work.

11 How will the preserve areas protect against
12 mortalities due to canines? You have 1,100 homes going
13 in. I'm pretty sure at least some of those people are
14 going to own dogs. Dogs are really curious, and no
15 matter how friendly your dog is, if he thinks it's a
16 toy, he's going to chew on it.

17 So these are -- these are, again, just some
18 questions.

19 When was the species study conducted? I know when
20 it was conducted, I read the -- I did read it, but
21 specifically when was it conducted? Not just in April
22 on these days when the weather outside was 80 degrees.
23 Was it 6:00 in the morning to after dusk? Was it 8:00
24 in the morning, when you start work for the day, to
25 5:00 when you're -- you're done? Those are relevant

1 because there are -- there are species in the area that
2 are much harder to find, especially doing -- doing
3 these transects, and that's kind of how we -- we gloss
4 over them. So it's just a question of, you know, when
5 was it done, and how active were the animals at the
6 time.

7 Were there specific burrow investigations done to
8 verify the absence of endangered commensals, such as
9 the eastern indigo snake, the gopher frog, the gopher
10 mouse, the Florida pine snake? I didn't see that
11 mentioned in there. Again, it was actually kind of --
12 you know, like I read what I could find, but I didn't
13 see that mentioned.

14 All right, or I saw -- not present, but I
15 didn't -- I didn't see anything that showed how they
16 determine that it was not present other than, well, we
17 didn't see it. Well, did you look in the burrow where
18 it usually lives?

19 And then the reason why all of this is
20 important -- and I realize that this is not specific to
21 the project, but I'm going to throw it in here anyway
22 because it's just -- it's a -- it's a philosophy point,
23 if nothing else.

24 So in 2022 the U.S. Fish and Wildlife denied
25 endangered species protections for gopher tortoises, so

1 they're not federally protected. They remain state
2 protected. But on July 16th a formal peer-reviewed
3 letter published -- published in Global Ecology and
4 Conservation illustrated that the thinking behind that
5 decision was based on a very, very flawed error-prone
6 study. At the time it projected that there would be 60
7 percent -- or 67 percent remaining gopher tortoises in
8 the state.

9 As a realist, that's a fantastic number for a
10 threatened species because, you know, anything above
11 50, it might be viable. It's able to recover. But
12 they found that it was based on accelerated recovery
13 rates because they were attributing biological factors
14 that simply aren't biologically achievable, the sexual
15 maturation of the -- of the tortoises being much higher
16 than expected, the loss of habitat being much lower
17 than planned.

18 Approving, again, this development, which is
19 incompatible with the area, which is not the sterling
20 preservation beacon that it tries to present itself as,
21 when you actually look at how animals live and the
22 amount of preparation that would go into the site, that
23 one percent -- that expected one percent, every
24 tortoise matters more than it did on July 15th because
25 now we know better.

1 That's really -- that's really what I have. This
2 is, again, incompatible with the area, and what we're
3 saying, those things either need to be addressed or --
4 or just taken -- or on that matter alone, something has
5 to be done.

6 But to say that we -- we're going to put 788 homes
7 if we can't put in 11 -- or 1,100 -- 1,099, whatever it
8 is, I mean, that's like saying I'm going to hit you
9 with this brick if I can't hit you with this glove. It
10 seems like a threat.

11 MS. MONTGOMERY: Before you leave, I have a couple
12 of questions.

13 MR. KENNEDY: Sure, I have a couple answers.

14 MS. MONTGOMERY: Are you aware of the fact that
15 gopher tortoises are regulated by the FWC?

16 MR. KENNEDY: Yes, ma'am, I am. Do you realize
17 that the -- the County has an obligation to preserve
18 them, too?

19 MS. MONTGOMERY: I'm asking the question.

20 MR. KENNEDY: I'm answering your questions.

21 MS. MONTGOMERY: And are you an expert in wetland
22 and wildlife ecology?

23 MR. KENNEDY: So as a member of a citizen group
24 that's focused on it, working with FWC on a weekly
25 basis, and having -- having experience with this for

1 over 30 years, as I stated -- I'm not certified, it's
2 not written in paper; but when I look at that project,
3 it's the most embarrassing statement to say I
4 professionally support it that anybody can make because
5 it factually doesn't do what we said it does.

6 MS. MONTGOMERY: Okay. So the answer is you don't
7 have the qualifications --

8 MR. KENNEDY: No, I absolutely have the
9 qualifications based on lived experience and actual
10 experience with these animals. It's a fact, and we
11 both know it.

12 So I've heard you try to disestablish or
13 dis-account --

14 HEARING EXAMINER RIVERA: Sir, I'm sorry, just
15 to -- and for everyone's education, I don't know if
16 you're familiar with -- the Administrative Code and
17 Florida law allows participants, which are members of
18 the public, to provide testimony, and in doing so you
19 are subject to cross-examination by the parties --

20 MR. KENNEDY: Yes, ma'am.

21 HEARING EXAMINER RIVERA: Which are the Applicant
22 and the Staff. Unfortunately, Florida law does not
23 afford the same opportunity, again, for the
24 participants to cross-examine. So it really is not a
25 discussion. It's just a direct answer to the questions

1 that she's asking. And her questions are -- they
2 cannot intimidate, they cannot harass; and if it gets
3 into that, certainly we will stop it. But her question
4 right now is simply to restate your qualifications,
5 which you have done, and then --

6 MR. KENNEDY: Yes, ma'am, I understand -- I
7 understand that they can't in letter -- but when you
8 ask people to qualify in the manner or the tone that
9 she has over the past two days, there is an absolute
10 intent to intimidate.

11 HEARING EXAMINER RIVERA: I understand. And I
12 understand that -- again, I know that passions are
13 high, and I receive that. I feel it. I understand it,
14 and I don't want anyone to feel like that's not being
15 communicated, because it is; but my job, as well, is to
16 preserve the proceedings. And so everybody has rights.

17 I will ask, again, if you can just narrow the
18 questions to the specific question and leave it at
19 that. We don't need to get into intense
20 cross-examination on any -- I don't think -- of his
21 testimony.

22 MS. MONTGOMERY: And I appreciate the fact that he
23 put it in a PowerPoint, his questions; and then we will
24 have our wildlife ecologist address those questions.

25 HEARING EXAMINER RIVERA: Thank you.

1 And did you want to enter in your PowerPoint into
2 the record?

3 MR. KENNEDY: Yes, ma'am.

4 HEARING EXAMINER RIVERA: Okay, thank you.

5 (Kennedy Exhibit 1 submitted.)

6 MS. MONTGOMERY: Madam Hearing Examiner, before we
7 move on, I did want to make a comment. I didn't get a
8 chance until after the witness spoke, Ms. Schwartz.
9 There were two documents -- several copies of them, but
10 essentially two documents. One was an article on light
11 pollution. I just want to note for the record that
12 there's nothing in there that indicates that the Lee
13 County lighting standards don't address that so it's
14 just a document.

15 And the rest of it is a compilation of documents,
16 communications between the City of Fort Myers and DEP.
17 That's not really an issue in the zoning case. The Lee
18 Plan requires this project to connect to central water
19 and sewer, and we're not, in the process, delving into
20 where the City is in regards to their DEP issues. We
21 will have to now respond to that, but I just want to
22 state that without the ability to cross-examine the
23 people that provided those documents -- you know,
24 produced them, it's a due process question.

25 HEARING EXAMINER RIVERA: Okay, thank you. That's

1 noted for the record.

2 The next card that I have is for Charles Soukup.
3 I apologize if I mispronounced that, Soukup, Charles?
4 Not present, okay.

5 Elly Hagen?

6 (Discussion at lectern)

7 HEARING EXAMINER RIVERA: Good morning.

8 MS. HAGEN: Good morning, my name is Elly Hagen.
9 I live at 14280 Duke Highway.

10 My next-door neighbor and brother-in-law is
11 Richard Durling, who could not be here today. He is
12 out of the country, and he has asked me to read a
13 statement from him, if that's appropriate?

14 HEARING EXAMINER RIVERA: Yes, it is.

15 MS. HAGEN: Okay.

16 HEARING EXAMINER RIVERA: Wait one second. I've
17 got a card for him so should I pull that out --

18 MS. HAGEN: Yes.

19 HEARING EXAMINER RIVERA: -- and just say that
20 that's in written --

21 MS. HAGEN: Yes, ma'am.

22 HEARING EXAMINER RIVERA: Okay.

23 MS. HAGEN: Even though I am unable to attend this
24 public hearing because I'm out of the country, I still
25 want to go on public record so I may maintain my

1 standing and be able to address the County Commission
2 when this rezoning issue goes before them.

3 Respectfully submitted, Richard Durling, 14300 Duke
4 Highway.

5 Madam Hearing Examiner, I have lived in Lee County
6 practically my entire life, having moved here with my
7 parents, brother, and sister in 1969. Back then the
8 Edison Mall, which was built in 1965, was the center of
9 activity, and Daniels Parkway was a dirt road, little
10 more than a trail. Development was not only wanted but
11 welcomed in this sleepy county. For those who recently
12 moved here, they would not recognize, nor probably
13 appreciate, Lee County of yesteryears. A lack of
14 shopping, dining, and entertainment would have been and
15 was the argument for new development.

16 Now, in 2024, 55 years later, it hardly resembles
17 the county of those earlier years, and for the most
18 part it is a good thing. It is what the citizens of
19 the county wanted. With it came more shopping, dining,
20 entertainment, jobs, and success. Many have made a
21 good life for themselves and their families and lot of
22 money, and there's nothing wrong with that. But during
23 those explosive growth years, the struggle and the
24 objective was to manage growth, and the Florida State
25 Legislature enacted new laws and procedures to address

1 the issue of growth. One of those actions was to have
2 local government create and adopt comprehensive plans
3 with goals and objectives -- the land and the impact of
4 development in their respective counties.

5 I know these measures and actions because I was
6 involved in the process. I helped develop these
7 policies, having served on the LPA. The outcome was
8 the Lee County Comprehensive Plan, the plan that was
9 and is mandated by the state government.

10 If you go on the internet and look up Lee County
11 Comprehensive Plan, you will see the Lee Plan Maps; and
12 if you click on that, the first -- the very first map
13 at the top of this list is future land use map. Now,
14 as the name implies, this map was to show where growth
15 and certain development was meant to go, as Lee County
16 grew and was developed into the future, hence the name
17 "future land use map."

18 Based on this map, it is safe to say that most
19 people, citizens in this county, might think that this
20 map is a blueprint or a plan for future development;
21 and that being the case, could be relied on when making
22 decisions on things like where they wanted to live and
23 raise a family. So when people, citizens, want to
24 move -- want to live a more rural lifestyle, perhaps to
25 raise animals as well as children, or to enjoy open

1 spaces and less congestion, that they could rely on the
2 future land use map to show them where those rural and
3 agricultural areas are, or could they?

4 Now that many people and families have made the
5 move to areas designated rural/agricultural on the
6 future land use map, investing lots of resources and
7 money and time and effort, they are being told that
8 they may have misplaced their trust and reliance on
9 what was developed by the County to guide the citizens
10 into the future. Can these people, citizens, really
11 rely on this map?

12 Now to make it even more difficult to understand,
13 the County officials and supporting staff seem to have
14 overlooked the concerns of citizens living in these
15 areas for the benefit of a small but influential group
16 wanting to impact the area and their way of life. The
17 original rules have been subverted and new rules
18 adopted to grant changes to the future land use map for
19 the benefit of some, but not the people, the citizens
20 living in the areas affected.

21 Staff may have found that the proposed changes
22 qualify and are satisfied with the changes, but the
23 people and the citizens affected by these changes, are
24 they satisfied? I would say not.

25 Lee County's own Comprehensive Plan speaks through

1 its policies to these areas designated rural and
2 agricultural. The policies speak to the character and
3 nature of the area; it speaks to the type of
4 development and the density of such development. It
5 says that changes and increases cannot be made, and
6 why, because these areas were intended to be what they
7 are identified as, rural and agricultural. That is
8 what the future of this area was supposed to be.

9 Let's not completely build over all the areas of
10 Lee County. Let's leave some of it as was anticipated
11 and planned to be, open and rural. We are a very
12 special place. Lee County is a very special county.
13 We've done a great job managing our growth and
14 development, planning for its future, unlike many areas
15 of Florida. Let's not make a big mistake now. The
16 future is at stake.

17 Richard Durling, 14300 Duke Highway in Alva.

18 HEARING EXAMINER RIVERA: Did you want to enter
19 that into the record, too, ma'am?

20 (Durling Exhibit 1 submitted.)

21 HEARING EXAMINER RIVERA: Thank you.

22 MS. HAGEN: Uh-huh.

23 I have two areas I want to speak on today.
24 Something that we want to ensure that goes into the
25 record is the creation of the North Olga Planning Panel

1 and how that originated.

2 The North Olga Planning area was established
3 around 2010, and as a result separated from Alva,
4 although the addresses still contain an Alva postal
5 address. The proposed idea was that this new local
6 community could do better, direct changes to the Lee
7 County -- could better direct changes to the Lee County
8 Comprehensive Plan than the larger countywide body that
9 was previously charged with this oversight. It was met
10 with much opposition at the time because only seven
11 wealthy, powerful, and connected landowners were chosen
12 to serve on the North Olga Community Planning Panel.

13 At the time there were 613 eligible parcels with
14 owners who could have served on the panel, meaning
15 about 600 parcels and even more individual property
16 owners were included in an area with absolutely no say.
17 Many of these residents voiced their opinions to the
18 County through emails and public address, but the
19 powerful few hired even more powerful lawyers and
20 planning professionals, who successfully argue their
21 case and established the North Olga Community Planning
22 Panel.

23 One public record, a letter from Attorney Richard
24 Pringle, of the Strayhorn firm, to Kathy
25 Ebaw (phonetic) of the Lee County Department of

1 Community Development states, the reality is --

2 MS. MONTGOMERY: Madam Hearing Examiner, I'm going
3 to interpose an objection at this point in time.

4 There's no relevancy to this zoning hearing as to the
5 creation of the -- and facts behind the North Olga
6 Community Plan. What's in black and white is what's
7 controlling.

8 HEARING EXAMINER RIVERA: You can continue, thank
9 you.

10 MS. HAGEN: Thank you.

11 THE REPORTER: And would you read a little slower?

12 MS. HAGEN: I'm sorry.

13 One public record, a letter from Attorney Richard
14 Pringle, of the Strayhorn law firm, to Kathy Ebaw of
15 Lee County Development -- Lee County Department of
16 Community Development states (as read), the reality is
17 that a vocal minority of community members should not
18 dictate anyone's reaction to the planning efforts of
19 the North Olga Community Planning Panel. The
20 additional reality is that a majority of the landowners
21 and interested parties in the North Olga community
22 supports the North Olga Community Planning Panel
23 efforts. One would need to read the public letters
24 submitted and compare the names of those who submitted
25 letters to the corresponding tax rolls and see whether

1 you think a majority of the residents and landowners in
2 Alva/North Olga really supported this panel and its
3 proposed changes.

4 Is that better?

5 THE REPORTER: (Nods head.)

6 MS. HAGEN: The overarching theme of the majority
7 of the letters seem to be that these people felt like
8 they were thrust into a district they didn't want and
9 were not going to have a voice on the panel.

10 And I do have copies of those letters that I'll
11 put into the record.

12 Looking at the documents submitted by members who
13 were pushing for the new district, the North Olga
14 Community Planning Panel doesn't seem so bad. Take
15 this excerpt from a public document to include the
16 North Olga vision statement, as well as their ten
17 guiding principles, prepared by Alexis Crespo, a
18 professional planner working at Waldrop Engineering.

19 The vision statement for North Olga: To establish
20 a community plan in order to preserve and promote the
21 unique rural character, historic heritage, and quality
22 of life in North Olga, as well as proactively and
23 appropriately plan for the area. The North Olga
24 Community Plan goals, objectives, and policies, GOP,
25 address preservation of the existing rural character

1 and unique historical background that North Olga has
2 retained through the years. The GOPs also speak to
3 higher standards for future development in terms of
4 landscaping, open space provisions, architecture, and
5 the protection of environmentally sensitive lands.

6 Additionally, it is the intent of the plan to
7 support economic development throughout the community,
8 including nature-based tourism and agricultural
9 operations.

10 The implementation of this vision will assist in
11 creating a strong sense of identity in the North Olga
12 community and further establish this area as a unique
13 community within eastern Lee County.

14 I do have a list of the guiding principles. There
15 are ten of those. I won't read those today, but I'll
16 put those into the record.

17 HEARING EXAMINER RIVERA: Are you referencing --
18 just for my edification. Are you referencing the
19 current policies that are in the Lee Plan, or are you
20 referencing drafts that predated those policies?

21 MS. HAGEN: It was the -- the -- the draft, the
22 initial -- the initial plan.

23 HEARING EXAMINER RIVERA: Okay. Does that reflect
24 what's in the current plan or -- does that reflect
25 what's in the current plan?

1 MS. HAGEN: It should, yes.

2 HEARING EXAMINER RIVERA: Okay. We have that
3 then. That part does not need to be entered into the
4 record.

5 MS. HAGEN: Okay.

6 HEARING EXAMINER RIVERA: Thank you.

7 MS. HAGEN: After reading this, it's easy for Alva
8 residents to get onboard with this new district and
9 agree with all of these guiding principles and the
10 vision statement. If only the panel and Lee County
11 worked together to make that reality, there'd be no
12 need for any opposition.

13 It seems since the inception that the panel has
14 failed the guiding -- on Guiding Principle Number 10,
15 as a huge majority of individual landowners have been
16 excluded from the conversation, or can I say
17 disenfranchised? And therefore, a few wealthy and
18 powerful owners who stand to make a fortune, at the
19 expense of their neighbors' quality of life, which is
20 to be explicitly protected under Guiding Principle
21 Number 5.

22 So with the new district area defined and the
23 panel in place, what do you think the very first order
24 of business was? Do you think it was something to
25 support the community, who already feels like they have

1 no voice? Or do you think it was something that
2 violated a guiding principle? Would you be shocked to
3 learn it violated the mission statement and just about
4 all of the guiding principles?

5 The following is from a memorandum to add a few
6 items to the community panel that were inadvertently
7 omitted from the previous filing. Land use amendments
8 that would increase the allowable total density of Alva
9 are prohibited, and that was exchanged with
10 "discouraged." They struck out "prohibited" and
11 replaced it with "discouraged," which is an infinitely
12 lower bar to clear.

13 Our current commissioner served as president and
14 on other positions of the Board of the North Olga
15 Planning Commission from 2013 until he resigned in
16 order to file for Lee County Commission in 2022. The
17 current Board still operates in a way that
18 disenfranchises the majority of the community of North
19 Olga. And that, in part, is how we arrived here today.

20 (Hagan Exhibit 1 submitted.)

21 MS. HAGEN: Finally, I'd like to speak as -- as a
22 resident of 14280 Duke Highway. I am directly across
23 the street from the proposed development, and I am in
24 agreement with the community members who have spoken
25 before me.

1 The objective and policies of the Lee County
2 Comprehensive Plan are to help preserve the unique and
3 rural character of the North Olga area. The
4 surrounding property includes 120 acres of land that
5 includes North River Oaks, which has homes on 5 to 8
6 acres, as well as additional agricultural land.

7 Across North River Road, there is no development
8 allowed within 1,300 feet of North River Road.

9 To the east, AG-2 properties and the Rural and
10 Wetlands Future Land Use categories.

11 To the south, properties are separated by Duke
12 Highway, which are AG-2 and large residential lots.

13 To the west is Owl Creek, where the County has
14 approved 380 homes for Neal Communities, including
15 duplexes, a marina, and amenities on only 342 acres.
16 This property only has a 20-foot setback on North River
17 Road. Which one of these doesn't fit? Just because
18 Owl Creek was approved doesn't mean it's right.

19 Now we are looking at an additional 1,099 dwelling
20 units, including duplexes, right next door. This
21 planned development does not comply with the Lee Plan
22 and is not compatible with existing and planned uses
23 and surrounding areas.

24 It is estimated that this community alone will
25 generate more than 9,000 trips per day on County Road

1 78, North River Road, tripling the current traffic.
2 Lee County Staff has reported that the development does
3 not adversely impact the surrounding roadway network,
4 even though the 78 and State Route 31 intersection is
5 predicted to operate at an F rating, near gridlock, in
6 2030 after development.

7 How will the County address this impact on
8 transportation? Staff notes that the intersection
9 improvements are mitigated through a payment of roadway
10 impact fees. That doesn't solve the problem.

11 The Lee County Metropolitan Planning Organization,
12 MPO, is the County's transportation partnership
13 responsible for transportation plannings in Bonita,
14 Cape Coral, Estero, Fort Myers, Fort Myers Beach,
15 Sanibel, and unincorporated Lee County. The MPO's 2045
16 transportation plan states that County Road 78 is
17 considered a constrained road. Constrained roadways
18 are defined through local policies as roads not
19 eligible for widening based on environmental impacts,
20 impacts to existing neighborhoods and businesses, and
21 limitations of the existing right-of-way. How can we
22 approve 1,099 more residences all entering and exiting
23 on a two-lane highway that is already at its breaking
24 point? Our rural community will be in constant
25 gridlock.

1 Residents of Duke Highway were informed on
2 Wednesday that we are in a pinch area, meaning we have
3 the least protection from this development, 170 feet.

4 Interesting, when you look at the seller,
5 Mr. Cary's property on Serenoa, he has the largest
6 protection. To me as -- not a professional, it looks
7 like nearly a mile behind his home. Why do the
8 residents of Duke Highway get the least amount of
9 protection, when the person that chose to sell this
10 property gets the most?

11 Mr. Neal said on Wednesday that his business is to
12 sell homes, and buyers know within 30 seconds if they
13 will buy. In looking at this map, it's my opinion --
14 not a professional -- that the larger homes will be at
15 the front of the development because that's where
16 Mr. Neal wants to see -- wants them to see first, and
17 the duplexes will be placed in the back of the property
18 abutting Duke Highway, where homes are currently for
19 sale for 2 to \$4 million and up to 8 acres in size. So
20 with that logic, there will be at least 10 attached
21 homes within 170 feet of our property, and the same
22 number right across the street from those homes.

23 Right now, if I stand on my front porch, I can see
24 over to my neighbor's balcony and have a conversation,
25 and he's 170 feet away. But he's my brother-in-law,

1 and we intended it that way.

2 The petitioner has showed us landscaping that will
3 provide line-of-sight protection, but what about
4 protection from noise and light? I don't know about
5 you, but in the fall, winter and spring, we open up our
6 home and turn the air conditioning off. What is the
7 petitioner going to do to protect us from the noise
8 coming from these homes? Not just the people, but the
9 air conditioning units, lawnmowers, and construction.
10 What about a real barrier to mitigate sound?

11 How will we be protected from unnecessary light at
12 night? What will the petitioner do to incorporate
13 environmentally responsible outdoor light to protect
14 the night sky and sensitive wildlife? According to
15 DarkSky International, artificial light and sound
16 produced by humans has negative and deadly effects on
17 many creatures, including birds, mammals, insects, and
18 plants.

19 One of the criteria that must be met by Neal
20 Communities is that the development must not adversely
21 affect environmentally critical or sensitive areas and
22 natural resources. The proposal that Neal Communities
23 has offered promises these clustered homes will allow
24 them to create, preserve, and restore indigenous rare
25 and unique upland habitat. His team have stated they

1 will not come back and look for additional density.
2 How are we to believe these promises will come to
3 fruition?

4 Mr. Neal has shown a disregard for his zoning
5 designations, the environment, and the citizens
6 impacted by his developments, which has been
7 well-documented by reputable media.

8 MS. MONTGOMERY: Madam Hearing Examiner, I'm going
9 to object to this testimony. This is a personal attack
10 on Mr. Neal. That's not appropriate in these
11 proceedings.

12 HEARING EXAMINER RIVERA: If you can move on to
13 the next --

14 MS. MONTGOMERY: Address the zoning criteria.

15 MS. HAGEN: Well, in -- in one area he did rezone
16 a preserve area to a Publix, and the owners in that --
17 in that area said they felt they had been given a bait
18 and switch, and that's true. It's not a personal
19 attack.

20 Finally, in January 2024, Patrick Neal, president
21 of Neal Communities, spoke at a Lee County Commission
22 meeting concerning sewer hookups for this proposed
23 community. "There's no doubt that if we don't get this
24 Comprehensive Plan amendment, we will go ahead with
25 construction of the homes on a septic system, because

1 that's the law in the county," Mr. Neal said.

2 I think everyone who has spoken over the past
3 several days would be happy to take Mr. Neal up on this
4 promise. As a resident of North Olga, I ask you not to
5 recommend approval of this rezoning request, and I
6 appreciate your time.

7 HEARING EXAMINER RIVERA: Thank you.

8 We are going to take a break at this point to give
9 everyone a moment to rest. So we'll reconvene at
10 10:45.

11 (Recess from 10:33 a.m. to 10:47 a.m.)

12 HEARING EXAMINER RIVERA: Okay. We are back on
13 the record. The next card that I have is for -- I
14 believe this says Cody (sic) Pierce. I apologize if I
15 butchered your name at all, sir.

16 MR. PIERCE: It's okay. It's spelled uniquely.

17 Good morning, my name is Captain Codty Pierce. I
18 am a lifelong Lee County resident, and I currently
19 serve as the waterkeeper for Calusa Waterkeeper.

20 So I'm here today to go on the record in
21 opposition of this development. I'd just like to
22 highlight a couple of issues that I think we have due
23 to infrastructure.

24 So first and foremost, any of us that have spent
25 any time off of River Road have definitely noticed the

1 increase in traffic. As we know, there have been
2 developments that have occurred here in previous years
3 that is increasing the amount of traffic that this poor
4 road is having to serve for the community. So that is
5 the first and foremost reason that I'd like to provide
6 in opposition.

7 I believe that this increases the likelihood of
8 road mortality for a lot of species, and this general
9 area east of 31 does serve as an important wildlife
10 corridor for the north-to-south transportation of
11 animals in this area.

12 You know, being in Lee County for my entire life,
13 I think that we can all agree this place has, you know,
14 increased probably beyond the greatest imagination of
15 our early fore-founders. Now that we're in 2024, we
16 are more known as a metropolis than we are as this
17 quaint little town that we used to be known for.

18 I'd like to just highlight, as well, you know,
19 that the Caloosahatchee River is impaired for a number
20 of parameters. One of those is going to be nutrients.
21 When we add, you know, a nutrient or a natural
22 resource, you know, consuming entity like a -- like a
23 community of this scale, I think it just increases the
24 likelihood that we're going to have to deal, you know,
25 with some potential stormwater issues that are inside

1 of the river area. So this does cause great concern
2 for us, you know. I don't think that we have the
3 infrastructure currently to support a neighborhood of
4 this -- you know, of this amount of people, and so I
5 just wanted to go on the record for those two -- two
6 excerpts. Thank you.

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

9 Next we have Monica Busbee. Good morning.

10 MS. BUSBEE: Good morning. I am the owner of two
11 parcels equaling approximately 39 acres on my small
12 farm, which is --

13 THE REPORTER: I can't hear you. I'm sorry, could
14 you start again, please?

15 MS. BUSBEE: Sure. Can you hear me now?

16 THE REPORTER: Try to yell.

17 MS. BUSBEE: Okay.

18 Good morning. I'm the owner of two parcels
19 equaling approximately 39 acres. My small farm is just
20 around the corner from the Cary+Duke+Povia property.

21 Although I know today I may be part of the
22 minority speaking in support of this development, I
23 felt it was important for these families selling this
24 land to know not everyone is against it.

25 As I watched the gentleman speak yesterday (sic)

1 stating his family has been good stewards of the land,
2 and the family had finally decided to sell, I can
3 appreciate that decision. There are properties for
4 sale every day, and the people that own them should not
5 feel so much pressure to have others around them
6 affect, influence that decision when their time comes,
7 if they want to sell, or let's just say need to sell.

8 In the event they do sell, realtors, surveyors,
9 businesses in general just benefit from a time a piece
10 of land is sold. I can list the names of realtors I've
11 met, and even calls from friends over the years, that
12 have encouraged landowners such as myself to sell. I
13 hold no negativity towards any of them. They are just
14 trying to make a living.

15 Sure, I would have loved it to look just like it
16 did on my bus ride to school as a small child; however,
17 it isn't realistic. Having seen the growth -- excuse
18 me -- Babcock has had on our community, along with the
19 growth has brought change and opportunity for all. It
20 has brought with it a lot of conveniences.

21 This property we are discussing today is very
22 small in comparison to Babcock Ranch. That was also at
23 one time owned by a family that had to make a tough
24 decision to sell. There are many costs that landowners
25 accrue owning a property -- taxes, maintenance, fence

1 repairs, liability. I know that myself just having a
2 small farm. Liability insurance you have to pay over
3 those years. I would imagine after maintaining a piece
4 of land all those years, they deserve the right to
5 benefit from that sale, as well.

6 That's the point of my comment today. I don't see
7 an issue with that. I felt this family deserved the
8 same respect. In my opinion, they should be able to
9 move forward with the best decision for the maximum
10 benefit of the family, as I (sic) fit.

11 There have been comments made about the road and
12 traffic and the speed and growth, which has already
13 happened. Those statements are accurate. People are
14 speeding. People have been speeding on this road and
15 other roads for years. This development isn't going to
16 change anyone's speed. That solution will only take
17 place if enough people speaking on this topic today
18 were to request a meeting with the Sheriff's Department
19 to remedy that issue.

20 Overall, if people want to say -- a say on what is
21 done with someone's property, I feel like before any of
22 this came about, they should have got together as a
23 group and purchased it years ago for the desires they
24 have voiced.

25 I respect everyone's rights, their opinions. We

1 are all allowed to feel and think differently. But
2 several people that spoke don't even live right in this
3 area in question.

4 The family is asking for nothing different than if
5 one of us were the owners of the parcel, and we were to
6 benefit financially from the sale. I think all they're
7 asking for you to grant them is what landowners
8 deserve.

9 Thank you for your time.

10 HEARING EXAMINER RIVERA: Thank you. Thank you
11 for coming today.

12 Next I have Ralph Bond. Good morning.

13 MR. BOND: Good morning.

14 Well, I wasn't prepared for this. I got a call,
15 and I was trying to stay out of it because a lot of my
16 neighbors -- I guess I could be described as one of the
17 rich, powerful, large landowners in area, according to
18 these folks. That's my piece of property right
19 directly across -- probably I got -- just right in
20 that -- just due east of this property on 78.

21 And I have to apologize for skipping around. I
22 don't have a prepared statement, basically been
23 listening to what's being said here.

24 And if we were all honest with ourself, we're
25 coming up with the tortoises and the birds and the bugs

1 and the water and the flow and all this. That's just
2 because it sounds good. If everybody had their way, it
3 would stay just the way it is right now, and there'd be
4 nothing done there. But you can't say that because it
5 doesn't sound good.

6 I was noticing in this building, you still have
7 these old pictures of Fort Myers, see how it used to
8 look. This building we're in right now, it's no longer
9 the courthouse. Why is that? Things change.
10 Everything changes.

11 The development came from the East Coast across to
12 Collier County; went into Collier County, come into
13 Bonita -- which is some of the worst land to ever try
14 to develop there is, but that cancer spreads. It don't
15 leapfrog very much. It's developed all the way up to
16 us, and now it's our turn.

17 As far as these land use and rule and designation
18 and all this, those things are put in there, but
19 everything is in there for the time being. As the need
20 changes, the plans change. It stops what they call
21 urban sprawl from leapfrogging. Develop here, have
22 this a little bit less density. As the need comes, you
23 change it. It comes here, make this a little bit --
24 and it just grows like a cancer.

25 Everybody -- you know, a few people for the good,

1 and for what we want, and this, that, and the other,
2 get their money together and come buy it. I'll sell my
3 land to anybody that wants to buy it. They can sit
4 around and sing Kumbaya till the cows come home.

5 Talk about farmers. If you're rich enough to be a
6 farmer in today's world, you don't need a job. Save
7 your money, you can retire. There's no money in it.
8 It can't be done.

9 As far as drainage on that piece of property
10 there, I'm well aware of it. It's a big mountain right
11 now of spoil. That spoil is going to go away. With
12 all the regulations and the way they're going to make
13 him drain that property, it's going to drain better
14 than it ever did, even a 100 years ago.

15 Talk about dams? All these houses where these
16 people are living along Duke Highway, I remember when
17 there was no houses on Duke Highway. Born and raised
18 here just like everybody else -- well, not everybody
19 but a lot of us. Their houses are damming up more
20 water than what is there because when those houses were
21 built, the regulations weren't like what they are now.

22 Eagles? I got them out at my place. I watched
23 them blow out of the tree three times. You know what
24 they did? Built another one.

25 The caracara bird, it ain't even native to here.

1 So, I mean, all this stuff that we're talking
2 about -- basically what everybody here is -- it's
3 beautiful. I agree with that. Nobody wants criminals
4 on the street, but they don't want a prison next door
5 to their house either.

6 And I understand what -- it's beautiful and -- but
7 things change. And -- I mean, that's all I gotta say.

8 I don't like it, particularly, when people say for
9 the betterment of the people, and this, that, and the
10 other. If they were honest with theirselves -- and when
11 you've got density on my property -- what they're
12 trying to do here is what they're talking about, the
13 density, from one, what it is, to 1.4 or 1.5 or
14 whatever it's getting to there. When I sell my land,
15 whoever comes and buys that is going to pay me on the
16 highest and best use. So that basically -- if I can
17 get one-and-a-half units to the acre, it's worth
18 one-third more than what it is if I can only have one
19 unit today.

20 So I just don't think anybody should be able to
21 dictate to me what I do on my land, especially if I'm
22 following all the rules and the guidelines with the
23 State of Florida and with the County -- and they're
24 going on about the Commissioners, and this, that, and
25 the other. It's my understanding that the State

1 instituted some of that density increase on that water
2 and sewer because they wanted to get people away from
3 using wells and septic tanks; and in order to do that,
4 they had to incentivize the people that were actually
5 doing that so that they could offset some of the cost
6 that it would bear to do so. So in doing that, the
7 only way they could do it without actually just
8 providing and paying for the sewer and water
9 themselves, they get the developer to put water and
10 sewer in there, and they incentivize him, to recapture
11 some of that money, by increasing the density. He's
12 not going to do that if it's all on his dime. We all
13 go to work for that profit margin.

14 And I just think a lot of stuff that's being said
15 here, the tortoises, bugs, like I said before, and
16 everything else that's going on and on about the
17 drainage, about the panthers, and agricultural, rural
18 lifestyle -- as far as I know, I look around here, I
19 don't see but one goddang farmer in this building, and
20 that's me.

21 So that's all I got to say about it. I just -- I
22 wasn't going to come here. I got a phone call this
23 morning. They said they were talking about my property
24 last week in a meeting, or a couple of days ago,
25 whenever it was; and they said, you better go down

1 there and tell them, you know, what you think.

2 And so that's all I've got to say about that.

3 HEARING EXAMINER RIVERA: Thank you. Thank you
4 for coming today, sir.

5 The next card I have is for Keith Durling. Good
6 morning.

7 MR. DURLING: Good morning.

8 First, I'd like to say that I do agree with all
9 the comments made -- that have been made by the people
10 of Alva the last few days, certainly not with that last
11 man.

12 And, thank you, I appreciate you being so engaging
13 and actually listening to people. I've been to several
14 County Commissioner meetings, and they're very
15 dismissive of us. And so you actually showing
16 interest -- you know, you not only listen to the Neal
17 people, but you're listening to us, and that's very
18 refreshing.

19 And, actually, oddly enough, I'd kind of like to
20 thank Neal's attorney, who keeps on -- was asking
21 people the other day, well, how close do you live to
22 the site? You know, and people are like, I'm a mile
23 away. I'm five miles away. I'm a couple miles away.
24 You know, it's going to impact everybody for sure, but
25 you know what? I'm right there on Duke Highway. You

1 know what the setback is? 170 feet.

2 So looking at the piece of property, 788 acres.
3 That's a lot of property. They're protecting 420
4 acres, going to make it into wetlands, they're going to
5 create these wetlands, yet I have this on my front yard
6 170 feet?

7 How would that -- man that just spoke, would you
8 like that to happen 170 feet from your property?

9 HEARING EXAMINER RIVERA: If you could --

10 MR. DURLING: Yeah, you wouldn't like it.

11 HEARING EXAMINER RIVERA: Sir, excuse me --

12 MR. BOND: (Unintelligible.)

13 MS. MONTGOMERY: I'm sorry --

14 HEARING EXAMINER RIVERA: Excuse me --

15 MR. BOND: (Unintelligible.)

16 (Participants speaking en masse.)

17 HEARING EXAMINER RIVERA: Sir, excuse me --

18 (Participants speaking en masse.)

19 UNIDENTIFIED SPEAKER: Hey, hey, hey, hey, hey.

20 MR. BOND: He called me out. I didn't call him
21 out.

22 MR. DURLING: Hey, I'm just saying --

23 (Participants speaking en masse.)

24 HEARING EXAMINER RIVERA: Excuse me, we need to
25 recess.

1 (Recess from 11:01 a.m. to 11:17 a.m.)

2 HEARING EXAMINER RIVERA: Okay, everyone, we are
3 going to get back on the record. I just want to again
4 thank everybody for staying calm. And, again, safety
5 is our first priority so we can begin now, and I
6 appreciate your patience.

7 Thank you, sir, if you could resume your comments
8 where you left off.

9 MR. DURLING: Thank you. Just please give me a
10 heads-up if somebody else comes towards me, I'd
11 appreciate it.

12 And in response to that gentleman --

13 MS. MONTGOMERY: I'm sorry, we're not going to
14 respond to the gentleman --

15 MR. DURLING: All right.

16 HEARING EXAMINER RIVERA: I agree. We don't --

17 MR. DURLING: Well, just as a --

18 HEARING EXAMINER RIVERA: -- need to get into it.

19 MR. DURLING: -- as a personal comment, I'm not
20 against developing this land, I'm not, and I understand
21 change happens. My brother builds homes. I realize
22 it's -- it's a good thing. I'm just against the 40
23 percent density increase. That's pretty much what it
24 comes down to, thank you.

25 So getting back to the --

1 (Participants speaking in the back of the room)

2 HEARING EXAMINER RIVERA: I'm sorry.

3 Gentlemen, I'm sorry, I'm having a hard time
4 hearing. Thank you, I apologize to interrupt the
5 conversation. Thank you, sir.

6 MR. DURLING: Getting back to the 170-foot
7 setback, you know, I think the people on Duke Highway
8 are the biggest losers in this whole project. You look
9 at North River Oaks, which is a beautiful development,
10 just as beautiful as what we have, and I know -- I know
11 Mr. Cary lives there. I'm not sure if I can mention
12 his name, but he lives there and -- the western part of
13 that division -- subdivision, and look at all that
14 space. I mean, here's the man that's creating this
15 problem for everybody, yet he gets all this space.
16 He's getting --

17 MS. MONTGOMERY: I'm sorry, I'm going to object
18 again to the personal attacks and personal comments.

19 HEARING EXAMINER RIVERA: Again, if we could --

20 MS. MONTGOMERY: We have to stick to the zoning
21 criteria --

22 MR. DURLING: Isn't it a fact --

23 MS. MONTGOMERY: And besides the fact Mr. Cary is
24 a former judge and has his address and location
25 protected, and you're destroying that protection.

1 HEARING EXAMINER RIVERA: Again, if the -- the
2 testimony just needs to be relevant to the request, and
3 so not the ownership or how it's held.

4 MR. DURLING: Okay.

5 HEARING EXAMINER RIVERA: For example, the County
6 cannot regulate if it's a condo or if it's apartments,
7 if they were doing that kind of development. We don't
8 get into ownership. So if you could just limit it to
9 the project and what your comments are related to that.

10 MR. DURLING: Okay. Well, that nice piece of
11 property that looks like a state park next to North
12 River Oaks, I would like to have that buffer. I don't
13 know why that buffer is there but -- I'm sure because
14 the creek is there and stuff like that, but these
15 designers, I'm sure, can make it happen. I mean,
16 170-foot just doesn't seem reasonable to me.

17 And it's an affordable housing community. I'm not
18 sure how many in this room have been in one of those
19 recently when it's fully populated, probably not
20 anybody here, but I go through them several -- I go
21 through them fairly often. I'm sure -- I'm sure
22 Mr. Neal goes through them when they -- you know, when
23 they're finished, but do you go through it when they're
24 populated?

25 And the first thought I have, when you go in

1 there, is look at all the vehicles. These places are
2 jam-packed with cars. There's never enough parking.

3 And I -- I haven't heard anybody talk about
4 homeowners' -- I'm sure it's going to have a
5 homeowners' in this community, I'm assuming, but -- and
6 I'm sure that's going to control work vehicles, trucks,
7 box vans, things like that. You know, there's not
8 going to be boats and -- and hopefully all this is not
9 going to be there, trailers, motor homes. I'm assuming
10 that that's the way it's going to be.

11 So, again, I'm 170 feet away from this thing. It
12 sounds like there's going to be a berm, which is good,
13 but to be honest with you -- and the landscape expert
14 is saying we're going to plant all this foliage.
15 You're never going to see it. You know, we're going to
16 see it. We're going to hear it. There's no doubt
17 about -- about that.

18 I think there should be a bigger setback,
19 obviously. I think there should be a wall, to be
20 honest with you. That would cut down the noise and the
21 sight. And I'd much rather look at a wall than a
22 cluster community, I'm sorry to say. So -- or even
23 better -- even better, we have 420 acres that are
24 protected that we're going to turn into wetlands.
25 Well, why don't we put that on Duke Highway? Why don't

1 you give us -- why don't we take, I don't know, several
2 hundred acres and put it there? Why don't we get a
3 buffer? I think we're getting the worst part of this
4 whole deal, we really are.

5 And you know what? Like I said, I don't mind them
6 building this. I just want -- I want what I was
7 promised 35 years ago when I bought this property, one
8 home per acre. Go ahead and do that. Mr. Neal --
9 there was a graphic up there saying that's what he was
10 going to do. Why can't we all agree then, let's --
11 let's do that. It seems like the reasonable thing to
12 do, but we're not going to do it. I don't know why.

13 So anyway, I've owned this property on Duke
14 Highway since 1989. I purchased this property back
15 then because I knew it was a rural part of the county
16 surrounded by AG-2 property like the one I bought. So
17 I knew one day, if they were going to develop it, it
18 was going to be one home per acre.

19 When the Lee County Comprehensive Plan came out in
20 1995, it assured me that the Alva area would stay the
21 way it was meant to be, rural. Within the Plan it
22 states, Goal 27, maintain, enhance, and support the
23 heritage, rural character, natural resources, and
24 agricultural lands. That sounds good.

25 In addition, the Lee Plan for North Olga Community

1 Plan states, in Goal 29, that will promote and support
2 the unique rural character, heritage, economy, quality
3 of life, and natural resources in the North Olga
4 Community Plan area. I'm onboard with all that, and it
5 makes me feel good as a homeowner out there.

6 So changing zoning to residential planned
7 development does not meet anything within this
8 Comprehensive Plan. How will -- how will increasing
9 the density of these 788 acres to 40 percent meet this
10 requirement? Neal wants to make this a cluster
11 community, which doesn't meet the rural character or
12 quality of life issues in Alva. It's very clear.

13 Isn't the Bert Harris Act meant to protect me, as
14 a homeowner, against influential developers? I think
15 it is. Will the cluster -- will this clustered
16 affordable housing community impact the value of my
17 property? Well, I believe it will. My property value
18 will decrease, which is a violation of Bert Harris.
19 Government actions can't unfairly diminish the value of
20 my property without providing just compensation. I
21 think having affordable housing 170 feet from my front
22 yard, I think that -- that counts.

23 Would -- would a rezoning approval of this
24 property create an undue burden on existing
25 infrastructure? Well, that's a no-brainer, of course

1 it would. Building an additional 1,100 homes off of
2 two-lane North River Road will obviously impact
3 traffic, which is a quality of life issue.

4 So shouldn't rezoning any area within Lee County
5 be in the best interest of the County and the community
6 instead of a developer? That seems like a no-brainer
7 to me.

8 So who is benefiting? Well -- who is benefiting
9 from the 40 percent density increase? Well, of course,
10 it's benefiting a handful of people. The existing
11 property owners and Neal Communities will benefit
12 financially, and Alva and Lee County residents will be
13 the losers.

14 So because Neal and these property owners will
15 make a lot of money, we all must suffer. Why does
16 greed always seem to win out over common sense and
17 integrity? I don't know. I can't answer these
18 questions.

19 Alva has always been a rural environment and
20 attracted people who wanted to live the same lifestyle.
21 With this density increase, we're attracting people who
22 want a home at a reasonable price and really couldn't
23 care less about living in the country. These people
24 will live all the way out in Alva and then will have to
25 commute to other parts of the county. They'll have to

1 go back to Fort Myers or Cape Coral. How is that going
2 to fix our traffic problem? Which is already a mess,
3 as everybody knows.

4 And I saw recently on the news the other day where
5 Sanibel just passed an affordable housing community,
6 and I was like, wow, that surprised me. Well, then you
7 get to hear the details and, well, it's 18 units, and
8 the reason they're doing it is because there's people
9 out there that work in the restaurants, and they need a
10 place to live. That makes sense. We're building 1,100
11 homes out in the country where there's no jobs, and
12 then these people are going to have to go back into the
13 city to work, or wherever they go. It absolutely
14 doesn't make any sense.

15 So I think North River Road will have to be
16 widened from two lanes to four lanes to support this
17 increase since this cluster community will triple the
18 population of the area.

19 Why do we continue to bend over backwards for
20 developers and new developments over the rights of the
21 people who have been here for years, decades, and
22 generations? Our commissioner continues to tell us,
23 development is coming, and there's nothing we can do
24 about it. And I accept the fact develop -- development
25 is coming, but isn't his job to control the growth? I

1 really think it is. Not approve every zoning change
2 that appears in front of him. He approves everything.

3 The County Commissioners don't have to approve
4 this -- this rezoning, they shouldn't approve it, but
5 they will. They rarely explain why they decide the way
6 they do, but if they do this time, it will surely be
7 because of the Bert Harris Act. Well, what about the
8 people? What about us, the people that have already
9 homesteaded here in Alva for a rural lifestyle?

10 The other person that benefits from this rezoning,
11 of course, is our commissioner. It's difficult to
12 understand --

13 MS. MONTGOMERY: I'm going to object at this
14 point --

15 MR. DURLING: I'm sure you are.

16 MS. MONTGOMERY: -- in time. Again, we have got
17 to stop having personal attacks on people, including
18 Commissioners. It's not the issue before the Hearing
19 Examiner.

20 HEARING EXAMINER RIVERA: If you can just, again,
21 not single out individuals. You can -- of course, as a
22 citizen, you can --

23 MR. DURLING: Okay.

24 HEARING EXAMINER RIVERA: -- express displeasure
25 or frustration with the process --

1 MR. DURLING: Okay.

2 HEARING EXAMINER RIVERA: -- and those things.

3 MR. DURLING: Well, there's property on Route 31,
4 76 acres that was recently rezoned, and this property
5 is a -- is commercial, which will allow 400,000 square
6 feet of commercial buildings. Somebody that's
7 connected to that is a decision-making person on what's
8 going to happen with that property with -- the
9 Duke-Cary property.

10 So let's suppose the Commissioners approve the 40
11 percent increase of the 788-acre property, which they
12 will. Wouldn't that make his -- this commercial
13 property on 31 more valuable? Knowing that the density
14 increase provides a larger population in North Olga,
15 which are potential patrons for 400,000-square-foot
16 commercial buildings that some -- that he's trying to
17 sell, how is this not a conflict? It is a conflict no
18 matter what they say.

19 So no matter how their high-price attorneys spin
20 and try to justify all this, I think everybody here
21 knows what's going on is wrong. The people of Alva
22 bought into this community and the lifestyle; we've
23 paid our taxes for years and decades; we've been great
24 stewards of this land; and now we're going to allow
25 some outside developer to come in here and change the

1 rules, change the community, based on his attorney's
2 interpretation of the Lee County Comprehensive Plan.
3 It's absolute nonsense.

4 Why can't this property be developed as intended,
5 one home per acre? I'm sure there's money to be made
6 that way. Then we maintain, enhance, support the
7 heritage, rural character, and natural resources stated
8 in the Comprehensive Plan. Maybe it's because Neal
9 said that it doesn't fit their development plan. Well,
10 I guess there's probably more money to be made in a
11 cluster community. I don't know.

12 So why is this our problem? Why can't he just go
13 somewhere else? There are plenty of other areas in our
14 county that are designated for residential planned
15 developments, yet Neal insists on doing it here.

16 A message needs to be sent, enough is enough. The
17 County Commissioners continue to approve every density
18 increase proposed, and in return we -- we're
19 overdeveloping, overpopulating this beautiful county in
20 Florida. We must do the right thing and stop Neal from
21 building this cluster community eyesore that will
22 dramatically change Alva forever.

23 And just -- just to close I -- thank you again for
24 your attention and -- and everything. I think you're
25 doing a good job. I think you're going to be very

1 objective about this, which is very refreshing. And I
2 think even if you do support the people of Alva, I
3 don't think it matters. I think the Commissioners are
4 going to vote in favor of Neal. I think it's a done
5 deal. I think it's already -- I think it's already
6 done.

7 So it's -- it's sad for me because I've had this
8 property for 35 years. Over the years we've had
9 hundreds, if not thousands, of people come out, and
10 every time people come out, they're like, wow, this --
11 it's beautiful out here. The drive is beautiful. You
12 get out to -- to our place, it's beautiful. It's
13 just -- it's stunning. It really -- it's Old Florida.
14 Everybody will say that.

15 And now I'm sure people are going to come out a
16 few years from now when this is done, and I have
17 duplexes 170 feet from my front yard, and I'm sure
18 they're going to pull up, and they're going to be like,
19 how in the world did you get a cluster community of
20 duplexes across the street from where you live out in
21 Alva? And I -- I truly can't wrap my mind around how
22 something like this could happen. It seems -- it seems
23 so wrong that you're taking AG-2 property, one home per
24 acre; now we're increasing the density 40 percent,
25 cluster homes, duplexes, 170 feet from us and bigger

1 buffers everywhere else. It just -- it's just hard for
2 me to understand how this can all happen.

3 And it's -- the only word I can say that comes to
4 mind, when I think about this, is it's shameful.
5 What's going on here is shameful. I mean, I know Neal
6 is in the business of building homes and selling homes.
7 My brother is in the same business and -- but in this
8 case you're also in the business of destroying
9 communities because our -- this community is going to
10 be destroyed.

11 And I know the Cary family. They want to sell
12 their property. I -- people have the right -- I have
13 no -- no problem at all with somebody selling their
14 property. The problem I have is when you're an
15 advocate for increasing the density, why would you do
16 that to the people of your community? You live -- you
17 live out there. You understand what this is doing to
18 the community. Why don't you just say one home per
19 acre is the way it's going to be? Neal's already said
20 that he'll do that. Why are we going through this
21 battle when we really don't have to go through this
22 battle? I think we could all be together with this
23 thing.

24 The Neal team, their -- the presentation the other
25 day was incredible. It really was. They can take

1 anything, and with a little spin and going through the
2 loopholes and stuff, they -- they make you think like,
3 well, this might be the best thing to ever happen out
4 there. They do a good job.

5 The Staff -- Staff is wonderful. I actually
6 thought the Staff was part of the Neal team till I
7 found out later that, no, they're Lee County employees.
8 They're working well with the Lee team -- or with the
9 Neal team, so it's kind of interesting.

10 The traffic expert, you know, makes it sound like
11 we're not going to make traffic issues. 78 is going to
12 be fine. And with the construction on 31, we're going
13 to widen 31, and so there's not going to be any issues.
14 Well, you are going to have to go -- to go south,
15 instead of going left, you're going to have to go right
16 and go north and make a U-turn. Nevertheless -- and,
17 you know, he said there's funding in place, that it's
18 going to be there in five years. Well, then we -- we
19 hear information that there's no funding in place for
20 this. So there's going to be a big problem with
21 traffic, obviously. Everybody said it, and it's true.
22 Everybody knows it's true.

23 The environmental expert, wow, I -- I heard him
24 talk. He was amazing, too. They were all -- they're
25 all very amazing. The property right now, as it sits,

1 is probably a wasteland. And, really, it sounds like
2 the Neal team is going to come in, and they're going to
3 turn this into an environmental haven. It sounds like
4 it's the best thing that -- it goes against logic that
5 you're building 1,100 homes, and it's going to be the
6 best thing for the environment out there. I don't know
7 if I believe it or not, but it certainly sounds good.
8 I didn't hear anything about pesticides or fertilizers.
9 He might have talked about that, but, you know, there
10 are issues with that, as well.

11 Landscape guy, loved him, too. Somehow, someway,
12 they're going to make this development that's 170 feet
13 away from my house, or my front yard, they're going to
14 make it -- they're to make it vanish somehow with --
15 with all this foliage they're going to put in.
16 Hopefully -- you know, I didn't hear anything about
17 bamboo or arecas, but that's what you're going to need
18 to hide this thing from me.

19 And I don't know if those homes -- I know there's
20 a chance that they can be 35 feet tall. So I'm not
21 sure if the duplexes -- and I'm sure those are going to
22 be duplexes because I don't think they're going to put
23 the duplexes out -- you know, when you drive into the
24 community. So the other day when you were asking them,
25 they really weren't sure where they're going to go.

1 I'm not an expert on this, but I'm pretty sure they're
2 going to be right there on Duke Highway so -- that's
3 where they're going to be, and I'm not sure if they're
4 going to be 35 feet tall either so -- with my luck they
5 probably are.

6 So just in closing, I'd just like to say this
7 really is the way things work in a third-world country.
8 Down there, though, you have to bribe people to get
9 things -- people to do things. I'm not sure we're not
10 doing that here because I think we're -- you know, I
11 think these people are too smart to get caught up in
12 something like that, but it's -- it's sad. It's --
13 it's very, very sad, and obviously the system is
14 broken.

15 Thank you, I really appreciate your time.

16 MS. MONTGOMERY: I do have --

17 HEARING EXAMINER RIVERA: Thank you.

18 MS. MONTGOMERY: -- a question.

19 MR. DURLING: Yes. I'm not an expert with
20 anything, no, it's just all opinion.

21 MS. MONTGOMERY: Are you aware -- you talked about
22 the fact that you like the AG-2 regulations.

23 MR. DURLING: Yeah.

24 MS. MONTGOMERY: Do you know what the front
25 setback is from a road right-of-way in an AG-2

1 district?

2 MR. DURLING: Probably 40 feet.

3 MS. MONTGOMERY: It's 25 feet.

4 MR. DURLING: Okay.

5 MS. MONTGOMERY: So 170 feet -- I'm not good at
6 math -- is somewhere near a 100 percent increase over
7 what you said you like.

8 MR. DURLING: I love -- yeah, I love -- can I make
9 one -- one last comment?

10 HEARING EXAMINER RIVERA: Yes.

11 MR. DURLING: I'm glad that you said that, thank
12 you, because, yes, 25 feet from the road, yes, please
13 give that to me. I have one home on one acre 25 feet
14 from the road. Sold, I'll take that right now, instead
15 of a cluster of rows of homes 170 feet away.
16 Absolutely. Can we make a deal right now? I'll
17 definitely take that, thank you.

18 HEARING EXAMINER RIVERA: Thank you. Thank you
19 for coming today, sir, and your patience.

20 The next card I have is for Richard Blake.

21 UNIDENTIFIED SPEAKER: He's not here today.

22 HEARING EXAMINER RIVERA: He's not here? Okay,
23 let me make a note of that.

24 Okay. Duncan Brown, is Duncan Brown here? No?

25 Terri Lodge? Terri Lodge is not here.

1 Nancy Hutto?

2 UNIDENTIFIED SPEAKER: Not here.

3 HEARING EXAMINER RIVERA: Not here.

4 Susan Allen?

5 MS. ALLEN: It's supposed to be a video but -- can
6 you help me, Dirk? Thank you.

7 MR. DANLEY: Oh, yeah.

8 (Discussion at lectern)

9 HEARING EXAMINER RIVERA: Good morning.

10 MS. ALLEN: Hello, thank you so much for your
11 patience through this. I don't know how you do this
12 job because I -- you know.

13 My name is Susan Allen, and I live at 14641 Duke
14 Highway, and I did receive the close proximity thing.

15 First I'm going to play a video for you.

16 (Video played.)

17 (Discussion at lectern)

18 MS. ALLEN: Once again, my name is Susan Allen. I
19 am the president of Alva Strong, and I live at 14641
20 Duke Highway. And it was presented on that video, it's
21 a beautiful lane, and the proposed development will
22 definitely negatively affect myself and my neighbors.

23 I have received -- I have received a close
24 proximity notice, and I am in complete agreement with
25 those who have spoken in opposition to the zoning

1 request. And I believe that the Lee County
2 Comprehensive Plan has been spun to allow for increased
3 density against the best interest of those who will
4 live within the development, and those who have lived
5 in the neighboring communities for decades.

6 My observation, after listening to the Neal team,
7 is that if the houses are hidden behind shrubs,
8 masqueraded as rural, no one will recognize it as
9 anything but rural. I call that lipstick on a pig. I
10 don't believe that if you put up an entrance that looks
11 rural -- I don't know, maybe wagon wheels or hay
12 bales -- and you hide the 30-foot frontage lots and the
13 duplexes and the 10 feet distance between houses,
14 that's simply not rural.

15 The Lee County Plan calls for one house on one
16 acre, and I don't think there's anybody in opposition
17 to this situation that is against that. That's what we
18 thought was going to come into our area when we moved
19 here. We thought that this -- this was a future plan.
20 That was not like, oh, we're going to do it today.
21 We're going to do something different in the future.
22 This was the future plan. So when you buy here, there
23 is an expectation that this is the kind of community.
24 There's going to be 1,000 houses behind me. That's
25 3,000 people.

1 Several other neighborhoods have been developed on
2 the North River Road corridor and have been welcomed by
3 our community because of their willingness to adhere to
4 the Lee Plan and the acknowledgement that our -- the
5 acknowledgment of our rural nature. There's three
6 developments that are newer developments, and they're
7 beautiful. They're an acre plus, and they're gorgeous,
8 and they fit in great. We have no problem with that.

9 This builder would likewise be welcome if the
10 rules were equally applied. The landowner simply
11 picked the wrong builder for this property. It's a
12 square peg in a round hole. The County should not be
13 allowed to trim the edges to force the peg to fit. It
14 simply doesn't fit.

15 You have seen the map of Otter Creek. Otter Creek
16 runs by my house and through my property, and we have
17 major concerns for the water level, runoff, and
18 pollution from -- of the creek by fertilizers and
19 potential construction waste. Construction waste
20 mismanagement is also a concern as I was notified, as a
21 leader of Alva Strong, by a property owner from another
22 Neal development under construction that reported that
23 construction waste was being dumped in the retention
24 ponds, and they had video of the cement truck rinsing
25 its -- their tanks into the storm drains. This

1 whistleblower reported this to the FDA. And Otter
2 Creek -- as Otter Creek is a tidal creek and runs
3 directly into the river, any future mismanagement is a
4 major concern to me, as a landowner, and the public at
5 large.

6 This creek floods frequently at high tide,
7 especially king tides, and I don't know what's going to
8 happen with the runoff from this. It's very, very
9 concerning.

10 In addition to the community -- in addition, the
11 community was only given two weeks' notice of this
12 hearing with a Staff Report of 450 pages, giving us
13 little time to prepare, take off work, and notify the
14 community. Signs were rained out within several days
15 of posting, and the only -- only a few remained to
16 notify the public. Many more concerned citizens would
17 like to have voiced their concerns, but due to work and
18 other commitments and lack of early notice really
19 prevented that, and I think that's important.

20 Also the fact that a Neal employee knocked on my
21 neighbor's door on Tuesday asking why he was in
22 opposition to this property is very troubling. This
23 smacks of intimidation, and he was dis -- he dismissed
24 this hearing as a done deal, discouraging his
25 attendance. We do not know if he went to other

1 neighbors' homes. And I will say -- he's a few doors
2 from me -- he has a long driveway. You cannot see his
3 house from the road, and yet this gentleman went down
4 and knocked on his door and intimidated him, that he
5 should not come to this meeting. Who else did he say
6 that to?

7 In addition, the community has been aware that the
8 Applicant has employed a lobbyist, who is
9 coincidentally the campaign manager for four out of the
10 five Commissioners, as well as contributing to all five
11 Commissioners. This just isn't good luck, and there
12 just is an appearance of impropriety to the community.
13 Whether it's true or not, whether there's a problem or
14 not, there is definitely an appearance. And we have
15 felt, as a group, that we -- our voices are not
16 represented at all, in any way.

17 So to get to my main point here, I am a registered
18 nurse -- or was a registered nurse for 43 years. I
19 served including emergency and critical care and
20 hospice nursing, as well as in education.
21 Healthcare/public safety are critical concerns, and I
22 believe that this is the most important aspect of this
23 rezoning and unbridled and exponential development
24 happening -- happening throughout Lee County and
25 particularly our surrounding remaining rural areas.

1 The numbers we have seen are attached to real
2 people -- daughters, sons, mothers, grandparents, all
3 this data we've been seeing. They're not -- people are
4 not a dot on a map. We are talking about increasing a
5 local population thrice, and that's approximately 3,000
6 people in one community, which is considered already
7 medically underserved. Where we are with our
8 population now is considered medically underserved.

9 In addition, this community exit onto North River
10 Road, which is a two-lane road which feeds into Route
11 31, which is already a very heavily -- very heavy
12 construction traffic from Babcock Ranch, and has a very
13 high vehicular fatality rate. A 19-year-old died just
14 a few weeks ago on that road. This is a major, major
15 public safety issue, and we are going to put 3,000 more
16 people feeding onto that road.

17 So now I would like to go to my presentation here.

18 So unbridled development and healthcare
19 consequences. Per your Zoning Staff Report, we're
20 supposed to preserve and promote the general intent of
21 this Code to protect public safety -- public health,
22 safety, and welfare, and that's what I want to address
23 today.

24 So I pulled these numbers up. This is population
25 characteristics. We're talking about density. There's

1 a reason we want to limit density and -- there's
2 multiple reasons. But when you see the difference --
3 and here's Lee County, we're right now at this
4 population, 822,453 in a 781-square-mile radius. Now,
5 this number is going to be a million within five years,
6 especially if we continue with this, because this is --
7 this is a huge problem. I don't know why our County
8 seems to be hell-bent -- excuse me -- on rapidly trying
9 to get to a million. I'm not understanding.

10 But look at our density here compared to Collier
11 County and Charlotte County. So what are we going to
12 do? We're going to increase -- we're going to gift a
13 builder density, more density, for a property that he
14 knew up front couldn't -- you couldn't build on the
15 whole property. So he wants to be rewarded for what I
16 think was -- might have been a kind of not smart
17 business decision by, oh, we're going to give you or
18 entitle you to more density. I think that's kind of
19 scary.

20 Increased density drives exponential population
21 growth, and population growth increases demand for
22 healthcare -- healthcare. This development will
23 increase the density of North Olga and Northeast Lee
24 County by about 46 percent. That is over 1,000 homes,
25 and about 3,000 people which will be medically

1 underserved, as that will show.

2 Prolonged wait times in emergency rooms directly
3 are affected by population growth. Lee County is one
4 of the top ten fastest-growing counties in the nation.
5 With that population explosion comes the need for more
6 services to meet the growing needs of our new
7 residents, in particular medical services. Keeping
8 this up with our historically fast-growing community
9 needs has already been -- has already been a priority
10 and a challenge, and that's from LeeHealth.

11 So I want to speak -- oops, I think -- okay.

12 Lee County is medically underserved. It is
13 considered critically medically underserved. A
14 critical shortage of doctors and nurses, a critical
15 shortage of hospital beds -- which I'll demonstrate --
16 and demands on EMS response times at the current
17 population, much less once we increase that population,
18 especially in this kind of rural, kind of distance
19 area, where we don't have immediate medical services.
20 We really are behind the eight ball in this county on
21 healthcare.

22 So according to the Lee County Staff Report, Lee
23 County EMS cannot yet sufficiently serve the entirety
24 of the subject property area within the established
25 response time at the current population. So let's add

1 more, you know...

2 Uh-oh, what happened? Can you fix it?

3 (Discussion at lectern)

4 MS. ALLEN: Okay, there we go.

5 What if your loved one was in this car, and EMS
6 said, can't arrive in the established response time
7 threshold? As a nurse there's a thing called the
8 golden hour, and the golden hour is the time -- it's
9 that window of opportunity, if somebody has a trauma,
10 that -- that if you can get to them and get them to
11 advanced medical care, that they have the best chance
12 of survival. So when you have a delay in EMS services,
13 especially in a rural area that's already taking them a
14 while to get out there, you're really eating up that
15 clock.

16 So the benchmark for EMS services is 8 minutes and
17 59 seconds 90 percent of the time, and that is the --
18 the higher end of the degree of injury.

19 So here is what our response times look like in
20 Lee County, not so good. This mark here is the 90
21 percent. The red are life-threatening, and the green
22 are non-life-threatening events. And you can see that
23 Lee County is well under that 90 percent most of the
24 time.

25 Per Lee County Florida Department of Community

1 Development Zoning Section Staff Report, during the
2 review of this request, Lee County Public Staff (sic)
3 advised that current EMS infrastructure is not able to
4 respond to emergency calls at acceptable level of
5 service. Public Safety also noted that the -- the site
6 at Babcock is planned for development of a new facility
7 which will correct the service -- correct the level of
8 service of EMS. Given this existence of service
9 deficiency, Staff recommends a condition of approval to
10 limit development until such time that appropriate
11 level of service can be done.

12 Now, this Babcock Ranch EMS is five years out, and
13 is probably not -- still not going to be adequate when
14 you look at the numbers even once it's built, because
15 there are even ambulances that have been purchased by
16 Lee County that don't have staff to run them now. So,
17 again, I think this limited development, I think,
18 speaks to why are we manipulating the Lee Plan to fit
19 this particular Applicant where up front they knew that
20 this was a one-acre-per-house situation.

21 So if you're going to have a heart attack, you
22 might want to wait five years to do it.

23 Okay. Critical -- critical nursing and physician
24 shortage in Lee County. Over 30 percent of our
25 population is over 65. These are the people who need

1 healthcare the most. The percentage of this
2 demographic is also growing. Population growth is one
3 of the greatest forces of change in the -- in the
4 healthcare and -- in the healthcare system and
5 threatens our ability to provide access to care for the
6 people of our community. Why are we adding 1,000
7 homes, 3,000 people, tripling our local population, in
8 direct opposition to the well-thought-out community
9 plan? Healthcare shortages are not just an
10 inconvenience. It is life-threatening.

11 So you talk about traffic, it's an inconvenience;
12 but if you're trying to get an ambulance to you -- and
13 cardiac death -- or brain death happens six minutes
14 after cardiac arrest, and yet our -- even the benchmark
15 is 8 minutes and 59 seconds, which I showed on the
16 graph we're not meeting. Now we're going to add more
17 population.

18 And it's almost like it's death through a thousand
19 cuts. This is just one community. What's, you know, a
20 few more houses. But this is happening over and over
21 all over. This Applicant has bought -- purchased land
22 all around us so we know kind of what's happening. The
23 community is not stupid. We're watching. So this
24 is a -- this is death by a thousand cuts. You just
25 keep adding and -- and every time they apply, they want

1 bonus density, and they want more and more and more and
2 more and more, but something's got to give, and
3 unfortunately it could be a child, a grandmother. Who
4 is going to be the one that's going to be the
5 sacrificial lamb because we didn't plan well?

6 Okay. As a nurse, this is an area that is near
7 and dear to my heart. There is a nursing shortage in
8 Lee County, and it is population driven. Unsafe nurse
9 ratios, when you have an overabundance of demand, the
10 supply side being nurses. If you can't -- if you're
11 not dealing with the demand, you can keep pumping
12 nurses in, you can keep pumping doctors in, and you can
13 do what you want, but not if you keep exponentially --
14 and these nurses since COVID -- thank God I retired
15 when I did. I don't -- just the ratios these nurses
16 have to deal with is unsafe.

17 And let me tell you something, they're really
18 pumping nurses out now to try to help with this
19 shortage. There is nothing more dangerous than a new
20 nurse. I was one, and I know that there is nothing
21 more dangerous. So even though we're trying to get
22 that supply up, these are not going to be experienced,
23 seasoned nurses for quite a while. Aging nurse force,
24 20 percent are over 60. They're going to be tapping
25 out. Florida nurse shortage, they expect it to raise

1 to 60,000 by 2035 -- and, actually, that shortage is
2 higher in our specific area. Unbridled development,
3 population-driven needs, that's what's really driving
4 this. That is the demand side of this.

5 I won't read all this. These are just news
6 articles about the nursing shortage. You know, again,
7 60,000 nurses short by 2035. You can read this if you
8 want.

9 I did it again. You can tell I was a nurse and
10 not a tech person.

11 (Discussion at lectern)

12 MS. ALLEN: Thank you.

13 All right. Also there's a doctor shortage. At
14 present -- at present Florida ranks 43rd nationally in
15 the number of medical residents. Medical residents
16 kind of -- they kind of stick to the area that they --
17 they went to.

18 Fourth most popular state in the nation, but we
19 have a severe, severe doctor shortage, especially in
20 rural areas. Highest deficit is in Cape Coral, Lehigh,
21 Alva, and Fort Myers. Lee County is short 273 adult
22 primary care physicians and currently has a shortage
23 that will climb to 625 doctors by 2025 the data shows.

24 And now I want to stop a moment, and I want to
25 give you some anecdotal evidence of what this is. I

1 have a best friend. She's been my best friend since I
2 was 17 years old. We were roommates in nursing school
3 together. Two, two and a half years ago, she had an
4 adverse reaction to the COVID vaccine and ended up in
5 the ICU with endocarditis, kidney failure, heart
6 failure, and was on dialysis. After she was finally
7 discharged, we flew -- she and her mother, 95 years
8 old -- she was the sole caregiver of her mother, who
9 recently passed about four years ago. She lived with
10 us for the last two and a half years. We were helping
11 the two of them.

12 About a year ago Kay was diagnosed with cancer.
13 She had a hysterectomy. She was told everything is
14 fine. You're cancer free. Her follow-up scan six
15 months later showed multiple metastatic disease,
16 multiple tumors throughout her belly which were
17 incurable. Her oncologist -- her oncology surgeon
18 referred her to a medical oncologist.

19 You want to guess how long it took her to get that
20 appointment? Three months, and it was in Tampa, three
21 months. Do you want to know what her prognosis is?
22 Four to fourteen months. Three months wasted while she
23 tried to get a doctor to see her, and the first doctor
24 that saw her was a tele-visit because they didn't have
25 any office hours. She called multiple oncologists. I

1 got on the phone trying to get her in.

2 When we say there's a shortage of doctors, this
3 is -- this is not something abstract that's out there.
4 This affects people today in our community, and we
5 can't keep pumping people in. Again, you have to look
6 at the demand side of this. The answer is not more
7 doctors. The answer is more doctors and less
8 population.

9 So what do we do as a County? We keep approving,
10 approving, approving density increase after density --
11 with complicit Commissioners who own property
12 themselves that they're trying to develop.

13 Second story. My husband has pneumonia from
14 COVID. He got it about a month ago. Took him to the
15 ER last week -- week before last. Tuesday morning,
16 offseason, 10:30 in the morning we get there. Guess
17 when we saw a doctor? 5:00 at night. And that's
18 typical. I've been to that ER a couple of times with
19 my friend. One time it was eight hours, and one time
20 it was twelve hours to see a physician. This is common
21 here, and we're not a third-world country, but, boy, it
22 sure looks like one. We have to deal with the demand
23 side of this issue.

24 Okay. So talked about hospital -- nurse shortage,
25 EMS, prolonged response times, physician shortage. Now

1 I'm going to talk about hospital bed availability.

2 This is the number of hospital beds per thousand
3 people. You can see we're below the state. Primary
4 care physicians were below the state. .66 percent of
5 public safety professionals per population, average is
6 .82. Okay.

7 I know this is hard to see, but I spent a long
8 time on this last night trying to -- to make sure you
9 could kind of see this.

10 Now, we have several hospitals. Most people in my
11 area go to Gulf Coast because it is -- they have more
12 services.

13 If you look at this line right here, this is the
14 number of -- percentage of occupancy of hospital beds,
15 and this is the ICU percentage. The safe number is
16 this right here, 85 percent. A hospital should never
17 be occupied more than 85 percent to ensure safety of
18 the, you know, people.

19 ICU should be between 70 and 75 percent.

20 All of these numbers in red are over 90, and some
21 of them are like 97 percent. At Lee Memorial, one day
22 they had 111.3 percent bed occupancy. So people were
23 in the halls, yeah.

24 And, again, this goes -- this is about a year's
25 worth. So you can go back -- I wanted to capture the

1 full year so you could see in season, out of season.
2 It really doesn't seem to matter. It's almost all over
3 90 percent, and I'm not talking low 90s either. We're
4 talking 95, 90 -- you know, it's up there.

5 So that's scary. As a nurse that's scary. I'll
6 tell you right now, I would not want to work at that
7 hospital. I would not do it because you know the
8 patient ratio is just whacked.

9 The other thing that's super, super important,
10 especially after Ian, is evacuation times. Again, when
11 you look at this particular property, you're going out
12 onto North River Road, which is a two-lane road. Right
13 now, on any given day, you're going to sit through the
14 cycle of a light -- especially in the morning --
15 sometimes two or three times. So -- and that's --
16 we're going to triple -- now we're going to triple the
17 population.

18 So if you have an evacuation event, right now it
19 takes 41 hours to leave the county and 89 to get out of
20 Southwest Florida. High-density housing and
21 exponential population growth in Lee County only add to
22 the stress on emergency services and puts people at
23 risk. Again, these are not just numbers. All of these
24 are people, they're your pets you're trying to get out.
25 It's scary. It's scary.

1 And this is just for a little humor. We can't
2 keep feeding him because you know what happens when you
3 keep feeding -- some -- something is going to explode.

4 And I have a comment about -- okay. Miami is the
5 second worst city to retire in the nation due to
6 traffic. "At build-out we will be Broward County," and
7 that comment came from Frank Mann, former Commissioner.
8 He saw it coming, and I wish he were still here. He
9 saw it coming.

10 We can't keep feeding it. We can't keep feeding
11 this.

12 And so I implore you to request that this
13 Applicant follow the same rules that North River --
14 Riverwind Cove and the other communities along our road
15 did. We can't take it. And it -- it sounds -- you
16 know, there's been a lot about rural and things, and
17 that's super, super important, but public safety is --
18 my God, there's just nothing more important than that,
19 and I think it's been ignored.

20 I just implore you to do the right thing here. I
21 really do. Because there's some kid that's going to
22 get killed out on 31 like happened a few weeks ago, and
23 it's not going to stop. And the more we add to it --
24 with the construction of Babcock Ranch, those trucks go
25 flying through there. We don't need any more of that.

1 We just don't.

2 And I thank you so much for listening, and I pray
3 that you act on it, as well. Thank you.

4 HEARING EXAMINER RIVERA: Thank you. Thank you
5 for coming today.

6 Okay. It is 12:10 so we are going to break for
7 lunch. We'll do one hour, and we'll resume back at
8 1:15, and we'll pick back up with the comment cards in
9 the order that I have them. If you need them in a
10 particular order, please let Staff know so that they
11 can alter the order. Otherwise, as I said, I'll
12 continue until we finish. Thank you.

13 (Recess from 12:10 p.m. to 1:18 p.m.)

14 HEARING EXAMINER RIVERA: Okay. We are back on
15 the record. Again, we are resuming with public
16 comment. So the next card that I have is Andy Tilton.
17 Good afternoon.

18 MR. TILTON: Good afternoon. Let's see if I can
19 figure out how to operate this.

20 MR. DANLEY: Let me help you.

21 MR. TILTON: Yeah, if you would.

22 (Discussion at lectern)

23 MR. TILTON: Okay. Good afternoon, I'm Andy
24 Tilton. For the record, I live at 18810 Serenoa Court,
25 which is -- on this graphic here, it's this triangular

1 lot at the south end of Serenoa Court. My wife and I
2 and family have lived there -- the kids grew up there
3 from about 1991 to today; and as long as my wife and I
4 can, we're going to stay right there. We kinda like
5 it.

6 We have been there quite a while. I have grown up
7 here in Fort Myers, Lee County. I was born in Lee
8 Memorial Hospital. The part of it that I was born in
9 is now a parking lot, but that's the way things change.

10 When I was about five years old, the State decided
11 to build US 41 in front of my house in North Fort
12 Myers. The right-of-way was 15 feet from our property
13 line. So in '62 I got to watch them build two lanes,
14 and then in 1964 I got to watch them come back and
15 build the other two lanes. So I know a little bit
16 about things changing in your neighborhood.

17 A lot of people have talked that this is Alva. I
18 was told by a friend of mine years ago that was from
19 Alva that I really wasn't in Alva, and the reason I was
20 in Alva is because of the zip code, not because -- and
21 that happened in 1971. So I live north of the river, I
22 have an East Fort Myers phone number and an Alva zip
23 code. So sometimes people go, well, where do you
24 really live?

25 I also wanted to say I have no financial contact

1 with this project. I am vice president of the
2 homeowners' association, but I am not speaking for the
3 homeowners' association. I'm speaking as an
4 individual.

5 Much of the land around, as it's been mentioned,
6 especially to the east and south is dredge spoil. I,
7 as a child, actually spent time on both the Povia and
8 the Duke-Cary properties hunting for fossils, sharks'
9 teeth primarily. At five, six, seven years old,
10 sharks' teeth make more sense than busted up pieces of
11 shell. So I do know what it was.

12 Some of that, where it's the highest ground, is
13 geologically really good material because it's the
14 coarse material. There are some areas that are going
15 to have to be rehabilitated because it's the silt and
16 clays that came out of the dredge spoil material, all
17 of which is just a matter of where you move dirt
18 around. I don't see it as a hindrance. In fact, the
19 families have sold some of that material to Lee County
20 for its fine soil properties to cap part of the
21 landfill. So it does have purposes. It's just not for
22 building houses on. And whoever mentioned that
23 earlier, they're correct. You don't want to build a
24 house on it. But the high spots, that's great building
25 material. I'd love to have that.

1 Much of the land that they're proposing for
2 development was also proposed for development 15 to 20
3 years ago by another developer. The stock market crash
4 in '10 killed that project. So, hence, we jump forward
5 another 15, 20 years, and people are back looking at
6 the same -- similar chunk of property.

7 While I'm not excited about the land use changing,
8 because I've lived there and gotten kind of used to it
9 after 33 or 4 years, I always knew that it would
10 change. In fact, when I bought the property out there,
11 there was discussion in Lee County about having a
12 beltway around the county. That piece of 78 was part
13 of the beltway proposal. I don't know that that
14 beltway will ever go, I'm not suggesting it will or
15 should, but it's the reason I chose the lot at the
16 south end of the street instead of -- there were four
17 lots sold at the time. I had a choice of ten. I knew
18 the owner of two of those, and they were willing to
19 trade me a lot if I happened to want one of the lots
20 they had. I didn't do either of those. I just bought
21 one outright. But it's part of the reason I bought at
22 the south end of the street.

23 By the same token, I understand that if 788 homes
24 are put on that -- under current zoning, which is
25 allowable, that most of the land will get used up for

1 homesites and roads and stormwater ponds. There will
2 be very little set aside, other than what's
3 environmentally required through environmental
4 permitting. And so it's going to look quite a
5 bit different if that -- this is the proposed one now.
6 We've got distances of -- at least from our subdivision
7 of over 400 feet in these directions, and quite a bit
8 more to the west.

9 If we go to what could be, without having some
10 sort of -- just doing 788 homes, then if I were the
11 developer -- and I've done some of this kind of work
12 for a few years -- I would do something like this --
13 although this is crude and it looks pretty choppy --
14 and, no, it wouldn't have roads -- three or four roads
15 going across Trout Creek. There would be at least one
16 crossing in my plan.

17 The other thing I would do is there where Trout
18 Creek goes through this property down through here,
19 there's -- by County ordinance you could put about 40
20 docks along there for boat access, fishing, things like
21 that, on Trout Creek. The plan, as I understand it --
22 and maybe I don't understand it correctly, but the
23 plan, as I understand it, they've restricted any kind
24 of zoning -- or any kind of use along that area to be
25 mostly passive recreation at best, and that they would

1 not be placing any docks along this stretch of the
2 creek. The last time I looked, the County ordinance
3 allowed a dock every 100 feet. So that's how I came up
4 to the, round number, 40. I won't tell you I measured
5 it. When you own both sides of the creek, you can have
6 100 feet on each side of the creek. So that gets you a
7 few more.

8 So from that standpoint, I think there's some
9 things that if I were developing the property without
10 the clustering, without the density addition, it would
11 look a lot different. And that -- the other part of
12 that is, as a developer, I would not have to be here at
13 this hearing. This hearing would not exist because if
14 I stayed under the present land use, I go directly to a
15 development order, directly to my Water Management
16 District permitting, and so forth. I don't have to go
17 through a rezoning, before this body, the LPA, and the
18 Commission. And one of our former County Commissioners
19 used to bemoan the fact that people could do that and
20 didn't have to come to the Commission to get the
21 Commission's input. Whether you agree or disagree with
22 the gentleman, that's here nor there.

23 And so one of the other things is that by -- at
24 least for the subdivision that I live in, and I don't
25 know about the Duke Highway side because I don't know

1 exactly where the waterlines are proposed, but the
2 proposal is to put a waterline to connect the east and
3 the west, to loop it to put a waterline along State
4 Road -- County Road 78 now, which would put a fire
5 hydrant right at our entrance. That will greatly
6 improve the capability for the fire department, because
7 now the closest hydrant is about three and a half
8 miles. And so having one at the end of the street,
9 while it's still 2,000 feet from my home, it's a lot
10 closer than three and a half miles. And some of the
11 homes right at the front end will be within 300 or 400
12 feet of that fire hydrant, which makes their fire
13 insurance rates go down considerably.

14 And so, I guess, all said and done, I know change
15 will happen, and I would prefer this plan over the,
16 quote, do-nothing plan, but the do-nothing plan is not
17 to do nothing. The do-nothing plan means that all of
18 these lots -- and there could be lots right along --
19 there was discussion about a 170-foot setback from Duke
20 Highway. If I were developing it, I would put a row of
21 houses along Duke Highway, and their -- their setback
22 would be, I believe I heard earlier, 25 feet. So
23 within that 170 feet would be the whole lot, not just a
24 setback. And so -- and there would be no berm because
25 there would not be a requirement for a berm, would not

1 be a requirement for peripheral landscaping and things.
2 Each house, based on County Code, might have one or two
3 trees and a few bushes, but that's not going to block
4 the view, if you will, from those homes.

5 And so just like -- and that's part of the reason
6 that I bought this lot where I did and oriented my
7 home -- my home sits here. Under this plan, there
8 would be a lot right here off my back property line.
9 But I also have 300 or 400 feet of trees in between me
10 so I could stand that. Some of the other people in the
11 neighborhood, they just have pasture, and they're going
12 to see -- if that house is 50 feet off or 75 feet off
13 their property line, they're going to see it right
14 there. So I'm not sure exactly what we're going to get
15 if we turn all this down and say we don't want the
16 increased density -- which I'm not a tickled person
17 about, but I'm just saying there's trade-offs on both
18 sides of the fence. And so from my perspective, I am
19 for this plan and would like it to go ahead, knowing
20 what could be done without the plan.

21 And I thank you very much for your time, ma'am.
22 You have a good day.

23 HEARING EXAMINER RIVERA: Thank you. Thank you
24 for coming today.

25 MR. TILTON: Oh, any questions?

1 HEARING EXAMINER RIVERA: No, thank you.

2 MS. MONTGOMERY: No.

3 HEARING EXAMINER RIVERA: The next card I have is
4 for Michelle Burks or Burns.

5 UNIDENTIFIED SPEAKER: Not here.

6 HEARING EXAMINER RIVERA: Okay, thank you.

7 Dylan Cochran?

8 UNIDENTIFIED SPEAKER: Not here.

9 HEARING EXAMINER RIVERA: Okay, thank you.

10 Katrina --

11 MS. SALOKAR: Salokar.

12 HEARING EXAMINER RIVERA: I'm sorry -- yes, thank
13 you. I apologize for that mispronouncement.

14 Good afternoon.

15 MS. SALOKAR: Good afternoon. My name is Katrina
16 Salokar, and I agree with the community members who
17 have spoken here in opposition to the increase in
18 density and precedent-setting modifications this
19 proposal may bring.

20 I've lived in Lee County for 35 years, and we
21 moved here from the Chicago area when I was 20, and I'm
22 55 now.

23 I came today to offer, if you find it useful, a
24 broader countywide regional and state-level perspective
25 on the matter before you. I contend that allowing this

1 development to go through as planned may create a
2 ripple effect whereby others with your same -- with
3 same intentions can build on, and it may help to ruin
4 the rest of North River Road, as well as potentially
5 the future of Lee County, and even affect the state.

6 Please consider the following to establish my
7 familiarity with the issue and to establish me as an
8 expert: Locally I'm a member of the civic
9 organizations, Alva, Inc., Alva Strong, the Alva
10 Museum, Preserve Buckingham, East Lee Wildlife
11 Stewardship Group, Unite Lehigh, Lehigh Acres Community
12 Council, and one religious institution, the Alva Church
13 of God.

14 I've been in Alva two to five times a week since
15 November of 2023, coming in from the 31/North River
16 Road entrance, and then also across the bridge, and
17 I've spent hours in Alva and agree with the various
18 testimonies against the project.

19 To establish my ability to speak to the regional
20 interests, consider I own the East Lee County News, The
21 Roar, a direct mail paper that circulates to 65,000
22 once a month through physical copies, with additional
23 online circulation. The paper has been in print since
24 the '90s, and it's been in various forms; and recently,
25 for five years and nine months, it's been the East Lee

1 County News, The Roar, exclusively.

2 May I present you copies? There are articles in
3 it that -- because we take submissions, and I'm about
4 to tell you that.

5 HEARING EXAMINER RIVERA: Do you want me to
6 reference it now? If not, you can give it to Maria.
7 Did you want me to look at it while you were speaking?

8 MS. SALOKAR: Oh, not necessarily.

9 HEARING EXAMINER RIVERA: Okay. If you could give
10 it to her, then she's --

11 MS. SALOKAR: I'll --

12 (Salokar Exhibit 1 submitted.)

13 HEARING EXAMINER RIVERA: Thank you. She's
14 gathering the evidence for us. Thank you very much.

15 MS. SALOKAR: So the paper has been in print, like
16 I said, and -- let's see. We've been taking
17 submissions and articles from the Alva community since
18 the -- since the December time frame -- January time
19 frame, and many of the articles and the issues I've
20 given you reflect the testimonies you've heard today.
21 And there are actually two articles that you haven't
22 heard too much about today, that would be the Bert
23 Harris Act and the rebuttal of the Bert Harris Act as
24 it's currently been in use. That's in this issue,
25 current, and then the -- the last issue.

1 So with that, I own the Southwest Florida Business
2 Alliance. It's a -- it's -- for the last five years
3 with 1,400 contacts and members circulating, and 17 to
4 19 events per month, in subgroups throughout Lee County
5 called the Business Network, the Under 40s, the Ladies'
6 League Singles Group, Building Industry Alliance,
7 Custom Home Builders Association. And most
8 importantly, a 45-member Executive Advisory Board of
9 Subject Matter Experts, of which Grant Fichter, the
10 vice president of AIM Engineering for surveying; Rose
11 Connor, a former hospital board member and LeeHealth IT
12 expert, both North Olga residents, are on that board;
13 and then politician and philanthropist Amanda Cochran
14 of the North River/West Alva side are all members.

15 This executive group takes up the input and the
16 concerns of the larger group and works to meet with the
17 heads of Lee County Economic Development directly; and
18 through the Horizon Council, where five of our
19 executive members correctly serve and another five have
20 been nominated, we have formed an official subcommittee
21 of realtors to counsel in to the department, as well,
22 and have held two meetings on that. This is all in an
23 effort to avoid this level of disenfranchising -- or
24 disenfranchisement that we're seeing in all of these
25 land use hearings over -- over time.

1 And my executive group is in talks over advancing
2 single-member districts with Matt Caldwell and members
3 of the House and the Senate delegation, who have been
4 volunteering as surrogates recently when the BoCC would
5 not meet with the delegation on the matter.

6 Two of our executive members are on the Fort Myers
7 City Planning Commission; they're appointed to the MPO;
8 they have many other county committees. They're
9 supporting Stantec and the MPO on the state-mandated
10 study to reduce violent traffic deaths and -- and
11 dismemberments that are occurring. Severe accidents in
12 Lee County, we're number two in the state for that, and
13 the State has literally mandated that that change. One
14 of our board members voluntarily assisted the MPO with
15 the scope of work for that study.

16 I'm currently a refugee from Sanibel and Captiva
17 islands. I've worked in our hospitality industry since
18 '91, and Ian wiped out tourism on the islands, and our
19 chief county economic driver went with that in Lee
20 County for the -- for the foreseeable future.

21 I need to establish more where I've come from for
22 this next point. In '96 began inn-keeping on
23 Sanibel-Captiva; formed an accommodations management
24 company; worked with Keith Trowbridge, the inventor of
25 time-share; worked with Bud Nocera, the man who

1 invented Visit Florida; and our County's Visitors
2 Convention Bureau -- worked for them, my agency
3 backdoored all of their operations -- as well as Gerard
4 Beck, who's the River District Alliance, he was an
5 urban planner who ran that for a number of years, we
6 back-ended him, as well. So I have all that experience
7 with economic development.

8 We also were the largest recipients of the grants
9 from the Visitors Convention Bureau for things like
10 (unintelligible), sand sculpting, the downtown
11 fireworks. We did all of those events. All of that is
12 pretty much laid to waste.

13 We also had 19 to 22 properties on four islands
14 from -- from the Everglades to Boca Grande that we put
15 into expediabooking.com, International Tour Operations;
16 and in 2010 to 2020 basically raised the occupancy of
17 Lee County 40 percent.

18 Why am I bringing this up? Well, having met with
19 basically Economic Development to ask what's next
20 because we've lost the lungs of Lee County in -- in
21 what's happened on Sanibel-Captiva.

22 For that point, where we're at is we're
23 taking growing our economy and our region very
24 seriously, and what goes directly to that is quality of
25 place.

1 So at the Museum of Alva -- we'll switch back to
2 that -- what we have there is -- something I've
3 learned, it was the original Board of Trade. Alva was
4 the seat at the Board of Trade in 1917. There's a
5 document to that effect there. And it comes full
6 circle because now the east is being looked at as the
7 next area that The News-Press has called the
8 undeveloped triangle. They're looking to the large
9 expanse of land to come up with economically
10 sustainable, viable economy-driving initiatives. And
11 in order to anchor that, we need a pillar called
12 quality of place.

13 At the museum we currently ran a number of really
14 great programs that happen on Saturdays, and we widely
15 invited visitors to come. And these programs were
16 well-attended by people from all around the county,
17 which was kind of surprising -- it had never happened
18 before -- and there were five programs in high season.
19 And people explained -- because I literally stood there
20 for every program and had people sign in and learned
21 where they were from exactly. They were to capacity,
22 every program we ran, and they explained that they come
23 out frequently to do agri-tourism, and that they go
24 through Buckingham, they go through Alva, they go all
25 the way out to Hendry County to enjoy some of the --

1 the facilities out there.

2 With that being said, I realized -- you know,
3 coming from my background, I realized that Alva was
4 really critical to quality of place.

5 We went ahead and met with John Talmage, had him
6 come out and tour the place, and he agrees and believes
7 that there should be -- Lee County Economic Development
8 believes that there should be a five-county --
9 potentially six with Monroe -- effort to identify
10 heritage places in -- in the areas, and then go ahead
11 and get behind them and strengthen them. Because if
12 we're going to do any kind of next phase of remodeling,
13 we're going to need people to enjoy the place when they
14 come. And what we're concerned about is that this
15 project will basically take out -- start -- start us
16 down a path of taking out old 78 and -- and not at all
17 preserving the quality of place.

18 Sewer under the river. So when I met with -- at
19 John's suggestion, I went out and met with Hendry
20 County and -- to see where we had -- Alva and Hendry
21 had any kind of an alignment. And the gentleman and
22 the lady who are in Economic Development and Community
23 Development out there for the government said, we're
24 concentrating all of our development on 80, and we want
25 to stay off 78. And to that end, they also directly

1 told me that they had developers pressuring them to put
2 sewer under the river, and he was very interested in
3 that not happening, and was wondering what we were
4 doing to attempt to prevent that because they have
5 concerns around that, as well.

6 Let's see. Lastly, Paradise Business Consulting,
7 a form of my umbrella company, is working on parlaying
8 the Edison Awards for Innovation into a countywide
9 movement that will anchor the east and rebrand the
10 county as the next hottest spot for innovation in the
11 USA. We call it the Innovative Operative and the IO
12 Exchange, and the innovation movement that's being
13 birthed by professionals out of the best business
14 schools in the world, course work certifications,
15 database systems, allowing connectivity for startups
16 and companies needing to go to the next level with
17 technologies, experts, and investors all connecting.

18 Why do I mention it? Well, one of the whole
19 pillars in that plan, the plan that's been developed at
20 these business schools around the country, and that
21 actually the U.S. -- or the Florida Chamber of Commerce
22 has identified, as well, it's all quality of place.
23 You have to have the quality of place in order to
24 anchor that kind of interest into your region.

25 So they actually, at the Florida Chamber,

1 identified the Florida goals for the future on
2 Florida2030.org, global competitiveness, prosperity and
3 high-paying jobs, vibrant and resilient communities.
4 Under these goals, the six pillars, the last goal has
5 two pillars that are before you today: civic governance
6 systems and quality of life and quality of place.

7 Local Alvanians and others in Lee County are
8 scrambling to get a handle on how to preserve quality
9 of place. The laws and interpretations and government
10 proceedings are stacked against them in every way.

11 In yesterday's oral argument, the lawyer for the
12 Greenwell family and the court -- the County
13 Attorney -- and this is for Amanda Cochran, Darius
14 Cochran, Denise Eberle, Connie Dennis, Amy Harrington,
15 and Jeffrey -- I can't pronounce the last name --
16 petitioners against Lee County in regards to the
17 Greenwell 31 MPO -- or MPD. They were responding.
18 This was an oral argument in front of a judge.

19 The County Attorney said that if the petitioners
20 don't like what the County Commissioners have decided,
21 that they're free to go ahead and run for office or
22 vote out the current County Commissioners. The problem
23 is that --

24 MS. MONTGOMERY: I'm going to --

25 MS. SALOKAR: -- they did --

1 MS. MONTGOMERY: -- make an objection at this
2 point in time. We're talking about a lot of political
3 things, which are lovely for having a political
4 discussion, but this is a zoning application, and the
5 criteria are in the LDC, and I think we've gone a
6 little far afield.

7 HEARING EXAMINER RIVERA: If you could, yeah,
8 bring it back to the request.

9 MS. SALOKAR: Yes, ma'am.

10 HEARING EXAMINER RIVERA: Thank you.

11 MS. SALOKAR: So with my request being that -- if
12 this is the only opportunity for the people of Alva to
13 express, you know, their will -- which -- because
14 they've expressed it in many political ways that are
15 being un -- you know -- listened to, then I just
16 request, I guess, that you do your best to try to hear
17 the county in general, at large, to hear the state of
18 Florida, to hear the region when we say we want quality
19 of place preserved, because it's critical, especially
20 in -- for our economic development. All the way to
21 Hendry County it's -- it's critical because of what
22 we've lost on Sanibel-Captiva islands and in general.

23 So I think that's what I have for you.

24 HEARING EXAMINER RIVERA: Thank you. Thank you
25 for coming today, ma'am.

1 MS. SALOKAR: Yes, ma'am.

2 HEARING EXAMINER RIVERA: The next card is for Tom
3 Mulling. Good afternoon.

4 MR. MULLING: Good afternoon, thank you for
5 allowing me to speak.

6 I was one of the founding members of the North
7 Olga Planning Panel. I have received no compensation.
8 I owned two acres off of Duke Highway so I was not one
9 of the seven large landowners that started it.

10 We sent out -- when we started, we sent out 450
11 postcards to every address that was in the North Olga
12 area, and we invited people monthly to come to a
13 meeting and to give their thoughts on what we would --
14 what the area would look like. And one of the things
15 that came up was that we were just coming off of the
16 Bonita Bay project that tried to come in, and we found
17 out that we were unprotected. We've heard for years
18 that Alva had a plan, they had development orders, and
19 that it reached all the way to 31. We found out at the
20 time that that was not true. They had a one-acre -- I
21 mean a one-mile plan around the school and development
22 orders for one mile around the school.

23 So we decided that we needed to protect ourselves
24 because we had already been blindsided once. So we
25 started looking at ways and formed the panel. It took

1 us a while, and it took us almost a year and a half to
2 two years to do the plan and the development orders,
3 fighting the whole way. The -- we got our plan done.

4 And in the meantime, Alva decided to extend their
5 plan to coincide with ours. So they moved their
6 community plan out to the area -- minus ours.

7 And then -- we got those plans through. They went
8 through simultaneously. And we also put the Northeast
9 Lee County overlay over the top of it so that both the
10 plans kind of melded.

11 Then we started our development orders; Alva
12 started theirs. We got ours done in a timely fashion,
13 and they were transmitted and approved by the State.
14 As far as I know, Alva has never got their development
15 orders finished. So when we hear that Alva is
16 protecting this area, it comes with a grain of salt,
17 because I was in on all the hard work.

18 Moving on from that, I've heard a lot of stuff
19 about safety and fire, and what I haven't heard one
20 person mention, that North Olga Drive is the separation
21 between the Alva and Bayshore Fire Department. So
22 everybody to the east of North Olga Drive is serviced
23 by the Alva Fire Department. Everybody to the west is
24 serviced by the Bayshore Fire Department. So this
25 community will go entirely into Bayshore, and Bayshore

1 will get all of the taxes off of this community. So
2 that will increase the availability for service.

3 As it stands right now, if the fire station goes
4 in on 31, which Babcock has said they would, everybody
5 east of North Olga Drive will fall within the enhanced
6 fire district except for one address, which is on the
7 end of Duke Highway. So the last one on Duke Highway
8 does not meet the -- the travel criteria.

9 When this project was starting -- and it was
10 something else that I asked Bonita Bay when they were
11 starting, was for the inclusion of fire hydrants on the
12 county border. Neal has been nice to include these,
13 which puts a lot of people along Duke Highway into the
14 1,000-foot area.

15 When I moved out there in 1977, my address was
16 Route 2, Box 269A, Fort Myers, Florida. We were not
17 Alva. Alva became our -- I can remember changing to
18 the new zip code, to everything, in the late '90s. Up
19 until that time we used the Tice Post Office. And it
20 was changed for EMS to be able to locate properties,
21 because they couldn't locate them by address on routes.
22 So they gave us a four-digit number that allowed them
23 to GPS our addresses, and that's when we changed to
24 Alva, just because the Post Office -- they moved the
25 Route 2 out to the Alva Post Office.

1 And so looking at this -- well, let me back up a
2 little bit.

3 I was a UPS driver for 31 years, and I spent 9
4 years in LaBelle, and part of my route was State Route
5 29, and I used to go down there and deliver on Case and
6 A and B, and that was all five- and ten-acre lots. And
7 when we got to talking about doing this plan, I didn't
8 think that that was what the people would want, lots
9 like that. So we came up with this clustering. We
10 came up with it to preserve more of the land. And that
11 was originally put in the plan for that reason, so that
12 we wouldn't get just straight-in roads with ten-acre
13 plots, five-acre plots off of that. So that's why the
14 clustering is in the plan.

15 So far both Babcock and this plan kind of adheres
16 to saving the -- the -- as much land as possible,
17 trying to not be seen, and putting stuff back like it
18 should be.

19 I also heard a gentleman come up and talk about
20 flooding on North Olga Drive and Terrell -- Terrell
21 Road. There used to be a culvert -- well, there still
22 is, one right off the end of the second high-bank
23 curve, that drained that land in that area. And it ran
24 across there and ran across the field between Terrell
25 Road and North River Road. That land that bordered the

1 river there, when it was bought up and -- and built on
2 by extremely big houses that are bigger than the lot
3 should hold, the canal that went to the river was
4 either culverted or filled in. So the water now has --
5 has to run under North Olga Drive and then go down the
6 opposite side to the river. So -- and no water off of
7 this property or Babcock enters that -- that area. So
8 that's -- you know, that's a little mistake.

9 But as we -- as we go forward, I know that the new
10 evacuation plan tells everybody to only go 40 miles
11 inland, because getting on the interstates with
12 electric cars, you die someplace. They suggest that
13 you find friends that live 40 miles inland and go stay
14 with them. And so this will also help in that because
15 it falls in that corridor.

16 Also, when I was younger -- I've lived here all my
17 life. Learned to walk during Hurricane Donna as the
18 roof on our house bounced up and down. But I was not
19 enthused about all the land that was developed going
20 towards the -- towards the beach because that was all
21 farmland, working farms. There was a reason it was
22 working farms, because it flooded during a hurricane,
23 but we went ahead and built on it when we shouldn't
24 have.

25 Also, it goes all the way back to the Calusas, who

1 had mounds on Pine Island that were 20 feet tall, and
2 that was because of flooding, plus they built behind
3 Sanibel. They didn't build on Sanibel. They used
4 Sanibel as their buffer. So even they knew that we
5 shouldn't build along the coastline.

6 But now, as we're coming into this -- I used to
7 deliver downtown here, too, and I would have a weekly
8 conversation with a planner, and he -- we would talk
9 about this area up here because I lived out here and
10 everything. And he would tell me that Babcock would
11 never build, it would never happen. And I told him,
12 yes, it will, as soon as Mr. Babcock passes away. It
13 happened.

14 The same thing is kind of here. They had a large
15 family group that fought back and forth. This piece of
16 property had a large family group that's, you know,
17 back -- back and forth. And you -- you've got to move
18 forward when you don't have somebody that wants to take
19 over the reins of taking care of -- plus the money and
20 the upkeep, the taxes.

21 So in closing, I think this is -- meets what we
22 were looking for when we originally did the plan. And
23 one thing that I think is unique about our plan is we
24 included the large -- large landowners, and they agreed
25 to put restrictions on themselves. They wanted -- they

1 wanted as much saved as possible, but they weren't
2 naive enough to think that it would never change, but
3 to get as much saved as possible.

4 I think that it's -- it's outstanding that this
5 plan does not put large houses on Trout Creek. I think
6 that's a big plus.

7 On Duke Highway, when I moved out there, none of
8 the people lived on Duke Highway. There was --
9 actually, the land still belonged to Duke Cary. And we
10 used to go down to the beach, I used to hunt fossils
11 and everything along the -- the thing, but that all
12 changed. I didn't ask the people -- I didn't tell
13 them, no, you can't buy the land, you can't build, you
14 can't sell the land, but it changed my life. It
15 changed one of the things I moved out there for, but it
16 happens.

17 So I -- I -- I feel that this meets a lot of
18 the -- the vision that we had ten years ago, because
19 one of our things was don't look for tomorrow, look for
20 10, 15 years down the road, because that's what's
21 coming. So it's -- it's kind of like a 15-, 20-year
22 progression, that I've seen it go from plans to
23 actually starting to -- to show itself.

24 And as far as this is going to start a trend down
25 North River Road, there is -- I believe until you get

1 past the part out of North Olga, that there is only two
2 large parcels of land left, and that is the 450 acres
3 directly to the -- the east, and about 600 acres to the
4 north. So once that -- I don't see it blowing up
5 everywhere.

6 The next land comes -- that is available that is
7 large comes in Alva. So, yes, that's -- that's a thing
8 that -- you know, when it starts to come up there, then
9 yes, but this will not be something they can use --
10 well, you had it there, we want it up here -- because
11 the thing won't even be touching because of all the
12 environmental land that's between the two and the
13 preserves and the land that the State owns. So a lot
14 of this stuff kind of goes -- it's not the same.

15 And so when we started and sent out those 450
16 addresses, I'm sure there's well over 1,000 in the area
17 now. So the area has already doubled without even
18 building anything like this. And they will keep
19 cutting out little acre parcels and stuff and keep
20 building because everybody loves it. But I think that
21 with the plan and everything, that this more than meets
22 the criteria, and I approve of this development.

23 HEARING EXAMINER RIVERA: Thank you. Thank you
24 for coming today.

25 The last card that I have is for Marsha Ellis.

1 MS. ELLIS: Okay, thank you. Please bear with me.

2 Dirk, would you mind assisting just a tiny bit?

3 This is going to be a little interesting.

4 (Discussion at lectern)

5 MS. MONTGOMERY: Madam Hearing Examiner, while
6 Ms. Ellis is loading her PowerPoint, I do want to note
7 for the record that due to her 17-mile distance from
8 the subject property, she's not an aggrieved party as
9 set forth in the Land Development Code nor in 163.3215,
10 and I submit she doesn't have standing under Renard.
11 Thank you.

12 HEARING EXAMINER RIVERA: Thank you.

13 (Discussion at lectern)

14 HEARING EXAMINER RIVERA: Good afternoon.

15 MS. ELLIS: I did prepare a PowerPoint --

16 HEARING EXAMINER RIVERA: Okay. If you could give
17 it to Maria, please.

18 MS. ELLIS: -- for you to write on --

19 HEARING EXAMINER RIVERA: Oh, okay.

20 MS. ELLIS: Yeah, because I know you like to take
21 notes --

22 HEARING EXAMINER RIVERA: I do, thank you.

23 MS. ELLIS: -- and one also for the
24 transcriptionist because I know that she also has
25 requested it in previous hearings to refer to.

1 (Ellis Exhibit 1 submitted.)

2 HEARING EXAMINER RIVERA: Okay, thank you. Will
3 this be the only exhibit that you're submitting? Just
4 so I can know for --

5 MS. ELLIS: Yeah, it's for you to write on.

6 HEARING EXAMINER RIVERA: -- identification?

7 MS. ELLIS: And I apologize (unintelligible) --
8 and I spilled a little coffee on it.

9 And then also -- pass that over.

10 MS. PEREZ: (Complies.)

11 MS. ELLIS: I have one for myself -- no, actually,
12 I made this for you, Dirk.

13 (Discussion at lectern)

14 MS. ELLIS: All right. So give me just a second
15 because I'm working in a little bit of a different
16 format than I typically do.

17 Can I make this whole screen, Dirk, or no?

18 MR. DANLEY: Yeah.

19 MS. ELLIS: Because this is a PDF. I'm working
20 off of slides these days.

21 We can go without, if that's going to be -- yeah,
22 that's fine, thank you.

23 First of all -- I'm sorry, I was blocking out what
24 you were saying because I was moving around a little
25 bit. I apologize.

1 But Marsha Ellis for the record. I live at 17850
2 Devore Lane, which is a completely different zip code.
3 It is quite a distance away in a similar type of area,
4 which is agricultural, AG-2 zoning, experiencing a lot
5 of development pressures and similar insomuch as some
6 of the assumptions and the protections that we had
7 assumed would protect us in our agricultural use
8 have -- have experienced the same sorts of pressures.
9 So I'm going to be weighing in on that, as well as
10 procedurally some of the issues I have when -- in the
11 zoning hearing to make sure that the constitutional
12 rights of public participants are protected as they
13 give that valuable input. So my standing on this
14 really has to come from the procedural side of things
15 and those protections.

16 And when I take a look at the overall argument --
17 I'm just going to paint with a wide stroke to begin
18 with -- what strikes me that's really significant about
19 this particular case is the lack of specificity, and
20 that lack of specificity really prevents the public
21 participants from being able to assert specific and
22 adverse impacts on their interest.

23 Some information that I think is very relevant
24 regarding, let's say, the heritage, the rural use, the
25 amount of property that's in the high hazard area,

1 there are some key pieces of information that are
2 omitted in the accompanying materials, the Staff
3 Report, and I think that that skews the overall
4 perception of -- of the Applicant's request.

5 I think that because public participants have been
6 dissuaded from showing up and participating in this
7 public hearing, they've been given some messages like,
8 "it's a done deal," they see that it's an unfair match
9 in terms of a lot of developer money, politically
10 connected people pushing into their community from
11 outside, that that, in and of itself, creates an unfair
12 burden that the public participants have to push past.

13 Undeniably, the kinds of increases that we see
14 with what is being proposed in terms of traffic, in
15 terms of the intensity of use on this parcel, in terms
16 of the strains on the natural resource, the water
17 supply, the capacity of the land to mitigate flooding,
18 losing the water quality benefits, all of those things
19 increase physical hazard for the community. All of
20 them do. And because of that increase in physical
21 hazard that I mentioned, today I heard very compelling
22 testimony about the strains on public safety, and I saw
23 statistics about the amount of density per acre in our
24 county compared to some of the other counties, and I
25 was moved by that because we're asking a lot of our

1 land to be able to handle all of these stressors; we're
2 asking a lot of our infrastructure; we're asking a lot
3 of our hospital staff, our nurses, our professionals to
4 be able to pull this off. And because we don't have
5 capacity in terms of our services, and we don't have
6 caring capacity in terms of our land, it creates an
7 unsafe condition. All of these things add up to be --
8 to increase physical hazard, not to help. It's not
9 helping.

10 And when you're in a situation like that, the Land
11 Development Code is clear. When you're talking about
12 issues of public health, public safety, that the most
13 restrictive is the prevailing doctrine, is what you go
14 to whenever you're discussing issues of -- that are of
15 such grave concern when it comes to the way that we
16 develop our land, and we protect the public interest.

17 I also heard testimony in the past couple of days
18 about how overdevelopment and the impacts on water
19 quality are affecting the national perception of Lee
20 County and of our community, and the real estate
21 investments are being pulled back. Our ratings have
22 been downgraded because it's being recognized that we
23 simply are overdeveloping. We don't have the kinds of
24 structures that can support this level of density, and
25 we need to back off.

1 So we saw, for instance, a property that is
2 abutting drop in -- drop by \$300,000. So that is a
3 huge chunk. When you proportionately look at like what
4 the average landowner out in Alva -- you know, if you
5 have invested your entire life in a million dollar
6 property, right, on some acreage, that's probably
7 pretty normal, all right? But to lose \$300,000 over
8 the course of a year or two, that is not. And I think
9 that we have to realize that when we are overdeveloping
10 in the backyard, that's going to have specific adverse
11 impacts on what people have spent their entire life
12 working towards, right?

13 If folks decide that they don't want to live next
14 to a fancy -- or not -- live next to an intensely
15 developed development, and they want to pull up and
16 they want to move up to Tennessee or North Carolina or
17 North Florida, right, they're not going to have the
18 kind of buying power that they would have had had this
19 development not pushed into their neighborhood. So
20 they're having that choice taken away.

21 They want to continue their rural lifestyle, and
22 they have to -- they are being forced to move out of
23 our community. Their property value has lost what, a
24 third, because of this development pushing in? Because
25 developers like Neal and other developers are -- are --

1 are coming into the community, gobbling up land,
2 overdeveloping, and driving people out, and that is
3 unfair.

4 So I could qualify as an expert in breaking up
5 fights, having spent a couple of decades in middle
6 school, which came in handy a little while earlier.

7 I also spent a considerable amount of time, the
8 last ten years or so of my career, teaching earth and
9 space science, with a particular interest in human
10 impact and also in sustainability, and how do we manage
11 natural disasters. There was some great curriculum.

12 Post-career I do a lot of public outreach, and I
13 believe very much in public engagement in forming
14 government. I believe that the public voice helps
15 balance business and government. It's really, really
16 important. And I know that we have seen some great
17 conversations come out of this forum that -- and we've
18 all learned, and I think that that's -- we have to --
19 we have to support that.

20 I believe in open source access to information and
21 data, whether that be legal information, whether that
22 be access to public databases, GIS, statistics,
23 whatever; and I believe the public should get help in
24 making sense of that and informing their positions.

25 I see crises and emergencies, such as what we

1 experienced in Hurricane Ian, as an opportunity to
2 revisit and inform our policies and then make some
3 adjustments accordingly. I think that that's an
4 important part of the process.

5 I think that we have to be reflective about
6 precedents that we've set in a community, and that just
7 because levels of density have been approved other
8 places doesn't mean that we should continue to approve
9 those levels of density. Just because we have put
10 homes around stormwater ponds so that we get a price
11 bump and a view amenity doesn't mean that, from an
12 ecological perspective or a public safety perspective,
13 that we should continue in that way.

14 And I believe that each of us have opportunity to
15 take direct action that aligns with our values, every
16 single one of us. I think a lot of the conflict that
17 we are experiencing today is something I -- I saw a lot
18 in middle school, which is you have a set of rules,
19 everyone agrees to those rules; and, yes, you can --
20 you can see it as an opportunity to spread your wings
21 and push the rules, but you're going to -- you're going
22 to run up against problems when you don't recognize
23 constraints, right? That's -- that's part of the
24 process. So it's really a balance between what could
25 happen and what we could do, and then what are the

1 constraints that we do so that we can not take too big
2 of a bite out of the sandwich, right? We've got to
3 respect others, and I'm going to talk about that today.

4 So specifically, the first slide that I have up
5 here is from Hurricane Ian. This is post-storm that
6 talked about the deaths, most of which unfortunately
7 were in Lee County, and most of which were drowning
8 deaths in the high -- coastal high hazard area. The
9 reason I say this is because I really struggled in the
10 Staff Report to locate that information, about how much
11 acres -- how many acres were actually in the coastal
12 high hazard. It's 183, and that's 23 percent of the
13 overall footprint. I think that that's important
14 because the deaths that happened were preventable.
15 They were preventable because we're building in the
16 wrong place, and folks weren't heeding those evacuation
17 warnings. A number of the folks that did die were
18 older folks that weren't able to get out of the rising
19 waters.

20 I have friends in Olga, folks that lost their
21 vehicles, that lost all their possessions out in their
22 outbuildings mainly. And so, you know, when we -- we
23 can -- we've all seen pictures from up in Manatee
24 County, and we can just, you know, take those 400,000
25 square feet of commercial, plop it down on -- in some

1 locations out here off of 31, or visualize those
2 cookie-cutter houses side by side going underwater like
3 what we saw up there, and we could expect something
4 like that to happen, right? We dodged the bullet on
5 Debby, but at any given point in time, we can have the
6 climate change signature of rain bombs, an extreme
7 local -- extreme precipitation on a localized level
8 affecting any area. In fact, in June we had 4 billion
9 gallons of water fall on this region in three days. We
10 had 13 inches out where I live, out East Alico, but
11 they had 19 as you went further out east. So you can
12 get a lot of variation just -- just within even a few
13 miles.

14 We have State statutes that help regulate
15 evacuation times and the kinds of requirements that we
16 have to make in our community, the provision to give
17 people a place to stay. Clearly we don't want people
18 staying in this -- this community if there is a storm
19 because I know it's Flood Zone A. There are some areas
20 that are Flood Zone X. Flood Zone X should not make
21 anyone feel like, oh, yeah, I'm safe. Flood Zone X
22 mainly means it has not been mapped, and the FEMA maps,
23 the flood maps, and the models are not as good as some
24 other models, like First Street Foundation's open
25 source model and riskfactor.com, as well as some of the

1 mapping that's coming out of FAU.

2 So on the next page I actually have a reference to
3 this article that I would really encourage folks to
4 look into, and some of the questions that I think we
5 need to ask is how -- how would this development with
6 this footprint, how would it impact the insurance of
7 individual homeowners, right? If some of those houses
8 are in Flood Zone A, some of those houses are in Flood
9 Zone X, I mean, how -- how is that going to work?

10 And how would this affect the insurance for
11 collective development, right, because there's going to
12 be some common buy-in, I'm thinking -- I mean, I don't
13 fully understand the structure of how the -- how it
14 works with the amenities, et cetera.

15 And then how does this impact the insurance for
16 the surrounding property owners, right? Because we're
17 adding a lot of impervious surfaces here, a ton of
18 impervious surfaces. We're adding 78 acres of open
19 water/surface water. How is that going to affect --
20 affect them?

21 FAU they worked with to do all of the fine work
22 with the CRS, the Community Rating System modeling.
23 That modeling is on a parcel-level scale. So, you
24 know, it is very precise. They can get in; they can
25 work with the models; they can plug in different types

1 of infrastructure to see how it is affecting flooding.
2 We are there, all right? And I'm not seeing that level
3 of detail that I would expect when we have -- we're
4 talking about 183 acres of coastal high hazard.
5 Science can do better.

6 And, in fact, the -- the test pilot of the FAU
7 resiliency -- water resiliency and risk reduction,
8 which is out of School of Engineering at FAU, they did
9 their -- their pilot test on the Caloosahatchee,
10 working with Hendry County over into part of Lee
11 County. So it's already been mapped, part of it at
12 least.

13 And then staying on this idea of coastal high
14 hazard, how does -- how does building in the coastal
15 high hazard with this type of housing this close to the
16 river and these flood zones, how does that affect the
17 municipal bond rating for the development? How does it
18 affect the municipal bond rating for our community?

19 In this development, there's approximately 70
20 acres of wetlands, with 18 acres of those wetlands
21 impacted. So, again, that's a loss. We would have to
22 put a little subtraction sign in front of that because
23 we're losing the capacity of those wetlands to help us
24 mitigate flooding, and water quality.

25 The 78 acres of lake are a liability, and I'll get

1 into that with more detail.

2 In reviewing these maps and materials, I did not
3 see the elevations, and I would really like to see
4 those, because that's going to tell and show a bigger
5 picture on the -- the flow and how things are moving.
6 Otherwise, it's just -- it lacks any kind of
7 specificity to try to assert certain specific adverse
8 impacts.

9 And, again, the elevations of the pods, too, in
10 terms of not just natural grade, but where -- where are
11 we going to? What are we anticipating?

12 All right. Now let me see if I can go back to
13 the --

14 MR. DANLEY: Scroll it.

15 MS. ELLIS: Scroll it? Like this?

16 MR. DANLEY: Go down --

17 MS. ELLIS: Oh, there we go.

18 All right. So these are just some of the
19 resources I'm referring to. I just put them on here as
20 links because, you know, I didn't -- and for reference.

21 So first of all, this Ian death with the
22 visualization I felt was particularly excellent in
23 terms of showing that relationship between where folks
24 lost their life and what we're talking about.

25 In terms of supporting some of the arguments I'm

1 going to get into regarding the septic and sewer and
2 sort of weighing the two, the -- there is a study, a
3 local study from the Estero River that was conducted
4 that -- my husband was involved in the study, and part
5 of those conclusions were, as Roxanne Gause had
6 mentioned, is that on a larger lot, a one-acre lot, a
7 new functioning septic system is perfectly acceptable,
8 and I would say there's even some recharge value.

9 And then there is a TEDx. This was -- this is
10 years ago, 2016, it's eight years old. But we do have
11 Mr. Neal and his team here, and they may not be
12 familiar with, regionally, the work that has been done
13 looking at the efficacy of stormwater ponds and how
14 they don't work and can be a problem over -- maybe not
15 a problem for the first five years while they're
16 building these houses, but over time it becomes an
17 increasing problem for the folks who are asked to
18 maintain them and to potentially even have to dredge
19 them. So I did throw in some of that literature.

20 All right. And now we'll go to the second one,
21 which is right here.

22 Again, I was snipping this as I was putting it
23 together. These are the basics on the -- these are the
24 basics on the project itself.

25 And I did want to mention the buffers. I think

1 that was -- that did show that there is real potential
2 to work with this -- this development group to try to
3 come up with a solution that is in everyone's best
4 interest because the message was heard pretty loud and
5 clear about the buffers. And even though, you know,
6 the Duke is the skinny part of the buffer down here, it
7 looks like some efforts were made. Some overtures were
8 made on the part of the community asking for this, and
9 that message was heard. And I would like to see this
10 continue to be the direction that we can move in, that
11 we can all work together to find a solution that is in
12 everyone's best interest.

13 So I think that privilege affords choice. I truly
14 believe this. You know, it's easy to pass judgment on
15 someone if they don't have -- if they're -- if they're
16 struggling, a single mom, once they get a bunch of
17 kids, and they literally -- when you have those
18 arguments, like, well, you know, you should buy organic
19 food at Whole Foods, that's a hard sell, right? It
20 really is a hard sell. But when you talk about folks
21 that have successful businesses, as, you know, major
22 developers, and you're talking about professionals in
23 the community that have a lot of experience in this
24 area, I think we can expect more. That's reasonable.

25 To be a good neighbor means that you jump through

1 those hurdles; you jump through those hoops; you make
2 those compromises. And you're careful of greenwashing
3 because it is a real temptation, right? There's a lot
4 of greenwashing that happens. Well, I -- I've been an
5 advocate for -- for -- for wetlands, but I am also
6 willing to destroy 18 acres of them. So it sort of
7 becomes like a tug and push sort of thing.

8 I pointed out earlier that I thought that
9 disasters are a real opportunity to be reflective. I
10 don't -- I'm not a big fan of precedent. I think it's
11 really destructive at this point. We have accelerating
12 development, we have accelerating stressors on our
13 environment, and we need to be more responsive. And we
14 also must have the ability to be able to determine what
15 the specific adverse impacts are for property owners,
16 and I don't think that the proposal, as is, has met
17 that burden.

18 All right. The future land use, I had a problem
19 with this map because I literally could not tell where
20 the DR/GR was, even though it's -- the colors, it's
21 like too many of these blue/greens. Ms. Crespo had an
22 excellent map. I can go back to that later because it
23 did have it indicated. I was a bit alarmed. It looked
24 pretty tiny. I don't know what happened to the DR/GR
25 up there. Unfortunately, it looked like a lot of those

1 public supply wells are running right along this road.

2 Now, running right along the road, I get it, you
3 know, when those wells maybe went in back in the day;
4 but it makes a lot of good sense to keep this a
5 two-lane road. And that's central in this community
6 plan, isn't it, that this road remain two lanes? I
7 mean, that's what maintains the rural character. We
8 saw that out in Buckingham. We see that with Orange
9 River out there. Honestly, having these two-lane roads
10 maintains the rural character. And we've got,
11 honestly, look, water wells out there on the side of
12 this road. So that to me makes good sense.

13 Okay. Again, the wetlands, 18.85 impacted. Kick
14 down to the development order phase, which I -- when
15 you are moving important issues like flood mitigation
16 to the development phase, you're denying the public
17 participants the opportunity to assert their specific
18 adverse impacts.

19 The state and fed permitting, I'm going to ask a
20 question later, but I'll go ahead and throw it out,
21 about what types of permitting are we anticipating with
22 this development? Specifically, are we looking at
23 South Florida Water Management District and ERP? Are
24 we Water Use? Are we looking at an Army Corps fed
25 nexus, FDEP, et cetera? So I would like to know

1 specifically what we're looking at, as well as any
2 fancy new names. We've already had a name shift here
3 that created a negative public perception, and that has
4 been an ongoing issue when, you know, we go to search a
5 database, for instance, and it's got a new name. So if
6 that could be disclosed and shared with the
7 participants on record, that will be most helpful.

8 Let's see. So under the future land use
9 categories, those were the ones listed. I notice that
10 Rural was excluded on page one, but later it came up in
11 the Staff Report, and I think that's really important,
12 that that be beyond the -- be a big part of this
13 discussion.

14 All right. On the master concept plan,
15 after participating in a number of these, I've really
16 come to be a lot more specific about the information
17 that's on these, and it really kind of boils down to
18 the crux of it, doesn't it? Specifically, we have
19 74.43 acres of lake, as mentioned here. And then under
20 the open space, the 25 percent max required is 18.61.
21 So I'm seeing some -- some -- some numbers I'm not
22 quite sure -- Elizabeth usually corrects me on this and
23 explains the math, right? I just want to make sure
24 that I understand that the open space -- how much of
25 that open space calculation is including the lake.

1 That's pretty -- pretty much it. And then understand
2 that -- because I agree with Mr. Fichter's density
3 calculations because there's less density that's given
4 on the wetlands, as well as part of this development --
5 you simply can't build a house on Trout Creek and Otter
6 Creek and the wetlands. It's -- they're just areas
7 that are -- that are unbuildable. So I'm sure
8 Elizabeth can explain that and clear that up for me.

9 Looking at the -- this is the open space and FEMA
10 floodways exhibit, and for the open space they have
11 almost all of the lake in -- certainly more than 25
12 percent. So I felt like that that was misleading, and
13 it really kind of added to the general confusion I had
14 about how much open space is being attributed.

15 And we can see where -- the flood zone here, this
16 is -- is it riverine flooding, I think, specifically
17 that's going -- pushing way up in here? And then this
18 is Flood Zone X up here. I would certainly not feel
19 good about that because you have the remnant Otter
20 Creek up in this area and then all down in here.

21 All right. I highlighted the deviations. So the
22 first deviation is that front buffer. That was
23 attempting to keep as much of the mature canopy. And
24 then all of the confusion around the deviation for
25 Trout Creek.

1 So the way that I am interpreting it is -- the
2 20-foot access I get. That's clear. What's not clear
3 is, is it a 10-foot buffer on just one side? Which is
4 what it appears like looking at this. And it's not
5 that I want there to be a bunch of clearing around this
6 creek. I want it to stay natural, of course. It's
7 just the double-dipping into the buffers. You know,
8 taking that buffer and then applying it as
9 preservation, that bothers me. I have a problem with
10 that because I think it's artificially inflating the
11 density calculations, as is -- you know, I think
12 folks -- Alva and Olga folks have been really pretty
13 gracious in saying, oh, 777, we'll go right along with
14 that. I think it shows their goodwill and that they do
15 want to work with the property owner and -- and the
16 team here to not nitpick this. But there are ways to
17 shave off the -- the buffers and double-dip, you know,
18 to beef up that density calculation.

19 Okay. So here we are west of Trout Creek, the
20 archeological resources. This was not really mentioned
21 except for this one place here. It was in the Comp
22 Plan packet. I remember it distinctly.

23 In terms of archaeological resources, that tells
24 you a lot. That says that this place is rich in
25 natural resources. It's so rich in natural resources

1 ancient people settled here. They could live there.
2 That is really, really special and tells us it's not --
3 there's something to protect there.

4 In terms of the second emergency entrance, to go
5 in with a median on the boulevard entrance, and that
6 the deviation will not negatively impact -- I don't
7 think that just making it bigger is going to fix all of
8 the problems. It's really a problem of ingress and
9 egress into the -- the -- the development, all right?
10 And we're talking about getting into a development
11 that's already in a flood -- a coastal high hazard area
12 that could well experience an emergency.

13 I'm also going to say that bus stops have not been
14 mentioned one time; and when we're talking about a
15 single entry in and out of a pod, that concerns me
16 because you have got to get kids on what has already
17 been described as a very busy road. So are we looking
18 at a bus stop for this pod and a bus stop for the other
19 pod? What are we looking at? Is this going to be
20 internal? Are we going to get the bus off of the road,
21 into the development, for the children?

22 Already because of what I'm hearing, these, you
23 know 3,000-square-foot -- or 30,000-square-foot lots,
24 we can -- you know, that's the type of housing that --
25 starter homes and things like that that we would

1 anticipate there being a number of families living in
2 this style -- so that's a big issue.

3 All right. What do we have here? Now we're into
4 the deviations. The 20 -- okay. This is where it gets
5 super con -- 20-foot-wide easement on both sides of the
6 canal, then it goes, to allow a 10-foot-wide easement
7 on one side of Trout Creek. We're kind of all over the
8 place. So we need to know, is it going to be 10 feet
9 wide on one side of Trout Creek, which is what it
10 appears to be on the MCP, or -- to have it cleared up.

11 I will point out that if we're talking about a
12 50-foot-wide -- a flow-way, you know, it's going to be
13 hard -- we're going to expect the maintenance workers
14 to go out there one side, and then they're going to put
15 on their water wings to float over to the other side to
16 do some maintenance? I'm not quite sure how that's
17 going to work. So, again, you know, I was struggling
18 there. So I just would like clarity on that.

19 Next is the amenity. There was nothing in the
20 Staff Report. It had been requested, and it was silent
21 coming into the hearing about the amenity and where
22 that was going to be. So that was a big concern. I
23 was afraid that that was going to be addressed with
24 seeking an amendment. And it still -- when we are
25 discussing the amenity, that can create some shrinking

1 of the footprint. There might be more of a certain
2 style, those connected townhomes, to compensate for the
3 fact that we're putting that amenity footprint into the
4 MCP. I think it's worthy having a conversation about
5 that and getting -- seeking some clarity on that.

6 Again, just to refresh what the aerial looks like
7 within the landscape.

8 The typical lake section. So this was the
9 deviation to go with the steeper bank, which I am
10 completely opposed to. So it increases hazard whenever
11 you have a steeper bank, and I'm going to get into that
12 in a moment. It decreases the -- for the wading birds,
13 they're having to come into a steeper bank, which isn't
14 as supportive of the wildlife that's already out there.
15 We know the wildlife is out there.

16 And then we're adding this turf reinforcement
17 map -- mat. So those -- typically, I've seen some that
18 are plastic, and, you know, I have a problem with that,
19 right? If we're going to put out like a plastic
20 reinforced turf mat, then you're going to have the
21 wading birds in there, and it's going to be exposed to
22 the elements, the sunshine breakdown, tangle the wading
23 birds. So having some more specific information about
24 what we're talking about. If we're talking about coco
25 fiber or something that's natural that's going to

1 degrade, and then you're -- they're going to have to
2 build that into their lake maintenance plan, to replace
3 it over time, that would be a more acceptable
4 engineering practice and management practice than a
5 plastic reinforced turf to accommodate an overly steep
6 bank. And the reason that it's overly steep is to try
7 to squeeze in as much density into this property as
8 possible. It's not to benefit the environment; it's
9 not to benefit the water quality; it's certainly not to
10 benefit the residents that live there and the
11 surrounding neighborhood. It is for economic reasons.

12 So the justification. The eastern side has a
13 higher elevation to reach the required lake depths, and
14 then, again, the slope protection methods -- this is
15 referring back to the Land Development Code. My
16 concerns are with the Chapters 10, 14, 33, 34, with the
17 Land Code making sure that -- that we're meeting all of
18 those. And more specifically, when I talk about that,
19 that we are most restrictive in applying that.

20 So we've had a lot of drownings in these ponds in
21 this community that Mr. Neal may or may not be aware
22 of. We've seen more than our fair share, right? We've
23 had -- we've had teenagers crash and die en masse; we
24 have people running their cars into them; we have many
25 children who are drowning in these ponds. And it's --

1 it's not just here, right?

2 I want to click this study link, but I'm afraid I
3 won't be able to get back off of it. But I urge every
4 single person who is here to -- to click into this --
5 click onto that. This is a study from July 4th, 2024,
6 from -- a University of South Florida study, kids with
7 autism drowning in Florida at an astounding rate. And
8 so the Children's Service Council of Palm Beach County
9 produced a report. They found that between January of
10 2012 and April of 2024, 109 children with autism
11 drowned, said the Council's John Bernstein. And I'm
12 going to make sure I get a copy of this report. He
13 added that another 12 children have drowned since.
14 Since April of 2024, another 12 children have drowned.
15 The numbers have been growing year to year, and in 2022
16 4 children with autism drowned, and that ballooned to
17 23 children in 2021. Another 63 children drowned in
18 2021 (sic). The average age of children drowning with
19 autism is three years old.

20 The statistics according to this report is one in
21 every 36 children are -- that are currently being born
22 have autism. I myself, over the course of a couple of
23 decades, have seen an acceleration in -- in this trend.
24 It's not just autism. It's also, you know, ADHD,
25 children being impulsive, a lot of economic pressures

1 on families and -- and the kids getting -- getting
2 away.

3 All right, the required setbacks. So asking
4 for -- again, this is the way to shave off a little bit
5 of space so that you can increase density. These are
6 for economic reasons. This isn't doing anything to
7 improve the -- the -- the physical health or -- of the
8 folks that live in the community. It's simply to be
9 able to make it more expensive to run lawn equipment in
10 between these houses, or more likely that there could
11 be a problem in the future.

12 All right. The proposed development seeks to
13 minimize space requirements to maximize preserve areas
14 to the greatest degree.

15 This -- this development is not happening as a way
16 to enhance the environment, right? That's part of the
17 narrative to get as much profit as you can get out of
18 this piece of property. That's what this is about.
19 It's not like you sat down and decided, how can we make
20 things better for everybody? So I just want to be
21 really clear about the -- the narrative, the
22 environmental narrative, in that we give it proper
23 scrutiny.

24 Just because it's been implemented in other Lee
25 County communities doesn't mean that we need to keep

1 doing it, especially without taking the time to be
2 reflective about it, right, and weigh it out.

3 All right. So in terms of the access points, I
4 don't agree with that deviation. I do agree with the
5 buffering along North River Road, to -- to maintain
6 that.

7 Certainly do not agree with the lake bank slopes.

8 The encroachments into the required setbacks, I
9 don't think that that's a good idea. I think it just
10 makes harder wear and tear on the equipment. It's kind
11 of being applied universally. So my snip, I chose the
12 one that was butting up against the lake. All these
13 houses are butting up against lakes so you have a lot
14 of equipment crammed in together, more impervious
15 surfaces, more likely things are going to go wrong.

16 And the drainage and access easement requirements,
17 that's on the Trout -- the Trout Creek, getting some
18 clarity on that one.

19 So I tried to dig into deviations a little bit
20 more to understand what some of the requirements are,
21 and I'm just going to kind of, you know, go -- go
22 through this a little bit.

23 On the -- the site development regulations
24 schedule of uses, that's when we start to get into the
25 spoil and understanding a little bit better the

1 characteristics of that spoil.

2 In reviewing the -- some of the letters going back
3 and forth with Staff and the Applicant, there were some
4 questions about the destination property, where is this
5 dredge going to go? How is it going to be utilized? I
6 don't think that we've gotten all of that worked out,
7 nor -- I do have an outstanding question regarding a
8 couple of things about the -- the -- the spoil: One,
9 when did it last happen? And then I did review Section
10 7 in the Indigenous Preservation Plan last night, and
11 it was too unspecific. I couldn't really get any
12 information. I was expecting to see some analysis
13 like, well, the ph and the total of this and that, you
14 know, certainly more specific -- screened for
15 contaminants, that type of thing. I didn't -- I
16 thought that it was way too -- way too general.

17 A large portion -- again, talking about the spoil
18 and that the soil samples from the area is being
19 created as rare and unique. And I know there have been
20 some questions that have been raised about are those
21 soils going to be capable of supporting those uplands
22 types of plant communities.

23 And so in reviewing the soils, I see that it's
24 this -- this whole bottom section, as well as the
25 section on the right. Interestingly enough, you know,

1 we have a lot of the gopher tortoises down here, and I
2 know we're going to -- I'm going to go ahead and just
3 say, from what we have seen in the field from surveying
4 the gopher tortoises, they kind of like those disturbed
5 areas. They like if, you know, if things -- there's
6 been a bunch of dredge or -- places that you wouldn't
7 necessarily expect them to be thriving, they actually
8 are. So it could be that the spoil keeps the canopy
9 low, right? And they love to have that open air and be
10 able to bask and be able to put their nests there.
11 And, you know, it might not be as bad of a thing as we
12 might think, particularly because, you know, managing
13 an area for gopher tortoises is pretty intensive.
14 You've got to burn it; you've got to go in and roll
15 chop it. You kind of have to keep it up open. So I'm
16 just sort of throwing -- throwing that out there in the
17 spoils discussion.

18 HEARING EXAMINER RIVERA: Ms. Ellis, I don't want
19 to interrupt you.

20 MS. ELLIS: Yes.

21 HEARING EXAMINER RIVERA: I don't typically
22 interrupt the public when they're speaking, but I would
23 like to give Ms. Bruns a break. We usually --

24 MS. ELLIS: Oh, sure, no problem.

25 HEARING EXAMINER RIVERA: -- we usually go every

1 90 minutes, and we're just a little past that. So if
2 you're okay to put a pin in this for maybe 15
3 minutes --

4 MS. ELLIS: Yes, ma'am.

5 HEARING EXAMINER RIVERA: -- we'll take a break
6 and then resume right back where we were.

7 Okay. So, everyone, we're going to take a short
8 break, and we'll start back at 3:00.

9 (Recess from 2:40 p.m. to 3:00 p.m.)

10 HEARING EXAMINER RIVERA: Okay, we are back --

11 MS. ELLIS: Thank you.

12 HEARING EXAMINER RIVERA: Thank you.

13 MS. ELLIS: I'm just going to backtrack and just
14 wrap up the density discussion, just because there's
15 just one outstanding thing I want to -- I want to
16 circle back on, and that is the Florida Supreme Court
17 has explained in land use rulings that a Comprehensive
18 Plan only establishes a long-range maximum limit on the
19 possible intensity of land use. A plan does not
20 simultaneously establish an immediate minimum limit on
21 the possible intensity of land use, and that the
22 present land -- use of land by zoning ordinance could
23 be more limited than the future use contemplated by the
24 Comprehensive Plan. And even where denial of a zoning
25 application would be inconsistent with the plan, the

1 local government should have the discretion to decide
2 that the maximum development density should not be
3 allowed, provided the governmental body approves some
4 development that is consistent with the plan, and the
5 government's decision is supported by substantial,
6 competent evidence.

7 So though there has been a land use change, and
8 since they're somewhat restricted on -- on the types of
9 challenges that can be brought to those changes, it
10 doesn't mean that that is a guarantee of the absolute
11 maximum, that truly there is a balance in the public
12 interest, as well, and there's discretion on government
13 units to make -- make that call.

14 Now I'm going to talk a little bit more about
15 those soils in the spoils.

16 So there are some requirements, if the soils show
17 there's been logging, drainage, exotic infestation,
18 that those -- there would need to be some restoration.
19 And I'm going to kind of blow that out a little bit
20 more because there is a lot of attention on agriculture
21 in terms of legacy contaminants. And I'm not throwing,
22 you know, any shade on anyone, you know, that this
23 is -- things are evolving, right? And with particular
24 focus on PFAS and -- as emerging contaminants and
25 concerns for those --

1 MS. MONTGOMERY: Madam Hearing Examiner --

2 MS. ELLIS: -- chemicals --

3 MS. MONTGOMERY: -- I'm going to object to any
4 testimony on PFAS. That's regulated by other agencies.
5 It's not an issue for consideration in the LDC for
6 zoning.

7 HEARING EXAMINER RIVERA: Yes, if you could please
8 restrict it to what the criteria are that we're
9 evaluating for the request --

10 MS. ELLIS: Okay, great --

11 HEARING EXAMINER RIVERA: -- here --

12 MS. ELLIS: -- yes.

13 So just some concerns for -- in general,
14 re-suspension of ag, agriculture legacy, and
15 contaminants, that I think most certainly re-suspension
16 of legacy contaminants, nutrients, et cetera,
17 associated with historical agricultural uses are of
18 concern and are addressed through a variety of calls
19 for water quality monitoring and, you know, assessing
20 what the specific impacts could be for surrounding
21 landowners, whenever we have the dust and -- that's
22 going to be suspended in the air from widespread
23 land -- you know, land clearing, grading, et cetera, as
24 well as in those waterbodies and -- including Trout
25 Creek, Otter Creek, that runs into people's properties

1 and eventually into the Caloosahatchee.

2 I will point out that this development is north of
3 the Caloosahatchee so Hendry County might be onto
4 something trying to make sure that development stays
5 south of the Caloosahatchee, since the Caloosahatchee
6 is a receiver -- that imperiled waterbody is a receiver
7 of what's coming off of this property.

8 So, again, sort of looking at the bigger picture
9 in terms of those soils, I think, is warranted.

10 It was called out in the indigenous preserve
11 restoration plan. I tried to group all of those
12 concerns about the spoils together. Again, here's the
13 plan on -- on the restoration.

14 So Objectives 2.1 and 2.2 encourages new growth
15 where compact and contiguous development patterns can
16 be created. I think there's absolutely nothing really
17 compact about this sprawling development. I think it
18 pretty much fits the bill for spot zoning and urban
19 sprawl in general in terms of its -- you get a
20 different -- we're looking at a suburban in the middle
21 of a rural area. The size is quite large, and it's
22 neither compact or contiguous with the other areas --
23 it's pretty far out there in the middle of a rural
24 area.

25 Again, the -- just because the area is in

1 transition should in -- in my view be cause for pause
2 to say, are we protecting public interest? Are we
3 protecting life, health, safety? What kinds of impacts
4 are these having on our neighbors?

5 And then what is typical of a rural area? In a
6 rural area, it's associated with low-density
7 residential, agricultural, one dwelling unit per acre.
8 When we take a look at the -- the -- the justification
9 for -- for this project, was relying -- I thought this
10 was interesting -- on the letters of availability as
11 evidence to support -- to support it. I found that
12 really kind of interesting.

13 And for -- for rural areas, basically, I'm just
14 referring to Land Development Code Chapter 4,
15 Section 2. It says the petitioner -- or let me drop
16 down here. The purpose of -- the purpose of
17 agriculture is to provide areas for the establishment
18 and the continuation of agricultural operations, and
19 residential uses being permitted as ancillary to
20 agriculture -- so some sort of agriculture use -- and
21 to accommodate those individuals who understand and
22 desire to live in the agricultural environment.

23 So all of the surrounding landowners out here have
24 chosen that rural lifestyle is a place that they want
25 to be, and -- and -- and that is the existing condition

1 for those residents.

2 And then the regulation table out there allows for
3 limited to passive and active recreation, educational
4 activities, hiking, nature trails, paintball, gun
5 ranges, zip-lining, paragliding, and similar
6 activities, where it's little investment and folks are
7 enjoying the natural landscape.

8 So gun ranges have been a bit of an issue.
9 Fortunately, when WildBlue pushed into my neighborhood,
10 we have quite a large preserve between us, thank
11 goodness, to help -- and folks are generally happy with
12 that, right? Because we are continuing to have our
13 wildlife, we're continuing to live our rural lifestyle,
14 and folks can continue their gun ranges. There's a lot
15 of pride in rural communities for having -- being able
16 to use their -- their gun ranges, being able to hunt.
17 That's part of their identity, and they really take it
18 very personally, I'm finding, whenever that is
19 threatened, very personally.

20 So I just would urge the team to listen to that
21 argument and sort of put yourself in someone else's
22 boots for a moment and say how would you like it if
23 this use was pushing up on you, and you couldn't -- you
24 could no longer enjoy, you know, target shooting or
25 riding your ATV or the other types of things that you

1 enjoy, having livestock, and wondering about are they
2 going to get out into a neighborhood of 3,000 people.
3 So I just wanted to point that out.

4 So I think what we're seeing here is one of the --
5 the public perception pieces, and one of the reasons
6 that I think passions and tensions have been running
7 high, is -- is feeling like something is being forced
8 on the community. And I think that there's a burden on
9 all of us to try to find ways that we can push past
10 that, right? That we can -- so that folks can heal and
11 move on.

12 I've seen a lot of grace on the -- on the part of
13 the surrounding neighbors, most times, and showing
14 their willingness to move forward and -- you know,
15 grace in terms -- with those density calculations, as
16 well. Folks want --

17 MS. MONTGOMERY: Marsha, I'm going to stop you for
18 just --

19 MS. ELLIS: -- to work --

20 MS. MONTGOMERY: -- a second on that page.

21 MS. ELLIS: You want me to go back?

22 MS. MONTGOMERY: You quote from -- you quote from
23 the --

24 MS. ELLIS: Oh, yeah, yeah, yeah, right, yes.

25 MS. MONTGOMERY: Hang on a second.

1 MS. ELLIS: Yes.

2 MS. MONTGOMERY: I'm going to tender an actual
3 copy of that case to the Hearing Examiner --

4 MS. ELLIS: Oh, super --

5 MS. MONTGOMERY: -- for the record --

6 MS. ELLIS: Oh, yeah.

7 MS. MONTGOMERY: -- because I think it stands for
8 a different proposition than what is cited. So rather
9 than elaborate on that, I'll just provide you with a
10 copy.

11 (Applicant Exhibit 2 submitted.)

12 HEARING EXAMINER RIVERA: Okay, thank you. That
13 will be Applicant Exhibit 2.

14 MS. ELLIS: Oh, awesome, thank you. I appreciate
15 that. They don't let you do that over at the JO
16 (phonetic) when you're doing your research.

17 Anyway, so it says here the law, however, will not
18 and cannot approve a zoning resolution or action that
19 adversely affects the rights of others that's based on
20 no more than the fact that those who support it have
21 the power to work their will, and -- and this is the
22 perception that we have to push past. I put this up
23 there as an example of the burden that we have to
24 overcome here, right? No one wants to feel like that
25 they're having something forced on them, and -- and --

1 and folks legitimately feel like something is being
2 taken from them. And so I wanted to -- to throw that
3 in there.

4 The Staff, I thought, in the report did a very
5 good job of acknowledging, as well, how folks feel, the
6 sense of public perception that something is being
7 taken from them, the use of their land. After all,
8 they moved to a rural area because that was where they
9 chose to live, and -- and it creates a burden for --
10 for everyone to try to work within.

11 Again, the -- the North Olga Plan recognized what
12 could be potentially destructive to the character, and
13 they've made some -- they took some steps to try to
14 figure out how can we preserve the rural character.

15 The part, in all these policies, that I was
16 struggling with was the variance criteria. And so the
17 statement was (as read), the Applicant notes that five
18 deviations are sought -- which we've gone over in great
19 detail -- but only one pertains to these design
20 criteria required to meet the variance criteria. That
21 was the section out in the front with the buffers and
22 whatever kind of rural Cracker Barrel sign we're coming
23 up with.

24 And when I -- when I refer to this, it seems to
25 me -- I was like, wow, we only have to really -- we

1 only have criteria on one? Well, when I went digging a
2 little bit deeper, I saw that really there is a pretty
3 strict criteria for -- for being granted variances and
4 deviations. It doesn't just happen. Just because
5 there's a community plan that says, okay, the North
6 Olga Plan allows a deviation, that doesn't mean that
7 you don't have to meet the criteria of Chapter 34 of
8 all the others.

9 So what really stuck out to me here, also, is that
10 the plan is to promote the heritage, which is the
11 agriculture heritage. We have the civic center there.
12 It is literally the beating agricultural heart not just
13 of Lee County but this region. And the quality of
14 life, which I thought that Katrina Salokar, she did a
15 really good job of talking about the economic value of
16 having a -- a place that you are proud to call home.
17 And -- and those natural resources, those were the
18 three things that I felt like the Staff Report was --
19 was omitting and a bit shy on, and that's what I wanted
20 to focus on more.

21 So again here we go, the subject property is
22 located in this community. This is the Northeast Fort
23 Myers/Olga community, and it goes back to that -- those
24 variances in Chapter 33.

25 And then the provisions are intended to enhance,

1 not replace, the regulations contained in the balance
2 of this Code. So just because there was only -- you
3 know, there was a provision for that one deviation on
4 signage, doesn't mean that you don't have strict
5 criteria for all of the other deviations.

6 So I spent some time trying to understand a little
7 bit better about how -- how do we weigh these out? You
8 know, if we have a plan -- I'm a bit of a rule
9 follower. If we have a plan, and we have constraints
10 that we have to operate under, how come we're giving --
11 not allowing -- allowing people to not follow these
12 rules? Especially when they're getting extra density,
13 and it's really the density and the high intensity use
14 on this parcel that is in question.

15 So the granting of the variance will not be
16 injurious to the neighborhood or detrimental to the
17 public welfare, and I take real issue with this,
18 particularly with those steep banks on those lakes,
19 because I think that it -- it creates a physical hazard
20 that's not there, and I think we're asking families to
21 live in a place where there will be drownings.

22 The deviations and the variances set forth in each
23 article may be achieved under the standards in the
24 planning community; and if it's not in there, they're
25 going to -- the variances are going to go to 10 and

1 24 (sic), like we talked about.

2 Keep going...

3 And basically through -- through looking at these
4 deviations and variances, I learned that the
5 prevailing -- and the guidance really kind of comes
6 down to what's most restrictive when we're talking
7 about these life safe -- life and safety issues, that
8 that ultimately is going to require us to be
9 restrictive in the deviations that are being handed
10 out.

11 So, again, the proposed use or mix of uses is
12 appropriate for the proposed location. I question that
13 with so much of the property being in the coastal high
14 hazard area.

15 And that the conditions provide sufficient
16 safeguards to the public interest, I don't believe,
17 with the lakes, that they are protecting the public
18 interest. I think that the plan is not specific enough
19 to allow people to assert the adverse impacts.

20 Nor do I believe that what's being granted is
21 preserve and promoting the general intent of the Code,
22 and that Code is to protect public health, safety, and
23 welfare. It's not to grant additional density to a
24 developer from out of town.

25 Back in June, as I mentioned, we had 4 billion

1 gallons of rain. You'd think with all that rain that
2 falls here that we would never have a water problem,
3 but we do. We do have a water problem. Unfortunately,
4 because this plan lacks specificity, I don't know where
5 they're planning on lake pumping. I have no idea. Are
6 they going to pump out of the sandstone? Are they
7 going to pump out of the Hawthorn? Both of those are
8 problematic for different reasons.

9 The proposed site proposes significant setbacks to
10 Trout Creek. I think we've already talked about that.

11 The physical hazard -- this is Policy 5.1.2. This
12 really speaks to whether or not these deviations should
13 be granted and if the conditions are enough to protect
14 the public health.

15 And the surface water management plan, it's just
16 not specific enough. We really need a lot more
17 information to be presented to the public. In fact, we
18 rely on you guys to come in with some better maps. The
19 map that you gave us about the DR/GR was terrible, and
20 I'm not seeing the elevations here. So we just -- I
21 expect better, and I know that there are better models,
22 the CRS models I was mentioning out of FAU. There's --
23 there's more that could be done there.

24 The property is subject to seasonal inundation, by
25 a stream swollen by the rains of a 100-year storm

1 event. We have two of those on this property, as well.

2 Goal 60 speaks to the flooding due to rainfall,
3 preserving not just life -- because we have real
4 questions about flooding and folks drowning -- but also
5 the environment.

6 And when I -- I'm going to specifically speak to
7 the gopher tortoises on that. We have 137 burrows --
8 137 -- 134 burrows on here. So when we're messing with
9 the hydrology -- and I appreciate the fact that we want
10 to do some on-site preservation here. We've got to
11 look at how that hydrology is going to be impacting
12 those wetlands and their environmental resources, as
13 well.

14 The protected species, just a quick list of all
15 that we have here, including the caracara.

16 I'm going to switch now to my notes on this.

17 When we talk about the way that this land has been
18 managed in the previous -- in Comprehensive Plan, as
19 all that's worked out, it's come out that those cabbage
20 palms were stripped of their foliage. And this really
21 is regrettable because it's -- that's home to species.
22 But it called attention to the fact that there are some
23 decisions that we can make to help manage this property
24 and other properties to leave things maybe a little bit
25 messy because there could be real benefits to doing

1 that.

2 We know that those cabbage palms are utilized by
3 the caracara. So we had a pair and a juvenile there.
4 They're also utilized by the bat species, the bonneted
5 and the tricolor. And so we can look at how can we
6 manage the heritage trees, the cabbage palm, what's
7 already on-site that we want to keep to support the
8 wildlife that's there.

9 The way that we manage the land doesn't change
10 what's below the surface. So a lot of times these
11 rivers and these flow-ways, there will be something
12 geologically underneath that will allow -- that has
13 allowed for that to develop. So I think that we are
14 going the wrong way when we try to cover that up. It
15 just takes a really big storm, a big surge to expose
16 what's underneath the ground, and why that streams have
17 developed at this location over time.

18 I also want to talk about the myriad of landscape.
19 There's a lot of effort on preservation, but we have
20 rural stewards here. You've heard people speak with
21 love about the bobcats, the raccoons. All us folks
22 that choose the rural lifestyle, we take it personally
23 when -- when you start impacting our wildlife. I mean,
24 it will bring us to little tears. And I don't think
25 the rural stewards give enough credit to that myriad

1 landscape. It's not fancy. The way we keep our
2 properties isn't as fancy as these -- these
3 developments, for good reason, because we're also
4 providing habitat. So there is a management -- ways
5 that we manage land that I would like to see adopted
6 here.

7 So the myriad landscape is made up of the
8 conservation areas, the rural homesteads, the
9 easements, they're connected. Looking at the plan, you
10 know, being able to leave some areas that might be
11 ponds or water sources that are not surrounded by a
12 billion houses, and that we think about the
13 fragmentation.

14 Very valid questions have been asked about the
15 phasing. This is particularly important when we talk
16 about the gopher tortoise management. If we're looking
17 at temporary exclusion down in that bottom right-hand
18 corner along that buffer zone, that canopy fleshing
19 out, then we start to get into some management issues
20 where it becomes shadier, and it becomes a less ideal
21 habitat.

22 If we're talking about relocating gopher tortoises
23 on the space, then we need to have a plan built into
24 the phasing of when are we going to move them,
25 including time of year. I think right now is hatchling

1 season. James could probably -- and the gopher
2 tortoise guy could probably answer that better. But,
3 you know, timing really matters and phasing really
4 matters when we talk about big projects here and the
5 kinds of impacts that are happening to the wildlife,
6 and the comfort zone of all the neighbors around that
7 want to know that the wildlife in their neighborhood
8 are being given some provision.

9 I think that having conversations about the
10 upland, great, I'm very happy to see it; but we also
11 could be creating an urban heat island here, right? I
12 know you want to come in there, and you want to
13 maximize your -- maximize density, right, to get as
14 much bonus density as possible. But it could be a
15 very, very heated up place, right, if that's how you're
16 approaching the whole property. Especially because
17 kids -- they don't have anyplace to play because
18 they've been squished in, and then there's like an AC
19 unit right by their house, right?

20 So I -- I really -- I hear the message. I just
21 think a variety of landscapes might make the place more
22 liveable.

23 I covered the lake bank slopes with the nexus for
24 the wildlife.

25 Again, staying away from the heavy equipment

1 during hatchling season, restricting the heavy
2 equipment in the gopher tortoise areas, including what
3 the management -- I think having, you know, that
4 addressed. It would go a long way to building trust
5 with the community, if this is something that is
6 pursued.

7 For land management, not trimming the cabbage
8 palms, leaving snags. That's what's natural out in the
9 country.

10 The gopher tortoise -- the food sources, the
11 groundcovers that are specific to that species and
12 supporting them.

13 I'll point out the upland habitat. It already
14 exists. It's not like it's being created. It's --
15 really, it's already there.

16 In terms of the wetlands, there's a lot of focus
17 about going in and removing the invasives. I will say
18 this is an agricultural area, and that this is the bee
19 nursery of our entire food structure of the -- of the
20 whole country. People bring their bees down to this
21 area to build up their hives, to take them out for
22 pollination services all over the country --
23 California, up to the orchards in the Northeast, in the
24 Great Lakes.

25 And so these -- the main species for building up

1 those bees is the Brazilian pepper, and there are some
2 big operations up off of 31 and -- there was a lot of
3 that over in Babcock back before Babcock got developed,
4 and a lot of it has pushed down into that 31 corridor,
5 and that the management of the invasives can be
6 problematic for some of the historical uses in these
7 rural areas, I think it's worthy of pointing out.

8 I also say that from a research perspective, that
9 the water quality benefits of a wetland that is filled
10 up with invasives and a wetland that is -- has just
11 natives, there's no difference in terms of water
12 quality gains. My husband has done research on that,
13 and I included it in the packet.

14 In terms of approvals, looking at the cumulative
15 impacts of this development, all the other developments
16 around it, and sort of weighing that from the post-Ian
17 lens, things like Owl Creek may have been approved
18 before Ian, before we got the big wake-up call about
19 the coastal high hazard area, do we want to keep
20 developing this?

21 In terms of -- whoops, it looks like I skipped a
22 bunch, but that's okay. I'm just going to stay with --
23 I'm going to go to the -- I'm going to do the water
24 stuff real quick.

25 Looking at the surface water plan, again, it's not

1 specific enough for me to be able to -- or any of the
2 public participants to be able to figure out what the
3 impacts are.

4 Looking at the outfall, I don't know where the
5 outfalls are going to be or where they're going to
6 outfall into, because those lakes are literally on the
7 interior of roads and houses. So I don't understand
8 how the system is going to work.

9 I know there was a question about dry detention so
10 I specifically looked. It's about two acres of dry
11 detention up in that top right-hand section, right in
12 the middle, that's the only dry detention that is
13 indicated on the stormwater map. I went looking for
14 it. That's 2.8 acres in, what, 74 acres of lakes.

15 So it does not appear that these lakes are
16 connected into part of an overall system. I don't
17 understand how they're interacting with the
18 tributaries, as well.

19 I will say that building these lakes is a
20 financial incentive to the developer because then it
21 becomes an income source for lakes management. It's
22 like a whole industry and business. It's intensive.
23 It can be chemical intensive, it's management
24 intensive, and eventually that cost is going to be
25 passed on to all the folks who are living in this

1 community. In terms of funding for the CDD, it is
2 considered a utility. So there are some financial
3 reasons for continuing these lakes as a practice,
4 though the ecological gains are few and the liability
5 is great, including the risk of physical health.

6 The view amenity can be something you can add
7 money to. People don't realize that it's going to be a
8 liability over time. It's sold as lakefront property.

9 I did include the TED Talks, The Ticking Time
10 Bomb, and some other literature that -- that my husband
11 has discovered through his research. The aggressive
12 management that they're -- that is required by them.

13 These lakes may need to be fenced. If we're
14 talking about a bus stop up on this small piece up here
15 especially, you're talking about a boulevard, kids.
16 Yeah, it's something to think about.

17 With this deeper slope, it decreases the littoral
18 zone. So that's going to be less of a wildlife
19 benefit, less of a water cleansing benefit.

20 The lakes are saturated already. So in terms of
21 recharge value, it's not like a dry detention area
22 where it's open, it's wider, and it can recharge more
23 effectively. In fact, it's like reusing the same
24 coffee filter for decades. I mean, you -- you're
25 losing that benefit to act as a filter as it starts to

1 build up sediment on the bottom.

2 Then there's the re-suspension of everything that
3 has settled in it during storm events.

4 My husband's research has shown that -- that the
5 stormwater ponds increase localized flooding. They
6 don't help localized flooding. The flooding comes from
7 the lakes because they're already full during the --
8 the -- the wet season. And we saw that up in --
9 especially the Laurel Meadows area had a lot of
10 flooding, where people were genuinely perplexed about,
11 wow, you know, we moved in, and where is all this water
12 coming from?

13 So literally every bit of lake, except that one up
14 by the front entrance, there are houses all around
15 these things. It's just -- we've -- we've moved past
16 this as a -- as an acceptable design standard. We've
17 gone beyond this in Southwest Florida. We're now at a
18 point where overdevelopment is impacting our water
19 quality. We need some new solutions that are informed
20 by the most contemporary science. I'm happy to share
21 all that information.

22 There are also issues with nutrient seepage coming
23 from the bottom of the lake. That's also been
24 measured. My husband did some work on that about six
25 or seven years ago. The water that's coming from the

1 ground into the lakes is also a problem. So now we're
2 exposing wildlife to this increased nutrients and water
3 quality.

4 The lake pumping during the dry season is like the
5 worst thing that can happen whenever people's wells are
6 already distressed. So you get these -- you get a cone
7 of depression, which changes the localized water
8 movement. So now the water is moving from all of these
9 houses, right, to wherever the withdrawals are. We
10 don't know where the withdrawals are because they
11 haven't told us, but it's pooling everything into
12 this -- this system.

13 The outflows aren't providing any water quality
14 gains, nor is the water monitoring. Monitoring the
15 water is not a water-improving technology. It just
16 gives you -- tells you how good or bad your water is.

17 Increased physical hazard in the immediate, but
18 over time they become a biological hazard as that
19 filter becomes saturated.

20 These ponds are also -- we've got roads and
21 houses. So lots of impervious surfaces and ways to
22 introduce pollution into them.

23 Traffic. So we have a serious intensification of
24 use here. We're putting a lot of strain on this --
25 especially these pods with all these houses around

1 them. And so when we talk about the intensification,
2 we have a two-lane road that should stay two-lane.
3 We've got our public water wells there. It's built
4 into the plan. It's fundamental. So we -- we can't
5 make that road any bigger. It would totally ruin
6 the -- the rural character. But the development is --
7 the whole area is immature for development.

8 What happens when you come in, and you start
9 developing, and then you're going to come back and add
10 roads; then you gotta pay somebody \$500,000 to take 15
11 feet of their property. They go out there, they put a
12 bunch of trees, you know, they declare something
13 commercial, and then they get a bunch of money. You
14 gotta dig things up, lines get ruptured, and -- and
15 things are being redone. That's what happens whenever
16 you -- you overdevelop an immature area like this.

17 So in the -- in the calculations for the traffic,
18 we haven't really talked about the fact that things
19 have changed. We've got a lot of -- on my little rural
20 road, it is like delivery, Amazon, Amazon, Amazon,
21 delivery, and they're driving fast. Somebody new every
22 week in a big box van. They're driving into the
23 neighborhood. You have people coming in with the lawn
24 trucks, you know, to do the lawn -- lawn care, things
25 like that. So I think that the characteristics of that

1 traffic really should be considered when we talk about
2 the fact that we know we cannot expand this two-lane
3 road. That's not going to happen.

4 I thought that Roxanne did a really -- okay.

5 This is the calculations, just pulling some
6 information on traffic specifically. As I stated
7 earlier, I really felt like Mr. Fichter had done a
8 beautiful job with that, focusing on the public safety,
9 which is a real concern. This area -- this part of the
10 county was never meant to develop to this level of
11 intensity, that's clear, with the -- with the
12 constraints that were placed on that road.

13 So with that being said, I don't think that the
14 emergency services are -- are able -- well, they're
15 currently not able to serve it, but it's just not --
16 it's too much in the wrong place.

17 Again, that the conditions are sufficiently
18 safeguarding the public interest, and that they're
19 related to the impacts of the public interest. The
20 conditions, as I am seeing them, are more related to
21 how can we find a way to grant extra density for
22 Mr. Neal.

23 Just quickly on the gopher tortoises, I really
24 would thank the group for coming up with the prospect
25 of having on-site gopher tortoise preservation. This

1 is the direction that the management plan revision is
2 headed. We definitely need to preserve those
3 bloodlines for the survivability of the species, and
4 make sure that we are keeping our Lee County gopher
5 tortoises in Lee County. We've lost so many of them.
6 Thousands and thousands of acres, large tracts like
7 this, have been converted with supposed environmental
8 enhancements, and there's not a turtle to speak of --
9 tortoise, sorry. There's not a tortoise to speak of.

10 And then we look to the citizen efforts like out
11 in Cape Coral, down in Marco Island, what East Lee
12 Wildlife is doing, and all I can say is, you guys need
13 to step it up. It's been a lot of development that's
14 taken place here. In fact, Lee County has the second
15 highest number of CDDs in the state, and I think
16 there's a lot of responsibility on the development
17 community to try to right that wrong. It shouldn't
18 have gone down like that.

19 So lastly, on the septic-to-sewer conversion, the
20 longer that these pipes are running out to these remote
21 places like are proposed here -- those pipes are not
22 sealed. Water infiltrates into them. That's why --
23 you know. So -- and the longer that the pipes are
24 down, the less efficient those systems are over time.

25 So because of the concerns that have come up with

1 wastewater, recognizing that it's contaminated with
2 PFAS, recognizing that the household inputs from
3 people's homes have those -- those hazardous substances
4 in them. More importantly, the industrial sources are
5 mixing into those -- those public sewer systems, right?
6 Then that water is also -- massive amounts are coming
7 in from infiltration. All of a sudden we have all of
8 this water that now we're taking out of the water
9 budget, not knowing how to deal with it anymore, not
10 knowing how to manage our biosolids, and looking at
11 having to ASR inject it, right?

12 So I know that we are at a critical point in the
13 development of our county as we're grappling with this
14 and trying to figure out how we're trying to manage
15 this issue going forward, and I think that -- that
16 smaller plants, septic systems where people can manage
17 those inputs and have some responsibility for it, is --
18 is -- is not that bad of an idea. I know that the Alva
19 community, the Olga community, us rural communities
20 would get behind that 100 percent. Because there is
21 something to be said for being able to be master of
22 your own destiny when it comes to your utilities, not
23 to be tied into these public systems, not to be
24 dependent upon them in hurricane events, climate
25 change, and have our wells, have our private on-site

1 systems, as was intended for these rural areas, and the
2 levels of service that are appropriate. So I don't
3 think we need to break what is -- is fixed and working.

4 Yes, there are clay pipes out there. There are
5 old systems. We need to target those and get those
6 fixed. But, you know, we do have the technology to be
7 able to have our own on-site systems, get that
8 recharge, and sort of rethink about that -- about that
9 policy.

10 And with that being said, you know, I just hope
11 that this community can heal some of the -- the -- the
12 divisions, and that there's still opportunity to work
13 together towards a common solution and -- because we're
14 asking -- it's like, you know, they always tell you you
15 never ride a wet horse, right? But I'm telling you
16 that this idea about putting all these houses around
17 this lake, it is an old idea that's outdated. We know
18 it's not good. Let's not do that to our environment.
19 Let's find a better solution. Let's work together.
20 Let's do something novel and awesome, and I don't think
21 it's too late.

22 Thank you, Madam Examiner.

23 HEARING EXAMINER RIVERA: Thank you. Thank you
24 for coming today.

25 That was the last card that I had. Was there

1 anyone else of the public who wanted to speak today?

2 MR. BARRACO: (Indicating).

3 HEARING EXAMINER RIVERA: Yes, sir, if you could
4 please come forward. Good afternoon.

5 MR. BARRACO: Good afternoon. I'll keep this
6 short. I represent the owner of the 160 acres at the
7 end of Duke Highway --

8 THE REPORTER: Sir, can you state your name?

9 MS. MONTGOMERY: Hang on a second --

10 MR. BARRACO: Vincent Barraco --

11 MS. MONTGOMERY: Hang on.

12 Dirk, can you pull the aerial up so we can see
13 what Mr. Barraco is talking about?

14 MR. BARRACO: Yeah, the address is 13231 Duke
15 Highway. It's the square that Trout Creek kind of
16 bisects on the western side of the project.

17 Currently don't have any specific comment. I just
18 wanted to -- I think we've heard about all the comment
19 we can hear from both sides, experts, laypeople,
20 concerned citizens. I just wanted to kind of preserve
21 our right based on what comes out of this -- your
22 report to the Commission in the future. I just wanted
23 to go on record.

24 HEARING EXAMINER RIVERA: Okay, thank you.

25 MR. BARRACO: Thank you.

1 HEARING EXAMINER RIVERA: Is there anyone else who
2 wished to speak today?

3 Okay, then we will close public comment and come
4 back to the Applicant and the Staff.

5 How much time would you like to break before you
6 begin your rebuttal, or did you want to start today?
7 Did you want to call any rebuttal witnesses today?

8 MS. MONTGOMERY: We have a couple witnesses that
9 may have future scheduling issues.

10 HEARING EXAMINER RIVERA: Okay.

11 MS. MONTGOMERY: I think they'll be relatively
12 quick. We won't be past the 4:30 time. So Shane in
13 particular, since the gopher tortoise issue was
14 featured today and the wildlife issue, if we could
15 allow him to testify, and Kirk Martin, and Yury on
16 traffic, to clear those issues up. Everybody else
17 would wait until the next day --

18 HEARING EXAMINER RIVERA: Okay.

19 MS. MONTGOMERY: -- to have a more coherent
20 presentation on the --

21 HEARING EXAMINER RIVERA: Do they need a moment
22 before we begin their -- their rebuttal testimony, to
23 collect your notes, or are you ready to go?

24 MS. MONTGOMERY: Are you ready?

25 MR. JOHNSON: I'm ready.

1 MS. MONTGOMERY: Okay.

2 HEARING EXAMINER RIVERA: Thank you.

3 And just to be clear, has the Staff and Applicant,
4 have you chosen the subsequent hearing date for the
5 third day, if we go into that?

6 MS. MONTGOMERY: The date, as I understand it, is
7 September 20th, and that's the problem, that Shane
8 can't be here on the 20th.

9 HEARING EXAMINER RIVERA: Okay. Understood, thank
10 you.

11 Good afternoon.

12 MR. JOHNSON: Hi, Shane Johnson again, for the
13 record. I have a lot of notes here. There's a lot of
14 information --

15 HEARING EXAMINER RIVERA: I hope you do because
16 there were a lot of issues that came up. So thank
17 you --

18 MR. JOHNSON: Yes.

19 HEARING EXAMINER RIVERA: -- for taking those.

20 MR. JOHNSON: I will try to do this as cohesively
21 as possible; but, again, I do have a lot of notes. I
22 may -- I may be bouncing around a little bit.

23 Is this our presentation?

24 MR. DANLEY: No, that's Staff's.

25 MR. JOHNSON: Yeah, I'll pull up ours. Which

1 one's ours, Dirk?

2 (Discussion at lectern)

3 MR. JOHNSON: There we go. I'll start with the
4 soils discussion to elaborate a little bit more on my
5 testimony during my presentation to hopefully shed some
6 more light on this.

7 So, again, revisiting the Policy 123.2.17, there
8 was a comment made that the information in our
9 indigenous report was a little vague. Well, revisiting
10 the policy and what the policy states with respect to
11 soils -- again, I want to revisit that. It states (as
12 read), the land where creation and/or restoration of
13 indigenous rare and unique upland habitats will occur
14 must contain the soils needed to support the
15 establishment and success of the indigenous rare and
16 unique upland habitats.

17 Well, nowhere in the policy is it specific to
18 certain soil units or soil types, but I think it's
19 generally accepted -- and Staff may agree or
20 disagree -- that in order to create uplands, we have to
21 have soils that are relatively well drained, okay? So
22 I think from a conservative standpoint, we're proposing
23 to use soil types that are sandy or a mixture of sand
24 to allow that to occur. Because if we have soil types
25 that are impermeable or have a layer that doesn't allow

1 for the permeation of water, then you're not really
2 achieving potentially your upland habitat type. So
3 that's kind of our approach here, and I want to expand
4 on that a little bit.

5 So we're talking about, you know, relatively well
6 to moderately well-drained soils, sand or a sand mix,
7 to achieve the specific rare and unique target habitat
8 types we're trying to achieve here, which is oak
9 hammock, primarily live oak and cabbage palm and pine
10 flatwoods, which is primarily slash pine here in South
11 Florida. And those species -- live oak, cabbage palm,
12 and slash pine -- they're all very highly adaptable
13 species in Florida. They're very common. The mature
14 forms of these in habitat form are becoming more rare
15 because uplands have a lot of development potential
16 versus wetlands, which are more regulated, so common
17 yet unique and becoming more rare in their mature form
18 habitat-wise.

19 So there was a comment made about pH. These are
20 species -- especially live oaks and cabbage palm are
21 highly adaptable, can exist in a wide range of
22 different pH levels. Slash pine a little different,
23 likes more acidic soils, but still very highly
24 adaptable, can be found in a variety of different
25 conditions.

1 So this graphic that you see on the screen was
2 from our indigenous management plan, and what this
3 graphic shows is that the tan color represents our rare
4 and unique upland creation. That's about 300 acres.
5 And this graphic shows the USDA's soil -- soil units or
6 soil types across the project so you can see which soil
7 units overlap our proposed rare and unique creation.

8 And so I just want to focus on -- of the 12 that
9 are listed here in this table, focus very quickly here
10 on four of those soil types. That's unit 13, Cypress
11 Lake fine sand; unit 28, Immokalee sand; unit 33,
12 Oldsmar sand; and unit 144, Calusa fine sand. Those
13 four out of the 12 represent 95 percent of what is
14 overlapping onto our rare and unique creation area.

15 So all of these soil types that I just listed off,
16 these four, contain existing rare and unique
17 vegetation. It contains live oak in the canopy, with
18 cabbage palm and slash pine. So I just want to point
19 that out.

20 The first three, units 13, 28, and 33, are listed
21 in the description by the USDA as poorly drained soils;
22 however, they do contain the rare and unique habitat
23 types that we are trying to achieve. So, again, we're
24 trying to be a little bit more conservative by saying
25 we'll try to use sandy mixtures, sandy soils and

1 sandy-mix soils, to achieve our upland rare and unique
2 habitat.

3 Unit 44, again, the last one, Calusa fine sand, is
4 listed as moderately well drained, and that soil
5 type -- you can see the cursor -- represents over half
6 of what is overlaying on the proposed rare and unique
7 creation, okay? All of this.

8 So essentially what areas of the property that
9 have received the dredge material from the river is
10 characterized -- characterized as moderately well
11 drained and does have the sandy components.

12 So knowing that a lot of this material has to be
13 moved around given its height, there will have to be an
14 effort to basically utilize that top layer of sand in
15 the rare and unique areas, but the point is the
16 material is there. It's just how we -- you know, when
17 we go into development, and prior to planting, you
18 know, how we're conscientious about utilizing that
19 sandy soil in the rare and unique areas.

20 Next topic, gopher tortoises. There was a lot of
21 discussion on this, and the gentleman that gave the
22 presentation I think did a really good job. He made a
23 lot of valid points. And not to discredit anything he
24 said, but I just kind of want to boil this down to kind
25 of, you know, what we're dealing with. We're within

1 the confines of what we can do, right?

2 So when we have gopher tortoise burrows that are
3 within a development footprint, we have essentially two
4 options, and that's we approach FWC for an on-site
5 relocation permit or an off-site relocation permit. So
6 we prefer to keep the tortoises on-site, and the
7 gentleman earlier made a good point, gopher tortoises
8 do have a high site fidelity. If you remove them from
9 their burrow area to somewhere else, they want to home
10 back to where their -- their burrow was.

11 So -- relocation is stressful on the tortoise. So
12 keeping them on-site from a biological standpoint is a
13 good thing, but ultimately that decision is up to FWC.
14 If they find that we're not meeting the right
15 vegetation and the soil characteristics, and our
16 management plan isn't -- won't work for the site for
17 tortoise, then there's the off-site relocation option.

18 So we have those options available to us. Again,
19 we prefer on-site, but they may end up going off-site,
20 depending on what FWC does in reviewing the incidental
21 take tortoise relocation application.

22 HEARING EXAMINER RIVERA: And when does that
23 happen? Because there was a lot of questions about the
24 timing --

25 MR. JOHNSON: Yes.

1 HEARING EXAMINER RIVERA: -- to be sure that that
2 wouldn't predate, essentially, any construction
3 activities.

4 MR. JOHNSON: That would have to happen after all
5 entitlements are issued and prior to construction. So
6 let's say just we're dealing with a phased project with
7 three different phases, for the sake of discussion. It
8 could be phased -- the permit from FWC could be phased,
9 or we could do it all in one single phase. It really
10 depends on, you know, the restoration schedule so...

11 HEARING EXAMINER RIVERA: And you had mentioned
12 that you don't typically do this level of environmental
13 species review at this stage. I think you said on the
14 first day that that usually happens closer to
15 development order. Will there be additional reviews
16 that are still required as part of subsequent permits,
17 either from the county or state or federal agencies, or
18 have you done all the environmental --

19 MR. JOHNSON: No, there's quite a bit more to go.
20 I'll get to that in just a second, if I could.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. JOHNSON: That question specific to tortoises,
23 I can answer that now, but --

24 HEARING EXAMINER RIVERA: It covered all the
25 species, but obviously the tortoises got the most

1 attention today --

2 MR. JOHNSON: Sure.

3 HEARING EXAMINER RIVERA: -- but it goes to all of
4 them.

5 MR. JOHNSON: Delving more on that subject, we're
6 required to do a 100 percent gopher tortoise survey for
7 the FWC permit, meaning we have to cover 100 percent of
8 the suitable tortoise habitat on the project, which is
9 a majority of the site. That's a huge undertaking. So
10 that has to be done in accordance with the permit
11 requirements and in order to get the permit.

12 HEARING EXAMINER RIVERA: And there was some
13 concern -- if you're on tortoises -- about the
14 conflict --

15 MR. JOHNSON: Sure.

16 HEARING EXAMINER RIVERA: -- point. So once -- if
17 you're going to relocate them and keep them on-site, it
18 seems like there's some peril to them, understand that
19 circumstance, as well, if you're relocating them even
20 if it's on-site from their original habitat.

21 MR. JOHNSON: Right, and that was -- that was the
22 point of me saying, well, FWC has to review this to
23 make sure the vegetation characteristics match what's
24 suitable for the tortoise. So there's a balance that
25 has to be struck if we're going to keep tortoises

1 on-site. We know we have to do all of the indigenous
2 restoration, the rare and unique component, but have
3 habitat that's suitable and conducive for the long-term
4 survive -- survivability of the tortoise. So that may
5 look like clustering some vegetation in areas to allow
6 some more open areas for the tortoises to forage and
7 more grasses to grow for the species. So what that
8 balance looks like right now we don't know, but that's
9 a balance that will have to be struck if we're looking
10 to do both on the property. Again, if it's not
11 feasible, FWC is going to tell us that and have us take
12 them off-site.

13 HEARING EXAMINER RIVERA: And that goes to the --
14 I think I asked this question on Wednesday, as well,
15 but there won't be any physical barricades between
16 these preservation areas that the -- that the tortoises
17 may be relocated to in terms of fencing or whatever to
18 actually physically keep them separate from the --

19 MR. JOHNSON: There may be --

20 HEARING EXAMINER RIVERA: -- development?

21 MR. JOHNSON: -- there may be if FWC does approve
22 on-site relocation. Again, we don't know exactly what
23 that looks like yet because we haven't applied --
24 we're not -- we're not at that time. So there may be
25 barriers that are required between the development

1 footprint and conservation area.

2 HEARING EXAMINER RIVERA: But that would be a
3 requirement of the permitting, it sounds like you're
4 saying --

5 MR. JOHNSON: Correct.

6 HEARING EXAMINER RIVERA: -- a condition of
7 approval.

8 MR. JOHNSON: That's correct.

9 There was a concern about commensal species,
10 gopher tortoise commensal species, such as eastern
11 indigo snake, pine snake, and Florida mouse. When we
12 obtain a permit from FWC, at that point we can scope
13 burrows, but until we obtain a permit, we're not
14 allowed to stick a scope down a burrow, unless
15 something has changed. But if we do happen to come
16 across commensal species, there's protocol in the
17 permitting guidelines and in the conditions of the
18 permit that's issued by FWC on how to handle each
19 individual species. So I just want to point that out.

20 Wetlands, there are approximately 70 acres of
21 wetlands on the site. There was a concern about the
22 amount of wetland impacts, approximately 19 acres. The
23 vast majority of -- actually, all of those 19 acres are
24 very low quality. So those were selected for impact
25 based on their existing quality -- very high exotic

1 levels, they're low pasture areas that have exotic
2 species, such as torpedo grass, West Indian marsh
3 grass. So -- and impacting those areas is going to
4 require approval by the South Florida Water Management
5 District. So we can tell you there's going to be 19
6 acres of impacts. What the final outcome is has yet to
7 be determined, and they have to be mitigated. So of
8 the remaining wetlands, those could possibly be used
9 for -- be used for mitigation, but there has to be a
10 functional balance between what's impacted and what's
11 preserved on-site, and that is determined by the South
12 Florida Water Management District.

13 Getting back to more species, so there was a
14 question about when we conducted our general protect
15 species survey for -- for Lee County, when that was
16 conducted. Again, that was a 2022 survey, but I think
17 the question was more geared toward time -- like what
18 time. So our report indicates it was conducted during
19 daylight hours. That's generally 7 a.m. to 5 p.m. But
20 we did do -- not for the zoning effort, but in
21 anticipation of environmental permitting -- and I
22 mentioned this in my presentation -- species-specific
23 surveys for crested caracara, red-cockaded woodpecker,
24 and the Florida bonneted bat, that -- those hours
25 varied. Some were in the morning; some are in the

1 evening. So we have spent a significant amount of time
2 on the property with not only the general species
3 survey, but these other species-specific surveys.

4 I just want to point out that -- and I'm not sure
5 I made this clear in my presentation, but we did not
6 have any listed species nesting observed on the
7 property. I did mention that, you know, bald eagle and
8 crested caracara were observed, you know, utilizing the
9 property but not in a nesting capacity.

10 A report does indicate that we identified, in the
11 western portion of the site, a dilapidated caracara
12 nest. This was when we were first doing work on the
13 property. So that was a nest that we had observed in a
14 cabbage palm tree. Again, it was falling apart, and
15 deemed it caracara nest because they're in the area.
16 We know we have caracara habitat, which is pasture with
17 scattered cabbage palms, but we don't know if that nest
18 was ever successful in the past. We don't know if it
19 was a nest, you know, they just recently created, and
20 it failed. We don't know that information.

21 But in our species-specific caracara survey that
22 we conducted, again, in anticipation of environmental
23 permitting, using the U.S. Fish and Wildlife Service
24 survey guidelines, this survey was done in January
25 through April -- April of 2024. We did not have any

1 caracara nesting on the property.

2 Just some general notes on the -- on the preserve
3 area and concerns that were brought up. We're
4 preserving all the indigenous habitat. Again, we're
5 looking at nine percent of the property being
6 indigenous, per my presentation on Wednesday. So those
7 lands are being preserved, and that does include very
8 large trees, including heritage trees. There's very --
9 very large live oaks on the property that are being
10 preserved, and that's definitely going to be an amenity
11 for the residents.

12 Again, not to belabor this, but we're looking at
13 extensive planting to achieve the overall 420 acres of
14 preserve area, but there was a question about species
15 and species balance. So we did state some species
16 minimums in our management plan that includes a minimum
17 of four species in each stratum -- the canopy,
18 sub-canopy, and ground-cover levels. So there has to
19 be a minimum of four species in each of those levels,
20 and no one species can exceed 25 percent coverage. So
21 we -- the point of this is to diversify with rare and
22 unique.

23 There was a question about if any areas of the
24 preserve were damaged, well, what happens? Who is
25 responsible? So if portions are damaged, yes, it does

1 need to be replaced, the vegetation needs to be
2 replanted. Whether there's a hurricane or a fire, it
3 must be replaced. Whether that's Neal Communities, as
4 they control the property, or after turnover to the
5 long-term management entity -- and I think in this case
6 it would be the CDD, it would be their responsibility.
7 But the CDD will have the taxing authority to make sure
8 that that's completed.

9 A question about use of herbicide in the preserve
10 area, that is pretty standard to treat exotic
11 vegetation, but that must be done, one, by a licensed
12 applicator; and, two, they must use EPA-approved
13 chemicals. So I wouldn't anticipate that any
14 herbicides that were not EPA approved would be
15 utilized; and if you're a licensed applicator, they
16 know that.

17 There was a question about, well, who is
18 monitoring the preserve area? Again, we have a
19 five-year monitoring window to be able to document the
20 condition of the preserve areas, and hopefully, you
21 know, at five years we're obtaining that 80 percent
22 survivability to be able to get sign-off from the
23 County. If we're not meeting that success, the
24 monitoring's going to be prolonged until we are meeting
25 that threshold.

1 I think that's all I had.

2 HEARING EXAMINER RIVERA: Give me one second.

3 MS. MONTGOMERY: Yeah, Shane, let me ask you a
4 question. Have you worked on projects before where
5 they've actually implemented a restoration and creation
6 of wildlife and rare and unique and wetland areas?

7 MR. JOHNSON: Yes.

8 MS. MONTGOMERY: And once or twice? About how
9 many times would you say you've done this type of
10 project?

11 MR JOHNSON: More than I can count --

12 MS. MONTGOMERY: Okay.

13 MR. JOHNSON: -- at this point.

14 MS. MONTGOMERY: So my next question is, since
15 you've had an historical basis with creation,
16 restoration, replacement, do you have an expert opinion
17 as to whether or not those programs, when implemented,
18 are successful and work?

19 MR. JOHNSON: No, absolutely. From my
20 perspective, as long as, you know, the maintenance is
21 conducted the way it should be, they've been very
22 successful.

23 MS. MONTGOMERY: And did you sit through all the
24 public testimony in this matter?

25 MR. JOHNSON: I did.

1 MS. MONTGOMERY: Was there anything in that public
2 testimony that changed your expert opinion that this is
3 an improvement to the vegetation and wildlife on the
4 subject property?

5 MR. JOHNSON: Nothing has changed my opinion that
6 I've heard.

7 MS. MONTGOMERY: Okay, thank you.

8 HEARING EXAMINER RIVERA: One item that I had
9 written down was about the wildlife corridors. I don't
10 recall hearing anything about that. I think there was
11 some -- there was material in the record but not
12 testimony that was given, if you could briefly touch on
13 that?

14 MR. JOHNSON: Sure. There was mention of a
15 north/south corridor. There's really nothing to
16 connect to south of the property. There's the river.
17 So I did mention that the preserve area -- the overall
18 420 acres of preserve is going to provide sufficient
19 area for wildlife movement. I don't know if I would
20 call it or characterize it as a north/south corridor
21 because of the geographic restriction of the river
22 being south. But I would point out that certainly the
23 Trout Creek system and the buffers that are being
24 provided, you know, adjacent to Trout Creek provides an
25 excellent movement corridor. I mean, that's the most

1 environmentally sensitive area of the property, is
2 Trout Creek, and the fact that it's being buffered
3 significantly with the project and -- and the
4 restoration is -- is a really good thing.

5 HEARING EXAMINER RIVERA: And then you mentioned
6 subsequent the site-specific species management plans.
7 And so those are going to be provided to the County, I
8 assume, as part of the DO; but will they also be
9 provided to additional agencies for oversight review?

10 MR. JOHNSON: Yeah, site-specific, they're not
11 management plans, they're survey reports, but those are
12 for environmental permitting. I mean, certainly if the
13 County requests those as part of the development order,
14 we would furnish those, assuming that they're completed
15 at the time; but that's typically not something that
16 the County would request at the DO level.

17 HEARING EXAMINER RIVERA: Okay. I think that was,
18 for your portion, everything that I had written down.
19 Thank you.

20 MR. JOHNSON: Thank you.

21 HEARING EXAMINER RIVERA: Did Staff have any
22 questions, by the way?

23 MR. DANLEY: (Shakes head.)

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. MARTIN: Good afternoon.

1 HEARING EXAMINER RIVERA: Good afternoon.

2 MR. MARTIN: And I apologize. I had some throat
3 issues a number of years that, as the evening goes on,
4 my throat gets worse. So excuse me for clearing my
5 throat --

6 HEARING EXAMINER RIVERA: Absolutely.

7 MR. MARTIN: -- and so forth.

8 I'm going to be addressing comments that were
9 based on water resources and potential impacts to
10 those. I'm just going in the order that they -- that I
11 received them so there may be some -- a little bit of
12 overlap.

13 Mr. Fichter brought up two issues. One was about
14 water protection, and -- and specifically he mentioned
15 something about gas tanks and sewer lines. Just as
16 kind of a background, wellhead protection -- protection
17 ordinances is -- are designed to either prohibit, limit
18 and/or manage the use, storage and/or disposal of
19 potentially hazardous materials. That's what it's
20 there for, to protect --

21 THE REPORTER: You need to speak up. I know your
22 throat is hurting.

23 MR. MARTIN: I'm sorry.

24 So wellhead protection ordinances are created to
25 either prohibit, limit, or manage potentially hazardous

1 substances, either their use, their storage, or their
2 disposal. But the project we're proposing has -- meets
3 all the conditions of the Lee County wellhead
4 protection ordinance because we do not have any
5 hazardous materials.

6 With regard to sewer lines, sewer lines are very
7 common wellhead protection ordinances, and they're not
8 (unintelligible) so there's no issues there.

9 Mr. Fichter also raised the issue of the project's
10 irrigation affecting area wells. This was also
11 indicated by other speakers, as well. As I noted in my
12 principal testimony, our project is creating a major
13 reduction in the potential for site irrigation water
14 use. First of all, the elimination of any potable use
15 going to Lee County Utilities; the fact that 60 percent
16 is set aside in preserve, no irrigation going on there,
17 also recharge occurs in those areas. Something close
18 to ten percent of the area is in lakes. No irrigation
19 going on there. Plus the clustered small lot sizes,
20 essentially a small footprint, requiring very little
21 irrigation. And finally, the centrally controlled
22 irrigation system that will ensure compliance with all
23 irrigation ordinances and -- and make sure that people
24 aren't overirrigating.

25 I mentioned, I think, in my primary testimony that

1 our modeling done for the Water Management District
2 showed our impacts to be less than one foot at the
3 property boundary. I was wrong. It's actually .1
4 foot. So essentially we have a -- essentially zero
5 impact at our property boundary from our proposed use
6 for irrigation.

7 Ms. Fischer raised questions about nutrients going
8 to the river, and this was also indicated by other
9 speakers, as well. The project engineer, Brandon, may
10 bring other issues up on this, but our project will
11 notably reduce the potential for nutrients. First of
12 all, providing central sewer versus septic tank. One
13 of the speakers talked about the septic tanks have
14 been -- have been implicated as a primary cause of the
15 impairment of the Caloosahatchee River. That is true.
16 We have our surface water management system that meets
17 all state standards for water management control and
18 water quality. That water management system increases
19 the storage on the site and the retention time of water
20 on that site so that you have plenty of time for the
21 attenuation of nutrients to -- to occur.

22 In addition to that, as I noted in my primary
23 testimony, we have a massive surrounding preserve area
24 that our stormwater system actually discharges to, and
25 that's what I could call a polishing of water before it

1 actually gets to waters of the State. So this is --
2 this is a much greater program than most surface water
3 management systems.

4 And then finally, I mentioned that we have an
5 ongoing monitoring program. It does not provide any
6 treatment. It does provide evidence that the system is
7 working. And that ongoing monitoring plan was --
8 included seven surface water sites, three groundwater
9 sites, and biannual reporting to Lee County Natural
10 Resources.

11 HEARING EXAMINER RIVERA: Are there additional
12 permitting agencies that you'll also be responsible to
13 report to or obtain permits from?

14 MR. MARTIN: For the nutrient analysis, I'll let
15 Mr. Frey answer that. I don't know -- I think there is
16 a five-year monitoring program for all surface water
17 management systems, but this is in perpetuity. This is
18 for Lee County Natural Resources, and I can tell you
19 they're typically a little more rigorous than even the
20 Water Management District is.

21 HEARING EXAMINER RIVERA: Okay. And just to be
22 sure I understood what you just said, so the monitoring
23 reporting that you're doing is the test results, and so
24 you were saying that that's not reviewing for the
25 actual functionality of the system, but the results of

1 the test will indicate if the system is functioning.
2 So while you're not being held to that standard, the
3 attenuation and polishing that you just mentioned,
4 that's how you're improving the water quality before
5 it's exiting the site?

6 MR. MARTIN: It is, but I -- one -- one
7 clarification. I was kind of addressing one of the
8 comments made that monitoring doesn't improve water
9 quality. That is true. That's all I was saying, the
10 monitoring is proof that it's working.

11 HEARING EXAMINER RIVERA: But are you improving
12 water quality, I guess, is the --

13 MR. MARTIN: Absolutely.

14 HEARING EXAMINER RIVERA: Okay.

15 MR. MARTIN: The -- the system is improving the
16 quality. The monitoring is proof that it's working.

17 HEARING EXAMINER RIVERA: Okay. And then there
18 was a question about the continued oversight and
19 enforcement mechanisms for the water quality. So,
20 again, it's just difficult -- everyone is talking very
21 fast because I think --

22 MR. MARTIN: Yeah.

23 HEARING EXAMINER RIVERA: -- everyone is anxious
24 to get out of here, but I want to be sure we get it
25 right. So did you say that it's in perpetuity to the

1 County?

2 MR. MARTIN: It is for Lee County Natural
3 Resources. They do have a provision in their rules
4 that after many years, if you can show that -- many
5 years after the completion of development, if you can
6 show that the system has been in compliance, you may be
7 able to get out of some or all of that permitting -- or
8 that monitoring, rather. But the way it's set up right
9 now, it is in perpetuity.

10 HEARING EXAMINER RIVERA: Okay. I believe the
11 rest of my questions would be addressed to Mr. Frey and
12 not you but --

13 MR. MARTIN: Yeah, and that's a good point. He's
14 the surface water engineer. I'm just addressing water
15 quality in general --

16 HEARING EXAMINER RIVERA: Okay.

17 MR. MARTIN: -- and he may have some more details
18 on that.

19 HEARING EXAMINER RIVERA: Okay, thank you.

20 MR. MARTIN: There were some comments by Mr. and
21 Mrs. Cochran regarding septic tanks. One quote was
22 "septic systems are better for the environment than
23 central sewer." I don't know of anybody that is
24 knowledgeable or working in the wastewater management
25 industry that would make that statement. As I noted in

1 my testimony, septic tanks have their place; however,
2 by using septic tanks, you eliminate the possibility of
3 clustering, which is encouraged by the policy and
4 provides a number of benefits, including wildlife
5 areas, preserve areas, storage, recharge areas, so
6 forth. So septic tanks have their place, but
7 clustering provides, I think, much greater value than
8 septic tanks do.

9 Mr. Cochran said something about wastewater
10 treatment plants pump raw sewage plus chemicals to the
11 river. Not true. Wastewater systems are a highly
12 evolved process over many years of making things
13 better. There's actually very little chemical use in
14 wastewater processing. It's mostly a biologic
15 infiltration process, biologic being encouraging
16 bacteria to eat up all the nutrients in there. The
17 result is a really highly processed water that -- I
18 hate to say this, but probably meets -- is better than
19 potable water that much of the world drinks. I mean,
20 it's a very high-quality water. Actually, except for
21 nutrients, it's actually very near drinking water
22 standard.

23 I'll get into that a little bit more as I talk
24 about the next -- I think it was Ms. Gause and also a
25 comment by Ms. Schwartz in a similar vein.

1 Ms. Gause correctly noted that the septic systems
2 along the Caloosahatchee are a major cause of the river
3 contamination that's been known in a number of studies,
4 including one my firm did for the DEP that established
5 the BMAP for the Caloosahatchee River.

6 She went on to say something about the City of
7 Fort Myers having lots of problems with their
8 wastewater treatment system, including pumping 11
9 million gallons a day into the river. That was all
10 true a year ago. She's missing out on some new
11 information. Currently the City is working with DEP.
12 It's a major, major upgrade, some of it including being
13 funded by the DEP.

14 The City of Fort Myers just completed, in concert
15 with the City of Cape Coral, a pipeline under the river
16 to deliver 12 million gallons a day of reclaimed water
17 to the City of Cape Coral. The reason for that is the
18 City of Cape Coral has a currently expanding system
19 with lots of demand for irrigation water. The City
20 doesn't have -- does not -- the City of Fort Myers does
21 not have the demand but does have the supply. We made
22 that connection. That project just was completed and
23 was given the -- probably the most prestigious award in
24 the state of Florida as the project of the year for
25 reclaimed water.

1 In addition to that, the City is currently adding
2 treatment processes to both their water treatment
3 plants to raise it to high-level disinfection reclaimed
4 water standards. That's the highest standard that we
5 operate in wastewater. So -- so we'll be meeting
6 high-level disinfection standards and sending that
7 water to Cape Coral for irrigation use, not going to
8 the river.

9 In addition to that, they're currently in the
10 process of constructing four deep injection wells.
11 These are injection wells down to 3,000 feet that --
12 and that's for backup disposal of any effluent that
13 can't be used during wet season.

14 All of these projects together will be completed
15 by 2029, so that by 2030 the City of Fort Myers will
16 have eliminated all river discharges. However, the
17 septic tanks will still be, you know, adding their
18 water to the system; but there will be no wastewater
19 plant -- wastewater from central sewer going to the
20 river.

21 And that's all I had unless you had other
22 questions.

23 MS. MONTGOMERY: I did have a question. I know --
24 and I can't remember who it was that had a concern
25 about the irrigation was going to impact their well.

1 We would have to get a consumptive use permit, would we
2 not, in order to put in the irrigation wells?

3 MR. MARTIN: We do. In fact, it's already been
4 applied for, and it's actually been deemed complete by
5 the Water Management District. It's waiting on the ERP
6 permit. And that's where we did the modeling of our
7 proposed water use, and that's why we have two
8 sandstone wells that their drawdowns are less than .1
9 feet at the property boundary. So essentially we have
10 no impact on other wells outside our property.

11 MS. MONTGOMERY: And if the worst-case scenario
12 happened, does the Applicant's handbook provide that,
13 one, you can't have an adverse impact on existing legal
14 users; and if you did, you'd have to address that
15 damage; is that correct?

16 MR. MARTIN: It is correct. The District
17 evaluates each potential water use for its impact to
18 existing legal users, the environment, and the water
19 resource themselves, and we have to meet all those
20 criteria. However, if anybody was to ever believe they
21 have an impact from a new use, the District is their
22 recourse, and the District will do an investigation and
23 determine, if that impact is caused by the new user,
24 they have to mitigate that.

25 MS. MONTGOMERY: Okay. Do you know whether or not

1 a phase one environmental assessment was done on this
2 property?

3 MR. MARTIN: Yes, there was one.

4 MS. MONTGOMERY: There's been suggestion that
5 there's existing contaminants. Did that phase one
6 indicate that there's any existing contaminants?

7 MR. MARTIN: It did not.

8 MS. MONTGOMERY: Okay. And I know you -- you had
9 an in-depth discussion about the monitoring, but you're
10 going to have to do a baseline monitoring; correct?

11 MR. MARTIN: That is correct. There is a baseline
12 monitoring of those same stations mentioned and
13 biannual sampling in perpetuity.

14 MS. MONTGOMERY: So if there's an existing
15 problem, would that be identified in the baseline
16 monitoring?

17 MR. MARTIN: It should be. I mean, monitoring --
18 you know, obviously those are monitoring stations so
19 you don't monitor everything, but we have quite a large
20 array that -- that met all the conditions of Lee County
21 Natural Resources, and as I said, they tend to be very
22 rigorous in their review of those monitoring systems.

23 MS. MONTGOMERY: And, again, should there be a
24 problem -- we don't expect one, but should there be,
25 does that have been to be remediated under all the

1 appropriate rules?

2 MR. MARTIN: There is -- I didn't mention it, but
3 the monitoring program, it's a whole package that
4 includes statistical analysis of the data; and if
5 there's any exceedances, a resampling and/or -- and an
6 analysis of what the cause might be for that -- that
7 exceedance.

8 MS. MONTGOMERY: And do you know whether or not
9 Lee County has a fertilizer ordinance?

10 MR. MARTIN: They do.

11 MS. MONTGOMERY: And does that ordinance limit the
12 application of certain chemicals and nutrients?

13 MR. MARTIN: I believe it does, at least
14 seasonally. I don't remember about the total
15 magnitude, but yes.

16 MS. MONTGOMERY: And does it have to be applied by
17 someone who is authorized and licensed?

18 MR. MARTIN: That is correct.

19 MS. MONTGOMERY: If you're an agricultural user,
20 do you have to follow the fertilizer ordinance?

21 MR. MARTIN: I believe so, but I don't know that.

22 MS. MONTGOMERY: Okay. And I want to go back to
23 the wetland protection ordinance. I think it's Section
24 14-214, and it has prohibited and regulated activities
25 within a protection zone. So should there ever be a

1 protection zone on the subject property, would the
2 property have to comply with that particular ordinance
3 in terms of what's prohibited?

4 MR. MARTIN: Yes.

5 MS. MONTGOMERY: Okay, thank you.

6 MR. MARTIN: Thank you.

7 HEARING EXAMINER RIVERA: Thank you.

8 MS. MONTGOMERY: Again I'm going to ask you the
9 same question I asked Shane, and that is, did you have
10 the opportunity to listen to all the public input?

11 MR. MARTIN: I did.

12 MS. MONTGOMERY: And was there anything in the
13 public input that changed your opinion as to whether or
14 not this property would have an adverse impact on water
15 quality?

16 MR. MARTIN: No.

17 MS. MONTGOMERY: What is your expert opinion as to
18 whether this will have an adverse impact on water
19 quality?

20 MR. MARTIN: I think it will be an overall
21 improvement by the time this is done.

22 MS. MONTGOMERY: Okay, thank you.

23 HEARING EXAMINER RIVERA: Thank you.

24 Okay. So we are going to need to conclude for
25 today and get the next date. Will it be in this room?

1 MS. PEREZ: No, in the hearing room.

2 HEARING EXAMINER RIVERA: Okay.

3 MS. PEREZ: Our hearing room.

4 HEARING EXAMINER RIVERA: So we're going to resume
5 with rebuttal on September 20th -- at 9:00?

6 MS. PEREZ: Yes.

7 HEARING EXAMINER RIVERA: But that hearing will be
8 in the Hearing Examiner chambers, which are at the 1500
9 building that you're probably familiar with, if you've
10 been to these proceedings before. That's two weeks
11 from now so hopefully that gives everyone time to make
12 the small change that we talked about to the master
13 concept plan, to remove the deviation notation. And
14 then I believe the conditions that were presented,
15 Staff can have time now to discuss that. So hopefully
16 we'll have more clarification on that. And any
17 additional comments or conditions and things that we
18 heard about today -- it sounds like so far, with the
19 rebuttal we heard, you guys took great notes, so thank
20 you for that, to be as thorough as possible when we
21 reconvene.

22 For anybody that's not here, if you could just
23 spread the word, they'll receive notice of that, as
24 well, and we will, again, conclude and hope that
25 everyone else can join us when we convene.

1 Thank you for coming. Thank you for your time. I
2 do appreciate everyone being here. It's been a long
3 two days. We had some excitement, and I appreciate
4 everyone being patient and calm through that.

5 And I hope everyone stays well and has a wonderful
6 weekend.

7 Thank you.

8 (Proceedings concluded at 4:22 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 262
11 through 489, is a true and correct record of my
12 stenographic notes.
13

14 Dated this 10th day of September, 2024.
15

16 
17 _____
18 Deborah M. Bruns, FPR
19

20 (This transcript was electronically signed.)
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