VOLUME 4
THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2023-00051

IN RE: SOUTH SEAS ISLAND RESORT
MIXED USE PLANNED DEVELOPMENT
_____/

VOLUME 4

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| PROCEEDINGS: | PUBLIC HEARING |
| BEFORE: | Donna Marie Collins<br>Chief Hearing Examiner |
| DATE: | February 26, 2025 |
| TIME: | 9:00 a.m. to 3:59 p.m. |
| LOCATION: | Lee County Board of County Commissioners Board Chambers<br>2120 Main Street<br>Fort Myers, FL 33901 |
| REPORTER: | Deborah M. Bruns<br>Florida Professional Reporter |

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Shawn Farrell, South Seas Resort
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P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning, my name is Donna Marie Collins. The date is February 26, 2025. We are mid-hearing on an application to rezone property on Captiva Island to the Mixed Use Planned Development District.

All testimony and evidence that I accept during these hearings must be taken in under oath. Since we're starting a new week, I'm going to ask everyone in the room to please raise their hand if you believe you may be testifying on the record today. Do you swear and affirm the testimony and evidence that you place on the record will be the truth?

(Participants respond en masse.)

HEARING EXAMINER COLLINS: Okay, thank you.

All right. We left off with Michael Whitt. We were not yet finished.

(Sotto voce between Hearing Examiner and Ms. Perez)

HEARING EXAMINER COLLINS: All right. And we're on page 57 -- 55?

MR. WHITT: We left off on 56. I'm going to loop back just --

HEARING EXAMINER COLLINS: Recap?

MR. WHITT: -- for -- yeah, for the sake of some

continuity, kind of pick up where we left off. Just whenever you're ready, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: I'm ready.

MR. WHITT: All right. Good morning, again, Michael Whitt, counsel for Suraya, LLC, also counsel for Captiva Civic Association. And I appreciate the break the other day so that we could have some continuity and flow between my testimony and presentation and that of our expert, James Patterson.

I'm going to, with your indulgence, pick up on page 55, slide 55 of our PowerPoint, just to kind of loop back to where we were when we broke last Friday.

In -- in response to some of the changes made by the Applicant to the plans responding to earlier insufficiency letters, Lee County sent an insufficiency letter on August 19, 19 -- excuse me, August 19, 2024, and it referenced the master concept plan. And it says, revise the MCP to depict all easements. Please ensure that no required vegetation is proposed in any easement.

Then the next paragraph goes on to reference sheet 5 of 6 of the MCP, and it had green lines on certain areas where there were not going to be any buffers, and it said, "The" -- quote, unquote -- "'to allow' statement does not include Tract G." And if you

remember, it says, "which abuts timeshare units." That's incorrect, that's just a typo, which abuts a single-family residence. Tract G abuts the property of Suraya, LLC.

So it says, remove the green line and "be advised that Staff will not support a deviation." So in other words, Staff says, no, we are going to require that you have a -- a -- a required LDC buffer in this area.

It goes on, in addition, the DO for this area depicts buffering -- and, remember, we talked about the previous development order that had been approved by the County for the Beach House restaurant -- that had been approved in April of 2024 -- that "it depicts buffering and a 30-foot-wide landscape" -- remember that's not correct, it's not a landscape easement -- "landscape and access easement. Please revise to accurately depict what is being proposed." Because even the County acknowledged what you're showing us in this application, it's not accurate. It's not correct.

And then it says that they're proposed to plat the tracts of the project, provide the required buffers, et cetera. I don't think that platting is an issue.

Moving on then, this is the last slide that we covered when we broke before. The Applicant's response on October 29, they split the deviations -- remember,

before it was just Deviation 4, and it had all of this stuff in there. They split it into separate deviations, Deviation 4A through 4E.

Deviation 4D, as it dealt with the buffer along the southern boundary on the Suraya property, requested an alternative buffer of 10 trees per 100 linear feet. Going back to the development order then approved, the position was the, quote, unquote, existing vegetative buffer is sufficient to meet a Type F 30-foot-wide opaque buffer of trees and double hedgerow. Now they're saying, well, we see that's really not going to work. That's not totally accurate so now we're asking for a deviation. Instead of no buffers -- we know we're not going to get away with that. You already told us that. Where we showed no buffer, we have to do a buffer. We're asking for 10 trees per 100 linear feet -- like that's going to actually buffer anything -- between Tract G and the Suraya property.

Now, it states -- and I'm going to -- in the next slide, we're going to pick up on that. It falsely states that the recreational and residential uses have coexisted for decades; and based on that, the Staff said, okay, we're going to recommend that that would be an adequate buffer. But I have a question about that. They've already told the Applicant three times you

can't plant in the easement. Where are they going to plant? They have this -- all the drawings, surveys, everything submitted that shows it's an easement, and Staff's already told them you can't plant in the easement.

You asked the question Friday, Madam Hearing Examiner, just minutes before we broke, and you said, wait a minute, isn't there a hiatus? Isn't there some property, some strip, something somewhere where this buffer could go in? And the answer is, unequivocally, no. There's no room whatsoever without violating that -- that right-of-way, that access easement to put the plantings in. Even this is going to be violative of the LDC, with planting in a right-of-way and an egress/ingress easement.

Now, let's look at this request.

HEARING EXAMINER COLLINS: Okay, just a second --

MR. WHITT: The Applicant -- this is the next slide page --

HEARING EXAMINER COLLINS: -- just a second.

MR. WHITT: -- page 57.

HEARING EXAMINER COLLINS: Can you indulge me again?

MR. WHITT: Certainly.

HEARING EXAMINER COLLINS: Show me the aerial...

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MR. WHITT: Okay, which --

HEARING EXAMINER COLLINS: One of the aerials that depicts the --

MR. WHITT: Which do you think would work? Maybe -- let's go -- let me go back to slide 30 -- let's click back.

HEARING EXAMINER COLLINS: 37?

MR. WHITT: How about this one? How about page 30, slide 30, does that...

HEARING EXAMINER COLLINS: Okay. So this is how this restaurant appeared on January 14th?

MR. WHITT: Yes, ma'am.

HEARING EXAMINER COLLINS: And the easement to the beach --

MR. WHITT: Yes, ma'am.

HEARING EXAMINER COLLINS: -- and then your client's property?

MR. WHITT: Yes. Suraya is to the right of the photo, that is south; the Beach House on the north side of the easement. The -- the overhang, that's the main entrance. Do you see where the overhang is sticking out kind of on the right of the restaurant building? That's the main access into the restaurant. So when you walk -- when you go in to be seated, you -- you come along the easement and then come into the

restaurant, and that overhang comes right to the property line. In fact, they're required to have five feet of a perimeter buffer around the building. They don't have five feet to put a perimeter buffer in around the building in certain areas, the way the property run lines -- excuse me, the way the easement line runs there.

So let me find --

HEARING EXAMINER COLLINS: And then this other area that's cleared but not improved quite yet, that is between the restaurant and the beach; correct?

MR. WHITT: So are you talking about just outside the back of the restaurant?

HEARING EXAMINER COLLINS: Right.

MR. WHITT: That would be on the west side heading toward the beach. That is the outside deck seating area, with I believe 116 seats they anticipate. And I could be corrected on that, but I believe that's the -- I believe that's the correct number.

So you have the enclosed under-air restaurant, and then you have outdoor seating. The restaurant is approximately 6,700 feet, and the outdoor deck is 3,000 plus feet. The outside seating totaled 10,300 --

HEARING EXAMINER COLLINS: I just wanted a visual before you went on.

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MR. WHITT: Yes, yes, ma'am.

And then let me show you 35. This is the survey that was dated January of this year; and if you look, you can see the area of the restaurant, and you can see the -- the building with the overhang -- I wish I -- yeah, yeah, you got it? Put your mouse right where it shows overhang up to the right.

MR. ARBOIS: (Complies.)

MR. WHITT: Yeah, it says six-foot overhang, and you have that great big kind of entry covering -- it comes right down to the easement.

So the building and the deck seating, I mean, it comes right -- right down to the easement. And, in fact, Mr. Patterson will cover in some of the slides that he has, it shows, from the Applicant's own proposal, about 80 percent of this walkway -- excuse me, this pedestrian and vehicular easement, they're going to put pavers on it. That's what they show. Why would they do that? Well, they don't want people walking in shell and -- and then tracking that into the restaurant so they're going to improve it with pavers. About 80 percent of the area from South Seas Plantation Road west to about the edge of the deck, maybe even a little bit past that, is all going to be pavers installed by the Applicant, or at least what they're

proposing to install in the easement.

And I -- I -- I'll make the point now -- because I'll be making it in a few minutes, I may as well say it now. This is a problem because there's going to be conflict now. This is an access easement for vehicles, vehicular parking, in the area all the way down -- and you can see on this survey, this line here is 200 feet, the westerly 200 feet, that's pedestrian only. No vehicles are supposed to be in there, although historically they did go all the way down to the beach --

HEARING EXAMINER COLLINS: From that point west you're saying pedestrian only?

MR. WHITT: Yes, that's what the easement says, from that point west pedestrian only. From that point well past the bathrooms, which you'll see when you make your visit, the bathrooms are here, from that point back east all the way to South Seas Plantation Road allows vehicular travel and vehicular parking, as well as pedestrian uses.

HEARING EXAMINER COLLINS: You mean historically?

MR. WHITT: No, I mean in the language of the easement itself and historically.

HEARING EXAMINER COLLINS: So it's not restricted to pedestrians?

MR. WHITT: Correct, the -- the easterly -- I think it's like 370 feet from --

HEARING EXAMINER COLLINS: What's the point you're making?

MR. WHITT: There's going to be conflict between vehicles that have every right to traverse this easement and come in here and park, well, they can't come in here and park right in front of the access to the restaurant, presumably. You may hit somebody. So their siting of this restaurant is intentional. It wasn't accidental. They made the decision; they drew it up; they pushed it all the way to the south; they put it right against the easement line. And now they're in here hat in hand -- and I'm going to cover this in greater detail, and so will Mr. Patterson -- saying, oh, please, give us deviations; oh, please, let us plant in the easement; oh, well, let's modify it in the 48-hour. Oh, well, by law we can't plant in the easement? Let's go back and let the Development Director give us a betterment plan -- and I'll tell you why that won't work either. They created this problem, as I said at the very outset, they put themselves in this box by putting it where they put it.

HEARING EXAMINER COLLINS: Okay, I understand.

MR. WHITT: Okay? So -- so there's no -- to

answer your question, you can look at the survey, you can look at the aerials. The building is right to the edge of the easement. There is no room to put a buffer, period.

Let me -- let me -- let me jump back so we can try, dear Lord, at some point to get Mr. Whitt out of this chair. Let's go back to page 57.

The Deviation 4D, this is the justification that the Applicant submitted: The proposed MPD will only apply to those lands known as South Seas Island Resort, per the ADD, that are owned by the Applicant, SSIR. The amenities are integrated with existing development areas -- you saw all the aerials that we showed you historically, going back 25 years, this was a golf course. That is not an existing development area with something that's simply being rebuilt or replaced after the hurricane. No, it's not. This is a brand-new restaurant, brand-new commercial use.

HEARING EXAMINER COLLINS: I'm less troubled by that, to tell you the truth, than the issue of whether it's going to be adequately buffered.

MR. WHITT: Okay. And they say again that that would preclude the installation of buffers, but the County's already said, no, you've gotta have a buffer. They know they have to have a buffer.

Now, here's -- here's where I believe, again, there's some not-so-accurate statements made: Where Recreation Tract G abuts the single-family residence. So it's not talking about Tract G, and it's not talking about all of Suraya. Where Tract G abuts the single-family residence, the residence, "which has historically been used as a beach food and beverage facility." That's what they're claiming is a use for decades on Tract G. "Thus, the uses have coexisted for decades." The existing buffer will contain a minimum of 10 trees -- blah, blah, blah -- per the approved plans.

Let's -- let's have you take a look at this visual. So this is the historical food and beverage service area down here on the beach. This was Latitudes and Attitudes right in this area here circled in red. That does not abut the single-family residence. It abuts the lot at the beach. As I noted to you before, and I'll remind you, these structures are outside of the oldest coastal construction control line. I don't know how they got approved, how they got built, but they're out past the 19 -- I think it was like 1976 or 1971, whatever, CCCL. The restaurant is here. So to say that those uses coexisted --

HEARING EXAMINER COLLINS: Wait, I missed that.

Where's the restaurant?

MR. WHITT: Right here in this --

HEARING EXAMINER COLLINS: Are you showing me --

MR. WHITT: Here, sorry.

HEARING EXAMINER COLLINS: Right. They would have to comply --

MR. WHITT: Yeah, this is the area -- I'm sorry, the mouse -- the mouse ran away from home.

HEARING EXAMINER COLLINS: Right, okay.

MR. WHITT: Here it is. This is where the restaurant is. Now, you can't even see the roadway, and you know it's right up here by the roadway. So it starts right up in here and it comes down about halfway down the Suraya residence. That's where the restaurant is.

The restaurant is 30 feet away, this is over 200 feet away -- and these structures, when we found some plans, they were like 10 feet by 16 feet and 10 feet by 15 feet. That's like 150 and 160 square feet. The restaurant is 6,700 square feet under air with 30 -- over 3,000 square feet of outdoor deck space, not -- not the same. And this was historically -- oh, daggone, this mouse.

This was historically golf course. There was a golf course hole up here for decades. That's what

existed here for decades.

All right. So that's what -- that's their justification, and Mr. Patterson will also cover that what's proposed, Madam Hearing Examiner -- if you look at the MCP, what's shown just north of the restaurant -- and I believe the reason that they crammed the restaurant all the way down where they did on this particular tract, they propose to build new timeshare buildings here. This is yellow. This is residential, and they're going to put three or four timeshare buildings here on this tract.

So these facilities down here, what they call the preexisting food and beverage facilities, have never abutted the home. They've always been far removed, past the coastal construction line, and they're on the beach. Plain, pure, and simple, they're on the beach. It's not improved, it's -- there's no footings, there's no buildings. There's -- there's nothing there. It's on the sand down there.

And here's a photo. This is what -- this is what it looks like. That's the -- that's Attitudes. So Attitudes is the beach bar so that's -- that's what you're talking about as a comparative food and beverage facility.

Now, at some point, when Suraya started pushing

back on the plan to have, in essence, no buffer, they were going to install 10 -- 10 more trees or so along the, quote, unquote, preexisting vegetative area. The Applicant said, oopsy, we got a problem with this requested Deviation 4D. So what did they do? In their 48-hour notice, they changed their request, two days before we started this hearing. And now what do they ask for? Well, they said we're in agreement with the condition with the following clarification language. I'm not aware that there was ever any condition proposed by the County. We've not seen it. I don't believe you heard about it. I don't believe the County testified, hey, we -- we -- we recommend approval with this condition. They never did. The County gave a thumbs-up to planting an additional 10 trees per 100 feet, that that was supposed to be a sufficient buffer.

HEARING EXAMINER COLLINS: And you're saying that was with the understanding that there was room to actually plant that on property --

MR. WHITT: (Nods head.)

HEARING EXAMINER COLLINS: -- that was owned and controlled by the --

MR. WHITT: Exactly right.

HEARING EXAMINER COLLINS: -- the Applicant.

MR. WHITT: Exactly right. Because the Applicant

had been saying all along throughout this process, incorrectly -- I'm just going to leave it --

HEARING EXAMINER COLLINS: Okay. I understand where you're going.

MR. WHITT: Well, yeah, yeah, yeah, because they -- they've been saying that it's an access -- or, excuse me, a landscape --

HEARING EXAMINER COLLINS: Right.

MR. WHITT: -- easement, a buffer easement, and it's not. But here they say, if plantings cannot be located in the easement, an alternative location or buffer treatment may be reviewed and approved by the Development Services Director pursuant to an alternate landscape betterment plan process set out in 10-419.

HEARING EXAMINER COLLINS: Right, that's the --

MR. WHITT: Well, no -- no, it can't. No, it can't, and let me -- let me explain to you why -- and I know that's what the LDC says, okay?

Let's start -- let's start with a look -- it cannot be done, and there's -- and there's two reasons. Let's look at LDC 10-419. What does it say? It says projects that cannot comply. That's not what we have here. We have a project that could easily have complied with the LDC Chapter 10-416 and put in the required buffer. They easily could have done that, Mr.

Patterson will show you how easy it was to do that. They created this problem themselves. They intentionally created noncompliance by siting that restaurant where they -- where they put it, pushing it all the way down to the easement. The Applicant did that. The Applicant did that intentionally. So there's no room to effectuate anything there. So it's not a project that, quote, cannot comply.

Now, it goes on to say, if the requirements can be more effectively accomplished through an alternate landscape betterment plan -- well, it can't be accomplished at all, forget more effectively, because they cannot plant in the right-of-way.

Now, look at sub (5), what the -- the condition that has to be met before the Development Director could even consider doing something like this. "The proposed alternate landscape betterment plan must exceed" -- "exceed the intent of the minimum landscape requirements." The minimum landscape requirements requires trees, double hedgerow, either 15 feet or 30 feet, opaque vegetative barrier, and it has to exceed that intent. You've seen it. I won't beat it any longer. It cannot be done.

Now -- nor can it be planted to impede the right-of-way, ingress/egress access easement.

And it's worthy of note that this easement has been used for decades by folks in the South Seas Resort. There are people that own there, that live there, or that come and stay there that are elderly, that are infirm. This is their beach access. They've got signs out there. They call it Sunset Beach. They've got signs out, this way to Sunset Beach, down this -- down this road to Sunset Beach. Well, there's people that can't get around. There's people that have to drive and have to come and park to be able to access that. And if they start planting all this stuff in the easement -- they've already got electrical boxes, they've got drain structures, and all that. That would -- would impact the easement.

Now, I believe the biggest reason why this is an impossibility I'll get to in just one second, but I want to point this out to you, Madam Hearing Examiner. The Applicant, when it did its presentation, these are the relevant slides that were presented when it came to the buffer. What did they not tell you? What did they not address? They never addressed -- that says 417. Yeah, yeah, they never addressed LDC 416 and the requirements there. It says 417. That's a typo. I apologize for that.

So they never addressed, never presented anything

about 416 and the buffer; they never presented anything about 421(a)(5) that prohibits planting in the right-of-way, which includes an ingress/egress easement; and they stayed far away from Policy 5.1.5. So they never addressed it. We have. We've shown you the problems and what the LDC and the County -- the Lee Plan require.

Now --

HEARING EXAMINER COLLINS: So it can't be provided within this easement area, which means it has to be provided on their property.

MR. WHITT: Exactly right.

HEARING EXAMINER COLLINS: Okay.

MR. WHITT: Exactly right.

Now -- so they say, hey, if we've got a problem, we have to go back, we want a betterment plan by the Development Director. I would pose a question to the Applicant, are you working on that? What does that look like? Because the Development Services Director is not going to come up with a plan. They're not going to sit down and draw this out. That would have to be proposed, and how are we supposed to address that as the neighboring property owner?

So let's go all the way through this, let's keep changing what we're asking for, then say, yeah, we'll

just go to the Director and come up with some other plan.

Here's -- here's the problem. Here's why it won't work, cannot work, prohibited. I've put up before you Administration Interpretation 2002-00098, what we have lovingly referred to as the ADD. On page 3 of the ADD, I have highlighted language there that deals with South Seas Resort. Remember, South Seas Resort is treated as a PUD, has been since the '70s, and the ordinances adopted by Lee County treat it as a PUD. It gives the Development -- the Director of the Department of Community Development, which is now the Development Services Director, certain rights that they -- they can approve certain things. They can approve minor changes -- here -- gosh, this mouse -- minor changes that can be included by the Department Director, but it says, "which does not decrease buffers," right here.

Then to really hit the nail directly on the head, down here it says, nor shall the Director approve any change which results in a reduction of buffering, landscaping, or which adversely impacts on surrounding land uses. The Development Services Director has no authority to do that, in fact, prohibited from doing it.

Again, 416(d) requires the buffering, particularly

where there's -- it abuts a different use. They cannot be located on any portion of an existing dedicated street, right-of-way, or roadway easement.

And I told you I was going to get to this, here we are, and -- and I think you can see I'm now midway in the 60s on my slides, and my last slide is slide 68.

So as I begin to wrap up, what is a right-of-way? Well, it is -- it is -- it is literally Black-letter law. You can go to the Black's Law Dictionary and find the definition of right-of-way, which is the right to pass through the property owned by another. That's exactly what we have, vehicular access to pass on the property of another, pedestrian access to pass on the property of another.

And then it says -- why don't you run the mouse here.

MR. ARBOIS: (Complies.)

MR. WHITT: It says, "Cf." -- which means compare to -- "easement" -- up top.

MR. ARBOIS: (Complies.)

MR. WHITT: Yeah.

So as part of the first definition, it says -- which is why it's so -- it's so clear, see an easement. It's the same thing.

Right-of-way, in its strict meaning, is the right

of passage over another man's ground.

And then we looked up private right-of-way, and it says private right-of-way as opposed to a publicly dedicated right-of-way, see easement.

HEARING EXAMINER COLLINS: Where are we now?

MR. WHITT: It's --

HEARING EXAMINER COLLINS: Yeah, I see, okay.

MR. WHITT: -- right -- yeah, at the bottom.

Now, Florida Statutes, Chapter 177 of the Florida Statutes, define right-of-way. That's Section 177.031(16). "Right-of-way means land dedicated, deeded" -- so let's say dedicated, that would be easement; or deeded, same thing, it's a recorded interest -- "used, or to be used for" -- go down to the next line -- "access for ingress and egress" -- exactly what we have, you've seen the language of the easement -- "or other purposes by" -- it says the public, but we're not talking about, you know, a public right-of-way and public access. It's limited to the owners in Government Lots 1 and 3 on Captiva. But it says, "access for ingress and egress, or purpose by" -- "certain designated individuals."

There you have it, the owners in Lot 3 and Lot 1, Government Lot 3 and Government Lot 1 on Captiva. That's who has the right for access and -- for ingress

and egress across this land, which is a right-of-way as defined by Florida law.

If you hold that right, and you have the right to traverse the property of another, whether by pedestrian use or vehicular use, that equates to a right-of-way. And as I mentioned to you the other day, this is a property right that cannot be denied, it cannot be impinged, and they don't have rights totally to their exclusive use though they own it. That right was given up long ago, back in 1960.

So 416(d), let me address this. This has not been addressed by the Applicant. It was never addressed by Lee County. 416 -- let me be clear for the record, LDC Chapter 10, Section 416(d)(7), uses or activities that generate noise or other similar impacts must provide a Type C or Type F buffer if, in the opinion of the Director, the proposed development will have a significantly adverse impact on adjacent property.

I don't believe that there is any question but that the construction and location of this restaurant, feet away from the Suraya property, will have significant adverse impacts on the property. But no consideration was given by the County; there was no opinion by the Development Director, no -- it's like, no, you don't have to put that -- even though you show

it on your plans, no, you don't have to put that in.

And I want you to think about this because this is important. You can't make your decision in a vacuum. And when you go out and you visit this site, and you stand on that easement, and you've got the Suraya house right behind you, and you're looking at the entrance to that restaurant -- you have been to busy restaurants in Southwest Florida. You know what happens when -- when the restaurant is booked, when people are waiting for their reservations. They're queuing outside; they're hanging around outside; kids are running around outside and -- and there's going to be noise, kids maybe running through the hedgerow -- what's existing there, the existing vegetation -- onto the Suraya property. You're going to have noise coming from this outside deck. Imagine 116 people talking above music, clanking dishes. There's going to be all kinds of noise.

You know, I would tell you -- you've also been to restaurants. Some use buzzers. Some you've got the "Johnson, party of six," being announced over some loud speaker, "your table is now ready." Right next to this guy's 12-and-a-half-million-dollar house.

So never addressed by the County, should have been addressed by the County. Neither the Applicant, nor the County, nobody ever addressed the significant

impacts created by the noise to say, no, we actually do need a Type C or Type F buffer here.

I'm going to pull this off.

(Discussion at table)

MR. WHITT: As I wrap up, I want to point you to -- again, back to LDC 10-421(a)(5). Again, they don't address it. The Applicant did not address it in its presentation to you, just stayed away from it because it says, "No Code-required landscaping may be located in any street easement or right-of-way." That's the oopsy moment that I just talked about. Then it's like, ah, gee, well, maybe let's -- maybe let's go chasing after this betterment plan because this is going to be a problem for us. The LDC is very clear. And -- and the reason I bring it up again, variances or deviations -- the requested deviation from the requirements of this subsection are prohibited. You can't do it.

Now, you can't allow the Applicant out of the box that they've created, that they -- I call it heaping the burning coals on their own head, because it's to the detriment of the neighboring property owner who has rights, as well, under the LDC. And this is one of those very rare circumstances where I think the Hearing Examiner, whether it's you or, you know, another

Hearing Examiner in the future, is put in a position to say, you know, this is really a problem. And I know the Applicant has property rights. The Applicant has a right to rezone, and, you know, growth is coming. We've got -- we've got LDC provisions for that. But I also have to look out for neighboring uses.

Based on their application, based on the existing access easement/right-of-way that exists -- you've seen the existing vegetation. I want you to pay particular attention to Mr. Patterson, when he follows me and he shows you the series of photographs -- and I referenced it -- that 56 percent of that existing vegetative buffer, that they call it, it's not. 56 percent of that is on Suraya's property, not -- not on the easement, it's on the Suraya, LLC, property.

Let me -- let me -- can you --

HEARING EXAMINER COLLINS: So when you say 56 percent is on Suraya's property, what is the rest of the vegetation on?

MR. WHITT: The easement.

HEARING EXAMINER COLLINS: It's actually sitting on the easement?

MR. WHITT: Yes, ma'am. Yes, ma'am.

HEARING EXAMINER COLLINS: And what does this vegetation consist of?

MR. WHITT: Mr. Patterson will cover that. Mostly palm trees, there are a few buttonwoods, and I think some others. He's got -- he's got the tree descriptions and the tree counts and walks you all the way down the property line photo by photo by photo with ribbons on the trees, showing if it's on the easement or if it's on the Suraya property. It's very enlightening. And then when you go out, and you visit the property, you're going to see. But that's what they've done all along --

HEARING EXAMINER COLLINS: So this easement is for the benefit of who exactly?

MR. WHITT: The owners in Government Lots 1 and 3, which is basically kind of a South Seas Resort property -- a lot of it, most of it. Lot 1 is on the east side.

HEARING EXAMINER COLLINS: So it's a private easement?

MR. WHITT: It's a private easement.

HEARING EXAMINER COLLINS: It's not something that's dedicated to the public --

MR. WHITT: No.

HEARING EXAMINER COLLINS: -- that could be partially vacated or anything like that?

MR. WHITT: Correct.

HEARING EXAMINER COLLINS: It would require a modification of the original easement by successors in interest.

MR. WHITT: Correct, consented to by the dominant estate holders, those that have rights in the easement, the easement holders.

HEARING EXAMINER COLLINS: Right.

MR. WHITT: Right.

Lee Policy 5.1.5 of the Lee Plan, this is a PD, and the development regulations they can't comply with, so that's clearly inadequate. Conditions will be attached to minimize or eliminate the impacts. I don't believe you can attach any condition. The condition that I would -- that I would propose to the Applicant, would you agree to a condition that requires you to partially demolish the Beach House restaurant, what's called a cut and reface, would you agree to that condition, to cut off feet of your building, reface it, put a new wall on it, to have room to install the required buffer? If they'll -- if they'll create an area to install a buffer by a cut and reface, then that could be a condition I think that you could impose on them. I think I know the answer to that.

But my point is you can't even attach a condition because they built it right to the easement. They

can't plant in the easement, period, not a shrub, not a tree in the easement; and you have no authority -- I've shown you that -- nor does the Development Director -- I've shown you that -- to attach such a condition, and what does it say? The application will be denied altogether. Wow, but I think that's where we are. I think that's why -- when they ran down the road and got this DO, and they ran down the road and they started this building, they're either going to have to partially or totally demolish it or be faced with the prospect that this rezoning application will have to be denied altogether. Because as you, yourself, have said, I've got serious concerns about this restaurant use and this residential area and no buffer between the two.

So let me wrap up. Based on the requirements of Policy 5.1.5, Policy 23.2.6, LDC Provision 10-416, LDC Provision 10-419, LDC Provision 421, among others, the application for rezoning must be denied, and that needs to be the recommendation that comes from you and goes to the Board of County Commissioners.

And with that, thank you for your attention, Madam Hearing Examiner. I have concluded.

MS. MONTGOMERY: Madam Hearing Examiner, if I may, I have a couple questions.

HEARING EXAMINER COLLINS: Okay, if it doesn't go to the legal argument.

MS. MONTGOMERY: No, I'm trying to find some clarification, if I could.

Mr. Whitt, you indicated, I believe on Friday, that your client lives in the UK and only visits this site 37 days out of the year. Did I get that right?

MR. WHITT: I don't remember saying any -- any amount of days. My client -- the principal of Suraya, LLC, his name is Peter Stephens, lives in the UK. He does come and visit the property.

MS. MONTGOMERY: And during the time when he's not there, has he in the past and does he still rent the property out?

MR. WHITT: I've never -- I've never asked him that question. I believe that there is a website that I've seen where it is offered for lease.

MS. MONTGOMERY: I've seen that website, too, that's -- that's why I'm asking.

MR. WHITT: Uh-huh.

MS. MONTGOMERY: The Property Appraiser's Office says that the property -- the house has four to four and a half bedrooms. Is that correct?

MR. WHITT: I have no idea, ma'am.

MS. MONTGOMERY: Okay.

MR. WHITT: I've not -- I've not looked at the site.

MS. MONTGOMERY: Let me ask you a question. Do you know what the DSO is?

MR. WHITT: The DSO?

MS. MONTGOMERY: Yes.

MR. WHITT: I believe that's the development order. If you give me a number, I could tell you if that's the -- the development order for the restaurant.

MS. MONTGOMERY: No. In the -- what we all call the ADD, the interpretation, it indicates that there was a waiver from the DSO, which is an acronym for Development Standards Ordinance. Are you familiar with what the Development Standards Ordinance is or was?

MR. WHITT: I believe that would be argument versus a question to me about -- about, you know, facts.

I'm familiar with the Lee County Development Code and, you know, planning and zoning in Lee County generally, yes.

MS. MONTGOMERY: Okay. In your presentation, you shifted back and forth between provisions in the interpretation and the Land Development Code. In your opinion, do the setbacks, buffering, landscaping requirements of the ADD control right now, or does the

Land Development Code?

MR. WHITT: I'm not an expert, and I'm not going to provide expert opinions, ma'am.

MS. MONTGOMERY: Okay. It was a factual question, but okay.

You did -- and I don't remember the number of the slide -- point to the ADD, and it was towards the end of your presentation, and you quoted from Section 34-1038. You had that up on the slide and submitted that, based on that, the Director doesn't have any authority to grant relief.

HEARING EXAMINER COLLINS: This is all legal argument.

MR. WHITT: Yes.

HEARING EXAMINER COLLINS: Can't you address this in your rebuttal, that you disagree with his interpretation? I mean, this is like back and forth about his interpretation of the Code and agreement.

MS. MONTGOMERY: Well, okay --

HEARING EXAMINER COLLINS: I'm not --

MS. MONTGOMERY: -- let me ask --

HEARING EXAMINER COLLINS: -- considering that factual testimony. I'm considering it legal argument.

MS. MONTGOMERY: He asserted a lot of facts in the context of his testimony that are not in evidence, but

I think it's worth noting what rules actually apply in light of his --

HEARING EXAMINER COLLINS: Well, you can address that when we get back to you --

MS. MONTGOMERY: Okay. Well, then --

HEARING EXAMINER COLLINS: -- and point --

MS. MONTGOMERY: -- ask this because --

HEARING EXAMINER COLLINS: -- by point you can do it.

MS. MONTGOMERY: When you -- you made a statement. You said that there is an ordinance, and the County has acknowledged by ordinance that this property has been a PUD for decades. Can you tell me what ordinance that is?

MR. WHITT: It would be the zoning ordinance, the 1973 zoning ordinance, and then other interpretations and other either ordinances or resolutions regarding South Seas after 1973. I don't know that that's in dispute, that this property -- though the PUD ordinance did not exist at the time, this property, since 1973 when it was rezoned, has always been treated under a PUD concept.

MS. MONTGOMERY: Okay. So a concept but not an actual PUD.

MR. WHITT: And I believe that's why I said has

been treated, treated, as a PUD.

MS. MONTGOMERY: You indicated -- well, let me go back.

Are you aware of the fact that the green area next to the golf course and the area around Latitudes and Attitudes has been used for outdoor events, including a stadium with live outdoor music?

MR. WHITT: I -- I -- I am not personally aware of that, ma'am, no.

MS. MONTGOMERY: Okay.

Okay. And, Madam Hearing Examiner, there's several pages of his presentation where it submits that the Applicant has -- you have to make findings under Chapter 10 that don't actually apply here --

HEARING EXAMINER COLLINS: Okay. This is all legal argument you can address --

MS. MONTGOMERY: I'm just checking. I understand.

Mr. Whitt, do you know whether or not the Suraya house overhangs into the easement?

MR. WHITT: I'm sorry, I can't understand that question.

MS. MONTGOMERY: Do you know -- because you have two pages of survey on your slides. Do you know whether or not the Suraya roof overhangs into the easement?

MR. WHITT: It does not.

MS. MONTGOMERY: Are you aware of the fact that Section 10-1 has definitions of both easements and right-of-way?

HEARING EXAMINER COLLINS: Neale, I'm like -- this is of very limited value. I don't know what you're hoping to accomplish with this. I urge you again to address this during your rebuttal time, and distinguish your interpretation from that of Mr. Whitt. It's not like he's a planner. You know, I see -- this is of very limited benefit.

MS. MONTGOMERY: I respect your -- I will stop, but I will note for the record that he spent quite a bit of time presenting planning testimony, albeit incorrect, and we will address it on rebuttal.

HEARING EXAMINER COLLINS: Thank you.

MR. WHITT: Thank you, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: I'm ready for the next witness.

MR. PATTERSON: James Patterson, and I have copies of the PowerPoint.

HEARING EXAMINER COLLINS: Thank you, I'll take that. Do you have one for the Applicant's representative?

MR. PATTERSON: I do.

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(Patterson Exhibit 3 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MR. PATTERSON: As well, I will reference an historic survey of the Suraya property, and I don't know that it's been put into evidence so I have multiple copies here.

HEARING EXAMINER COLLINS: Okay, very good.

MR. PATTERSON: And then I have a copy of my CV.

(Patterson Exhibits 1 and 2 submitted.)

HEARING EXAMINER COLLINS: The court reporter doesn't need this, but maybe if you have an extra copy of the survey --

MR. PATTERSON: There's more than one.

HEARING EXAMINER COLLINS: I'm going to take --

MR. PATTERSON: They're stapled together.

HEARING EXAMINER COLLINS: -- I'm going to take two so that I can make notes if I need to. And there's two extra. Would you mind giving it to Ms. Montgomery?

MR. PATTERSON: Absolutely, and I have a copy of my CV, if needed.

HEARING EXAMINER COLLINS: Yes. And just give me a moment to mark these into -- okay. The CV will be Patterson Exhibit 1, the Suraya survey will be Patterson Exhibit 2, and the PowerPoint will be Patterson Exhibit 3. And just --

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MS. MONTGOMERY: I'm sorry, Madam Hearing Examiner, what was the first one?

HEARING EXAMINER COLLINS: Okay. The first one is his CV.

MS. MONTGOMERY: Okay, I didn't -- I didn't get that.

HEARING EXAMINER COLLINS: Well, you can speak to Maria after the hearing, and she'll make sure --

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: -- you get a copy.

MR. PATTERSON: I've got another copy.

MS. MONTGOMERY: Thank you.

HEARING EXAMINER COLLINS: The survey of the Suraya property is Exhibit 2, Patterson Exhibit 2, and the PowerPoint is Patterson Exhibit 3.

Okay. Mr. Patterson, when you begin, would you just start off by giving us an overview of your educational and work experience.

MR. PATTERSON: Certainly.

My name is James Patterson, I am an AICP, a certified land planner, with Mesimer Patterson and Irvine. I have approximately 20 years' experience in land planning, site civil engineering, design, permitting, and such; 18 of those years is with -- are with Mesimer and Associates, now referred to as Mesimer

Patterson and Irvine.

I spent two years with HDR Engineering in Pensacola, evaluating -- the predominant 20 years that I've been in this business is largely focused on the effects of eminent domain on private properties, both for condemning authorities and for private properties, as well as -- so it's producing land planning and civil site design in reference to before and after conditions, as to what's there and what could be there, highest and best use, and that.

Does that answer your question?

HEARING EXAMINER COLLINS: Okay. All right. I'm ready for you to begin.

THE REPORTER: Mr. Patterson, speak a little louder and slower, please.

MR. PATTERSON: Yes, ma'am. Can you hear me okay now? Is that better?

THE REPORTER: (Nods head.)

HEARING EXAMINER COLLINS: All right. We may ask you to speak up from time to time.

MR. PATTERSON: That's fine.

So this is the beginning of my presentation. I want to -- this is just a random photograph of the area. Again, many of the points that I will make today have already been made by Mr. Whitt. I won't spend an

inordinate amount of time rehashing what has already been presented, but I do want to cover them for my evaluation.

This is the property -- the subject property, Mr. Suraya -- or the Suraya, LLC, property, Mr. Stephens' property, adjacent to the historically located Latitudes and Attitudes Beach Bar area, which was -- also presented our -- everything that has been constructed or -- short of the restroom building in this room is all beyond both coastal construction lines. It's not ever been adjacent to the Suraya, LLC, home itself in the area where the building is located.

So this is just to refamiliarize, the South Seas Island Resort, MPD. We're talking about Tract G, again, which is located immediately south of the larger Tract H, which is going to be proposed for residential use. It currently is a golf course use, and it will be proposed for a residential use adjacent to Tract G, which has been deemed for recreational use by the Applicant.

This is the survey that Mr. Whitt has previously showed you showing the existing construction of the restaurant and its proximity to this Gulf access easement. It does identify the shell roadway that has been there historically since the 1960s. This easement

has never been landscaped, with the exception of the perimeter of the easement in certain times has -- on the north side of it has had varying landscape, perhaps some grass came into a portion of the easement. There was maybe some plants at the corner of South Seas Plantation Road. There is a row of palm trees along the south side. And when you look at an aerial view, if you go back to this picture, the aerial view of the trees between Mr. Stephens' home and the easement, the majority or over 50 percent of those trees are actually on Mr. Stephens' property. They are not within the easement.

This is the language from the easement that has already been covered that basically lets us know that the westerly 200 feet of the easement shall be used for pedestrian only. The remaining portion of the easement may be used for vehicular parking, as well as for pedestrian use. I would -- I would put forth that in today's Land Development Codes in any municipality within the state, providing vehicular parking, as well as pedestrian use, 30 feet is not an adequate width. So back in 1960 it maybe perhaps was.

And so the use as it exists today is already quite -- quite taxed if it were 100 percent to be used by vehicular parking and access, which means if you

access it with a vehicle, you would need to turn the vehicle around within 30 feet in the area where pedestrians are. So it's already a taxed easement if it is used both by vehicles and pedestrians, which we have plenty of photographs showing that the two have coexisted for decades.

There's a use narrative that was filed with the -- by the Applicant, and in this use narrative it's explaining the existing or the preexisting use of the Beach House amenity, or what is currently being replaced by the Beach House, and arguing that it's a food and beverage and an outdoor venue event, and it's always been used that way, and it will continue to be used in the same way that it's -- that it's been used in the past. And some of the descriptors within that paragraph -- I won't read that for -- for necessity, but it says -- I underlined them and put them in red, "food and beverages were available, live entertainment occurred, and parties and events took place in this location."

And with this use narrative -- and a number of photographs were taken, and so I want to show you, actually, these photographs now. This is outdoor nightlife with outdoor music in the evening. Here's a party showing people with glow sticks, hundreds of

people dancing and having a fun time outside. Here is the -- during the day, live music out by the beach there at the little Surf's Up pavilion, which was next to the Attitudes and Latitudes area. Here's the Attitudes and Latitudes -- the preexisting buildings, the Attitudes is to the left, the green building. The Latitudes where they got food or where food was available is to the right. A number of chairs and things were out there so people could enjoy the sunset. This is traditionally where people have gone. It's referred to as Sunset Beach.

There are some of these pictures that show tables being set up in the area, large gatherings in this area. Occasional gatherings, to opposing counsel's point, have occurred in the area that's adjacent north of Mr. Suraya's property, his building, but it's not a regular use. I found one aerial that showed a temporary tent in that area, but the regular, consistent, everyday use of the area is not that way. And here's another evening out at the beach and, you know, they've got fire throwers and some different things out there gathering at the beach.

And what I would have you notice -- I'm going to back up in these photographs. We're going to go back through them to the beginning. From the very

beginning, in every one of these photographs that are submitted by the Applicant, you'll notice there's an extensive opaque landscape buffer behind the use that is occurring. In 100 percent of these photographs, there are large trees, there are shrub hedgerows well past 6 feet, 20 or 30 feet in the air. The uses have been buffered -- and I'll show you further with aerial views -- for the existence of the use that's been out there. Because they know that, you know, when you're having large gatherings, people are outside, we want to protect the residents, the people that own property, as well as people that are staying on the -- on the South Seas Resort area that are not participating in the events.

And so here are -- I'm going to run through a few aerials that are dated. These are the available aerials that I was able to locate online.

This is the Suraya, LLC, property. This is sheet 1 of 5. This aerial was taken in 2005. In 2005 you'll see a couple of shack areas a little -- up to the upper left-hand portion of the aerial that were for the beach use, for the beverages and food, I would assume. You see the restaurant facility that is located with an arrow. And then adjacent to the previously existing structure on this property, there was a water feature

for the golf course and a golf course hole with a couple of sand traps. It's not an outdoor gathering event, it's not a -- a restaurant with a deck. It's -- it was a golf course amenity.

In 2008 you can see that the beach bar, the Attitudes beach bar, Latitudes -- I'm not sure if it was called that at those times, but the amenities that were at the beach are well buffered, intentionally, when the area -- when the golf course hole was removed, and this is just a sodded open resort grass area with no intended use on a regular basis. You'll see that when they -- when they reworked the area, they intentionally put a tree and landscape buffer because they knew and they recognized that you're going to have outdoor events, you're going to have evening -- people outside, and you're going to try and buffer, to the extent possible.

This is the subject property that's under construction. That's prior to Mr. Stephens' owning the property. It was being redeveloped.

This aerial was from 2017. The home has been complete. It has been landscaped, as well. You'll see that the Attitudes and Latitudes area, or the structures that were occupying those uses at the time, are still out by the beach. You'll see that the area

that's adjacent to the home and north of the home has been expanded a little bit. If you go to the previous one, you'll see it's all grass in '08. In 2017 you'll see that a golf cart path has been added along the east side of the food and beverage facilities that are out near the beach, and some golf cart parking at that time, while still maintaining an extensive landscape buffer between those uses and anything east or south of there.

This is a photograph taken in 2020, and it shows the extent of the development prior to the hurricane damages that occurred most recently, and the grass area north of the Suraya, LLC, property was developed into a golf cart parking area, largely, I would assume, because of the amount of traffic of people trying to go to the outdoor food and beverage areas during the day, and especially in the evening to watch the sunset, so they allowed them to park their carts there. That's not where people hung out and drank and ate. It's where they parked their golf carts.

They did develop two sand volleyball courts north of that location, but I would show, as I've mentioned, on the property, that the uses that are at the beach, the food and beverage uses, were approximately 200 feet from the closest corner of Mr. Stephens' home. Even

the volleyball courts, which would be an outdoor gathering area in the evening, perhaps, I don't know -- I don't see any lights out there, I'm not sure it was available in the evening, but certainly in the day it was at least 125 feet from his property.

As we continue, here is a 2023 aerial after some hurricane damage has occurred with the proposed Beach House restaurant superimposed by the plans that have been submitted by the Applicant over top of the aerial to try and keep the two -- show the two coexisting. And you'll see that the corner -- the nearest corner of his home to the front corner of the front main entrance will be approximately 50 feet from each other. And then the people, as Mr. Whitt alluded to, that perhaps are gathering in the proposed paver area would be waiting to go into the restaurant, they will be actually in this access easement area.

There are notes that I will call to in a moment that -- but you can see it on that plan, in the middle of the right side of the plan. It alludes to and says specifically, "Type F buffer met by existing vegetation."

We'll show you that more clearly in a moment.

HEARING EXAMINER COLLINS: Okay, wait a minute. This exhibit you're showing me right now --

MR. PATTERSON: Yes.

HEARING EXAMINER COLLINS: -- page 19?

MR. PATTERSON: Yes.

HEARING EXAMINER COLLINS: Is this your exhibit or their exhibit?

MR. PATTERSON: This is their plans superimposed -- it's my exhibit, and I took their plan that was available in the public --

HEARING EXAMINER COLLINS: And superimposed it?

MR. PATTERSON: And superimposed it on an aerial to show what their --

HEARING EXAMINER COLLINS: That includes the beach vegetation that's shown on the -- on the left side and the placement of the restaurant on the right side?

MR. PATTERSON: Correct. They identify the existing beach vegetation that is out there, all the numbers that are corresponding to the trees. They field-located every tree, and every tree out there has about a two-inch diameter metal disc nailed to the trees with the numbers -- appropriate number stamped in each one so that you can actually go on-site and go locate those trees by number according to this --

HEARING EXAMINER COLLINS: Okay. So these trees I'm seeing are superimposed in this right-of-way easement?

MR. PATTERSON: They're shown as existing trees on their --

HEARING EXAMINER COLLINS: They are existing trees?

MR. PATTERSON: That is --

HEARING EXAMINER COLLINS: Are they existing trees?

MR. PATTERSON: Yes.

HEARING EXAMINER COLLINS: Okay. So there are existing trees in the right-of-way right now?

MR. PATTERSON: There are existing trees within the 30-feet access easement along the south side of the easement --

HEARING EXAMINER COLLINS: Right, okay.

MR. PATTERSON: -- that have existed there for -- for quite some time. They don't --

HEARING EXAMINER COLLINS: And I'll see that --

MR. PATTERSON: -- predominate --

HEARING EXAMINER COLLINS: -- during my site visit.

MR. PATTERSON: I'm sorry -- yes, you will.

HEARING EXAMINER COLLINS: See this during my site visit.

MR. PATTERSON: You'll see it more clearly in the rest of my presentation, as well. And the Applicant

claims that there are 31 trees on the easement side of that buffer, and you'll see that more clearly in a moment.

This next slide is from the application for the golf course betterment or revitalization, whatever you want to call it. It is a survey that is in the public record surveying the golf course area prior to the hurricane damage, and it shows the golf cart path. It does not show the volleyball area, but it shows the buildings that were down by the beach, the Attitudes and Latitudes. I believe I have a zoomed up -- this is a zoomed up excerpt of their survey showing that. And you'll see the two red lines that are on this survey, one -- the one to the left is the older coastal construction limit line, that nothing is to be constructed to the west or the left side of that line. 100 percent of the existing -- or the preexisting buildings and the ones that were destroyed and put back in all of the beach nightlife area or daytime area or bar or restaurant or amenities that are located there are west of that area, and the buffer that they put in was just east behind that left line.

The 1991 coastal construction control line is shown on this property to the right, and that is the line that the Applicant has made an attempt to adhere

to and place the Beach House to the east, or to the right of that right red line.

HEARING EXAMINER COLLINS: Okay, hang on a second, please.

Okay. I'm looking for the post-hurricane aerial. Oh, here we go. So this golf maintenance facility is still there?

MR. PATTERSON: No, ma'am. It was in the aerials. It's since been removed by the Applicant.

HEARING EXAMINER COLLINS: That's just off of your superimposed picture, the golf --

MR. PATTERSON: Correct --

HEARING EXAMINER COLLINS: -- maintenance --

MR. PATTERSON: -- just to the -- you'll see on the north side what is marked "loading area" --

HEARING EXAMINER COLLINS: Yeah.

MR. PATTERSON: -- the 24-feet-wide access driveway, and immediately north of that, right before the end of the picture, is a little white square that shows the tip of the building. That building has since been completely removed, and you'll see that in another aerial that I'll --

HEARING EXAMINER COLLINS: All right.

MR. PATTERSON: -- show later in the presentation.

So Lee County Development Code, we've heard about

this, as well, Section 10-416(d), "Buffering adjacent property, buffering and screening applies to all new development." This is obviously a new development.

Industry standard definitions for buffer -- we do work all over the state. It's my pleasure and my task and my duty, actually, to go through Land Development Codes, Unified Development Codes, Comprehensive Plans, from Pensacola to Key West. We -- we are all over the state, and one of the neighboring counties actually has this -- this definition. I know there are other definitions, but they all seem to point back to something similar to this, that is, a buffer is actually a physical barrier located between and separating one or more land uses. That's an industry accepted standard, and I'll make that point a little bit further, later in the presentation.

LDC 10-146(d)(1), a buffering area is generally required along the entire perimeter of the proposed development whenever the proposed development abuts a different use. Thus, our case here, the proposed development is a commercial use, and it abuts a private -- private residential use. The Code provides specifically that buffers may not be located on any portion of an existing or dedicated street right-of-way or roadway easement --

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THE REPORTER: Slow down, please.

MR. PATTERSON: Yes, ma'am, my apologies.

HEARING EXAMINER COLLINS: When you read, you speak faster.

MR. PATTERSON: I've noticed that with many of the presenters. I apologize.

But buffer areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement, but a buffer is -- is required not only adjacent to the building, but along the entire perimeter of the development. The buffering is required along the entire perimeter of the proposed development.

This is the historic survey that I submitted into evidence of the currently owned Suraya, LLC, property prior to the current building being constructed there, the current home. This was the previous home. And in this 1992 easement -- survey of the property, you will see that the surveyor even identified this is a 30-foot road. It's obviously owned by the -- South Seas, but due to the presence of the easement and the use over the decades, as well it's identified as a roadway. It's open to vehicular traffic, a portion of it, as you've heard, as well as it is the main access to the beach for the residents and those staying in this area.

This is an excerpt of the Administrative Interpretation 2002-00098, referred to as the ADD. It's been covered previously, but the Director shall not approve any change which will result in a reduction of total open space, buffering, and it says adverse impacts on surrounding land uses. And we know that the ADD was created so -- so to interpret the previously existing built environment into the LDC, and as it's doing that, under -- under my reading of this, the Development Director can't -- can't okay something that is an adverse impact to surrounding land uses upon development going forward, which is what we have in this case.

Insufficiency letter dated September 8th, 2023, that was in the public record, along with this application. The Applicant's asked to illustrate and label all the easements on the landscape plans. Please note that, per LDC 10-421(a)(5), no Code-required trees or shrubs may be located in any right-of-way, road, utility, or drainage easement. The south buffer is within an easement. The County clearly identified that it was in the easement; clearly identified that, by the LDC, it's not allowed to be landscaped, and so asked them to respond.

In the public record, there is no response. Let's

go here. 10-421(a)(5) in the LDC says that no Code-required landscaping may be located -- this is what was quoted -- "may be located in any street easement or right-of-way." "Variances or deviations from the requirements of this subsection are prohibited." So this is what was referred to in the insufficiency letter.

And the next thing in the public record is a second insufficiency letter dated December 8th, 2023. There is no Applicant response recorded in the public record. I searched for one. I spoke with my other colleagues representing the South -- representing the private property owners and Mr. Stephens. We could not locate one.

And so the second insufficiency letter changes its tune slightly. It says, "The calculation for the required buffer along the south side is stating that existing trees and shrubs will meet the buffer requirements; however, Staff has concerns, as aerials depict insufficient plant material existing, especially shrubs."

HEARING EXAMINER COLLINS: Is this the zoning or the development order? What --

MR. PATTERSON: This is an insufficiency letter that was -- that was issued by the County back to the

Applicant.

HEARING EXAMINER COLLINS: On the planning -- on the zoning application?

MR. PATTERSON: Correct, yes, ma'am.

HEARING EXAMINER COLLINS: Okay.

MR. PATTERSON: Dated December 8th in the record.

It says, "Please add a note to the plans that if insufficient plant material is not present at the time of Certificate of Compliance (CC), supplemental plantings must be provided and approved as a minor change to the development order."

The problem is they've previously stated that supplemental plantings are not allowed within the easement, and the building goes right to the easement.

And then it also asks, across the bottom of this slide, "Please illustrate the buffer width for the southern buffer on the landscape plans," and so they do so.

HEARING EXAMINER COLLINS: So do you -- did you measure the distance between -- not counting the entrance to this restaurant they've built, the edge of the porch to the edge of the right-of-way?

MR. PATTERSON: The edge of the right-of-way or --

HEARING EXAMINER COLLINS: How much space --

MR. PATTERSON: -- the edge of the easement --

HEARING EXAMINER COLLINS: -- how much space is there -- well, it's an easement, a right-of-way easement is what it is.

MR. PATTERSON: Upon my field inspection, the area was fenced off, and I was not allowed --

HEARING EXAMINER COLLINS: Well, I can see it on one of these surveys. I just can't read it. It's very small. It looks like someone measured --

MR. PATTERSON: Yeah.

HEARING EXAMINER COLLINS: -- from the edge of the building --

MR. PATTERSON: Let me go back --

HEARING EXAMINER COLLINS: -- to the edge of the right-of-way --

MR. PATTERSON: On the -- yeah.

HEARING EXAMINER COLLINS: I'm on slide 4.

MR. PATTERSON: I did not conduct the survey. It says that there's a two-foot overhang, and it says -- I believe it says the overhang is actually -- I can't see if it says it goes into the easement or not.

HEARING EXAMINER COLLINS: I'm just -- no, it looks like it's going from the edge of the hatched building to the edge of the right-of-way easement.

MR. PATTERSON: So it's dimensioned --

HEARING EXAMINER COLLINS: If you don't know, you

don't know. I'm just asking if you do know.

MR. PATTERSON: -- it's dimensioned on here that the west portion of that concrete stoop is one-and-a-half feet, 1.5 feet, from the edge of the easement per this survey, and the north corner is 1.2 feet from the edge of the survey -- from the edge of the --

HEARING EXAMINER COLLINS: So this --

MR. PATTERSON: -- easement.

HEARING EXAMINER COLLINS: -- concrete entrance you're saying is only 1.2 feet --

MR. PATTERSON: From the easement.

HEARING EXAMINER COLLINS: No, not from the easement. It shows it goes right to the edge of the easement. I'm talking about the building.

MR. PATTERSON: You're talking about the building not including the overhang, the front --

HEARING EXAMINER COLLINS: Right --

MR. PATTERSON: -- porch area?

HEARING EXAMINER COLLINS: -- exactly.

MR. PATTERSON: It's -- I believe it's dimensioned on there, but it's 13 feet and change at the north -- at the east end. I believe it's perhaps 13 -- I may even have a copy of the survey to zoom in on.

HEARING EXAMINER COLLINS: And then this entrance

depicted here goes right to the edge?

MR. PATTERSON: Correct. So even if, as Mr. Whitt suggested, you were to reorient the use of this side of the building, you were to remove the stoop and the overhang that is going to serve as the front entrance, you still do not have enough room between the actual building that's been constructed and the easement to even satisfy a Type C buffer, 15 feet wide, much less a 30-feet-wide Type F buffer. Does that answer your question?

HEARING EXAMINER COLLINS: Yeah.

MR. PATTERSON: Let me return to my slides here.

HEARING EXAMINER COLLINS: But it seems to me that the Applicant has options available to it by reorienting the entrance to the building and seating in order to plant something along that line; and even though a deviation would still be needed, it wouldn't be zero.

MR. PATTERSON: It would significantly be closer to meeting at least a Type C buffer, correct.

HEARING EXAMINER COLLINS: Right.

MR. PATTERSON: Unfortunately for the Applicant, I believe they will push back tremendously on that because the east third of the building is all of the infrastructure for the kitchen and bathrooms. There is

no access easement. It's already been plumbed, slabs poured --

HEARING EXAMINER COLLINS: That's a "them" problem.

MR. PATTERSON: That's exactly right. That's exactly right.

So let's get back to -- okay.

So this was the development order. So there were two insufficiency letters issued to the Applicant prior to the development order being given. One says you cannot plant in the easement. You have to change it. The second one says, well, we still don't see how you're going to be able to pull it off, but add a note that says you're going to add more plants in the area that we told you you can't plant in, which is a little bit confusing. And then I do not think that it is any coincidence that the development order was approved on April Fools' Day. I'm still waiting for the April Fools on this. I --

HEARING EXAMINER COLLINS: Right now we're talking about the development order.

MR. PATTERSON: Exactly. This gave -- this gave permission to turn dirt and put the building in the ground. It's not the CC but -- you can't meet it, but we're going to go ahead and push it through and let

it -- let it -- let it be under construction, and we'll figure it out even though there is no area physical possible (sic) -- no possible way to meet the Code requirements to put this building in.

Environmental comment on -- which was back here -- it's highlighted in orange on slide 30, and it's amplified here. The stipulation is "Prior to the issuance of the Certificate of Compliance, if sufficient plant material" -- again -- "is not present within the south buffer" --

THE REPORTER: You need to slow down.

MR. PATTERSON: I'm sorry.

"Prior to the issuance of the Certificate of Compliance, if sufficient plant material is not present within the south buffer, supplemental plantings must be provided" -- we don't know where -- "and approved as a minor change to the development order."

HEARING EXAMINER COLLINS: Okay, hang on a second. I'm going to make a note of something.

Okay, you may proceed.

MR. PATTERSON: Slide 32 shows the landscape plan that was submitted by the Applicant. It identifies the 30-feet-wide buffer. This was in a previous orientation of the building. The building has not changed from this orientation, to my knowledge, to what

is currently built in the field. They originally proposed that not only was that going to be a stoop coming right to the edge, but it had stairs that were leading straight down into the easement. That has since been changed. The stairs are now off to the north side of that overhang stoop area, and a wheelchair ramp, an ADA-accessible ramp, is to the -- or, excuse me, to the east side, and the wheelchair ramp is to the west side.

But this is the -- what was originally approved as their landscape plan by Ohdet Kleinmann -- if I pronounced that correctly -- on April Fools' Day, on April 1st, that says, Type F buffer, 30 feet minimum width, southern property line, Type F buffer, requirement met through existing landscape. Well, as we've heard before, a Type F buffer requires 30 feet in plantings, 1 tree per 10 linear feet -- or 10 trees per every 100 linear feet -- plus a double hedgerow, staggered hedgerow. A Type C buffer requires the hedgerow to be 36 inches at planting above finished grade. A Type F buffer requires that once the plant is in the ground, it is 48 inches tall, or 4 feet tall, at the time it is planted and is to be groomed at 60 inches tall, or 5 feet tall, and is to be kept that way as to provide a completely visually opaque barrier; not

only a distance barrier 30 feet wide, but tree cover over top and a double hedgerow 60 inches high.

The "sufficient" note there is also highlighted: "If sufficient plant material is not present" -- we've already covered that.

HEARING EXAMINER COLLINS: Right. They probably accepted this because it's labeled as a landscape buffer.

MR. PATTERSON: Correct. And I'm -- in all my years of experience, I have no idea how this can be called a landscape buffer. My credibility as an expert witness would be thrown out on its ear had I ever testified that this is a landscape buffer, and I'll show you that even further going forward.

I inspected all of the trees that exist between Mr. Suraya -- Mr. Stephens -- the Suraya, LLC, home and this buffer going all the way into the area just past the restroom building. Upon my inspection -- you will see field evidence and photographs a little bit later.

But this is the actual buffer table matrix from Section 10-416(d)(4) that outlines the types of buffers, and it claims that the F type buffer must be 48 inches at installation and maintained at 60 inches. This is the Code requirement for the buffer that they say will be met by the existing plants in the field.

So forgive me that the slide goes off slightly. The fonts are different than what I prepared.

The comment response letter by the Applicant dated October 3rd, 2024 -- the Staff insufficiency comment reads, "The development order for this area depicts buffering and a 30-foot-wide landscape and access easement." Obviously incorrect, you can't have a landscape easement over an access easement.

But they state, "Please revise to accurately depict what is being proposed." Because even the County to this point still -- still is scratching their head, we don't understand how you can do this, and what you say is existing; and then later propose to pave 80 percent of it, but all the existing plants in the part we're going to pave meet the 30-feet-wide requirement. The two cannot be coexisting truths.

So the response given by the Applicant, Tract G does not abut the timeshare unit. Tract G is proposed for the Beach House restaurant to replace beachfront food -- beachfront food and beverage services destroyed in Hurricane Ian, historically located in the same location.

I would say -- I would press strongly against that being true in any -- in any manner, shape, or form. They are not historically located in the same location

at all. The current Beach House is well over 200 feet east -- 200 to 300 feet, I didn't measure completely, but in excess of 200 feet east of the location of the historically located area.

Deviation 4D is what they're requesting to allow for an alternative buffer consisting of 10 trees per 100 linear feet per the development order in the Recreation Tract G, Beach House, and the external single-family home.

The schedule of deviations -- the revised schedule of deviations submitted by the Applicant September 2024:

Deviation 4D, to allow for an alternative buffer consisting of 10 trees per 100 linear feet. So at this point the deviation is now requesting we don't have the hedges that are required. We could have put them in, but we decided not to. We decided to push ahead with development anyway. Now we realize we can't, as the County has identified on multiple occasions, so we're asking that since we imposed this on ourselves, but the building is in the ground, that you just don't allow us -- don't require us to do it.

The only fault that they cannot do is by the Applicant themselves. None of that was imposed on any of them -- on the Applicant at all. It was where they

chose to put the building. There was no outside force requiring the building to be there.

At the bottom of this slide you'll see where Recreation Tract G abuts a single-family residence, which has historically been used as a beach food and beverage facility -- that is incorrect. It was well beyond both of the coastal construction lines. It was used that way.

The uses have coexisted for decades. I would -- I would say and remind you that at least 200 feet of separation and two landscape buffers between them.

Insufficiency letter dated November 15th, 2024. The stipulation was that prior to the issuance of the certificate of compliance -- again, this seems redundant and repetitive, but it is continually put back -- back to the Applicant because they do not and cannot meet the requirement. If sufficient plant material is not present within the south buffer, supplemental plantings must be provided as approved -- and approved as a minor change.

The comments by the Applicant, the southern buffer area has added -- or the comments from the Staff, excuse me -- has added brick pavers over the majority of the buffer width, thereby even further confusing the County, I'm certain.

It says not more than 20 percent of the width of the buffer can be impervious if it is a landscape buffer. Well, it can't be a landscape buffer, but say the easement didn't even exist. You can't pave more than 20 percent.

The response by the Applicant was, oh, we've changed the type of -- of pavers. They're now pervious pavers so water can drain underneath them, and we'll continue to pave in this area where we're supposed to put plants. Again, it's confusion, at the very least, and it's an untruthful representation of what is required versus what is being proposed.

So here is the minor change. This is the landscape plan minor change showing the expanded paver areas proposed by the Applicant. They've got underground stormwater drainage Type C inlets that can be traversed by vehicles -- so they know that vehicles, obviously, can be within the easement. They show all of the existing trees. And you'll see that those trees that begin with 438 to the right, or to the east side near the front door of the east -- of the restaurant, and going -- going to the west, they do number those trees. All of those trees numbered in this picture are within the easement. They've historically been there for quite some time.

The shell roadway area at the right-of-way of South Seas Plantation has never had any significant plantings; and as it traverses to the west, the shell improved portion of it skinnies up slightly to the north of the easement, while still allowing vehicles and pedestrians to travel.

And what you'll see in this picture is a representation of the location of the trees based upon their trunk location. The circles, the larger circles around these trees show the palm fronds or -- it's not an adequate spread of the tree canopy. It's just a marker that's showing that there's a tree in that location. But 100 percent of these trees that are in this easement, by the Applicant, are identified as -- as palms, as cabbage palms.

Here is the updated --

HEARING EXAMINER COLLINS: And what is this document from?

MR. PATTERSON: This is the Applicant's document. This is their landscape plan. Slide 38 is their landscape -- updated proposed landscape plan showing where trees are located.

HEARING EXAMINER COLLINS: And this was for the development order or for the zoning app?

MR. PATTERSON: This is -- this is for the

development order of the Beach House --

HEARING EXAMINER COLLINS: Okay, thank you.

MR. PATTERSON: -- that's being allowed by the zoning app.

This is their perimeter planting plan that shows the perimeter plants that are proposed around the site. I will bring this to light slightly later, but the current Code requirement of 5 feet around the adjacent portion of the building has not been met and cannot be met by the current plan. It was alluded to that it's met to -- that it's going to be met, but it cannot be by the landscape -- by the Land Development Code, and I'll show you that in a moment.

This was a slide presented by the Applicant's landscape architect, Christian Andrea, on day one of the hearing. This is his slide 173. This is where Mr. Andrea is talking about the proposed landscaping of the easement and the perimeter landscaping of the building, and completely misleadingly and 100 percent incorrect, he shows the 30-foot access easement as being green in his landscape plan, alluding to the fact that if you don't lift the hood on this old Pontiac, you think it's all planted, and it's not. That easement has predominantly been the home of a shell roadway and walkway since its inception, and it will

never be fully green like this picture. But because they're trying to count it as their landscape buffer, they depicted it as green. Not only is it misleading, it's untrue. And, in fact, on this same slide, in the lower left-hand side of the slide, you'll see a current picture of that landscape easement showing the shell roadway that exists. So even his own slide misrepresents the truth on what's out there and what's intended.

Mr. Andrea went on to say that the required building perimeter plan plantings, which are those that are required around the -- around the building and adjacent to the building itself, are met by their current proposed plan on the scene. He alludes to the fact that you need -- it's required to have 10 percent plant -- building plantings -- 10 percent of the building area as building plantings, and he even said that the area that's north, immediately north -- the mouse is here -- oops, where did we go here? Oh, there we go.

This area right here, that area alone, to his testimony, satisfies the 700 square feet that is required by the building plantings. However, the Code also reads -- let's go here. Building perimeter planting, Section 10-416(b), "All new development in

commercial zoning districts and commercial components of planned development districts and DRIs must provide building perimeter plantings."

To go on in red, "These planting areas must be located abutting three sides of the building with emphasis on the sides most visible to the public, not including the loading area."

And then at the bottom you'll see, "The perimeter planting areas must consist of landscape areas, raised planters or planter boxes that are a minimum of five feet wide."

And so by this Code requirement, three sides of the building, adjacent to the building itself, must have five-feet-wide plantings. You can satisfy the 700 feet fairly quickly, but on all three sides of the building, you have to have a planting area that's five feet wide. Its length would be determined by the square footage that is required and/or desired by the Applicant, but at a minimum three sides of the building must have five-feet-wide landscape. That does not exist here.

I'll go on. Section 10-1, the definitions that opposing counsel actually alluded to earlier, building is defined as a means -- any structure -- it means any structure built for the support, shelter, or enclosure

of persons, animals, chattels, or property of any kind that has enclosing walls for 50 percent of its perimeter. That is a building.

Going back two slides to show their landscape plan, you'll see that this area on the outside of the proposed deck was identified as one of the five-feet-wide landscape buffers. That buffer is only three feet wide by their own plan. It is not five feet wide.

That buffer also does not abut the building. It's on the outside of the deck. Does not meet the Code requirement. There are small planter boxes that are proposed right here along this west side of the building that are only two and a half, maybe three feet wide at best. There was a larger planting area located on the southeast corner of the building. At one point in time, the earlier plantings showing it at five feet wide, they revised it and shrunk it down to approximately two feet. The only area of adjacent plantings to the building itself that satisfy any portion of the five-feet-wide width is over here next to -- on the -- on the east side of the property next to the proposed sidewalk.

And I'll remind you that the LDC requirement here, talking about perimeter plantings, says the three sides

that are most visible to the public not including the loading area. However, if you look at their plan, the most heavy side of the building that is proposed to be landscaped is the loading area. Well, why is that? That's because there is a proposed timeshare building being built right here, if they can get the coastal construction approval to build beyond the coastal construction line. That's my understanding. But if you look at their own application, it shows a shaded area of a timeshare building being built immediately adjacent to this. And the reason you would then landscape that area is because you don't want your people to see it. You don't want your timeshare people or anyone that's going to be using that portion of the property to see the delivery trucks and the dumpsters and grease traps. And so that would be unsightly, that would be a use you don't want to see, so they immediately adjacent -- adjacent buffer -- even though the Code says not including the loading area, they buffer that area because they know that they want to protect the nuisance of that from their own people. They just forgot about Mr. Suraya, who has a 12-and-a-half-million-dollar property -- Mr. Stephens, I should say, next door because that doesn't -- that apparently doesn't concern them as much.

VOLUME 4

HEARING EXAMINER COLLINS: Okay. I'm going to take a break now for ten minutes for the court reporter, and we will resume on slide 43 or slide 42.

MR. PATTERSON: Yes, ma'am. Thank you, Madam Hearing Examiner.

(Recess from 10:36 a.m. to 10:53 a.m.)

HEARING EXAMINER COLLINS: Okay. We're back on the record after the break. The date is February 26th, 2025. We are in the middle of testimony from James Patterson, and we will resume.

MR. PATTERSON: Thank you, Madam Hearing Examiner.

We were on slide 42 talking about what a building is, and just to recap, what has been presented from the landscape architect by the client does not meet the 30-foot-wide landscape buffer requirement between their proposed development, which is now nearly complete, and Mr. Stephens' property, as well it does not meet the Code requirement for building perimeter plantings -- building perimeter plantings. It may meet the square footage, but building perimeter plantings are supposed to be, by Code, placed adjacent to the building itself to buffer the building and not on the outside of a deck.

So going forward, slide 43, this aerial was flown a week ago, is my understanding. This is a drone shot

aerial of the current construction and Mr. Stephens' property in the lower left corner. This is looking north, and you'll see that the Beach House restaurant -- this is -- this is not part of my main presentation, but I've never seen a building that actually hangs to the corner of the right-of-way. I'm not sure how that happened. There's a six-foot overhang on the building, and the building overhang goes -- from what I've seen on the plans, as well as what I've seen in these aerials and looked at in the field, the building overhang goes to the edge of the road, more or less. I have not measured that, but it is -- it is very close with zero setback for the eave.

But you'll see in this photograph that the previously mentioned golf course maintenance building has been removed. That may have been at one time one of the factors. I don't -- I don't pretend to know as to why the building was placed in its current location, as far south as it's been placed. If you -- from my previous exhibit showing their plans overlayed on the aerial, you'll see that that allows the driveway to be on the north side of the building, loading area, and still not have an effect on the maintenance building, but now the maintenance building actually has been removed.

This is a nearly directly overhead -- you'll still see -- if you look at Mr. Stephens' home and the home next door to it, you'll see that this is still at an angle. To be directly overhead, this shot would have to be even further to the west. It is not directly overhead, but it's close, and you'll even see the northeast corner of the building in the lower right-hand portion of the -- of the aerial, to the edge of the roadway, that -- there are -- there are multiple factors that show that this building appears to have been wedged into an area that is not sufficient for the area. If there are any large vehicles that ever leave the roadway headed southbound, they will hit the building. There are State Statutes in the State roadways, and other governmental agencies on their particular roadways, that prohibit that through clear zones but -- anyway.

You'll see that in between the two structures is the subject of our conversation, or at least of my testimony today, and that's the access easement. You'll see that the drainage structure near the edge of the South Seas Plantation Road has already been installed, and the underground piping has been installed. I was made aware that during that construction, the easement was actually fenced off, as

well. People were not permitted to use it during that construction.

But you'll see that the easement at the moment is made up of shell and rock and dirt, but it is a vehicular traversable area. You'll see in the far top of this location -- of this picture next to the bathroom building, which has a palm tree, and it has orange paint on the side, there's a food truck that has been stationed there with outdoor seating; and upon my inspection of the property, I witnessed vehicles driving all the way to the food truck. And so it is intended for vehicular traffic, it always has been, always will be, to a portion of that.

This is a particular -- this is -- this is a shot that I took upon my building inspection on January 31st this year. This is a shot looking west from the corner of the Suraya, LLC-owned property and the edge where it abuts the South Seas Plantation easement. That intersection of the pink lines, you'll see behind that there's a stake with a green flag on it. That's a stake that I placed temporarily. This is the property corner for Mr. Stephens' property. I found the iron rod via a metal detector, as well as there were a couple of survey stakes that had been -- were previously on down the easement to the west that were

still present from the spot survey that was done of the easement, as well I located all of the Applicant's tree stamp locations that number the trees, and was able to compare that to their plans and locate with a -- a fairly precise amount of -- of accuracy where the existing property line is. This being the corner, and I found documentation -- to the west of Mr. Stephens' property showing this document -- showing this.

Now, you'll see in the next slide, this is the property line. This is a representation of the property line. You'll see the easement representation there. South Seas Plantation Road on this side. And this is a picture of all of the existing vegetation in the easement that meets a Type F buffer. Fortunately, I guess, dirt and shell and rock doesn't die out so you don't have to water it. There are no plants. There's not a blade of grass; there's not one plant; there's not one tree in the first 70 or so feet of the easement, not one. There is nothing in the easement, no vegetation that can meet any type of requirement, whether it be 5 feet wide or 30 feet wide, that could satisfy any interpretation of a landscape buffer. And yet the Applicant's -- the Applicant's drawings and approved landscape plans say the existing vegetation satisfies the Type F buffer, not the -- not even the

Type F buffer sub-Deviation 4D, removing -- removing hedges. It satisfies the Type F buffer, 30 feet wide of landscaping, 10 trees per 100 linear feet, double hedgerow, 48 inches tall completely opaque screening. What I see is a shell roadway. There's no other interpretation.

So it's hard for me to understand how any of this can meet a landscape buffer requirement because it simply cannot.

You'll see in this picture and the following pictures some of the trees to the left of that property line have an orange ribbon around them. I tied every one of those ribbons upon inspection of the property and the easement. I tied the ribbons around all of the trees that are owned by Mr. Stephens and/or exist on the Suraya, LLC, property, and I did not flag any trees that are located in the easement area towards the top of this picture, towards the end of that upper pink line where the first trees pick up that are in their easement. There are 31 cabbage palms in their easement. The rest of what you see out there is on the private property side of this easement.

This view here is from Mr. Stephens' driveway facing north towards the proposed Beach House. Every tree you see in this picture is on Mr. Stephens'

property, and there is not one tree in this picture that exists in the easement. If Mr. Stephens were to remove all of his trees on his property, there is nothing buffering his driveway and the front of his home to the front door of this building, nothing. And yet somehow that meets a Type F 30-foot existing landscaping vegetative buffer. It's the most incorrect representation of the truth that I've seen in quite some time. You know, deplorable to me, that you would say that 30 feet of gravel satisfies a Type F buffer with a double hedgerow and trees -- 10 trees per 100 feet. It just doesn't happen.

The next slide shows you where the first tree in the easement exists. This slide is looking northwest. You still see the building -- the proposed building that's going up, you see the overhang slightly, but all of the trees to the right of that red arrow are all on Mr. -- Mr. Stephens' --

HEARING EXAMINER COLLINS: Okay.

MR. PATTERSON: -- property.

HEARING EXAMINER COLLINS: Could you hang on one minute, please?

MR. PATTERSON: Yes, ma'am.

This is slide 48.

HEARING EXAMINER COLLINS: So slide 47 is the

corner of the property --

MR. PATTERSON: Slide 47 is actually in his driveway.

HEARING EXAMINER COLLINS: Right, but that's oriented near the road, the actual road.

MR. PATTERSON: Correct, that's -- that's very near the east property line or South Seas Plantation Road.

HEARING EXAMINER COLLINS: So is South Seas Plantation Road to my right in this photo?

MR. PATTERSON: That is correct.

HEARING EXAMINER COLLINS: Okay. Continue, please.

MR. PATTERSON: So, as I said, in slide 47 not a single tree in this picture is in this easement. There are none.

In slide 48 you'll see where -- the first tree that was field marked by the Applicant's personnel that marked the trees. That, I believe, was number 438. I don't have it in front of me, but that was the first tree with the stamp and a nail on it. So everything to the right of this red arrow is all on Mr. Stephens' property. There's nothing planted before that tree, and somehow it satisfies the easement, or so their interpretation thereof, which physically cannot be

truthful, and it isn't truthful.

Then what I did -- this is looking northwest from basically the roadway. It's west/northwest at the Beach House. That first large tree that you see, that date palm there with the ribbon around it, that's the first tree that's located on Mr. Stephens' property.

And I'm going to take us on a journey, and we're going to walk down this side of the easement completely on Mr. Stephens' property. Then we'll cross through the easement, across the easement, and we'll walk back to the roadway, to show you an accurate account of the trees in the area. And every tree, as I said previously, that has an orange ribbon on it are Mr. Stephens' trees. None of those are in the easement.

So as we go forward, walking west down Mr. Stephens' side of the existing treeline that sits there, all of these trees are Mr. Stephens'. Not one of them is in the easement. All of these trees are Mr. Stephens'. Behind this tree over on the easement side begins the very first one that's not on his property. So you'll see the tree -- not the far tree to the right, but the tree next to it, that's the first tree -- or, no, actually that one is owned by him, too. It's beyond that. It's behind this coconut palm is the

first tree. All of these trees are owned by Mr. Stephens.

You'll see a stake in the middle of this slide that shows a green ribbon on it. That's a stake that I put in based upon the location of the trees that they identified and their proximity to the -- to the property line.

HEARING EXAMINER COLLINS: What does the green stake represent?

MR. PATTERSON: That represents a representation of the property line.

HEARING EXAMINER COLLINS: Okay. So now we're walking closer to the beach; right?

MR. PATTERSON: Correct, you're walking closer -- you're walking to the west down the north side of Mr. Stephens' home, which is currently under renovation from the storms, the ground floor of it.

And so you'll see, again, every one of these -- you'll see a couple more flags in this picture and in the following pictures. Those are approximate locations of the -- of the property line.

I will say up front I am not a licensed professional surveyor, but I do have the ability and 20 years' experience locating property corners and placing them on surveys, which have been provided -- and

drawings have been provided by the Applicant to show within a -- within a relatively accurate -- very accurate location of where the approximate property line is. Those -- those stakes identify where the approximate property line is.

So as you walk further, you see several of those stakes. You begin to see some of the trees that are located in the easement, those trees that do not bear the orange marking are in the easement. You'll see the property line actually gets to right in front of one of them. You'll also see some scattered thin buttonwood mangrove in the area, but they were not even considered enough of a buffer or enough of a planting to be recognized by the Applicant. They -- because they don't really do much. They identified the cabbage palms.

So as we walk further, several of these trees in there are on the property. This is -- this is the -- this is approaching the thickest portion of their easement where -- all of these trees that they say provide a buffer, you can see directly right through them.

As we go further, every one of these trees is owned by Mr. Stephens. The few that you see in the background are those that are not. And we are near the

back corner of the deck, as well as the back corner of Mr. Stephens' home.

In this you can see this is actually the thickest portion of their buffering, which exists to buffer his pool area, not his home, and those previously exist. Every tree to the right, upwards to the center of this picture that does not have the ribbon, is located within the easement; and the easement property line, between the easement and his property, is in between these orange trees -- orange flagged trees and those trees that do not have a ribbon. You see the property stake there, as well. And this is the thickest portion of the easement -- of the buffering.

HEARING EXAMINER COLLINS: Now we're almost to the dunes?

MR. PATTERSON: Correct, we're right near the dunes, near the back corner of Mr. Stephens' pool area. And many of the ones on Mr. Stephens' property are coconut palms, what are these here. You'll see the flag there. And that's the -- that's the restroom building that exists behind this view.

And you'll see this is looking towards the restroom building. There are two, maybe three trees at best. I think there's two in this area that are in the easement. Everything else that's blocking his view is

on his property, even the low shrubbery there, the -- fondly referred to as mother-in-law tongue.

This is at the back corner of his improved area of his property, and you can even see the two cabbage palms that are in the center of this picture. If you look closely, you'll see they're both ribboned because they're both still on his property, and that's the back corner of the restroom building that you see to the right.

And now we turn back around and face northeast from his back improved property area. I did not flag this tree in the middle of it because it was so far into his property, I wouldn't have considered it part of the buffer area, but it is a cabbage palm on his property, and every other one of those coconut palms are on his property. This is one more --

HEARING EXAMINER COLLINS: Now we're at the very corner of his property here?

MR. PATTERSON: It's not the very corner of his property. It's the corner of the improved area before -- he's got some overgrowth, natural preservation kind of -- but this is -- this is the cleared portion of his property west of his pool deck. You'll see it a little bit better in this. This is the corner --

HEARING EXAMINER COLLINS: Okay. So this cabbage palm in the center of the photo has an orange band on it -- I'm on page -- I don't know what page I'm on, 62?

MR. PATTERSON: 62, yes. The -- the two that are in the center also have ribbons. Those are still on his property.

HEARING EXAMINER COLLINS: And then what about the tree in between the center tree and this one that's in the foreground?

MR. PATTERSON: Yeah, the coconut palm with the ribbon on it? That's --

HEARING EXAMINER COLLINS: Is that tree in between them? It looks like I can see orange. I'm just trying to figure out, is that in or out?

MR. PATTERSON: Yes, you'll see it -- I step over the easement to take another picture of this area, and you'll be able to identify which ones are in -- I believe one of those trees may be in the easement.

HEARING EXAMINER COLLINS: Okay. So now we've turned, and we're facing north, page 63?

MR. PATTERSON: Correct, north/northeast. You'll see the back corner of the restaurant building, the Beach House building in the center right, and this is looking from the improved portion of Mr. Stephens' pool area, beyond the pool back towards northeast --

northeasterly. And again --

HEARING EXAMINER COLLINS: So this -- this structure I see in the background is actually the restaurant?

MR. PATTERSON: Yes, ma'am.

HEARING EXAMINER COLLINS: Okay.

MR. PATTERSON: Here's one more view a little bit closer up in slide 64 looking towards the Beach House, in the thickest portion of their landscape easement of what they're calling their buffer. Again, every tree in the foreground with orange on it are Mr. Stephens' trees, and the trees that are beyond them are their landscape buffer, the existing cabbage palms.

HEARING EXAMINER COLLINS: And across the 30-foot easement is their outdoor seating?

MR. PATTERSON: Correct, directly adjacent to the 30-foot easement.

So in this view we step across -- slide 65, we step across into the easement.

HEARING EXAMINER COLLINS: Okay.

MR. PATTERSON: And we're looking back -- right very near the edge of the easement back to the east towards the Beach House, and you'll see that small swell of trees right in the center of the photograph. That is the thickest portion of their tree landscaping

that they are saying buffers the entire 30 feet between Mr. Stephens' property and the access easement. And as we walk down this way, those are their trees. This is the thickest portion of their tree buffering. And as you can see, you can see right through it to Mr. Stephens' property. And yet -- and you'll see the flag to the right with the green ribbon on it, that's the property line. So we're -- it's -- I'm still having trouble understanding who could ever interpret this as a 30-feet-wide Type F landscape buffer.

As we step further to the east, you'll see some of the buttonwood mangroves that were more or less ignored, and some of the mother-in-law tongue, the long plants there near the drainage structure; but you'll see how close to the property line it is. You'll see some of the trees through this that have orange on them, and you'll see a stake actually somewhere in the middle -- it's kind of hard to see, but between all of the trees in this picture, the ones that are further away from you are the coconut palms on Mr. Stephens' property; the ones that are closer are actually some buttonwood mangroves and a couple of the -- of the cabbage palms.

The tree to the right that you see in this picture, about two-thirds of the way up the picture

you'll see a round shiny disc, and that's the discs that I explained to you earlier, their surveyor marked every single tree and labeled it with a number that corresponds to the plan that has the triple digit numbers.

But you'll see that this is the proximity of the property line between the easement and Mr. Stephens' property, and yet they've got a drainage structure within feet of the property line. There is no buffering; there is no landscape; there is no ability to put landscaping. That -- that area is to be -- have brick pavers around it. That's why -- that's why the inlet's there in the first place, is to drain the water that is going to be on the pavers. So none of this is to be planted, none of it.

This is taking a little bit further walk towards the -- towards the front of the restaurant. The trees that you don't see with a ribbon are their almost singular soldiering rows of their cabbage palms. The stake in the middle is not a property stake. That's a stake that was put by another survey trying to get a proposed grade for draining, just to be clear. But you'll see the tree to the right that's almost out of view that has an orange ribbon on it, that's how close we are to the property line. So at best, you know, you

might have six or seven feet at the widest that -- that they're calling their landscape buffering easement.

As we take a step further towards the east, I believe that tree that has the disc in it to the right, or one just -- I believe that's the second tree in the easement. The first tree is about the center of the -- of the photograph that doesn't have a ribbon on it. Those are the first two trees in the easement. Those are the ones that are adjacent to the front door of this building. Every other growth in this picture is on Mr. Stephens' property. There's nothing beyond the tree that's in the center of this picture that doesn't have a ribbon on it between there and the road right-of-way, roughly 70 or more feet. No plantings exist, no plantings are proposed, and somehow they're supposed to buffer the uses.

You'll see in the center of this picture a stake -- a couple of stakes with the green ribbons on them, and you'll see a little box that they've actually installed all the way at the south end of the easement. That's an electrical box that they've installed, and they pave right up to it with the brick pavers. And, again, every tree in this photograph is Mr. Stephens'. There's nothing in this photograph that's in the easement. I'm trying not to belabor that point, but

kind of I am. It's -- I still can't process the fact that this is sold to the County and even given a green flag to start breaking ground, that these existing plants that you see that don't exist satisfy the buffer.

This is one of the last shots showing that electrical box and where the approximate property line is right next to the electrical box. And, again, all of these trees are Mr. Stephens'.

And, unfortunately, the -- the font that I have in my slide presentation doesn't quite translate to this so I can't quite show you that. You've got a copy of this. This is slide 72. You've got a more representative copy that shows the tree tabulation.

And I'm almost done. Yeah.

So if you look at slide 72, there is an accurate depiction of the trees that I located that make up the treeline that exists between Mr. Stephens' home and the restaurant. And there are 39 trees on Mr. Stephens' property, the Suraya, LLC, property. There are 31 trees within the easement that have also been identified by the Applicant, and those are all sabal palms or cabbage palms that -- there are 21 -- there are 14 of those on the -- on the Suraya property, 31 in the easement, and then the Suraya property also has a

scattering of intentionally planted coconut palms, a thatch palm, a dwarf palm, date palm, and one coast live oak, but all of those, again, are not within the easement.

This is a revisiting of the Applicant's proposal superimposed over top of an aerial, the latest aerial available. What you'll see is everything that's highlighted in green is what the Applicant has proposed to plant. On the west -- excuse me -- yeah, the west side of the proposed deck is a three-feet-wide area of plantings that was identified as a five-feet-wide on day one.

On the south side of the deck, it's approximately two, maybe two-and-a-half feet at the west side end, or the lower left corner of the deck, and it actually gets more narrow as you approach the main entrance, to what we -- what is less than two feet as identified on the survey that we saw previously.

And then you see all of the brick pavers, pervious pavers as they now claim it, are in -- in the area on the south side of the building. And, again, also -- let me make another point, to all of the lush landscaping on the north side near the -- near the loading area so that it's not unsightly to their own guests, but, again, no -- no buffering on the south.

And in those south three boxes, those red boxes that are identified with numbers 2, 21, and 8, that's every 100 feet of the easement. And so that's an interpretation -- that's a measurement of the first 300 feet of the easement. In the first 100 feet of the easement, there are 2 sabal palms in the easement; in the second 100 feet, there are 21; in the third 100 feet, there are 8.

One of the things that has not been addressed yet, and has not been brought up, is the complete misinterpretation, incorrect interpretation of LDC Code 10-416 that talks about the number of trees per 100 linear feet. What the landscape architect and the Applicant has assumed is you can average them over the entire frontage of the property. The Code does not read that way. If the Code read that way, you could plant 31 of these trees all the way in the left corner of these three boxes, nowhere in between the buildings, and that would satisfy 1 tree per 100 linear -- 10 trees per 100 linear feet because you have over 30 trees in 300 feet, but you cannot average them. There's no Code provision that says you can cluster all the trees in one area, and it provide a buffer. It undermines the definition of a buffer. If there's 2 trees in the first 100 feet, nothing is being buffered,

period.

And so an assumption that because you have 31 existing sabal palms in an area of 300 feet, that satisfies 10 per 100, that's a complete misinterpretation, an incorrect interpretation of the Code. There's no provision about -- about -- about clustering. There's no -- there is no other application of the LDC -- of the LDC requirement.

In fact, I'll say this: That when you go through the Land Development Code, there's another buffer that's called a Type D buffer, which is a right -- which is required in a right-of-way buffer. It's 15 feet wide. And if this roadway -- say that there was a commercial piece where Mr. Suraya's property is so you don't have to provide a 30-foot buffer, and this 30-foot easement was considered a road right-of-way, which it is, then by the Code you would be required to plant a Type D buffer, which is 15 feet. And in a Type D buffer, in the right-of-way buffer portion of the Code, I would say -- and I don't have a slide to show it, but we can -- I can -- I can cite the Code if you -- if you require that. A right-of-way buffer is only allowed for the number of trees -- it says you cannot plant them in a soldiering effect, like palm trees every 10 feet, because it looks poorly. They

want you to cluster the palm trees in small clusters, but you can only use 50 percent of the required trees as palms because they don't buffer, they don't require (sic) a canopy spread. And yet 100 percent of the trees in this buffer are sabal palms.

So there -- there are many different ways that this just doesn't meet -- and, you know, something else, if you think about it, as well, in square number 2, adjacent to the front overhang, is the beginning and the only access to the ADA-accessible ramp that's going to the restaurant. That's required by federal law. However, this easement, 30 feet wide, is also meant for vehicular parking and pedestrians with -- with no detail as to where any of that could happen. So by the letter of the easement, I could take my vehicle and park it right in front of the ADA ramp in this easement and be fully legal by the use of the easement and deny all ADA access to this restaurant. It's an oversight. It's a complete lack of design, a lack of consideration for those who require that.

There are -- there are so many things glaring about this that -- I don't know, personally and professionally, it upsets me that this has been put forth, and it's actually been approved to be constructed.

So a couple of last points, and then I will close. The reason that the outdoor deck is constructed at an angle is because that is the limiting line of the coastal -- the 1991 coastal construction control line. And so what they've done is everything that they are constructing they've put west -- or, excuse me, east of that control line, which is why it's so close to the road. They didn't have to design the restaurant that big. They didn't have to run it right to the road with a six-and-a-half-foot overhang of -- the building overhangs to the edge of the road, but they did. They didn't have to make the restaurant as large as it is, significantly, ten times more -- larger than the previously -- historically used beach food and beverage areas.

If -- if the Applicant would have appropriately designed this so as to adhere to the Code for a 30-foot-wide buffer and to properly buffer between the uses -- let me go back to this. There's one more point before I get to that.

In the lower right-hand corner of slide 73, you see the note that has been asked early on by the second insufficiency letter by the -- by the County to say that the southern property line Type F buffer requires to be met through existing vegetation. What you don't

see is the -- in this picture is the added note that says you'll add more if, on your -- upon approval of your CC, we don't think there's enough. Well, by the Code requirement, if you were to add more trees, LDC 10-416(a)(2) talks about plant installation and maintenance standards. "Trees and shrubs used in buffers must be planted in a minimum width area equal to one-half the required width of the buffer. However, in no case may the planting area be less than five feet in width."

So if this area were to be considered a 30-foot-wide landscape buffer -- which it cannot be, but let's just humor ourselves for a moment. You cannot plant any trees in an area that are less than 15 feet in width, and yet you don't have 15 feet in width that are not proposed to be paved until you get near the end of the deck, if you'll look back at the proposal. So they cannot, by their own Code, even add to the existing easement -- which for many reasons you can't add to the easement anyway because you can't add plantings.

If in some magic way you could add plantings, it still needs to be 15 feet wide. 50 percent of the required easement has to be green space for the tree roots to grow. It's been my experience in over 20

years of evaluating the effects of eminent domain on properties, that when roadways are widened near trees -- and although they don't strike the tree, they get within the tree canopy and/or the root system, the tree ends up failing the predominant amount of the time because you're not allowed to disturb the ground above it, nor pave over it. And so that's the requirement in the LDC, you have to have a -- 50 percent of the buffer has to be open space that doesn't have impervious area on it. That's not possible in their plan, even if it was possible to put trees in the easement.

So this is the -- Applicant's 48-hour letter. We've already seen this in Mr. Whitt's presentation, but it describes that if we get down to the 11th hour, and all of the existing deviations still exist, and nothing can be met, there's an alternative betterment plan that will be set forth. One -- I'll get into the details of that in a moment and recap that.

But in the line of work that predominates my experience, we have to -- I have to deal with landscape -- or land development codes, unified development codes nation -- or not nationwide -- statewide that talk about nonconformities and hardships, because every time you widen a roadway, typically, to a developed property, you'll create some

sort of nonconformance due to landscape -- many of it is landscapes widths. Some of it's parking, some of it's sign setbacks, building setbacks. But because the property owners' improvements were there prior to a roadway going in, any deviations that are caused, in most municipalities, are considered legally nonconforming because they did not come at the fault of the property owner. He was there first, he was permitted at the time it was constructed, and so then it's classified as a legal nonconformity. Some of those exist because the property was developed prior to the current rendition of the Land Development Code, and so anything prior to a certain time is considered legally nonconforming.

In no municipality statewide is a hardship ever excused because of a self-imposed nonconformity, never. The Applicant had the opportunity not to self-impose this need for a deviation and this need for an alternative betterment plan, but chose not to adhere to the Code and interpret it in a way that I still can't understand, and not provide any landscape buffer whatsoever, and then ask forgiveness because they've already turned dirt and has the building in the ground, and you can't stop progress. But they're asking for a deviation on something they created. In my 20 years'

experience, that's never been upheld, and in a court of law that would be laughed out, in my opinion.

So let's look back at Section 10-419, which talks about the landscape betterment plan. As Mr. Whitt showed earlier, that if you can't demonstrate how the requirements can be met, it needs to be more effectively accomplished through the alternative landscape betterment plan. And the approval of the alternate landscape betterment plan is at the Development Services Director's discretion, sub (5), "The proposed alternate landscape betterment plan must exceed the intent of the minimum landscape requirements." The minimum landscape requirements, we don't need to be reminded, but it's 30 feet wide with a double hedgerow in between Mr. Stephens' home or along the entire perimeter of the development, which would be from the roadway of South Seas Plantation Road to the back corner of the deck, proposed deck, at a minimum has to have 30 feet of width.

So putting this 48-hour notice at the tail end saying if we can't figure this out in any other realms, we're just going to adhere to this. If you landscape to the density to the Amazon rainforest east, west, or north of this building, it will never satisfy the Code requirements of the buffer along the south side. There

is no provision to make that happen sans cutting and refacing the building, cutting at least the stoop off of the building and/or cutting into the building itself to go back 30 feet, or demolishing the whole building and moving it north. There is no other alternative. 419 does no good to anyone because you can't put any plantings in the area where you can't put any plantings. Saying we've got another Code provision that allows us some other remedy, great, we can plant 75 trees on the east or west or north sides. It does Mr. Stephens' property no value. It doesn't adhere to any of the need for the buffer. It does not serve as a buffer, it cannot satisfy, and in this it says it must exceed what was originally proposed or required. In no interpretation of this can that be the truth.

Again, going back to the ADD, it talks about the Director can't approve this. It can't approve any deviation.

This is an exhibit that I created. I took what is being proposed by the Applicant, and I put it 30 feet away from the easement. And the coastal construction line is depicted on here, and all I had to do was shrink the deck by about four feet. It took eight or ten proposed seats -- I think eight seats, four two-top tables that they had drawn in their plans off of the

deck. That doesn't preclude you from adding more width to the deck to the north. You may have to modify the ADA ramp coming from the restaurant down into the deck for the landing area, but you can still get significant, if not 100 percent, of the proposed seating outside.

You have a double hedgerow 48 inches tall. You have all of the required plantings, within every 100 feet you've got 10 trees; and the Code allows for up to 20 percent of a landscape buffer to be impervious for pathways for pedestrians. So you can provide a pathway from the easement and the parking area where golf carts and other cars will park, again -- because, again, let me remind you, there is no parking lot for this -- for this building. If anyone comes here in any vehicle at all, they're putting it in the easement, and so that's where 100 percent of the vehicular traffic will be parked. And you -- you provide a six-foot-wide pathway leading to the ADA ramp, leading to the front steps, and it's still -- it's completely lavishly landscaped with trees and landscaping and the double hedgerow and meets all the requirements of the Code, and still jammed right up against the right-of-way, as they do.

Had they not demolished what you see in this picture as the golf course maintenance building, it

would have required that approximately 15 feet of that building be removed from the south side of the building, and you could maybe put it on the north side of the building, but they didn't need the building to begin with. As we've seen in current aerials, the building's already gone.

So doing -- placing this plan where I've placed it shows conceptually that their proposed development could have been put in, could have met the LDC requirements, but because of their own oversight and now blatant disregard for the requirements -- whether it was accidental or on purpose I'm not going to speculate, but it was ignored, and now we're asking for deviations and permissions from a situation that they imposed on themselves.

And so for that -- I have to ask you that in no way, shape, or form can you recommend to the Board that this be approved without some modification to the building, far be it from -- you know, either complete demolition of the building and moving it over and putting a plan -- subject -- something like this, or maybe refacing the building and taking the stoop off and trying to do some other remedy. That's not my problem to solve, but I'm telling you, from the beginning this was possible, but it just wasn't

desired.

And with that, I thank you for your time.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: Madam Hearing Examiner, if you don't have questions, I have some.

HEARING EXAMINER COLLINS: Okay, Neale.

MS. MONTGOMERY: Okay. Mr. Patterson, I noticed on your slide that you're an AICP. Are you a landscape architect?

MR. PATTERSON: No, ma'am, I'm not.

MS. MONTGOMERY: Are you a surveyor?

MR. PATTERSON: I am not, as I previously stated.

MS. MONTGOMERY: Did you evaluate the Beach House in conjunction with the development requirements of the ADD?

MR. PATTERSON: I'm not exactly sure what you're asking.

MS. MONTGOMERY: Okay. Well, let's start with parking. You just talked about parking, and under the ADD it indicates, activities/facilities internal to the resort and used almost exclusively by resort owners and guests, i.e., marina, golf course, tennis, retail, resort area restaurants, have no minimum required parking spaces. So based on the ADD, and what I just read to you, there wouldn't be a requirement for any

parking, would there?

MR. PATTERSON: No, ma'am, that's exactly correct.

MS. MONTGOMERY: And --

MR. PATTERSON: That does not preclude vehicles from driving to the restaurant though, does it?

MS. MONTGOMERY: And if we look at the ADD on landscaping and buffer, it doesn't require perimeter building landscaping, does it?

MR. PATTERSON: I'm not here to interpret the ADD with this. I'm here to interpret the current Land Development Code specific to 416(d), which even the County claims and still claims to this day must be met. So my interpretation of the ADD is -- is -- is irrelevant --

MS. MONTGOMERY: Okay.

MR. PATTERSON: -- with regards to that.

MS. MONTGOMERY: I appreciate that.

HEARING EXAMINER COLLINS: Okay. Neale, I'm going to let you continue, but I want to remind you that you will be much more effective if you counter his arguments in your rebuttal, okay? We're not going to flip this guy. We're not going to, you know, get him to recant testimony. I've never seen that in my experience as a Hearing Examiner. I want to allow you the opportunity to cross-examine, but I want you to

focus on what is going to be the most effective for your client.

MS. MONTGOMERY: Thank you.

You just testified about parking and the easement. To the best of your knowledge, has there ever been an approved parking plan for the easement?

MR. PATTERSON: Not to my knowledge.

MS. MONTGOMERY: Okay. And you did include, in your presentation, a definition from Section 10-1. In that section it says a street right-of-way is something that's open to or dedicated to the public. That 30-foot easement, to the best of your knowledge, is that open or dedicated to the general public?

MR. PATTERSON: Not to the general public, no.

MS. MONTGOMERY: Okay. You made a comment about the setback of the building to the road, and you may not have looked at it, but is that setback consistent with the ADD setback requirements, or you don't know?

MR. PATTERSON: I -- I -- I do not know.

MS. MONTGOMERY: Okay.

MR. PATTERSON: I do know that the County had a problem with it in the beginning in the insufficiency letters, but they didn't adhere to their issue.

MS. MONTGOMERY: When you -- when I looked at your aerials, I think you started in 2005, and you had a

series of aerials. It appeared in all of those aerials that there were trees in the easement.

MR. PATTERSON: Correct.

MS. MONTGOMERY: So historically there have always been trees in that easement.

MR. PATTERSON: To my knowledge, the 31 trees that exist now have been there for some time, correct, along the south buffer of it.

MS. MONTGOMERY: And I'm assuming you don't know how many might have gotten destroyed --

MR. PATTERSON: I do not.

MS. MONTGOMERY: -- in Ian.

MR. PATTERSON: I do not.

MS. MONTGOMERY: Okay.

MR. PATTERSON: But by examination of aerial photographs, it can't be many.

MS. MONTGOMERY: But you didn't do an in-depth analysis of that; correct?

MR. PATTERSON: I don't know how I could.

MS. MONTGOMERY: Okay. Let me ask you a question. You talked about nonconformities and what the rules are everywhere in this state. If the Hearing Examiner denies the deviation, then the building is nonconforming; correct?

MR. PATTERSON: If she denies the deviation, then

you can't get your CC, so I guess it doesn't adhere, yes.

MS. MONTGOMERY: That's your opinion, but that's your conclusion; correct?

MR. PATTERSON: Yes. By its current plan, it cannot meet the Code requirement, the LDC requirement.

MS. MONTGOMERY: And we're not debating which requirements apply at the present time, the ADD or the Land Development Code, because you already indicated you don't know because you didn't review it per the ADD.

MR. PATTERSON: I did review it per the ADD. I did go over the ADD. I didn't review it in significant depth because the -- the controlling entity right now over the setbacks, as continued to be presented by the County itself, is the LDC for these requirements because it's new construction.

MS. MONTGOMERY: You made a point on your pictures about the electrical box. If you know, do you know whether LCEC is the entity that put those there?

MR. PATTERSON: I don't have any knowledge of the electrical box, who put that there.

MS. MONTGOMERY: Okay. So you're not accusing my client of putting it in the easement. You just don't know.

MR. PATTERSON: No, ma'am. There are recent additions to the easement. There's also one at the very west end near the restroom building, which I'm assuming serves the lift station for the rest -- for the restroom, but I do not know. It is on your client's property, but I do not know who put that in.

MS. MONTGOMERY: Okay. You have some pictures about all the activity around Attitudes and Latitudes; and you're right, those pictures were submitted by the Applicant. In your opinion, if you know, could those facilities have been replaced due to the CCL line?

MR. PATTERSON: Are you -- you're asking about the specific buildings of Attitudes and Latitudes?

MS. MONTGOMERY: Yeah.

MR. PATTERSON: If it's a previously existing building, I believe that there is some sort of -- I don't have it quoted, but I've read that perhaps there's some -- not to be -- not to have a pun, but some latitude on putting buildings back where they previously existed. I just -- you know, I don't know how they were permitted in the first place, since the first -- the first control line was back in the '70s. I can't imagine they were there before then, but I don't know, yes.

MS. MONTGOMERY: Okay. You don't disagree that

food and beverage service and restaurants that serve the resort are permitted within the resort, do you?

MR. PATTERSON: No, no, not at all.

MS. MONTGOMERY: And that those aren't identified in the ADD as to where they can be located?

MR. PATTERSON: Again, I -- I don't have a -- the ADD in front of me to where I have the opportunity to look at that and testify to that. I do know they've never existed adjacent to the existing home on the Suraya property, from the history that I've been available to review over the last 30 years.

MS. MONTGOMERY: Thank you for that comment, but I don't think I asked a question.

MR. PATTERSON: Okay.

MS. MONTGOMERY: You talked a lot about vehicles driving on the easement. Are these Ford 150s (sic), or are these golf carts, when you talk about vehicles?

MR. PATTERSON: The day I was there, it was a Ford F-150.

MS. MONTGOMERY: Okay. Let me ask you a question about the house. I noticed when you were walking down the buffer, that there was a lot of air handlers on that side of the residence. How high up is the first habitable floor?

MR. PATTERSON: I don't have that knowledge in

front of me.

MS. MONTGOMERY: Okay.

I don't have any other questions.

HEARING EXAMINER COLLINS: Adam?

MR. MENDEZ: No questions here, thank you, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: I don't have any questions of this witness right now, but I may subsequent to hearing other testimony from the public. Is your plan to be here for the remainder of the hearing?

MR. PATTERSON: I was not planning to be here for the remainder of the hearing.

HEARING EXAMINER COLLINS: Okay.

MR. PATTERSON: We're located in the Tampa Bay area, about two to three hours, depending on traffic, from here; but at the Hearing Examiner's request, I can be here whenever --

HEARING EXAMINER COLLINS: Okay, thank you.

MR. PATTERSON: -- you'd like me to be. If given any notice, I can be here.

HEARING EXAMINER COLLINS: Thank you very much.

Next witness, and I apologize if I mispronounce your name, Zac Liebetreu -- Liebetreu?

THE REPORTER: Can you spell that?

VOLUME 4

(Sotto voce between witness and reporter)

MR. LIEBETREU: Good morning, Madam Hearing Examiner. My name is Zachary Liebetreu. I'm an attorney with Roetzel & Andress here on behalf of RLR Investments, LLC, and Royal Shell Vacations, Inc.

As a preliminary matter, I'd like to submit into evidence our request for aggrieved party status. I understand that's been denied, but I would like to --

HEARING EXAMINER COLLINS: It's already --

MR. LIEBETREU: -- submit for the record.

HEARING EXAMINER COLLINS: -- been denied so --

MR. LIEBETREU: Yes.

HEARING EXAMINER COLLINS: -- so I don't really need that in the record.

MS. MONTGOMERY: And I maintain our continuing objection to it.

MR. LIEBETREU: Okay. Additionally with this, I have a study from Visit Fort Myers. It is their October through December 2024 Visitor Tracking, Occupancy & Economic Impact Study, if I may submit those into the record.

MS. MONTGOMERY: Do we have any kind of foundation for this information?

MR. LIEBETREU: I will be speaking about it later. I just figured you'd want it now --

MS. MONTGOMERY: Okay.

MR. LIEBETREU: -- because I'll be speaking about it later.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: Is this like a composite exhibit?

MR. LIEBETREU: The study is, you know, just a series of pages about traffic and tourism.

HEARING EXAMINER COLLINS: Okay. We'll make this Exhibit 1.

(Liebetreu Exhibit 1 submitted.)

MR. LIEBETREU: This is the study.

HEARING EXAMINER COLLINS: Thank you. Is this part of the same, or is this a different exhibit?

MR. LIEBETREU: No, this is the request for aggrieved party status.

(Discussion at table)

MS. MONTGOMERY: Zac, just for the record, the big white binder is the aggrieved party information, and so the information you're going to talk about is, thankfully, the smaller exhibit?

MR. LIEBETREU: Yes, the study is the smaller exhibit.

MS. MONTGOMERY: Okay, thank you.

MR. LIEBETREU: Okay. Furthermore, I understand

that our request to cross-examine has also been denied, and we have been working together to compile some questions, which Mr. Grosso will be presenting at the end of public input.

So I'm here on behalf of RLR and Royal Shell, which own and operate hundreds of properties on Sanibel and Captiva. RLR owns two properties which are within South Seas, another property within 500 feet of South Seas, and then there are dozens more properties managed by Royal Shell within South Seas.

Here with me today, I have Royal Shell President Michael Polly, and he will be speaking about his experiences on the island.

So one of the main issues with the rezoning are the 435 units requested over and above the 912 units which are already permitted. Lee County Land Development Code Section 34-1802(4)(d) says, in sum, that hotels approved as planned developments are not subject to density requirements provided all other aspects of the development -- height, traffic, intensity of use, et cetera -- are found to be, one, compatible with the surrounding area; and, two, otherwise consistent with the Lee Plan. You have heard plenty of competent substantial evidence from our experts that this rezoning is both, one, incompatible

with the surrounding area; and, two, inconsistent with the Lee Plan.

So as to the 912 units, this was established back in 1973, as you have previously heard, and has been continually enforced and maintained all the way to the present day. This 912-unit cap was relied upon by RLR when purchasing these properties. Furthermore, RLR has relied on the original master plan binding commitments regarding the maximum number of units, open space, development pattern, height, general quality of life, the resulting character and historic development pattern. These changes will have a negative impact on the usability, value, and salability of the RLR properties, which Mr. Polly will be testifying to.

Next, as to the internal road within South Seas, this internal road is already under strain, and the additional 435 units will increase the intensity of use on the road, which has been meant to serve the 912 units. This is going to be a 40 percent increase of units which are going to be using this access road.

As required by LDC Section 34-411(i), the Applicant has not substantiated its claim that this private road is adequate to serve a 40 percent increase in the allowable number of units on the resort property and the existing surrounding uses likewise served by

this access road.

Furthermore, as noted by Mr. Roark, our traffic engineer which you may remember, the rezoning by increasing the intensity of use will likely increase the probability of crashes, worsening safety, and operations of the access road.

So for these reasons, Lee Plan Policy 23.2.7 and Land Development Code 34-411(f) are not met because the rezoning does not make Captiva safer for pedestrians, golf carts, and bicyclists. Rather, it increases the hazards to people.

Furthermore, according to Lee Plan Policy 39.2.2, the Applicant is supposed to provide a network of motorcycle, bicycle, and pedestrian facilities, as well as a pedestrian-friendly design with sidewalks along all the roads, and the Applicant has not done so.

So Florida Statute 163.3194(3)(a), and Imhof v. Walton County, say that a review of a rezoning for consistency with a Comprehensive Plan must consider whether there is complete consistency.

So because of the increased intensity of the access road, which decreases safety, and the Applicant being -- supposed to -- charged with providing a network of pedestrian and bicycle facilities and sidewalks along all the roads, the proposed rezoning is

inconsistent with the Comprehensive Plan, and you must recommend denial.

Now, expanding just from the rezoning and the increased intensity in general, Deviation 15 must also be denied for very similar reasons. Deviation 15 will continue to make the access road unsafe. Again, as our traffic engineer, Mr. Roark, noted, the requested deviations are for substandard bike lanes, no pedestrian sidewalks, and a narrower access road. As noted by Mr. Roark, Deviation 15 will increase the probability of crashes, worsening the safety and operations of the access road. Again, Lee Plan 23.2.7 and LDC 34-411(f) are not met because Deviation 15 does not make Captiva safer for pedestrians, golf carts, and bicyclists, rather, increases the hazards to people.

Another issue with Deviation 15 and Deviation 3 is how the proposed deviations infringe on the easement rights and access rights for the residential units in South Seas. LDC 34-202(a) requires the Applicant to submit that he has full authority to secure the approval required, and to impose covenants and restrictions on that property. The Applicant has no such authority.

Furthermore, Lee Plan Property Rights Element 12.1 calls for the protection of easement rights. Given

that the requested deviations on the access road will result in an unsafe road, and are not consented to by the other co-owners of the property and the road, these deviations are not compliant with the Lee Plan nor the Land Development Code. So I would submit that you -- that you deny Deviation Number 3 and 15.

And I actually have a condition. I know you've been asking for conditions, so I would request that you actually impose a condition on the Applicant to, one, bring the access road into compliance with LDC 10-296, with the consent and joinder of all co-owners of the access road; and, part two, to bring the road into compliance with LDC 10-296 before any hotel rooms or additional units are built. You know, this condition is important because if it's implemented, it could actually improve the safety issues and protect the easement rights associated with the internal road.

Moving on to the Applicant's traffic study. Obviously the Applicant presented a traffic study that showed there would be a minimal traffic increase; then our traffic engineer got up and pointed out that there are huge gaps in the Applicant's traffic study. Particularly of note, the employee shuttling issue. The Applicant takes it as a given that this employee shuttle system will reduce the traffic impacts. I

believe that was presented in the -- in the presentation, as well as the traffic impact statement itself. Furthermore, they say that the Applicant's shuttle system will fix the employee parking issue. And the problem is that there are no guarantees regarding employee shuttling. There's nothing binding in there. There's just kind of some throwaway statements that this employee shuttling even exists, and this is going to be an even greater issue when you compound the fact that they have removed all the employee housing.

And as to another shuttling service, the airport shuttle, both the South Seas general manager and the hurricane evacuation expert testified that South Seas does not have an airport shuttle service; but in the Applicant's traffic study presentation, the Applicant pats itself on the back for not including any traffic reductions for use of an airport shuttle service, which they say will only further reduce the traffic concerns. So it's a good thing they didn't include it because apparently South Seas' shuttle -- airport shuttle does not exist. So if they were referring to some third party or private vendor that was going to be running this shuttle service that the Applicant is counting on to reduce traffic, then the Applicant needs to state

that.

And I guess the underlying point being made is that the Applicant has made reference to all of these items in their traffic impact analysis with no actual guarantees; and if these guarantees were even made, I'm not sure if there is any mechanism to actually monitor and enforce them. So it would not be reasonable to state that either of these apparent shuttle systems will actually reduce the traffic impact.

As I previously noted, our traffic engineer identified a bunch of issues with the -- and errors and omissions in the Applicant's traffic study. I'll just list a couple that I think are extremely relevant. Not analyzing the Sanibel-Captiva Road and Periwinkle Way, as required by AC 13-17, when it is obvious that the trips will consume ten percent of Level of Service C capacity. Furthermore, they were analyzing the peak hour direction as if Captiva Drive were 40 miles per hour, when the relevant portion is 25 miles per hour.

And speaking of peak hours, the Applicant identified the incorrect peak hours which, for this property in this location and the uses involved, should have been 2:45 p.m. to 3:45 p.m.

And so while not binding here today, there's case law that states that courts may refuse expert testimony

when the expert omits facts which are obviously necessary to the formation of an opinion. That is Centex-Rooney Construction Company v. Martin County.

So I would submit that given the errors detailed by Mr. Roark, you should have refused the Applicant's -- the Applicant's evidence presented as to traffic because it cannot be considered competent substantial evidence, as it would not be reasonable to accept as adequate to support the conclusion that there will be a minimal impact on traffic when there are these glaring gaps in the traffic study.

So even without considering the Applicant's traffic study, you have already heard from our traffic engineer, Mr. Roark, that this rezoning will worsen traffic on this failing roadway. This was expert testimony; it was competent substantial evidence; and this, in and of itself, is sufficient to recommend denial.

Paired with these traffic issues are the issues with hurricane evacuation, and this one is -- it's really simple. It's probably the most simple and straightforward Lee Plan Objective. Lee Plan Objective 73.1 says that the County must be improving hurricane evacuation routes; and Land Development Code 34-411(f) says that planned developments must not increase

hazards to persons.

So, simply, this rezoning and the increased intensity of use does not improve evacuation routes, and it increases hazards to persons. Again, as I stated, Florida Statute 163.3194 and Imhof v. Walton County say that any review of a rezoning for consistency with a Comprehensive Plan must consider whether there is complete consistency.

So not only is there a life/safety issue, there is also economic impact associated with the increased traffic. The Applicant has failed to consider the negative impact of increased traffic on tourism and the economy of Sanibel and Captiva. As the Applicant themselves noted, Lee Plan Objective 158.2, Lee County will maintain and develop programs which are designed to expand and enhance the tourism industry. And there's also another objective which I don't think has been raised so far. It's Objective 161.4, ensure development of the appropriate infrastructure needed to support the County's tourism sector.

And so you'll hear from Mr. Polly after -- after myself regarding the impact of traffic on tourism and the rental properties, and how this rezoning would actually cause harm to the tourism industry because of this increased traffic. And hearing from all these

interested parties, paid experts, paid attorneys, myself included -- I'm sure you're enjoying it -- but how about a completely neutral third party, Visit Fort Myers? That's the study I handed out. It is their October through December 2024 Visitor Tracking, Occupancy & Economic Impact Study, and the relevant pages in that entire thing are 103 and 133. There's two slides per page so just look to the corner of those slides.

But the ultimate conclusion was it found that the number one complaint of visitors to the Fort Myers area was traffic.

HEARING EXAMINER COLLINS: Where am I looking?

MR. LIEBETREU: It's pages 103 and 133, and those page numbers are on the corners of the slides.

HEARING EXAMINER COLLINS: Okay, continue.

MR. LIEBETREU: Okay. So that study, the conclusion was that the number one complaint of visitors to the Lee County area was traffic. That was a greater -- that was taken in 2024, December. So that was a greater concern than damaged buildings from hurricanes and even insects. And the previous years all say the same thing, if you go look back at the history of these studies, traffic is consistently the number one concern of tourists and visitors, and -- and

they all say the same thing. Even the COVID year, 2020, traffic was still the number one concern of people visiting our area.

So based on this study, and the testimony you're going to hear from Mr. Polly, and the testimony from our traffic engineer, Mr. Roark, we know this rezoning would increase traffic, and that the increased traffic would cause harm to the tourism industry and the supporting infrastructure, violating Objectives 158.2 and 161.4 of the Lee Plan.

I would like to ask you at this time to take judicial notice of the study and its conclusion that traffic is a Lee County visitors' number one concern.

HEARING EXAMINER COLLINS: That's fine.

MR. LIEBETREU: Okay, thank you.

Two more minor points but points I think are worth raising, the elimination of public offerings. So South Seas is removing their public marinas and restaurant, making them private. So they're simultaneously reducing the public benefit of their resort at large, and in return is just increasing the traffic flow by adding the additional units. They're increasing the burden on everyone else but making themselves private.

HEARING EXAMINER COLLINS: Wait, hang on a second. You're saying there's a greater impact

transportation-wise by converting from public to private?

MR. LIEBETREU: No, I was saying that the general benefit of the resort at large to the public, public amenities -- public use, public marina, public restaurants, they are taking those away and making them private, and in return they're increasing the intensity of their resort, thus increasing traffic. I'm not making commentary on whether removing those public offerings will reduce traffic, just simply the point that they are taking away public offerings and giving, I guess, nothing back to the community.

HEARING EXAMINER COLLINS: Okay, proceed.

MR. LIEBETREU: Thank you.

And, finally, I would like to direct your attention to Deviation Number 9, which is regarding the 96-square-foot South Seas flag. Lee County Code allows for a business' flag to be 15 square feet, and the Applicant has requested, Lee County Staff has recommended approval of, a 96-square-foot flag. In light of all the other issues presented here today, I understand this may seem like a minor deviation; but it's an example of an erroneous Staff recommendation which does not constitute competent substantial evidence. That is the case Beach Legal Properties v.

City of Miami Beach.

So given that there is no supporting evidence and no competent substantial evidence to support Deviation Number 9, a recommended -- a recommendation of approval would fail to apply the Land Development Code and depart from the essential requirements of the law.

So to conclude, the Applicant is seeking to rezone the property, add 435 hotel units. Applicant argues this is allowed because of LDC 34-1802 which says that hotels approved as planned developments are not subject to density requirements, provided all other aspects of the development are, one, compatible with the surrounding area; and, two, otherwise consistent with the Lee Plan.

Part one is not met because the increased intensity of use of the access road is not compatible with the current/future pedestrian, biking, and golf cart uses. Number two is not met because the development is not consistent with the Lee Plan because it would actually cause harm to the tourism industry and supporting infrastructure, and does not improve hurricane evacuation routes and does not protect easement rights. Thank you.

HEARING EXAMINER COLLINS: Thank you. Is the document that you read from part of the exhibits you

submitted?

MR. LIEBETREU: No, it is not, but I can -- I can certainly prepare it --

HEARING EXAMINER COLLINS: It's not that I need it because I'm going to have the court reporter's transcript. I'm just wondering if you would be willing to offer it to the court reporter to assist in her transcription?

MR. LIEBETREU: Yes, yes, I can do that right now.

MS. MONTGOMERY: I have a couple questions, but I'll wait --

HEARING EXAMINER COLLINS: She's taken down a lot --

MS. MONTGOMERY: Oh, I know --

HEARING EXAMINER COLLINS: -- and --

MS. MONTGOMERY: -- but I just want to wait for him to hand it to her before I ask him a question.

HEARING EXAMINER COLLINS: It sounds --

MR. LIEBETREU: Well, maybe I should keep it with me to reference.

HEARING EXAMINER COLLINS: The sound is still not consistent in here so --

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: -- would that be helpful to you? I don't want to get it for you if you

don't need it.

THE REPORTER: Yes, please.

HEARING EXAMINER COLLINS: Okay, if you don't mind.

MR. LIEBETREU: Yes, I will.

MS. MONTGOMERY: All right. Let me ask you a question. Who or what is RLR? What business are they in?

MR. LIEBETREU: They -- they own various real estate properties ranging from commercial to residential.

MS. MONTGOMERY: What business is Royal Shell in?

MR. LIEBETREU: Royal Shell manages vacation rentals.

MS. MONTGOMERY: Does RLR own houses and condos that are a part of vacation rental programs?

MR. LIEBETREU: Vacation rental programs by who?

MS. MONTGOMERY: By anyone.

MR. LIEBETREU: Anyone? Yes, yes.

MS. MONTGOMERY: In other words, I've heard of them in the vacation rental business in Ocala; so this isn't the only location they do vacation rentals of houses; is that right?

MR. LIEBETREU: Correct.

HEARING EXAMINER COLLINS: Are we talking about

RLR right now?

MS. MONTGOMERY: Yes.

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: So you indicated that RLR owns property inside South Seas. Can you tell me what kind of properties they own inside South Seas?

MR. LIEBETREU: I believe they are condominium units, but I can -- I can defer to Mr. Polly.

MS. MONTGOMERY: Okay. How many?

MR. LIEBETREU: My understanding -- again, I'll defer to Mr. Polly, but my understanding is that they own two within the South Seas Resort itself and with dozens more managed by Royal Shell.

MS. MONTGOMERY: And so Royal Shell, do they own any houses or structures, or they just manage and rent them?

MR. LIEBETREU: I believe they just manage, but I will defer to Mr. Polly.

HEARING EXAMINER COLLINS: Sounds like the next witness is going to have most of the details.

MS. MONTGOMERY: Yeah, I just have one more question.

Do you know the number of bedrooms in a lot of the houses that they rent on Captiva, or is that a better question for the next witness?

MR. LIEBETREU: It's a better question for the next witness.

MS. MONTGOMERY: Okay, thank you. I don't have any other questions.

MR. LIEBETREU: Thank you.

HEARING EXAMINER COLLINS: Thank you, sir.

We're going to break for lunch at 12:30. The next witness is Michael Polly. We may or may not finish with you by the lunch break. I hope you can come back if we do not finish with you.

Michael Polly is the next witness.

MS. MONTGOMERY: Thank you.

MR. POLLY: Madam Examiner, thank you for the opportunity to speak today. I am Michael Polly, the president of Royal Shell Vacations and Royal Shell Real Estate, Incorporated, and I represent RLR Investments and the Royal Shell companies. I have been the president and managing broker of Royal Shell Real Estate since 2010 and the president of Royal Shell Vacations since 2016. Royal Shell has served the islands for 28 years. I'm a certified property evaluator; I'm a certified residential specialist and a certified residential broker/manager.

RLR and Royal Shell own and operate hundreds of properties on Sanibel and Captiva. Two are within

South Seas, and dozens of others with South Seas managed by Royal Shell Vacations. RLR and Royal Shell are companies deeply committed to the Sanibel and Captiva Islands. Together we have spent decades fostering sustainable development and promoting the island's economic well-being while ensuring they remain vibrant and intact for future generations.

We strongly oppose the proposed rezoning at South Seas Resort which seeks to increase both density and height at the resort. This rezoning would have a profoundly negative impact on the historic character of the islands and would strain the very infrastructure that makes Captiva and Sanibel so unique.

The Lee Plan is clear in its goal to preserve the character of --

MS. MONTGOMERY: I'm sorry --

MR. POLLY: -- of Captiva Island --

MS. MONTGOMERY: -- I'm going to interpose -- Madam Hearing Examiner, I'm going to interpose an objection at this point and a standing objection. Mr. Polly is an expert on the things he identified, but he's not an expert in planning. He's not an expert in the Lee Plan or the Land Development Code.

HEARING EXAMINER COLLINS: Okay, continue.

MR. POLLY: The Lee Plan is clear in its goal to

preserve the character of Captiva Island by limiting development to what aligns with the historic low-density development pattern. Policy 23.2.4 directly supports this by mandating that all development on Captiva maintain its low-density character. The proposed increase in density and height at South Seas would directly violate this principle, changing the essence of the island's development.

South Seas has been subject to a long-standing cap of 912 units, including residential and hotel units, and this limit has stood for 50 years. The 2003 settlement agreement reaffirmed this cap, ensuring the integrity of the island's historic development patterns; and any attempt to increase density beyond this cap is not only legally questionable, but also undermines the long-standing community values that have made Captiva and Sanibel such desirable places to live and visit.

RLR relied upon the 912 total unit cap when purchasing properties within South Seas. Furthermore, RLR relied on the master plan's binding commitments regarding the maximum number of units, open space, development pattern, and quality of life. These changes will have a negative impact on the usability, value, and salability of the RLR properties.

Royal Shell manages nearly 400 properties on Sanibel and Captiva Island. Our business depends on ensuring that guests have uninterrupted access to the islands. The single two-lane road that serves as the only access to Captiva Island is already heavily used, and increasing the number of units would make it more difficult for the residents and visitors to get on and off the island. The Applicant says that many people staying in South Seas will be using ride-sharing programs or driving directly to the resort, parking, and leaving their cars in place. That is not true with our experience with guests, even those staying in South Seas. An overwhelming majority of them bring their cars and make daily trips. We may receive frequent complaints from guests regarding the internal access roads at South Seas with congestion and safety issues due to pedestrian traffic, golf carts, and vehicular traffic sharing the same roads. Adding in additional units will exasperate (sic) these problems.

Last season it took two to three hours to get on the island, and two to three hours to get off the island on a good day. Employees and visitors often spend up to 15 hours from home due to the extended travel times. For our workforce, who needs six, eight hours of sleep, this left them with two or three hours

of time at home, including meals, before they had to start the cycle all over again.

Traffic congestion is a critical concern for us as it affects the guests' experience. If the roads become increasingly congested due to higher density, it will not only impact the quality of visits, but will also discourage potential visitors from choosing the islands as their destination. This would severely impact the local economy, particularly tourism and the rental industry, which are already struggling to reach capacity, ultimately making the islands less appealing as a destination and impacting the value of real estate.

In the tourism industry, a balance must be struck between traffic, guest experience, over-tourism, development, and adding in hundreds of new units at the northernmost part of Captiva upsets this balance.

We must also consider the public safety implications. As density increases, the strain on infrastructure, from water and sewer to emergency services, becomes overwhelming. The current infrastructure is not designed to handle the increased load of more people, vehicles, and buildings. Emergency evacuations, especially in times of hurricane, is already difficult with the road

condition, capacity, and increasing the number of residents and visitors would make an island even more vulnerable in the face of natural disaster.

RLR and Royal Shell are deeply invested in sustainable, responsible development. RLR has shown this through projects like the Island Store restoration, the rebuild of the Sundial Beach Resort and homes on Andy Rosse Lane; the Jensen's Marina rebuild after recent hurricanes.

Royal Shell similarly remains committed to the islands' long-term economic impact, ensuring that tourism and real estate sectors continue to thrive without sacrificing the islands' character.

The proposed increase in density at South Seas contradicts the principles of responsible development that we both uphold. While we are not opposed to growth, it must be measured and aligned with the islands' capacity, infrastructure, traffic, and environmental health must be our priority.

We urge this panel to reject the rezoning proposal and uphold the 912-unit cap established for South Seas Resort. The proposed changes would violate the Lee Plan and place an unacceptable strain on the islands' infrastructure, economy, and character. Captiva and Sanibel Islands are special, and they remain true to

their historic charm. By protecting the current development standards, we can ensure they continue to thrive for generations to come.

Thank you for your time and consideration.

HEARING EXAMINER COLLINS: Thank you.

Neale?

MS. MONTGOMERY: Yes, thank you.

Mr. Polly, I think you just mentioned that you manage Sundial Resort?

MR. POLLY: It's one of the assets that RLR Investments owns. I do not manage it directly.

MS. MONTGOMERY: Okay. And if you know, there's a billboard that says the Sundial is offering two-for-one day passes to the Sundial. Are you aware of that?

MR. POLLY: I am.

MS. MONTGOMERY: So you are inviting people who aren't guests of your facilities to use those congested roads to use the amenities of Sundial, and that's not a problem?

MR. POLLY: Predominantly it's guests who are already on the island use those amenities.

MS. MONTGOMERY: And you don't have anybody coming from off island?

MR. POLLY: I can't speak to that.

MS. MONTGOMERY: Okay.

MR. POLLY: I will tell you that the east and the west sides of Sundial, the pools are down still, and so that is intended to help those who are not members of the Sundial rental program.

MS. MONTGOMERY: Let me ask you a question. Does either Royal Shell manage or RLR own any of the homes that are 5,000 square feet or greater on Captiva?

MR. POLLY: I don't have a list in front of me to tell you that, but we own several homes on Captiva.

MS. MONTGOMERY: Well, what I'm trying to get at, do you own some of the larger homes that have more than three bedrooms?

MR. POLLY: Yes.

MS. MONTGOMERY: And if you know, can you explain that when you go on the website and look at your offerings, that the number of bedrooms and -- that are defined in your offerings and homes differs from the Property Appraiser's website? In other words, you offer more homes than the County has of record. Can you explain how that happens?

MR. POLLY: I never looked at that information. We maintain a registration with every rental property so it could be new properties that have come into the program that the registration hasn't been processed yet.

MS. MONTGOMERY: Okay. So if there are properties under your management where what's supposed to be non-habitable space is habitable space, RLR and Royal Shell aren't responsible for that, that's the owner?

MR. POLLY: I would say yes.

MS. MONTGOMERY: And I know you're concerned about traffic. So if there are bedrooms in a lot of these rental houses -- that have extra bedrooms, that would suggest extra traffic, wouldn't it?

MR. POLLY: Or large parties traveling together.

MS. MONTGOMERY: You gave your qualifications when you started. You provided a lot of testimony about hurricane evacuation and traffic, water, sewer. You're not an expert in any of those things, are you?

MR. POLLY: I've lived it.

MS. MONTGOMERY: Are you an expert in any of those things? Are you an engineer?

MR. POLLY: One more I might be an expert.

MS. MONTGOMERY: Are you an engineer?

MR. POLLY: I am not an engineer.

MS. MONTGOMERY: Are you --

MR. POLLY: I'm an industrial engineer, but not an engineer dealing with natural disaster.

MS. MONTGOMERY: Are you a traffic planner or engineer?

MR. POLLY: No.

MS. MONTGOMERY: And you've never designed, constructed, or managed a utility, have you?

MR. POLLY: No, I have not designed it or...

MS. MONTGOMERY: And you haven't designed or constructed or worked for a fire department or a sheriff's office?

MR. POLLY: No, I have not.

MS. MONTGOMERY: Okay, thank you. I don't have any other questions.

HEARING EXAMINER COLLINS: Adam, anything?

MR. MENDEZ: No, ma'am, thank you.

HEARING EXAMINER COLLINS: Okay, thank you. You may take your seat.

I was intending on breaking for lunch at 12:30. So rather than start another witness -- and the next witness will be Dana Sousa -- let's resume at 1:30 with Dana Sousa. Thank you.

(Recess from 12:25 p.m. to 1:31 p.m.)

HEARING EXAMINER COLLINS: Okay. The next witness is Dana Souza.

Good afternoon, thank you for coming.

MR. SOUZA: Good afternoon, Madam Examiner. Thank you for the opportunity to provide comment today. My name is Dana Souza. I am the City Manager for the City

of Sanibel, and I have served as Sanibel City Manager since November 2021.

I'm here on behalf of the City of Sanibel to speak in opposition of the application to rezone approximately 120 acres of South Seas Island Resort from its current classifications to mixed-use planned development that increase the number of multi-family dwelling units and hotel rooms from the current limit of 272 units to 628 units, a net increase of 356 units or 43 percent.

Sorry, I just ran back from lunch so I'm catching my breath.

The Sanibel City Council has consistently voted in the past to oppose any amendments to the Lee County Land Development Code, Lee Plan, and this rezoning application that serves to increase density on Captiva as it will surely have a negative impact an Sanibel's roadways, quality of life, and emergency evacuation times.

Sanibel, Florida, is a barrier island located on the Gulf Coast of Lee County. It is one of the most unique and beautiful communities in America, primarily because of its Land Development Code and the efforts to make sure that it remained a sanctuary barrier island.

It is approximately 12 square miles of land area

and has a population of approximately 6,500 year-round residents. Sanibel's population increases to over 20,000 people, which does not include the day-trippers that cross the Sanibel Causeway to enjoy Sanibel's beaches, restaurants, and shops during season.

To access Sanibel one must drive over the causeway, which is a two-lane roadway that consists of three independent spans and two islands. The entire causeway is approximately three miles in length.

Once on Sanibel, the transportation roadway system is approximately 80 miles in length, with 61 miles paved and 19 miles unpaved. All roads on Sanibel are two-lane roads with a speed limit of 30 miles per hour or 35 miles per hour on connector and arterial roads, and 25 miles per hour in some residential areas, in a section of Sanibel-Captiva Road known as Santiva, which is a small area at the northern end of Sanibel before you travel over the Blind Pass Bridge and in to the island of Captiva.

The distance of road miles between the entrance to Sanibel and the Blind Pass Bridge, in the most direct route, is approximately 10.5 miles. The distance between Blind Pass Bridge and the entrance to the South Seas Resort is approximately 3.3 miles.

The primary point of describing Sanibel's roadway

system and the travel distance is to demonstrate that any vehicle traveling the 13.8-mile journey to South Seas travels 10.5 miles, or 76 percent of that distance, on Sanibel roadways. In other words, every vehicle that travels to Captiva and South Seas must pass through Sanibel and, therefore, impacts the residents of Sanibel. Likewise, any application to increase density on Captiva, like the one before you today, is of great concern and interest to Sanibel because that increase in density will result in a negative impact to Sanibel's roadway system, travel times, and particularly during emergency evacuation periods; and, therefore, the quality of life and the quality of place that Sanibel seeks to preserve may be harmed.

So what are the qualities of Sanibel -- that Sanibel seeks to preserve? Sanibel, Florida, incorporated as a city in 1974 primarily to maintain control over its development and preserve its unique natural environment. The residents wanted to protect the island's ecosystems, such as wildlife, beaches, and mangroves, which were under increasing pressure from external development. By becoming a city, Sanibel gained the authority to regulate zoning, land use, and development within its boundaries. The island's

residents were concerned in 1974 that without local governance, developers would significantly alter the island's character, potentially leading to overdevelopment that was taking place in other parts of Lee County, and the destruction of its environmental integrity. Incorporating as a city gave Sanibel the ability to enforce strict building codes, preserve the natural beauty, and limit commercial development, ensuring the island would remain a peaceful, environmentally-focused community.

A sanctuary barrier island, as defined in Sanibel's Comprehensive Plan, also known as the Sanibel Plan -- the following points will frame why increased density and intensity is such a concern for Sanibel City Council and Sanibel residents:

The Sanibel Vision Statement identifies three fundamental values: sanctuary, community, and attraction.

Under Sanctuary. Sanibel is and shall remain a barrier island sanctuary, one in which a diverse population lives in harmony with the island's wildlife and natural habitats -- and I'm quoting from the Sanibel Plan. The Sanibel community must be vigilant in the protection and enhancement of its sanctuary characteristics.

The City of Sanibel will resist pressures to accommodate increased development and redevelopment that is not consistent with the Sanibel Plan, including this Vision Statement.

The City of Sanibel will guard against and, where advisable, oppose human activities in other jurisdictions that might harm the island's sensitive habitats, including the island's surrounding ecosystems.

Under the value of community, Sanibel is and shall remain a small town community whose members choose to live in harmony with one another and with nature, creating a human settlement distinguished by its diversity, and will endeavor to maintain it. The City of Sanibel cherishes its cultural, social, ecological, and economic diversity, and will endeavor to maintain.

Beauty. The City of Sanibel will foster quality, harmony, and beauty in all forms of human alteration of the environment. The community aesthetic is defined as a casual style, one which is adapted to a relaxed island quality of life and respectful of local history, weather, culture, and natural systems.

Uniqueness. The City of Sanibel chooses to remain unique through a development pattern which reflects the predominance of natural conditions and characteristics

over human intrusions. All forms of development and redevelopment will preserve the community's unique small town identity.

Character. The City of Sanibel chooses to preserve its rural character in its setting within an urbanizing county. Auto-urban development influences will be avoided. The commercialization of natural resources will be limited and strictly controlled.

Stewardship. In keeping with the foregoing principles, the City of Sanibel affirms a land ethic and recognizes landholding, both public and private, as form of -- as a form of stewardship, involving responsibilities to the human and natural communities of the island and its surroundings, and to future generations.

Under the value of attraction, the Sanibel community recognizes that its attractiveness to visitors is due to the island's quality as a sanctuary community. The City of Sanibel will welcome visitors who are drawn by, and are respectful of, these qualities. It will resist pressures to accommodate visitor attractions and activities that compromise these qualities.

And perhaps this is the most important statement of the -- of the vision statement, which is the

hierarchy of values. This three-part statement of the community's vision of its future is a hierarchy, one in which the dominant principle is Sanibel's sanctuary quality. Sanibel shall be developed as a community only to the extent to which it retains and embraces this quality of sanctuary. Sanibel will serve as an attraction only to the extent to which it retains its desired qualities as sanctuary and community.

Sanibel's closest neighbor -- I'm not reading from the Sanibel Plan any longer. Sanibel's closest neighbor is the island of Captiva, which is unincorporated Lee County. Sanibel and Captiva are often referred to as sister islands as a way to express their closeness in proximity but also their shared values. The protections historically provided by the Lee Plan and the historic development pattern on Captiva are what has provided assurance to the City of Sanibel and its residents that increased density would not occur on Captiva, and therefore would not impact Sanibel. This application seeks to modify that long-established paradigm and synergy between the community islands.

On September 28th, 2022, Hurricane Ian made landfall as a Category 4 storm near Sanibel. The island, which was impacted by 150- to 160-mile-per-hour

winds, and historic storm surge of 8 to 12 feet, left Sanibel with catastrophic damage. Every structure on Sanibel was damaged, approximately 9,000 structures. No structure escaped any damage from that storm. Buildings were pushed off their foundations on the Gulf Coast. They were in the road. They prevented access throughout the community for public safety purposes and just general transportation. There was no ground transportation in the early days following -- following the storm's landfall. There was no barge to land equipment or supplies that could be brought from the mainland following the storm. There was no water; there was no sewer; there was no electrical service; and there was no food that you could buy if you were one of the folks that did not evacuate from the island.

Sanibel's infrastructure was devastated with widespread destruction of homes, businesses, and public facilities. The Sanibel Causeway, which connects the island to the mainland, which we refer to as our umbilical cord, breached in five places cutting off vehicular access to the island for days, which meant that first responders and initial response efforts were severely limited and delayed, which included the evacuation of people who did not evacuate Sanibel prior to the storm, and some of them had a great need to be

evacuated quickly.

From a housing perspective, thousands of homes, as I mentioned, were damaged or destroyed. Many residents on the island experienced roof damage, flooding, and some complete structural failure. Some houses were swept away, and the housing stock in the island was left in a dire state.

Over 10,000 building permits have been issued since September 2022, and that does not include the building permits that have been issued in fiscal year '25.

From a flooding perspective, due to the storm surge much of the island was flooded, especially in low-lying areas -- and I can say that all of the island was flooded, that this storm surge of 8 to 12 feet completely inundated Sanibel. There was not an area that escaped it. It changed our freshwater systems to saltwater systems and completely changed the environment of the island.

Sanibel's location along the Gulf makes it vulnerable to storm surges, and I want to comment on storm surges, is that some of the recent storms that we've had in history, while there was a projected storm surge, or we were warned of storm surge, they didn't materialize. This is really the first storm that I can

recall since prior to Hurricane Charley where there was a significant storm surge that affected primarily Sanibel and Fort Myers Beach, and that storm surge left many residential and commercial properties wet, muddy, and debris-filled.

Environmentally, Sanibel Island is home to a variety of ecosystems, including saltwater marshes, mangroves, and beach dunes. Hurricane Ian's powerful winds and flooding caused significant damage to these delicate environments, one that I just mentioned, that our freshwater system's turned into a saltwater system and still has not recovered. Vegetation, wildlife habitats, and marine life were impacted by the storm surge and debris.

From a power and water perspective, and sanitary sewer, power was lost across the island. Every pole had to be replaced, every aerial pole on Sanibel following Hurricane Ian had to be replaced, and they had to be replaced twice: First as a temporary pole, a wooden pole was installed so they could start to begin the restoration of electrical service on the island; and then after that, a hardened concrete pole was in place. And there are some dramatic photos that have been available in the press that show LCEC and mutual aid vehicles that have been working to restore the

electrical lines on San-Cap Road, and those trucks are on both sides of the road, taking up both lanes with their buckets in the air, and it was a significant process over a significant period of time in order to get that completed. The restoration of electricity was a slow process with many residents without power for weeks or even months after the storm. The extended power outage led to difficulties with refrigeration, communication, essential services, caused mold to develop in homes that might otherwise have been -- been able to be preserved at a higher level.

We also had to develop an affidavit system with LCEC because there were structural fires that also occurred on Sanibel, and there were other instances within Lee County, when power was reactivated, that there was a structural fire developed because of saltwater intrusion into those water meters. That was a lengthy process that we had to go through with LCEC, but to ensure that we didn't have additional structure fires.

Water supply, in addition to the power outages, the island also experienced disruption to its water supplies. Much of the water system was damaged. The potable is provided on Sanibel by Island Water Association, which is a nonprofit organization and not

associated with the City. Their systems were overwhelmed, and the loss of safe drinking water was a significant issue for residents and emergency workers until restoration could take place.

Sanitary sewers were significantly damaged, as well. 165 lift stations, which is all of the lift stations on Sanibel, were flooded and damaged, and damage occurred to the wastewater treatment facility, Donax facility. Sewer lines were also impacted, broken, and had to be repaired as part of the recovery efforts.

Island Water Association and the City tried to work closely together with the mutual aid partners that came to the island to provide assistance to both organizations. And as the waterline was repaired, we worked to try to repair that -- that sewer line in the same area. So as water was restored to a home, they could get sewer service. Electrical service also had to be provided. The effort to -- once homes were being cleaned out, and people were returning to the island, to maintain that sewer system was enormous, both from deploying vac trucks to make sure that the system was not overwhelmed with any waste that was generated, and then at the same time trying to repair significant infrastructure.

Rescue and recovery efforts. The initial response immediately in the aftermath of the storm saw a rush of first responders, rescue teams, and volunteers attempting to reach the island. Due to the collapse of the Sanibel Causeway, access was restricted for several days. We all might remember the monumental effort that was put in place by Governor DeSantis to make sure that that causeway was restored temporarily, first within ten days to get LCEC primarily on the island, and their partner trucks, so they could begin the restoration of electrical services both on Sanibel and on Captiva, and then days later when it was open to the general public.

Boats and helicopters were used to ferry supplies in those first few days after the storm to evacuate people and bring in emergency personnel.

Some residents had already evacuated before the storm. There was likely over a thousand residents that did not evacuate prior to Hurricane Ian's landfall. Evacuation efforts for those people who remained on the island were difficult due to the damage in infrastructure, and only a limited number of people were able to leave quickly.

We also couldn't establish boat service quickly. Most boats were damaged after the storm; so being able to get a flotilla of boats from the mainland -- where

we could launch boats from the mainland to Sanibel Island was very challenging.

In the search and rescue operations after the storm, search and rescue teams, they were mostly airlifted onto the island and then supplemented the personnel from the Sanibel Fire and Rescue District and the Sanibel Police Department to locate people that were trapped in the wreckage and provide medical assistance to those survivors. The danger of additional flooding and structural collapse made the search operating -- operation challenging, and the island was essentially closed to non -- to nonresidents for weeks.

From an economic perspective, obviously everything was shut down on Sanibel. And the storm resulted in a loss of market values on the island for residential properties and commercial properties, and taxable -- taxable values were reduced by 34 percent.

The tourism industry was stopped because there was not access; and then once access was restored to the island, the City established a checkpoint at the tollbooth just off island using a hurricane pass system that has been in place for years. That hurricane pass system allows residents of Sanibel and Captiva to return to their homes once it's safe to do so, and then

contractors who are providing assistance to those residential properties and commercial properties are also able to get a hurricane pass. And primarily that is in place so we can protect the safety of the island. Burglaries went up significantly following the storm, and the checkpoint is critically important to make sure that those who own properties on Sanibel, and those who have legitimate business on Sanibel and Captiva, are able to return.

From a long-term recovery perspective, the rebuilding efforts, recovery efforts on Sanibel Island have been ongoing for two and a half years now. Rebuilding the Sanibel Causeway was the top priority. Although restorations were underway, full recovery of the entire island will take more time.

Additional impacts from Tropical Storm Debby and Hurricanes Helene and Milton, all in 2024, brought additional flooding and damage to the island, delaying Sanibel's overall recovery.

From traffic perspectives, while fewer vehicles were traveling over the causeway, once we opened full access to the island, on a daily basis, the significant increase in contractor vehicles also significantly altered the daily traffic patterns on the island. They caused significant delays both for the inbound traffic

in the morning and the exiting traffic in the evening. Historically, the patterns on Sanibel is that you'll encounter congestion coming onto the island in the early morning hours, between 7:00 and 9:00, and then off island between 2:30, 5:00 to 6:00, depending on the volume that comes in each day. Following Hurricane Ian, those backups were beginning to exit the island sometime around noon. They were also impacting other areas of the island that may not have been impacted before the advent of smartphones and GPS systems that tell us this is the shortest way to go. And so we had residential communities or neighborhoods that were not impacted by some of the traffic volume that we would see in a typical year on Sanibel, in the post-hurricane environment we were seeing people trying to find any which way they can to get off the island, which really strained police resources and also put a great strain on residents.

In certain -- of residents that lived on the island, services were no longer available. There were no longer medical offices; there were no longer pharmacies; there were very limited options to buy food; restaurants were not available. So that meant that more trips off island had to be planned, and they're generally planned around this congestion. But

those things were for medical appointments, pharmaceutical pickups, for parents who had to have their children who -- the Sanibel school was closed -- to get their children to and from school or to and from after-hour activities were significantly impacted by those delays in the post-storm environment.

Also, you heard testimony previously that the employees -- employees on the island also had a significant impact because they were losing two, sometimes three hours of their day in that commute, which meant that they were not available for their families in the evening hours, and some employers, who were trying desperately to recover quickly, could not retain employees.

From a debris and hazard standpoint, over one million cubic yards of debris was hauled off Sanibel; and, again, within the media images, there's dramatic photos that show Periwinkle Way lined on both sides with mountains of debris waiting to be picked up. And once that first wave of debris was picked up, it was filled with a second wave of debris, and a third wave of debris. It was a monumental task with very large trucks on Sanibel's roads operating into the evening hours, early morning hours, and on weekends. It was a significant impact that also added to some of the

delays in traffic.

While the immediate impact -- immediate aftermath presented significant challenges for residents and emergency workers, the community began the long and arduous process of recovery. The full -- the full rebuilding of the island, as I said, is expected to take several years with continued efforts to restore both the human and the environmental aspects of Sanibel.

To ensure public safety, the City for months established a checkpoint, as I -- as I already mentioned, to make sure that the burglary rate and crime rate could be controlled or mitigated to the extent possible.

The hurricanes experienced over the past two and a half years have heightened awareness on the vulnerability of Sanibel and Captiva from storm impacts, the conditions experience -- and those conditions that are experienced post-storm.

Despite the excellent coordination that the City of Sanibel has with Lee County and all the other municipalities and jurisdictions within Lee County, Hurricane Charley and Hurricane Ian show us that storm tracks are unpredictable, and sudden turns in course means people may not evacuate early and will result in

heavy congestion during times when storm intensity is increasing, and travel becomes dangerous on the islands and on the causeway.

And I can tell you from firsthand experience, as one of the last people who evacuated from Sanibel as Hurricane Milton was approaching, while it was still reasonably safe to travel the roadways on Sanibel and within Lee County, the waves that were crashing over the causeway, both at the barrier island areas or the spoil island areas, and then at the approach to the spans was -- was pretty frightening.

Tropical Storm Debby showed that a storm doesn't need to be a category form or pass directly overhead. It can be hundreds of miles off -- off the land and can still bring damaging storm surge and flooding to the community.

Hurricanes Helene and Milton show that the area can experience multiple significant events within a short period of time. Both Helene and Milton completely inundated Sanibel with saltwater overwash, both storms just a couple of weeks apart. We were beginning to clean up from Hurricane Helene, and Hurricane Milton arrived. And Hurricane Milton also displaced quite a bit of sand on the roadways, which hadn't been experienced from Hurricane Milton.

Primarily the impact was on the north part of the island, in the Santiva area that I mentioned near Blind Pass, and also on Captiva. I'm from the Northeast, and I remember the days when my work included plowing snow or being responsible for snowplows; and when I first arrived, as crews were moving the sand out of the roadways, that's what it was reminiscent of, after a blizzard with high snowbanks on both sides of the road.

All the recent storm experiences show us that each storm brings different conditions -- it's unpredictable -- different challenges for preparedness, response, and recovery efforts, and that impacts can be quite broad across the islands.

Increasing density on Captiva does not aid in improving emergency preparedness, evacuation travel times, road congestions, and recovery challenges. It hinders it. It harms it.

Increasing density on Captiva negatively impacts Sanibel on a daily basis and in emergency situations.

As I said at the start of my comments, to get to Captiva one must pass through Sanibel. Each vehicle adds to Sanibel's congestion and negatively impacts the quality of place and quality of life on Sanibel.

The City of Sanibel opposes the approval of the application to rezone 120 acres of South Seas Resort

from its current classification to mixed-use planned development, and to increase the number of multi-family dwelling units and hotel rooms from the current limit of 272 units to 628 units. For reasons stated, I urge you to deny the application. There is no public benefit to this, and there is harm to the residents and businesses of -- of Sanibel.

That concludes my comments.

HEARING EXAMINER COLLINS: Thank you.

Neale?

MS. MONTGOMERY: Yeah, thank you.

MR. SOUZA: Thank you.

MS. MONTGOMERY: Were you aware --

HEARING EXAMINER COLLINS: She's going to be questioning.

MR. SOUZA: Oh, I'm sorry.

MS. MONTGOMERY: I'm sorry --

HEARING EXAMINER COLLINS: He didn't hear what --

MS. MONTGOMERY: -- can you hear me?

MR. SOUZA: I have hearing aids so I am getting a little echo so --

MS. MONTGOMERY: No, I understand.

MR. SOUZA: -- be patient with me.

MS. MONTGOMERY: It echoes in here so I apologize for that.

Were you aware of the fact that the National Guard, after Ian, was housed in South Seas?

MR. SOUZA: The what? I'm sorry?

MS. MONTGOMERY: National Guard.

MR. SOUZA: Well, they may have been and -- for Captiva purposes, but they were not housed for Sanibel's purposes.

MS. MONTGOMERY: And were you aware of the fact that South Seas was allowing Public Safety folks to moor in their marina?

MR. SOUZA: And that's great, but they were also within the limits of -- of the current requirements for -- for zoning. That doesn't really have any implication on -- in terms of the application, from my perspective.

MS. MONTGOMERY: And you spent quite some time talking about the Sanibel Plan. Does the Sanibel Plan only apply to the City of -- within the jurisdiction of the City of Sanibel?

MR. SOUZA: Except where -- yes, it does. It applies only to the City of Sanibel, but Sanibel's interests, as I read, if there are -- if there are any development projects that are off island that are of the City's interest, then the Sanibel Plan provides that framework for the City to oppose that. There's

also an agreement between Lee County and the City of Sanibel for any development project within a specific geographic boundary of Sanibel, to be able to respond and provide comment on those as it pertains to the interests of Sanibel.

MS. MONTGOMERY: And in light of that, did the County send you a copy or notice of the application?

MR. SOUZA: I apologize.

MS. MONTGOMERY: Did the County send you, according to those provisions, notice of the fact that this application had been filed?

MR. SOUZA: They did. They sent that to our planning director, Paula McMichael.

MS. MONTGOMERY: Okay. So they complied with those provisions?

MR. SOUZA: Yes, we have no issue with the government of Lee County complying with those requirements.

MS. MONTGOMERY: Okay. And within the Sanibel Plan, has the City decided to call several roads, quote, constrained and not capable of being improved?

MR. SOUZA: I'm sorry, I really apologize.

MS. MONTGOMERY: No, I'm -- in the Sanibel Plan, does it identify certain roads as, quote, constrained for a variety of reasons, most of which is aesthetics,

and that they cannot be improved?

MR. SOUZA: Did you say "aesthetic"?

MS. MONTGOMERY: Do you have roads that are identified as constrained?

MR. SOUZA: Well, all roads on Sanibel are constrained by the right-of-way limits, but there are roads within --

MS. MONTGOMERY: Wait, I want you to answer the right question.

Do you have roads identified in your Comprehensive Plan that are specifically identified as constrained, if you know?

MR. SOUZA: The answer is no, but if I may --

MS. MONTGOMERY: No, that's the answer, no.

MR. SOUZA: But constrained --

MS. MONTGOMERY: Did the City of Sanibel have to adopt new FEMA maps in November of 2022?

MR. SOUZA: Yes.

MS. MONTGOMERY: Did the City of Sanibel adjust their height regulations to account for that additional height and base flood elevation plus one?

MR. SOUZA: Yes, that was already in place. Floodplain maps did not -- they adjusted the elevations within the island but not the requirements for base flood plus one.

MS. MONTGOMERY: But you did go through an amendment process that allowed people to rebuild what they had starting at the new elevation and not lose height.

MR. SOUZA: We went through an amendment process that amended how we would measure that.

MS. MONTGOMERY: Yes, that's what I'm talking about.

MR. SOUZA: The overall height remained at 4 feet -- 45 feet or 3 stories --

MS. MONTGOMERY: Right, but what I'm getting at is if I could do 3 stories, and this is base flood (indicating), you changed it so I could do 3 stories, same 3 at the new base flood plus one.

MR. SOUZA: Well, there's two separate issues. The ordinance that you're speaking of that amended was primarily -- was for residential properties only, and that was based on measurement. There was confusion within the Code on how that was to be measured, and so City Council took action to correct that so there would be a uniform way.

MS. MONTGOMERY: Totally understand, Lee County did the same thing.

Do you require your hotels to evacuate early and stop taking reservations?

MR. SOUZA: We provide a -- we provide lots of information about the potential impacts of the storm; and then using Hurricane Ian as an example, the City Council passed a resolution declaring a local state of emergency and called for voluntary evacuation. And so -- so we do communicate with -- we have a project -- a partner team that the police department meets in advance of an approaching storm, and we communicate with our nonprofit organizations, our businesses through the Chamber of Commerce, of the potential of impact, and we ask them to prepare for potential evacuation.

MS. MONTGOMERY: It's my understanding that the impediment or one of the slow-downs or chokepoints in getting off Sanibel is the four-way stop. Is that correct?

MR. SOUZA: There's a lot of traffic. The primary reason is because there's a lot of traffic coming from Sanibel and Captiva.

MS. MONTGOMERY: Is the four-way stop a chokepoint?

MR. SOUZA: The four-way stop is a place where vehicles have to stop. So, yes, you could call it a chokepoint, but it's an intersection. You could call every intersection a chokepoint.

MS. MONTGOMERY: Okay. Did you -- did the City of Sanibel hire Kimley-Horn to analyze the four-way stop to try to more expeditiously move traffic through that particular intersection?

MR. SOUZA: The City of Sanibel did hire Kimley-Horn to do a conceptual analysis and an ICE analysis of that intersection, which included traffic counts at Periwinkle Way and Casa Ybel, as well as on the entrance to the causeway, and then an evaluation of the historic traffic counts because the traffic volumes were not consistent with the historic patterns. So, yes, we did hire them to do that, and I might mention that there have been previous studies also in Sanibel's history to study that intersection and a potential roundabout.

MS. MONTGOMERY: Okay. That's where I was headed. There is a way to move more traffic, and that's a roundabout.

MR. SOUZA: Well, I think that to move more traffic through the roundabout, there is the potential for that -- for there to -- there will be an improvement from a roundabout or a signalized intersection, which is prohibited by our charter unless the voters approve that. But it is not a silver bullet to the traffic issues, and it will not perform at a

high level during our peak rush hours. So it has the ability to move traffic through the intersection more efficiently; but when you have that high volume of traffic, it will get bogged down during those peak hours.

MS. MONTGOMERY: And during those peak, you have a police officer that mans that intersection; correct?

MR. SOUZA: We do have police officers at that intersection and several other intersections.

MS. MONTGOMERY: And I can't remember the chief, is it Dunlap?

MR. SOUZA: It's Chief William Dalton.

MS. MONTGOMERY: I knew it started with a "D."

MR. SOUZA: Almost there.

MS. MONTGOMERY: I heard him testify before that they did, during times of evacuation, man that four-way stop to ensure traffic moved smoothly.

MR. SOUZA: I can't speak to his testimony.

MS. MONTGOMERY: Okay. I don't have any other questions, thank you.

HEARING EXAMINER COLLINS: Thank you, sir.

MR. SOUZA: Thank you.

HEARING EXAMINER COLLINS: Anthony Thompson, if you're present, please come sit at this first seat here, and state your name for the record, please.

VOLUME 4

MR. THOMPSON: Anthony Thompson, Deputy Police Chief, Sanibel Police Department.

Good afternoon, Madam Hearing Examiner. Thank you for the opportunity to address you.

The City of Sanibel is opposed to increasing the density of units on our barrier islands --

HEARING EXAMINER COLLINS: Okay, hang on, let me just stop you for a minute. Because you're going to be reading from a statement, I'm going to ask you to please take your time because we have a court reporter recording, and we tend to speak faster when we read.

MR. THOMPSON: Yes, ma'am.

HEARING EXAMINER COLLINS: No problem with reading, just try to pace yourself.

MR. THOMPSON: Yes, ma'am, thank you.

MS. MONTGOMERY: Madam Hearing Examiner, just for the record, I'm going to pose an objection to relevancy of the police officer testifying in opposition to zoning if it's outside the scope of his area of expertise.

HEARING EXAMINER COLLINS: Okay, noted for the record.

Please proceed.

MR. THOMPSON: Increasing the population density on barrier islands presents significant challenges for

law enforcement, particularly in terms of public safety and emergency response during hurricanes or other catastrophic events. As these areas become more populated, several issues emerge that constrain law enforcement resources and impede effective policing. The following are some of the key challenges we expect to encounter with increased density:

Resource allocation. Higher population density often leads to an increased demand for police services. Law enforcement agencies face challenges in effectively allocating essential resources, including personnel and equipment, to respond to calls for assistance. This struggle can result in longer response times, putting public safety at risk, especially during critical emergencies. On barrier islands like Sanibel, which has approximately 7,500 full-time residents, police forces are generally smaller due to the reduced population during off-peak seasons. However, during peak tourist seasons the significant influx of visitors creates a substantial demand for public safety services. This situation is further complicated by the presence of vulnerable populations, such as older adults and tourists who are unfamiliar with the area. The high volume of individuals needing help during evacuations, property protection, or finding shelter

can stretch our department's resources to their limits.

Traffic management. Traffic congestion has become a significant issue as more people choose to live in and visit our barrier islands. Managing traffic flow is particularly challenging on our narrow roadways, which quickly become congested. Our limited infrastructure is easily overwhelmed by the increase in vehicles. Sanibel has one main roadway, Periwinkle Way, that serves as the primary access point to and from the island, along with several feeder roads. Our priority is to address traffic issues by focusing on Periwinkle Way. Our roads often experience congestion, even in good weather, with traffic regularly backing up to Summerlin Road and McGregor Boulevard in the morning and to Periwinkle Way shops in the afternoon. During the tourist season, as vehicle traffic and congestion increase, so do frustrations among drivers. To help manage the situation, our police aides who direct traffic have been supplemented by uniformed police officers to assist in calming frustrated motorists caught in delays. Congestion worsens during inclement weather, as cautious, slow-moving traffic adds to the problem. The risk of gridlock is high, and the time needed for evacuations can lead to dangerous situations. If residents and visitors do not evacuate

promptly, additional pressure is placed on our police department. Congested roads complicate traffic enforcement and negatively impact emergency response times, as officers struggle to navigate through traffic to reach calls for service quickly. This delay hinders emergency response efforts and increases the risk of harm to both residents and visitors.

Logistical challenges. Our barrier islands are highly vulnerable to hurricanes. During the most recent storms, our infrastructure suffered significant damage. We faced downed power lines on the Gulf drives and on Sanibel-Captiva Road. Storm surge flooded roads and debris, all of which hindered our response times. These conditions created hazards for our officers, and impacted residents trying to return home. Damage to our roads, bridges, and critical services during storms increases the challenges that we face, causing delays in our response efforts, and affecting our ability to assist those in need. Additionally, increasing population density means more structures, vehicles, and people are at risk of potential damage, complicating our operations during a crisis.

Post-storm recovery and security. After a hurricane, we transition from evacuation and emergency response to recovery efforts. One of the main

challenges during this phase is maintaining order and safety. When residents evacuate, and properties are left unattended, the potential for increased criminal activity rises significantly. This situation necessitates the implementation of heightened patrols and monitoring, which strains our resources and diverts attention from other critical safety and emergency services. During the most recent storms, we encountered many individuals who did not belong on Sanibel Island. To address this issue, we established a checkpoint at the Sanibel toll facility using our hurricane pass system. Many individuals attempted to access the island through the checkpoints with counterfeit hurricane passes. Additionally, some tried to bypass the checkpoint altogether by accessing Sanibel by boat, prompting us to request additional assistance from the Florida Fish and Wildlife Conservation Commission. The actions of those trying to exploit the chaotic situation led to an increase in reports of criminal activity. Officers were assigned to patrol neighborhoods, secure properties, and assist residents in regaining access to their homes, while ensuring public safety. Increased density will lead to heightened concerns about crime and safety in the aftermath of a hurricane or other disaster.

In conclusion, the combination of geographic isolation and infrastructure vulnerabilities makes policing a barrier island in general particularly challenging. These challenges are amplified during tourist season, hurricanes and other natural disasters. Increasing the density of islands will only further impact our evacuation efforts, our recovery efforts, and response times for our officers. The potential risk to public safety, and the significant challenges for law enforcement, are too great to overlook. We must prioritize the safety and well-being of our residents, visitors, and first responders.

Thank you for your time, ma'am.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: I just have a couple questions.

Captiva uses the Lee County Sheriff's Department; correct?

MR. THOMPSON: Yes, ma'am.

MS. MONTGOMERY: And South Seas has the substation for the sheriff on-site.

MR. THOMPSON: That I am not sure of.

MS. MONTGOMERY: Okay. So the City of Sanibel Police Department doesn't need to worry about Captiva because the Sheriff's Department is already there on-site.

MR. THOMPSON: No, ma'am, that's not correct. We have a mutual aid agreement with Lee County Sheriff's Department; so we access Captiva, as well as the Sheriff's Department accessing Sanibel. We work in agreement together.

MS. MONTGOMERY: So having a boat slip for the Sheriff at South Seas helps you in that endeavor then.

MR. THOMPSON: Yes, ma'am.

MS. MONTGOMERY: And having a boat slip for the Captiva Fire Department at the marina also helps you in that endeavor.

MR. THOMPSON: Yes, ma'am.

MS. MONTGOMERY: And knowing that South Seas has a substation ensures that there is an officer available should you need help.

MR. THOMPSON: Yes, ma'am.

MS. MONTGOMERY: Okay, thank you.

No further questions.

HEARING EXAMINER COLLINS: Thank you.

MR. THOMPSON: Thank you.

HEARING EXAMINER COLLINS: The next person I see on the list is Mayor Richard Johnson. If you're present, come to the podium -- oh, excuse me, come sit in this chair here. We can hear you better there.

MR. JOHNSON: Madam Hearing Officer, my name is

Richard Johnson. I am the -- hold the office of the Major for the City of Sanibel, and it's a pleasure for me to be here and provide testimony to you. Thank you for the time.

I would like to first start off with saying that our City Manager and our Deputy Chief of Police have spoken, and I would fully support the testimony that they provided, as well.

In addition to that, I'd like to talk with you today about the Sanibel support for the opposition to these Land Development Code changes and this increase in density that has been proposed before you today.

MS. MONTGOMERY: Madam Hearing Examiner, just for the record, the Land Development Code changes occurred in 2023. This is not a Land Development Code change.

HEARING EXAMINER COLLINS: Right, let me just clarify for a minute.

I mean, if you want to touch on that, you can, but that's already happened, and we're focusing on the request before me today, which is seeking to rezone 120 acres to mixed-use planned development.

MR. JOHNSON: Thank you for that clarification.

I will say that the opposition to that plan that you just shared with me is in full opposition from the residents, business owners, property owners, various

nonprofit organizations based on the City of Sanibel; and, furthermore, I've never seen opposition to something as strong and consistent as what I am sharing with you today. I have not had, as my -- as a member of council, I have not had a single person come to me and say you're doing the wrong thing. Everyone throughout my community has strongly opposed these changes.

I'm going to go back to -- and at the risk of repeating, we have one road in and one road out. That road goes through the entirety of the city of Sanibel; so anything that occurs on Captiva has an impact on what we do in our community. That roadway is already heavily taxed, and those are on good, sunshiny days during normal traffic patterns. Otherwise, when a rainstorm pops up or an emergency pops up, or an evacuation, or in time of inclement weather, that roadway can turn to gridlock very quickly, impeding public safety and evacuation.

There's been public comments in the past about change and the fact that change is hard, and I will agree. There are times when change is hard. I will also say, though, not all change is good change. Sometimes change is wrong. It's not just about being hard, change is wrong. It is wrong to come into a

community -- for a developer to come into a community and ask that these historic zoning changes -- these historic zoning ordinances, that have been in place for decades, be changed to accommodate their business model. It's -- it's wrong to knowingly come into a community, know what you're faced with, know what the rules are that govern that community, as well as impact our community, and ask for a change in their favor.

Overdevelopment of this property, at the expense of neighboring properties and neighboring communities, is wrong. Flying the flag of resiliency, as it applies to increased density and additional units on their property, is wrong. These requested changes are just wrong. We, the property owners, residents, business owners, visitors, oppose these changes and support the Captiva Community Association in their opposition.

Thank you very much for the time I spent with you today and hearing my testimony.

HEARING EXAMINER COLLINS: Thank you, sir.

Neale?

MS. MONTGOMERY: No.

HEARING EXAMINER COLLINS: You may take your seat.

MR. JOHNSON: Thank you.

HEARING EXAMINER COLLINS: Deputy Mayor Mike Miller?

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MR. MILLER: Good afternoon, Madam Hearing Examiner. My name is Mike Miller from the Sanibel City Council serving as vice mayor. Thank you for the opportunity to speak this afternoon.

Both the Captiva and the Sanibel communities have a shared love and appreciation for our unique islands, and both communities are committed to protecting our islands and the people who live, work, and play on them; but increasing density on Captiva will impact both islands and will negatively affect public safety, specifically related to daily traffic congestion and especially during major storm events.

The County Staff Report dealing with this application, commenting on the sufficiency of access and transportation impact on page 22 of 24, says that, quote, in summary, all roadway sections analyzed will continue to operate at an acceptable Level of Service D with the project in a.m. and p.m. weekday peak hours; therefore, the project will not have a detrimental impact on the surrounding roadway system.

The summary comment is only accurate depending on how one defines the surrounding roadway system. We are dealing -- as others have said, we are dealing with an unusual property here where the only access to the mainland, of entry to the regular Federal, State, and

County roadway system, is by means of a two-lane road system going through Sanibel and across the Sanibel Causeway. There's only one way off island. In a sense, functionally, we're talking about a very long driveway.

Traffic on Sanibel is, unfortunately, very problematic. Depending on the time of day, the time to transit Sanibel and cross the causeway can be unacceptable, exceeding an hour, exceeding an hour and a half. All of Sanibel's roads and the Sanibel Causeway, which is owned by the County, have been determined by the Lee County Metropolitan Planning Organization as, quote, constrained corridors, unquote, generally on the basis of limitations of roadway widening.

Under the Lee Plan, the absolute minimum level of service for roadways is E. Many of Sanibel's roads are at or below that level, and the causeway itself is at an E level, as determined by the County in 2021. How will the additional traffic from these new units, possibly many with multiple bedrooms, reduce these service levels? Unfortunately, the traffic impact study submitted by the Applicant do not cover any roadways other than Captiva Drive.

You will hear testimony from some of my --

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HEARING EXAMINER COLLINS: Excuse me.

It's too warm in here.

MS. PEREZ: Too warm?

HEARING EXAMINER COLLINS: I'm sorry, sir.

MR. JOHNSON: You will hear testimony from many of my Sanibel neighbors as to the degree that the additional density at South Seas Resort and the resulting adverse effect on traffic congestion will impact their lives, and I encourage you to listen to their comments. But I want to comment on the opposite, the extent to which the existing traffic congestion on Sanibel will potentially affect the additional guests at the resort.

We heard testimony about the advanced warning that will normally precede a storm, but storms don't always follow the rules. Sometimes they change direction or intensity at the last minute. We just can't assume that the resort discouraging guests from remaining on-site with a storm warning will be a panacea. It won't be.

And apart from storms, guests may have medical issues or other family crises requiring rapid relocation, and they may or may not be able to evacuate in the time required. The well-being of these guests will be in jeopardy as a result of these traffic

realities.

As both communities build back, we need to maintain our focus on increasing resiliency, particularly due to the frequency and intensity of major weather events. No one disagrees that future buildings should be built to withstand the impact of major hurricanes, but building with resilience and increasing density are two very different things. Public safety should be paramount in all future development decisions.

In closing, this zoning increase will exacerbate Sanibel's difficult traffic situation, will risk public safety on Sanibel and Captiva, and will have a potentially disastrous impact on the guests occupying these additional apartment and hotel units. And for that reason, the application should be denied. I strongly oppose the zoning change being considered.

Thank you.

HEARING EXAMINER COLLINS: Thank you.

Neale, do you have any questions for this witness?

MS. MONTGOMERY: No, ma'am.

HEARING EXAMINER COLLINS: You may take your seat. Thank you, sir.

Council Member John Henshaw. Thank you for coming.

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MR. HENSHAW: Thank you, Madam Examiner. Thank you very much for giving me an opportunity to speak for myself and the residents of Sanibel. I support the comments you heard from the Sanibel residents this afternoon.

My name is John Henshaw. I reside at 561 Lighthouse Way, Sanibel, and I'm currently a member of the Sanibel City Council.

As a former U.S. Assistant Secretary of Labor for the Occupational Safety and Health Administration, my life focus has been on the health and safety of my family, my -- the workers, as well as the community of Sanibel.

I object to the South Seas Island Resort rezoning application for the following four reasons:

The first, the rezoning application violates the Lee Plan by increasing density, which will negatively impact the health and safety of Sanibel residents and our visitors, and hinder our ability to attract visitors to the island, to Lee County, and to Southwest Florida.

Increased -- number two, increased vehicular traffic on the only road in, through, and out of Sanibel will extend evacuation times in the event of hurricanes and natural disasters. We all --

responsible people realize we are going to see more frequent storms and more calls for evacuations. That's the state of affairs today.

The increasing -- the increased density at South Seas will add hundreds of vehicles daily, threatening the public safety and the quality of life for our Sanibel community. With two-thirds of our island under conservation, we have no viable options to improve traffic flow in, through, and out of Sanibel.

My third point. Approximately, as I said, two-thirds of -- of Sanibel is conserved lands, making good water quality essential for the health and safety of our natural habitats and our residents and visitors. Water quality is crucial for the survival of our Sanibel businesses and the economy of Lee County. The rezoning application will increase density, harming the environment, and degrading quality to an already stressed ecosystem.

And my last point. The rezoning application not only violates the Lee Plan but also breaches a long-standing understanding regarding density and property rights. And our property rights on Sanibel and Captiva are connected, and the majority of the South Seas property owners have relied upon these property rights and these assurances in purchasing

their property, as well as Sanibelians who purchased their property.

And, Madam Examiner, for these reasons I urge you to deny this application and protect the environment, the health and safety of Sanibel, residents and visitors, and the economy, the economic value of Sanibel, Captiva, and Lee County.

Thank you.

HEARING EXAMINER COLLINS: Thank you.

Neale?

MS. MONTGOMERY: Yes.

Councilman, how far are you from South Seas, where you reside?

MR. HENSHAW: I'm on the east end, not too far -- I'm right off of Periwinkle Way.

MS. MONTGOMERY: So how many miles are you from South Seas?

MR. HENSHAW: I don't know, maybe ten miles. I don't know precisely.

MS. MONTGOMERY: Okay, no further questions.

(Sotto voce between Hearing Examiner and reporter)

HEARING EXAMINER COLLINS: The court reporter needs a break so we're going to break for ten minutes, and then we'll resume with Council Member Laura DeBruce. If you're here, you're the next one up.

(Recess from 2:33 p.m. to 2:48 p.m.)

HEARING EXAMINER COLLINS: Okay. We're going to resume with Counsel Member Laura DeBruce. Thank you for your patience.

I just want to remind everyone quickly, we are going to break for the day at 4:00. So I will abide by your wishes and go along this list here, but we will stop at 4:00. If you're mid-testimony, we'll have you started up first thing on Friday.

MS. DeBRUCE: Okay, thank you.

Good afternoon, Madam Hearing Examiner. My name is Laura DeBruce, and I am a member of City Council and the owner of two small businesses on Sanibel. I've owned a home on Sanibel since 2010, and I've been involved with many nonprofits. I'm also a lawyer. I was one of the founders of the Sanibel-Captiva Business Women's Association, and I served on Sanibel's Planning Commission for three years. I speak to you today, though, primarily in my capacity as a small business owner.

Sanibel is, of course, a great tourist attraction for Lee County, and in usual times our Sanibel businesses contribute a good deal of revenue. Visitors come to Sanibel not only for the beautiful beaches and shelling, but also for our eclectic mix of mom-and-pop

shops. That's what helps us with our small town and our small-town charm.

Our businesses are struggling right now, but we're making progress as we rebuild after Hurricane Ian and the two hurricanes last fall. Our recovery would be hindered by approval of South Seas' application that would substantially increase the number of dwelling units at their property. You've heard about the traffic on Sanibel. That traffic creates severe problems for business owners. I fear these would worsen in the event that you grant South Seas' application request.

While businesses like mine need visitors to Sanibel, they need visitors who actually stop in Sanibel and patronize our shops. In my experience, in doing business on the island for the past six years, visitors to South Seas tend to stay at South Seas. To the extent they venture off, they may go to Captiva. The owners of South Seas, of course, as business owners like it this way. They also do what they can to keep their guests on the compound, including by actively working against outside vendors, like myself, from doing business on their property, even on the property within the resort that they don't own. That's been my personal experience time and again with South Seas.

All this to say that the burden from the additional traffic that would be created by South Seas' request before you is in no way balanced by any benefit to the small business owners on Sanibel. Worse, this increase in traffic would exacerbate our greatest challenge to small businesses on Sanibel Island, which is finding and retaining employees. This is true even though many businesses, mine included, pay substantially more on an hourly wage than a similar job in Fort Myers or Cape Coral, along of course with allowances for tolls and gasoline, and of course the reason for this difficulty is the traffic.

In looking for one position before Hurricane Ian, so many qualified applicants, as soon as they understood where the job was and how long it would take there, they backed out. One young woman came all the way out to meet me for a job and then simply came in and politely explained that she was not going to be doing that drive again.

A commute that should take about 30 to 40 minutes can take an hour and a half getting onto the island, and close to two hours, sometimes more, at the end of the day. When there's a particularly bad backup, that means that the doors to our shops might not open on time, and customers, who show up at opening, walk away.

Many small business owners on Sanibel work other jobs or have family commitments, and it's not always possible to jump in and take the place of an employee who's stuck on the causeway.

A customer lost because you weren't open when you said you were going to be sometimes never comes back, or worse, leaves negative reviews on Google or social media.

For our valued employees with young children, the challenge to get to and from work is even more difficult, when coming home on time to pick up your child from school makes all the difference as to whether or not there's a small traffic glitch on the causeway. Some employees on the island who live off island have their children at the Sanibel school. This is great for our small school; but, again, it causes real problems when traffic prevents them from making it to school on time, or heading back home and spending hours in the car.

We need these employees. We need them to help our business community recover and to eventually thrive. I urge you to reject the application before you because of the burdens it places on our local businesses and employees. For the good of Sanibel, which has gone through so many challenges these past years, please

help protect our small town.

Thank you.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: I just have one question. How far is your business located from South Seas?

MS. DeBRUCE: One of my businesses is located at the intersection of Rabbit Road and San-Cap Road. I'd guess, if it's 17 miles from Lighthouse to the entrance of South Seas, maybe 8 miles. The other one is located at Tarpon Bay and Periwinkle, maybe 11 miles.

MS. MONTGOMERY: Okay, thank you.

MS. DeBRUCE: Yeah.

HEARING EXAMINER COLLINS: Council Member Holly Smith is next. Good afternoon, thank you for coming.

MS. SMITH: Good afternoon, Madam Hearing Examiner. It's -- I've been here for -- every day -- let me first introduce myself. My name is Holly Smith. I currently serve as councilwoman for the City of Sanibel. I had the title of mayor before, during, and after Ian. You will hear some discussion on that. I have had the honor of being a certified appraiser for nearly 20 years, where I specialized only on Sanibel, Captiva, and North Captiva; and the reason I did that was because of the very sensitive manner and complicated process of conducting appraisals in those

areas, in those sensitive lands. I say that because I will have some reference to what I have heard from the Applicant. In addition, for full disclosure, I have had the pleasure of being in the hotel business; so I can speak to evacuations regarding hoteliers. So I just wanted to make sure that you understood my background, and we will speak to several of those points.

HEARING EXAMINER COLLINS: Thank you, I appreciate that.

MS. SMITH: I'm sorry?

HEARING EXAMINER COLLINS: I appreciate you --

MS. SMITH: Oh, okay --

HEARING EXAMINER COLLINS: -- saying that.

MS. SMITH: -- sorry. Thank you.

You know, when I look at why we're here today, why the City of Sanibel is here, it's because we are sister islands. What happens to Captiva affects Sanibel, what happens on Sanibel affects Captiva, and we are only constrained by the simple characteristic that we are the City of Sanibel, and they're unincorporated Lee County. We have been protected through our Sanibel Plan; and as the Applicant said, you know, that plan does not cross over to the unincorporated area of Captiva unless it's through an interlocal agreement

that we have; but be assured that we watch out for each other all the time because we are a community that believes in conservation, both islands. We were all smart enough to look at the potential development that was happening all around Lee County in the '70s, and before and after, and make adjustments because we knew we were different, and we knew what the islands were to our residents, to those that visited us, to people around the world. They valued what we protected.

And I'm here today in opposition of the application, as they look to seek an increase in both their density and intensity from 912 units to 1,268 units, which is an increase of 43 percent, and we'll talk more about that.

Before I get started, I'd like to address a couple of items -- three items that were brought forward, and one was with our police. We have an interlocal agreement. We come to their aid. They come to our aid. That's always happened. It's what you do as a neighborhood. It's what you do as a community. And although we're two separate places, we are one neighborhood, we are one community, and we've run our islands that way forever. So this mutual support has always been there. Regardless of that application, whether it's approved or denied, that mutual support

will always be there. Very similar to Iona coming to our rescue, or we need to go to theirs, if there's an issue on the causeway or wherever, we help each other. That's what good communities do. And I can tell you as mayor during and right after Ian, we were humbled by everyone that came to support us in our greatest time of need. So I don't want anyone to think that that is something that didn't exist or won't continue to exist, is that mutual aid. So I wanted to speak to that.

I wanted to talk about -- because the question was brought up about this daycation. September 28, 2022, our island changed forever. We are in a very long-term recovery, and part of that recovery for us on the island of Sanibel is trying to make sure these businesses can survive. And so what we've had to do is we've had to look at some tweaks. So I will tell you that RLR, Becky Miller, got in touch with me personally and said this is what we would like to see happen, and that was this daycation. But let me also let you know about the qualifiers that weren't discussed. They came to us to say we want to be able to make sure people have a place to go to enjoy -- if you've been across to the island, we're doing really, really well, but we've got a long way to go. And when you look at the successes we have, we want to share those successes,

for the people to be able to keep their employees going, and look at opportunities that we can help a business for a short period of time.

What RLR also said is this isn't long-term. We don't have accommodations. They manage, not own, approximately 200 units on Sanibel east and Sanibel west. Those are the areas that are around them, very similar to South Seas Island Resort where there are communities around them that benefit or don't benefit from what happens at that little strip.

So what we did is we said, you know what? We are going to allow this for a very short amount of time. It is outside of what we typically do, but we understood the importance of trying to get businesses working. We look at this any way that we can, but we always stay true to the mission of what Sanibel is. And I think that's very important to understand.

Basically, RLR indicated Sundial, that when those accommodations are open, they don't want that anymore because we had to look at parking, we had to look at impact, we had to look at all of those things that would affect all those residents around them. So that is a short-term aid to somebody that needed help, and that's what we've tried to do.

And I will tell you, after the hurricane, when we

were looking at ordinance changes -- as I sat as mayor, along with Dana Souza and the council, we had to look at how we can help our island recover. But what we always did was stay true to what our mission is, what our Sanibel Plan -- and that is low density, low height. And I can tell you, those pressures to our island have been strong, but they are not succeeding to change who we are.

Our density and our height will stay true. I know the Applicant has spoken to any height adjustments, but we still had to stay within the envelope. We had a build-back provision that allowed -- to make sure that there were personal property rights of those impacted properties throughout our island. As City Manager Souza said to you, every property on our island was impacted. This isn't a minor storm. This was one of the largest storms in the United States. But what we knew is our island cannot fundamentally change from what we believed in 1974 and what we incorporated, and we've stayed true to that.

We have development applications in that are staying within the codes that exist. The only way that you can increase the density on the City of Sanibel is for the right reason, and that's workforce housing. It's making sure that we have accommodations in -- that

were built into our charter that allow to make sure that the people can work on this island, can live on this island. That's going to help them. That's going to help us. We didn't take out those units, and we're not having those people travel from off island. That's the only way that the density can be increased unless there's a referendum to do so.

I wanted to talk a little bit about the roundabout because that was brought up, as well. And we just -- we've had discussion on a roundabout at the four-way stop on the causeway, and that's Periwinkle and Causeway Boulevard, if you're familiar with that. But I don't want the Applicant to think that we're doing that for the benefit of density. We were looking at ways to mitigate traffic within our own island, but we certainly are not doing that potentially to look at the Applicant having the ability to increase their density because the traffic flow might be smoother.

And let me just say that Council just recently halted that -- the path for the roundabout because what we understood is if we do something on the roundabout, then the bottleneck is right where it ends up, and that's on the causeway that's owned by Lee County; and when they improved that causeway many years ago -- it seems like whenever I move, they're doing a major

change in the area on traffic. We realized that the roundabout could only be successful if Lee County partnered and looked at the causeway, because that's where the bottleneck is. That's two lanes there, as well. So Council has stalled that because unless there's something that we can coordinate with, with Lee County -- and, again, not for the benefit of the Applicant, it is for the benefit of our citizens on Sanibel that we likely are not moving forward with that at this time.

So thank you for allowing me to speak to those three areas.

Why we're here today, as I mentioned, South Seas Resort was bought in September of 2021, and I can tell you I am fully in support of the success of that business under the envelope of what they bought in, at 912 units, which includes hotel rooms, and we all wish them success to be able to do that. There's not even a question. But to think that because of a potential storm, in the guise of resiliency, that it's okay to go from 912 to 1,268 and pretend that a hotel unit doesn't exist, it defies logic to me.

When you're starting to look at resiliency, you've got to look at so many different avenues of what that means. And my fellow council members, our deputy

police chief, and our city manager have certainly outlined the impacts that that would have to Sanibel, but it's also the impacts that it would have for Captiva. And the reason that we're here today is in support of our Captiva community that has been guided by and followed those rules for decades. All of the building, unless there was a variance, has taken place under that 912, which includes the hotel rooms that are available.

To think that intensity will not be impacted by taking 192 or 193 units, and knowing that the workforce housing might have been 400 or 500 square feet -- it might have been smaller than a current hotel room -- and possibly expanding that to whatever, we don't -- we don't know. We don't know the number of bedrooms, we don't know how many they will have, but that's going to be a significant increase, and it's going to be a significant impact on the entire community. Those 435 rooms, they mean something.

The intensity of use in a hotel for water and resources and parking can't be understated. So I just, for common sense, cannot understand how that could be approved in this application, when we are looking at critically sensitive conservation islands, which are very difficult to get on and off of on a regular day, a

hurricane day, during a normal rain, how that can be of benefit to the overall community. I argue that it's not, and I argue that the surrounding homeowners associations -- there's 12 homeowners associations, there's 8 timeshare communities, have spoken their voice and were never included as part of the conversation on how we can do better, what can we do together.

And I want to just take a quote, and this is from the Timbers website. "Since 1999, Timbers Company has been committed to being authentic, unique and respectful of the destinations in which the properties reside, focusing on family and immersive experiences, offering approachable luxury."

How have they been respectful of that entire community that has been set in place under the existing zoning, and has maintained and worked within that, and now we're looking at a zoning change to do just the opposite of what they're stating there? There is no respect of that. There has not been discussion. I have been to nearly every meeting, listened in, been in place, spoken up, and we've never had answers. We've just received this application not too long ago, and we finally understood what was going on because there was this cloak of darkness. It wasn't about intensity. It

wasn't about increased density. It wasn't about traffic. Yet here we are, it's about intensity, it's about density, it's about the impact that it will have not only within South Seas, but to the entire Captiva community that has lived in harmony with that -- with that PUD -- if you want to call it a P-U-D, you want to call it a master plan, whatever you want to call it -- I'm not going to get into the technical data of that, but we know what it was, what it is, and what it was basically under the law to be, and here we are.

I've heard a lot of reference in the conversations about the properties both within South Seas and the size of the homes and how many bedrooms there are. If those had been legally zoned -- which there is going to be an assumption that they are -- if they had been legally permitted -- which I'm going to make an assumption. In my years of appraising up on Captiva, I never had to do any testimony for a variance. In the TFC-2 zoning, 43560 (phonetic), it's one acre. There is an allowance for what they ask for. If they are building within the current zoning, then you know what? That's okay. If they're renting within the seven-day minimum or what the minimum is around Captiva, then that's okay. They're working within the Code that has been established and held to for decades.

And when they asked RLR in regards to if there was any illegal activity going on, well, whose job is it to enforce that? And that's Lee County Code. So if you're aware of something, then it is their duty to make sure that the Code is being followed; and if it's not, there are avenues to make sure that it's corrected. So I want to be careful how we're judging all of that, when everything there appears that it is legally built; and if it hasn't, then it is the jurisdiction's responsibility to enforce any noncompliance and make them compliant.

And, again, when I look at the words "historical development pattern," "historic low-density development," when I've watched over these last few days -- and even before that -- the photos that you're seeing, you're seeing lower heights, you're seeing lower density. It's what has been the pattern for decades. Again, we were smart enough -- and Captiva was, too -- to put in a plan to protect that, and that's the value of what they are.

So I really question, when I'm looking at why can't we do this or why can't we have another 435 units, think of the impact of what that means to the greater community.

Mr. Mintz talked about -- you know, we're going to

hear more about environmental issues coming up so that's not something I'll be speaking to, but I know Mr. Mintz did speak about potential sewer. And when I was both councilwoman, vice mayor and then mayor, this was a conversation, it was a serious conversation. Water quality is a huge concern for all of us. Many of the systems throughout Captiva are on septic. Many are failing, and that's recorded. I can't give you the exact data, but I know either the Applicant or Mr. Mintz will be able to provide that. I know Lee County would.

So this was a really strong conversation that we were having, and we were looking to take on Captiva in our sewer system. We would likely build it. We would manage it. What a win for Lee County, what a win for Southwest Florida, because this water quality is also going to draw people to these amazing islands. They come for the beaches; they come for the low density; they come for the quality of life that they've expected and that we have fostered over the years.

When we find -- when we found out that the water plant, FGUA, was going to be, I believe, reconditioned -- we had had conversations before, and I had had conversations with one of the Applicant's consultants, from Brightwater, Noah Valenstein, and I

asked him, can we decommission that? Because we had to think about the capacity of our system, that we could handle for Captiva -- both Captiva -- all of Captiva and South Seas to come on, and there was a maximum capacity that we could handle from the village -- which is outside of this application but kind of inside the scope of all of what's happening -- and that was about 200,000 gallons per day, and South Seas would be the same.

Once we heard that they were going to redo the plant, and once the changes were made, back in 2023, to allow for the application to get here, what we realized was we don't know anymore what capacity could be because there's no, really, limit on density; there's no limit on what the density could be both within the proposed MPD and outside of the MPD. So, unfortunately, we had to stop that conversation, because as councilwoman for the City of Sanibel, at that time as mayor, we had to look at and say we don't know that we can take that on, because we could have only done that with a limited capacity. So it's really unfortunate that that's happening because that was going to be a win-win for all of Southwest Florida. So basically that's off the table right now.

When I look at this application from the get-go,

on January 17th, 2023, when they said we need to look at resiliency specifically for South Seas Island Resort, at that point it was a turning point for all of us because it didn't take in any of the other areas on Captiva. It only allowed for the benefit of one developer, one developer who would have the total benefit of potentially, as here we are now, increasing density and increasing intensity within their own walls for the profitability, not for the benefit of the entire communities.

And you have heard from a developer today that was against it. And I -- I know that when I look at these four developments, that they have gone and said, you know what? This is over the 3 per acre -- let's just reflect on that. Jensen's, built in 1932, 7 units; Tween Waters, 1931, 137 units; Captiva Island Inn, 1940, 16 units; and, finally, Jensen's -- and I believe that has 10 units (sic). Three are historic. Don't base your conclusion on old history that we've changed, that they have changed. The density needs to be where it stayed at the 3.5 -- 3 units per acre. It needs to include the hotel units. That has been supported by Judge Shenko -- and I know that that is under appeal; but I was at that hearing, as well, and it specifically said 912 units, which includes hotel units. So I

really --

MS. MONTGOMERY: Madam Hearing Examiner --

MS. SMITH: -- am imploring you --

MS. MONTGOMERY: -- I'm going to have to interrupt, A, that proceeding isn't before us; and, B, Judge Shenko did not, in his order, say the dwelling units were also hotel units.

MS. SMITH: I'm sorry, I couldn't hear you, ma'am.

HEARING EXAMINER COLLINS: She's objecting to your testimony, your characterization of Judge Shenko's conclusions.

MS. SMITH: And I'll --

HEARING EXAMINER COLLINS: I note -- I note her objection. You may proceed.

MS. SMITH: Okay. And I'll let the order stand for itself. So, you know, that's certainly for the lawyers to decide. I was there, I know what I heard, but I will let that stand by itself.

I've taken a few notes during the last couple of days so bear with me. I am almost to the end.

You know, I will just finish with I do stand in opposition to this application. I do see this as a very unfair advantage to the entire community, to look at the word "resiliency" and use that for increased intensity and density in an area that really is not

sustainable for that in long-term or in short-term.

So I want to thank you for allowing me to speak today, and thank you for your time.

HEARING EXAMINER COLLINS: Thank you for coming.

All right. Is it my understanding we're going to Matt DePaolis next?

MS. MONTGOMERY: Wait, wait, wait, I did have questions.

HEARING EXAMINER COLLINS: Oh, okay.

I'm sorry, so close, Holly, so close.

MS. SMITH: But yet so far.

MS. MONTGOMERY: You just weren't fast enough.

Holly, do you work for RLR or Royal Shell?

MS. SMITH: I do not.

MS. MONTGOMERY: Okay. And how far do you live from South Seas?

MS. SMITH: The entire island of Sanibel is impacted by South Seas --

MS. MONTGOMERY: That wasn't my question.

MS. SMITH: -- so my home probably -- I'm not sure of the relevance, but I'm probably thinking about ten miles.

MS. MONTGOMERY: Okay, thank you.

You spent quite a bit of time talking about how Sanibel is concerned about protecting --

MS. SMITH: Neale, I'm sorry --

HEARING EXAMINER COLLINS: It's really hard to hear.

MS. MONTGOMERY: Okay. You spent quite a bit of time talking about how Sanibel protects wetlands and the environment. To the best of your knowledge, what impact is this application going to have on wetlands?

MS. SMITH: I can't speak to that. I think the environmental speakers will be coming up next, and that's going to be their expertise.

MS. MONTGOMERY: Okay. So, likewise, you don't know if there's any impact on protected species because that's outside your field?

MS. SMITH: That is outside of my field.

MS. MONTGOMERY: Let me ask you a question. You spent quite some time talking about hurricane evacuation in Ian. You obviously, if you've been here, heard Shawn Farrell say that all the resort people evacuated. Did you evacuate for Ian, or did you stay on the island?

MS. SMITH: Of course I evacuated. I was mayor at the time, and we certainly can't lead by telling people to do one thing and us doing another.

I will tell you with a hotel evacuation, a mandatory evacuation does not -- people are not

required to leave. So I think it is -- that's great that the owner did, and I think that's very important; but for a mandatory evacuation, it is mandatory, but it is not something that you can carry somebody off the island, and that certainly was represented --

MS. MONTGOMERY: That wasn't my question. My --

MS. SMITH: Oh, I'm sorry.

MS. MONTGOMERY: -- question was did you leave, or did you stay on the island?

MS. SMITH: Absolutely I left the island.

MS. MONTGOMERY: You spent quite a bit of time talking about septic tanks. I'm assuming you're aware of this. While the rest of the island may be on septic tanks, South Seas is not.

MS. SMITH: I do understand that, but they were in conversations with us to convert to sewer, the South Seas community was, as well.

MS. MONTGOMERY: But South Seas is served by FGUA.

MS. SMITH: I understand that, but the communications for sewer were for the South Seas community, as well as Captiva.

MS. MONTGOMERY: You said something about January 2023 and the application. What application were you talking about in January of 2023?

MS. SMITH: No, I was just referring to the

findings that were made through the -- through Lee County. Let me...

When Mayor Johnson was speaking, the Hearing Examiner made it very clear what this application was and what the previous findings were, which were totally separate. So I believe that was 23-22 or -- I can't -- Neale, I can't remember those numbers. I wanted to make sure I, just for clarity, was speaking to this application and not mixing any other findings that were approved by Lee County.

MS. MONTGOMERY: Well, that's why I'm confused because this application was not filed in January of 2023, so I don't know what you were talking about, but it couldn't be this application.

MS. SMITH: Yeah, it was not this application. It was when it came before the Lee County BoCC for the changes.

HEARING EXAMINER COLLINS: The ordinance change maybe?

MS. SMITH: Yes, ma'am, thank you very much --

HEARING EXAMINER COLLINS: Is that what you mean?

MS. SMITH: 23-22 and 23-32.

HEARING EXAMINER COLLINS: She's referring to some ordinances --

MS. MONTGOMERY: Okay, so it has nothing to do

with this application.

MS. SMITH: Correct, I apologize --

MS. MONTGOMERY: Okay.

MS. SMITH: -- for that.

MS. MONTGOMERY: All right, thank you. I have no further questions.

HEARING EXAMINER COLLINS: Thank you.

Matt DePaolis? Oh, right there, have a seat. Mr. DePaolis, state your name for the record.

MR. DePAOLIS: Matt DePaolis. I am the environmental policy director for the Sanibel-Captiva Conservation Foundation.

HEARING EXAMINER COLLINS: Okay. You may begin.

MR. DePAOLIS: Thank you.

So I have been sitting here for the same amount of days as everyone else has, and I've heard a lot of valid concerns that have been raised by all the parties. However, what hasn't really been discussed, as much as I feel like it should have been, is the environmental concerns that this project is bringing. So I'm going to overlay a few of those, and then there's a few experts that will be testifying after me to get more technical in some of those areas.

HEARING EXAMINER COLLINS: Okay. This next group of public witnesses are going to speak to environmental

issues is what he's saying.

MS. MONTGOMERY: Okay, thank you, so we can have our folks watch.

HEARING EXAMINER COLLINS: Right.

MR. DePAOLIS: So I am the Environmental Policy Director at Sanibel-Captiva Conservation Foundation; I'm a member of The Florida Bar; I received my JD at the University of Oregon, where I also received a Master's of Science in Biology from the Oregon Institute of Marine Biology, specifically focused on estuarine systems; and before that I was a field biologist. So I've had experience in the area and in these -- in similar situations to this so -- and I've worked in this position through Ian, have been seeing some of the rebuild and some of the -- the forces that have been impacting the island and our surrounding communities.

So I think it's really important, as we're evaluating this application and as you're taking in all the information that's being presented to you, to really focus on the fact that we need to know that this project will not adversely affect environmentally critical or sensitive areas and natural resources. And there's many components of the Lee Plan that make it clear that applications like this rezoning change

really need to respect the natural resources that we have in Lee County and that we rely on, not only for our own quality of life, but to drive the tourism-based economy that brings people from all over the world into these environments.

And as I was looking through this application, it is really clear that we're talking about increasing heights, we're talking about increasing intensity, and we're talking about increasing density on this sensitive barrier island. That means more people using the resources, using the beaches, walking through the dunes, exploring the mangroves, going out in boats. That's more people driving down the roads to this area. That's more cars on the road, that involves more wildlife strikes. One of the largest causes of mortality for our island wildlife, and that involves more -- more water being used. And as we have more water being used, that creates more sewage. So we really need to evaluate exactly what the ramifications of these decisions are, and I haven't anything that has really sussed out exactly what we can expect to see if this project were to go through.

When the environmental presentation was -- was presented, there were some assurances that lighting requirements would be met, a couple buffering

requirements would be met with some variances that will be talked about later, and nothing really told me that we were going to be protecting our estuarine water quality if this project were to go forward as applied for.

We have -- it's necessary to have some level of assurety that the Lee Plan will be met before you sign off on this project, and I don't think that that burden of risk should be borne by fellow Captivians, other members on the island, Sanibel, and other visitors who rely on these estuaries for fishing, for recreation, and for their livelihoods.

So presented in the Applicant's application, you see that they are -- they have provided letters of sufficiency that water -- the amount of water will be supplied and that they will be able to process the amount of sewage that's coming off. But a huge component of their plan is using reuse water; so that's irrigation, that's spreading it on the golf course. And reuse water isn't treated to the advanced wastewater standards necessary to remove nitrogen and phosphorus from that water.

So we are in an area of the country where we have a lot of impaired waterbodies, whether they're freshwater or brackish estuarine conditions like that.

We're surrounded by impaired waterbodies that are largely impaired for these same pollutants of nitrogen and phosphorus, that are great for growing crops, they're great for making your lawn look green, but they're also great for helping algae to grow once they -- once they meet the water. So if you're applying reuse water in massive quantities to something like a golf course, you can expect that a lot of that water will make its way into the surrounding waterbodies. And if that golf course is situated on a barrier island like the one on South Seas, you would expect that that irrigated water -- though it is treated, and it's safe -- it's not potable, but it is safe -- it still has an impact on the estuarine conditions when it -- when it enters that waterbody. We know that nitrogen and phosphorus are large contributors to some of the harmful algal blooms that impact our county; and some of those, like red tide, can have huge effects on our -- on our community and other coastal environments.

So knowing that -- we've received these letters of sufficiency. We understand that there's enough water, potentially, to meet the needs -- although some of the numbers didn't seem to add up in the letters of sufficiency that I reviewed from the Applicant's

report. It isn't clear that we -- that the treatment options are going to be suitable for protecting the environment that is around the resort.

We don't really have any explanation for how that will be impacted -- or will be impacting in regards to the Lee Plan specifically, and I think there's a couple of goals and objectives that are really on point here.

Specifically, Goal 113 of the Lee Plan requires that you preserve the ecosystem that nourishes and shelters Lee County's commercial sport and recreational fisheries. Certainly the areas around this resort are key components of juvenile fisheries and flats that are required for a lot of the fisheries that people come from all over the world here to utilize.

Objective 113.1 requires that we -- that projects like this support policies and practices that enhance estuarine ecosystems in order to achieve sustainable yields of fish and shellfish. If you are dumping excess nutrients that are known to cause harmful algal blooms, that are known to degrade estuarine environments, it doesn't strike me that that could be seen in any way as enhancing estuarine environments.

Policy 113.1.3, under Objective --

THE REPORTER: Slow down.

MR. DePAOLIS: Oh, sorry.

Policy 113.1.3, under that same objective, requires a monitoring system in place. That would fall to the County, but I would expect that if we're at risk of damaging these estuarine environments, a more robust monitoring system than the one we are -- that is not in place right now would be utilized in order to ensure that damage is not falling into the public domain coming from the benefit of one private actor.

Similarly, Goal 122 of the Lee Plan relates directly to estuarine water quality. So it requires that we manage estuarine ecosystems in order to conserve productivity through manufacturing or improving water quality, protecting wildlife diversity, and reducing or maintaining current pollution loading and systems and balances.

So to just wholeheartedly apply more reuse water, more water that is full of the nutrients that are considered pollution already in our environment to these areas is going to contribute to more nutrient loading in these environments. And we know that anthropogenic nutrients, like through reuse water or similar applications throughout the county, can directly feed these red tide blooms, these other harmful algal blooms that have a direct -- direct impact to the benefits that we see from tourism to the

County.

Last year SCCF partnered with the Conservancy of Southwest Florida and Captains for Clean Water to provide an economic evaluation of the potential impact of some of these algal blooms. And we found that for just one narrow stretch of Charlotte, Collier, and Lee County, a single harmful red tide could result in damages of over $5.2 billion in lost economic output -- lost economic output and potentially cost those three counties 43,000 jobs.

So I think that there -- these are very real risks associated with increasing nutrient pollution in these areas that have not been accounted for in the Applicant's application.

HEARING EXAMINER COLLINS: So you're asking for more -- for clarification on those issues?

MR. DePAOLIS: I am asking for -- for assurety that we won't be contributing to nutrient pollution in the surrounding estuaries. I think that Sanibel was faced previously with very similar issues. They were using reuse water, and they did an analysis that said that the reuse water was a large contributor of nitrogen to these areas, and they put in advanced wastewater treatment to combat that issue, at great expense to the City, but it has been largely successful

in removing that pollution from their water system. So there are solutions that could be met.

And all of this, of course, assumes that the water is being managed effectively, and capacity is being met, but there are still steps that we would hope would be taken in order --

HEARING EXAMINER COLLINS: So you would want ongoing monitoring, in addition to clarification of what measures are being in place to ensure against contamination or discharge of water that would increase nitrogen.

MR. DePAOLIS: I would -- I would hope that monitoring would be the bare minimum. I would expect that some modeling would be done to ensure that we know or at least think we know how many -- how much nutrients will be placed into the system by virtue of these actions, and I would hope that there would be conditions in place that would require no extra pollution be entered into the environments, were they able to move forward with this. So seemingly, based on the analysis that Sanibel did, that would require something like advanced wastewater treatment, if they were going to be using that reuse water for irrigation.

HEARING EXAMINER COLLINS: So you would request, recommend, a condition in place for remedial actions to

take place, if through modeling or monitoring, there was detection of impaired discharge?

MR. DePAOLIS: If there was a large increase in nutrients just generally. I think it's more so than even just a discharge because a discharge isn't treated the same as irrigation on a large nonpoint source like a golf course or landscaping.

So this highlights one major issue, I think, that we're seeing with water quality potential, but there's a lot of these similar environmental issues that are popping up that haven't really been addressed in the application.

We heard about lighting requirements, but even if proper window treatments are applied to buildings that are much more dense and much larger than they otherwise were on that island, you're still going to have an increase in light pollution that's going to affect migratory birds, it's going to infect nesting sea turtles, both of which are important species that use the Captiva beaches. Higher buildings provide a greater risk for migratory birds that are flying through. It's one of the number one mortality factors.

As I mentioned before, greater traffic on the roads is going to increase the likelihood of wildlife strikes, which is one of the largest mortality

contributors to the sensitive wildlife on -- on Captiva. And there's -- there's objectives and goals in the Lee Plan that also talk about promoting biodiversity, and it doesn't seem to me that this meets those requirements either.

So I know that there -- there will be experts coming behind who are able to speak in more detail about some of the shorebirds and sea turtles specifically. I just want to make sure...

Yeah. So just to reiterate, I think that it's really important that we answer these questions before anything moves forward with this project because if we have impacts to the environment, it's much more difficult to rectify the situation after the damage has already been done than to evaluate and understand what's going to be done before the actions are taking place. And a lot of the issues that are at risk environmentally from the Applicant's proposed project really are trans-boundary issues. So it's not like the impacts are only going to be felt on the South Seas property. These are impacts that are going to be felt along Captiva, across Sanibel, and, really, for everyone who comes to Lee County to enjoy and utilize our natural resources. So it's important that we stop water quality degradation from happening before it

occurs, it's important that we protect the wildlife that we have; and that when we're taking out natural spaces for impervious surfaces and actions like that, that we really fully understand the ramifications of those decisions prior to okaying them.

Thank you.

HEARING EXAMINER COLLINS: Okay. So I just have a few questions. You're asking for clarification on a number of measures that they are going to put into place to protect environmental systems. My question to you is, do you have written up or described specific conditions that you would like to be considered by the Applicant or the County in its review of this application?

MR. DePAOLIS: I have chicken scratch writings of conditions that I've jotted down, and I'd be happy to type those up and submit them formally.

HEARING EXAMINER COLLINS: Okay. I think it would be, you know, helpful to the Applicant to see what you're talking --

MR. DePAOLIS: Yeah, absolutely.

HEARING EXAMINER COLLINS: -- about and give them an idea of whether they already have things in place that accomplish those things that they can then clarify during their rebuttal, or maybe -- and also give a copy

to Staff so that they can be sure that they're accounting for the things that you've testified to.

MR. DePAOLIS: Absolutely.

HEARING EXAMINER COLLINS: Thank you.

MR. DePAOLIS: Yeah.

HEARING EXAMINER COLLINS: Neale?

MS. MONTGOMERY: Yes, thank you.

I know you're a policy guy so you've raised a policy concern about water quality. Reuse has been in place for a considerable period of time. Do you have any data or analysis that indicates that the reuse system is causing water quality degradation?

MR. DePAOLIS: Well, the way that a reuse system functions is --

MS. MONTGOMERY: I didn't ask you that. Do you have any data and analysis that this system is causing water quality degradation?

MR. DePAOLIS: No, I don't have any, and I would expect that the Applicant would generate that to ensure that we're not adding to the problems that we already have.

MS. MONTGOMERY: And you might have missed Mr. Barraco's testimony, but he testified that the water quality on this site with the new ERP, as opposed to the old surface water management permit, has

improved. Were you here when he provided that testimony?

MR. DePAOLIS: I was here, yes.

MS. MONTGOMERY: Do you have anything that refutes Mr. Barraco's testimony?

MR. DePAOLIS: I think it's important to realize that just because an ERP is established for a project, it doesn't mean that it meets all the requirements of the Lee Plan to not further degrade the environment.

MS. MONTGOMERY: That's not my question. Do you have any indication that the improvement in water quality provided by the new system is not functioning properly?

MR. DePAOLIS: I think even with functioning properly, we have a danger of increasing nutrient pollution to this area.

MS. MONTGOMERY: So you don't have anything definitive. You're just concerned.

MR. DePAOLIS: I am concerned, and I'm concerned because I think that these questions need to be answered, and the burden falls on the Applicant to answer these questions, not the public to deal with the ramifications of the fallout.

MS. MONTGOMERY: And the degradation to the surrounding waterbodies would occur if water was

discharged from the system directly into the estuarine; correct?

MR. DePAOLIS: Absolutely.

MS. MONTGOMERY: So if you have a --

MR. DePAOLIS: I'm sorry, polluted --

MS. MONTGOMERY: -- complete retention system --

MR. DePAOLIS: -- water was --

MS. MONTGOMERY: -- where there's no discharge, that wouldn't be occurring, would it?

MR. DePAOLIS: Sorry, could you repeat that?

MS. MONTGOMERY: Mr. Barraco testified that this is a complete retention system. There is no discharge.

MR. DePAOLIS: Correct.

MS. MONTGOMERY: Did you hear that testimony?

MR. DePAOLIS: I did, and I -- even the way the retention system functions, with our sandy soils and our limestone bedrock, it's not retaining water until it magically gets clean and then enters the waterbody. It still retains a lot of the nutrient.

MS. MONTGOMERY: But the whole point of being in a retention system is you have an uptake in nutrients through that system. That's how they're designed.

MR. DePAOLIS: Absolutely. So there's -- there's designed retention systems, there's designed water quality systems, and all of those working perfectly can

still add to nutrient-loading of the surrounding environment, and that's what I'm worried about happening, is we have a perfectly functioning permitted water system that is still contributing to nutrient-loading in the environment causing these detriments.

MS. MONTGOMERY: Again, you have no evidence that's happening. You're just raising a concern.

MR. DePAOLIS: Yes.

MS. MONTGOMERY: You've been in this business a while; so going back in time, I'm sure you remember when there was a concern about certification of water quality to the federal government, so we -- the South Florida Water Management District started with what was commonly known as the Harvey Harper analysis. Do you recall when that got implemented?

MR. DePAOLIS: No, I'm not familiar.

MS. MONTGOMERY: Okay. It was an increase in the things you had to do to ensure water quality so you could get the certification.

MR. DePAOLIS: Sure.

MS. MONTGOMERY: Since that time those requirements have been substantially enhanced beyond the Harvey Harper analysis. So when you get a water management permit, or ERP these days, you have to prove

that you're not going to have a negative impact on water quality. Are you aware of that?

MR. DePAOLIS: Yes.

MS. MONTGOMERY: So there has been an ERP issued for the improvements on this property, and that will be required for other improvements that will have to meet those strict water quality standards. Do you agree with that?

MR. DePAOLIS: I haven't seen the ERP for this project.

MS. MONTGOMERY: So you --

MR. DePAOLIS: I assume all the --

MS. MONTGOMERY: -- didn't review the ERP for this project?

MR. DePAOLIS: -- I assume all the permitting's in order.

MS. MONTGOMERY: Okay. And you raised some concerns about diversity of wildlife in the Comp Plan; but as a policy guy, I'm sure you recognize that the Comp Plan is implemented through the Land Development Code; correct?

MR. DePAOLIS: Yeah.

MS. MONTGOMERY: And this project, in the conditions recommended by the Staff particularly as it relates to the birds and the turtles, exceeds the

requirements in the Land Development Code. Were you aware of that fact?

MR. DePAOLIS: I was.

MS. MONTGOMERY: So even though it exceeds those Land Development Code provisions that were implemented -- implementing the Comp Plan, we are over and above those standards -- so you're still suggesting, even though we exceed all the standards, it's not good enough?

MR. DePAOLIS: I am still suggesting that even though the baseline standards are exceeded, there's still likely to be a detrimental impact to shorebirds and sea turtles.

MS. MONTGOMERY: And you don't have any evidence of that in this case.

MR. DePAOLIS: I have not done sky glow metrics or --

MS. MONTGOMERY: Okay. I don't have any other questions.

HEARING EXAMINER COLLINS: Okay. The next witness is Eric Milbrandt. Eric is going to go for another 15 or 20 minutes. If you're not done, you may have to come back Friday morning and speak.

Thank you for coming. You may begin. State your name for the record.

VOLUME 4

MR. MILBRANDT: My name is Eric Milbrandt. I'm the Director of the Marine Laboratory at the Sanibel-Captiva Conservation Foundation. I've earned a Ph.D. in Biology and have written or coauthored 37 peer-reviewed publications in the field of marine and estuarian ecology. I do have a complete list of publications and accomplishments in my CV which I can provide to you.

HEARING EXAMINER COLLINS: Sure. This will be Milbrandt Exhibit 1.

MS. MONTGOMERY: Perchance do you have an extra copy?

(Milbrandt Exhibit 1 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: Thank you.

HEARING EXAMINER COLLINS: And this exhibit is a résumé, CV, for this witness. Okay.

MR. MILBRANDT: I have been qualified as an expert witness in -- for Lee County in a zoning hearing in 2018, for Eden Oak, and I was invited to be a subject matter expert --

MS. MONTGOMERY: I'm sorry, I missed the name. In 2018 which case?

MR. MILBRANDT: The Eden Oak zoning case.

MS. MONTGOMERY: Oh, that was the one in front of

Shell Point?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: Okay.

MR. MILBRANDT: And also invited to be a subject matter expert in water quality and seagrass by the Florida Department of Environmental Protection in 2018. So I've studied water quality trends for the past 22 years here in Sanibel and Captiva, and studied the salinity and light requirements for seagrass, identified sources of nutrients responsible for harmful algal blooms, and investigated widespread seagrass losses in the region.

So the proposed zoning changes by this application to increase the development intensity, in my professional opinion, would result in water quality degradation and habitat loss in the ecologically sensitive areas around Captiva and within the Pine Island Sound Aquatic Preserve.

We have sampled water and analyzed available data from the bay side of Captiva. Some of these studies started in 2010, and they have continued to today. There are elevated nitrogen levels and significantly higher chlorophyll concentrations or microscopic algae that live in the water and that grow using nutrients in the area surrounding Captiva. So the main contributors

of that nitrogen are septic tanks and the reuse water application on South Seas Resort golf course.

Treated wastewater is considered, quote, safe by -- by standards, but it does contain high levels of nitrogen. Monthly reports from the wastewater treatment plant have concentrations of nitrogen that are between 10 and 20 milligrams of nitrogen per liter. These are 10 to 20 times higher than background nitrogen levels in marine waters surrounding Captiva, which are around 0.5 milligrams of nitrogen per liter.

The wet detention ponds on the golf course do have steep sides with little littoral zones, and they are limited in their ability to clean and treat water. And when water levels from storm events exceed the levels of the weirs, the water spills directly into the waters of the State surrounding Captiva Island, and also when there are storm surge events, for which we had three in 2024.

The waters of the State include the sensitive areas of Pine Island Sound Aquatic Preserve, and the whole area of Pine Island Sound is impaired through the State of Florida's Department of Environmental Protection 303(d) list.

So more people is equal to more water use, and I believe that more water use will mean more wastewater

discharge and more reuse water on the landscape, in addition to impervious surfaces that will not be conducive to nutrient absorption.

So the excessive waste from nitrogen, it -- it fuels algal blooms. We know this. We have studies that show that it also contributes to the intensity of red tide blooms. What it also does is it increases the amount of macroalgae in the water, and macroalgae is able to overgrow seagrass and has been shown, in Matlacha Pass and other areas in the region, to overgrow seagrass.

HEARING EXAMINER COLLINS: What does that mean, "overgrow seagrass"?

MR. MILBRANDT: So they compete for space. Seagrass is dependent on clear, clean water to thrive and to grow and to expand; and when there's a lot of nutrients in the water, macroalgae will overgrow, shade the seagrass, and outcompete the seagrass for space.

HEARING EXAMINER COLLINS: Okay, thank you.

MR. MILBRANDT: So seagrass is an important nursery for many fish and invertebrate species, including snapper, grouper, redfish, stone crab, and other commercial species.

So this more intense -- more turbid water from increased nutrient runoff and seagrass declines are

concerning, and I believe more people on Captiva, from the increased development intensity from this zoning change, would further degrade water quality for which seagrass has already been -- seen significant losses in the last decade.

The loss of seagrass has a direct connection to nursery species, as a nursery to commercial sport and recreational fish species, and impedes Lee Plan Goal 113 that protects fisheries management.

The Lee Plan Goal 122 for estuarine water quality states, "Manage estuarine ecosystems in order to conserve productivity through maintaining or improving water quality, protecting wildlife diversity and reducing or maintaining current pollution loading and system imbalances."

In my professional opinion, the proposed zoning changes will provide more water use and wastewater generation, which will then be applied in shallow -- on the golf course and in the detention areas, which could spill over into surrounding waters, and will create pollution loading imbalances.

And just to reiterate that Pine Island Sound has already been designated as an impaired waterway by the State's 303(d) list; so any additional imbalances and nutrient loading will not protect the long-term

sustainability of the estuarine ecosystem.

Finally, Goal 123 of the Lee Plan states that natural resources, such as seagrass and oyster reefs, should be managed to maintain or enhance native habitats, floral and faunal species diversity, water quality, and natural surface water characteristics. So increased numbers of people on South Seas Resort property, again, in my opinion, they're concerning and will increase the amount of wastewater, which the reuse water being applied to the golf course and in the detention ponds has a potential given the high -- higher rainfall levels and storm surge potential will spill over into waters of the State and contribute to degradation of seagrass and water quality.

So thank you for your time this afternoon, and I'm finished.

HEARING EXAMINER COLLINS: Okay. Neale?

MS. MONTGOMERY: Yeah, thank you, I have some questions.

Can you tell me where on the bay side of Captiva you did your analysis?

MR. MILBRANDT: Yes. We did slices through -- if you want to think about in perpendicular transects through the data that's available, which is pretty -- it's pretty widely available through the State's

publicly available water quality database; and on the bay side, the Captiva side, there are higher levels of nitrogen from the northern tip of Captiva to Blind Pass. So we analyzed several slices across Pine Island Sound.

MS. MONTGOMERY: Okay. So -- and you said that that data is generally available?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: Okay. Do you know how many septic tanks, per chance, that there are on Captiva?

MR. MILBRANDT: I don't.

MS. MONTGOMERY: It's my understanding there's hundreds. Would that seem reasonable?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: And it's also my understanding that when the island was covered with water, that those septic tanks leach or malfunction. Does that seem like a reasonable result from that action?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: And if the septic tanks leach, is that not causing nutrients then to enter the waterbody?

MR. MILBRANDT: Yes, I testified that there are multiple sources of nutrient pollution on Captiva, including septic tanks and the use of reuse water on the golf course.

MS. MONTGOMERY: The reuse water is not provided by a private entity. It's provided by FGUA, which is partially owned by Lee County; is that correct?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: And it's my understanding that the acreage of golf course that's being irrigated has been reduced. Are you aware of that?

MR. MILBRANDT: Yes, I am aware of it. The amount of -- of irrigation, however, you still need to use that water. You can eject some of it but -- yeah.

MS. MONTGOMERY: Well, let me ask you a question. I've read some of the data on Island Water Association, and it's my understanding that 60 percent or greater of their water -- potable water is used for irrigation. As a biologist, does that seem appropriate?

MR. MILBRANDT: No, it doesn't.

MS. MONTGOMERY: It's also my understanding -- you may know more than me -- that FGUA got a grant for a second deep well injection to dispose of the reuse water. Are you aware of that?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: Will that improve water quality?

MR. MILBRANDT: It would provide additional volume for the -- for the treated wastewater to be disposed of.

MS. MONTGOMERY: And I'm assuming that has to be approved by DEP and appropriate agencies; correct?

MR. MILBRANDT: I would assume so.

MS. MONTGOMERY: And that those agencies are required to ensure that water quality is maintained or improved.

MR. MILBRANDT: They are, but the record of water quality declines in the area speak for themselves as far as the protection of the resource.

MS. MONTGOMERY: Okay. You provided some testimony about the lake bank slope. When was the last time you visited the resort to look at the lakes?

MR. MILBRANDT: I have not visited them. I've just looked at them through aerial imagery.

MS. MONTGOMERY: Okay. Because -- did you look at the aerial images where the golf course was totally rebuilt?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: And were you able to determine from a two-dimensional picture what the bank slope was?

MR. MILBRANDT: Not the bank slope, but you can generally tell if there are littoral plants that are there to function and to remove nutrients, and I didn't see any.

MS. MONTGOMERY: Okay. So then your testimony

about the bank slope isn't the issue. Your concern is there's not enough littoral plants.

MR. MILBRANDT: The treatment -- yeah, the treatment function of the -- of ponds is limited.

MS. MONTGOMERY: And I think you did say, but I might have missed it, that you recognize that this is a retention system, complete 100 percent retention system.

MR. MILBRANDT: Yes, I do recognize that. It does have flaws, you know. Particularly if we have heavy, intense rainfall events or storm surge, the water weirs are compromised by flooding, and water spills into the estuary.

MS. MONTGOMERY: I mean, you talk generally about algae blooms and red tide. Typically you can look at an aerial and see it come down the river. Is that typically where it comes from, up river out into the bay and the Gulf?

MR. MILBRANDT: Not red tide. Red tide is a marine bloom that starts as patches in the near shore and intensifies as it moves closer to the barrier islands. Freshwater algae blooms start in the river and are carried down through the river to the coastal areas and the barrier islands.

MS. MONTGOMERY: Okay. So -- I appreciate that

clarification. So like the blue-green algae is what starts upriver?

MR. MILBRANDT: Correct.

MS. MONTGOMERY: And the red tide starts at the coast and moves toward the barrier islands; is that --

MR. MILBRANDT: Yes.

MS. MONTGOMERY: -- is that correct?

MR. MILBRANDT: Yes.

MS. MONTGOMERY: Okay. So it's not caused on the barrier island. It's subjected to it from the coastal areas.

MR. MILBRANDT: Yeah, it's transported to shore by currents, and sometimes a little bit by wind, but it becomes more intense, and it becomes larger as it interacts with discharges of nitrogen in particular.

MS. MONTGOMERY: One minute. I have lots of notes people have given me, make sure I catch them all.

I don't have any other questions. Thank you for your help.

HEARING EXAMINER COLLINS: Thank you.

MR. MILBRANDT: Thank you, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: Okay. It's not quite 4:00, but I don't think we have time for Kelly Sloan. So if you don't mind, Ms. Sloan, we'll hear from you first thing Friday morning. Okay? Thank you.

VOLUME 4

Thank you, everyone, for coming today. This concludes the hearing for today. We will resume at 9:00 a.m. on Friday.

(Proceedings concluded at 3:59 p.m.)

VOLUME 4

CERTIFICATE OF REPORTER

STATE OF FLORIDA )
COUNTY OF LEE )

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 241, is a true and correct record of my stenographic notes.

Dated this 3rd day of March, 2025.



Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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