

VILLAGE OF ESTERO SPECIAL COUNCIL MEETING
WEDNESDAY, DECEMBER 13, 2023, 9:30 A.M.

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CAPTIONING WHICH SHOULD NEITHER BE RELIED UPON FOR COMPLETE
ACCURACY NOR USED AS A VERBATIM TRANSCRIPT.

ANY PERSON WHO NEEDS A VERBATIM TRANSCRIPT OF THE
PROCEEDINGS MAY NEED TO HIRE A COURT REPORTER.

9:31:07AM >>Mayor McLain: GOOD MORNING AND WELCOME.
9:31:09AM I'D LIKE TO NOW CALL TO ORDER THE DECEMBER 13th, 2023,
9:31:14AM 9:30 SPECIAL VILLAGE COUNCIL MEETING TO ORDER.
9:31:20AM [SOUNDING GAVEL]
9:31:20AM I WOULD LIKE TO REMIND EVERYONE THAT IF YOU HAVE A CELL
9:31:25AM PHONE TO PLEASE SILENCE THAT NOW SO THAT WE DON'T GET
9:31:28AM DISRUPTED AND INTERRUPT PEOPLE'S TRAIN OF THOUGHT ON THIS
9:31:32AM THING.
9:31:32AM THAT INCLUDES COUNCIL AND MYSELF.
9:31:35AM I'D ALSO LIKE TO REMIND ALL OUR SPEAKERS AND COUNCIL MEMBERS
9:31:41AM WHEN YOU ARE SPEAKING THAT YOU GET CLOSE TO THE MICROPHONES,
9:31:46AM ESPECIALLY THIS ONE UP HERE, ADJUST IT, AND IT NEEDS TO BE
9:31:49AM WITHIN FIVE OR SIX INCHES OF YOUR SPEAKING VOICE THERE.
9:31:54AM SO I'LL REMIND YOU IF WE CAN'T HEAR, BUT SOMETIMES IT'S A
9:31:59AM LITTLE MORE DIFFICULT TO HEAR UP HERE HOW IT'S GOING.
9:32:02AM WITH THAT, I WOULD LIKE TO START THIS MEETING WITH AN
9:32:04AM INVOCATION FROM KYLE STRONG.
9:32:07AM HE IS FROM THE OCEAN CHURCH RIGHT DOWN THE STREET FROM HERE.

9:32:10AM WELCOME, KYLE.
9:32:13AM >> WELL, GOOD MORNING, EVERYBODY.
9:32:16AM IF WE WOULD BOW OUR HEADS AND WE'LL ASK THE LORD TO BE
9:32:19AM PRESENT IN THIS MEETING.
9:32:20AM FATHER, WE THANK YOU FOR ANOTHER DAY THAT YOU GAVE US BREATH
9:32:24AM IN OUR LUNGS.
9:32:25AM LORD, WE THANK YOU THAT WE CAN COME TO YOU WITH ANYTHING
9:32:28AM THAT WE HAVE IN OUR HEARTS.
9:32:29AM LORD, I PRAY FOR ANYBODY IN THIS ROOM THAT IS CARRYING HEAVY
9:32:34AM HEARTS THIS MORNING.
9:32:35AM MAYBE THEY ARE WORRIED, ANXIETY, FEAR MAYBE.
9:32:37AM LORD, I PRAY YOU WOULD MEET THEM THIS MORNING AND, LORD THAT
9:32:41AM WE CAN COME TO YOU BUT YOU CAME TO US FIRST.
9:32:44AM AS WE CELEBRATE CHRISTMAS, THAT YOU CAME TO US AS A BABY,
9:32:49AM NOT AS WHAT WE EXPECTED, BUT, LORD, IN A MANGER SCENE,
9:32:56AM FATHER.
9:32:57AM LORD, I PRAY THAT IF ANYBODY IS STRUGGLING WITH JUST THINGS
9:33:01AM THAT THEY ARE HOLDING ON TO FROM THE PAST, LORD, I PRAY THAT

9:33:04AM YOU WOULD JUST MEET THEM.
 9:33:06AM LORD, YOU CAME TO US AS THE GENTLE COUNSELOR, THE MIGHTY
 9:33:12AM GOD, THE PRINCE OF PEACE AND EVERLASTING FATHER.
 9:33:14AM YOU SAID THE WORLD AND THIS GOVERNMENT WILL BE ON YOUR
 9:33:17AM SHOULDERS.
 9:33:17AM LORD, WE PRAY RIGHT NOW FOR THE VILLAGE OF ESTERO.
 9:33:20AM WE PRAY FOR THIS MEETING.

 9:33:21AM LORD, THANK YOU FOR THE LEADERS THAT SIT BEFORE ME.
 9:33:24AM YOU PLACE THEM IN THE SEATS AND, LORD, GIVE THEM WISDOM THIS
 9:33:28AM MORNING.
 9:33:28AM LORD, I PRAY FOR THEIR FAMILIES.
 9:33:30AM I PRAY FOR THEIR CHILDREN.
 9:33:31AM LORD, IT'S NOT EASY THEM SITTING WHERE THEY ARE AT, BUT YOU
 9:33:35AM PUT THEM THERE FOR A REASON FOR SUCH A TIME AS THIS.
 9:33:38AM LORD, I PRAY FOR THIS MEETING.
 9:33:39AM IT WOULD BE THE BEST MEETING THEY'VE HAD ALL YEAR.
 9:33:42AM LORD, I PRAY FOR WISDOM BEYOND HUMAN REASONING.
 9:33:45AM LORD, THAT YOU WOULD GIVE THEM WISDOM THIS MORNING.
 9:33:48AM I PRAY FOR JUST THE SPEECH THIS MORNING WOULD BE UPLIFTING
 9:33:51AM AND EDIFYING TO YOU.
 9:33:53AM LORD WE GIVE YOU ALL THE PRAISE AND GLORY.
 9:33:55AM IN JESUS NAME, AMEN.
 9:33:58AM >>Mayor McLain: THANK YOU, KYLE.
 9:33:59AM PLEASE JOIN ME IN THE PLEDGE OF ALLEGIANCE.
 9:34:03AM [PLEDGE OF ALLEGIANCE]
 9:34:18AM MADAM CLERK, WOULD YOU PLEASE CALL THE ROLL.
 9:34:26AM >>Vice-Mayor Ribble: HERE.
 9:34:28AM >>Larry Fiesel: HERE.
 9:34:29AM >>Mayor McLain: HERE.
 9:34:31AM >>Lori Fayhee: HERE.
 9:34:33AM >>Rafael Lopez: HERE.
 9:34:35AM >>Jim Ward: HERE.

 9:34:36AM >>George Zalucki: HERE.
 9:34:42AM >>Mayor McLain: TODAY WE HAVE ONE ITEM ON THE AGENDA.
 9:34:45AM THAT IS A QUASI-JUDICIAL -- THAT IS QUASI-JUDICIAL.
 9:34:50AM SO I WILL TURN THIS OVER TO THE VILLAGE ATTORNEY TO
 9:34:54AM EMPHASIZE THE FORMAT OF TODAY'S MEETING.
 9:34:56AM >>Robert Eschenfelder: THANK YOU, MAYOR.
 9:34:57AM THIS IS A HEARING ON AN APPEAL OF A DECISION OF THE PLANNING
 9:35:01AM ZONING AND DESIGN BOARD BROUGHT PURSUANT TO SECTION
 9:35:04AM 2-409-A-1 OF THE VILLAGE CODE.
 9:35:08AM THE RELEVANT PROVISIONS OF THAT CODE SECTION PROVIDE ANY
 9:35:11AM PARTY AGGRIEVED BY A DECISION OF THE PZDB SHALL, PRIOR TO
 9:35:16AM SEEKING JUDICIAL REVIEW FILE WITH THE VILLAGE CLERK WITHIN
 9:35:19AM 30 DAYS FROM THE VOTE OF THE BOARD AN APPLICATION FOR APPEAL
 9:35:23AM TO THE VILLAGE COUNCIL.

9:35:25AM UPON THE FILING OF A NOTICE OF APPEAL, THE VILLAGE COUNCIL
 9:35:29AM SHALL AS SOON AS REASONABLY PRACTICAL HOLD A PUBLIC HEARING
 9:35:35AM UPON THE MATTER AND SHALL AFFIRM, REVERSE OR AFFIRM WITH
 9:35:39AM MODIFICATIONS THE DECISION OF THE PZDB.
 9:35:43AM THE HEARING SHALL BE CONDUCTED AS A DE NOVO HEARING.
 9:35:46AM HAVING REVIEWED THE CODE LANGUAGE, I WILL NOW REVIEW SOME
 9:35:50AM CORE LEGAL POINTS BOTH FOR COUNCIL AND FOR THOSE IN THE
 9:35:53AM ROOM.
 9:35:54AM THE FIRST POINT SURROUNDS THE RECORD ON APPEAL.
 9:35:58AM AS NOTED, THIS APPEAL IS A DE NOVO HEARING, MEANING THE
 9:36:02AM PARTIES PRESENT THEIR CASES FROM THE BEGINNING.

9:36:05AM THE PZDB RECORD AND ORDER BEING APPEALED ARE A PART OF THE
 9:36:11AM RECORD IN THIS HEARING.
 9:36:13AM FURTHER, THE EVIDENCE AND OTHER MATERIALS SUBMITTED FROM ANY
 9:36:17AM PARTY BY THE SEVEN-DAY DEADLINE ESTABLISHED IN COUNCIL
 9:36:22AM PROCEDURES RULE 10J HAS BEEN AUTOMATICALLY INCLUDED IN THE
 9:36:27AM RECORD.
 9:36:28AM PARTIES NEED NOT MOVE SUCH RECORDS INTO EVIDENCE AS THEY ARE
 9:36:33AM ALREADY PART OF THE RECORD.
 9:36:35AM IF A PARTY SEEKS TO INTRODUCE A RECORD NOT SUBMITTED BY THE
 9:36:40AM DEADLINE, PER THE COUNCIL RULES, THE COUNCIL WILL HAVE TO
 9:36:44AM DETERMINE IF IT WILL ACCEPT SUCH LATE RECORD.
 9:36:49AM TURNING NOW TO THE STEPS IN THIS APPEAL HEARING.
 9:36:54AM PURSUANT TO VILLAGE CODE SECTION 2-407, THE COUNCIL'S
 9:36:58AM QUASI-JUDICIAL PROCEDURES WILL CONTROL.
 9:37:01AM THE PARTS OF THIS HEARING ARE THEREFORE AS FOLLOWS:
 9:37:06AM DISCLOSURE OF EX PARTE COMMUNICATIONS BY COUNCIL MEMBERS.
 9:37:11AM DISCLOSURE OF ANY CONFLICTS OF INTEREST OF ANY
 9:37:14AM COUNCILMEMBER.
 9:37:15AM ADMINISTRATION OF THE OATH TO ALL PERSONS WHO WILL BE
 9:37:19AM PROVIDING TESTIMONY.
 9:37:22AM BRIEF INTRODUCTION BY STAFF AND IDENTIFICATION OF AFFECTED
 9:37:27AM PARTIES.
 9:37:27AM PRESENTATION OF APPELLANT'S AFFECTED PARTIES.
 9:37:33AM THE APPELLANT AFFECTED PARTY HAS THE BURDEN OF CONVINCING
 9:37:37AM COUNCIL THROUGH EVIDENCE AND ARGUMENT THAT THE DECISION OF

9:37:40AM THE PZDB SHOULD BE REVERSED BASED ON THE ARGUMENTS RAISED IN
 9:37:45AM THE APPEAL DOCUMENT FILED WITH THE VILLAGE.
 9:37:49AM FOLLOWING THE PRESENTATION OF APPELLANT'S WILL BE
 9:37:52AM CROSS-EXAMINATION OF APPELLANT'S AFFECTED PARTIES IF
 9:37:56AM NECESSARY.
 9:37:56AM NEXT, VILLAGE STAFF WILL PRESENT.
 9:38:02AM AFTER STAFF'S PRESENTATION, THERE WILL BE CROSS-EXAMINATION
 9:38:05AM OF VILLAGE STAFF, IF NECESSARY.
 9:38:08AM FINALLY -- I'M SORRY, THE APPLICANT DEVELOPER'S
 9:38:15AM PRESENTATION.

9:38:15AM AFTER THE APPLICANT DEVELOPER HAS COMPLETED THEIR
9:38:20AM PRESENTATION, THERE WILL BE CROSS-EXAMINATION, IF NECESSARY.
9:38:22AM EACH PRESENTING PARTY SHALL BE LIMITED TO 45 MINUTES.
9:38:30AM CROSS-EXAMINATIONS, IF ANY, PER PARTY SHALL BE LIMITED TO 10
9:38:35AM MINUTES IN TOTAL.
9:38:38AM FOLLOWING PARTY PRESENTATIONS, THE CHAIR WILL CALL FOR
9:38:42AM PUBLIC COMMENT.
9:38:43AM PUBLIC COMMENTS ARE LIMITED TO THREE MINUTES AND SPEAKERS
9:38:46AM MUST HAVE FILLED OUT A SPEAKER'S CARD.
9:38:49AM AFTER PUBLIC COMMENT CLOSURES, THE CHAIR MAY PERMIT THE
9:38:55AM APPELLANT'S AFFECTED PARTIES UP TO THREE MINUTES FOR BRIEF
9:38:59AM REBUTTAL REMARKS.
9:39:03AM PURSUANT TO THE COUNCIL'S PROCEDURE RULES, AFTER THE PARTIES
9:39:05AM HAVE PRESENTED AND THE PUBLIC COMMENT IS CLOSED, COUNCIL
9:39:11AM WILL INTRODUCE A MOTION, DEBATE THE MOTION, AND VOTE ON THE

9:39:16AM QUESTION.
9:39:18AM COUNCIL MEMBERS MAY ASK QUESTIONS OF WITNESSES AT ANY TIME.
9:39:23AM HOWEVER, TO ENSURE EACH PARTY IS AFFORDED ITS FULL TIME, IT
9:39:27AM IS RECOMMENDED THAT COUNCIL MEMBERS HOLD QUESTIONS UNTIL
9:39:30AM EACH PARTY HAS FINISHED ITS RESPECTIVE PRESENTATIONS.
9:39:34AM IN A QUASI-JUDICIAL SETTING, THE STRICT RULES OF EVIDENCE DO
9:39:37AM NOT APPLY.
9:39:39AM HOWEVER, A PARTY OR PARTY'S LAWYER MAY MAKE OBJECTIONS.
9:39:44AM THE CHAIR WILL RULE ON THE OBJECTION AND, IF NECESSARY, SEEK
9:39:47AM GUIDANCE FROM THE VILLAGE ATTORNEY.
9:39:50AM THE COUNCIL'S DECISION SHALL BE BASED ON COMPETENT
9:39:54AM SUBSTANTIAL EVIDENCE IN THE RECORD OF THE PROCEEDING AND THE
9:39:58AM APPLICABLE LAW.
9:40:00AM FOLLOWING THE HEARING, THE COUNCIL'S DECISION SHALL BE
9:40:03AM REDUCED TO WRITING.
9:40:05AM APPEALS OF THE COUNCIL'S DECISION MAY BE MADE BY FILING A
9:40:09AM PETITION FOR WRIT OF CERTIORARI IN THE CIRCUIT COURT'S
9:40:13AM APPELLATE DIVISION AS PROVIDED FOR IN THE FLORIDA RULES OF
9:40:16AM APPELLATE PROCEDURE.
9:40:17AM WITH THOSE GROUND RULES IN PLACE, MAYOR, I'LL HAND IT BACK
9:40:21AM OVER TO YOU TO BEGIN THE PROCEEDINGS.
9:40:23AM >>Mayor McLain: THANK YOU.
9:40:24AM AT THIS TIME, I WILL ASK COUNCIL MEMBERS IF ANY OF THEM WISH
9:40:27AM TO DISCLOSE ANY EX PARTE COMMUNICATIONS ANY OF THEM MAY HAVE
9:40:33AM HAD WITH THE APPELLANT OR DEVELOPER APPLICANT REGARDING THIS

9:40:38AM HEARING.
9:40:38AM WHY DON'T WE START WITH THE VICE-MAYOR AND WE'LL GO AROUND.
9:40:40AM >>Vice-Mayor Ribble: I HAVE NONE, MAYOR.
9:40:42AM >>Larry Fiesel: I HAVE NONE.
9:40:43AM >>Lori Fayhee: I HAVE NONE.
9:40:45AM >>Rafael Lopez: NONE.

9:40:48AM >>Larry Fiesel: I HAVE NONE.
9:40:51AM >>Jim Ward: DO WE NEED TO DISCLOSE THE DISCUSSION WE HAD AT
9:40:54AM THE BRIEFING WITH THE VILLAGE MANAGER AND ATTORNEY?
9:40:57AM IS THAT PART OF EX PARTE?
9:40:58AM >>Robert Eschenfelder: NO.
9:40:59AM THIS IS WHERE YOU HAVE TALKED TO ONE OF THE PARTIES.
9:41:01AM THE DEVELOPER OR THE APPLICANT -- THE APPELLANT.
9:41:06AM >>Jim Ward: I DID HAVE DISCUSSIONS WITH MS. WYROFSKY PRIOR
9:41:09AM TO THE APPEAL BEING NOTED, BUT SINCE THEN I HAVE NOT.
9:41:17AM >>Mayor McLain: I NEED TO SAY THAT I HAD CONVERSATIONS WITH
9:41:22AM SEVERAL HOMEOWNERS IN THE AFFECTED AREA, THAT'S IN SHADOW
9:41:27AM WOOD, THE BROOKS COMMUNITY, JUST TO DISCUSS THE CONCERNS
9:41:31AM THEY HAD.
9:41:32AM OTHER THAN THAT, I'VE HAD NO COMMUNICATION WITH THE
9:41:34AM DEVELOPER.
9:41:34AM NOW I WILL ASK ANY COUNCIL MEMBERS IF THEY NEED TO DECLARE A
9:41:41AM CONFLICT OF INTEREST BECAUSE THE OUTCOME OF THIS HEARING
9:41:47AM INURES TO THE MEMBER OR MEMBER'S FAMILY SPECIAL PRIVATE
9:41:50AM GAIN.

9:41:51AM VICE-MAYOR.
9:41:51AM >>Vice-Mayor Ribble: I HAVE NONE.
9:41:54AM >>Larry Fiesel: I HAVE NO CONFLICT.
9:41:56AM >>Lori Fayhee: I HAVE NONE.
9:41:58AM >>Rafael Lopez: I HAVE NONE.
9:41:59AM >>Jim Ward: I HAVE NONE.
9:42:00AM >>George Zalucki: NO CONFLICT.
9:42:02AM >>Mayor McLain: I HAVE NONE EITHER.
9:42:03AM I'LL ASK THE CLERK TO ADMINISTER THE OATH TO ALL PERSONS WHO
9:42:06AM WILL BE PROVIDING TESTIMONY.
9:42:08AM >>Carol Sacco: CAN EVERYONE PLEASE STAND?
9:42:10AM THAT WILL BE SPEAKING TODAY.
9:42:16AM >>Robert Eschenfelder: ANYONE WHO IS GOING TO BE PROVIDING
9:42:18AM TESTIMONY.
9:42:19AM >>Carol Sacco: DO YOU SWEAR TO TELL THE TRUTH, THE WHOLE
9:42:21AM TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD.
9:42:24AM >> I DO.
9:42:31AM >>Mayor McLain: AT THIS TIME, VILLAGE STAFF AND LAND USE
9:42:36AM COUNSEL WILL BRIEFLY INTRODUCE THE MATTER INCLUDING
9:42:38AM PROVIDING STAFF ANALYSIS REGARDING WHICH PERSONS QUALIFY AS
9:42:42AM AFFECTED PARTIES.
9:42:47AM >>Mary Gibbs: GOOD MORNING, EVERYBODY.
9:42:48AM MARY GIBBS FROM STAFF.
9:42:50AM I FEEL LIKE I HAVE NEVER LEFT SINCE WE WERE HERE LAST NIGHT.
9:42:54AM BUT I DO WANT EVERYBODY TO KNOW I DID CHANGE CLOTHES.

9:42:58AM [LAUGHTER]
9:42:58AM I WOULD LIKE TO SPEND A COUPLE OF MINUTES TO DO THE BRIEF

9:43:01AM OVERVIEW OF WHAT THIS CASE IS ABOUT AND THEN JUST TOUCH ON
9:43:04AM THIS AGGRIEVED PARTIES ISSUE.
9:43:08AM THIS IS, OF COURSE, AN APPEAL OF THE BROOKS TOWN CENTER.
9:43:12AM APP 2023-E001.
9:43:17AM THE BROOKS TOWN CENTER IS LOCATED AT THE CORNER, NORTHWEST
9:43:21AM CORNER OF COCONUT ROAD AND THREE OAKS PARKWAY.
9:43:24AM THE PROJECT IS ABOUT TEN ACRES IN SIZE.
9:43:27AM JUST A LITTLE BIT BELOW TEN ACRES.
9:43:30AM IT IS THE EXISTING SHOPPING CENTER THAT HAS THE VACANT
9:43:33AM WINN DIXIE PROPERTY.
9:43:35AM I THINK EVERYBODY IS FAMILIAR WITH THAT.
9:43:36AM THE DEVELOPER IS PROPOSING TO DEMOLISH THE WINN DIXIE PART
9:43:40AM OF THE PLAZA AND CONSTRUCT A MULTIFAMILY BUILDING ON THE
9:43:45AM PARKING LOT AREA ON THE EAST SIDE OF THE SITE.
9:43:48AM THEY ARE PROPOSING TO BUILD 137 UNITS.
9:43:52AM THAT WAS REDUCED FROM THE 158 UNITS THAT CAME TO YOU IN THE
9:43:56AM ORIGINAL PROPOSAL.
9:43:57AM THEN THEY WOULD RETAIN THE EXISTING COMMERCIAL BUSINESSES AS
9:44:03AM WELL AS THE FINE MARK BANK.
9:44:06AM AGAIN, THIS CASE IS AN APPEAL OF THE DECISION OF THE
9:44:09AM PLANNING AND ZONING BOARD THAT RELATES TO THE DEVELOPMENT
9:44:12AM ORDER.
9:44:12AM AND THE DEVELOPMENT ORDER IS THE SITE PLAN APPROVAL, THE

9:44:15AM ENGINEERED PLANS, THE LAYOUT OF THE PROPERTY.
9:44:18AM IT'S NOT THE ZONING.
9:44:20AM THE ZONING HAS ALREADY BEEN ESTABLISHED.
9:44:22AM I'M GOING TO TOUCH ON THAT A LITTLE BIT LATER.
9:44:24AM BUT THERE'S A LITTLE BIT OF CONFUSION ABOUT THAT.
9:44:27AM PLANNING ZONING AND DESIGN BOARD APPROVED THE DEVELOPMENT
9:44:29AM ORDER WITH CONDITIONS, WHICH WAS THE STAFF CONDITIONS, AND
9:44:31AM THEY ADDED AN ADDITIONAL CONDITION ABOUT THE PARKING.
9:44:34AM THE APPLICANT DID NOT AGREE WITH THAT DECISION OF PLANNING
9:44:38AM ZONING AND DESIGN BOARD AND THAT'S WHY IT IS BEING APPEALED
9:44:40AM TO COUNCIL.
9:44:41AM SO IN THE APPEAL -- AND I THINK THE ATTORNEY MENTIONED THIS
9:44:44AM -- THE COUNCIL HAS THREE OPTIONS.
9:44:46AM YOU CAN AFFIRM THE PLANNING ZONING AND DESIGN BOARD
9:44:49AM DECISION.
9:44:49AM YOU CAN AFFIRM IT WITH MODIFICATIONS.
9:44:52AM OR YOU CAN REVERSE IT.
9:44:53AM STAFF IS RECOMMENDING THAT WE AFFIRM IT, WHICH MEANS THE
9:44:56AM DEVELOPMENT ORDER WOULD BE APPROVED WITH THE SAME CONDITIONS
9:45:00AM THAT THE PLANNING ZONING AND DESIGN BOARD HAD IMPOSED IN
9:45:03AM THEIR -- WHEN THEY HEARD THE CASE.
9:45:05AM LET ME MOVE ON JUST TO WHAT THE AGGRIEVED PARTIES ISSUE IS
9:45:11AM AND WHAT DOES THAT MEAN BECAUSE IT IS VERY LEGALISTIC AND
9:45:14AM EVERYBODY IS LIKE WHAT IS AN AGGRIEVED PARTY.

9:45:16AM PLANNING ZONING AND DESIGN BOARD HAD REVIEWED THIS

9:45:19AM DEVELOPMENT ORDER ON OCTOBER 10.

9:45:22AM THEY APPROVED IT WITH CONDITIONS.

9:45:23AM THERE IS A PROVISION IN THE CODE, AS THE ATTORNEY JUST

9:45:27AM MENTIONED, THAT THE AGGRIEVED PARTY CAN FILE AN APPEAL

9:45:30AM WITHIN 30 DAYS OF THAT DECISION.

9:45:31AM THAT APPEAL WAS FILED WITHIN 30 DAYS BY 37 RESIDENTS OF THE

9:45:35AM BROOKS AND OUR LIAISON MRS. WYROFSKY HAS BEEN OUR LIAISON

9:45:42AM FOR 37 PEOPLE.

9:45:43AM IN THE APPEAL, WE'RE GOING TO LISTEN TO ALL THE PARTIES.

9:45:46AM THAT'S WHAT HAPPENS BEFORE YOU MAKE ANY DECISION.

9:45:50AM THE AGGRIEVED PARTY AS DEFINED IN LAND DEVELOPMENT CODE, IT

9:45:53AM SAYS ANYBODY WHO HAS A LEGALLY RECOGNIZABLE INTEREST WHICH

9:45:57AM MAY BE ADVERSELY AFFECTED BY AN ACTION OF THE VILLAGE.

9:45:59AM IN ORDER FOR THE STAFF TO DETERMINE WHO WE THINK THE

9:46:03AM AFFECTED PARTIES OR THE AGGRIEVED PARTIES ARE TO RECOMMEND

9:46:07AM TO YOU, WE TOOK THE LIST OF THE 37 APPLICANTS FROM THE

9:46:11AM BROOKS AND WE MADE THE LIST, WHICH WE PUT IN YOUR PACKET AND

9:46:17AM IS ALSO ONLINE.

9:46:17AM IT IS A ONE-PAGE LIST THAT FOLLOWS THE STAFF REPORT.

9:46:20AM IT LISTS THE 37 APPLICANTS.

9:46:22AM AND THEN WE LOOKED AT THEIR ADDRESSES AND WE LOOKED IN OUR

9:46:25AM COMPUTER SYSTEM, OUR GIS TO SEE THE PROXIMITY OF THE

9:46:30AM APPLICANTS TO THIS PROJECT.

9:46:31AM GOING BACK AND LOOKING AT THAT, WE FOUND THAT THE CLOSEST

9:46:36AM NEIGHBORS LESS THAN 500 FEET, THERE ARE FIVE PARTIES.

9:46:40AM TWO OF THEM ARE WITHIN 254 FEET AWAY FROM THE PROJECT.

9:46:45AM ONE IS 345 FEET -- OR TWO ARE.

9:46:48AM ONE IS 470 FEET.

9:46:51AM THESE NEIGHBORS ARE ON MAGNOLIA, FOR THE MOST PART, MAGNOLIA

9:46:56AM LANE WHICH IS JUST NORTH OF THE PROJECT AND THERE IS A

9:46:59AM CONSERVATION AREA WHICH SEPARATES THE PROJECT FROM MAGNOLIA.

9:47:02AM THERE IS ONE APPELLANT WHO IS OVER 800 FEET AND THE

9:47:06AM REMAINING 31 ARE OVER A THOUSAND FEET AWAY IN DIFFERENT

9:47:10AM LOCATIONS IN THE BROOKS.

9:47:11AM SO STAFF IS RECOMMENDING THAT THE PARTIES WITHIN 500 FEET BE

9:47:16AM CONSIDERED THE AGGRIEVED PARTIES.

9:47:18AM THE REASON FOR THIS IS THEY ARE, OF COURSE, THE CLOSEST TO

9:47:21AM THE PROPERTY.

9:47:22AM THEN IF YOU LOOK AT THE CASE LAW THAT THE APPLICANT

9:47:26AM SUPPLIED, WHICH JUST SHOWS THAT IN MANY CASES WHEN YOU'RE

9:47:30AM LOOKING AT AN AGGRIEVED PARTY, IT MIGHT BE THE DISTANCE THAT

9:47:34AM YOU NOTIFY PEOPLE ABOUT, DEVELOPMENT ORDER ACTIONS.

9:47:37AM SO WE NOTIFY PEOPLE WITHIN 500 FEET WHEN WE HAVE A

9:47:40AM DEVELOPMENT ORDER.

9:47:41AM SO THAT SEEMS TO BE A REASONABLE DISTANCE AND IS ALSO

9:47:45AM SUPPORTED BY THE CASE LAW.
9:47:46AM SO WHAT WE'RE RECOMMENDING IS THAT THESE FIVE APPELLANTS,
9:47:50AM KATHY WYROFSKY, RUDOLPH WYROFSKY, WILLIAM CLARK, GAYLEEN
9:47:59AM CLARK, AND DAVID COSTELLO BE CONSIDERED THE AGGRIEVED
9:48:03AM PARTIES.

9:48:03AM IF YOU AGREE WITH THAT, WE'LL GO AHEAD AND GET STARTED WITH
9:48:06AM THE PROCEEDINGS AND LET THE APPLICANT TALK FIRST, UNLESS YOU
9:48:09AM HAVE ANY OTHER QUESTIONS FOR ME.
9:48:11AM >>Mayor McLain: DO WE HAVE ANYBODY OBJECT TO THAT
9:48:16AM DEFINITION?
9:48:19AM I SEE NO COUNCIL MEMBERS IN THAT.
9:48:24AM GO AHEAD AND PROCEED.
9:48:25AM >>Mary Gibbs: ALL RIGHT.
9:48:26AM I THINK THE FIRST, WE TURN THIS OVER TO THE APPLICANT NOW,
9:48:30AM WHICH I THINK KATHY WYROFSKY WILL BE STARTING THIS OFF.
9:48:35AM THEY GET 45 MINUTES.
9:48:37AM WE TRY TO HOLD THE QUESTIONS UNTIL THE END.
9:48:39AM ARE YOU OBJECTING?
9:48:42AM THIS IS STEVE HARTSELL.
9:48:50AM HE'S HERE BECAUSE NEALE MONTGOMERY COULDN'T BE HERE TODAY.
9:48:54AM HE REPRESENTS THE DEVELOPER.
9:48:55AM >>Mayor McLain: I DON'T KNOW IF THAT'S IN ORDER OF WHAT
9:48:57AM WE'VE ESTABLISHED.
9:48:59AM I BELIEVE WE WERE GOING TO HEAR FIRST FROM THE AGGRIEVED
9:49:04AM PARTIES.
9:49:04AM >>Robert Eschenfelder: I THINK HE'S WANTING TO MAKE AN
9:49:06AM OBJECTION.
9:49:07AM HE'S NOT WANTING TO MAKE A PRESENTATION.
9:49:09AM IS THAT CORRECT?
9:49:13AM >> BRIEFLY, FOR THE RECORD.

9:49:15AM I'M STEVE HARTSELL WITH PAVESE LAW FIRM.
9:49:21AM I'M HERE ON BEHALF OF THE DEVELOPERS AND OWNERS OF THE
9:49:24AM BROOKS TOWN CENTER APARTMENTS.
9:49:27AM AS MARY POINTED OUT, MY PARTNER, NEALE MONTGOMERY, IS UNABLE
9:49:34AM TO BE HERE BECAUSE SHE'S IN THE MIDDLE OF ANOTHER HEARING
9:49:37AM RIGHT AT THIS MOMENT.
9:49:38AM SHE WOULD MUCH RATHER BE HERE I'M SURE.
9:49:41AM I DO WANT TO AT LEAST PUT ON THE RECORD OUR OBJECTION TO
9:49:47AM FINDING THAT ANY OF THESE FOLKS ARE AGGRIEVED OR ADVERSELY
9:49:53AM AFFECTED IN ANY MANNER OR DEGREE GREATER THAN OTHER MEMBERS
9:49:57AM OF THE PUBLIC.
9:49:59AM SO WE ARE NOT IN AGREEMENT THAT ANY OF THEM ARE AGGRIEVED
9:50:03AM PARTIES.
9:50:04AM I DON'T WANT TO GO INTO A BIG PRESENTATION ABOUT THAT, BUT
9:50:06AM WE AT LEAST WANTED THAT TO BE ON THE RECORD TO THE EXTENT
9:50:09AM THAT THAT BECOMES AN ISSUE IN THE FUTURE.

9:50:12AM THANKS VERY MUCH.
9:50:12AM >>Mayor McLain: THANK YOU.
9:50:14AM IN LIGHT OF THAT, NOW THE AFFECTED PARTIES WILL PRESENT THE
9:50:20AM CASE.
9:50:20AM >>Mary Gibbs: I THINK THE APPLICANT WANTED TO MAKE A QUICK
9:50:24AM COMMENT.
9:50:27AM >> I REJECT THAT WE'RE NOT AGGRIEVED.
9:50:30AM KATHY WYROFSKY.
9:50:33AM BY THE WAY, ARE YOU MARYANN FROM GUARDIAN.

9:50:36AM HAD TO HIRE YOU.
9:50:37AM THANK YOU.
9:50:38AM I THINK THERE ARE MANY, MANY REASONS WHY WE ARE AGGRIEVED,
9:50:42AM AND I THINK THEY ARE IN THE PRESENTATION WE WOULD HAVE
9:50:46AM GIVEN, VIEW, NOISE, LIGHTS, SERENITY, THE PEACE, THE
9:50:52AM SECURITY.
9:50:52AM THERE ARE SO MANY REASONS ON TOP OF THE FACT THAT WE ARE
9:50:54AM WITHIN 500 FEET.
9:50:56AM SO I DISAGREE WITH MR. HARTSELL.
9:51:00AM >>Mayor McLain: WE'VE HEARD FROM BOTH PARTIES ON THAT.
9:51:02AM NOW WE'LL HAVE THE APPELLANTS AND THE AFFECTED PARTIES
9:51:07AM PRESENT THEIR CASE.
9:51:08AM THEY WILL HAVE A TOTAL OF 45 MINUTES, WHICH THEY WILL
9:51:11AM ALLOCATE AMONG THEMSELVES IF THEY DESIRE.
9:51:14AM WE MENTIONED EARLIER THAT WE WILL PRESERVE THE 45 MINUTES OF
9:51:18AM TIME AND COUNCIL AT THE CONCLUSION OF THEIR PRESENTATION
9:51:23AM WILL THEN ASK ANY QUESTIONS THAT ARE PERTINENT.
9:51:29AM 45 MINUTES WILL START.
9:51:44AM >>Kathy Wyrofsky: OKAY.
9:51:45AM THANK YOU.
9:51:45AM I AM KATHY WYROFSKY.
9:51:47AM AS YOU KNOW, 10089 MAGNOLIA BEND, SHADOW WOOD, THE BROOKS.
9:51:53AM THANK YOU FOR SCHEDULING THIS HEARING.
9:51:54AM I SHOULD BE THE PRINCIPAL PRESENTER BUT WILL BE JOINED BY
9:51:58AM BILL CLARK WHO WILL ESTABLISH LOCATION, DENSITY, AND LATER

9:52:00AM SOME APPLICABLE FLORIDA STATUTES.
9:52:04AM DAVID SMALL WILL READ THE LEGAL MEMORANDUM PREPARED FOR US
9:52:07AM BY RALF BROOKES TO BE GIVEN IN HIS ABSENCE.
9:52:09AM HE WILL REVIEW OUR SUMMARY OF THE BAY POINT INCORPORATED
9:52:10AM VERSUS BAY COUNTY CASE, AND MARY BLAKELY WHO WILL LIST AREAS
9:52:19AM OF THE DEVELOPMENT ORDER THAT ARE INCONSISTENT WITH THE
9:52:21AM ESTERO LAND DEVELOPMENT CODE.
9:52:22AM BEFORE I BEGIN, I WOULD LIKE TO TELL EVERYONE PRESENT THAT I
9:52:24AM WAS TOLD BY THE VILLAGE THAT WE WOULD HAVE AN UNINTERRUPTED
9:52:27AM 45 MINUTES IN WHICH TO PRESENT MATERIAL OF OUR CHOICE.
9:52:30AM WHEN YOU CONSIDER THE CUMULATIVE IMPACT OF THESE
9:52:32AM PRESENTATIONS, YOU CANNOT HELP IN OUR MINDS BUT CONCLUDE

9:52:35AM THAT THE DEVELOPMENT ORDER DOS 2023-E010 BROOKS TOWN CENTER,
9:52:41AM LACKED NECESSARY AUTHORIZATION UNDER FLORIDA AND LOCAL LAW
9:52:46AM AND THEREFORE SHOULD BE REVERSED OR REMANDED.
9:52:48AM AS DE NOVO MEANS FROM THE BEGINNING OR MADE FROM SCRATCH, WE
9:52:52AM HOPE YOU ARE HERE WITH AN OPEN MIND TO HEAR OUR APPEAL
9:52:55AM PRESENTATION.
9:52:56AM WE MUST INCLUDE A REVIEW OF THE PROCESS LEADING UP TO THE
9:53:00AM APPROVAL OF THIS DEVELOPMENT ORDER AS WE WILL SHOW IT IS
9:53:03AM CRUCIAL NOT ONLY TO OUR APPEAL BUT TO THE LEGALITY OF THIS
9:53:06AM PROCESS.
9:53:06AM MANY RESIDENTS OF THE BROOKS ARE DISILLUSIONED AS WE DO NOT
9:53:11AM FEEL THE VILLAGE HAS ACTED IN OUR BEST INTEREST IN THIS
9:53:13AM CASE.

9:53:14AM OUR INTERESTS WERE NOT CONSIDERED AT ALL.
9:53:16AM AND, IN FACT, WILL BE NEGATIVELY AFFECTED BY THIS
9:53:19AM DEVELOPMENT ORDER AND DEVELOPMENT.
9:53:20AM BEFORE WE CONTINUE, I WISH TO SET THE RECORD STRAIGHT.
9:53:25AM I REFUTE THAT I HAVE EVER SAID THAT I USE THE CONSERVATION
9:53:32AM AREA AS I DO NOT.
9:53:33AM AND TO DO SO WOULD BE ILLEGAL.
9:53:36AM THE CONSERVATION AREA OWNED BY THE CDD IS FOR NATURAL
9:53:40AM WILDLIFE AND VEGETATION AND IS NOT TO BE USED BY RESIDENTS.
9:53:44AM OTHER THAN TO ENJOY THE VIEW.
9:53:48AM TRESPASSING IS ILLEGAL, HENCE OUR CONCERN WITH ITS PROXIMITY
9:53:51AM TO THE NEW DEVELOPMENT.
9:53:52AM AS FOR MY E-MAILS, I PLEAD GUILTY.
9:53:57AM I PLEAD GUILTY TO BEING TIRELESS IN MY DETERMINATION TO
9:54:01AM PROTECT THE RIGHTS OF MY NEIGHBORS AND HOPE ALL OFFICIALS
9:54:04AM AND STAFF TAKE THAT SAME APPROACH TO THEIR RESPONSIBILITIES.
9:54:08AM DAVID SMALL.
9:54:14AM >>David Small: GOOD MORNING.
9:54:15AM I'M DAVID SMALL.
9:54:16AM I LIVE AT 10055 MAGNOLIA BEND IN SHADOW WOOD.
9:54:21AM I'M GOING TO BE READING THE MEMORANDUM OF LAW PREPARED BY
9:54:23AM OUR ATTORNEY, RALF BROOKES, AS WELL AS PROVIDING ADDITIONAL
9:54:26AM COMMENTARY ON THE RELEVANCE OF THE BAY POINT VERSUS BAY
9:54:30AM COUNTY CASE AND WHY WE BELIEVE IT APPLIES.
9:54:33AM BEFORE I BEGIN, I'D LIKE TO INFORM EVERYONE HERE THAT I AM

9:54:37AM NOT A LAWYER IN PRACTICE NOR EDUCATION OR TRAINING.
9:54:41AM I HAVE ZERO LEGAL BACKGROUND.
9:54:43AM I'M SIMPLY HERE BECAUSE WE WERE NOT AFFORDED THE OPPORTUNITY
9:54:47AM TO SCHEDULE A DATE AND TIME IN WHICH OUR ATTORNEY WAS
9:54:51AM AVAILABLE.
9:54:51AM I'LL NOW READ A SUMMARY THAT OUR ATTORNEY PREPARED FOR US.
9:54:55AM DEVELOPMENT ORDERS MUST BE CONSISTENT WITH THE COMPREHENSIVE
9:54:59AM PLAN, EVEN WITH THE VESTED DRI.

9:55:03AM ONCE A LOCAL COMPREHENSIVE PLAN IS REVIEWED AND FOUND IN
9:55:08AM COMPLIANCE BY THE STATE LAND PLANNING AGENCY UNDER THE
9:55:11AM GROWTH MANAGEMENT COMMUNITY PLANNING ACT, THE DULY ADOPTED
9:55:16AM LOCAL COMPREHENSIVE PLAN IS THEN CONTROLLING LAW.
9:55:20AM ONCE A COMPREHENSIVE PLAN IS ADOPTED, ALL DEVELOPMENT ORDERS
9:55:24AM MUST BE CONSISTENT WITH THE COMPREHENSIVE PLAN PURSUANT TO
9:55:28AM FLORIDA STATUTE.
9:55:29AM THE COMMUNITY PLANNING ACT REQUIRES THAT A DEVELOPMENT ORDER
9:55:34AM SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN IF THE LAND
9:55:38AM USES, DENSITIES, OR INTENSITIES AND OTHER ASPECTS OF THE
9:55:42AM DEVELOPMENT PERMITTED BY SUCH ORDER OR REGULATION ARE
9:55:46AM COMPATIBLE WITH AND FURTHER THE OBJECTIVES, POLICIES, LAND
9:55:50AM USES, AND DENSITIES OR INTENSITIES OF THE COMPREHENSIVE
9:55:54AM PLAN.
9:55:55AM THIS HAS BEEN MADE ABUNDANTLY CLEAR IN CASE LAW FROM THE
9:55:59AM FLORIDA SUPREME COURT.
9:56:00AM A DRI THAT DOES NOT CONTAIN A DENSITY LIMITATION ON

9:56:05AM MULTIFAMILY USE IN THE BROOKS TOWN CENTER DOES NOT VEST A
9:56:10AM PARTICULAR DENSITY FOR A NEW MULTIFAMILY USE.
9:56:14AM IN THIS CASE, ANY CHANGES TO THE BUILT-OUT TOWN CENTER
9:56:18AM EXCHANGING RETAIL FOR MULTIFAMILY MUST BE CONSISTENT WITH
9:56:22AM THE DENSITY CONTAINED IN THE DULY ADOPTED COMPREHENSIVE PLAN
9:56:26AM FUTURE LAND USE MAP, WHICH HAPPENS TO BE HANGING ON THE WALL
9:56:31AM IN THIS BUILDING.
9:56:32AM IN PARTICULAR, THE DESIGNATION LIMITING DENSITY TO A MAXIMUM
9:56:35AM OF FOUR UNITS PER ACRE.
9:56:38AM ALTHOUGH SECTION 163 PROVIDES THAT, NOTHING IN THIS ACT
9:56:44AM SHALL LIMIT OR MODIFY THE RIGHTS OF ANY PERSON TO COMPLETE
9:56:49AM ANY DEVELOPMENT THAT HAS BEEN AUTHORIZED AS A DEVELOPMENT OF
9:56:52AM REGIONAL IMPACT PURSUANT TO CHAPTER 380 OR WHO HAS BEEN
9:56:56AM ISSUED A FINAL LOCAL DEVELOPMENT ORDER AND DEVELOPMENT HAS
9:57:01AM COMMENCED AND IS ACTING IN GOOD FAITH.
9:57:04AM IN 2004, THE FIRST DISTRICT COURT OF APPEALS MADE IT CLEAR
9:57:08AM THAT CHANGES TO A VESTED OR BUILT-OUT DRI MUST BE CONSISTENT
9:57:12AM WITH THE COMPREHENSIVE PLAN.
9:57:15AM THE DISTRICT COURT IN THE BAY POINT OPINION, WHICH WAS
9:57:18AM ISSUED AFTER THE EDGEWATER BEACH OWNERS ASSOCIATION VERSUS
9:57:22AM WALTON COUNTY, IT WAS MADE CLEAR THAT CHANGES TO A VESTED OR
9:57:26AM BUILT-OUT DRI MUST THEN BE CONSISTENT WITH THE COMPREHENSIVE
9:57:31AM PLAN.
9:57:32AM ALL DEVELOPMENT ORDERS MUST BE CONSISTENT WITH THE
9:57:34AM COMPREHENSIVE PLAN AS THE COMPREHENSIVE PLAN EXISTS ON THE

9:57:39AM DATE OF ISSUANCE OF THE DEVELOPMENT ORDER.
9:57:42AM IN EVALUATING AN APPLICATION FOR A DEVELOPMENT ORDER, A
9:57:46AM LOCAL GOVERNMENT CANNOT USE A PRIOR BUILT-OUT PORTION OF A
9:57:50AM DRI TO INVALIDATE A COMPREHENSIVE PLAN DESIGNATION AND

9:57:55AM REPLACE THE ERADICATED DESIGNATION WITH WHATEVER THE LOCAL
9:57:59AM GOVERNMENT SEES FIT TO APPLY IN A SETTLEMENT AGREEMENT.
9:58:03AM SUCH A CHANGE CAN ONLY BE MADE UNDER THE PLAN AMENDMENT
9:58:07AM PROCEDURES OF THE ACT.
9:58:09AM EVEN COMPLIANCE WITH THE ZONING AND LAND REGULATIONS IS NOT
9:58:12AM SUFFICIENT TO PROVIDE CONSISTENCY WITH THE MAXIMUM DENSITY
9:58:17AM CONTAINED IN THE COMPREHENSIVE PLAN.
9:58:18AM THE BROOKS DRI DEVELOPMENT ORDER MAKE IT CLEAR THAT ANY
9:58:24AM CHANGES TO THE BUILT-OUT COMPLETED TOWN CENTER SHALL BE
9:58:28AM SUBJECT TO THE PLANNED DEVELOPMENT REZONING PROCESS.
9:58:31AM ALL REZONINGS MUST BE CONSISTENT WITH THE DENSITY SET FORTH
9:58:36AM IN THE COMPREHENSIVE PLAN LIMITING DENSITY TO FOUR UNITS PER
9:58:39AM ACRE FOR THE TOWN CENTER PROPERTY.
9:58:41AM FURTHER, REZONINGS REQUIRING PROCEDURAL SAFEGUARDS OF TWO
9:58:47AM PUBLIC READINGS THAT PROVIDE FOR DUE PROCESS AND THE INITIAL
9:58:51AM BURDEN IS ON THE APPLICANT TO SHOW BY COMPETENT AND
9:58:54AM SUBSTANTIAL EVIDENCE THAT THE DEVELOPMENT ORDER CONFORMS
9:58:59AM STRICTLY TO THE MAXIMUM DENSITY IN THE COMPREHENSIVE PLAN.
9:59:02AM I'D ALSO LIKE TO BRIEFLY COMMENT CONCERNING NANCY STROUD'S
9:59:07AM DECEMBER 2023 MEMO.
9:59:08AM SHE CHALLENGED US ON THE MEANING OF THE BAY POINT VERSUS BAY

9:59:12AM COUNTY CASE.
9:59:13AM WE BELIEVE THE HOLDING IS STRAIGHTFORWARD.
9:59:16AM WHERE A DEVELOPER ENJOYS VESTED RIGHTS UNDER A DRI, THE
9:59:20AM DEVELOPMENT CAN PROCEED CONSISTENT WITH THE DRI,
9:59:24AM NOTWITHSTANDING CHANGES IN LAW.
9:59:25AM HOWEVER, THAT PROTECTION DOES NOT EXTEND TO CHANGES OR
9:59:29AM VARIATIONS FROM THE DRI THAT IN THEMSELVES DO NOT TRIGGER
9:59:33AM THE NEED FOR A FURTHER DRI.
9:59:35AM BUT WHICH CONFLICT WITH CURRENT LAW SUCH AS THE SUBSEQUENTLY
9:59:40AM ESTABLISHED COMPREHENSIVE PLAN.
9:59:42AM IN OTHER WORDS, YOU START WITH THE DEVELOPMENT THAT IS GOING
9:59:45AM TO HAVE A REGIONAL IMPACT THAT FORCES AND REQUIRES A
9:59:49AM DEVELOPER TO GO THROUGH THE EXPENSIVE AND TIME-CONSUMING DRI
9:59:53AM PROCESS.
9:59:53AM HOWEVER, ONCE THROUGH IT, THE DEVELOPER ENJOYS THE RIGHT TO
9:59:58AM CONSTRUCT WHAT HAS BEEN APPROVED IN THE DRI.
10:00:00AM THAT RIGHT IS VESTED SO THAT SUBSEQUENT CHANGES IN THE LAW
10:00:04AM DO NOT TRUMP THAT RIGHT WHICH WOULD OTHERWISE REQUIRE THE
10:00:07AM DEVELOPER TO GO BACK THROUGH THE DRI PROCESS AGAIN.
10:00:10AM IF, HOWEVER, THE DEVELOPER MAKES CHANGES IN THE DEVELOPMENT
10:00:15AM THAT ARE MINOR IN THE SENSE THEY WOULD NOT TRIGGER ANOTHER
10:00:19AM DRI REVIEW, THOSE CHANGES ARE NOT IMMUNE FROM COMPLIANCE
10:00:23AM WITH LOCAL STANDARDS SUCH AS A COMPREHENSIVE PLAN, EVEN IF
10:00:27AM THE COMPREHENSIVE PLAN WAS PUT IN PLACE SUBSEQUENT TO THE
10:00:31AM ORIGINAL DRI.

10:00:33AM IT WOULD BE NONSENSICAL TO SAY THAT SOMETHING THAT DID NOT
10:00:36AM EXIST WHEN THE VESTED RIGHT WAS CREATED COULD BE VESTED.
10:00:39AM THAT MAKES SENSE IN THAT EVERYTHING SHOULD BE SUBJECT TO
10:00:43AM REVIEW.
10:00:44AM THE DRI IS THE REVIEW FOR THE ORIGINAL PLAN.
10:00:48AM SIGNIFICANT CHANGES THAT ARE MAJOR WOULD BE REVIEWED IN A
10:00:50AM NEW DRI, BUT MINOR CHANGES WOULD SIMPLY SLIP THROUGH THE
10:00:55AM CRACKS UNLESS THEY WERE SUBJECT TO LOCAL STANDARDS SUCH AS
10:00:59AM THE COMPREHENSIVE PLAN.
10:01:00AM THANK YOU.
10:01:01AM I APPRECIATE YOUR TIME.
10:01:02AM I'LL TURN IT OVER TO BILL CLARK.
10:01:08AM >> MY NAME IS BILL CLARK.
10:01:11AM I LIVE AT 10097 MAGNOLIA BEND.
10:01:16AM GOOD MORNING, COUNCIL MEMBERS.
10:01:17AM THE COMPREHENSIVE PLAN OF THE VILLAGE OF ESTERO WAS
10:01:20AM ESTABLISHED IN 2018, AMENDED IN 2019, AND BY 2020 WAS FULLY
10:01:27AM RECOGNIZED BY THE STATE OF FLORIDA.
10:01:28AM ON THE SCREEN YOU CAN SEE THE FUTURE --
10:01:37AM >> GO AHEAD.
10:01:37AM KEEP GOING.
10:01:38AM >> YOU CAN SEE -- ON THE SCREEN YOU CAN SEE THE FUTURE LAND
10:01:44AM USE MAP OF ESTERO AND ALL THE BROOKS INCLUDING TOWN CENTER
10:01:49AM CLEARLY IN THE VILLAGE ONE NEIGHBORHOOD.
10:01:52AM THAT'S WHAT WE SAW AND I THINK WHAT DAVID REFERRED TO IN THE

10:01:56AM HALLWAY AS WE CAME IN.
10:01:58AM A SECOND MAP, WHICH I DON'T KNOW IF I HAVE HERE.
10:02:14AM THIS MAP IS THE ESTERO LAND DEVELOPMENT CODE MAP, AND IT'S
10:02:20AM INCONSISTENT WITH THE FUTURE LAND USE MAP, AS THIS IS NOT
10:02:24AM THE FORM TO CREATE THE REQUIRED CONSISTENCY, WE SIMPLY PASS
10:02:28AM OUT A NOTE THAT THE ZONING MAP WAS AMENDED IN 2021 AND IS
10:02:31AM INCONSISTENT WITH THE FUTURE LAND USE MAP.
10:02:34AM WE WOULD LIKE TO SEE THIS INCONSISTENCY CORRECTED.
10:02:38AM DENSITY WAS NOT ADDRESSED IN THE DRI FOR THE TOWN CENTER.
10:02:42AM IT IS THE COMPREHENSIVE PLAN THAT DETERMINES DENSITY AND THE
10:02:46AM COMPREHENSIVE PLAN FOR ESTERO SPECIFICALLY STATES
10:02:49AM PREDOMINANT LAND USES IN VILLAGE ONE NEIGHBORHOOD WILL BE
10:02:53AM LOWER DENSITY RESIDENTIAL USES WITH THE POTENTIAL TO ALLOW
10:02:55AM FOR MINOR COMMERCIAL OR LIMITED NEIGHBORHOOD COMMERCIAL,
10:03:00AM ALSO ASSISTED LIVING FACILITIES, PUBLIC AND QUASI-PUBLIC
10:03:04AM USES IN EACH CASE THROUGH A PUBLIC HEARING PROCESS.
10:03:07AM HIGHER DENSITIES GREATER THAN FOUR DWELLING UNITS PER ACRE,
10:03:12AM COMMERCIAL DEVELOPMENT GREATER THAN NEIGHBORHOOD CENTERS,
10:03:15AM AND INDUSTRIAL LAND USES ARE NOT PERMITTED.
10:03:17AM THE STANDARD DENSE RANGE IS FROM ONE DWELLING UNIT PER ACRE
10:03:21AM TO FOUR DWELLING UNITS PER ACRE.
10:03:23AM BONUS DENSITIES ARE NOT ALLOWED.

10:03:26AM THIS IS REINFORCED BY THE CHART IN THE COMP PLAN.

10:03:29AM I'LL NOW TURN IT OVER TO KATHY.

10:03:35AM >>Kathy Wyrofsky: KATHY WYROFSKY.

10:03:37AM IN ORDER TO UNDERSTAND THE KEY TO OUR APPEAL, WE NEED TO

10:03:42AM DISCUSS SOME HISTORY.

10:03:43AM THE CHRONOLOGY MARY GIBBS HAS PREPARED IS MISSING SOME

10:03:47AM CRUCIAL DETAILS IN OUR MIND.

10:03:49AM WHILE NANCY STROUD SHOWED CAUSE AGAINST THIS DEVELOPMENT IN

10:03:53AM 2022, WE BELIEVE THAT TWO IMPORTANT ARGUMENTS WERE LEFT OUT.

10:03:57AM THE 200 ADDITIONAL UNITS GRANTED TO THE DRI FOR THE OAK

10:04:04AM BROOK PROJECT IN 2013 WERE SPECIFIC TO THE LAND REFERRED TO

10:04:09AM AS THE MARTINI GLASS PARCEL OF THE BROOKS THAT IS NOW PEBBLE

10:04:13AM POINT.

10:04:13AM LEE COUNTY DRI 2012-00019 AND DRI 2012-00039, EXCUSE ME,

10:04:25AM SPECIFY THE SPECIFIC LOCATION, INCLUDING THE STRAP NUMBER.

10:04:29AM 1147250000001.0000.

10:04:39AM AND PROVIDED A DRAWING OF THE SITE FOR THE APPROVED

10:04:43AM ADDITIONAL 200 UNITS.

10:04:44AM THIS STRAP NUMBER IS SPECIFIC TO THE PEBBLE POINT OAK BROOK

10:04:49AM PROPERTY.

10:04:49AM FURTHER, IT EXPRESSLY MANDATED MASTER PLAN CONSISTENCY.

10:04:56AM LEE COUNTY'S AT THAT TIME.

10:04:58AM INDEED, THERE WAS A FURTHER RESTRICTION OF THESE ADDITIONAL

10:05:01AM UNITS.

10:05:02AM SECTION B CONDITIONS OF THE APPROVAL STATE SPECIFICALLY --

10:05:06AM AND THIS IS THE HEARING EXAMINER -- AND IS IN THE HEARING

10:05:09AM EXAMINER'S REPORT RECOMMENDATIONS AS WELL.

10:05:11AM ALL ADMINISTRATIVE APPROVALS GRANTED AFTER THE ADOPTION OF

10:05:16AM ZONING RESOLUTION Z 97037 AS AMENDED ALSO REMAIN IN FULL

10:05:22AM FORCE AND EFFECT, EXCEPT THE USE OF MULTIFAMILY MID-RISE IS

10:05:28AM NOT A PERMITTED USE.

10:05:30AM AND THIS USE IS REMOVED FROM THE APPROVED SCHEDULE OF USES

10:05:34AM AND PROPERTY DEVELOPMENT REGULATIONS ON THE MASTER CONCEPT

10:05:40AM PLAN.

10:05:41AM THE DEFINITION OF MID-RISE MULTIFAMILY RESIDENCES AT THAT

10:05:45AM TIME IN LEE COUNTY MCP IS THREE TO TEN STORIES.

10:05:49AM REMOVING THIS REQUIRES THAT ALL OF THE RESIDENCES BUILT WITH

10:05:54AM ANY OF THE 200 ADDITIONAL UNITS MUST BE ONE TO TWO STORIES

10:05:59AM IN HEIGHT.

10:06:00AM THIS IS EQUIVALENT TO THE CURRENT ESTERO LDC REQUIREMENT FOR

10:06:04AM LOW DENSITY BUILDING HEIGHTS OF 35 FEET AND NEVER 50 FEET.

10:06:09AM THE COUNTY EXPLAINED THAT THIS CONDITION WAS TO KEEP THE NEW

10:06:12AM DEVELOPMENT COMPATIBLE WITH THE REST OF THE BROOKS.

10:06:15AM FURTHER, IN HER PETITION TO LEE COUNTY FOR THE ADDITIONAL

10:06:19AM UNITS FOR PEBBLE POINT, MS. MONTGOMERY STATED, ADDING THOSE

10:06:23AM 200 UNITS DON'T HAVE AN IMPACT.

10:06:26AM I THINK WE WOULD ALL DISAGREE WITH THAT.
10:06:28AM SHE GOES ON TO SAY BUT ADDING THE UNIT IS NECESSARY IN ORDER
10:06:33AM TO DEVELOP -- ACTUALLY DEVELOP THE PROPERTY.
10:06:36AM IN CHIP'S STAFF REPORT HE INDICATES THERE ARE 48 UNITS LEFT.
10:06:42AM THIS REFERS TO THE VESTED UNITS LEFT IN THE 1997 DRI.
10:06:46AM FOR THE BROOKS.
10:06:47AM SHE SAID FURTHER, BUT YOU KNOW, WHEN MOST OF THE PROPERTY IN

10:06:51AM HERE WAS SOLD, IT WAS SOLD WITH AN ALLOCATION OF UNITS.
10:06:55AM SO AS NOT TO GET IN ANY KIND OF LEGAL ENTANGLEMENT WITH
10:06:59AM ANYBODY ELSE IF WE DON'T THINK THOSE CAN BE DEVELOPED
10:07:01AM ANYWHERE.
10:07:02AM SHE ALSO STATED, THIS IS JUST THE 200 UNITS THAT WILL GO ON
10:07:06AM THE SUBJECT PROPERTY.
10:07:09AM SHE LATER CONFIRMED, AS YOU HAVE HEARD, IT'S A DEVELOPED
10:07:13AM AREA.
10:07:13AM IT IS AN ESSENTIALLY BUILT-OUT DRI.
10:07:16AM THE VESTED RIGHTS FOR THE BROOKS DRI EXPIRED WITH THE FINAL
10:07:21AM DEVELOPMENT ORDER OF PEBBLE POINT.
10:07:23AM IT IS FULLY DEVELOPED.
10:07:26AM IT USED THE REMAINING 48 UNITS AND AN ADDITIONAL
10:07:30AM SITE-SPECIFIC 42 UNITS FOR A TOTAL OF 90 RESIDENTIAL UNITS.
10:07:35AM THAT LEFT 158 UNUSED UNITS.
10:07:40AM THE DEVELOPMENT PLAN FOR TOWN CENTER STARTED WITH 157 UNITS
10:07:44AM USING THE SAME LAWYER AND THE SAME ENGINEERING COMPANY.
10:07:48AM INDEED, THE ENGINEERING COMPANY DESIGNED THE ORIGINAL TOWN
10:07:51AM CENTER UNDER THE BROOKS DRI AROUND 2008.
10:07:54AM THE TOWN CENTER WAS COMPLETED PER THE DRI AND RECEIVED A
10:07:58AM FINAL DEVELOPMENT ORDER.
10:08:00AM THESE EXTRA UNITS CANNOT BE TRANSFERRED FROM STRAP NUMBER
10:08:04AM 1147250000001.0000.
10:08:09AM WHAT IS NOW PEBBLE POINT.
10:08:12AM TO CHANGE THE LAND USE AND DENSITY ON THE TOWN CENTER SITE

10:08:17AM REQUIRES A REZONING OR COMP PLAN AMENDMENT BOTH OF WHICH
10:08:21AM WOULD HAVE BEEN EASY TO FIGHT ON COMPATIBILITY AND DENSITY.
10:08:24AM BUT THE SIGNING OF THE SETTLEMENT AGREEMENT REMOVED THESE
10:08:28AM REQUIREMENTS AND REMOVED YOUR POLICING POWER.
10:08:32AM THAT SAID, BECAUSE THIS CLAIM WAS NOT JUSTIFIED, IT SEEMS
10:08:36AM MISLEADING AND POSSIBLY DECEPTIVE TO US.
10:08:38AM THE DEVELOPMENT ORDER, AND WE BELIEVE THE VERY SETTLEMENT
10:08:41AM AGREEMENT, SHOULD BE VOID.
10:08:43AM CLEARLY, ANY RESIDENTIAL DEVELOPMENT APPROVED IN THE FUTURE
10:08:46AM AT TOWN CENTER OR IN THE BROOKS DRI OR COMP PLAN MUST BE ONE
10:08:50AM TO TWO STORIES OR A MAXIMUM OF 35 FEET TALL.
10:08:53AM FURTHER, THE BUILD-OUT DATE FOR THE DRI IS EXPIRED.
10:08:58AM THERE ARE NO REMAINING DRI VESTED RIGHTS AS ALL ADDITIONAL
10:09:02AM WERE SITE-SPECIFIC ONLY.

10:09:18AM >> GOOD MORNING.
10:09:19AM MY NAME IS MARYANN BLAKELY.
10:09:22AM I LIVE AT 10039 MAGNOLIA BEND IN SHADOW WOOD.
10:09:27AM RIGHT BEHIND THE PROPOSED COMPLEX.
10:09:32AM THE APPROVED DEVELOPMENT ORDER IS INCONSISTENT WITH THE
10:09:38AM ESTERO LAND DEVELOPMENT CODE.
10:09:41AM AND THE ESTERO MASTER COMPREHENSIVE PLAN.
10:09:43AM THE LDC NUMBERS I WILL BE REFERRING TO ARE FROM THE LAND
10:09:48AM DEVELOPMENT CODE OF THE VILLAGE OF ESTERO.
10:09:51AM FIRST, LET'S REVIEW THE DEVIATIONS PROVIDED BY THE PLANNING
10:09:56AM ZONING AND DESIGN BOARD.

10:09:57AM NUMBER ONE, THE DEVIATION FROM LAND DEVELOPMENT CODE TABLE
10:10:04AM 5-204-B-1, MINIMUM NUMBER OF STREET PARKING WAS REDUCED BY
10:10:11AM 21 SPACES.
10:10:12AM REDUCED FROM THE MINIMUM.
10:10:15AM WE HAVE ALREADY BEEN TOLD OF PARKING ISSUES AT THE TOWN
10:10:19AM CENTER MERCHANTS ARE NOT HAPPY.
10:10:21AM WHERE WILL THE RESIDENTS AND THEIR GUESTS PARK?
10:10:27AM THIS IS NOT AN URBAN AREA WITH OTHER PARKING CHOICES.
10:10:32AM THERE IS NO NEIGHBORHOOD PARKING ACCESSIBLE.
10:10:37AM THIS IS A SERIOUS SAFETY ISSUE.
10:10:40AM WITHOUT AMPLE PARKING, RESIDENTS MAY BE FORCED TO PARK ALONG
10:10:44AM THREE OAKS AND COCONUT.
10:10:45AM NOT ONLY IS THIS ILLEGAL, BUT IT COULD CAUSE A TREMENDOUS
10:10:49AM SAFETY ISSUE FOR RESIDENTS OF THE BROOKS.
10:10:53AM AS YOU KNOW, THIS IS ALREADY A VERY BUSY INTERSECTION,
10:10:57AM ESPECIALLY AT HIGH TRAFFIC HOURS, AND IT WILL ONLY GET MORE
10:11:01AM SO WITH THE PLANNED DEVELOPMENT AT 41 AND COCONUT.
10:11:04AM THIS DEVIATION CLEARLY ONLY HELPS THE LAND DEVELOPER AND
10:11:10AM LANDOWNER AND DEVELOPER ADD MORE UNITS THAT ARE FEASIBLE ON
10:11:13AM THIS SITE.
10:11:14AM THIS IS A HUGE NEGATIVE FOR US RESIDENTS.
10:11:17AM NUMBER TWO, THE DEVIATION APPROVED FROM THE LDC 7-206 IS NOT
10:11:26AM TO CURRENT CODE.
10:11:27AM THIS CLEARLY IS JUST FOR THE CONVENIENCE OF THE LANDOWNER
10:11:31AM AND THE BUILDER AND COULD BE A FUTURE ISSUE WITH FUTURE

10:11:35AM HURRICANES.
10:11:36AM ALL ELEVATION MUST BE TO CURRENT CODE.
10:11:39AM THIS IS CLEAR INCONSISTENCY AND SHOULD NOT BE ALLOWED.
10:11:43AM NUMBER THREE, THE THIRD DEVIATION ONCE AGAIN IS NOT IN THE
10:11:48AM INTEREST OF US RESIDENTS.
10:11:51AM LDC 5-604-C, TABLE 5-604-C, LIST THE MAXIMUM ALLOWED HEIGHT
10:12:00AM FOR EXTERIOR LIGHTING TO BE 15 FEET.
10:12:05AM BUT, AGAIN, THE BOARD APPROVED A HIGHER HEIGHT OF 20 FEET.
10:12:08AM THIS CLEARLY WILL BE DISRUPTIVE TO CURRENT RESIDENTS AND OUR
10:12:13AM WILDLIFE ADJACENT TO OUR PRESERVE AND SHOULD NOT BE ALLOWED.

10:12:17AM THE CONSERVATION AREAS BEHIND THE TOWN CENTER CONTAIN MUCH
 10:12:23AM WILDLIFE, SOME OF WHICH IS FEDERALLY AND STATED PROTECTED.
 10:12:28AM INDEED, WE WOULD ARGUE FOR MORE RESTRICTIVE LIGHTING IN THIS
 10:12:31AM DEVELOPMENT AS ANY LIGHTING WOULD CLEARLY BE SEEN AND DAMAGE
 10:12:34AM THE VIEW AND SERENITY OF THE NEARBY NEIGHBORS.
 10:12:38AM OTHER INCONSISTENCIES INCLUDE, NUMBER FOUR, LDC SECTION 1
 10:12:47AM THROUGH 5, THE LAND USE MAP MAY LIST MULTIUSE FOR THE LAND
 10:12:52AM BUT THE DENSITY IS DETAILED IN THE COMP PLAN.
 10:12:55AM THE LAND DEVELOPMENT CODE SECTION 1 THROUGH 5 REQUIRES
 10:13:00AM CONSISTENCY WITH THE COMPREHENSIVE PLAN AND STATES, THIS LDC
 10:13:04AM IS INTENDED TO ENSURE THAT ALL DEVELOPMENT WITHIN THE
 10:13:08AM VILLAGE IS CONSISTENT WITH THE GOALS, OBJECTIVES, AND
 10:13:12AM POLICIES AND FUTURE LAND USE MAP, FLUM, OF THE COMPREHENSIVE
 10:13:18AM PLAN.
 10:13:18AM WHERE THERE ARE CLEAR CONFLICTS BETWEEN THE COMPREHENSIVE

 10:13:23AM PLAN AND THIS LDC, THE COMPREHENSIVE PLAN SHALL CONTROL.
 10:13:28AM THIS DEVELOPMENT IS ENTIRELY INCONSISTENT WITH THE DENSITY
 10:13:32AM REQUIRED IN THE COMPREHENSIVE PLAN.
 10:13:36AM FUTURE SECTION 1502 STATES ALL DEVELOPMENT PERMITS AS
 10:13:50AM DEFINED IN STATE LAW INCLUDING BUT NOT LIMITED TO
 10:13:54AM DEVELOPMENTS OF REGIONAL IMPACT DRIs, AMENDMENTS TO THE
 10:13:57AM ZONING DISTRICTS, MAPS, REZONING PLANNED DEVELOPMENTS,
 10:14:01AM ET CETERA, SHALL BE CONSISTENT WITH THE COMPREHENSIVE PLAN.
 10:14:06AM NUMBER 5, LDC 3-301A REQUIRES THAT DEVELOPMENT MUST PROVIDE
 10:14:13AM APPROPRIATELY LOCATED LANDS FOR RESIDENTIAL DEVELOPMENT THAT
 10:14:19AM ARE CONSISTENT WITH THE GOALS, POLICIES, AND OBJECTIONS --
 10:14:24AM OBJECTIVES OF THE COMPREHENSIVE PLAN AGAINST THIS
 10:14:26AM DEVELOPMENT ORDER IS NOT CONSISTENT.
 10:14:28AM NUMBER 6, LDC 3-301-E, REQUIRES THAT RESIDENTIAL
 10:14:36AM NEIGHBORHOODS ARE PROTECTED FROM INCOMPATIBLE DEVELOPMENT.
 10:14:40AM CLEARLY THIS FOUR-STORY, 134 UNIT APARTMENT COMPLEX IN THE
 10:14:45AM MIDDLE OF THE RESIDENTIAL BROOKS OF VILLAGE NEIGHBORHOOD 1
 10:14:48AM IS, AGAIN, CLEARLY INCONSISTENT.
 10:14:51AM NUMBER 7, LDC 3-301, RESIDENTIAL DISTRICTS.
 10:14:58AM WE HAVE CLEARLY SHOWN TOWN CENTER IN ALL OF THE BROOKS TO BE
 10:15:01AM IN THE VILLAGE NEIGHBORHOOD ONE.
 10:15:03AM HAVE A MAXIMUM BUILDING HEIGHT OF 35 FEET AND DENSITY
 10:15:08AM MAXIMUM OF FOUR DWELLING UNITS PER ACRE.
 10:15:10AM THIS DEVELOPMENT ORDER ALLOWS FOR 50-FOOT HIGH RESIDENTIAL
 10:15:15AM HEIGHT CLEARLY INCONSISTENT AND CLEARLY NOT IN THE INTEREST

 10:15:19AM OF US NEIGHBORS.
 10:15:20AM AND RESIDENTS.
 10:15:24AM WE WILL HAVE APARTMENT DWELLERS THAT CAN LOOK INTO MY
 10:15:27AM NEIGHBORS' BACKYARDS.
 10:15:28AM PRIVACY AND VIEWS ARE BEING DESTROYED.
 10:15:30AM THIS IS COMPLETELY UNACCEPTABLE.

10:15:32AM NUMBER 8, LDC 3-303 REQUIRES DISTRICT REGULATIONS TO
10:15:40AM DISCOURAGE DEVELOPMENT THAT SUBSTANTIALLY INTERFERES WITH
10:15:43AM THE QUIET RESIDENTIAL NATURE OF THE DISTRICT, AND THIS WILL
10:15:47AM CLEARLY INTERFERE WITH OUR QUIET AND WITH ALL THE QUIET
10:15:51AM NATURE OF THE PRESERVE IN GENERAL.
10:15:53AM NUMBER 9, LDC 3-703, REQUIRES THAT RESIDENTIAL DISTRICTS
10:16:00AM WILL BE CONSISTENT WITH THE GOALS, POLICIES, AND OBJECTIVES
10:16:04AM IN THE COMPREHENSIVE PLAN.
10:16:09AM NUMBER 10, 4-101.
10:16:12AM AS THE ENTIRE NINE-PLUS ACRE LOT IS BEING CONSIDERED AS ONE
10:16:16AM DUE TO THE OWNERSHIP CONTRACT, THE SITE CANNOT CONTAIN MORE
10:16:20AM THAN THE SINGLE PRINCIPAL USE PER LOT.
10:16:22AM IT IS INCONSISTENT WITH PART OF THE LAND DEVELOPMENT CODE.
10:16:27AM NUMBER 11, LDC-408C REQUIRES THAT THIS PLAN HAVE 35% OPEN
10:16:37AM SPACE, BUT IT DOES NOT.
10:16:39AM NUMBER 12, EARLIER WE PASSED OUT A PAGE FROM LDC WITH AN
10:16:45AM ILLUSTRATION.
10:16:45AM I'D LIKE TO SHOW YOU THE LOOK AT THE LDC FIGURE 5-706B,
10:16:51AM BUILDING TRANSITION.

10:16:52AM CLEARLY THIS FOUR-STORY BUILDING NEXT TO THE TOWN CENTER
10:16:56AM SHOPS MEETS THE "DO NOT DO THIS" ILLUSTRATION.
10:16:59AM ANOTHER MAJOR INCONSISTENCY.
10:17:03AM THIS BUILDING WILL FOREVER BE AN EYESORE IN THE BROOKS.
10:17:08AM IT IS FAR TOO LARGE AND WILL BE A VISUAL BLIGHT.
10:17:12AM NUMBER 13, PARKING RECOMMENDATIONS IN THE ESTERO
10:17:19AM COMPREHENSIVE PLAN FOR BUILDINGS OF THIS TYPE ARE NOT BEING
10:17:22AM FOLLOWED.
10:17:23AM THERE ARE MORE, BUT THESE ARE THE FUNDAMENTAL FLAW IN
10:17:28AM DENSITY ALLOWANCE THAT ENOUGH REASON TO VOID THIS
10:17:31AM DEVELOPMENT ORDER AS INCONSISTENT.
10:17:33AM WE ARE FURIOUS THAT OUR INTERESTS HAVE NOT BEEN CONSIDERED.
10:17:41AM YOU HAVE THE RESPONSIBILITY TO PROTECT OUR INTERESTS AND OUR
10:17:46AM QUALITY OF LIFE.
10:17:48AM THIS DEVELOPMENT AND THIS PROCESS ARE DOING JUST THE EXACT
10:17:53AM OPPOSITE.
10:17:54AM YOU ARE DAMAGING OUR QUALITY OF LIFE AND THE VALUE OF OUR
10:17:57AM HOMES, AND THIS IS UNACCEPTABLE.
10:18:00AM I'M SURE THAT IF YOU ASKED THE MAJORITY OF PEOPLE IN THIS
10:18:05AM ROOM RIGHT NOW, THEY WOULD DEFINITELY TELL YOU THAT THIS IS
10:18:09AM NOT IN YOUR RESIDENTS' BEST INTEREST.
10:18:13AM THANK YOU.
10:18:17AM [APPLAUSE]
10:18:21AM >>Kathy Wyrofsky: KATHY WYROFSKY.
10:18:23AM THIS WAS NOT A TRANSPARENT PROCESS.

10:18:29AM THERE WERE NO PUBLIC MEETINGS OR DISCUSSIONS OF THE PROJECT
10:18:31AM OR ITS LITIGATION FOR TWO YEARS.

10:18:33AM AND YOU KNEW THAT THE RESIDENTS OF THE BROOKS WERE VERY
10:18:36AM INTERESTED.
10:18:37AM WE WERE TO BELIEVE THERE WAS NO DISCUSSION, NO WORK-AROUNDS,
10:18:41AM NO LEGAL COUNSEL.
10:18:43AM THANK YOU, MAYOR McLAIN, FOR BEING THE ONLY COUNCILMEMBER
10:18:47AM TO CARE ENOUGH TO INVESTIGATE OUR SITUATION AND TO SHOW ANY
10:18:50AM CONCERN FOR OUR INTERESTS.
10:18:53AM LAST WEEK, YOU VISITED WITH ME AND SEVEN OF MY NEIGHBORS TO
10:18:56AM SEE HOW NEGATIVELY IMPACTED WE WILL BE.
10:18:58AM HOWEVER, WHEN ONE OF THE NEIGHBORS ASKED MAYOR McLAIN HOW
10:19:04AM THIS PROCESS COULD HAVE TAKEN PLACE WITHOUT MEETINGS OR EVEN
10:19:07AM SHADE MEETINGS, YOU DID TELL US THAT AT LEAST TWO EXECUTIVE
10:19:11AM SESSIONS WERE HELD TO DISCUSS THE ONGOING LITIGATION, WHICH
10:19:18AM I BELIEVE.
10:19:18AM BUT THEN WHY WHEN RALF BROOKES AND I ASKED THIS SPECIFIC
10:19:21AM QUESTION DID VILLAGE COUNSEL ROB ESCHENFELDER WRITE BACK AND
10:19:28AM SAY, THE VILLAGE COUNCIL DID NOT CONDUCT A LITIGATION SHADE
10:19:31AM MEETING RELATED TO THIS MATTER.
10:19:33AM THERE ARE, THEREFORE, NO RECORDS RESPONSIVE TO YOUR REQUEST.
10:19:38AM WE BELIEVE SCHEDULING MEETINGS THAT ARE THIS IMPORTANT TO
10:19:40AM THE PUBLIC AT A TIME WHEN THEY ARE NOT IN FLORIDA IS
10:19:43AM UNREASONABLE.
10:19:44AM BEING TOLD THAT APPROVAL IS EXPECTED PRIOR TO PUBLIC

10:19:48AM INVOLVEMENT IS UNFAIR.
10:19:50AM BEING DENIED PRIOR PARTICIPATION IN PROCEEDINGS FOR AN
10:19:55AM INVALID REASON IS WRONG.
10:19:57AM YOU KNOW I DID NOT HAVE TO BE THE ONLY OR THE MOST ADVERSELY
10:20:00AM AFFECTED INDIVIDUAL, YET THAT WAS ALLOWED TO STAND BY STAFF,
10:20:06AM VILLAGE COUNCIL, AND THE BOARD.
10:20:08AM THE PLANNING ZONING AND DESIGN BOARD CHAIRMAN DIDN'T KNOW
10:20:11AM WHERE DEVELOPMENTS ARE IN ESTERO WHEN HE INCORRECTLY STATED
10:20:14AM AT THE OCTOBER 10th MEETING THAT THE FOUR-STORY APARTMENT
10:20:17AM COMPLEX AT WILLIAMS ROAD AND VIA COCONUT WAS IN THE BROOKS
10:20:20AM DRI.
10:20:20AM ENGINEER CHARLES KREBS OF HOLE MONTES TOLD THE PUBLIC AND
10:20:26AM THE BOARD AT THE SAME MEETING THAT THERE EXISTS A WOODEN
10:20:29AM FENCE ALL ALONG THE CONSERVATION LAND BORDER AND TOWN
10:20:33AM CENTER.
10:20:33AM THIS IS UNTRUE.
10:20:34AM THERE WERE ADDITIONAL FALSE STATEMENTS AT THAT OCTOBER
10:20:38AM MEETING.
10:20:47AM >> AGAIN.
10:20:47AM I'M BILL CLARK ON MAGNOLIA.
10:20:49AM PER FLORIDA STATUTE 112.3143, ANY ELECTED OR APPOINTED
10:20:56AM OFFICER SHALL MAKE REASONABLE EFFORT TO DISCLOSE THE NATURE
10:20:59AM OF HIS OR HER INTEREST AS A PUBLIC RECORD IN A MEMORANDUM
10:21:02AM FILED WITH THE PERSON RESPONSIBLE FOR RECORDING THE MINUTES

10:21:05AM OF THE MEETING WHO SHALL INCORPORATE THE MEMORANDUM IN THE

10:21:08AM MINUTES.

10:21:08AM THE MEMORANDUM MUST BE FILED NO LATER THAN 15 DAYS AFTER THE

10:21:11AM VOTE.

10:21:12AM NO OFFICER SHALL VOTE IN AN OFFICIAL CAPACITY UPON ANY

10:21:17AM MEASURE WHICH WOULD INURE TO HIS OR HER SPECIAL PRIVATE GAIN

10:21:20AM OR LOSS.

10:21:20AM IT WOULD SEEM INAPPROPRIATE ONCE AN OFFICER HAS RECEIVED A

10:21:24AM GAIN FROM WORK THAT THEY COULD THEN THINK THEY HAVE NO

10:21:28AM CONFLICT WHEN DISCUSSING OR VOTING ON THE VERY PROJECT THAT

10:21:31AM PROVIDED THIS GAIN.

10:21:32AM THE STATUTE GOES ON TO REQUIRE ANY SUCH MEMORANDUM SHALL

10:21:36AM BECOME A PUBLIC RECORD IMMEDIATELY PROVIDED TO OTHER AGENCY

10:21:39AM MEMBERS AND SHALL BE READ PUBLICLY AT THE NEXT MEETING HELD

10:21:43AM SUBSEQUENT TO THE FILING OF THE WRITTEN MEMORANDUM.

10:21:47AM FOR THE RECORD PARTICIPATE MEANS ANY ATTEMPT TO INFLUENCE A

10:21:50AM DECISION WHENEVER A PUBLIC OFFICER IS BEING CONSIDERED FOR

10:21:52AM APPOINTMENT OR REAPPOINTMENT, THE APPOINTING BODY SHALL

10:21:56AM CONSIDER THE NUMBER AND NATURE OF THE MEMORANDA AND CONFLICT

10:22:01AM PREVIOUSLY FILED.

10:22:02AM IN OCTOBER, KATHY PRINTED OUT ALL OF THE MINUTES OF THE LAST

10:22:06AM TWO YEARS AND NO CASE WAS A FORM 8B ATTACHED OR AN ORAL

10:22:10AM DISCLOSURE INCLUDED.

10:22:12AM HOW ARE APPOINTED OFFICIALS BEING SCREENED FOR CONFLICTS

10:22:15AM WITHOUT REQUIRED DECLARATIONS AND DECLARATION FORMS?

10:22:20AM FLORIDA STATUTE 112.311 STATES THAT NO OFFICER SHALL HAVE AN

10:22:25AM INTEREST, FINANCIAL OR OTHERWISE, DIRECT OR INDIRECT, ENGAGE

10:22:29AM IN ANY BUSINESS TRANSACTION OR PROFESSIONAL ACTIVITY OR

10:22:32AM INCUR ANY OBLIGATION OF ANY NATURE WHICH IS A SUBSTANTIAL

10:22:37AM CONFLICT WITH THE PROPER DISCHARGE OF HIS OR HER DUTIES IN

10:22:40AM THE PUBLIC INTEREST.

10:22:42AM RECOGNIZING THAT PROMOTING THE PUBLIC INTEREST IN

10:22:46AM MAINTAINING THE RESPECT OF THE PEOPLE IN THE GOVERNMENT MUST

10:22:49AM BE THE FOREMOST CONCERN.

10:22:51AM PLEASE NOTE THAT MR. BARRY JONES WAS LISTED AS A SHAREHOLDER

10:22:55AM OF THE ENGINEERING FIRM OF HOLE MONTES WHEN HE WAS

10:22:58AM REAPPOINTED TO THE BOARD IN 2021.

10:23:01AM HOLE MONTES DESIGNED THE SITE FOR THE TOWN CENTER APARTMENT

10:23:05AM COMPLEX WHICH WAS PRESENTED TO THE TOWN IN 2020, IN 2021.

10:23:11AM MR. JONES MADE THE MOTION TO APPROVE THE FINAL DEVELOPMENT

10:23:15AM ORDER AND VOTED TO APPROVE IT.

10:23:19AM WHILE NANCY STROUD WRITES THAT THIS VOTE MAY NOT HAVE

10:23:24AM MATTERED IT DOESN'T MAKE ANY DIFFERENCE.

10:23:25AM IT'S LIKE GOING THROUGH A RED LIGHT, GETTING PULLED OVER BY

10:23:28AM A COP, WELL, I DIDN'T HAVE AN ACCIDENT.

10:23:30AM NO, IT'S AGAINST THE RULES.

10:23:32AM I'M IN THE SECURITIES BUSINESS.
10:23:33AM I'M SUBJECT TO A LOT OF RULES AND WITH CONFLICTS.
10:23:37AM IF I'M ON A BOARD, I CAN'T HAVE ANYTHING TO DO WITH ANY
10:23:41AM BENEFIT OF BUSINESSES OTHERWISE I COULD GET IN A LOT OF
10:23:44AM TROUBLE.

10:23:44AM SO CONFLICTS OF INTEREST ARE IMPORTANT TO ENFORCE.
10:23:47AM AS OF THE SEPTEMBER 12, 2023, MEETING, MR. MICHAEL SHEELEY
10:23:55AM RECUSED HIMSELF FROM VOTING ON A MATTER CONCERNING THE
10:23:57AM ABBIATI DENTAL BUILDING.
10:24:01AM NO DECLARATORY DETAIL WAS PROVIDED.
10:24:03AM STILL NO FORM 8B ATTACHED TO THE MINUTES AND NO DECLARATION
10:24:06AM WAS READ AT THE NEXT MEETING THOUGH HIS FIRM DESIGNED THE
10:24:10AM BUILDING.
10:24:10AM THERE ARE OTHER SIMILAR CASES BUT IN THE INTEREST OF TIME
10:24:15AM I'M NOT GOING TO GO THROUGH THESE.
10:24:16AM IN SUMMARY, WE DO NOT BELIEVE THAT THERE ARE ANY REMAINING
10:24:19AM VESTED RIGHTS IN THE 1997 OR THE 2013 DRI RESOLUTIONS.
10:24:24AM ALL ADDITIONAL 200 UNITS ADDED IN THE 2013 WERE
10:24:27AM SITE-SPECIFIC FOR THE TOWN AND NOT FOR THE TOWN CENTER.
10:24:31AM FURTHER CONDITION WAS THAT THE BUILDING HEIGHT COULD ONLY BE
10:24:34AM TWO STORIES MAXIMUM SO THAT THESE RESIDENTS COULD BE
10:24:37AM COMPATIBLE WITH THE BROOKS CURRENT DENSITY.
10:24:39AM FURTHER, WE THINK THE DRI BUILD-OUT TIME EXTENSION IS
10:24:43AM EXPIRED.
10:24:43AM THIS MAY HAVE CONTRIBUTED TO THE RUSH OF MEETINGS AND
10:24:46AM DECISIONS THIS YEAR, AND THIS DEVELOPMENT ORDER CLEARLY
10:24:49AM REQUIRED A REZONING APPLICATION AND COMPREHENSIVE PLAN
10:24:53AM APPLICATION.
10:24:54AM WHICH, OF COURSE, WOULD HAVE BEEN CHALLENGED AND REQUIRED TO
10:24:57AM COMPLY WITH THE 2018 ESTERO COMPREHENSIVE PLAN.

10:25:00AM DENSITY WAS NOT SPECIFIED IN THE DRI, BUT IT IS SPECIFIED IN
10:25:05AM THE ESTERO COMPREHENSIVE MASTER PLAN, THE ESTERO FUTURE LAND
10:25:08AM USE MAP PUTS ALL THE BROOKS, INCLUDING A TOWN CENTER
10:25:12AM VILLAGE, CLEARLY IN NEIGHBORHOOD ONE, AN AREA OF LOW
10:25:15AM DENSITY, NO EXCEPTIONS.
10:25:16AM THIS RESTRICTS THE TOWN CENTER AND ALL OF THE BROOKS TO THE
10:25:20AM MAXIMUM 35 FEET.
10:25:22AM THERE ARE MANY INCONSISTENCIES WITH THE DEVELOPMENT ORDER
10:25:25AM AND THE LAND DEVELOPMENT CODE OF ESTERO PROVIDING FURTHER
10:25:28AM CAUSE FOR APPEAL OF THE APPROVAL.
10:25:30AM KATHY WROTE TO THE LANDOWNERS AND THE DEVELOPER THIS PAST
10:25:34AM SUMMER AND ASKED THAT THEY WOULD MEET WITH THE RESIDENTS TO
10:25:37AM DISCUSS BETTER OPTIONS OR MORE COMPATIBLE OPTIONS FOR THE
10:25:41AM TOWN CENTER.
10:25:41AM WE HAVE NEVER HAD ANY RESPONSE.
10:25:43AM WE WERE NOT INVOLVED IN THE PROCESS.

10:25:45AM MY VIEW IS DIRECTLY ACROSS FROM THIS DEVELOPMENT.
10:25:49AM I CAN HEAR RIGHT NOW WHEN THEY PICK UP THE GARBAGE AND SO ON
10:25:54AM AND THE NOISE.
10:25:55AM THIS BUILDING HEIGHT WILL BE ABOVE THE TREE LINE.
10:25:58AM I WILL SEE THIS DEVELOPMENT VERY CLEARLY.
10:26:01AM IT WILL CHANGE THE VALUE AND THE ENJOYMENT OF MY HOME THAT I
10:26:06AM WAS HOPING THAT THE CITY COUNCIL WOULD DEFEND.
10:26:09AM NOT TO MENTION THE EXTREME DISRUPTION THAT THIS DEVELOPMENT
10:26:15AM WILL CAUSE IN THE MIDDLE OF A COMPLETELY DEVELOPED SITE NEAR

10:26:21AM RESIDENTS, WE HAVE A NICE CONSERVATION AREA ACROSS FROM US
10:26:24AM THAT ABUTS RIGHT UP TO THIS DEVELOPMENT.
10:26:26AM THERE WILL BE NOISE POLLUTION MADE WORSE BY THE SOUND COMING
10:26:31AM ACROSS THE LAKE BETWEEN THE TWO PROPERTIES THAT WE'RE
10:26:34AM TALKING ABOUT, AND WE'VE HEARD MANY RESIDENTS THAT WOULD
10:26:40AM LIKE TO HAVE A DIFFERENT OPTION EXPLORED FOR THIS
10:26:44AM DEVELOPMENT AND WE HAVEN'T HAD SO.
10:26:46AM THANK YOU.
10:26:48AM [APPLAUSE]
10:26:52AM >>Mayor McLain: I WOULD LIKE TO ASK THE AUDIENCE NOT TO CLAP
10:26:55AM AFTER ALL THESE.
10:26:57AM THIS IS A SERIOUS MATTER THAT WE'RE DEALING WITH.
10:27:00AM AND THAT'S JUST NOT APPROPRIATE.
10:27:02AM PLEASE ABSTAIN.
10:27:03AM >>Kathy Wyrofsky: THANK YOU.
10:27:04AM KATHY WYROFSKY.
10:27:05AM THE DEVELOPMENT ORDER SHOULD NOT HAVE BEEN APPROVED.
10:27:10AM IT WAS BASICALLY PREAPPROVED BY VILLAGE COUNCIL VIA THE
10:27:13AM SETTLEMENT AGREEMENT BEFORE IT WAS PRESENTED TO THE PLANNING
10:27:16AM ZONING AND DESIGN BOARD.
10:27:17AM SAFETY AND SECURITY FOR BOTH THE CONSERVATION AREA AND THE
10:27:22AM RESIDENTS OF SHADOW WOOD SHOULD HAVE BEEN RESOLVED PRIOR TO
10:27:26AM ANY AGREEMENT.
10:27:27AM THE VILLAGE COUNCIL BARGAINED AWAY POLICING POWER AS WELL AS
10:27:32AM THE NECESSITY TO REZONE.

10:27:34AM RESIDENTS AND THEIR INTERESTS WERE NEVER CONSIDERED.
10:27:38AM THE SETTLEMENT AGREEMENT AND THE DEVELOPMENT ORDER CLEARLY
10:27:42AM ONLY FAVOR THE LANDOWNER AND DEVELOPER, LAND THAT THEY HAD
10:27:46AM ALREADY DEVELOPED PER THE ORIGINAL INTENTIONS OF THE DRI.
10:27:50AM IF THIS INCONSISTENCY IS ALLOWED, WE WILL BE PUTTING OUT THE
10:27:55AM WELCOME MAT FOR DEVELOPERS AND MANY MORE UNNECESSARY LEGAL
10:27:58AM COMPLEXITIES.
10:27:59AM THE RESIDENTS PUT THEIR TRUST IN TOWN COUNCIL TO PROTECT
10:28:03AM THEM.
10:28:04AM TOWN COUNCIL HAS A RESPONSIBILITY TO PROTECT THEM.
10:28:07AM THE VERY INCORPORATION OF ESTERO WAS TO BE BASED ON
10:28:12AM TRANSPARENCY, RESIDENT INTEREST AND INVOLVEMENT, AND

10:28:16AM RESPONSIBLE DEVELOPMENT.
10:28:17AM WE HAVE A COMPREHENSIVE PLAN SPECIFYING DENSITY AND
10:28:22AM INTENSITY OF OUR LAND, AND THIS DOCUMENT MUST BE FOLLOWED.
10:28:27AM NO DEVELOPMENT IN VILLAGE NEIGHBORHOOD ONE CAN EXCEED FOUR
10:28:31AM DWELLING UNITS PER ACRE, AND NO MULTIFAMILY BUILDING CAN
10:28:35AM EXCEED 35 FEET.
10:28:37AM NO VESTED RIGHTS REMAIN IN THE BROOKS DRI, AND IF THEY DID,
10:28:42AM THEY WOULD BE SITE SPECIFIC TO STRAP NUMBER -- DON'T THINK I
10:28:48AM NEED TO REPEAT IT, WHICH IS NOW THE PEBBLE POINT COMMUNITY.
10:28:52AM EVEN IF RESIDENCES COULD BE BUILT, THEY WOULD BE RESTRICTED
10:28:57AM BOTH PER THE DRI AMENDMENT AND PER THE COMP PLAN TO A
10:29:01AM MINIMUM OF TWO STORIES.
10:29:04AM BOTH THE SITE PLAN SETTLEMENT AGREEMENT AND, THEREFORE,

10:29:08AM DEVELOPMENT ORDER LACK GOOD FAITH, RESIDENT PROTECTION, AND
10:29:13AM IN OUR MINDS, NECESSARY AUTHORITY UNDER THE LAW.
10:29:16AM THANK YOU.
10:29:22AM >>Mayor McLain: DOES THAT CONCLUDE YOUR PRESENTATION?
10:29:24AM THANK YOU.
10:29:25AM NOW TO THE A-- NOW THAT THE APPELLANTS AND AFFECTED PARTIES
10:29:30AM HAVE CONCLUDED, DOES THE VILLAGE STAFF WISH TO CROSS-EXAMINE
10:29:33AM ANY WITNESS?
10:29:36AM >>Mary Gibbs: I BELIEVE I'LL JUST ADDRESS SOME OF MY
10:29:39AM COMMENTS WHEN I HAVE MY 45 MINUTES.
10:29:42AM >>Mayor McLain: THANK YOU.
10:29:43AM DOES THE APPLICANT DEVELOPER WISH TO CROSS-EXAMINE ANY
10:29:47AM WITNESS?
10:29:51AM >> NO, SIR.
10:29:53AM >>Mayor McLain: THANK YOU.
10:29:53AM AT THIS TIME I WILL ASK THE VILLAGE STAFF TO PRESENT THEIR
10:29:59AM CASE.
10:29:59AM THEY SHALL HAVE A TOTAL OF 45 MINUTES.
10:30:06AM >>Mary Gibbs: WE'RE GOING TO HAVE NANCY STROUD START AND
10:30:09AM THEN I WILL FOLLOW.
10:30:12AM >>Mayor McLain: THANK YOU.
10:30:13AM MADAM CLERK, WE'LL START THE TIME NOW.
10:30:15AM >>Nancy Stroud: GOOD MORNING.
10:30:17AM I JUST WANT TO MAKE A FEW INTRODUCTORY COMMENTS BEFORE MARY
10:30:23AM GETS UP.

10:30:25AM I MOSTLY WANT TO EMPHASIZE WHAT THE VILLAGE COUNCIL IS HERE
10:30:30AM TO DECIDE IN THIS APPEAL BECAUSE YOU'VE HEARD A LOT ABOUT A
10:30:35AM NUMBER OF ISSUES THAT THE PETITIONERS ARE CONCERNED ABOUT,
10:30:40AM BUT, UNFORTUNATELY, ARE NOT SUBJECT TO THIS APPEAL.
10:30:44AM THEY HAVE COMPLAINTS, FOR EXAMPLE, ABOUT SO-CALLED CONFLICTS
10:30:47AM OF WHICH THERE WERE NONE.
10:30:49AM SO-CALLED SHADE MEETINGS, OF WHICH THERE WERE NONE.
10:30:52AM ISSUES RELATED TO ZONING VESTED RIGHTS, ALL OF THOSE ISSUES

10:31:03AM ARE NOT SUBJECT TO THIS APPEAL.
10:31:05AM THIS APPEAL IS AN APPEAL OF THE PZDB DEVELOPMENT ORDER
10:31:11AM APPROVAL.
10:31:12AM AND THE VILLAGE COUNCIL IS HERE TO DECIDE WHETHER THAT
10:31:16AM DEVELOPMENT ORDER SHOULD BE APPROVED AND THE COMPETENT
10:31:21AM SUBSTANTIAL EVIDENCE THAT MARY WILL GIVE AND HAS GIVEN IN
10:31:24AM THE DOCUMENTATION BEFORE YOU WILL SHOW THAT THE PROPOSED
10:31:30AM DEVELOPMENT ORDER MEETS ALL OF THE RELEVANT LAND DEVELOPMENT
10:31:35AM CODE REGULATIONS, INCLUDING THE DEVIATIONS AND SHOULD BE
10:31:39AM APPROVED.
10:31:40AM I DO WANT TO ALSO SAY SOMETHING ABOUT COMP PLAN CONSISTENCY
10:31:48AM BECAUSE I THINK THAT THE PETITIONERS CLEARLY HAVE THE
10:31:53AM CONSISTENCY ISSUE INCORRECT.
10:31:57AM AND THAT'S BASED ON THE CASE THAT THEIR ATTORNEY BROUGHT TO
10:32:03AM YOU IN HIS MEMO, THE BAY POINT CLUB CASE.
10:32:09AM THE BAY POINT CLUB CASE SAYS THAT WHEN THERE IS AN
10:32:12AM AUTHORIZED DRI -- AND THIS IS AN AUTHORIZED DRI -- ANY

10:32:19AM CHANGE TO THAT, WHAT IS AUTHORIZED IN THE DRI HAS TO BE
10:32:24AM REVIEWED PURSUANT TO THE CURRENT COMPREHENSIVE PLAN.
10:32:29AM THEIR WHOLE ARGUMENT FAILS BECAUSE THERE'S NO CHANGE TO WHAT
10:32:35AM IS AUTHORIZED IN THIS DRI.
10:32:38AM THE DRI AUTHORIZES THE MULTIFAMILY USE.
10:32:42AM IT AUTHORIZES THE HEIGHT.
10:32:45AM IT AUTHORIZES THE NUMBER OF UNITS.
10:32:48AM IN FACT, MORE UNITS THAN WHAT THE D.O. HAS APPROVED.
10:32:53AM SO BECAUSE THERE'S NO CHANGE, ALL THE TESTIMONY THAT WAS
10:32:58AM PROVIDED IS IRRELEVANT REGARDING THE COMPREHENSIVE PLAN.
10:33:05AM DRIS HAVE A SPECIAL STATUS UNDER THE FLORIDA STATUTES,
10:33:11AM UNDER THE VILLAGE CHARTER, UNDER THE VILLAGE COMP PLAN.
10:33:16AM THE VILLAGE COMP PLAN, THE CURRENT VILLAGE COMP PLAN
10:33:19AM RECOGNIZES WHAT THE STATUTES PROVIDE, WHICH IS THE VESTED
10:33:24AM RIGHTS OF DEVELOPMENTS OF REGIONAL IMPACT.
10:33:27AM I APPRECIATE THAT THE TESTIMONY OF THE PETITIONERS IS
10:33:35AM HEARTFELT AND IS OF CONCERN TO THEM.
10:33:41AM I THINK THE PROBLEM IS THAT THEIR TESTIMONY IS NOT
10:33:45AM SUBSTANTIAL COMPETENT EVIDENCE IN REGARD TO WHAT'S HAPPENING
10:33:50AM IN THIS APPEAL TODAY.
10:33:53AM SUBSTANTIAL COMPETENT EVIDENCE HAS TO BE EVIDENCE THAT IS
10:33:56AM RELEVANT TO THE ISSUE BEFORE YOU.
10:33:58AM AND NOTHING THAT HAS BEEN PROVIDED TODAY IS EVIDENCE THAT
10:34:05AM REALLY GOES TO THE REQUIREMENTS TO APPROVE A DEVELOPMENT
10:34:09AM ORDER, A SITE PLAN.

10:34:12AM IT'S ALSO NOT IN LEGAL TERMS COMPETENT.
10:34:18AM LAY PEOPLE CAN GIVE TESTIMONY AND DO BEFORE THIS COUNCIL.
10:34:22AM YOU HEAR IT ALL THE TIME.
10:34:24AM BUT IN ORDER TO BE COMPETENT AND TO BE CONSIDERED BY THE

10:34:30AM COUNCIL IN ITS DECISION, ITS LEGAL DECISION, IT HAS TO BE
10:34:35AM BASED ON FACTS, FACTS AND THE KNOWLEDGE OF THE PERSONS WHO
10:34:41AM ARE TESTIFYING.
10:34:43AM AND NONE OF THE PERSONS TESTIFYING TODAY IDENTIFIED
10:34:46AM THEMSELVES AS LAND USE PLANNERS, AS ENGINEERS, AS ATTORNEYS,
10:34:51AM AND WHAT YOU ALL HEARD WAS A LOT OF ARGUMENT BUT NOT A LOT
10:34:57AM OF FACTS BASED ON THEIR OWN PERSONAL KNOWLEDGE OR EXPERTISE.
10:35:04AM THAT DOESN'T MEAN YOU SHOULDN'T LISTEN TO IT.
10:35:06AM IT JUST MEANS THAT YOU CAN'T USE IT IF IT'S NOT SUBSTANTIAL
10:35:10AM COMPETENT EVIDENCE.
10:35:12AM WHAT MARY WILL GIVE YOU IS THE RELEVANT AND COMPETENT AND
10:35:19AM EXPERT TESTIMONY THAT SUPPORTS THE APPROVAL OF THE
10:35:23AM DEVELOPMENT ORDER.
10:35:26AM AND SO WE WOULD ASK YOU TO APPROVE THE DEVELOPMENT ORDER
10:35:33AM WITH THE CONDITIONS AS APPROVED BY THE PZDB.
10:35:37AM THANK YOU.
10:35:49AM >>Mary Gibbs: GOOD MORNING AGAIN.
10:35:51AM AS NANCY SAID, WE THINK THAT THE PLANNING ZONING AND DESIGN
10:35:57AM BOARD MADE THE CORRECT DECISION AND THAT SHOULD BE AFFIRMED.
10:36:00AM I'M GOING TO TALK ABOUT SOME OF THE THINGS THE APPLICANT
10:36:05AM TALKED ABOUT AND WHY WE DON'T THINK THOSE ARE CORRECT.

10:36:09AM THERE'S REALLY JUST TWO ITEMS THAT THEY POINT OUT THAT WOULD
10:36:13AM BE RELEVANT TO YOUR DECISION.
10:36:15AM A LOT OF THE ITEMS ARE LIKE CONFLICTS OF INTEREST,
10:36:19AM INTERESTING BUT EXTRANEIOUS ITEMS.
10:36:21AM THE ONES THAT ARE THE MOST IMPORTANT ARE THE CONSISTENCY
10:36:23AM WITH THE COMPREHENSIVE PLAN AND THE CONSISTENCY WITH THE
10:36:26AM LAND DEVELOPMENT CODE.
10:36:27AM I'M GOING TO TOUCH ON THEM FIRST, BUT I WILL ADDRESS
10:36:31AM EVERYTHING, SO WE'LL TAKE A LITTLE WHILE.
10:36:35AM THE APPLICANT IS REFERRING TO THE REASON THEY THINK THAT THE
10:36:41AM COMPREHENSIVE PLAN IS INCONSISTENT IS BECAUSE THEY SAY THAT
10:36:44AM WE'VE GOT THE NEW COMPREHENSIVE PLAN FROM 2021 THAT LABELS
10:36:48AM THIS AREA AS VILLAGE NEIGHBORHOOD ONE, WHICH HAS A MAXIMUM
10:36:52AM DENSITY FOR RESIDENTIAL FOUR UNITS AN ACRE.
10:36:56AM BUT THEY REALLY HAVE LIKE IGNORED THE FACT THAT WE HAVE A
10:37:01AM DRI THAT HAS RIGHTS AND HAS DENSITY THAT WAS GIVEN TO THEM
10:37:06AM IN THE APPROVALS IN 1997.
10:37:08AM SO I'M GOING TO EXPLAIN THIS A LITTLE BIT.
10:37:11AM ALSO, IN 1997, THE PROJECT WAS PART OF A DRI, WHICH IS
10:37:17AM DEVELOPMENT OF REGIONAL IMPACT.
10:37:19AM THAT IS A STATE REVIEW PROCESS.
10:37:21AM IN ADDITION TO THE LEE COUNTY REVIEW, THERE IS A STATE
10:37:24AM REVIEW PROCESS THAT HAPPENS AT THE SAME TIME FOR THE WHOLE
10:37:26AM BROOKS, WHICH IS ABOUT 2500 ACRES.
10:37:30AM AND THE STATE GRANTS THEM THE SPECIAL RIGHTS THAT NANCY

10:37:33AM STROUD REFERRED TO.
10:37:34AM THEY GET A SPECIAL RIGHTS.
10:37:36AM THEY ARE ENTITLED TO USES AS LONG AS THEY BUILD OUT
10:37:38AM ACCORDING TO PLANS.
10:37:39AM I'LL EXPLAIN THAT A LITTLE BIT MORE.
10:37:41AM WE RECOGNIZE THAT IN OUR LAND DEVELOPMENT CODE ALSO THAT
10:37:45AM THERE ARE POLICIES IN THERE THAT SAY THE CENTRAL TENET OF
10:37:51AM OUR COMPREHENSIVE PLAN AND OUR LAND DEVELOPMENT CODE IS TO
10:37:53AM RESPECT THE RIGHTS OF DRIs.
10:37:55AM THE ZONING WAS APPROVED IN 1997.
10:37:57AM I KNOW THERE IS CONFUSION THAT THIS IS A ZONING HEARING.
10:38:00AM AGAIN, IT IS NOT.
10:38:02AM THIS IS FOR THE DEVELOPMENT ORDER.
10:38:03AM BUT WHEN THE ZONING WAS APPROVED, THEY WERE ALLOWED CERTAIN
10:38:05AM USES, TOTAL NUMBER OF UNITS.
10:38:07AM IT ADDRESSED THE HEIGHT.
10:38:09AM IT ADDRESSED THE SETBACKS.
10:38:10AM IT ADDRESSED THE OPEN SPACE.
10:38:12AM AND ALLOWED A LOW-RISE MULTIFAMILY AND COMMERCIAL IN THE
10:38:17AM TOWN CENTER.
10:38:18AM SO WHEN IT'S APPROVED WITH THOSE USES, YOU CANNOT TAKE THOSE
10:38:22AM USES AWAY, EVEN THOUGH THE VILLAGE INCORPORATED, WE
10:38:25AM INHERITED IT FROM LEE COUNTY.
10:38:27AM WE INHERITED IT.
10:38:29AM IT DOESN'T GO AWAY.

10:38:30AM IT DOESN'T BECOME VOID.
10:38:32AM IT'S STILL IN EFFECT.
10:38:33AM THE DENSITY, IN MY OPINION, IS CONSISTENT.
10:38:40AM EVEN IF YOU LOOKED AT THE NEW COMPREHENSIVE PLAN.
10:38:42AM LET'S TAKE A LOOK AT THAT.
10:38:44AM EVEN THOUGH THEY'VE GOT THE DENSITY ALLOWED IN THE DRI, IF
10:38:47AM YOU LOOK AT THE NEW COMPREHENSIVE PLAN AND YOU SAY FOUR
10:38:49AM UNITS AN ACRE, WE'RE GOING TO LOOK AT THE BROOKS
10:38:52AM DEVELOPMENT, THE PROJECT, WAS APPROVED.
10:38:55AM IT WAS APPROVED INITIALLY FOR 5200 UNITS ON THE 2500 ACRES.
10:38:59AM SO IT REALLY DOES MEET THE NEW COMPREHENSIVE PLAN BECAUSE
10:39:03AM THE DENSITY IS TWO UNITS AN ACRE.
10:39:05AM THEY FURTHER CAME BACK LATER AND REDUCED THE NUMBER OF UNITS
10:39:09AM FROM 5200 TO I THINK 3700.
10:39:11AM SO ACTUALLY THE BROOKS IS BUILDING OUT WITH THE DENSITY
10:39:15AM THAT'S LESS THAN TWO UNITS AN ACRE.
10:39:18AM SO OVERALL, YOU DON'T TAKE EACH PARTICULAR PARCEL AND MAKE
10:39:21AM EVERY SINGLE PARCEL COMPLY WITH THE COMPREHENSIVE PLAN.
10:39:25AM IT'S DONE ON THE AVERAGE OF THE PROJECT.
10:39:26AM SO IN OUR OPINION, IT DOES COMPLY.
10:39:31AM SECONDLY, IF YOU THINK ABOUT THE PROPERTY JUST TO THE NORTH
10:39:38AM OF THIS, MILAN VILLAS, WHEN WE HAD THE ZONING FOR THAT

10:39:42AM PROPERTY, THAT WAS VILLAGE NEIGHBORHOOD ONE, TEN ACRE SITE.
10:39:46AM THEY CAME IN AND WANTED TO DO 40 UNITS.
10:39:49AM THEY WERE LIMITED TO THE FOUR UNITS AN ACRE BECAUSE THEY

10:39:51AM DIDN'T HAVE ZONING ON THE PROPERTY.
10:39:53AM THEY DIDN'T HAVE -- THEY ONLY HAD COMMERCIAL ALLOWABLE USES.
10:39:56AM THEY HAD TO REZONE THE PROPERTY TO RESIDENTIAL, AND THEY
10:39:59AM WERE LIMITED TO THAT UNITS BECAUSE THEY HAD TO COME IN AND
10:40:03AM DO THE REZONING.
10:40:03AM SO THAT'S REALLY THE DISTINCTION.
10:40:05AM WHEN YOU COME IN TO DO THE REZONING, THOSE DENSITIES APPLY.
10:40:08AM I THINK THEIR SECOND ISSUE THAT THEY CLAIM IS THAT IT'S
10:40:17AM INCONSISTENT WITH THE LAND DEVELOPMENT CODE.
10:40:18AM THEY SELECTED A FEW ITEMS IN THE CODE.
10:40:21AM AGAIN, THE OPEN SPACE THEY SAID SHOULD BE 35% AND IT'S NOT
10:40:26AM BECAUSE IN THE DRI APPROVED OPEN SPACE FOR EACH OF THE
10:40:31AM INDIVIDUAL SECTIONS OF THE BROOKS AND THE TOWN CENTER WAS
10:40:34AM APPROVED FOR 10% OPEN SPACE BECAUSE YOU MET THE OPEN SPACE
10:40:39AM IN THE WHOLE DRI BECAUSE YOU HAD LARGE CONSERVATION AREAS
10:40:42AM AND OTHER OPEN SPACE.
10:40:44AM SO YOU CAN'T GO BACK AND TAKE AWAY THE RIGHTS THAT WERE IN
10:40:48AM THE DRI FOR THE OPEN SPACE OR THE HEIGHT, WHICH WAS 50 FEET,
10:40:53AM APPROVED IN THE DRI FOR TOWN CENTER, NOT -- IN THE NEW
10:40:59AM COMPREHENSIVE PLAN, 35 FEET IS THE HEIGHT, BUT YOU CAN'T
10:41:02AM TAKE AWAY THE 50 FEET.
10:41:03AM I WANTED TO TALK ABOUT A COUPLE OF THINGS THAT THE SPEAKERS
10:41:11AM BROUGHT UP.
10:41:15AM THERE WAS SOME DISCUSSION THAT THE ZONING MAP WAS NOT
10:41:19AM CONSISTENT WITH THE COMPREHENSIVE PLAN MAP, BUT THE ZONING

10:41:21AM MAP IS CONSISTENT.
10:41:22AM IT HAS TO BE CONSISTENT PER STATE LAW.
10:41:24AM SO I DON'T REALLY UNDERSTAND WHAT THE POINT OF THAT WAS, BUT
10:41:29AM THERE IS CONSISTENCY THERE.
10:41:31AM THERE WAS A LARGE DISCUSSION ABOUT PEBBLE POINT OR THE
10:41:34AM MARTINI GLASS PROPERTY ON THE OTHER SIDE OF THREE OAKS
10:41:38AM THAT'S PART OF THE BROOKS.
10:41:40AM THERE WAS A VERY LONG DISCUSSION ABOUT 200 UNITS THAT WERE
10:41:43AM APPROVED THERE.
10:41:44AM AND, YES, 200 UNITS WERE APPROVED NOT INITIALLY, BUT CAME IN
10:41:48AM LATER ON BECAUSE THAT LITTLE PIECE OF THE BROOKS ON COCONUT
10:41:53AM ROAD WAS ORIGINALLY PLANNED TO BE AN INTERSTATE INTERCHANGE,
10:41:58AM WHICH A LOT OF PEOPLE DIDN'T KNOW ABOUT.
10:42:00AM THERE WAS A BIG LONG STORY BEHIND THAT WITH THE GOVERNOR OF
10:42:04AM ALASKA AND STATE LEGISLATION AND LOTS OF THINGS HAPPENED AND
10:42:08AM THEN THAT ENDED UP GOING AWAY.
10:42:10AM IT DID NOT BECOME THE INTERCHANGE.
10:42:12AM SO THAT PARCEL BECAME AVAILABLE AND THEY CAME AND AMENDED

10:42:15AM THAT TO ASK FOR 200 UNITS FOR PEBBLE POINT.
10:42:19AM THEY DID NOT BUILD ALL THE 200 UNITS.
10:42:22AM THEY ONLY BUILT I THINK 90 SOMETHING.
10:42:24AM SO I KNOW THE APPLICANT IS SAYING THOSE UNITS WERE ONLY
10:42:28AM LIMITED TO THAT STRAP NUMBER, BUT THAT'S NOT CORRECT.
10:42:32AM WE WENT BACK AND LOOKED AT THAT IN SOME DETAIL WHEN THE
10:42:36AM ORIGINAL LAWSUIT CAME IN, AND IF YOU RECALL, I THINK THE

10:42:39AM BROOKS COUNCIL OF PRESIDENTS OR SOMEBODY HAD AN ATTORNEY, AT
10:42:44AM THAT TIME BEVERLY GRADY, AND THEY BROUGHT UP THAT POINT.
10:42:48AM NANCY AND I WENT BACK AND DID A LOT OF RESEARCH INTO THAT.
10:42:52AM THE INTENT WAS FOR THOSE UNITS TO BE FOR PEBBLE POINT, BUT
10:42:56AM THEY WERE NOT ALL USED IN PEBBLE POINT.
10:42:58AM AND THE WAY THE DRI WAS WORDED, THERE WAS NO RESTRICTION
10:43:01AM THAT SAID THEY COULD ONLY BE USED FOR PEBBLE POINT.
10:43:04AM SO THEY COULD BE USED ELSEWHERE, AND WE SPENT A LOT OF TIME
10:43:08AM LOOKING AT THAT.
10:43:10AM SO THE UNITS ARE STILL THERE.
10:43:13AM THERE'S 158 UNITS LEFT.
10:43:16AM THEY WERE NOT ASSIGNED TO THAT PROPERTY.
10:43:18AM AND THEN THERE WAS ALSO A DISCUSSION ABOUT THE BUILD-OUT
10:43:23AM DATE EXPIRED, AND THAT'S NOT CORRECT.
10:43:26AM THE BUILD-OUT DATE I THINK IN THE DRI ORIGINAL, IF YOU'RE
10:43:31AM LOOKING AT THE ORIGINAL DRI DEVELOPMENT ORDER HAD A
10:43:33AM BUILD-OUT DATE WHICH WAS AN OLD BUILD-OUT DATE.
10:43:36AM THE STATE HAS CHANGED THE RULES AND WILL ALLOW DRIS TO GET
10:43:41AM TIME EXTENSIONS FOR NATURAL DISASTERS LIKE HURRICANES,
10:43:48AM WILDFIRES, ALL KINDS OF THINGS.
10:43:50AM THERE IS A STATE LAW THAT SAYS YOU CAN COME IN AND GET AN
10:43:53AM EXTENSION TO YOUR DRI.
10:43:54AM EVERY TIME WE HAVE A HURRICANE, EVERYBODY GETS AN EXTENSION.
10:44:00AM THERE WERE WILDFIRES, PEOPLE GOT EXTENSIONS.
10:44:02AM WE SPENT A LOT OF TIME WITH THE DRIS, LIKE UPDATING THEM

10:44:06AM FOR THEIR NEW BUILD-OUT DATES BECAUSE THEY ARE ALLOWED TO
10:44:09AM HAVE EXTENSIONS.
10:44:10AM LUCKILY A LOT OF THESE PEOPLE NOTIFY US.
10:44:15AM THEY SEND A LETTER IN AND SAY PLEASE GRANT OUR EXTENSION TO
10:44:18AM X DATE.
10:44:19AM THEY DON'T HAVE TO.
10:44:20AM ALL THEY REALLY HAVE TO DO IS NOTIFY US WE ARE HERE EXTENDED
10:44:25AM PER HURRICANE IAN.
10:44:27AM WHEN YOU GO BACK AND LOOK AT THE BUILD-OUT DATE FOR THE
10:44:29AM BROOKS, IT IS NOW DECEMBER 2028.
10:44:32AM THERE IS NO EXPIRATION OF THE BUILD-OUT DATE.
10:44:36AM IT'S GOOD TO 2028.
10:44:38AM IF WE HAVE ANY MORE NATURAL DISASTERS, YOU KNOW, WE MAY END
10:44:43AM UP HAVING MORE EXTENSIONS AS WELL.

10:44:45AM THE INCONSISTENCIES WITH THE LAND DEVELOPMENT CODE THAT WERE
10:44:50AM BROUGHT UP, THERE WERE A FEW THAT WERE BROUGHT UP, BUT I
10:44:54AM THINK IT WAS THE PARKING SPACES, PARKING LOT ELEVATION, AND
10:45:01AM THOSE WERE ACTUALLY, THEY GOT SMALL DEVIATIONS GRANTED
10:45:05AM THROUGH THE FINAL PLAN APPROVAL PROCESS.
10:45:08AM WE HAD RECOMMENDED THAT THEY ADD SOME GARAGES TO THE
10:45:12AM PROPERTY INSTEAD OF JUST THE SURFACE PARKING.
10:45:16AM IN ORDER TO DO THAT, THEY WERE A FEW SPACES SHORT.
10:45:19AM 21 PARKING SPACES SHORT, AND WE SAID WE WOULD SUPPORT A
10:45:24AM DEVIATION AT THE FINAL PLAN APPROVAL BECAUSE WE WOULD RATHER
10:45:27AM SEE THE NICER PRODUCT.

10:45:28AM SO THOSE WERE GRANTED BY DEVIATION, WHICH COMPLIES, WHICH
10:45:33AM MEANS IT'S NOT INCONSISTENT WITH THE LAND DEVELOPMENT CODE.
10:45:35AM THERE WAS A DISCUSSION OF THE PARKING, WHICH THEY DO OTHER
10:45:41AM THAN THIS DEVIATION, THE PARKING IS SUFFICIENT.
10:45:45AM THERE ARE OPERATIONAL ISSUES THAT CAME UP AT PLANNING AND
10:45:48AM ZONING BOARD WITH PEOPLE WANTING TO PARK IN PROXIMITY TO
10:45:51AM CERTAIN BUSINESSES.
10:45:52AM SO THERE IS AN OPERATIONAL ISSUE THAT WE HOPE IS BEING
10:45:55AM ADDRESSED BY THE PROPERTY OWNERS.
10:45:58AM THE HEIGHT AGAIN THEY SAID SHOULD BE 35 FEET, BUT IT'S
10:46:02AM APPROVED FOR 50.
10:46:05AM AND THEN THE PARKING LOT ELEVATION WAS SOMETHING THAT WAS
10:46:11AM ALSO REQUESTED BY DEVIATION JUST SO THAT THEY WOULDN'T HAVE
10:46:14AM TO BUILD HALF THE PARKING LOT HIGHER THAN THE OTHER HALF,
10:46:18AM WHICH DIDN'T MAKE ANY SENSE IN TERMS OF WATER MANAGEMENT.
10:46:20AM THOSE THINGS WERE GRANTED BY DEVIATION AND DISCUSSED BY THE
10:46:23AM PLANNING AND ZONING AND DESIGN BOARD AT THE TIME.
10:46:25AM THERE WAS A DISCUSSION, SOME GENERAL DISCUSSION ABOUT LAND
10:46:33AM DEVELOPMENT CODE SECTIONS, WHERE DISCOURAGING DEVELOPMENT
10:46:42AM THAT WAS NOT COMPATIBLE.
10:46:43AM THOSE SPECIFIC CITATIONS APPLY TO THE RESIDENTIAL
10:46:46AM SINGLE-FAMILY DISTRICT OF THE ZONING.
10:46:49AM THIS IS NOT RESIDENTIAL SINGLE-FAMILY.
10:46:51AM THIS WHOLE BROOKS IS ZONED AS THE MIXED USE PLAN
10:46:54AM DEVELOPMENT.

10:46:55AM SO THOSE CITATIONS WERE NOT RELEVANT.
10:46:57AM LET'S SEE.
10:47:03AM I KNOW THEY SAID THERE WERE VESTED RIGHTS.
10:47:08AM THERE WERE NO VESTED RIGHTS REMAINING, BUT THAT'S NOT
10:47:11AM CORRECT.
10:47:11AM THERE WAS A DISCUSSION AGAIN ON PEBBLE POINT, WHICH I WANT
10:47:15AM TO COME BACK TO THAT, THAT THERE IS A TWO-STORY MAXIMUM.
10:47:18AM PEBBLE POINT, WHEN THAT WAS APPROVED FOR THAT EXTRA UNITS,
10:47:22AM THEY DID REMOVE THE HIGH-RISE MULTIFAMILY OUT OF THAT
10:47:27AM SECTION.

10:47:27AM BUT THERE WAS NOTHING PUT IN TO THE REST OF THE BROOKS THAT
10:47:31AM SAID YOU HAVE A TWO-STORY MAXIMUM.
10:47:33AM SO EVEN THOUGH MOST OF IT HAS BUILT OUT AS TWO STORY, ONE TO
10:47:37AM TWO STORY, THERE'S NO LIMIT IN THE DRI.
10:47:39AM SO TOWN CENTER ALLOWS YOU TO GO TO 50 FEET.
10:47:44AM PEBBLE POINT, I DON'T THINK THEY ARE ALLOWED TO GO THAT
10:47:47AM HIGH.
10:47:48AM TOWN CENTER YOU ARE ALLOWED TO GO TO 50 FEET.
10:47:50AM IF YOU'VE GOT THE REMAINING UNITS, YOU'VE GOT THAT HEIGHT AS
10:47:53AM WELL.
10:47:54AM NOW I WANT TO GO BACK AND ADDRESS A FEW OF THE OTHER CLAIMS
10:48:04AM THAT WERE, IN MY OPINION, NOT REALLY RELEVANT.
10:48:07AM BUT I WANT TO TOUCH ON THOSE ANYWAY.
10:48:09AM LET ME SEE.
10:48:11AM THE FIRST ONE I THINK WAS CONTRACT ZONING.

10:48:16AM THERE WAS A STATEMENT MADE THAT -- GIVING AWAY THE ZONING.
10:48:20AM CONTRACT ZONING, WHICH MEANS YOU PROMISE SOMEBODY ZONING.
10:48:23AM AGAIN, I THINK THERE IS A MISUNDERSTANDING.
10:48:25AM WE'RE NOT REVIEWING A ZONING CASE HERE.
10:48:27AM THE ZONING WAS GIVEN BY LEE COUNTY IN 1997.
10:48:31AM SO THERE'S NO PROMISE OF ZONING.
10:48:33AM THERE WAS NO -- COUNCIL MEMBERS NEVER VOTED ON ZONING.
10:48:38AM THERE WAS NO DISCUSSION OF APPROVING A ZONING.
10:48:41AM THE SETTLEMENT AGREEMENT WAS NOT CONTRACT ZONING.
10:48:44AM IN FACT, THERE WERE STATEMENTS IN THE SETTLEMENT AGREEMENT
10:48:47AM THAT SAID PLANNING ZONING AND DESIGN BOARD WILL REVIEW THE
10:48:52AM CASE AND MAKE THEIR DETERMINATION.
10:48:54AM IN ORDER TO BE CONTRACT ZONING, IT WOULD HAVE TO SAY
10:48:57AM PLANNING AND ZONING WILL APPROVE THE CASE.
10:49:00AM IT DOES NOT SAY THAT, SO THERE IS NO CONTRACT ZONING ISSUE.
10:49:04AM THERE WAS DISCUSSION THAT THE APPLICATION WAS CONTRARY TO
10:49:15AM THE INTENT OF THE DRI DEVELOPMENT ORDER.
10:49:17AM AGAIN, THIS IS NOT REALLY A REASON THAT YOU WOULD OVERTURN
10:49:22AM THE PLANNING ZONING AND DESIGN BOARD DECISION, BUT THE
10:49:24AM APPLICANT WAS SAYING THAT TOWN CENTER WAS INTENDED TO SERVE
10:49:28AM THE COMMERCIAL AND OFFICE NEEDS OF THE COMMUNITY.
10:49:32AM AND IT WAS THAT.
10:49:33AM THERE WAS A STATEMENT IN THE DRI THAT SAYS TOWN CENTER IS
10:49:36AM INTENDED TO SERVE THOSE NEEDS.
10:49:39AM BUT THERE WAS NO STATEMENT IN THERE THAT SAID TOWN CENTER IS

10:49:44AM REQUIRED TO SERVE THOSE NEEDS AND IS ONLY ALLOWED TO HAVE
10:49:46AM COMMERCIAL USES.
10:49:47AM SO IF IT HAD SAID THAT, WE WOULD BE HAVING A DIFFERENT
10:49:51AM CONVERSATION, BUT IT DIDN'T SAY THAT.
10:49:54AM IT ONLY SAID INTENT.
10:49:56AM SADLY, EVERYBODY WISHES THAT THE SHOPPING CENTER WAS MORE

10:49:59AM SUCCESSFUL AND SADLY IT HASN'T BEEN.
10:50:04AM THERE WAS A DISCUSSION IN THE APPLICANTS, WHAT THEY
10:50:11AM SUBMITTED ABOUT FUNDAMENTAL FAIRNESS AND SAYING THAT WE'RE
10:50:15AM HOLDING HEARINGS IN THE OFF-SEASON OR WHY CAN'T WE HOLD THE
10:50:19AM HEARINGS DURING SEASON WHEN PEOPLE ARE HERE.
10:50:22AM AND I UNDERSTAND BECAUSE I KNOW THERE'S A LOT OF SEASONAL
10:50:26AM PEOPLE HERE.
10:50:27AM BUT, AGAIN, WE HAVE CONSTRAINTS FROM THE STATE -- THANK YOU,
10:50:32AM STATE LEGISLATORS -- WHO HAVE PUT INTO THE STATUTES THAT
10:50:35AM THERE ARE SPECIFIC REVIEW TIMES FOR ZONINGS, DEVELOPMENT
10:50:39AM ORDERS, BUILDING PERMITS.
10:50:40AM AND THESE ARE MANDATED BY THE STATE.
10:50:43AM AND WE DON'T HAVE THE OPTION OF SCHEDULING SOMETHING ONLY
10:50:48AM DURING SEASON BECAUSE WE DON'T MEET THE STATE REQUIREMENTS.
10:50:51AM AND THE STATE REQUIREMENTS EVEN FOR BUILDING PERMITS,
10:50:54AM INTERESTINGLY, IF YOU DON'T ISSUE IT WITHIN TEN DAYS OR
10:50:56AM SOMETHING, THEY GET AUTOMATICALLY APPROVED.
10:50:59AM SO THERE ARE VERY, VERY STRINGENT REQUIREMENTS.
10:51:02AM I UNDERSTAND THE LEGISLATURE MAY BE REVISITING THAT THIS

10:51:05AM YEAR, BUT WE ARE VERY CONSTRAINED.
10:51:08AM IF WE TRIED TO WORK THIS OUT SO WE COULD ONLY DO IT DURING
10:51:11AM SEASON, WE CAN'T MAKE THAT WORK.
10:51:13AM I UNDERSTAND PEOPLE ARE UPSET BECAUSE THEY CAN'T BE HERE,
10:51:18AM BUT WE ARE STUCK REALLY WITH WHAT THE STATE HAS GIVEN US.
10:51:22AM I WANTED TO JUST TOUCH ON ANOTHER THING THE APPLICANT
10:51:27AM BROUGHT UP ABOUT TRAFFIC.
10:51:30AM EVEN THOUGH THEY DIDN'T MENTION IT TODAY, IT'S IN THEIR
10:51:35AM APPLICATION THAT THEY ARE SAYING THAT THERE WAS A FAILURE TO
10:51:37AM COMPLETE THE TRAFFIC MITIGATION OPTIONS IN THE DRI.
10:51:42AM APPLICANT IS MISREADING THE DRI DEVELOPMENT ORDER.
10:51:45AM IT'S VERY COMPLICATED AND TECHNICAL, SO THAT'S EASY TO DO,
10:51:50AM UNLESS YOU'VE BEEN DOING THIS FOR 40 YEARS LIKE I HAVE.
10:51:53AM IT'S VERY COMPLICATED.
10:51:54AM THERE IS MITIGATION IN THE DRI DEVELOPMENT ORDER WHERE THE
10:52:01AM APPLICANT HAD TO PAY A PROPORTIONATE SHARE OF THE TRAFFIC
10:52:04AM MITIGATION COST, AND THAT PROPORTIONATE SHARE COVERED ALL
10:52:07AM THE NUMBER OF UNITS AND ALL THE SQUARE FOOTAGE THAT WAS
10:52:11AM OUTLINED IN THEIR DRI.
10:52:12AM THEY ACTUALLY DID A DEVELOPMENT AGREEMENT WITH LEE COUNTY.
10:52:16AM I THINK I WAS WORKING THERE AT THE TIME.
10:52:18AM SO THE DEVELOPMENT AGREEMENT OUTLINED THE VERY SPECIFICS OF
10:52:21AM WHAT ALL THE MITIGATION WAS GOING TO BE, AND THAT INCLUDED
10:52:24AM CONSTRUCTING THREE OAKS PARKWAY AND CONSTRUCTING COCONUT
10:52:27AM ROAD.

10:52:28AM SO THAT WAS ALL TAKEN CARE OF MANY YEARS AGO.
10:52:32AM WHEN THE DEVELOPMENT ORDER CAME IN TO LOOK AT THE

10:52:38AM APARTMENTS, THEY LOOKED AT THE TRAFFIC IMPACTS.
10:52:42AM THE ENGINEERS REVIEWED THAT.
10:52:45AM INTERESTINGLY, APARTMENTS GENERATE ONLY ABOUT A THIRD OF THE
10:52:49AM TRAFFIC OF AN EQUIVALENT AMOUNT OF COMMERCIAL USES.
10:52:52AM EVEN THOUGH EVERYBODY IS SAYING THE TRAFFIC IS GOING TO BE
10:52:55AM HORRIBLE, WILL THE TRAFFIC BE MORE THAN AN EMPTY WINN DIXIE?
10:53:00AM YES.
10:53:01AM BUT WILL -- THE TRAFFIC WILL BE LESS THAN WHAT YOU WOULD
10:53:03AM HAVE IF YOU HAD THE COMMERCIAL THAT WAS THERE, SO I JUST
10:53:07AM WANTED TO CLARIFY THAT POINT.
10:53:08AM THIS IS JUST A BONUS THAT DIDN'T RELATE TO ANYTHING THAT WAS
10:53:15AM DISCUSSED TODAY, BUT AN INTERESTING POINT OF INTEREST.
10:53:18AM IT WAS BROUGHT UP I THINK AT A PRIOR MEETING THAT THERE WAS
10:53:22AM A POTENTIAL EAGLE NEST ON THE PROPERTY IN THE CONSERVATION
10:53:26AM AREA.
10:53:26AM SO WE HAD OUR CONSULTANT, OUR BIOLOGICAL CONSULTANT WENT OUT
10:53:32AM TO LOOK AND SEE IF WE COULD FIND A NEST.
10:53:35AM SHE DID NOT FIND A NEST.
10:53:36AM THAT WAS BACK I THINK IN SEPTEMBER.
10:53:38AM WE ASKED HER TO GO OUT AGAIN KNOWING THAT IT'S NESTING
10:53:43AM SEASON AND THEN THE CYPRESS TREES SOMETIMES DROP THEIR
10:53:46AM NEEDLES SO YOU GET A BETTER VIEW.
10:53:48AM SO WE HAD OUR CONSULTANT GO OUT AGAIN.

10:53:50AM SHE WENT ON NOVEMBER 29.
10:53:53AM SHE DID NOT FIND A NEST.
10:53:54AM SHE DID SEE AN EAGLE SOARING OVERHEAD, SO I THINK THEY LIKE
10:53:58AM TO STOP FOR SNACKS AND FISHES AND THINGS.
10:54:01AM SO THE EAGLE IS PROTECTED.
10:54:04AM I JUST WANT TO LET PEOPLE KNOW THAT THERE IS NO EAGLE NEST
10:54:09AM BUT WE CONTINUE TO LOOK AT THAT.
10:54:11AM IF AN EAGLE NEST IS CONSTRUCTED, THEN THERE'S FEDERAL AND
10:54:15AM STATE RULES THAT APPLY, AND YOU MIGHT REMEMBER THAT BECAUSE
10:54:20AM ON OUR PROPERTY AT 41 AND CORKSCREW, WHEN WE WERE GOING TO
10:54:24AM GO BUILD OUR PEDESTRIAN PATHS, AN EAGLE BUILT A NEST ON OUR
10:54:28AM PROPERTY, AND WE HAD TO WAIT UNTIL THE NESTING SEASON WAS
10:54:32AM OVER TO DO CONSTRUCTION.
10:54:33AM JUST TO LET PEOPLE KNOW THERE ARE SAFEGUARDS IN PLACE IN
10:54:38AM CASE THERE IS AN EAGLE.
10:54:40AM I'M JUMPING AROUND A LITTLE BIT BECAUSE SOME OF THE SPEAKERS
10:54:49AM BROUGHT UP THINGS THAT I WASN'T REALLY KNOWING THEY WERE
10:54:56AM GOING TO ADDRESS.
10:54:57AM THE CONFLICTS OF INTEREST, I JUST WANTED TO TOUCH ON BECAUSE
10:55:03AM EVEN THOUGH, AGAIN, IT'S NOT RELEVANT, BARRY JONES, WHO IS
10:55:10AM ON THE PLANNING ZONING AND DESIGN BOARD, INITIALLY WORKED
10:55:14AM FOR HOLE MONTES.
10:55:15AM HE LEFT AND WENT TO WORK FOR A DIFFERENT CONSULTING FIRM.
10:55:18AM SO HE WAS NOT INVOLVED IN THAT PROJECT.

10:55:21AM I WORKED WITH CHARLIE KREBS FROM HOLE MONTES ON THIS PROJECT

10:55:25AM THE WHOLE WAY.

10:55:27AM BARRY DID NOT HAVE A FINANCIAL GAIN WHICH IS WHAT YOU HAVE

10:55:30AM TO DO TO FILL OUT THE CONFLICT OF INTEREST FORM.

10:55:34AM TWO OTHERS MENTIONED, MIKE SHEELEY ON THE ABBIATI DENTAL

10:55:38AM CASE WHERE HE WAS PRESENTING AND DID FILE A CONFLICT OF

10:55:42AM INTEREST FORM.

10:55:43AM WHEN WE WENT BACK TO LOOK, IT WAS NOT ATTACHED TO THE

10:55:47AM MINUTES.

10:55:48AM FROM NOW ON WE DO ATTACH THEM TO THE MINUTES.

10:55:50AM HIS FORM WAS FILED AND THE OTHER ONE WHOSE NAME DIDN'T COME

10:55:54AM UP, JIM WALLACE, DID HAVE A CONFLICT OF INTEREST DECLARED

10:55:57AM RECUSAL AND HE DID FILE A FORM AS WELL.

10:56:00AM WE'LL BE SURE TO ATTACH THEM TO THE MINUTES GOING FORWARD.

10:56:04AM AGAIN, BUT NOT RELEVANT TO THE CASE AT HAND TODAY.

10:56:10AM WE DO FEEL THAT EVERYTHING WAS MET.

10:56:15AM EVERYTHING WAS COMPLIED WITH.

10:56:18AM THE COMPREHENSIVE PLAN WAS COMPLIED WITH.

10:56:20AM LAND DEVELOPMENT CODE STANDARDS WERE MET.

10:56:25AM THE DEVELOPMENT ORDER COMPLIED WITH THE CODE, COMPLIED WITH

10:56:28AM THE PLAN.

10:56:29AM IT ALSO COMPLIED WITH THE FINAL PLAN APPROVAL THAT WAS

10:56:32AM GRANTED.

10:56:34AM PRIOR TO THAT, AND IT COMPLIES WITH THE ZONING AND ALSO

10:56:38AM COMPLIES WITH THE DRI DEVELOPMENT ORDER.

10:56:39AM WE JUST FEEL THAT THERE'S NO REASON TO OVERTURN THE

10:56:46AM DECISION.

10:56:47AM THERE'S REALLY NO VALID REASON.

10:56:48AM AND NANCY I THINK IS WAITING TO JUMP UP AND ADD SOMETHING.

10:56:53AM I'M DONE.

10:57:00AM GET MY MESS OUT OF THE WAY.

10:57:04AM >>Nancy Stroud: MARY AND I QUICKLY LOOKED THROUGH ALL OF THE

10:57:10AM EXHIBITS THAT WE PUT IN YOUR PACKAGE THIS MORNING TO SEE IF,

10:57:13AM IN FACT, YOU HAVE A COPY OF THE DRI AND THE ZONING

10:57:19AM RESOLUTION THAT APPLIES TO THIS PROPERTY.

10:57:21AM THE ZONING RESOLUTION IS IN ONE OF YOUR EXHIBITS.

10:57:25AM IT'S WITH THE FINAL PLAN APPROVAL EXHIBITS.

10:57:29AM THAT IS WHERE YOU SEE, FOR EXAMPLE, ON PAGE 9, THE TOWN

10:57:35AM CENTER USES, WHICH INCLUDE MID-RISE RESIDENTIAL AND ON PAGE

10:57:43AM 17 THROUGH 18, TOWN CENTER REGULATIONS, WHICH ALLOW THE

10:57:47AM HEIGHT AND HAVE THE OTHER PROVISIONS THAT WERE APPLIED

10:57:52AM DURING THE DEVELOPMENT ORDER.

10:57:53AM THE DRI DEVELOPMENT ORDER MAY BE IN THERE, BUT IN AN EXCESS

10:58:00AM OF CAUTION I WOULD LIKE TO BE SURE AND PUT IT INTO THE

10:58:04AM RECORD TODAY AND DIRECT YOUR ATTENTION TO PAGE 7 OF THAT

10:58:11AM DEVELOPMENT ORDER WHICH SAYS THAT THE USES ALLOWED IN TOWN

10:58:15AM CENTER WILL BE THOSE ALLOWED IN THE PLANNED DEVELOPMENT
10:58:20AM ZONING, WHICH IS THE ZONING I JUST DESCRIBED TO YOU.
10:58:23AM I WOULD LIKE TO GIVE THIS TO THE CLERK, IF COUNCIL WILL
10:58:30AM ACCEPT IT.
10:58:30AM >>Mayor McLain: YES, PLEASE.

10:58:41AM >>Nancy Stroud: AGAIN, BASED ON THE COMPETENT SUBSTANTIAL
10:58:44AM EVIDENCE RELEVANT TO THE DEVELOPMENT ORDER, WE WOULD REQUEST
10:58:47AM THAT THE COUNCIL APPROVE WITH CONDITIONS THAT WERE PUT ON
10:58:51AM THE PZDB APPROVAL.
10:58:53AM THANK YOU.
10:58:57AM >>Mayor McLain: NANCY, DOES THAT CONCLUDE THE STAFF
10:59:01AM PRESENTATION?
10:59:01AM YOU'VE GOT 16 MINUTES LEFT.
10:59:03AM OKAY.
10:59:05AM THANK YOU.
10:59:05AM NOW THAT THE VILLAGE STAFF HAVE CONCLUDED, DO THE APPELLANTS
10:59:11AM AND AFFECTED PARTIES WISH TO CROSS-EXAMINE ANY OF THE
10:59:15AM VILLAGE STAFF OR WITNESS?
10:59:18AM YOU CAN START THE TIMER.
10:59:47AM >>Carol Sacco: START IT NOW?
10:59:50AM >>Mayor McLain: ONLY IF YOU'VE BEEN SWORN IN.
10:59:53AM >>Robert Eschenfelder: NO, NO, NO, NO.
10:59:55AM NO ONE IS PROVIDING TESTIMONY.
10:59:58AM THIS IS CROSS-EXAMINATION.
11:00:00AM SO THEY WOULD ASK QUESTIONS OF OUR STAFF.
11:00:03AM >>Mayor McLain: BUT NOT TESTIMONY.
11:00:04AM OKAY.
11:00:04AM THANK YOU.
11:00:05AM >>Kathy Wyrofsky: OKAY.
11:00:12AM >>Lori Fayhee: IS HE ABLE TO ASK QUESTIONS?

11:00:15AM >>Robert Eschenfelder: THE APPELLANT MAY SHARE HOWEVER THEY
11:00:17AM WISH TO TEN MINUTES TO ASK MS. GIBBS QUESTIONS RELATED TO
11:00:21AM WHAT SHE TESTIFIED TO.
11:00:23AM IF ONE WANTS TO ASK ONE QUESTION AND ONE WANTS TO ASK
11:00:26AM ANOTHER, THAT'S FINE.
11:00:27AM THEY HAVE TEN MINUTES.
11:00:29AM NOW NINE MINUTES AND 39 SECONDS.
11:00:32AM >>Kathy Wyrofsky: I WOULD LIKE TO JUST SAY THANK YOU FOR
11:00:33AM YOUR PRESENTATIONS.
11:00:34AM IT SEEMS LIKE YOU WERE HELPING -- ANYWAY.
11:00:38AM STRIKE THAT.
11:00:40AM I WOULD LIKE TO KNOW WHY THERE WAS 180-DEGREE TURNAROUND ON
11:00:49AM YOUR ARGUMENTS.
11:00:50AM IT WAS NOT THAT LONG AGO THAT YOU USED THE VERY BAY POINT
11:00:53AM VERSUS BAY COUNTY CASE AGAINST THIS DEVELOPMENT.
11:00:58AM WHAT CHANGED YOUR MIND?

11:01:00AM WHAT CHANGED YOUR MIND?
11:01:05AM >>Nancy Stroud: I DO NOT RECALL USING THE BAY POINT CASE
11:01:10AM EARLIER.
11:01:11AM IF YOU CAN POINT ME TO SOME TIME OR REFERENCE.
11:01:14AM >>Kathy Wyrofsky: I WILL.
11:01:16AM I HAVE A DOCUMENT.
11:01:16AM BUT I WILL DO THAT.
11:01:18AM SO WE WILL HAVE TO ADDRESS THAT.
11:01:19AM >>Nancy Stroud: LET ME FINISH.

11:01:21AM IN THE CONTEXT OF THIS PROCEEDING AND IN RESPONSE TO
11:01:29AM MR. BROOKES' MISINTERPRETATION OF THE CASE, I STAND BY MY
11:01:35AM TESTIMONY TODAY.
11:01:38AM >>Kathy Wyrofsky: OKAY.
11:01:39AM AND NEITHER OF YOU FEEL THAT THE ADDITIONAL 200 UNITS THAT
11:01:43AM WERE GRANTED WERE SITE SPECIFIC.
11:01:47AM >>Mary Gibbs: CAN YOU HEAR ME?
11:01:52AM >>Mayor McLain: YES.
11:01:53AM >>Mary Gibbs: THEY WERE NOT SITE SPECIFIC AND WE LOOKED AT
11:01:57AM IT IN GREAT DETAIL, IN GREAT DETAIL BECAUSE THERE WAS THAT
11:02:02AM QUESTION BROUGHT UP TO US, BUT THE WAY IT WAS WORDED THEY
11:02:07AM WERE INTENDED, BUT THEY WERE NOT SITE SPECIFIC.
11:02:10AM THE WORDING WAS INTENDED.
11:02:18AM >>Nancy Stroud: MAY I ADD TO THAT?
11:02:19AM THE INTENT LANGUAGE COMES FROM A HEARING TRANSCRIPT BEFORE
11:02:24AM THE HEARING EXAMINER.
11:02:26AM WHEN IT GOT TO THE LEE COUNTY COMMISSION, WHICH MADE THE
11:02:28AM ACTUAL DECISION AND AMENDED THE DEVELOPMENT ORDER, THOSE 200
11:02:35AM UNITS WERE NEVER ASSIGNED TO A PARTICULAR PARCEL.
11:02:39AM AND, IN FACT, WHEN THE DEVELOPMENT ORDER WAS AMENDED, THEY
11:02:44AM ADDED TO THE TOTAL NUMBER OF UNITS.
11:02:49AM SO IT COULD BE USED ANYWHERE IN THE DRI.
11:02:52AM >>Kathy Wyrofsky: THERE WERE MULTIPLE DOCUMENTS INVOLVED IN
11:02:55AM THIS AND A NUMBER OF THEM DID SPECIFY THE SITE AND A NUMBER
11:03:00AM OF THEM DID SPECIFY THE HEIGHT.

11:03:03AM SO WHEN THE ULTIMATE RESOLUTION WAS DONE, AND I WILL HAVE TO
11:03:07AM REVIEW THAT AGAIN MYSELF, THE LAST DOCUMENT SEEMED TO MISS
11:03:10AM THAT A LITTLE BIT, BUT THE INTENT WAS CLEAR IN OUR MINDS.
11:03:14AM I ALSO HAVE A QUESTION FOR THE TOWN, WAS YOUR INSURANCE
11:03:21AM COMPANY, WAS A CLAIM FILED WITH YOUR INSURANCE COMPANY AT
11:03:25AM ANY POINT FOR THIS CASE TO COVER THE LEGAL FEES?
11:03:29AM >>Nancy Stroud: YOU CAN ASK THAT TO THE VILLAGE ATTORNEY.
11:03:33AM >>Robert Eschenfelder: MR. MAYOR, IF YOU WANT ME TO RESPOND.
11:03:35AM I'M NOT A WITNESS IN THIS CASE.
11:03:37AM I'M THE VILLAGE ATTORNEY.
11:03:39AM BUT THERE WOULD BE NO CLAIM FILED WITH INSURANCE BECAUSE
11:03:44AM THERE HAS BEEN NO CLAIM MADE.

11:03:47AM >>Mayor McLain: OKAY.
11:03:47AM I THINK THAT ANSWERS.
11:03:48AM >>Kathy Wyrofsky: DIDN'T FILE A CLAIM THAT WOULD COVER
11:03:51AM POTENTIALLY THE LEGAL FEES.
11:03:52AM OKAY.
11:03:52AM WELL, THIS ISN'T THE TIME FOR OUR SUMMARY OR FINAL COMMENTS,
11:03:57AM SO I WILL STOP AT THAT.
11:03:59AM THANK YOU.
11:03:59AM >>Mayor McLain: THANK YOU.
11:04:00AM DOES THE APPLICANT DEVELOPER WISH TO CROSS-EXAMINE OUR
11:04:04AM STAFF?
11:04:09AM >> STEVE HARTSELL, FOR THE RECORD, NO, WE DO NOT.
11:04:13AM >>Mayor McLain: THANK YOU.

11:04:14AM IN THE INTEREST OF COMFORT, IT'S 11:03 RIGHT NOW.
11:04:18AM WE HAVE A PRETTY GOOD CROWD HERE.
11:04:21AM WE'RE GOING TO TAKE A TEN-MINUTE BREAK AND WE WILL RESUME.
11:04:27AM NOW, I WANT TO CAUTION COUNCIL THAT WE NOT TALK WITH EACH
11:04:33AM OTHER DURING THIS PERIOD OF TIME TO MAKE SURE WE DON'T
11:04:37AM DISCUSS THIS CASE PRIVATELY, THAT WE WILL WAIT FOR THOSE
11:04:42AM COMMENTS WHEN WE HAVE A MOTION.
11:04:46AM I WOULD ALSO ASK THE PUBLIC NOT TO ADDRESS THE COUNCIL
11:04:49AM MEMBERS AT THIS POINT BECAUSE WE'VE ALREADY REVEALED THAT
11:04:53AM WE'VE HAD NO CONFLICTS.
11:04:55AM SO WE WANT TO MAINTAIN THAT INTEGRITY.
11:04:58AM SO IT'S NOW 11:04.
11:05:00AM AT 11:14 WE WILL ADJOURN -- NOT ADJOURN, BUT REASSEMBLE.
11:05:07AM [RECESS]
11:15:30AM >>Mayor McLain: IT'S 11:14.
11:15:32AM LET'S RESTART THIS MEETING, PLEASE.
11:15:35AM MAY I HAVE YOUR ATTENTION, PLEASE?
11:15:42AM WE'RE GOING TO RESUME THE MEETING AT THIS POINT.
11:15:49AM I WILL NOW ASK THE APPLICANT DEVELOPER TO PRESENT ITS CASE.
11:15:54AM YOU HAVE A TOTAL OF 45 MINUTES.
11:15:57AM THE CLERK, WOULD YOU PLEASE START THE TIME?
11:16:01AM >>Steven Hartsell: GOOD MORNING, MR. MAYOR AND COUNCIL
11:16:03AM MEMBERS.
11:16:04AM AS I MENTIONED BEFORE, MY NAME IS STEVE HARTSELL, I AM WITH
11:16:07AM PAVESE LAW FIRM.

11:16:09AM I'M HERE ON BEHALF OF THE OWNERS AND DEVELOPERS OF THE
11:16:13AM BROOKS TOWN CENTER APARTMENTS.
11:16:14AM WITH ME TODAY ARE OWNER AND DEVELOPER'S REPRESENTATIVES,
11:16:18AM TOM CAVANAUGH, SUSAN WATTS, AND ILIAS VASILARAS.
11:16:25AM ALSO WITH ME TODAY IS BILL MOORE, AN ATTORNEY WITH MOORE,
11:16:27AM BOWMAN & REESE, WHO REPRESENTED THE DEVELOPER AND OWNERS IN
11:16:31AM THE LITIGATION WHICH HAS BEEN OUTLINED IN YOUR STAFF REPORT
11:16:34AM AND WHICH ULTIMATELY LED TO THE SETTLEMENT AGREEMENT WHICH

11:16:38AM GOVERNS THIS DEVELOPMENT ORDER.
11:16:39AM ALSO WITH THE TEAM IS CHARLIE KREBS, THE PROJECT ENGINEER
11:16:42AM WITH HOLE MONTES WHO MADE THE PRESENTATION TO THE PZDB.
11:16:46AM I'LL START BY STATING THAT WE SUPPORT THE STAFF
11:16:49AM RECOMMENDATION THAT THIS APPEAL SHOULD BE DENIED FOR ALL THE
11:16:52AM REASONS THAT WERE SPECIFICALLY OUTLINED IN THE STAFF REPORT
11:16:55AM AND IN YOUR COUNCIL'S MEMO.
11:16:57AM MS. GIBBS HAS DONE AN EXCELLENT JOB ADDRESSING EACH OF THE
11:17:01AM MANY POINTS AND IDENTIFYING THE FACT THAT NONE OF THEM ARE
11:17:04AM SUPPORTED BY SPECIFIC REFERENCES TO THE LAND DEVELOPMENT
11:17:06AM CODE THAT WOULD SUPPORT AN OBJECTION TO THE DEVELOPMENT
11:17:13AM ORDER.
11:17:14AM MY PARTNER, NEALE MONTGOMERY, HAS ALREADY FILED A MOTION TO
11:17:16AM DISMISS, WHICH IS PART OF YOUR MATERIALS.
11:17:18AM WE CONTINUE TO STAND BY ALL THE REASONS THAT WERE SET OUT IN
11:17:20AM THAT MOTION TO DISMISS.
11:17:22AM WE BELIEVE THAT THE STAFF REPORT PRESENTED BY MARY GIBBS HAS

11:17:25AM EFFECTIVELY ADDRESSED EACH OF THE MANY REASONS WHY THE
11:17:29AM APPEAL SHOULD BE DENIED.
11:17:30AM I COULD WALK YOU THROUGH EACH ONE OF THOSE, IF YOU HAVE ANY
11:17:33AM QUESTIONS, BUT INSTEAD I'LL BRIEFLY ADDRESS THOSE POINTS IN
11:17:37AM MY CONCLUSION.
11:17:38AM IN BRIEF SUMMARY, AS YOU HAVE RECOGNIZED, THE BROOKS TOWN
11:17:43AM CENTER APARTMENTS IS A MULTIFAMILY COMPLEX ON 5.3 ACRES,
11:17:48AM PREVIOUSLY OCCUPIED BY THE LONG VACANT WINN DIXIE BUILDING.
11:17:51AM THAT BUILDING WILL BE DEMOLISHED AND REPLACED BY THE
11:17:54AM MULTIFAMILY.
11:17:55AM THE PROPERTY IS ALSO PART OF THE BROOKS DEVELOPMENT OF
11:17:59AM REGIONAL IMPACT.
11:18:00AM YOU'VE NOW GOT THAT DEVELOPMENT ORDER AS PART OF YOUR
11:18:03AM RECORD.
11:18:03AM BOTH THE MPD ZONING IN RESOLUTION Z 97037 AND THE BROOKS DRI
11:18:13AM ARE ACTIVE AND ARE VESTED, AS YOUR STAFF AND LEGAL COUNSEL
11:18:17AM POINTED OUT.
11:18:18AM PARTICULARLY, AND I APPRECIATE NANCY STROUD BRINGING YOUR
11:18:23AM ATTENTION TO THAT, IN THE DRI DEVELOPMENT ORDER, SECTION
11:18:27AM ROMAN NUMERAL 2 E 5 A IT SPECIFICALLY STATES THAT THE
11:18:33AM FOLLOWING CONDITIONS APPLY TO THE TOWN CENTER.
11:18:37AM NUMBER TWO, THE USES WITHIN THE TOWN CENTER WILL BE GOVERNED
11:18:43AM BY THE PLANNED DEVELOPMENT ZONING.
11:18:45AM SO THOSE MULTIFAMILY USES WERE ALREADY PERMISSIBLE IN THE
11:18:49AM EXISTING ZONING BECAUSE THE PROPERTY IS CONTAINED IN THAT

11:18:52AM MIXED USE PD PREVIOUSLY APPROVED IN RESOLUTION Z 97037.
11:18:57AM THE NUMBER OF DWELLING UNITS APPROVED IN THE D.O. IS WITHIN
11:19:02AM THE MAXIMUM NUMBER SET BY THE DRI.
11:19:07AM IT DOES NOT EXCEED THE PERMISSIBLE DENSITY.

11:19:11AM FURTHERMORE, THE APPROVED DEVELOPMENT ORDER IS ALSO
11:19:13AM CONSISTENT WITH THE SETTLEMENT AGREEMENT YOU APPROVED AS
11:19:16AM VILLAGE COUNCIL ON JUNE 21st, 2023.
11:19:20AM AND AS HAS BEEN POINTED OUT, WHAT WAS APPROVED IN THE
11:19:26AM DEVELOPMENT ORDER BY THE PZDB ARE FEWER UNITS THAN APPROVED
11:19:31AM IN THE SETTLEMENT AGREEMENT.
11:19:33AM THIS DEVELOPMENT ORDER DID NOT CHANGE THE DRI, WHICH REMAINS
11:19:37AM VESTED.
11:19:38AM THE PROPOSED REDEVELOPMENT OF THAT PROPERTY INTO A
11:19:41AM MULTIFAMILY PROJECT WAS DESIGNED AND COMPLIES WITH ALL THE
11:19:46AM REQUIREMENTS OF YOUR LAND DEVELOPMENT CODE IN THE
11:19:49AM COMPREHENSIVE PLAN.
11:19:50AM THAT'S WHAT THE PZDB FOUND.
11:19:52AM IT MEETS ALL OF THE ARCHITECTURAL REQUIREMENTS,
11:19:56AM TRANSPORTATION AND PARKING REQUIREMENTS, STORMWATER, SURFACE
11:20:00AM WATER MANAGEMENT REQUIREMENTS, THE LIGHTING, LANDSCAPING,
11:20:04AM SIGNAGE, AND ENVIRONMENTAL REQUIREMENTS.
11:20:05AM ALL OF THOSE ARE THOROUGHLY EXPLAINED IN THE STAFF REPORT
11:20:11AM FOR THE PZDB FOR OCTOBER 10th, 2023, AND THAT STAFF REPORT
11:20:17AM IS, AGAIN, PART OF YOUR MATERIALS AND PART OF THE RECORD
11:20:20AM TODAY.

11:20:20AM FINAL PLAN APPROVAL, WHICH WAS BASED UPON THE APPLICATION,
11:20:27AM STAFF REPORT, TESTIMONY, AND EVIDENCE PRESENTED AT THE PZDB
11:20:32AM IS SET FORTH IN THEIR RESOLUTION 2023-01, WHICH IS SUBMITTED
11:20:38AM TODAY AND BEING CHALLENGED BY THE APPELLANTS.
11:20:41AM I MENTIONED THAT CHARLIE KREBS, THE PROJECT ENGINEER, IS
11:20:44AM WITH ME TODAY.
11:20:45AM FOR THE RECORD, WE DO WANT TO CONFIRM THE INCORPORATION BY
11:20:49AM REFERENCE OF ALL OF THE APPLICATION MATERIALS AND THE PZDB
11:20:54AM RECORD THAT WAS PRESENTED AS YOUR COUNCIL I THINK STARTED
11:20:57AM THE HEARING OUT.
11:20:58AM GIVEN THAT RECORD HAS BEEN MADE, WE DON'T HAVE A LONG
11:21:09AM PRESENTATION.
11:21:09AM INSTEAD, WHAT I'M GOING TO DO IS TO BRIEFLY CITE TO THE SIX
11:21:13AM REASONS THAT THE APPELLANTS IDENTIFIED AND WHICH MARY GIBBS
11:21:19AM ALSO POINTED OUT IN HER STAFF REPORT.
11:21:22AM THE SIX REASONS STARTED OUT WITH ONE CONTRACT ZONING.
11:21:26AM THEY HAVE CHALLENGED THE DEVELOPMENT ORDER AS BEING AN
11:21:31AM EVIDENCE OF CONTRACT ZONING.
11:21:33AM AS MARY POINTED OUT, IT IS NOT CONTRACT ZONING.
11:21:36AM THE ZONING REMAINS AS IT WAS APPROVED IN RESOLUTION Z 97037,
11:21:42AM ADOPTED BY LEE COUNTY IN 1997.
11:21:46AM THEY ARGUE THAT IT IS INCONSISTENT WITH THE COMPREHENSIVE
11:21:49AM PLAN.
11:21:50AM THE DEVELOPMENT ORDER AS IT'S BEEN POINTED OUT BY YOUR STAFF
11:21:53AM AND COUNSEL, IS, IN FACT, CONSISTENT WITH YOUR COMPREHENSIVE

11:21:58AM PLAN WHICH RECOGNIZES DRI DEVELOPMENT ORDERS AND ZONING THAT
11:22:03AM WAS APPROVED BY LEE COUNTY PRIOR TO THE VILLAGE
11:22:06AM INCORPORATION.
11:22:07AM THE APPELLANTS IGNORE THE VESTED STATUS OF THE DRI AND THE
11:22:12AM PLANNED DEVELOPMENT ZONING AND ARBITRARILY DECLARE THAT THE
11:22:15AM D.O., WHICH WAS APPROVED BY THE PZDB IS INCONSISTENT WITH
11:22:20AM THE PLAN.
11:22:21AM THE APPELLANTS SEEM TO DISPUTE REALLY THE 25-YEAR-OLD DRI
11:22:27AM AND ZONING RESOLUTION THAT WAS ADOPTED AT THE SAME TIME IN
11:22:31AM 1997.
11:22:33AM THIRD, THEY ARGUE THAT CONTRACT ZONING OCCURRED BY APPROVAL
11:22:38AM OF THE SETTLEMENT AGREEMENT.
11:22:40AM YOUR STAFF HAS POINTED OUT WHY THAT'S NOT THE CASE.
11:22:43AM WE WOULD ALSO POINT OUT THAT THE SETTLEMENT AGREEMENT WAS
11:22:47AM NOT REQUIRED TO BE APPROVED BY THE PDZB AND THEY DID NOT
11:22:53AM ADDRESS WHETHER THE SETTLEMENT AGREEMENT WAS APPROPRIATE OR
11:22:56AM NOT.
11:22:57AM FOURTH, THEY ARGUE THAT IT WAS CONTRARY TO THE INTENT OF THE
11:23:01AM DRI DEVELOPMENT ORDER.
11:23:03AM YOUR STAFF AND LEGAL COUNSEL HAVE VERY EFFECTIVELY ADDRESSED
11:23:06AM THAT POINT.
11:23:08AM THE PZDB WASN'T AUTHORIZED TO EXAMINE THE INTENT OF THE DRI
11:23:15AM NOR DID THEY ADDRESS THE INTENT OF THE DRI.
11:23:17AM THE FIFTH POINT THEY RAISED WAS FUNDAMENTAL FAIRNESS, AND WE
11:23:22AM WOULD LIKE TO POINT OUT THAT THE PARTICIPANTS WERE ALL GIVEN

11:23:25AM AN OPPORTUNITY TO PARTICIPATE AND EXPRESS THEIR OBJECTIONS.
11:23:28AM THEY WERE NOT DENIED FUNDAMENTAL FAIRNESS BY THE PZDB.
11:23:35AM FINALLY, THEY ARGUE CONFLICTS OF INTEREST AND THE LACK OF A
11:23:39AM CONFLICT DECLARATION, AS HAS BEEN POINTED OUT, THERE WAS NO
11:23:45AM CONFLICT OF INTEREST AND PLANNING BOARD ADDRESSED THAT
11:23:50AM APPROPRIATELY ACCORDING TO THEIR RULES.
11:23:53AM SO FOR ALL THE REASONS SET FORTH IN THE MOTION TO DISMISS
11:23:56AM AND THE STAFF REPORT AND IN YOUR LEGAL COUNSEL'S MEMO AND
11:24:00AM THE TESTIMONY THIS MORNING, WE AGREE WITH YOUR STAFF AND
11:24:02AM LEGAL COUNSEL THAT THE DEVELOPMENT ORDER APPROVED FOR THIS
11:24:05AM PROJECT MEETS ALL OF THE NECESSARY REQUIREMENTS OF YOUR LAND
11:24:09AM DEVELOPMENT CODE, IS CONSISTENT WITH THE ESTERO
11:24:13AM COMPREHENSIVE PLAN AND THE SETTLEMENT AGREEMENT, AND THAT
11:24:17AM THIS APPEAL SHOULD BE DENIED AND LET THE DEVELOPMENT ORDER
11:24:20AM THAT'S BEEN APPROVED SHOULD BE UPHOLD AND CONTINUE TO BE
11:24:24AM APPROVED.
11:24:24AM THANK YOU FOR THE OPPORTUNITY TO MAKE THE PRESENTATION.
11:24:28AM I'LL BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.
11:24:31AM >>Mayor McLain: WE'LL GET TO THOSE JUST IN A FEW MINUTES
11:24:34AM HERE.
11:24:34AM >>Steven Hartsell: THANK YOU VERY MUCH.
11:24:35AM >>Mayor McLain: NOW, IF THE APPLICANT DEVELOPER HAS

11:24:41AM CONCLUDED HIS PRESENTATION, DOES THE VILLAGE STAFF WISH TO
11:24:44AM HAVE ANY QUESTIONS?
11:24:47AM NO.

11:24:47AM AND DOES THE APPELLANT AFFECTED PARTIES WISH TO
11:24:51AM CROSS-EXAMINE THE DEVELOPER?

11:24:53AM NO.

11:24:56AM OKAY.

11:25:01AM >> DAVID SMALL, 10055 MAGNOLIA BEND.

11:25:05AM I HAVE ONE QUESTION.

11:25:06AM AND THE QUESTION IS, I HEARD FROM MR. HARTSELL THAT

11:25:09AM EVERYTHING IS FULLY COMPLIANT AND YET I HEARD FROM MARY

11:25:13AM GIBBS THAT THERE IS A DEFICIENCY IN TERMS OF PARKING SPOTS

11:25:18AM CHARACTERIZED AS A FEW.

11:25:19AM IT'S 21.

11:25:21AM WE HOPE THAT IT IS ADDRESSED BY THE DEVELOPER.

11:25:23AM IT SEEMS TO ME THAT THERE IS OBVIOUSLY A SIGNIFICANT ISSUE

11:25:27AM IN TERMS OF EXISTENCE OF FACTS HERE.

11:25:30AM I JUST WANTED TO POINT THAT OUT.

11:25:35AM >>Steven Hartsell: STEVE HARTSELL AGAIN, FOR THE RECORD.

11:25:36AM WHAT MR. SMALL IS REFERRING TO IS A DEVIATION.

11:25:42AM A DEVIATION THAT'S BEEN APPROVED CONSISTENT WITH THE CODE IS

11:25:46AM NOT A DEFICIENCY.

11:25:48AM IT'S BEEN APPROVED CONSISTENT WITH THE CODE REQUIREMENTS, SO

11:25:52AM THERE IS NOT ANY DEFICIENCY.

11:25:55AM I'LL LET MARY PROVIDE ANY ADDITIONAL COMMENTS THAT SHE FEELS

11:25:59AM ARE NECESSARY.

11:26:00AM THANK YOU.

11:26:01AM >>Mayor McLain: THANK YOU.

11:26:04AM >>Nancy Stroud: [INAUDIBLE] [MICROPHONE NOT ON]

11:26:15AM JUST TO ADD, THE DEVIATIONS WERE APPROVED DURING FINAL PLAN

11:26:18AM APPROVAL WHICH OCCURRED IN JULY.

11:26:22AM SO ANY CHALLENGE TO THOSE DEVIATIONS, IT MISSED THE 30 DAY

11:26:28AM TIME PERIOD TO APPEAL THOSE.

11:26:29AM THAT'S NOT SOMETHING THAT THE COUNCIL SHOULD BE CONSIDERING.

11:26:31AM THAT'S NOT SOMETHING THAT THE COUNCIL SHOULD BE CONSIDERING.

11:26:37AM THE DEVIATIONS.

11:26:42AM >>Mayor McLain: AND DOES THE AFFECTED PARTIES HAVE ANY OTHER

11:26:46AM QUESTIONS?

11:26:49AM >> [INAUDIBLE]

11:26:49AM >>Mayor McLain: AT THIS TIME, I WOULD LIKE TO ALLOW COUNCIL

11:26:53AM TO ANSWER -- ASK ANY QUESTIONS YOU MAY HAVE THAT DEVELOPED

11:27:00AM OVER ALL OF THE TESTIMONY THAT WE RECEIVED TODAY.

11:27:02AM I WOULD ASK YOU TO ADDRESS THE DEVELOPER OR THE AFFECTED

11:27:06AM PARTIES OR STAFF WITH YOUR QUESTIONS.

11:27:08AM DO ANY COUNCIL HAVE ANY QUESTIONS?

11:27:13AM COUNCILMAN WARD.

11:27:14AM >>Jim Ward: YEAH, I WOULD JUST LIKE TO START WITH A QUESTION
11:27:17AM TO OUR COUNCIL REGARDING SUBSTANTIAL COMPETENT EVIDENCE.
11:27:22AM BECAUSE OBVIOUSLY YOU HAVE A CONFLICT IN HOW THIS IS BEING
11:27:26AM VIEWED BY THE APPELLANT VERSUS THE STAFF VERSUS THE
11:27:31AM DEVELOPER.
11:27:31AM THE RULES CITING DIFFERENT REQUIREMENTS AS IT RELATES TO LDC
11:27:37AM AND THE COMPREHENSIVE PLAN.

11:27:38AM SO I'M JUST WANTING TO UNDERSTAND WHAT DEFINES SUBSTANTIAL
11:27:43AM COMPETENT EVIDENCE.
11:27:44AM IS IT SOMETHING THAT IS BEING READ TO US BY THE APPELLANT OR
11:27:49AM IS IT SOMETHING BEING READ TO US BY STAFF OR THE DEVELOPER?
11:27:52AM HOW DO WE DEFINE WHO IS CORRECT IN THEIR UNDERSTANDING OF
11:27:57AM WHETHER IT MEETS THE LDC OR THE COMPREHENSIVE PLAN?
11:28:03AM >>Robert Eschenfelder: SUBSTANTIAL COMPETENT EVIDENCE IS
11:28:05AM EVIDENCE WHICH WOULD TEND TO CONVINCE THE DECISION MAKER OF
11:28:08AM THE POSITION BEING ARGUED.
11:28:10AM IN THIS PARTICULAR CASE, YOU HAVE PARTIES WHO DISAGREE ON
11:28:14AM WHAT SOME OF THE FACTS ARE AND DISAGREE ON HOW THOSE FACTS
11:28:18AM MAY APPLY TO THE CODE.
11:28:20AM ALL THE LAW REQUIRES IN TERMS OF SUBSTANTIAL COMPETENT
11:28:24AM EVIDENCE IS THAT WHEN THE COURT REVIEWS IT, IS THERE A
11:28:27AM FACTUAL EVIDENCE IN THE RECORD THAT THE VILLAGE CAN POINT TO
11:28:34AM TO SUPPORT THE DECISION MADE BY COUNCIL.
11:28:36AM THERE CAN BE CONFLICTING EVIDENCE BUT SIMPLY NEEDS TO BE
11:28:40AM EVIDENCE IN THE RECORD, IN OTHER WORDS, YOU CAN'T MAKE A
11:28:43AM DECISION, FOR INSTANCE, IF YOUR DECISION IS TO REVERSE, YOU
11:28:46AM CAN'T MAKE A DECISION TO REVERSE UNLESS THERE ARE FACTS IN
11:28:51AM THE RECORD TO SUPPORT THAT.
11:28:53AM AND IT DOESN'T JUST HAVE TO BE WHAT IS SPOKEN TO YOU TODAY.
11:28:57AM MANY OF THE PARTIES HAVE REFERRED TO THE WRITTEN RECORD,
11:29:00AM THIS BIG, THICK NOTEBOOK, AND THAT IS ALSO PART OF THE
11:29:03AM EVIDENCE, THE SUBSTANTIAL COMPETENT EVIDENCE THAT THE

11:29:06AM COUNCIL CAN RELY UPON.
11:29:08AM DOES THAT ANSWER YOUR QUESTION?
11:29:12AM >>Jim Ward: YEAH, I GUESS IT DOES.
11:29:13AM I'M JUST WONDERING HOW TWO DIFFERENT PARTIES ARE LOOKING AT
11:29:16AM THE SAME DOCUMENT AND COMING TO TWO DIFFERENT CONCLUSIONS.
11:29:21AM >>Robert Eschenfelder: IT HAPPENS IN COURT ALL THE TIME WHEN
11:29:23AM TWO PARTIES GO IN FRONT OF A JUDGE AND JURY AND SAY I THINK
11:29:27AM THIS, I THINK THAT.
11:29:28AM IT COULD BE A CONTRACT INTERPRETATION, AN INTERPRETATION OF
11:29:31AM AN ORDINANCE, AN INTERPRETATION OF A STATUTE.
11:29:33AM ULTIMATELY, WHAT THE LAW IS YOU ALL DETERMINE BASED UPON
11:29:40AM YOUR COMPREHENSIVE PLAN, YOUR LAND DEVELOPMENT CODE, AND IN
11:29:45AM THIS CASE THE DEVELOPMENT OF REGIONAL IMPACT BECAUSE THAT IS
11:29:49AM PART OF WHAT THE LAW IS THAT APPLIES TO THIS CASE.

11:30:04AM THE FACTS THAT ARE PUT INTO THIS LAW IS WHAT IS ARGUED TO
11:30:07AM YOU TODAY IN TERMS OF THERE BEING COMPETENT SUBSTANTIAL
11:30:16AM EVIDENCE, THERE IS COMPETENT SUBSTANTIAL EVIDENCE THAT CAN
11:30:21AM GO BOTH WAYS.
11:30:22AM YOU HAVE TO DECIDE OF THE EVIDENCE PUT IN BY THE APPELLANT
11:30:25AM AND THE EVIDENCE PUT IN BY THE STAFF AND THE EVIDENCE PUT IN
11:30:28AM BY THE DEVELOPER WHAT WILL MAY MORE IN HOUR I DECIDE THE
11:30:34AM CASE BECAUSE CLEARLY THERE ARE DISPUTED FACTS.
11:30:37AM THE LEGAL STANDARD IN A QUASI-JUDICIAL PROCEEDING IS LOWER
11:30:41AM THAN IT IS IN COURT.
11:30:41AM AND SO BASICALLY, COMPETENT, SUBSTANTIAL EVIDENCE IS THERE
11:30:46AM ANY EVIDENCE IN THE RECORD THAT WILL GO TO SUPPORT THE
11:30:48AM DECISION MADE BY THE GOVERNING BODY?
11:30:55AM >>Jim Ward: THANK YOU.
11:30:55AM CAN I ASK ANOTHER QUESTION, PLEASE.
11:30:57AM >>Mayor McLain: YES.
11:30:58AM >>Jim Ward: TO THE APPELLANT, I BELIEVE YOU STATED INITIALLY
11:31:03AM THAT YOU DO NOT HAVE LEGAL REPRESENTATION HERE.
11:31:06AM AND I BELIEVE YOU DO HAVE LEGAL REPRESENTATION, CORRECT?
11:31:13AM >>Kathy Wyrofsky: I ENGAGED RALF BROOKES FOR THE INITIAL
11:31:20AM HEARING BEFORE THE PLANNING AND ZONING BOARD.
11:31:22AM WHEN WE DID NOT GET PARTICIPATION STATUS, I THEN TERMINATED
11:31:28AM THAT RELATIONSHIP FOR A PERIOD OF TIME.
11:31:31AM WHEN WE REALIZED THAT THIS -- THAT WE WOULD HAVE TO CREATE
11:31:35AM AN APPEAL, WE DID REENGAGE HIM; HOWEVER, HE -- HE DID
11:31:41AM RECEIVE NOTICE OF THIS MEETING WHEN I DID.
11:31:43AM AND HE DID PROVIDE SIX ADDITIONAL -- SEVEN ADDITIONAL DATES,
11:31:47AM ONE OF WHICH I THINK WAS AT ONE OF YOUR MEETINGS IN JANUARY
11:31:50AM IN ORDER TO REPRESENT US.
11:31:53AM WE WERE TOLD BY THE VILLAGE THAT NONE OF THOSE DATES WERE
11:31:56AM GOOD FOR THE VILLAGE AND THAT WE DIDN'T GET TO PARTICIPATE
11:31:59AM IN THAT DECISION.
11:32:00AM SO WE DO HAVE REPRESENTATION.
11:32:04AM HE DID PREPARE THE MEMOS BOTH FOR THE AGGRIEVED PARTY STATUS
11:32:09AM SO WE DIDN'T HAVE TO PRESENT THAT THIS MORNING.
11:32:11AM AND HE DID GIVE US THE MEMORANDUM THAT MR. DAVID SMALL READ
11:32:15AM TO ALL OF YOU SUPPORTING OUR POSITION.
11:32:18AM HE IS NOT HERE, UNFORTUNATELY.
11:32:21AM BUT WE CURRENTLY DO HAVE REPRESENTATION.
11:32:26AM THANK YOU.
11:32:27AM >>Jim Ward: THANK YOU.
11:32:29AM >>Mayor McLain: ANY OTHER QUESTIONS?
11:32:34AM GO AHEAD.
11:32:35AM YOU GO FIRST.
11:32:36AM COUNCIL LADY FAYHEE.
11:32:42AM >>Lori Fayhee: I -- I HAVE A COUPLE OF QUESTIONS HERE FOR
11:32:45AM BOTH OF YOU THAT MAY NOT BE RELEVANT TO OUR DECISION, BUT I
11:32:52AM FEEL THAT -- THAT IT IS TO MY DECISION.

11:32:56AM AND I HAVE LOST MY PAGE NOW.
11:33:01AM MISS.
11:33:06AM >>Kathy Wyrofsky: MISS WYROFSKY.
11:33:10AM >>Lori Fayhee: THANK YOU.
11:33:12AM >>Kathy Wyrofsky: SURE.
11:33:15AM >>Lori Fayhee: I UNDERSTAND YOUR CONCERNS.
11:33:17AM I GUESS WHAT I WOULD QUESTION IS, YOU HAVE A LOT -- A LONG
11:33:24AM LIST OF THINGS YOU DON'T LIKE ABOUT THIS DEVELOPMENT
11:33:27AM PROJECT.
11:33:30AM DO YOU HAVE CONCESSIONS IN MIND THAT YOU WOULD ASK THE
11:33:33AM DEVELOPER IF YOU HAD THE OPPORTUNITY?
11:33:36AM >>Kathy Wyrofsky: WELL, THE FIRST, OF COURSE, WOULD BE TO BE
11:33:40AM CONSISTENT WITH THE COMPREHENSIVE PLAN.
11:33:41AM BUT BEYOND THAT, I HAVE HEARD FROM, AS YOU CAN IMAGINE,
11:33:45AM THOUSANDS OF RESIDENTS OF THE BROOKS.
11:33:48AM YES, INDEED, I HAD A LAUNDRY LIST OF NOT ONLY CONCESSIONS
11:33:53AM AND IDEAS, AND WE ARE HAPPY TO PRESENT THEM AND DISCUSS
11:33:55AM THEM.
11:33:56AM MOST OF THEM DO DEAL WITH THE HEIGHT OF THE BUILDINGS.
11:33:58AM AND I UNDERSTAND WHY THE DEVELOPER WANTS THE HEIGHT OF THE
11:34:02AM BUILDINGS, BUT NOT ONLY IS IT INCONSISTENT, NOT ONLY WILL IT
11:34:07AM CREATE ISSUES FOR ADJACENT NEIGHBORS, THAT IS ONE OF OUR BIG
11:34:11AM ISSUES.
11:34:11AM THE SIZE OF THE BUILDING ON THE LOT.
11:34:15AM SAFETY.
11:34:15AM THERE IS -- BUT, YES, THE ANSWER IS, YES.
11:34:18AM WE WOULD BE AMENABLE TO CERTAIN CONCESSIONS AND MEETINGS.
11:34:24AM ABSOLUTELY.
11:34:25AM >>Lori Fayhee: I APPRECIATE THAT.
11:34:28AM >>Kathy Wyrofsky: THANK YOU.
11:34:29AM >>Lori Fayhee: I AM ALWAYS WORKING, AT LEAST IN MY OWN MIND
11:34:32AM --
11:34:33AM >> WE OFFERED AND WE ARE STILL OPEN.
11:34:34AM SO, YES, THANK YOU.
11:34:36AM >>Lori Fayhee: TO TRY TO BRING PEACE TO A SITUATION.
11:34:39AM >>Kathy Wyrofsky: THANK YOU.
11:34:39AM >>Lori Fayhee: YES.
11:34:41AM AND TO THE DEVELOPER'S REPRESENTATIVE, IF I COULD ASK YOU A
11:34:49AM QUESTION OR TWO.
11:34:50AM NOW THIS IS FOUR STORIES.
11:34:58AM IF IT WERE REDUCED TO THREE STORIES, HOW DOES THAT -- AT
11:35:05AM WHAT LOSS WILL THAT BE FINANCIALLY FOR YOUR DEVELOPMENT?
11:35:11AM >>Steve Hartsell: I ABSOLUTELY HAVE NO IDEA WHAT THE ANSWER
11:35:14AM TO THAT QUESTION IS.
11:35:16AM >>Lori Fayhee: DO YOU HAVE ANY IDEA WHAT THE -- HOW MANY --
11:35:24AM [BEEPING]
11:35:26AM -- SORRY, THE BEEP THREW ME OFF.
11:35:28AM HOW MANY UNITS ARE ON THAT FOURTH FLOOR, SORRY?

11:35:32AM >>Steve Hartsell: I DON'T KNOW OFF THE TOP OF MY HEAD HOW
11:35:35AM MANY.
11:35:35AM I WOULD PROBABLY PRESUME THERE ARE A QUARTER OF THE 137
11:35:41AM UNITS.
11:35:41AM >>Lori Fayhee: THAT WILL MAKE SENSE, I GUESS.
11:35:44AM THANK YOU.
11:35:45AM AND THEN ON THE LIGHTING, MY UNDERSTANDING WAS THAT IT WAS
11:35:49AM 20 FEET AND THE BROOKS RESIDENTS WOULD PREFER 15 FEET FOR
11:35:56AM THE LIGHTING HEIGHT.
11:35:57AM IS -- HAS THAT BEEN DISCUSSED?
11:36:03AM >> I BELIEVE THAT THE LIGHTING WAS DISCUSSED AS A DEVIATION
11:36:05AM AT THE PLANNING BOARD HEARING.
11:36:08AM AND THAT WAS -- THERE WAS A DEVIATION THAT WAS GRANTED WITH
11:36:17AM REGARD TO THE LIGHTING.
11:36:18AM I DON'T KNOW EXACTLY WHETHER CHANGING THAT TO -- MR. KREBS
11:36:24AM WOULD LIKE TO ADDRESS THAT.
11:36:25AM >>Lori Fayhee: THANK YOU.
11:36:26AM >> CHARLIE KREBS, CHARLIE KREBS WITH HOLE MONTES FOR
11:36:35AM THE RECORD.
11:36:35AM WHEN WE CAME IN TO DO THE LIGHTING, THE 5.3 ACRES WAS
11:36:40AM REDUCED DOWN TO THE 15 FEET.
11:36:42AM THE COMMERCIAL LIGHTING WAS STAYING AS IT IS BECAUSE WE
11:36:46AM WEREN'T IMPACTING THOSE LIGHT POLES.
11:36:48AM WE ONLY LOOKED AT MODIFYING THE LIGHTING ON THE RESIDENTIAL
11:36:51AM SIDE AND THAT WAS BROUGHT DOWN TO THE RESIDENTIAL
11:36:54AM REQUIREMENT WHILE THE COMMERCIAL WAS AT THE PREVIOUSLY
11:36:56AM APPROVED 20 FEET.
11:36:57AM SO THE DEVIATION WAS THAT WE COULD HAVE THE COMMERCIAL
11:37:00AM LIGHTING COMPLY WITH THE CODE WITHOUT HAVING TO GO AND REDO
11:37:04AM THE LIGHTING ON THE COMMERCIAL SAID SO IT WASN'T IMPACTING
11:37:07AM THE PORTION OF OUR PROPERTY.
11:37:09AM >>Lori Fayhee: I APPRECIATE THAT, THANK YOU.
11:37:11AM AND -- HAVE YOU MET WITH THE BROOK COMMUNITY OR DO YOU PLAN
11:37:21AM TO?
11:37:22AM WE HAVE YET ANOTHER ONE.
11:37:23AM I AM SORRY.
11:37:24AM >>Steve Hartsell: WE DON'T PLAN TO AT THE MOMENT, NO.
11:37:31AM WE GOT THE APPROVALS THAT ARE NECESSARY.
11:37:33AM >>Lori Fayhee: OKAY.
11:37:34AM ALL RIGHTY.
11:37:35AM THANK YOU VERY MUCH.
11:37:36AM >>Steve Hartsell: THANK YOU.
11:37:38AM >>Kathy Wyrofsky: I AM SORRY.
11:37:39AM IT WAS BROUGHT TO MY ATTENTION, THERE IS ONE OTHER IMPORTANT
11:37:43AM ITEM TO THE RESIDENTS, ESPECIALLY THE RESIDENTS OF
11:37:45AM SHADOW WOOD, AND, AGAIN, WITHOUT BEING ABLE TO NEGOTIATE
11:37:49AM ANYTHING, THERE IS NO SECURITY PERIMETER BETWEEN TOWN CENTER
11:37:54AM AND EITHER THE CONSERVATION AREA OR OUR PROPERTIES REALLY.

11:37:58AM >>Robert Eschenfelder: MR. MAYOR, PROCEDURALLY IF WE ARE --
11:38:02AM IF COUNCIL IS ASKING QUESTIONS, THIS ISN'T REALLY THE
11:38:05AM OPPORTUNITY FOR EVERYBODY TO STAND.
11:38:10AM >>Kathy Wyrofsky: SECURITY WOULD BE AN ISSUE TO TALK ABOUT.
11:38:12AM MY APOLOGIES.
11:38:14AM >>Mayor McLain: I HAVE MAYBE CLARIFICATION BECAUSE WE HEARD
11:38:18AM ON BOTH SIDES THE 50-FOOT BUILDING LIMIT.
11:38:22AM THE APPLICANT -- THE AGGRIEVED PEOPLE ARE SAYING THAT IS NOT
11:38:28AM ALLOWED.
11:38:28AM WHAT I AM HEARING FROM BOTH THE DEVELOPER AND FROM STAFF
11:38:31AM THAT THAT CLEARLY IS ALLOWED.
11:38:34AM AND I THINK FOR ME TO MAKE A DECISION, THAT IS EXTREMELY
11:38:37AM IMPORTANT THAT WE GET FIRM EVIDENCE AND CONCLUSION TO THAT
11:38:45AM HEIGHT.
11:38:45AM >>Mary Gibbs: THE 50 FEET IS CLEARLY ALLOWED.
11:38:49AM IT WAS APPROVED IN 1997 BY THE COUNTY.
11:38:53AM IT DOES IS NOT TAKEN AWAY BY A NEW COMPREHENSIVE PLAN AND
11:38:59AM LET ME JUST ADD ON WHEN ROB WAS TALKING OF COMPETENT,
11:39:02AM SUBSTANTIAL EVIDENCE, TYPICALLY -- AND I KNOW THE NEIGHBORS
11:39:06AM HAVE DONE A GREAT JOB AND THEY ARE VERY PASSIONATE, BUT WHEN
11:39:11AM YOU TALK OF COMPETENT, SUBSTANTIAL EVIDENCE, I HAVE BEEN
11:39:14AM REVIEWING DRIs FOR 40 YEARS, LEE COUNTY, COUNTY, VILLAGE OF
11:39:22AM ESTERO.
11:39:23AM I HAVE BEEN RECOGNIZED AS AN EXPERT IN THAT AND YOU HAVE TO
11:39:26AM PUT CREDENCE IN THE STAFF'S KNOWLEDGE OF DEALING WITH DRIs
11:39:30AM OF HOW IT IS INTERPRETED.
11:39:33AM I WOULD SAY THE 50 FEET -- AND I HAD ASKED THE DEVELOPER
11:39:37AM EARLY ON WHEN WE -- WAY BACK IN THE BEGINNING, YOU KNOW,
11:39:41AM COULD THEY REDUCE THE HEIGHT OF THE BUILDING, AND THEY SAID
11:39:45AM NO.
11:39:45AM IF YOU REDUCE IT TO THREE STORY, YOU ARE NOT REQUIRED TO
11:39:48AM HAVE ELEVATORS.
11:39:49AM YOU ARE REQUIRED TO HAVE THE ELEVATORS.
11:39:51AM SO THE QUALITY OF THE PROJECT IS A LITTLE BIT AFFECTED.
11:39:55AM BUT, YOU KNOW, THE 50 FEET IS -- IS CORRECT, IN MY OPINION.
11:39:59AM >>Mayor McLain: OKAY, THANK YOU.
11:40:00AM YOU KNOW I HAVE BEEN ON COUNCIL HERE FOR A FEW YEARS.
11:40:05AM AND IT IS A LITTLE DISTURBING TO ME THAT THE AFFECTED
11:40:11AM PARTIES HAD REACHED OUT TO THE DEVELOPER TO DISCUSS THEIR
11:40:16AM CONCERNS.
11:40:17AM AND MY PREVIOUS EXPERIENCES, THAT IS A -- A GREAT WAY TO GET
11:40:22AM ACCEPTANCE OF PROJECTS SO I AM CONCERNED WITH WHY THE
11:40:28AM DEVELOPER HAD CHOSEN NOT TO RESPOND IN ANY FORMAT TO -- TO
11:40:34AM THE AFFECTED PARTIES IN THERE.
11:40:36AM SO THE QUESTION IS, CAN YOU -- CAN YOU TELL ME WHY THAT WAS
11:40:40AM NOT DONE?
11:40:44AM >>Steve Hartsell: STEVE HARTSELL, AGAIN, FOR THE RECORD.
11:40:47AM CLEARLY I AM AT A LITTLE BIT OF A DISADVANTAGE SINCE I'M

11:40:51AM HERE ON BEHALF OF NEIL MONTGOMERY, MY PARTNER WHO HAS BEEN
11:40:57AM INVOLVED THE WHOLE TIME.
11:40:58AM WITH REGARD TO NOT ADDRESSING THE -- THE CONCERNS THAT YOU
11:41:03AM ARE ASKING ABOUT, I THINK PERHAPS THE QUESTION THAT
11:41:09AM COUNCILMEMBER FAYHEE ASKED ME OF THE HEIGHT OF THE LIGHTS.
11:41:14AM THE LIGHTS WERE REDUCED.
11:41:16AM THE DEVELOPERS HAVE BEEN COGNIZANT OF THE NEIGHBORS'
11:41:21AM CONCERNS.
11:41:21AM LARGELY THE POINT HAS BEEN DON'T DO FOUR STORIES.
11:41:36AM AND AS MARY GIBBS POINTED OUT, THAT IS SIMPLY NOT --
11:41:40AM >>Mayor McClain: I THINK WE ADDRESSED THAT.
11:41:42AM >>Steve Hartsell: THAT IS SIMPLY NOT AN OPTION.
11:41:45AM IN TERMS OF WHERE THE OBJECTIONS ARE COMING FROM, I MEAN,
11:41:49AM LARGELY YOU HEARD FROM ALL OF THIS TESTIMONY THAT THEY DON'T
11:41:53AM WANT THIS PROJECT TO BE HERE.
11:41:55AM WHAT THEY WANT IS ONE OR TWO STORY -- SOMETHING THAT IS ONE
11:42:01AM OR TWO STORY AND THAT DOESN'T WORK.
11:42:03AM WHAT THEY WOULD LIKE IS SOMETHING THAT ISN'T MULTIFAMILY,
11:42:09AM APPARENTLY.
11:42:10AM AND, AGAIN, IT'S CLEAR WE HAVE --
11:42:15AM >>Mayor McLain: I WOULD LIKE -- PLEASE.
11:42:16AM PLEASE KEEP IT DOWN.
11:42:18AM >>Steve Hartsell: ITS CLEAR WE HAVE A COMMERCIAL PROJECT
11:42:20AM WHERE THAT GROCERY STORE HAS BEEN VACANT FOR YEARS.
11:42:23AM IT DOESN'T WORK.
11:42:24AM SO THE DEVELOPER HAS PROPOSED SOMETHING THAT IS CONSISTENT
11:42:30AM WITH THE ZONING, THE CODE, THE COMPREHENSIVE PLAN.
11:42:34AM IT'S CONSISTENT WITH WHAT THEY ARE ABLE TO DO.
11:42:39AM IT HAS A SIGNIFICANTLY REDUCED TRAFFIC IMPACT.
11:42:43AM AS MARY GIBBS POINTED OUT, IT IS 30% OF WHAT A THRIVING
11:42:47AM SHOPPING CENTER WOULD -- THAT IS ALREADY PERMITTED.
11:42:52AM NOW, GRANTED, IT HAS BEEN VACANT FOR YEARS.
11:42:56AM SO, NO, THE IMPACTS SEEM TO BE LOWER.
11:42:58AM AS ONE GENTLEMAN TESTIFIED, HE COULD STILL HEAR THE GARBAGE
11:43:03AM TRUCKS AND PICK UPS AND THINGS LIKE THAT.
11:43:05AM IF THIS WAS A THRIVING SHOPPING CENTER, YOU WOULD HAVE A LOT
11:43:09AM MORE NOISE THAN YOU ARE GOING TO HAVE WITH MULTIFAMILY
11:43:13AM THERE.
11:43:13AM >>Mayor McLain: I HAVE ANOTHER QUESTION FOR YOU.
11:43:16AM I DID VISITS THE AFFECTED PARTIES ON -- ON THE STREET.
11:43:22AM AND THEY BRING SOME -- SOME VALID CONCERNS, BUT I THINK WE
11:43:26AM HAVE ADDRESSED THOSE THROUGH THE WHOLE AREA.
11:43:30AM ONE AREA -- AND I DON'T KNOW IF YOU CAN SPEAK FOR THE
11:43:34AM DEVELOPER, BUT ONE THAT WAS BROUGHT UP TO ME WAS POTENTIAL
11:43:38AM INCREASE OF SECURITY CONCERNS ALONG THE CDD PROPERTY THAT
11:43:42AM KATHY HAD MENTIONED THAT NO ONE WALKS ON THAT.
11:43:45AM BUT THAT ABUTS THIS PROPERTY.
11:43:49AM AND I AM WONDERING, ASKING THE QUESTION, IF -- I KNOW YOU

11:43:54AM HAVE YOUR DEVELOPMENT ORDER ALREADY, BUT BECAUSE THERE WAS
11:43:56AM NO COMMUNICATIONS BACK AND FORTH, IF THE DEVELOPER WOULD
11:44:00AM CONSIDER MEETING WITH THE APPROPRIATE PARTIES ARE AFFECTED
11:44:06AM AND ADDRESS THEIR SECURITY ISSUES.
11:44:09AM I AM NOT SURE HOW TO ADDRESS THOSE APPROPRIATELY, BUT I
11:44:14AM WOULD LIKE TO SEE -- I THINK SECURITY IS IMPORTANT.
11:44:18AM I THINK YOU HAVE ADDRESSED LIGHTING.
11:44:21AM THEY BROUGHT UP LIGHTING TO ME.
11:44:23AM I AM GLAD TO SEE THAT IS DONE.
11:44:25AM YOU CAN REDIRECT LIGHTS AND ALL THAT.
11:44:27AM THAT HAS BEEN SOLVED.
11:44:28AM SECURITY, WHEN YOU PUT MORE DENSITY OF PEOPLE CAN BE A RISK
11:44:32AM AND WILL BE MORE FOLKS AROUND.
11:44:35AM I WILL -- CAN YOU COMMENT ON THAT AT ALL?
11:44:38AM >>Steve Hartsell: I WILL -- I WILL DEFER TO MR. CAVANAUGH TO
11:44:42AM ADDRESS THAT.
11:44:43AM >>Mayor McLain: THANK YOU.
11:44:46AM >> SO MY NAME IS TOM CAVANAUGH.
11:44:49AM I AM THE DEVELOPER.
11:44:50AM I HAVE BEEN SWORN IN.
11:44:51AM AND I CAN ANSWER ALL OF YOUR QUESTIONS.
11:44:54AM FIRST, THE GENERAL RULE IS, I WANTED TO MEET.
11:45:01AM WE REACHED OUT TO THE PRESIDENTS, GOING BACK THREE YEARS --
11:45:05AM I PERSONALLY REACHED OUT TO ALL THREE OF THE PRESIDENTS, TO
11:45:08AM MEET WITH THEM.
11:45:09AM TELL THEM WHAT WE WERE DOING.
11:45:10AM BE THE GOOD NEIGHBOR.
11:45:12AM WE HAD SOME COMMUNICATION GOING BACK AND FORTH WITH E-MAIL.
11:45:16AM AND AT THE TIME, THEY DIDN'T WANT TO TALK TO US.
11:45:18AM THEY WERE BEING ADVISED BY AN ATTORNEY AND THE EASTERN TO
11:45:21AM SAID DON'T MEET WITH THEM.
11:45:22AM I PERSONALLY HAVE NEVER BEEN REACHED OUT BY KATHY.
11:45:27AM SHE MADE -- MY APOLOGIES.
11:45:30AM I NEVER RECEIVED IT.
11:45:31AM BUT IF -- WE WANT TO TALK ABOUT CONCESSIONS AND SECURITY,
11:45:37AM LET'S HAVE THE CONVERSATION, BECAUSE EVERYTHING THAT I WAS
11:45:40AM ASKED TO DO BY THE PLANNING BOARD, WE HAVE DONE.
11:45:43AM SO IF KATHY WANTS A FENCE, KATHY CAN HAVE A FENCE.
11:45:50AM KATHY WANTS ADDITIONAL LANDSCAPING, KATHY CAN HAVE
11:45:54AM ADDITIONAL LANDSCAPING.
11:45:55AM SORRY, THE RESIDENTS, OKAY.
11:45:58AM I THINK IT IS PROBABLY A GOOD QUORUM TO ASK WHAT THEY WANT
11:46:04AM AND LET'S DISCUSS IT RIGHT NOW.
11:46:05AM PERSONALLY, I DON'T THINK THERE IS ANY DIFFERENCE IN
11:46:09AM SECURITY BETWEEN THE BACK OF A RETAIL CENTER AND A BACK OF A
11:46:13AM VERY LUXURIOUS, HIGH-END, YOU KNOW, COMMUNITY THAT FULFILLS
11:46:20AM THE NEEDS OF ESTERO.
11:46:22AM MAY NOT FILL THE NEED OF BROOKS, BUT IT SURE FILLS THE NEEDS

11:46:26AM OF ESTERO AS A COMMUNITY.
11:46:30AM SO IMPORE THAN WILLING TO SIT HERE AND ANSWER QUESTIONS.
11:46:34AM >>Mayor McLain: LET ME ASK -- ROBERT, IS IT APPROPRIATE THAT
11:46:38AM WE HAVE THE AFFECTED PARTIES PROVIDE SOME OF THEIR CONCERNS
11:46:44AM THAT MAY NOT HAVE BEEN ADDRESSED, LIKE SECURITY?
11:46:49AM IS THAT APPROPRIATE FOR THIS?
11:46:55AM >>Robert Eschenfelder: SO THE DIFFICULTY THAT -- THAT WILL
11:46:59AM COME IN IS THAT COMING OUT OF THIS HEARING TODAY, YOU ALL
11:47:05AM NEED TO ISSUE A RULING.
11:47:09AM AND EITHER AFFIRMING, REVERSING, OR AFFIRMING WITH NEW
11:47:15AM CONDITIONS.
11:47:16AM IF YOU PUT NEW CONDITIONS ON, THOSE CONDITIONS HAVE TO BE OF
11:47:21AM SUCH SPECIFICITY THAT THEY ARE ENFORCEABLE.
11:47:25AM AND SO, IT'S A DIFFICULT ENVIRONMENT IN THE MIDDLE OF A
11:47:31AM QUASI-JUDICIAL HEARING TO START NEGOTIATING THE SPECIFICS OF
11:47:35AM WHAT KIND OF FENCE?
11:47:37AM HOW HIGH IS THE FENCE?
11:47:38AM WHEN WILL THE FENCE BE BUILT?
11:47:40AM I MEAN A TON OF DISCUSSIONS, AND IT IS VERY DIFFICULT TO
11:47:44AM HAVE THEM IN THIS SETTING.
11:47:46AM SO THAT IS -- THAT IS THE PROBLEM THAT IS CREATED.
11:47:49AM CAN IT BE DONE?
11:47:50AM YES, IT CAN BE DONE.
11:47:52AM YOU KNOW YOU MIGHT -- AND TRULY I THINK IT ALSO WILL BE THE
11:47:57AM CASE, LET'S ASSUME THAT YOU TAKE A TEN-MINUTE BREAK AND YOU
11:48:02AM SAY, DEVELOPER, MEET WITH THE AFFECTED PARTIES AND SEE IF
11:48:06AM YOU CAN COME TO AN AGREEMENT.
11:48:08AM THEY MAY COME BACK AND SAID, WE COME TO AN AGREEMENT THAT WE
11:48:11AM WOULD LIKE TO HAVE A FENCE.
11:48:13AM BUT DOES THAT MEAN THAT THEY ARE DROPPING THIS APPEAL?
11:48:16AM DOUBTFUL.
11:48:16AM SO YOU STILL HAVE AN APPEAL THAT NEEDS TO BE VOTED ON.
11:48:22AM DOES THAT ANSWER YOUR QUESTION?
11:48:25AM >>Mayor: YEAH, I THINK SO.
11:48:26AM I GUESS I WOULD -- I LIKE PEOPLE TO BE ABLE TO DISCUSS THESE
11:48:30AM THINGS.
11:48:30AM WE ARE FORTUNATE TO HAVE THE DEVELOPER HERE.
11:48:33AM HE CAN MAKE DECISIONS.
11:48:35AM YOU HAVE PEOPLE WHO ARE ABLE TO DO IT.
11:48:37AM I -- I ASK THE AFFECTED PARTIES -- THERE ARE, WHAT, FIVE, I
11:48:44AM GUESS.
11:48:44AM WOULD YOU WANT TO TAKE A TEN-MINUTE BREAK AND SEE IF YOU CAN
11:48:48AM CARVE OUT --
11:49:16AM >>Kathy Wyrofsky: PROFESSIONALS IN THIS AREA.
11:49:17AM I AM NOT SURE I CONSIDERED THAT.
11:49:20AM >>Mayor McLain: I DON'T KNOW IF YOU NEED TO HAVE THE
11:49:22AM ATTORNEYS PRESENT.
11:49:23AM THE DEVELOPER AND THE OTHER AFFECTED PARTIES CAN HAVE A

11:49:27AM TEN-MINUTE MEETING.
11:49:30AM YOU CAN EITHER DO IT NOW --
11:49:35AM >>Steve Hartsell: IF I MIGHT.
11:49:36AM AT LEAST FOR THE RECORD, I WOULD LIKE TO POINT OUT, WHICH I
11:49:39AM THINK YOUR COUNSEL WAS ALLUDING TO.
11:49:43AM WE HAVE BEEN THROUGH ALL OF THE HEARINGS THAT ARE NECESSARY.
11:49:49AM THERE HAVE BEEN PUBLIC INFORMATION MEETINGS.
11:49:52AM THERE HAVE BEEN PUBLIC MEETINGS GOING BACK TO JUNE WHEN THE
11:49:57AM SETTLEMENT AGREEMENT CAME THROUGH, WHEN THE FINAL APPROVAL
11:50:01AM CAME THROUGH THE PDZ IN OCTOBER.
11:50:04AM AGAIN WHEN WE WENT TO THE PLANNING AND ZONING DESIGN BOARD.
11:50:08AM WE HAVE HAD THESE DISCUSSIONS.
11:50:09AM WE WOULD URGE YOU TODAY WITH REGARD TO THE PRESENT APPEAL,
11:50:15AM TO DENY THE APPEAL, TO APPROVE THE DEVELOPMENT ORDER.
11:50:20AM WITH REGARDS TO THE QUESTION OF SECURITY, WHETHER HAVING A
11:50:24AM FENCE TO THAT, WHETHER ADDING ADDITIONAL LANDSCAPING.
11:50:29AM AS MR. CAVANAUGH HAS SAID, HE IS OPEN TO HAVING THOSE
11:50:33AM DISCUSSIONS.
11:50:34AM WE WOULD STILL BE OPEN TO HAVING THOSE DISCUSSIONS AFTER THE
11:50:40AM APPEAL HAS BEEN DETERMINED, BUT WE WOULD URGE YOU TO DO --
11:50:45AM TO MAKE THE DECISION TO DENY THE APPEAL AND NOT TO BASICALLY
11:50:51AM PUT THE DEVELOPER IN THE POSITION WHERE HE IS BEING HELD
11:50:56AM HOSTAGE BY THE RESIDENTS WHO UP TO THIS POINT HAVE SIMPLY
11:51:00AM SAID, WE DON'T WANT YOU TO DO THAT.
11:51:02AM GO AWAY.
11:51:03AM >>Mayor McLain: I AM GOING TO END -- WE ARE IN THE QUESTION
11:51:10AM FROM COUNCIL RIGHT NOW.
11:51:12AM SO I THINK ALL OF OUR COUNCILMEMBERS HERE, WE WANT TO
11:51:16AM REPRESENT OUR CITIZENS.
11:51:17AM WE HAVE TO DO THAT IN A LEGAL MANNER.
11:51:20AM I THINK WE HAVE DONE THAT TODAY.
11:51:22AM WE HAVE HEARD FROM ALL PARTIES.
11:51:23AM I THINK WE HAVE SOME CLARIFICATIONS ON THE SIGNIFICANT ISSUE
11:51:27AM WITH THE -- WITH THE 50 FEET.
11:51:28AM OBVIOUSLY THERE ARE SOME OTHER ISSUES.
11:51:32AM LIGHTING HAS BEEN DONE.
11:51:36AM AS A MAYOR AND COUNCIL MEMBER, I WAS TRYING TO SAY CAN WE
11:51:40AM GET SOME HARMONY.
11:51:42AM I UNDERSTAND IF IT IS NOT SPECIFIC AND ENFORCEABLE, IT'S
11:51:46AM KIND OF DIFFICULT TO DO THAT.
11:51:48AM SO WE ARE HERE.
11:51:49AM COUNCIL IS HERE TO MAKE A DECISION ON THIS TODAY.
11:51:53AM WE ARE GOING TO VOTE ON THIS.
11:51:55AM I DON'T KNOW WHAT THAT IS GOING TO LOOK LIKE.
11:51:57AM SO I WAS TRYING TO GIVE SOME OPPORTUNITIES FOR TWO PARTIES
11:52:02AM TO MAYBE AN AGREEMENT THAT WE COULD ENFORCE.
11:52:06AM I THINK WHERE WE ARE NOW THAT WE HAVE A DEVELOPER HERE WHO
11:52:09AM SAID, LET'S GET THIS OBVIOUSLY APPROVED.

11:52:13AM AND THEN WE CAN HAVE SOME DISCUSSION.
11:52:15AM THERE IS SOME GOOD FAITH THAT MIGHT TO BE INVOLVED IN THAT
11:52:18AM THAT WILL NOT BE ENFORCEABLE.
11:52:20AM YOU HAVE NO AGREEMENT THAT CAN PRESENT TO COUNCIL RIGHT NOW
11:52:25AM THAT WOULD ALLOW US TO TAKE THAT UNDER CONSIDERATION.
11:52:29AM SO I THINK THOSE ARE MY -- AT LEAST MY COMMENTS AND MY
11:52:34AM THOUGHT PROCESS THAT WE HAVE.
11:52:36AM I AM TRYING TO MAKE THIS WORK, BUT IT DOESN'T LOOK LIKE WE
11:52:40AM HAVE AN EASY SOLUTION.
11:52:41AM WE HAVE A TRUSTING SOLUTION.
11:52:42AM AND HOPE THAT OUR FOLKS THAT COME INTO THE VILLAGE OF ESTERO
11:52:48AM WILL STAND BEHIND THEIR WORD THAT THEY WILL TRY TO WORK A
11:52:52AM SOLUTION.
11:52:53AM HE IS NOT SAYING A DOLLAR AMOUNT OR EXTENT OF THAT, BUT AT
11:52:58AM LEAST YOU WILL HAVE THE CONVERSATION.
11:52:59AM AND TRUST THAT YOU CAN COME UP WITH SOMETHING THAT DOES MAKE
11:53:02AM SENSE AND ESTABLISH THE REAL NEED FOR THOSE CONCERNS.
11:53:06AM SO THAT'S MY COMMENTS.
11:53:09AM WE WILL GO BACK TO COUNCILMAN WARD.
11:53:12AM >>Jim Ward: YEAH, JUST A QUICK COMMENT TO THE AUDIENCE.
11:53:15AM MANY OF YOU -- SOME PROBABLY KNOW ME.
11:53:17AM MY NAME IS JIM WARD.
11:53:18AM I LIVE IN THE BROOKS.
11:53:19AM I LIVE IN SPRING RUN.
11:53:21AM I HAVE BEEN ACTIVE IN THE COMMUNITY FOR NUMBER OF YEARS
11:53:24AM HAVING SERVED ON THE SPRING RUN BOARD FOR A NUMBER OF YEARS.
11:53:28AM HAVING SERVED ON THE BROOKS COMMON CLUB BOARD FOR A NUMBER
11:53:31AM OF YEARS.
11:53:31AM WHAT IS INVOLVED WITH THE BROOKS COUNCIL PRESIDENTS FOR
11:53:36AM YEARS AND ALSO ON THE CDD FOR A NUMBER OF YEARS.
11:53:39AM WE HAD A NUMBER OF DISCUSSIONS WITH THE BROOKS COUNCIL
11:53:42AM PRESIDENTS PRIOR TO THIS BEING AUTHORIZED FOR THE VILLAGE TO
11:53:49AM ACCEPT THE LEGAL STATUS THAT WE DID ON JUNE 21, 2023.
11:53:53AM SO I WANT THE COMMUNITY TO BE AWARE OF THE FACT THAT WE DID
11:53:57AM REACH OUT AND DID HAVE NUMEROUS MEETINGS WITH COUNCIL, WITH
11:54:01AM MARY GIBBS, WITH NANCY STROUD, WITH THE BROOKS COUNCIL OF
11:54:06AM PRESIDENTS.
11:54:06AM AND KEPT THEM ABREAST EXACTLY WHAT WAS GOING ON OVER A
11:54:10AM PERIOD OF TIME, EVEN UP THROUGH THE LATE RECENT MONTHS
11:54:14AM DURING THIS PAST SUMMER.
11:54:15AM WE KEPT THEM ADVISED WHAT THE PROCESS WAS AND WHERE WE WERE
11:54:21AM AT A POINT IN TIME WE WISH TO SETTLE THIS DISPUTE WE HAD
11:54:24AM WITH THE DEVELOPER.
11:54:25AM BECAUSE AS MANY OF YOU KNOW, WE WERE IN COURT WELL OVER A
11:54:28AM YEAR WITH THE DEVELOPER TO ENSURE THE COMMUNITY HAD THE
11:54:31AM RIGHT TO BE HERE TODAY.
11:54:33AM THAT THE COMMUNITY HAD THE RIGHT TO BE BEFORE THE PLANNING
11:54:36AM AND ZONING BOARD TO EXPRESS THEIR VIEWS.

11:54:38AM THE DEVELOPER, AT ONE POINT IN TIME, WANTED TO BE A SIMPLE
11:54:43AM ADMINISTRATIVE PROCESS WHEREBY THE STAFF WILL MAKE THE
11:54:46AM DECISION.
11:54:46AM AND IT WOULDN'T HAVE -- THE COMMUNITY WOULD NOT HAVE THE
11:54:50AM OPPORTUNITY TO COMMENT OR MAKE SOME CHANGES TO THE PRODUCT.
11:54:54AM ONE OF THE THINGS I WOULD LIKE TO DO, IF I CAN, IS TO ASK
11:54:58AM MARY TO COME UP, BECAUSE THERE WAS SOME CONCESSIONS THAT
11:55:01AM WERE MADE, EVEN IN THE LAST THREE OR FOUR MONTHS WITH THE
11:55:05AM BLESSING OF THE BROOKS COUNCIL OF PRESIDENTS.
11:55:08AM AND WITH THE BLESSING OF THE DEVELOPER.
11:55:11AM MARY, ARE YOU IN A POSITION TO GO THROUGH SOME OF THOSE
11:55:14AM CHANGES THAT POSITIVELY AFFECTED THE OUTCOME OF THIS?
11:55:19AM >>Mary Gibbs: I THINK YOU ARE TALKING ABOUT SOME OF THE
11:55:22AM THINGS THAT WE WORK WITH THE DEVELOPER TO GET INTO THE
11:55:25AM SETTLEMENT AGREEMENT.
11:55:28AM AND THE MAIN THINGS WERE -- YOU KNOW, WE DID TRY TO GET THE
11:55:35AM HEIGHT LOWERED.
11:55:36AM THE DEVELOPER SAID HE COULDN'T -- OR DIDN'T WANT TO LOWER
11:55:40AM THE HEIGHT.
11:55:41AM WITH A FOUR-STORY BUILDING THERE WILL BE ELEVATORS IN THE
11:55:44AM BUILDING.
11:55:45AM THEY WILL DO THE ARCHITECTURAL DESIGN THAT FITS WITH ESTERO,
11:55:48AM NOT THE KIND OF STUFF THEY DO OR THAT OTHER PEOPLE DO
11:55:52AM ELSEWHERE THAT YOU DO IN THE COUNTY.
11:55:53AM WE HAVE KIND OF THE -- THE ATTRACTIVE ARCHITECTURAL DESIGN.
11:56:00AM THEY HAD CONCRETE BLOCK CONSTRUCTION, BECAUSE WE WERE
11:56:06AM WORRIED THAT SOMETIMES PEOPLE DO WOOD FRAME.
11:56:10AM EVEN THOUGH WOOD FRAME IS ALLOWED BY CODE, IT'S NOT VERY
11:56:14AM SUSTAINABLE.
11:56:15AM AND IT IS NOT REALLY THE QUALITY THAT WE WERE HOPING FOR.
11:56:19AM SO WE HAVE GOT -- WITH CBS CONCRETE BLOCK BUILDING.
11:56:28AM ELEVATORS.
11:56:28AM THE ATTRACTIVE KIND OF RENDERING THAT YOU SAW.
11:56:31AM THEY HAVE AMENITIES FOR THE RESIDENTS WHICH WE DIDN'T
11:56:34AM STIPULATE AND POOL CABANAS, FITNESS CENTER.
11:56:38AM I THINK THEY EVEN HAD A WINE STORAGE ROOM AND SOME OF THOSE
11:56:41AM THINGS.
11:56:41AM WE DIDN'T -- THEY HAVE A LITTLE DOG PARK.
11:56:44AM THEY ARE GOING TO REPAINT THE COMMERCIAL CENTER, BECAUSE
11:56:49AM WHEN THEY BUILD THE APARTMENTS, THE COMMERCIAL CENTER IS
11:56:53AM LIKE A LITTLE BIT DRAB LOOKING AND NEEDS A REFRESH.
11:56:57AM SO THEY ARE GOING TO REPAINT THE REST OF THE SHOPPING CENTER
11:57:01AM TO BE CONSISTENT WITH THE COLOR SCHEME THAT PLANNING, ZONING
11:57:05AM AND DESIGN BOARD HAD APPROVED.
11:57:07AM AND THEN I THINK THE LIGHTING FIXTURES -- REPLACE THE
11:57:15AM FIXTURES IN THE REMAINING PARKING LOT SO THEY WILL BE
11:57:18AM CONSISTENT AS WELL, DOING PAVER BLOCK CROWNINGS IN THE
11:57:22AM PARKING LOT BETWEEN THE RESIDENTIAL AND THE COMMERCIAL

11:57:24AM AREAS.
11:57:25AM AND THEN THERE WERE A FEW MORE THINGS THAT I THINK WERE
11:57:28AM STIPULATED IN THE PLANNING, ZONING AND DESIGN REVIEW BOARD,
11:57:33AM REVIEW OF THE DEVELOPMENT ORDER.
11:57:35AM THEY HAD SOME ADDITIONAL PARKING SUGGESTIONS TO TRY TO MAKE
11:57:41AM IT OPERATIONALLY WORK -- THE FLOW WORK A LITTLE BIT BETTER.
11:57:44AM THOSE, I THINK, WERE THE MAIN THINGS THAT I RECALL AT THE
11:57:49AM MOMENT.
11:57:49AM >>Jim Ward: MARY, WE HAD A REDUCTION FROM 158 TO 137 AS
11:57:58AM WELL.
11:57:58AM >>Mary Gibbs: THE DEVELOPER OFFERED THAT.
11:57:59AM 158 OR 157 WAS IN THE FINAL PLAN.
11:58:02AM WHEN THEY CAME OUT OF THE DEVELOPMENT ORDER THEY REDUCED IT
11:58:05AM TO 137, YES.
11:58:06AM >>Mayor McLain: THANK YOU.
11:58:12AM ANY OTHER QUESTIONS FROM COUNCIL?
11:58:14AM IF NONE, DID ALL PARTIES HAVE PRESENTED AND THE CHAIR WILL
11:58:19AM OPEN THE MEETING HERE TO PUBLIC COMMENT.
11:58:24AM AND MADAM CLERK, DO WE HAVE ANYONE TO SPEAK?
11:58:29AM >> YES, MAYOR.
11:58:30AM WE SENT OUT 22 E-COMMENTS TOO.
11:58:34AM OUR FIRST WILL CALL UP TAMMY ROSE FROM A CUT ABOVE OF ESTERO
11:58:40AM REPRESENTING THE BROOKS.
11:58:40AM >> SORRY FOR MY APPEARANCE, BUT I AM COMING FROM WORK.
11:58:48AM AND I HAVE A HAIRCUT AT 1:00.
11:58:51AM I NEED TO BE FAST.
11:58:52AM I AM -- MY NAME IS TAMMY ROSE, I DO OWN A CUT ABOVE OF
11:58:57AM ESTERO.
11:58:57AM I HAVE BEEN THERE FOR SEVEN YEARS.
11:58:59AM I HAVE ALSO BEEN AN ESTERO RESIDENT FOR 20 YEARS.
11:59:02AM AND I CAME TO ESTERO BECAUSE IT WAS A NICE QUIET AREA.
11:59:07AM I WANTED TO SPEAK AS FAR AS THE SHOP OWNERS.
11:59:12AM A LOT OF THEM WANTED TO BE HERE; HOWEVER, AT 9:30 IN THE
11:59:16AM MORNING.
11:59:16AM IT WAS HARD FOR THEM IN TO BE HERE.
11:59:18AM I SPOKE WITH THE GYM OWNER, AND HE IS CONCERNED ABOUT THE
11:59:22AM PARKING.
11:59:24AM HE CONSUMES MOST OF THE PARKING, BUT HIS CONCERN WAS THE
11:59:30AM CONSTRUCTION PARKING.
11:59:31AM I DO KNOW THAT A MAJORITY OF MY CLIENTELE ARE FROM THE FOUR
11:59:36AM AREAS.
11:59:36AM WE HAVE SPOKEN WITH THEM.
11:59:38AM IT IS -- TRUST ME, IT IS LIKE GROUNDHOG DAY IN MY
11:59:43AM BARBERSHOP.
11:59:43AM EVERY SINGLE DAY, PEOPLE COME IN, AND THAT'S ALL THEY WANT
11:59:47AM TO TALK ABOUT IS THIS DEVELOPMENT.
11:59:48AM I CAN TELL YOU THAT A LOT OF THE CLIENTS WANTED TO BE HERE
11:59:52AM TODAY BUT COULD NOT BECAUSE THEY ARE TRAVELING FOR THE

11:59:55AM HOLIDAYS AND THEY WEREN'T GOING TO BE IN TOWN.
11:59:57AM A LOT OF MY OTHER CUSTOMERS SAID, WELL, IT IS PRETTY MUCH A
12:00:02PM DON DEAL.
12:00:03PM SO IT IS JUST A WASTE OF TIME.
12:00:04PM I STILL ENCOURAGED THEM TO COME.
12:00:06PM MY -- MY DEAL IS THE -- THE TWO-YEAR VISIBILITY AND WHAT IT
12:00:11PM WILL TO DO THE BUSINESSES IN THE AREA.
12:00:13PM I TALKED TO EVERY BUSINESS OWNER, AND THE TWO THINGS THAT WE
12:00:19PM HAVE HAD PROBLEMS WITH IS WE HAD, ONE, CUSTOMERS COMING IN
12:00:24PM SAYING WHERE ARE YOU GOING TO GO?
12:00:26PM BECAUSE THEY ARE UNDER THE IMPRESSION THEY ARE TAKING THE
12:00:28PM WHOLE STRIP MALL, AND THAT IS NOT THE CASE.
12:00:30PM THE SECOND PART IS, IS THEY ARE WORRIED ABOUT WHAT IS IT
12:00:36PM GOING TO DO TO OUR VISIBILITY AND WHAT IT WILL TO DO OUR
12:00:40PM BUSINESS.
12:00:40PM AND IF IT DECREASES OUR BUSINESS, WE WILL BE FORCED TO
12:00:43PM LEAVE.
12:00:43PM SO THEN YOU ARE GOING TO HAVE ANOTHER PART OF THE STRIP MALL
12:00:46PM THAT IS VACANT.
12:00:48PM AND I -- IF I AM NOT MISTAKEN, THE REASON WHY WINN-DIXIE HAS
12:01:00PM BEEN VACANT FOR SO LONG, STILL GETTING MONEY AND UNDERGOING
12:01:06PM BANKRUPTCY SO -- I CAN'T THINK OF THE WORD -- ANYWAY.
12:01:10PM THEY HAVE BEEN TALKING THIS HAS BEEN GOING ON FOR SO LONG,
12:01:13PM THEY TALKED OF SITE DISABILITY AND THE TRAFFIC STUDIES AND
12:01:19PM THE OTHER STUDIES WERE CONDUCTED QUITE A FEW YEARS BACK.
12:01:22PM AND I THINK IF IT IS GOING TO BE APPROVED THAT THOSE STUDIES
12:01:26PM NEED TO BE RE-EVALUATED.
12:01:28PM I HAVE A CUSTOMER THAT CAME IN AT 7:30 THIS MORNING, BECAUSE
12:01:31PM I WANTED TO BE AT THIS MEETING.
12:01:33PM HE CAME IN EARLY.
12:01:34PM HE WAS COMING FROM COPPER LEAF.
12:01:36PM HE SAID IT TOOK HIM FIVE MINUTES TO GET OUT OF THE
12:01:38PM DEVELOPMENT.
12:01:38PM AND THAT WAS 7:30 IN THE MORNING.
12:01:44PM THERE HAVE BEEN OTHER DEVELOPMENTS CREATED SINCE ALL OF THIS
12:01:47PM STARTED THAT HAS IMPACTED THIS AREA.
12:01:50PM AND, YOU KNOW, TALKING OF DEVIATIONS OF THE 21 SPOTS.
12:01:57PM AFTER THE LAST MEETING THEY DO -- I AM SORRY.
12:01:59PM I WILL RESPECT MY TIME.
12:02:01PM >>Mayor McLain: REMIND ANY OF THE OTHER SPEAKERS THAT WE
12:02:04PM HAVE THREE MINUTES.
12:02:04PM SO TIME YOUR PRESENTATION TO THAT.
12:02:06PM AND I DO APPRECIATE THAT WE DON'T CLAP OR CHEER OR BOO OR
12:02:12PM WHATEVER.
12:02:13PM LET THE PEOPLE DO THEIR PEACE.
12:02:15PM SO WHO IS NEXT.
12:02:16PM >>Clerk: OUR NEXT IS MR. WILLIAM CLARK FROM SHADOW WOOD
12:02:21PM REPRESENTING THE BROOKS.

12:02:22PM >> HI, WILLIAM CLARK, MAGNOLIA BEND.
12:02:32PM ONE OF THE QUESTIONS I HAD IS WITH THE DEVELOPER, I DON'T
12:02:35PM KNOW THE DETAILS, IF THEY -- I ASSUME THEY BOUGHT THE WHOLE
12:02:39PM SITE WITH THE -- WITH THE STORES AND THE BANK, IS THAT TRUE?
12:02:45PM >>Robert Eschenfelder: THIS IS SAN OPPORTUNITY FOR TO YOU
12:02:47PM MAKE A THREE-MINUTE STATEMENT.
12:02:49PM >> THE POINT IS, I WOULD LIKE TO UNDERSTAND WHAT THE
12:02:52PM LONG-TERM PLANS ARE.
12:02:53PM WHEN THE LEASES COME AROUND ON THESE BUSINESSES, THIS THEY
12:02:57PM GOING TO DEVELOP MORE OF THIS SITE PUT UP ANOTHER FOUR
12:03:01PM STORIES AND UNITS ON THAT SITE AND PUT MORE PRESSURE ON THAT
12:03:04PM SITE AS FAR AS TRAFFIC AND PARKING.
12:03:07PM I WOULD LIKE TO KNOW WHAT THE INTENT IS LONG TERM IF THEY
12:03:11PM OWN THE WHOLE PROPERTY.
12:03:12PM >>Mayor McLain: WE WILL ADDRESS TO MARY AND NANCY.
12:03:18PM THEY WILL ADDRESS YOUR QUESTION, BUT NOT A CONCERN IN MY
12:03:24PM MIND.
12:03:25PM BUT THANK YOU.
12:03:26PM MARY, DO YOU WANT TO ADDRESS THAT OPENLY?
12:03:29PM >>Mary Gibbs: I WAS JUST GOING TO SAY THAT THE DEVELOPER IS
12:03:34PM PURCHASING PART -- HALF OF THE FIVE ACRES, HALF OF THE
12:03:39PM SHOPPING CENTER, NOT THE REMAINING SHOPPING CENTER.
12:03:42PM AND THEY COULDN'T -- IF THEY WANTED TO TAKE THAT DOWN AND
12:03:46PM BUILD MORE UNITS, THERE IS NO UNITS LEFT IN THE DRI.
12:03:49PM THEY ARE USING UP BASICALLY ALL THE UNITS BUT 20.
12:03:56PM THEY WILL HAVE TO GO THROUGH A PUBLIC HEARING.
12:03:58PM A ZONING AMENDMENT.
12:03:59PM AND GO THROUGH THAT GAMUT IN ORDER TO DO SOMETHING LIKE
12:04:02PM THAT.
12:04:02PM AND WE ASKED THEM BEFORE IF THEY WILL DEVELOP, AND WILL GO
12:04:10PM TO THE SITE.
12:04:11PM >>Mayor McLain: THE RISK OF ANOTHER APARTMENT BUILDING WITH
12:04:13PM FOUR STORIES WOULDN'T BE ALLOWED ON THE DRI BECAUSE IT WAS
12:04:16PM CLOSE TO THE MAXIMUMS THAT ARE INVOLVED IN THERE.
12:04:20PM >>Mary Gibbs: THE UNITS -- THERE WOULDN'T BE ENOUGH UNITS TO
12:04:23PM BE LEFT WITHOUT COMING BACK.
12:04:25PM >>Mayor McLain: I WANTED TO MAKE THAT CLEAR TO FOLKS.
12:04:28PM >>Clerk: NEXT IS SANDY SMALL FROM SHADOW WOOD REPRESENTING THE
12:04:34PM BROOKS.
12:04:34PM >> SANDY SMALL, 10055 MAGNOLIA BEND.
12:04:43PM THIS HAS BEEN A VERY FRUSTRATING PROCESS IN WHICH IT APPEARS
12:04:47PM THE NEEDS AND DESIRES OF EXISTING RESIDENTS AND TAXPAYERS
12:04:52PM ARE PLACED LAST ON THE PRIORITY LIST.
12:04:54PM AND INSTEAD, THE DESIRE FOR THE FINANCIAL GAIN BY THE
12:04:58PM DEVELOPER, THE FINANCIAL GAIN OF THE OWNER OF THE COMPLEX,
12:05:01PM AND THE ALLEGED NEEDS OF POTENTIAL FUTURE TRANSIENT
12:05:05PM RESIDENTS ARE BEING PRIORITIZED.
12:05:07PM THREE OAKS PARKWAY NORTH OF ESTERO PARKWAY HAS BEEN TURNED

12:05:12PM INTO APARTMENT ROW, AND THAT IS NOT A COMPLIMENT.
12:05:15PM AND TO HAVE APARTMENT HOUSING NEXT TO MULTIMILLION DOLLAR
12:05:19PM HOMES IN THE BROOKS SEEMS VERY INCONSISTENT FROM A
12:05:24PM COMMONSENSE PERSPECTIVE, LET ALONE A ZONING PERSPECTIVE.
12:05:26PM PART OF WHAT DREW US TO MAGNOLIA BEND WAS THE HOPE OF
12:05:30PM ANOTHER GROCERY STORE MOVING IN TO THE OLD WINN-DIXIE
12:05:35PM LOCATION.
12:05:36PM INSTEAD, WE WILL BE SUBJECTED TO IT THE NOISE POLLUTION AND
12:05:39PM DUST POLLUTION OF THE DEMOLITION OF THE WINN-DIXIE AND WILL
12:05:44PM BE SUBJECTED TO THE NOISE AND DUST POLLUTION OF A LENGTHY
12:05:48PM CONSTRUCTION PROCESS.
12:05:49PM THEN AGAIN, TRANSIENT RESIDENTS WILL OCCUPY THIS LOCATION
12:05:53PM WHO WILL POSSIBLY LACK PRIDE OF OWNERSHIP.
12:05:56PM AND WHAT WILL OCCUR WHEN MORTGAGE RATES DROP TO MORE
12:06:00PM AFFORDABLE LEVELS, THIS WILL OCCUR.
12:06:03PM PRIOR TO THIS COMPLEX BEING COMPLETE, MORE POTENTIAL
12:06:07PM APARTMENT DWELLERS WILL INSTEAD OPT TO PURCHASE SMALL
12:06:11PM STARTER HOMES AND DEMAND FOR APARTMENTS WILL DECREASE.
12:06:13PM THIS IS THE FUNDAMENTAL REALITY OF SUPPLY AND DEMAND.
12:06:17PM AS TENANTS MOVE OUT AND NEW ONES MOVE IN, RENTS WILL
12:06:22PM DECREASE TO MAINTAIN 100% OCCUPANCY.
12:06:25PM THAT IS HOW THE APARTMENT BUSINESS MODEL WORKS.
12:06:28PM AS A RESULT, A COMPLETE NEW TYPE OF RESIDENT WILL OCCUPY THE
12:06:33PM COMPLEX.
12:06:33PM WITH LOAN REPAYMENTS TO BE MADE, AND I AM ASSUMING THAT SOME
12:06:38PM OF THE FUNDS TO MR. THIS COMPLEX WILL BE BORROWED.
12:06:41PM UNLESS TENANT REVENUE COMING IN, WHAT DISCRETIONARY
12:06:45PM MAINTENANCE WORK WILL BE STOPPED?
12:06:46PM WHAT WILL BECOME OF THIS COMPLEX THEN?
12:06:50PM TO SUMMARIZE, I REALLY DON'T UNDERSTAND WHY TAX PAYING
12:06:54PM RESIDENTS OF THE BROOKS ARE PRIORITIZED AT THE BOTTOM OF THE
12:06:59PM LIST.
12:06:59PM THIS REALLY DOESN'T MAKE ANY SENSE AT ALL AND DEFIES A
12:07:03PM REASONABLE AND EVEN EXTREME DEFINITION OF FAIRNESS.
12:07:07PM THANK YOU.
12:07:08PM >>Clerk: OUR NEXT IS DAVID SMALL REPRESENTING THE BROOKS FROM
12:07:15PM SHADOW WOOD.
12:07:15PM >> DAVID SMALL, 10055 MAGNOLIA BEND.
12:07:24PM I THINK MY WIFE PARAPHRASED THAT QUITE WELL IN TERMS OF
12:07:29PM POTENTIAL LONG-TERM IMPACTS OF THE -- OF THE ACTUAL
12:07:32PM COMMUNITY.
12:07:32PM I WANT TO GO BACK TO THE NANCY STROUD MEMO, IN THAT THERE IS
12:07:38PM A QUESTION ALONG THE LINES OF, DO ANY PERSONS IN THE
12:07:42PM PETITION HAVE STANDING TO BRING THE APPEAL?
12:07:47PM WHILE THAT IS, I AM SURE, A VERY VALID LEGAL QUESTION, FROM
12:07:51PM A PRACTICAL MATTER, IT IS INTERPRETED THIS WAY.
12:07:55PM DID ANY PERSON IN THE COMMUNITY OR A TAXPAYER HAVE AN
12:07:59PM OPINION THAT MATTERS?

12:08:00PM I FIND THAT OFFENSIVE.
12:08:02PM THE SECOND NOTION IS THE DEFINITION OF HOW PEOPLE ARE
12:08:07PM AGGRIEVED.
12:08:08PM AND I DO VERY MUCH APPRECIATE THE GRANTING OF THAT.
12:08:11PM THANK YOU VERY MUCH.
12:08:13PM THERE IS A DEFINITION OF A DEFINITE INTEREST EXCEEDING THE
12:08:18PM GENERAL INTEREST IN COMMUNITY GOOD SHARE IN COMMON WITH ALL
12:08:22PM CITIZENS.
12:08:22PM WE HAD AN OBJECTION TO THAT.
12:08:25PM SO IF YOU TAKE AN EXTREME EXAMPLE OF THAT, SOMEONE OBLIGATED
12:08:31PM TO THE NOTION THAT IF SOMEONE LIVES NEXT TO A GARBAGE DUMP
12:08:37PM AND SOMEONE ELSE LIVES TWO MILES AWAY THAT THE PERSON
12:08:40PM DOESN'T HAVE AN EXCEEDING INTEREST IF THEY LIVE NEXT TO THE
12:08:43PM GARBAGE DUMP.
12:08:44PM I FIND THAT OFFENSIVE.
12:08:46PM THAT'S ALL I HAVE TO SAY.
12:08:47PM I VERY MUCH APPRECIATE THE OPPORTUNITY TO SPEAK.
12:08:51PM I APPRECIATE YOU LISTENING.
12:08:53PM THANK YOU.
12:08:54PM >>Clerk: OUR NEXT IS KATHY WYROFSKY FROM SHADOW WOOD REPRESENTING
12:09:00PM THE BROOKS.
12:09:01PM >>Kathy Wyrofsky: KATHY WYROFSKY.
12:09:06PM I WOULD LIKE TO SAY IF EVIDENCE CAN BE INTERPRETED DIFFERENT
12:09:09PM WAYS, THAT AT THE END OF THE DAY, IT IS YOUR RESPONSIBILITY
12:09:12PM TO PROTECT YOUR CITIZENS.
12:09:13PM I ALSO THINK THAT I HAVE IN MY HANDS HERE -- AND THEY ARE
12:09:21PM POTENTIALLY IN YOUR PACKET BUT IF NOT, PUBLIC RECORDS --
12:09:25PM NUMEROUS DOCUMENTS THAT CLEARLY SPECIFY THAT THE ADDITIONAL
12:09:29PM UNITS WERE TO BE USED ON SPECIFIED SITE.
12:09:34PM WE DO NOT BELIEVE THERE ARE ANY VESTED RIGHTS LEFT IN THE
12:09:38PM ORIGINAL OR THE AMENDED DRI.
12:09:41PM PEBBLE POINT WAS BUILT.
12:09:45PM IN ADDITION, DRIs IN GENERAL ARE MEANT TO PROTECT DEVELOPERS
12:09:50PM ONCE A PERMIT HAS BEEN ISSUED AND LAND USE OR RULES CHANGE.
12:09:54PM OR WHEN THERE IS OPEN LAND TO BE BUILT.
12:09:56PM BUT IN THIS CASE, WE HAVE A TOWN CENTER BUILT UNDER THE DRI
12:10:02PM TO THE INTENTIONS OF THE DRI WITH THE FINALIZED DEVELOPMENT
12:10:06PM ORDER.
12:10:06PM WE HAVE CLEAR INTENTION OF ANY ADDITIONAL UNITS.
12:10:12PM WE HAVE CLEAR INTENTION THAT THE HEIGHT WAS TO BE LIMITED TO
12:10:17PM TWO STORIES.
12:10:18PM AS FAR AS I AM CONCERNED, THERE IS NO CLAIM OF VESTED
12:10:23PM RIGHTS.
12:10:23PM AND EVEN IF THERE WAS, YOU CAN'T AUTOMATICALLY JUST TRANSFER
12:10:27PM THEM TO A NEW SITE AND A NEW LAND USE THAT IS
12:10:30PM INCOMPATIBILITY -- INCOMPATIBLE WITH THE COMPREHENSIVE PLAN.
12:10:35PM THANK YOU.
12:10:35PM >>Mayor McLain: THANK YOU.

12:10:36PM >>Clerk: OUR NEXT IS GALEN CLARK FROM SHADOW WOOD REPRESENTING THE
12:10:43PM BROOKS.
12:10:43PM >> I AM GALENE CLARK AT MAGNOLIA BEND.
12:10:51PM I LIVE NEXT DOOR TO THE WYROFSKYS AND ONE OF THE AFFECTED
12:10:57PM PARTIES OF THE FIVE.
12:10:58PM I HAVE SAT BACK AND LISTEN TO ALL THE HARD WORK THAT KATHY
12:11:02PM WYROFSKY HAS DONE, TIME, AND OTHERS AMONG THEM, AND ONE OF
12:11:06PM MY POINTS THAT I WAS GOING TO BRING UP IS THAT I WAS
12:11:10PM DISILLUSIONED IN FEELING THAT MY VILLAGE OF ESTERO COUNCIL
12:11:16PM HAD NOT REPRESENTED OUR CITIZENS OF THE BROOKS IN REGARD TO
12:11:20PM THIS PROJECT.
12:11:22PM MAYOR McLAIN, LORI FAYHEE, THANK YOU FOR THE COMMENTS AND
12:11:29PM QUESTIONS THAT YOU HAVE GIVEN.
12:11:31PM THAT HAS BROUGHT ME BACK TO A LITTLE TRUST THERE.
12:11:33PM THAT IS VERY HELPFUL.
12:11:34PM ACTUALLY -- AND FROM A DIFFERENT POINT OF VIEW -- I WOULD
12:11:37PM LIKE TO INVITE ALL OF YOU OVER TO MY HOUSE FOR DINNER.
12:11:41PM LET'S HAVE A PARTY ON THE LANAI.
12:11:44PM HOW BEAUTIFUL IT IS.
12:11:45PM WHY WE BOUGHT THE HOUSE.
12:11:47PM WHY WE ARE LIVING HERE.
12:11:49PM WHAT IS REPRESENTED IN THE BROOKS IS REPRESENTED RIGHT
12:11:53PM THERE.
12:11:53PM THAT WAY YOU CAN SEE WHAT WE ARE DEALING WITH RIGHT NOW, THE
12:11:56PM BEAUTY, THE SERENITY OF THE PRESERVE BEHIND US, THE
12:12:00PM CONSERVATION AREA.
12:12:01PM AND THEN LET'S FAST FORWARD TO TWO TO THREE YEARS FROM NOW
12:12:05PM AFTER THIS FOUR-STORY APARTMENT BUILDING GOES UP.
12:12:08PM AND I WANT YOU TO ALL COME BACK FOR DINNER AGAIN AND SIT ON
12:12:14PM THE DECK AND SEE THE DIFFERENCE.
12:12:15PM UNFORTUNATELY THAT WILL BE TOO LATE TO PREVENT THAT FROM
12:12:19PM HAPPENING.
12:12:19PM I COMPEL YOU TO CONSIDER ALL OUR CONCERNS.
12:12:23PM AND MAKE A DECISION TO UPHOLD OUR APPEAL.
12:12:26PM AND NOT GO FORWARD WITH THIS PROJECT.
12:12:28PM THANK YOU.
12:12:28PM >>Clerk: OUR NEXT IS MR. ROD WYROFSKY OF SHADOW WOOD REPRESENTING
12:12:38PM HIMSELF.
12:12:38PM >>Mayor McLain: NO?
12:12:46PM OKAY.
12:12:46PM NEXT?
12:12:48PM >>Clerk: OUR NEXT IS BETTY JOYCE FROM LIGHTHOUSE BAY REPRESENTING
12:12:54PM COMMONSENSE.
12:12:55PM OUR NEXT IS MARY LOU KENNEDY FROM SHADOW WOOD.
12:13:06PM >> HELLO, I'M MARY LOU KENNEDY, 10104 MAGNOLIA BEND.
12:13:17PM WE HAVE A SERIOUS -- WE HAVE SERIOUS SECURITY ISSUES.
12:13:20PM A MEETING WAS HELD BETWEEN THE SHADOW WOOD COMMUNITY --
12:13:24PM COMMUNITY ASSOCIATION AND THE BROOKS CDD IN WHICH THIS WAS

12:13:28PM DISCUSSED.
12:13:28PM OUR LAST COMMUNICATION FROM JIM DUNLAP, PRESIDENT OF OUR
12:13:32PM COMMUNITY ASSOCIATION, TELLS US THE LAND IS CLEARLY OWNED BY
12:13:36PM THE CDD AND SHADOW WOOD CAN DO NOTHING TO SECURE OUR BORDER
12:13:41PM AREA.
12:13:41PM THIS CDD NEEDED THE ABILITY TO WORK WITH THE DEVELOPER TO
12:13:45PM SOLVE THIS PROBLEM.
12:13:46PM IN FACT, THE DEVELOPER SHOULD BE FORCED TO PUT UP A FENCE
12:13:50PM BETWEEN TOWN CENTER AND THE CONSERVATION AREA ADJACENT TO
12:13:55PM MAGNOLIA BEND.
12:13:56PM NO NEGOTIATION SOLUTION WAS REACHED AS THIS WAS JUST PUSHED
12:14:02PM THROUGH.
12:14:02PM MY INTERESTS, THE INTERESTS OF MY NEIGHBORS AND ALL OF
12:14:07PM SHADOW WOOD WERE NEVER CONSIDERED.
12:14:09PM WE JUST HAD AN INCIDENT LAST WEEK WITH NONRESIDENTS COMING
12:14:13PM ON OUR STREET, BREAKING INTO OUR CARS AND MAILBOXES.
12:14:16PM WE SUSPECT THEY CAME FROM THE TOWN CENTER AREA.
12:14:19PM ADDING THIS NUMBER OF UNITS AND RESIDENTS WITH SUCH CLOSE
12:14:23PM PROXIMITY SUBSTANTIAL IMPACT ON US AND CERTAINLY RAISE THE
12:14:29PM LIKELIHOOD FOR SECURITY AND SAFETY ISSUES.
12:14:32PM FURTHER, WHY NO ONE IS ALLOWED TO TRESPASS IN THE
12:14:34PM CONSERVATION AREA, HOW IS IT THAT WE HAVE VAGRANTS LIVING
12:14:37PM THERE?
12:14:38PM FROM MY DOOR, I WILL NOW STARE AT A FOUR-STORY EYESORE.
12:14:43PM THANK YOU.
12:14:44PM >>Clerk: OUR NEXT IS SUSAN NICOLETTI FROM SHADOW WOOD.
12:14:52PM >> SUSAN NICOLETTI.
12:15:02PM I SIGNED UP TO MAKE A COMMENT BEFORE I HEARD EVERYTHING
12:15:07PM ELSE.
12:15:07PM AND I AM VERY HAPPY WHAT I HAVE HEARD FROM THE PEOPLE OF
12:15:10PM SHADOW WOOD.
12:15:11PM WE HAVE TRIED VERY HARD TO GIVE YOU AN IDEA OF WHAT THIS IS
12:15:15PM GOING TO BE LIKE FOR US.
12:15:17PM AND I APPRECIATE YOU LISTENING.
12:15:19PM AND I HOPE YOU WILL STAND BY US.
12:15:21PM THANK YOU.
12:15:21PM >> OUR NEXT IS GREGORY LEWIS OF SHADOW WOOD REPRESENTING
12:15:27PM HIMSELF.
12:15:28PM >> GOOD AFTERNOON.
12:15:32PM MY NAME IS GREG LEWIS.
12:15:35PM AND I LIVE AT 10024 GENRY POINT COURT IN SHADOW WOOD AT THE
12:15:42PM BROOKS.
12:15:42PM I HAVE BEEN AN OWNER OF OUR RESIDENCE FOR APPROXIMATELY 23
12:15:47PM YEARS.
12:15:47PM I ALSO HAVE BEEN A REAL ESTATE AGENT SELLING LITERALLY
12:15:53PM HUNDREDS OF HOMES IN THE BROOKS DURING MY REAL ESTATE
12:16:01PM PRACTICE OVER THE LAST 18 YEARS WHEN I MEET WITH PERSPECTIVE
12:16:07PM BUYERS, THEY ASK WHAT IN THE WORLD IS THE COMMONS CLUB.

12:16:11PM I GO BACK TO THE YEAR 2003, WHEN THE BONITA BAY GROUP CAME
12:16:19PM TO THREE OR FOUR RESIDENTS AND THEY SAID WOULD YOU MIND
12:16:23PM BEING A PART OF THE ADVISORY COUNCIL SO YOU CAN TELL US WHAT
12:16:26PM YOU REALLY THINK THE COMMONS CLUB WILL BE OVER TIME.
12:16:29PM IT BECAME A CONSENSUS AND CONFIRMED THAT IT REALLY SHOULD BE
12:16:33PM A GATHERING PLACE A GATHERING PLACE OF THE PEOPLE WHO LIVE
12:16:40PM IN THE FOUR COMMUNITIES COMPRISE THE BROOKS, COPPER LEAF AND
12:16:45PM SHADOW WOOD.
12:16:46PM A GATHERING PLACE SOLELY FOR THE BROOKS TO GATHER.
12:16:51PM A PLACE FOR SOCIALIZATION.
12:16:54PM AND A COMMITMENT WHICH WILL BE CONSISTENT FOR ALL OF THE
12:16:59PM BROOKS OWNERS IN PERPETUITY.
12:17:01PM WELL, THAT SEEMS TO BE IN JEOPARDY.
12:17:04PM IT IS NOT REALLY REAL ESTATE PUFFERY OR BOASTING OR AN IDLE
12:17:14PM PROMISE BECAUSE THE COMMONS CLUB WAS FOUNDED ON WRITTEN
12:17:17PM DOCUMENTS.
12:17:20PM AND I THINK THAT THOSE PROMISES REALLY NEED TO BE UPHELD.
12:17:24PM IN TERMS OF THE AGGRIEVED PARTIES, I DON'T THINK IT IS JUST
12:17:29PM THOSE PEOPLE WHO LIVE BEEN 500 FEET OF THE PROPOSED PROJECT,
12:17:34PM BUT REALLY ALL OF THE -- ALL OF THE THOUSANDS OF PEOPLE WHO
12:17:38PM OWN PROPERTY IN THE BROOKS ARE BEING DISADVANTAGED.
12:17:42PM IN ADDITION, TAMMY ROSE, WHO SPOKE EARLIER, REPRESENTED THE
12:17:49PM SMALL BUSINESS OWNERS WHO ARE GOING TO BE DISADVANTAGED.
12:17:54PM WHEN YOU THINK OF THE DEVELOPMENT OF THE UNITED STATES, IT
12:17:57PM IS THE SMALL BUSINESS OWNER WHO HAS BEEN THE BACKBONE OF THE
12:18:01PM DEVELOPMENT OF THIS COUNTRY FROM AN ECONOMIC SENSE.
12:18:04PM AND THEY ARE GOING TO BE DISADVANTAGED.
12:18:06PM DISADVANTAGED FROM THE STANDPOINT OF THE PROBABLY TAKING TWO
12:18:10PM YEARS TO DEVELOP, THE LACK OF VISIBILITY, THE PARKING
12:18:14PM ISSUES, SECURITY ISSUES, ETC.
12:18:17PM SO AI PALE TO IT THE COUNCIL TO -- TO NOT -- APPEAL TO IT
12:18:26PM THE COUNCIL NOT TO SUPPORT THE DEVELOPMENT OF THIS PROJECT
12:18:28PM AND I THANK YOU VERY MUCH FOR THE OPPORTUNITY TO APPEAR
12:18:30PM BEFORE YOU.
12:18:31PM >>Clerk: NEXT IS MR. BOB DOLWICK FROM SPRING RUN REPRESENTING THE
12:18:40PM APPEAL.
12:18:40PM >> THANK YOU.
12:18:43PM BOB DOLWICK, 9331 SPRING RUN BOULEVARD IN SPRING RUN.
12:18:49PM I WON'T USE ALL MY THREE MINUTES, BUT I WOULD LIKE TO ASK A
12:18:53PM QUESTION.
12:18:53PM AND I KNOW IT WON'T BE ANSWERED NOW, BUT AS FAR AS THE DRI
12:18:57PM IS CONCERNED, I HEARD THE TERM OR THE NUMBER 2500 ACRES.
12:19:02PM DOES THAT INCLUDE THE UNBUILDABLE PORTION OF THE 2500 ACRES?
12:19:07PM A LOT OF WETLANDS THERE SO IT WOULDN'T BE BUILDABLE.
12:19:11PM I DON'T KNOW IF THAT IS EVALUATED.
12:19:14PM SECOND, THERE WAS A DEVIATION OF 21 PARKING SPOTS.
12:19:21PM AND I KNOW FROM EXPERIENCE OF SPRING RUN THAT PARKING IS AN
12:19:25PM ISSUE.

12:19:25PM BECAUSE WE JUST WENT THROUGH A BIG REMODELING THING AND
12:19:30PM QUITE A BIT OF DISCUSSION OF HOW MANY PARKING SPOTS ARE
12:19:32PM REQUIRED EVEN THOUGH NO MORE PEOPLE WILL BE IN SPRING RUN
12:19:35PM THAN THE 846 STORES.
12:19:37PM THIRDLY, I WOULD LIKE TO KNOW IF PRECEDENT COMES INTO PLAY
12:19:42PM IN ANY WAY IN THE FORM OF A LAW.
12:19:44PM I KNOW IN LABOR LAW, IF YOU HAVE BEEN DOING SOMETHING FOR 25
12:19:47PM YEARS AND SOMEONE AGGRIEVES AGAINST YOU, AND YOU SAY THAT IS
12:19:50PM THE WAY WE HAVE ALWAYS DONE IT.
12:19:52PM THAT IS PROBABLY A GOOD CHANCE YOU WILL NOT WIN YOUR
12:19:55PM GRIEVANCE BECAUSE THAT THE WAY IT HAS BEEN DONE.
12:19:58PM IN SPRING RUN -- WELL, ALL OF THE BROOKS, WE HAVE BEEN
12:20:02PM AROUND FOR EXCESS OF 25 YEARS.
12:20:04PM AND THE PRECEDENT HAS ALWAYS BEEN NO MORE THAN A TWO-STORY
12:20:09PM BUILDING.
12:20:09PM NOW WE WILL GO TO A FOUR-STORY BUILDING?
12:20:12PM QUESTION.
12:20:12PM NOT AN ANSWER.
12:20:13PM THANK YOU FOR YOUR TIME.
12:20:14PM THANK YOU FOR CONSIDERATION.
12:20:16PM AND WE APPRECIATE THE PRESSURE THAT GOES ON YOU FOR YOUR JOB
12:20:20PM AS WELL.
12:20:20PM THANK YOU.
12:20:20PM >>Clerk: OUR NEXT IS MARIANNE BLAKELY FROM SHADOW WOOD.
12:20:27PM >> HELLO, AGAIN.
12:20:37PM I'M MARIANNE BLAKELY, 10039 MAGNOLIA BEND.
12:20:42PM I BOUGHT MY HOME TWO YEARS AGO -- ALMOST TWO YEARS AGO.
12:20:47PM AND I BOUGHT IT KIND OF AT THE HEIGHT, SO WE ARE TALKING
12:20:52PM ABOUT CLOSE TO \$3 MILLION.
12:20:53PM AND NOW I AM LOOKING AT WHAT IS GOING TO BE GOING ON BEHIND
12:20:59PM ME.
12:21:00PM THE REASON I MOVED OUT OF FIDDLERS CREEK WAS BECAUSE I DID
12:21:05PM BUILD A HOME THAT BEHIND ME WAS SOMEONE ELSE AND IT WAS NOT
12:21:11PM SERENE.
12:21:12PM IT DIDN'T GIVE ME THE SERENITY THAT I NEEDED THAT NOW I AM
12:21:18PM 70 YEARS OLD.
12:21:19PM BEHIND ME RIGHT NOW IS THE MOST BEAUTIFUL WILDLIFE PRESERVE.
12:21:25PM AND I AM AT A DIFFERENT POINT IN MAGNOLIA THAN THE WYROFSKYS
12:21:31PM AND THE CLARKS.
12:21:33PM BUT I DO HAVE THE ISLAND BEHIND ME.
12:21:35PM AND THERE ARE SEVERAL -- SEVERAL EAGLES BEHIND THERE.
12:21:41PM THERE ARE WOOD STORKS.
12:21:43PM THERE ARE ALL THESE BEAUTIFUL, BEAUTIFUL BIRDS.
12:21:47PM WITH THIS CONSTRUCTION AND THE DEMOLITION AND THE DYNAMITE,
12:21:52PM WHAT -- WHAT IS GOING TO HAPPEN HERE?
12:21:55PM AND THE SECURITY, ALSO.
12:21:57PM WE DID HAVE THAT INSTANCE JUST ABOUT A WEEK AGO WHEN WE --
12:22:01PM WE KNOW WHERE THEY CAME FROM.

12:22:02PM SO I AM JUST PRAYING THAT THIS WILL NOT HAPPEN TO US.
12:22:09PM YOU ARE THE ONES THAT REPRESENT US.
12:22:13PM AND WE HAVE PUT OUR FAITH IN YOU.
12:22:16PM AND WE PRAY THAT AT LEAST SOMETHING BETTER CAN BE DONE HERE.
12:22:21PM THANK YOU SO MUCH.
12:22:22PM I REALLY APPRECIATE YOUR TIME.
12:22:25PM THANK YOU.
12:22:25PM >>Clerk: OUR NEXT IS MR. GLEN KORFAHAGE.
12:22:33PM REPRESENTING -- THE COMMUNITY SHADOW WOOD, REPRESENTING
12:22:35PM HIMSELF.
12:22:36PM >> GLEN KORFHAGE -- K-O-R-F-H-A-G-E.
12:22:45PM I LIVE AT 312 AUTUMN BREEZE, APARTMENT 102 IN THE OAK
12:22:52PM HAMMOCK NEIGHBORHOOD OF SHADOW WOOD AROUND MY THOUGHTS AND
12:22:57PM COMMENTS ARE REALLY CUMULATIVE OF WHAT ALREADY HAS BEEN
12:23:01PM EXPRESSED.
12:23:02PM I COMPLIMENT OUR NEIGHBORS AT MAGNOLIA BEND FOR DOING AN
12:23:06PM EXCELLENT JOB.
12:23:07PM THANK YOU.
12:23:07PM >>Clerk: OUR NEXT IS MR. ROBERT MISHCO REPRESENTING LIGHTHOUSE
12:23:13PM BAY.
12:23:16PM >> THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY.
12:23:20PM I WANT TO JUST FOCUS ON ONE WORD --
12:23:24PM >>Robert Eschenfelder: FOR THE RECORD GIVE YOUR NAME
12:23:25PM ADDRESS.
12:23:26PM >> RON.
12:23:29PM THE LAST IS MISCO, AND I LIVE IN LIGHTHOUSE BAY IN THE
12:23:35PM BROOKS.
12:23:35PM >>Robert Eschenfelder: THANK YOU.
12:23:36PM >> OKAY.
12:23:38PM I WANT TO FOCUS ON ONE WORD.
12:23:39PM COMPATIBILITY.
12:23:41PM COMPATIBILITY.
12:23:42PM COMPATIBILITY.
12:23:44PM COMPATIBILITY.
12:23:45PM PUTTING UP A FOUR-STORY BUILDING, RIGHT SMACK-DAB IN THE
12:23:56PM MIDDLE OF THE BROOKS, IS NOT COMPATIBLE.
12:24:05PM WHEN YOU GO TO VOTE.
12:24:06PM I WANT TO YOU THINK OF THAT WORD AND WHAT WE ARE DOING TO
12:24:10PM THE BROOKS TOWN CENTER.
12:24:12PM THANK YOU VERY MUCH.
12:24:14PM THAT'S ALL.
12:24:19PM >>Clerk: THE NEXT IS MAX ROBINSON FROM SHADOW WOOD.
12:24:24PM >> GOOD MORNING.
12:24:31PM I AM MAX ROBINSON.
12:24:35PM 1048 GENTRY POINT COURT IN SHADOW WOOD.
12:24:39PM I AM NOT WITHIN 500 FEET OF THE PROJECT, BUT I CAN ASSURE
12:24:44PM YOU THAT I FEEL AGGRIEVED.
12:24:47PM THE APARTMENT PROPOSAL IS TOTALLY OUT OF CHARACTER FOR THE

12:24:53PM NEIGHBORHOOD.
12:24:54PM BROOKS TOWN CENTER IS FOR THE BROOKS HOMEOWNERS.
12:25:00PM AND THEY HAVE SPENT TOGETHER MILLIONS OF DOLLARS TO DEVELOP
12:25:04PM AND MAINTAIN THE AREA, INCLUDING THE BEAUTIFUL LANDSCAPING
12:25:09PM ON COCONUT ROAD AND THREE OAKS.
12:25:14PM BROOKS TOWN CENTER WAS INTENT TENDED TO SERVE THE RESIDENTS
12:25:20PM AND TO REDUCE TRAFFIC ON U.S 41 AND OTHER THOROUGHFARES BY
12:25:26PM PROVIDING SERVICES CLOSE BY AND NOT TO BECOME AN
12:25:31PM OPPORTUNISTIC DEVELOPMENT WHICH USURPS THE INVESTMENTS OF
12:25:39PM BROOKS HOMEOWNERS, ENCROACHES ON OUR PEACEFUL COMMUNITY AND
12:25:42PM WILL INCREASE TRAFFIC CONTRARY TO THE ORIGINAL INTENT.
12:25:47PM THE APARTMENTS WOULD BE AN UNFAIR CONVERSION OF THE SERVICE
12:25:54PM INTENT OF BROOKS TOWN CENTER.
12:25:55PM TAKING AWAY RESOURCES FOR BROOKS HOMEOWNERS.
12:26:02PM SPLITTING THEIR INVESTMENT, IMPOSING CONGESTION AND
12:26:06PM IMPAIRING THE PEACEFULNESS AND SECURITY OF THE BROOKS.
12:26:09PM TOWN CENTER WAS NOT INTENDED FOR APARTMENTS.
12:26:14PM IT WAS INTENDED FOR BUSINESSES SERVING BROOKS RESIDENCES
12:26:22PM INDEED, ITS NAME IS BROOKS TOWN CENTER.
12:26:25PM THANK YOU FOR THE OPPORTUNITY.
12:26:26PM >>Mayor McLain: THANK YOU.
12:26:28PM >>Clerk: OUR NEXT IS MR. ANDY KERN FROM SHADOW WOOD.
12:26:33PM >>Mayor McLain: NOT HERE.
12:26:39PM >>Clerk: OKAY.
12:26:39PM OUR NEXT IS CHARLIE KENNEDY FROM SHADOW WOOD, REPRESENTING
12:26:45PM SHADOW WOOD.
12:26:46PM OKAY.
12:26:48PM NEXT IS SUSAN SNOW FROM SHADOW WOOD.
12:26:50PM NO?
12:26:54PM AND OUR LAST IS MR. CLARK McKENZIE FROM HIGHLANDS,
12:26:58PM REPRESENTING HIMSELF.
12:26:59PM >> CLARK McKENZIE -- CLARK McKENZIE, I LIVE AT 20679
12:27:10PM HIGHLANDS AVENUE.
12:27:11PM I WAS VERY DISAPPOINTED WITH YOU GUYS PUTTING SOME 50-FOOT
12:27:17PM BUILDINGS CLOSE TO WHERE I LIVE.
12:27:19PM AND I AM REALLY SORRY ABOUT THAT FOR -- FOR YOU.
12:27:24PM BUT MR. SCOTT, YOUR GOVERNOR, HOW VOTED FOR, GUTTED THAT,
12:27:33PM YOU KNOW, DEVELOPMENT THING.
12:27:34PM SO I THINK IT IS VERY IMPORTANT TO REMEMBER WHO YOU ARE
12:27:38PM VOTING FOR, BECAUSE IT IS ALL ABOUT MONEY.
12:27:41PM AND MY HOUSE IS NOT \$3 MILLION, BUT I STILL DON'T WANT TO
12:27:46PM LIVE BY A 40-FOOT BUILDING.
12:27:48PM SO, YOU KNOW, THINK ABOUT WHO YOU ARE VOTING FOR, YOU KNOW.
12:27:52PM MR. SCOTT IS THE GUY THAT GUTTED THAT PROVISION.
12:27:56PM ALL RIGHT, THANKS.
12:27:57PM >>Mayor McLain: THANK YOU.
12:28:00PM >> MAYOR, THAT IS COMPLETED PUBLIC COMMENT.
12:28:03PM >>Mayor McLain: I WILL CLOSE THE PUBLIC COMMENT PORTION OF

12:28:05PM OUR MEETING AND NOW THAT THE PUBLIC COMMENT SECTION IS
12:28:09PM CLOSED, THE CHAIR WILL PERMIT APPLICANTS, AFFECTED PARTIES
12:28:14PM THE OPPORTUNITY FOR A BRIEF REBUTTAL STATEMENT NOT TO EXCEED
12:28:19PM THREE MINUTES.
12:28:19PM DO YOU HAVE ANY FURTHER COMMENTS?
12:28:26PM >>Kathy Wyrofsky: IT IS PRETTY CLEAR -- HI, KATHY WYROFSKY.
12:28:30PM REBUTTAL PERIOD.
12:28:31PM I JUST REBUT, AGAIN, THE IDEA THAT THEY HAVE REMAIN VESTED
12:28:36PM RIGHTS.
12:28:36PM THAT THE BUILDING IN THE VESTED RIGHTS COULD BE ABOVE TWO
12:28:40PM STORIES.
12:28:41PM THAT -- THAT WE CAN DEVIATE FROM THE COMP PLAN BASED ON
12:28:46PM CURRENT CASES.
12:28:48PM AND THAT THIS WILL CREATE AN INCONSISTENCY THAT WILL BE VERY
12:28:53PM DIFFICULT TO FIGHT IN THE FUTURE.
12:28:55PM AND THAT WE REALLY FEEL OUR -- THE OPENNESS -- I KNOW YOU
12:29:02PM SAID THERE WERE MEETINGS BUT WE DIDN'T HEAR OF THE MEETING
12:29:05PM UNTIL WE RECEIVED THE NOTICE THAT SAID BASICALLY THIS WAS A
12:29:11PM DONE DEAL AND YOU CAN COME COMMENT.
12:29:13PM THAT WAS THE PROCESS WE RECEIVED.
12:29:14PM AND HAVING THIS BUILDING IS CLEARLY NOT IN PRESIDENT
12:29:18PM INTENTION OF THE ORIGINAL DRI.
12:29:20PM AND WE -- OUR INTERESTS ARE NOT BEING MET.
12:29:25PM AND I LIVE HERE BECAUSE OF THE PRIVACY AND SERENITY OF MY
12:29:31PM LOT.
12:29:31PM THAT'S IT.
12:29:32PM AND IT WILL BE FOREVER CHANGED.
12:29:34PM THANK YOU.
12:29:35PM >>Mayor McLain: OKAY.
12:29:37PM NOW THAT ALL PARTIES, PRESENTATIONS AND PUBLIC COMMENTS ARE
12:29:42PM CONCLUDED, I WILL ACCEPT A MOTION TO EITHER AFFIRM THE
12:29:45PM DECISION OF THE PLANNING ZONING BOARD, REVERSE THE DECISION
12:29:49PM OF THE PZDB, OR AFFIRM WITH MODIFICATIONS TO THE PLANNING,
12:29:59PM ZONING BOARD.
12:30:01PM SO I AM -- I AM READY TO TAKE A MOTION FROM ANYONE.
12:30:07PM >> MAYOR, I WILL MAKE A MOTION.
12:30:11PM BASED UPON THE EVIDENCE AND THE TESTIMONY PRESENTED TO US
12:30:15PM TODAY, HEARING THE ARGUMENTS OF THE PARTIES, I MOVE TO
12:30:18PM AFFIRM THE DECISION OF THE PLANNING ZONING BOARD TO ISSUE
12:30:22PM THE DEVELOPMENTAL ORDER IN THIS CASE, INCLUDING THE
12:30:25PM CONDITIONS THAT HAVE BEEN SET FORTH THERE IN.
12:30:28PM >>Mayor McLain: DO I HAVE A SECOND?
12:30:31PM >>Rafael Lopez: I WILL SECOND.
12:30:32PM >>Mayor McLain: A SECOND BY COUNCILMAN LOPEZ.
12:30:36PM ANY DISCUSSION AMONGST THE COUNCIL?
12:30:40PM YES, COUNCILMAN WARD.
12:30:42PM >>Jim Ward: YOU KNOW, AS I NOTED A FEW MINUTES AGO, I AM A
12:30:45PM RESIDENT OF THE BROOKS.

12:30:46PM I AM A RESIDENT OF SPRING RUN.
12:30:48PM I CAN THOROUGHLY UNDERSTAND THE PASSION THAT YOU HAVE
12:30:53PM BROUGHT TODAY.
12:30:54PM AND YOUR CONCERNS, BECAUSE I UNDERSTAND WHAT THE ORIGINAL
12:30:58PM INTENT OF THE BROOKS TOWN CENTER WAS.
12:31:01PM I -- I REALLY DO FEEL THAT IT IS NOT COMPATIBLE WITH WHAT
12:31:11PM WAS ORIGINALLY INTENDED.
12:31:13PM I CAN REMEMBER BACK IN 2003 WHEN I FIRST CAME HERE, 2005, A
12:31:19PM FEW YEARS LATER, SWEET BAY WAS BUILT.
12:31:21PM I REMEMBER THE COMMUNITY BEING REACHED OUT TO, TO SUPPORT
12:31:27PM SWEET BAY, BECAUSE WE RECOGNIZE IF WE DIDN'T SUPPORT SWEET
12:31:31PM BAY, THAT IT WOULDN'T BE THERE.
12:31:33PM SUBSEQUENTLY, SWEET BAY WENT AWAY.
12:31:37PM WINN-DIXIE.
12:31:45PM WE REACHED OUT TO THE RESIDENTS.
12:31:47PM FINANCIALLY STABLE AND DID NOT EXIST SO THE DEVELOPER HAD TO
12:31:51PM REACH OUT AND DO SOMETHING DIFFERENT.
12:31:52PM THE DEVELOPER DID REACH OUT TO OTHER AVENUES TO WHICH THEY
12:31:56PM CAN USE THE PROPERTY I KNOW EVEN AT THIS VILLAGE, THE
12:32:00PM VILLAGE MANAGER REACHED OUT TO OTHER ENTITIES TO SEE IF WE
12:32:04PM COULD DO SOMETHING DIFFERENT THAN THE APARTMENTS.
12:32:07PM AT THIS POINT IN TIME, THIS COUNCIL HAS TO MAKE A DECISION
12:32:14PM THAT IS BASED ON WHAT WE TALKED IS THE COMPETENT AUTHORITY
12:32:17PM OR COMPETENT -- WHAT IS THE WORD I AM THINKING OF?
12:32:24PM >>Robert Eschenfelder: COMPETENT SUBSTANTIAL EVIDENCE.
12:32:26PM >>Jim Ward: YEAH.
12:32:26PM AND UNFORTUNATELY, I DON'T REALLY SEE ANY REASON TO DENY
12:32:35PM WHAT THE PLANNING AND ZONING BOARD DID.
12:32:38PM I BELIEVE THAT THEY ARE A COMPETENT AUTHORITY.
12:32:41PM THEY SERVE THIS BOARD VERY WELL.
12:32:43PM THEY SERVE THIS COMMUNITY VERY WELL OVER THE YEARS.
12:32:47PM SO, UNFORTUNATELY, I REALLY DO HAVE TO SUPPORT THE -- THE
12:32:54PM PLANNING AND ZONING BOARD AND DENY THE APPEAL.
12:32:57PM >>Mayor McLain: ANY OTHER COUNCIL COMMENTS?
12:33:04PM JUST ONE COMMENT I HAVE.
12:33:05PM I AM NOT SURE HOW THE VOTE WILL GO.
12:33:07PM WE OBVIOUSLY NEED FOUR TO SUPPORT THE PLANNING ZONING BOARD,
12:33:11PM BUT BASED ON WHAT WE HAVE HEARD TODAY, I -- I WOULD
12:33:15PM ENCOURAGE THE AFFECTED PARTIES TO WORK WITH THE DEVELOPER.
12:33:20PM SOUNDS LIKE HE IS WILLING TO CONSIDER YOUR CONCERNS,
12:33:25PM SPECIFICALLY AROUND SECURITY.
12:33:26PM SO NO MATTER HOW WE VOTE TODAY, THAT -- THAT IS AN OPTION
12:33:31PM THAT YOU SHOULD -- I WOULD ENCOURAGE YOU TO DO IF IT IS
12:33:35PM APPROPRIATE.
12:33:36PM SO NO FURTHER COMMENTS FROM COUNCIL.
12:33:43PM COUNCIL PERSON FAYHEE.
12:33:47PM >>Lori Fayhee: JUST ONE.
12:33:48PM THE MAJORITY OF -- SORRY.

12:33:50PM THE MAJORITY OF OUR BOARD ARE LOCAL RESIDENTS HERE.
12:33:55PM I LIVED HERE FOR 20 YEARS.
12:33:57PM AND I MISS THE COW PASTURES LIKE THE REST OF YOU.
12:34:01PM BUT IT IS VERY DIFFICULT FOR COUNCIL TO TRY TO TELL A
12:34:09PM DEVELOPER THAT THEY CAN'T BUILD SOMETHING ON THE PROPERTY
12:34:14PM THAT THEY PURCHASED.
12:34:17PM YOU KNOW, ACCORDING THE RESERVATIONS THAT ARE PROVIDED.
12:34:21PM IT WOULD BE THE SAME IF YOU WERE TOLD YOU COULDN'T BUILD A
12:34:24PM HOUSE ON THE PROPERTY YOU HAD.
12:34:27PM ALL WE CAN DO IS TELL YOU WHAT WITH THE POLICIES ARE AND HOW
12:34:31PM YOU NEED TO CONFORM TO THAT.
12:34:33PM SO THAT'S ALL I HAVE.
12:34:38PM THANK YOU.
12:34:38PM THANK YOU, ALL, FOR SPEAKING UP.
12:34:42PM THIS IS A TOUGH DECISION.
12:34:44PM >>Mayor McLain: YES.
12:34:45PM >>Robert Eschenfelder: MR. MAYOR, I WOULD LIKE TO MAKE A QUICK
12:34:51PM COUPLE OF COMMENTS.
12:34:51PM KATHY, THANKS EVERYBODY FROM THE BROOKS FOR BEING HERE
12:34:54PM TODAY.
12:34:55PM VERY APPARENT YOUR PASSION ON THIS PARTICULAR ISSUE AND I
12:34:59PM UNDERSTAND YOUR FRUSTRATION AND I CAN SEE IT.
12:35:00PM THANK YOU FOR A VERY COMPELLING PRESENTATION TODAY.
12:35:03PM I WILL SPEAK ON BEHALF OF MYSELF.
12:35:06PM I DID WEIGH THE EVIDENCE.
12:35:08PM AND ALL THE TESTIMONY PROVIDED TODAY AND IN OUR PACKET, FOR
12:35:14PM ME IT COMES DOWN TO A SIMPLE LEGAL TEST, RIGHT.
12:35:17PM I NEED TO FOLLOW WHAT IS LEGALLY APPLICABLE IN THE LAW.
12:35:22PM AND SO WHEN I TAKE A LOOK AT THE DRI AND VESTED RIGHTS OF
12:35:27PM THE DEVELOPER, THE COMPREHENSIVE PLAN, THE PZDB BOARD AND
12:35:35PM THEIR APPROVAL OF THOSE ITEMS, STAFF'S RECOMMENDATION.
12:35:42PM NANCY STROUD, YOU ARE LANDS USE ATTORNEY'S RECOMMENDATION,
12:35:46PM AND OUR VILLAGE ATTORNEY'S RECOMMENDATION.
12:35:48PM I WANT YOU TO KNOW AS A VILLAGE COUNCIL PERSON, I AM
12:35:52PM COMPELLED TO FOLLOW THE LEGAL FINDINGS.
12:35:54PM SO ALTHOUGH YOUR ARGUMENTS WERE COMPELLING, I AM LETTING YOU
12:36:00PM KNOW THE REASON I AM GOING TO BE VOTE SOMETHING TO SUPPORT
12:36:01PM THE MOTION IS BECAUSE OF THE LEGALITIES.
12:36:06PM BUT THANK YOU VERY MUCH.
12:36:07PM >>Mayor McLain: THANK YOU.
12:36:09PM I JUST HAVE ONE THING, MR. MAYOR, WE HAVE TO PROTECT ALL THE
12:36:15PM RESIDENTS OF ESTERO.
12:36:17PM INCLUDING TAXPAYER MONIES, FINES THAT CAN BE BROUGHT AGAINST
12:36:24PM THE VILLAGE, LAWSUITS THAT ARE BRUTE AGAINST THE VILLAGE.
12:36:30PM WE HAVE TO PROTECT EVERYONE IN THE VILLAGE AND THAT IS WHY I
12:36:35PM SECOND THAT MOTION BECAUSE I HAVE TO -- WE HAVE TO LOOK AT
12:36:39PM EVERYONE WHO LIVES IN THIS VILLAGE AND I ENCOURAGE YOU ALL
12:36:43PM TO DO WHAT THE MAYOR SUGGESTED AND MAYBE REACH OUT TO THE

12:36:46PM DEVELOPER AND TRY TO ARRANGE MORE ACCOMMODATIONS THAT YOU
12:36:52PM CAN GET FROM HIM.
12:36:52PM I AM THINKING THAT HE IS A MAN OF HIS WORD, AND THAT HE WILL
12:36:56PM FOLLOW UP WITH IT.
12:36:57PM AGAIN, I -- I THANK YOU ALL FOR COMING OUT AND SUPPORTING US
12:37:03PM AND SUPPORTING THE VILLAGE.
12:37:04PM IT IS STILL THE GREATEST CITY IN FLORIDA.
12:37:09PM AND IF NOT THE UNITED STATES.
12:37:10PM AND, YOU KNOW, WE ARE -- WE ARE ESTERO RESIDENTS, SO WE --
12:37:16PM WE -- WE APPRECIATE EVERYTHING THAT YOU GUYS DID.
12:37:19PM THANK YOU.
12:37:20PM >>Mayor McLain: THANK YOU.
12:37:21PM SO MADAM CLERK, WE HAVE A MOTION AND WE HAVE IS A SECOND.
12:37:27PM >>Clerk: YES, WE DO.
12:37:28PM >>Larry Fiesel: AYE.
12:37:32PM >>Lori Fayhee: AYE.
12:37:34PM >>Rafael Lopez: AYE.
12:37:36PM >>Jim Ward: AYE.
12:37:37PM >>Vice-Mayor Ribble: AYE.
[Streaming video ended.]

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