

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida March 10, 2022

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER: ANDREW DICKMAN

ALSO PRESENT:

Michael Bosi, Planning and Zoning Manager  
Raymond V. Bellows, Zoning Manager  
John Kelly, Senior Planner  
Andrew Youngblood, Operations Analyst

MR. YOUNGBLOOD: You have a live mic.

HEARING EXAMINER DICKMAN: All right. Good morning, everybody. Today is March 10th, 2022. It is 9:01 in the morning. This is the Hearing Examiner meeting. On our agenda we have two items that we need to cover.

Why don't we get started first of all with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Excellent. Thank you, everyone.

I'm going to give a quick introduction and then we'll get right into it. Hopefully everyone can hear me. My name is Andrew Dickman. I'm a licensed Florida Bar attorney in good standing with the Florida Bar. I've been practicing for 22 years. I have been working in the area -- my professional career in the area of growth management, land use, zoning, development since 1992. So I have been retained by the Board of County Commissioners to act as the HEX or Hearing Examiner, as it's called, HEX, to hear certain items that are listed in the code, in the administrative code, that would not normally go to the Board or the Planning Commission.

The purpose of this meeting is for me to get competent substantial evidence or as much evidence as I can from the applicant, from the county, and anyone who speaks in the public, take all of that information, apply it to the applicable code and criteria that's in -- published in the county code, and render a decision based on that within 30 days.

My job is to be here as a neutral decision maker and not have outside contact so that I am here impartially. I do my own research. I don't call applicants. I don't meet with applicants. I don't meet with staff. I don't work through these applications with staff. I read everything that the public reads, and anything that's submitted to me has been made available to the public. So I have all the information. If I need any additional information, I do that.

Everything that I decide on -- my decision is going to be based on everything up to now and any case law that I need to look at, but all of the record is going to be made here today, and then the decision will be made from that.

So I want to be -- I want everyone to be assured that the purpose of this is to have me here to look at this from a totally impartial decision-making point of view.

One of the things that we have here today is Ms. Terri, our court reporter. She has been with the county for quite a long time, and she is going to take verbatim transcripts of the proceedings here today. She is going to ask everyone -- or I'm going to ask everyone to not talk over each other, try to say "yes," "no," "maybe" instead of nodding your head left, right. She's going to actually stop everybody if she can't understand what you're saying, if we talk over each other, things of that nature. So that's one important thing.

The way that this process is going to take place is I'm going to ask the county to introduce the item and briefly cover their staff report and give me their recommendations, that way the applicant can come up and have the benefit of what the county has said, what they're presenting. The applicant will come to the large podium over here in brown, make their case in chief. There may be a presentation; there may not be. I'll have some questions probably back and forth, and then we'll have the -- open it up for public hearing.

Now, this is a hybrid meeting which means that we have folks that are logged in through virtual means, electronic means, calling in, so forth. We also have the ability to have people here in person. So we're going to take public comment and other things through both avenues. It's an accommodation that the county has made for individuals that may not be able to be here for whatever reason that may be.

So I believe with that, if we have no other introductions that I need to make, I am going to ask everyone that's going to provide testimony here today to me to be sworn in by the court reporter. If you would stand and raise your right hand, please.

(The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER DICKMAN: All right. I appreciate that, everyone.

Why don't we jump right into Item No. A.

Good morning, John.

MR. KELLY: Good morning, Mr. Dickman. How are you?

HEARING EXAMINER DICKMAN: Fine, thank you.

MR. KELLY: Okay. To start, Andy, if you could please put the staff report on.

This is going to be your Agenda Item 3A. It's BDE-PL2020000220. I have a correction to the staff report. It's the highlighted portion on the visual. It's the project location. It actually should read "the subject property is located at 404 Crystobal Street further described as Lot 578, Isles of Capri, No. 3, in Section 32, Township 51 South, Range 26 East, Collier County, Florida." I'll get a copy to the court reporter.

HEARING EXAMINER DICKMAN: Can you send me a copy of that as well?

MR. KELLY: Yes.

HEARING EXAMINER DICKMAN: I'm not going to waste my time writing that out. Thank you.

MR. KELLY: Yes.

So to start, the requested action here is for you to approve a boat dock extension that adds 38.25 square feet of terminal dock area for a second boat lift to an existing dock facility that protrudes 30 -- excuse me -- 19 feet beyond the maximum permitted protrusion of 20 feet for a total protrusion of 39 feet into a waterway that is 144-plus-or-minus feet wide pursuant to Section 5.03.06 of the Collier County Land Development Code for the benefit of the subject property, which I just corrected on the record.

This existing dock facility was approved per Collier County Planning Commission Resolution No. 12-08, which was issued in response to Petition BDE-PL20110000644.

The zoning of the subject property is Residential Single-Family 3.

Public notice requirements were as per Section 10.03.06.I of the Land Development Code.

HEARING EXAMINER DICKMAN: John, can I stop you there?

MR. KELLY: Sure.

HEARING EXAMINER DICKMAN: I want to make sure that the address on the notices were correct even though the staff report wasn't.

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Thank you. All right. Appreciate that. And I do want to note that the materials that are submitted that I'm reading note the correct address as well.

MR. KELLY: And the subject was always correct on the staff report.

HEARING EXAMINER DICKMAN: Just a scrivener's error in the staff report. I get it.

MR. KELLY: Correct. And the property owner notification letter was sent by the county, as well as the newspaper ad was run by the county on February 18, 2022, and a public hearing sign was posted to the front of the residence on February 22nd, 2022.

The review was -- staff's review was based upon the criteria contained in LDC Section 5.03.06.H. Of the primary criteria, it satisfies four of five; of the secondary criteria it satisfies four of six with the sixth being not applicable as it's the Manatee Protection Plan. It has been found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comment, I've had one contact with the public. That was by telephone on March 1st from a Karen Wassermann at 400 Crystobal Street. That's the property -- I believe it's immediately to the west of the subject property. She indicated that she was in opposition and would be here at the meeting today. Again, that's the only contact I've had with the public.

And as far as a recommendation, staff recommends that you approve the petition as described in accordance with the proposed dock plans provided within Attachment A.

HEARING EXAMINER DICKMAN: Thank you. All right. Let's start with the applicant.

Good morning, sir. How are you doing today?

MR. HELSEL: How's everyone this morning.

HEARING EXAMINER DICKMAN: Good. I just want to remind everybody that unlike -- you know, this is a small space. I want everybody to relax. Some people don't speak publicly very often, but take your time. We want to make sure -- I want to make sure we get all the information, questions out. The whole point of this process is to give me the opportunity and to give everybody the ability to relax and let's get all the information that we need. So thank you for being here.

MR. HELSEL: No problem.

MR. YOUNGBLOOD: I'll be steering this for you.

MR. HELSEL: Okay. Great. This is just a coversheet that says that we are requesting a boat dock extension on an existing dock at our residential property.

Next slide, please.

HEARING EXAMINER DICKMAN: Are you the --

MR. HELSEL: I am the property -- I'm sorry. My name is Ronald Helsel. I'm the property owner.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: My wife and myself.

HEARING EXAMINER DICKMAN: Okay. And I note that you have Turrell, Hall & Associates as your -- the submittal. Are they here today?

MR. HELSEL: I needed to have -- no, they are not. They are not my contractor. I simply hired them to do the submerged resources survey for me.

HEARING EXAMINER DICKMAN: Right. I understand what they do. But they're not here today, right?

MR. HELSEL: They are not here, no.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. HELSEL: What you're looking at here is from 2011 when the original boat dock extension was approved, and it's currently existing as such.

Next slide, please.

This is an overview from Turrell Hall that shows the requested flats boat, and I'm looking for four posts to put a lift on. And the highlighted yellow area would be the proposed addition to the dock so I can safely egress on and off the boat.

You see we have a riparian line with the prior boat dock extension. Ms. Wassermann also protested that, and at that time we negotiated and filed with the county a riparian line agreement, and we're within the riparian line agreement per the recorded document.

Next slide, please.

This is an overview just showing the house that we're at. Wassermann is -- would be to the right on this slide. To the left is Middlebrook, and it continues up the Isle.

Next slide.

HEARING EXAMINER DICKMAN: Can I ask you a question?

MR. HELSEL: Absolutely.

HEARING EXAMINER DICKMAN: So you're referencing a riparian line agreement.

MR. HELSEL: That's correct.

HEARING EXAMINER DICKMAN: So tell me about that, and do I have a copy of that?

MR. HELSEL: It's in the county -- it's in the county documents.

HEARING EXAMINER DICKMAN: Okay, great.

MR. HELSEL: I'll kind of make that a little bit clearer as I go along. Well, let's just jump to that.

HEARING EXAMINER DICKMAN: Go ahead.

MR. HELSEL: Maybe this will help, all right. Mrs. Wasserman's house at 400 Crystobal is not her homesteaded house. It's a rental property that went into foreclosure last year. I purchased that property at foreclosure last year, actually, on March 10th, ironically.

She has tangled it up pretty well up until about today, and I think as -- when I was coming in here, my attorney believes that we'll have a signed agreement, and she'll withdraw any opposition to the foreclosure.

HEARING EXAMINER DICKMAN: To the foreclosure or to this --

MR. HELSEL: This 400 Crystobal that you see here --

HEARING EXAMINER DICKMAN: Yeah, they're the ones that --

MR. HELSEL: She protested.

HEARING EXAMINER DICKMAN: She had --

MR. HELSEL: She protests everything.

HEARING EXAMINER DICKMAN: Okay. Let's let me -- okay. Some people do that.

John, let me clarify.

MR. HELSEL: Yes.

HEARING EXAMINER DICKMAN: John, is that the resident or the homeowner -- the property owner that called you?

MR. KELLY: That is the one public contact I've had, yes.

HEARING EXAMINER DICKMAN: Okay. And are you saying that you have now -- has she now withdrawn an objection, or you reached an agreement? No?

MR. HELSEL: So March 10th last year I bought that property at foreclosure, which there's a certificate of sale in the documents, okay. I never got a certificate of sale filed at the land document. I'm in between right now because on the 10th day at the 11th hour she wrote a handwritten letter that she wanted to protest it.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: So that got -- go ahead.

HEARING EXAMINER DICKMAN: John wants to say something here. County?

MR. KELLY: It's just that she had told me she would be here at the meeting and --

HEARING EXAMINER DICKMAN: Okay. So we'll wait and see if she shows up.

MR. KELLY: Exactly.

MR. HELSEL: In the last 48 hours, she's been in negotiations with my attorney to withdraw that.

HEARING EXAMINER DICKMAN: Okay. Is your attorney here?

MR. HELSEL: My attorney's not here, no.

HEARING EXAMINER DICKMAN: Okay. You just chose not to have -- I'm only asking because I'm looking for expert testimony. Now I get it, you are the property owner.

MR. HELSEL: I understand.

HEARING EXAMINER DICKMAN: And you've lived there for how long?

MR. HELSEL: Twelve years, 11 years.

HEARING EXAMINER DICKMAN: Eleven years. And have you had familiarity with building and having docks built on property?

MR. HELSEL: The first one, yeah.

HEARING EXAMINER DICKMAN: And any other properties?

MR. HELSEL: That I own, yeah. I have several other ones, but I don't do any construction on them right now.

HEARING EXAMINER DICKMAN: But they're not waterfront?

MR. HELSEL: They are not waterfront, no.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. HELSEL: So, Mrs. Wassermann, we expect by the end of today to have a signed agreement with her withdrawing any objection to the foreclosure which, in fact, would make that my property.

HEARING EXAMINER DICKMAN: Okay. Well, let's -- we'll hear what she says. And any private agreement you make is between you two, so...

MR. HELSEL: All right. So let's see where we're at here.

So this will show the waterway west that we have and what Turrell Hall found with the coverage of the seagrass. We covered that in the criteria and zoning questions, you know, where the dock was going to be as opposed to the seagrass.

We covered that, I believe, in section -- in the LDC. When a continuous bed of seagrass exists off the shore of the property adjacent to the property, the applicant should be allowed to build a dock across the seagrass beds and/or docking facility within 10 feet of seagrass beds. Such docking facility shall comply to the following conditions. I don't think I need to list the conditions for you, but it's allowed by the Land Development Code when you have a continuous seagrass bed.

We did the best to position what we have here to fit in compliance with all the restrictions that I had with my property.

And I believe that's the last slide. Well, no, there is one more. One more. This is the land survey showing the current dock and the proposed dock.

Next slide.

I've also, since I experienced this before -- I've been working on this project for two years. I had the DEP project approved first. Went to the DEP, applied for a BDE. The DEP came out, visited the site. I worked with them on drawings. I got a DEP permit approval. I filed with the Corps of Engineers, which you also have to have a permit for, worked with the Corps of Engineers, and I got the permit approval from the Corps

of Engineers. This is the last permit that I need in order to get a building permit.

And that concludes my PowerPoint presentation.

HEARING EXAMINER DICKMAN: All right. Quick question for you.

MR. HELSEL: Yes, sir.

HEARING EXAMINER DICKMAN: So you have what I would describe as an L -- depending on how you look at it, an L -- you have a long pier going out, then you have an area that goes to the -- looks like it goes to the S -- or to the east, which is six feet by something.

MR. HELSEL: Correct.

HEARING EXAMINER DICKMAN: Why wouldn't you take that off and just have your new flats boat just come straight in like your other vessel?

MR. HELSEL: I was trying to disturb the dock as least as possible.

HEARING EXAMINER DICKMAN: So --

MR. HELSEL: I'm still under the terminal footage of 160 feet even though I have the extension.

HEARING EXAMINER DICKMAN: Okay. Would that change any of your requests? Would that -- if you were to do that, take -- I understand not wanting to disturb the existing wood dock, but would that -- if you were to take off that part and just have a straight pier and then put the boatlift straight and have both your vessels come straight in, would that change the amounts or the type of variances that you would need or any of the dimensions?

MR. HELSEL: Well, I'm going to have to go back to DEP. I'll have to go back to the --

HEARING EXAMINER DICKMAN: No. I'm asking you. I mean, have you done that design or those calculations?

MR. HELSEL: No, I have not.

HEARING EXAMINER DICKMAN: You haven't? Did you ask Turrell Hall to do those calculations?

MR. HELSEL: I did not.

HEARING EXAMINER DICKMAN: You did not. Is there a reason why they're not here today?

MR. HELSEL: I did not request Turrell Hall to be here. I simply needed to get a submerged resources survey.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: I didn't have them design my dock. I designed my dock.

HEARING EXAMINER DICKMAN: Well -- okay.

MR. HELSEL: It's typical for what I have in my neighborhood.

HEARING EXAMINER DICKMAN: I understand that.

MR. HELSEL: That's what I based everything on is, you know, the next one up has pretty much the same configuration.

HEARING EXAMINER DICKMAN: Okay. I'm looking at each case --

MR. HELSEL: I understand.

HEARING EXAMINER DICKMAN: -- straight ahead. So, you know, when you're asking -- okay, I get it. I do have the authority, though, to look at these things from the criteria and ask these questions. One of them's the minimum -- the minimum request necessary or possible, so I do look at the configuration of what's being requested in terms of whether or not you could accomplish what you're trying to accomplish, which is, essentially, have your flats boat moored in on a lift at your property with less intrusion into the riparian setbacks and the length out. So I'm just asking you that. But it seems like you've just designed this, right, and that's the way you want it?

MR. HELSEL: Well, if -- can we go back to the slides? It will be probably the third one showing the proposed dock. The next slide.

HEARING EXAMINER DICKMAN: Yeah, looks like it.

MR. HELSEL: Next slide.

HEARING EXAMINER DICKMAN: One more. One more. Up. Up. I think it's the second slide.

MR. YOUNGBLOOD: This?

HEARING EXAMINER DICKMAN: Yep, that one.

So let me just explain what I'm saying just real quickly. So I've got the -- like, if you were to take this off

and then bring your flats boat straight in, I mean, it looks like you have a covered boatlift here for a very large vessel, so it doesn't seem like depth would be an issue. But if you were to put a lift here -- are you planning on a lift here?

MR. HELSEL: Yes. That's four posts.

HEARING EXAMINER DICKMAN: Okay. If you were just to, like, move this, not have that, have it pull straight in, it might actually change the request that you have.

MR. HELSEL: It would change the request. There's no -- it's clear that I would be reducing my terminal space that I have on the end that was, in fact, reduced the first time I asked for a BDE. I'm not at the 160 square foot of terminal space at the end that a typical non-BDE boat dock would be allowed.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. HELSEL: I mean, to be honest with you, the end of the dock is a place where I sit, watch the sun go down, you know, and, if I change to the configuration that you're proposing, I'm not going to get that anymore.

HEARING EXAMINER DICKMAN: But then you're adding on more decking.

MR. HELSEL: Thirty-six square feet, yes. Thirty-eight square feet, approximately.

HEARING EXAMINER DICKMAN: Okay. I understand. Are you --

MR. HELSEL: If I could get away without putting the decking on, I would, but I can't get on and off the boat.

HEARING EXAMINER DICKMAN: That's a criteria, too, is to make sure you can get on and off safely.

MR. HELSEL: Yeah, especially as I advance in years, let's say.

HEARING EXAMINER DICKMAN: I wouldn't want you to fall off, yeah. All right. Anything else?

MR. HELSEL: I have with me, as Ms. Wassermann is -- this is not the first time that I've run into opposition from Mrs. Wasserman. This actually is pretty typical for anybody on the street. I have two letters of support here from adjoining neighbors.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: They would be immediately to the west, the next two neighbors immediately to the west, along with a -- in the end there's an overview, an aerial overview marking those properties out so you know where they're at. I have copies here.

HEARING EXAMINER DICKMAN: If you could provide those to me, I'd appreciate it. There's three copies there.

MR. KELLY: Okay.

HEARING EXAMINER DICKMAN: Okay. So your other adjacent property owner is supporting, right?

MR. HELSEL: That's correct.

HEARING EXAMINER DICKMAN: Middlebrook.

MR. HELSEL: Middlebrook, which has a configuration typically like what I've proposed there.

HEARING EXAMINER DICKMAN: I see that.

MR. HELSEL: And the next one up is the Ward Family Trust. That's an old-time dock there. But you can see that he's using almost 100 percent of his waterfront, but he has a boathouse that's grandfathered in and, of course, his lift.

HEARING EXAMINER DICKMAN: All right. Thank you for this. Anything else?

MR. HELSEL: Not unless you have any other questions. Like I said, I've been through the DEP, the Corps of Engineers. They all more or less questioned in the direction that -- I wouldn't say that they asked me to reconfigure the dock, but they asked why you put it where, what you did. They're looking for the least amount of disturbance with the Corps of Engineers, and the DEP, the same thing. You know, he -- he did a good job. That guy came out twice, actually, from the DEP.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: Once to measure the water and another time to discuss the dock and then tell me to remove my fish table.

HEARING EXAMINER DICKMAN: Remove your fishing table?

MR. HELSEL: Not allowed to clean fish over top of the water.

HEARING EXAMINER DICKMAN: Oh, wow.

MR. HELSEL: Yeah, yeah. That's exactly kind of what I said, too. It's a new one for me.

HEARING EXAMINER DICKMAN: Just to be clear, though, that the -- I'm handling the zoning part of that, and they have different criteria. I have criteria that I follow, as you heard from the county, and you're aware of the primary and secondary criteria. So those are -- that's what I look at. So while I appreciate you giving me that information about the other agencies that are involved -- I'm aware that they are involved, but, you know, I do appreciate you giving me that information -- I have a different criteria that I have to look at.

MR. HELSEL: Understood.

HEARING EXAMINER DICKMAN: Hi, John.

MR. KELLY: John Kelly, for the record.

I just wanted to state that all of the documents that Mr. Helsel has referred to are contained within your Attachment D. That includes the DEP permit and the riparian line agreement.

HEARING EXAMINER DICKMAN: Okay. Have you-all had any contact with his designer, Turrell, Hall & Associates?

MR. KELLY: Not pertaining to this dock facility.

HEARING EXAMINER DICKMAN: So they just prepared your designs and you submitted everything?

MR. HELSEL: I submitted designs to them. They used them in their illustration for the submerged resources survey. John asked me to go back to them and ask them to add dimensions to that, which they did, off of the survey base that I had.

HEARING EXAMINER DICKMAN: Okay.

MR. HELSEL: So, you know, apparently that's the common for what you're seeing here in these hearings so I went back and tried to make it as --

HEARING EXAMINER DICKMAN: Yeah. I mean --

MR. HELSEL: I understand it now why.

HEARING EXAMINER DICKMAN: Yeah. It's very important to see the dimensions. They know exactly the types of information that the county Planning Department requires in order to evaluate this and for me to be able to understand how that fits into the criteria and to be able to evaluate this. I get it that you're the property owner, and I guess I understand you just asked them to do the legwork and the design work and that you do the presentation.

MR. HELSEL: Uh-huh.

HEARING EXAMINER DICKMAN: Okay. Okay. Anything else?

(No response.)

HEARING EXAMINER DICKMAN: So, John, I have a question for you.

MR. KELLY: Sure.

HEARING EXAMINER DICKMAN: I think you understand what I'm talking about with having the boat come straight in and taking off that part of the front of the dock where the applicant sits. Would that change any of the requests?

MR. KELLY: If I'm correct, I think the applicant was trying not to disturb the dock that he had previously approved which, if you go through the minutes and whatnot, I think it was rather contentious at the time. I think he was just trying not to disturb that dock. If I'm correct, you're suggesting that he cut off part of the terminal platform to have a straight pull-in?

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: And --

HEARING EXAMINER DICKMAN: So it would be right here, and then I guess the boat would be more out here and then down this way. So the intrusion towards this side would be less, I would assume, and maybe not have as much of a -- I guess the dock itself would still protrude out more, but I'm not so sure the boatlift would.

MR. KELLY: Yeah. And I'm not sure how much the county wants to tell people what design they can build --

HEARING EXAMINER DICKMAN: Yeah, I understand.



MR. KELLY: -- and can't build.

HEARING EXAMINER DICKMAN: I understand.

MR. KELLY: So this is what was proposed to us, and we find it to be compliant.

HEARING EXAMINER DICKMAN: Okay. All right. Why don't we go to public comment.

MR. YOUNGBLOOD: Mr. Dickman, I don't have any registered public speakers for this item.

HEARING EXAMINER DICKMAN: There you go. All right. Anything else you want to say?

MR. HELSEL: No, sir.

HEARING EXAMINER DICKMAN: Okay. Thank you for being here. And I have 30 days to render a decision on this. Thank you.

MR. HELSEL: All right. Thank you. Thank you all for your time.

HEARING EXAMINER DICKMAN: Have a great day.

Okay. Let's go to the next item.

MR. KELLY: Okay. Mr. Dickman, next is your Agenda Item 3B. It's a Variance Petition VA-PL20210001262. It's a request for you to approve an after-the-fact variance from the Land Development Code, Section 4.02.01.A, Table 2.1, to reduce the required 20-foot front yard setback to 12.9 feet along the east property line of the subject corner lot for a single-family residence to allow a swimming pool that was built closer to the property line than code allows to satisfy the required accessory structure front yard setback per LDC Section 4.02.03.D for the benefit of the subject property which is located at 2072 Mills Lane, further described as Lots 1 and 2, Block E, Inomah subdivision in Section 11, Township 50 South, Range 25 East, Collier County, Florida. The property is zoned Residential Multiple Family 6.

Public notice requirements are contained in Section 10.03.06.F.2. The agent letter was sent by the applicant's agent on November 24, 2021.

Property owner notification letter and the newspaper ad were run by the county on February 18, 2022, and a public hearing sign was posted two places by me on February 22nd, 2022.

This review was based upon the criteria contained within LDC Section 9.03 -- excuse me -- 9.04.03, A through H, and was found to be consistent with both the Growth Management Plan and the Land Development Code.

I have had no public comment in response to the advertising.

It's our recommendation that you approve this petition to reduce the minimum front yard setback for non-waterfront swimming pool, single-family, from SPS, which is same as principal structure, from 25 feet to 12.09 feet to allow for the continued existence of the existing pool as depicted within Attachment A. As a condition of approval, the applicant must satisfy all other requirements of building Permit No. PRBD20210100203 and obtain the certificate of occupancy and/or completion.

And that completes the staff report.

HEARING EXAMINER DICKMAN: Okay. Quick question. From time to time we do get these after-the-fact items and, I assume -- so based on what I'm seeing, the swimming pool was built, pulled permits or not, and came in, and it was -- they went out to close it, and it was deemed to be too close. Is that --

MR. KELLY: It's my understanding that they submitted to the county a building permit application which included a site plan. That site plan was based on a typical lot having a front yard, rear yard, and two side yards. It was later determined that this -- based upon the plat -- which, actually, if I could get Andy to pull it up. This is also included within your package. But, Andy, I believe it's labeled PB2, Page 82.

HEARING EXAMINER DICKMAN: Are you talking about the aerial?

MR. KELLY: No, but if you look at the aerial and then look at the plat, you'll see why the mistake was made. It becomes rather obvious.

HEARING EXAMINER DICKMAN: Is that a stormwater easement or utility easement behind it? Is that what you were about to tell me?

MR. KELLY: I don't see an easement; however, if you see Block E1 and 2, it's on the left side.

HEARING EXAMINER DICKMAN: Right up here?

MR. KELLY: Right, to the right, 1 and 2. Right there.

HEARING EXAMINER DICKMAN: So it's an alley?

MR. KELLY: You'll see that's not the way that the area was configured. Washington Avenue doesn't

go through. At any rate, I'm just letting you know for the record, the plat wasn't looked at at the time of permitting and so, apparently, when they submitted the spot survey after pouring concrete, it was determined that it is a corner lot.

HEARING EXAMINER DICKMAN: So one second here. So I see that this is -- this road -- Palm Street actually now curves out this way. That's what it does now. 1946, I think that was. It says "alley," but it looks more like a green area that's not used as an alley.

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: And so they thought it was a backyard. And whatever the case, it is a corner lot based upon the plat, and so --

HEARING EXAMINER DICKMAN: So you treat things differently on corner lots versus interior lots.

MR. KELLY: A corner lot, by definition, has two front yards and two side yards, no rear yard.

HEARING EXAMINER DICKMAN: All right. Interesting. I've had the opportunity to be looking at some 1920 plats recently, and some very interesting notes. Back then when Florida was a very -- very little populated, sleepy little state, not very many care -- not a -- a lot of things changed from there. So I just wanted to get a little historical background. So I see how that happened.

MR. KELLY: And I believe that the applicant's pool contractor is here to speak today.

HEARING EXAMINER DICKMAN: Awesome. Great. Come on up, sir.

MR. CHITTENDEN: Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. CHITTENDEN: My name's Nick Chittenden. I'm here on behalf of Mr. Korban and his investment partner, and Carolyn Sappenfield.

HEARING EXAMINER DICKMAN: Terri -- one second -- were you able to get that?

THE COURT REPORTER: Yes. Can you spell your name for me.

MR. CHITTENDEN: Yeah, it's -- last name?

THE COURT REPORTER: Yes.

MR. CHITTENDEN: It's C-h-i-t-t-e-n-d-e-n.

THE COURT REPORTER: Thank you.

MR. CHITTENDEN: We're coming on behalf for the proposal of a variance after the fact due to extenuating circumstances.

We began construction of the project in question in March of 2021. We moved through the front-end stages pretty vigorously. Upon shooting concrete for the pool, a 10-day spot survey is required by the county to open up any and all inspections. And this is when we were braced with the news that we had placed a pool in a position that affects the easements on the property, therein moving -- we're in an effort to remedy this and to accommodate the homeowner, we're filing for the variance so that we can complete the project in due time and close the open permit.

The owners, Mr. Kevin Korban and Ms. Carolyn Sappenfield, have undertaken the costs endeavored in this variance in the hopes that we can come to a conclusion that allows us to continue the construction of the pool.

The initial reasoning for the installation of the pool was for therapeutic reasons for Mr. Korban to be able to swim laps and exercise more freely. It was before COVID had taken its toll. And now he finds himself more secluded, being his age and health conditions and so on and so forth. We're really looking forward to trying to bring this to a completion.

The majority of the costs inside of this project are already paid in the project as to -- the draw schedulings for pools is pretty much collect the majority of the money on the front end of the project being the dig date, the form and steel and the shoot, collect the vast majority, and we have a remaining balance of about 30 percent of the project left to finish and collect on at this current state.

This has created a financial hardship for the client, and we wish to move forward so we can remedy the pool and allow for the project to be enjoyed by the homeowners.

We have spoken to the neighbors in the community, surrounding areas, surrounding properties throughout the process. Mr. Korban and myself have visited the neighbors. Mills Lane is a very tightknit lane. It's pretty much like a private entry. He sits down at the very corner. And the neighbors are very amicable and have had

no issues upon filing the letters. They did come to him. They stated that they received it. They were aware of the processes that we were moving through.

HEARING EXAMINER DICKMAN: Let me ask you a quick question. So you have -- you're at 70 percent completion; is that what you said?

MR. CHITTENDEN: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. CHITTENDEN: So we -- we move a little faster than an average build. So while -- you know, we move differently on a basis that even without equipment, I've already got an electrical panel run, I've got wiring to the panel, I've got the equipment pad set. We have the plumbing done, the bond grid. There's coping and tile. The only elements that I'm missing are to be able to pull the inspections to be able to do a bond grid inspection and a pressure test so that way we could set the deck. In the slides I'm going to show you, you can see his deck material's already delivered on site.

HEARING EXAMINER DICKMAN: Right, right. That's what I was getting at is, has -- so you're at pretty much a stop. Is there anything that's hazardous or dangerous? Because I know, you know, you have to go back, dig, put materials there. Are you in a situation where there's hazards or danger, you know, unsightly conditions just because of the fact that you've had to stop and come here? Are you comfortable with where they are right now?

MR. CHITTENDEN: We're comfortable in the sense of, you know, trying to maintain, you know, where we are. We've been trying to be comfortable overall in a position -- and to keep the client in a comfortable position so that we can finish.

HEARING EXAMINER DICKMAN: Okay.

MR. CHITTENDEN: We do have -- it's -- the only element of, like, you know, where it's an issue is that it's just an open construction project. So we were running a sump pump to try to keep the water down. The water in, you know, the ground table in Florida is very high. And so throughout the winter it's dry, but then during the summer months water tables rise, and the water smells. You have the sulfur, you have the irons and different contaminates, so it does create --

HEARING EXAMINER DICKMAN: You've already turned dirt -- you've already turned dirt and dug the hole and everything like that?

MR. CHITTENDEN: Yeah, I can show you slides where we're at.

HEARING EXAMINER DICKMAN: Okay, yeah. I'll let you finish.

THE COURT REPORTER: Can you just read a little slower.

MR. CHITTENDEN: Yeah. If we can go to the slides, it's just the -- so this here notates the rear corner of the property. This here to the right is Palm Street that enters off of 41, and this is the -- it's some sort of a rental unit directly behind Mr. Korban. If you click on it, it should notate -- an arrow should drop, I believe. Yeah, if you click on the slide, that's the corner of the property there.

And as you can see, there's, you know, a few different palm hedges. There's a lot of different privacy hedging, and there's a fence. Mr. Korban's fence runs down the rear of the property, and then it meets a chain link fence that ties to the neighboring property, which then continues down the back side of Mills Lane.

If you can click the next slide. So that's a closer view of the property. As you can see, it's pretty secluded. You can see where it comes in. And the fence line runs the complete perimeter of the property down around the front entry.

If you could click to one more. That's the house there in subject, the fence line, the hedge. The hedge is mostly to protect his second story. Being a two-story building, he does have a deck that wraps around the property, and it gives a view to the street.

If you right click again. The pool sits roughly inside of that area where the arrow sits.

If you go to the next slide. That's the corner in question that butts up to Palm Street. As you can see, you can't see the road from the hedge line, the road notated there.

If you go to the next slide. So that's the pool. As you can see, we've completed the coping and tile, we've completed the plumbing, and we're sitting waiting on the deck stage. The fence line continues down throughout as well as the hedge, so nobody can see in. Nobody can really see out. It creates a privacy barrier.

If you could go to the next slide. That's the front entry off of Mills, considerably, being the driveway.

As you can see, the deck material's been staged there for about a year now. It's coming up on a year that the deck material was dropped. The coping and tile was done, and we were waiting for an inspection with the release of the spot survey. But the fence and the hedge does go all the way down to the corner of the lot according to the pins on the survey, and then it turns and covers the front access entryway so that way the driveway's completely concealed.

If you could go to the next slide. That's the pool location there offset to the garage. It sits down in the corner. The reason we picked the area here was due to the privacy, that it was back into the back. You know, he could come in and out of the drive and be able to access the pool and have the seclusion. It's covered in the hedge from the rear of the property and the sides of the property and creates the ambiance to have peace and tranquility and have access to the pool.

If you could go to the next slide. That's the front access off of Mills Lane. He has a direct inlet. And then he -- the right-hand side there is open. I did speak to the county. They stated that there was the inevitability, possibility that we could have placed the pool on that right-hand side of the lot, but if you click the next slide there, as you can see, the neighboring property is also a two-story home, and the hedge is a little thinner when you go past -- just past my truck in front of red car the hedge line is thinner, and the neighbor also has a deck that wraps the perimeter of the house.

And so if we had placed the pool on that right-hand side, we would have been inside of the purview of the neighboring property.

And so, for seclusion reasons and privacy reasons, we placed it originally on the site plan and proposed plans to the county to be on the left-hand side.

And that concludes my presentation.

HEARING EXAMINER DICKMAN: Okay. A couple quick questions. So, I mean, you indicated the seclusion and things like that. That's for the property owner; however, are we going to maintain for the adjacent properties -- also they need privacy. Are we going to maintain heavy landscaping around the property so that --

MR. CHITTENDEN: Yes.

HEARING EXAMINER DICKMAN: -- both parties, neighbors and property owner, maintain privacy and --

MR. CHITTENDEN: We're going to maintain the hedge around all sides of the property. The fence maintains, and they are also installing -- per code we're installing a 4-foot baby barrier around the pool as a preventative measure so that anybody come onto the property, he has a preventative barrier. It was agreed upon by the county to place it.

The issue came in that we cannot install a cage being a permanent structure and/or a fence because it would require a secondary variance for the secondary structure to be able to bring it to code. So we're maintaining the privacy hedge and the fence in the rear. But to bring it to satisfaction of the permit requirements, we are installing the 4-foot baby gate around the pool.

HEARING EXAMINER DICKMAN: Okay. Is your client here?

MR. CHITTENDEN: Yes, he's sitting in the back there.

HEARING EXAMINER DICKMAN: Could I ask you a question, sir?

MR. KORBAN: Sure.

HEARING EXAMINER DICKMAN: Come on up. We've got to do it on the microphone. Sorry about that.

THE COURT REPORTER: He wasn't sworn in.

(The speaker was duly sworn and indicated in the affirmative.)

HEARING EXAMINER DICKMAN: How are you, sir?

MR. KORBAN: Good.

HEARING EXAMINER DICKMAN: A couple questions. Is this your full-time residence?

MR. KORBAN: Uh-huh.

HEARING EXAMINER DICKMAN: Okay. So it's not a short-term rental or anything of that nature?

MR. KORBAN: No.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. KORBAN: No. And the other thing, I put in a Ring alarm camera so if anyone -- where I am,

nobody ever comes back there. As a matter of fact, when I have people, they say this is the best-kept secret in Collier County. I think John saw it and said the same, that it really is exclusive of its own area.

But I did put up a Ring thing that if a car comes up, if a person walks, it puts me on the camera and everything, so just another safety thing.

HEARING EXAMINER DICKMAN: I got it. I got it. And you did speak with your neighbor or --

MR. KORBAN: I did talk -- they all asked if they -- if they needed to be here to applaud going forward. There was only one person that called me, and there's -- right behind me there's a rental. You saw that. It's a rental property. And the guy's an absentee landlord in Boston, and he asked me about fence. I didn't want to be snide with him, but he has -- they have a fence back there, and I have a fence, too. But he didn't even know, I mean, because he's not there. But he's just been working on the own property, and that's all he was concerned about. But I said, you're all fenced off.

HEARING EXAMINER DICKMAN: Okay. And you heard my question about the landscaping and things like that? Obviously, you love the landscaping and the privacy, but I'd prefer that you continue that.

MR. KORBAN: Yeah, the only problem --

HEARING EXAMINER DICKMAN: I mean, sometimes those --

MR. KORBAN: -- is through a hurricane, and then I'd have to rebuild it back. But it's been there. I bought the property a couple years ago from a woman who did the landscaping quite expensively, and the house is, like, 15 years old and it.

HEARING EXAMINER DICKMAN: Okay.

MR. KORBAN: And it seems to be pretty solid.

HEARING EXAMINER DICKMAN: Well, those palms grow really fast.

MR. KORBAN: They do grow, and they're good. And I've got another hedge in there, too, you couldn't really see off the pictures.

HEARING EXAMINER DICKMAN: Thanks for being here. Let's see if there's any public comment.

MR. YOUNGBLOOD: Mr. Dickman, could we have him identify himself for the record.

HEARING EXAMINER DICKMAN: Oh, I thought he did. He didn't.

MR. KORBAN: Sorry. My name is Kevin Korban, K-o-r-b-a-n.

HEARING EXAMINER DICKMAN: Thank you, Andrew.

MR. YOUNGBLOOD: And I don't have any registered speakers for this item.

HEARING EXAMINER DICKMAN: Okay. All right. Anything else?

MR. CHITTENDEN: I believe that's it. We just wish to hopefully bring this to a nice close and be able to finish off the project.

HEARING EXAMINER DICKMAN: Okay. All right. Thank you.

MR. CHITTENDEN: Thank you.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. CHITTENDEN: Thank you for your time.

HEARING EXAMINER DICKMAN: Any more items? Nobody walked anything on? No? Nothing like that?

(No response.)

HEARING EXAMINER DICKMAN: Anybody want to talk about anything under new business?

(No response.)

HEARING EXAMINER STRAIN: All right. Good. Okay. With that, I will adjourn the meeting. Thank you, everyone, for being here.

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March 10, 2022  
March 10, 2022

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:49 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 3/29/22, as presented  or as corrected \_\_\_\_\_

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING, BY TERRI L. LEWIS,  
REGISTERED PROFESSIONAL REPORTER, AND NOTARY PUBLIC.