

March 24, 2022

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
March 24, 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
Gabriella Castro, Principal Planner
Eric Ortman, Principal Planner
Andrew Youngblood, Operations Analyst

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning, everyone. Today is March 24, 2022. This is the hearing examiner, HEX meeting. It's nine -- approximately 9:00, a little thereafter.

Why don't we get started by giving the Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right. Thank you.

First of all, I want to welcome everybody here today.

This is an informal proceeding. My name is Andrew Dickman. I'm an attorney. I have been in good standing with the Florida Bar for over 20 years.

The extent of my land -- my practice has always been in land use, growth management, here in Florida.

I am not an employee of the County. I'm a contract attorney here to review all the petitions that are under the jurisdiction of the hearing examiner.

My role here today is to listen to all of the testimony, look at the evidence, and apply it to the criteria that's germane to the type of -- the type of petition that's being presented here today. I'm going to be looking for specifically evidence and testimony that will help me make those decisions on that criteria.

So, while this is a public meeting and you're allowed to say whatever you like, it would be ultimately helpful if you would keep your comments germane to those issues that are before us.

I have -- I always strive to be here as an impartial decision-maker. I have -- I don't consult with staff on substantive matters. In other words, I don't meet with them on the applications. I don't meet with the applicants. I don't respond to emails. I want you to be assured that I am here strictly as a decision-maker.

I have seen everything. I see everything that's been published in the agenda that the public sees.

I'm very familiar with the Land Development Code, with the ordinances, administrative code. My job is to take as much information here today. And after today, I can't collect anymore information from anybody else, because, in fairness, everyone needs to hear the same thing at the same time.

So with that being said, I would also state that you need to -- anyone who is going to testify here today is going to have to do so under oath. In a minute, I will ask our court reporter to swear anybody in that's going to testify.

The procedure that we're going to follow is I'm going to -- we have two items on the agenda today. The procedure I'm going to follow is to have the County introduce the item, briefly cover their staff report, which has already been published and made available to the public, and give me some background, their recommendations, explain some of the notices that went out to the public that I want to get on the record. And I may ask some questions.

Then we'll have the applicant or the applicant -- and/or the applicant's representative come up and put on their case in chief, and at that time may reserve some time for rebuttal, if necessary.

I'll open it up to the public, who can come forward and speak.

We also have -- as a courtesy, the County has created a hybrid-type meeting. So we have folks here in person, and we have folks virtually, calling in. So we'll handle it that way. It's been working pretty well so far. So it gives a chance for absolute due process. Anybody who doesn't feel comfortable to be here can, you know, come on virtually.

So I would ask everyone to silence their phones or anything else that makes noise. Anything you want to talk about with your colleagues, or whatever, please step outside so -- to give the courtesy of everyone that's participating in the hearing the ability to concentrate, and also for the court reporter to capture everything verbatim.

She is not going to be able to capture situations where people are going to talk over each other. She may very well tell you to stop if you start talking too fast. You know, hand gestures, things like that, I'll try to help you with making those verbalized.

So with that, I think we are good to go ahead and administer the oath for anyone who is going to give me any testimony here today. Please stand and raise your right hand. Do you want to do it or -- or I'll do it.

(Oath Administered by the Hearing Examiner.)

HEARING EXAMINER DICKMAN: All right. Thank you, everyone.

Again, as you know, we are here in a smaller venue. We are not here in the commission chambers. I want everyone to take your time.

I'm going to want to walk out of here with as much information as I can. You know, so just relax, don't get nervous. Some people do get nervous, some people totally enjoy speaking. So -- but after this is over and done with, any substantive matters -- I can't collect any more information that wouldn't be available to the other side. So after that, I will -- I have -- under the code, I have 30 days to render a decision. That will be given to the parties. The parties here are the Applicant and the County.

So have I missed anything, folks? No? Covered it all?

All right, great.

So why don't we get started with the first item on the agenda, and that is petition number CU-PL20210001683.

Hi. Good morning.

MS. CASTRO: Good morning.

For the record, Gabriela Castro, principal planner with Collier County.

So we have a petition for a conditional use for two requests and modification to amend the conditions of approval to a Conditional Use Resolution 2000-300 for a private club to modify conditions number 4 and 5. Condition 4 would modify the total number of people allowed. And condition 5 would modify the hours of operation for the site.

The subject property is in the Residential Tourist Zoning District, and the private club is a conditional use per Section 2.03.02.E.1.c.5 of the Collier County Land Development Code.

The subject site is .99 acres, and it's located at 9467 Gulf Shore Drive.

The project is compliant with the GMP and the LDC, and therefore staff recommends approval.

The applicant has complied with all hearing notices, and advertisements and mailers went out on or around March 4th. Property signage was constructed by the County on March 1st, and images provided in attachment E.

HEARING EXAMINER DICKMAN: Have you received any comments, any written comments, or anything else?

MS. CASTRO: Nothing written. I got a few phone calls. The most concerned people were to -- making sure that the umbrellas, beach chairs, would remain on their property, which is a condition on the conditional use and it's remaining and that's not being touched.

HEARING EXAMINER DICKMAN: Thank you very much.

MS. CASTRO: No problem.

HEARING EXAMINER DICKMAN: Okay. Thank you. Don't go anywhere.

All right. Applicant, applicant's representative, welcome.

Make sure to identify yourself.

MS. BISHOP: Good morning. I'm Karen Bishop, representing Vanderbilt Beach, LLC, for the owner of the property.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. BISHOP: We are proposing to change the -- actually, it's more like define where the occupancy for -- the maximum occupancy is, which is in the club, which you will see is on the west side of the road.

On the east side, we have a -- a -- small, little guest suites, kind of like a hotel, that's also been there before the club was there.

We are also looking to modify our hours of operation to a more consistent time, which are -- hold on here -- which used to be 30 minutes after sunset, and now we're looking at the later of 30 minutes after sunset or 9:00 P.M., which allows us to have consistent operational time throughout the year.

And that's really all we're asking for at this point.

HEARING EXAMINER DICKMAN: Okay.

MS. BISHOP: We have met with our neighbors. We seem to have no issues. We have operated this club for over two decades. So at this point, with no -- with no opposition, we feel secure that we'll work well with our neighbors in the future.

HEARING EXAMINER DICKMAN: Okay. I have a couple of questions for you.

I think I read here -- so the primary thing, you're still going to be maintained to 112 persons, right? But you want to have that to be in the building rather than on the premises, right? Is that --

MS. BISHOP: Correct.

HEARING EXAMINER DICKMAN: Explain that to me.

MS. BISHOP: Well, the premises, there's -- it could mean all four corners of the property. And since we have property on both sides, and on the east side we have a hotel, that -- I think there's six rooms over there, so your occupancy could be 12 easily. Plus, we have staff.

And so after working on our neighbors, they have agreed that the way we have operated in the last two decades, that making that clarification that the 112 is meant for the building, which is what the fire code allows, is agreed upon.

HEARING EXAMINER DICKMAN: Okay. So at any given time -- well, let me ask it this way, because you could have 112 people in the building and -- I guess both buildings, right, or one, or --

MS. BISHOP: Well, no. There's hotel suites on the other side, sir. There's only six rooms.

HEARING EXAMINER DICKMAN: So but you could also put more people on the premises, so you could have 112 in the building and then more people on the premises. Is that a fair statement?

MS. BISHOP: Right, within the -- there could be people on the beach, and there could be people on the -- within the pool area, that's true. This club is -- operates as a club for The Dunes, which is down the road. So the way that they have operated to date has been reasonable, not saying that -- you know, maybe there have been times -- because we have had special events, maybe there's been times it's run over, but it's not -- I mean, it's not like it's a frat party. So they operate in a reasonable, adult way, so -- but it's true we could have more out there.

HEARING EXAMINER DICKMAN: And I think I read somewhere in here that it's difficult to actually account for the number, because some of the -- some of the members are actually adjacent, you know, living in the adjacent --

MS. BISHOP: The adjacent condominium does actually have membership now. But how we have maintained counts up to date is that we have a shuttle that goes between The Dunes and this club, because there is limited parking here. So the shuttle has a counter, so that's how we have maintained. But we have added the neighbors now as a -- as a part of that. That's why we're making the change, another reason why we're making the change.

HEARING EXAMINER DICKMAN: The neighbor --

MS. BISHOP: To the north.

HEARING EXAMINER DICKMAN: To the north.

MS. BISHOP: The ones on the south, I believe, are timeshare.

HEARING EXAMINER DICKMAN: Okay. And does your property go down to the mean high waterline or the CCCL? Do you know? How much of --

MS. BISHOP: Well, the State likes to claim it past the CCSL, but technically we go all the way down to the -- pretty much the waterline. I think our master plan shows that, too.

HEARING EXAMINER DICKMAN: Right, okay.

MS. BISHOP: But there is a -- you know, there is a space that -- from the CCSL to the waterline, that that's the part where the public beach is.

HEARING EXAMINER DICKMAN: Okay. So that would also be on the premise. So you could have people on the beach, you could have --

MS. BISHOP: People are walking by, for sure, but our --

HEARING EXAMINER DICKMAN: Yeah.

MS. BISHOP: -- we have chairs and umbrellas, so the public is not able to operate any of those.

HEARING EXAMINER DICKMAN: Okay. All right.

And has any of this -- well, first of all, do you have any -- do you have any -- I mean, you talked about agreements with your neighbors. Do you have any letters of no objection, or anything like that, that you want to submit?

MS. BISHOP: I don't. I mean, I do have letters of no objection. I didn't bring any of them with me. But the neighbors next door, they all signed no objections to what we are doing. I just didn't bring them, because they didn't -- no one said anything that you -- you know, since there was no objection, I didn't need to show that they had none.

HEARING EXAMINER DICKMAN: Okay. Do we have any of those?

MS. BISHOP: Uh-uh.

MS. CASTRO: No, I -- I did not receive any letters of no objection, but no one has -- when they have called, they have just been inquiring, and no one seemed to object about it.

HEARING EXAMINER DICKMAN: Got it.

Okay. And tell me about the -- do you have -- what kind of special events -- like, weddings? So this is a venue for weddings or parties?

MS. BISHOP: Most likely, it's parties. I mean, I don't belong to the club, so I have not been to any of the special events.

HEARING EXAMINER DICKMAN: Frat parties?

MS. BISHOP: They are not frat parties, I promise.

But there's only -- I think there's only six a year. There's a limited number that were allowed over the -- that were allowed. And that mostly just means we have music and it stays out a little later. And, yeah, maybe it's a barbecue, and, you know, somebody's birthday, or maybe The Dunes has a -- some sort of event that their -- their whole -- you know, their whole club is a part of.

HEARING EXAMINER DICKMAN: Uh-huh.

Okay. Do we know anything -- have there been any code enforcement reports in terms of noise, anything like that, that you're --

MS. BISHOP: Well, I'm sure time to time. I mean, we have been operating for two decades. But we have managed to, you know, not have anything that's major. And we have a -- the neighbors are -- you know, obviously, now that they're members, disturbing them is not on our list of things to do.

HEARING EXAMINER DICKMAN: No. Of course not. And, I mean, hopefully you understand that part of the review that I have to look at is the traffic and the compatibility and, you know, any of that, that would -- I mean, we are changing the conditions, so --

MS. BISHOP: Absolutely.

HEARING EXAMINER DICKMAN: -- I wanted to --

MS. BISHOP: No, it's reasonable. I mean, impacting the neighbors would be the -- one reason why it would be a problem.

HEARING EXAMINER DICKMAN: Yeah.

MS. BISHOP: So that's certainly something we have spent 20 years laying the groundwork for, so that we could ask for this now.

HEARING EXAMINER DICKMAN: Okay, all right.

Okay. Why don't you -- let's see if there's any public comment here, and then we'll go from there.

MS. BISHOP: Okay.

HEARING EXAMINER DICKMAN: Anything else? Anybody here signed up for this?

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

HEARING EXAMINER DICKMAN: Okay. Well, that's that. Do we have anything else from the County?

Do we know anything? Has there been any -- I mean, I'm just wondering, because the change from premises to building seems to be predicated on the ability to actually count that, the condition? I mean, has there been an issue with that? I mean, do we know?

MS. CASTRO: So I just did a quick code enforcement search. The last noise complaint, code enforcement issue, that's registered for this property was from back in 2004.

HEARING EXAMINER DICKMAN: Oh, that was that frat party.

MS. BISHOP: We quit after that. No more spring-breakers. We promise.

HEARING EXAMINER DICKMAN: Kids can't afford that --

MS. BISHOP: I know, I'm just saying.

HEARING EXAMINER DICKMAN: Okay. And turtles, do you -- I mean, I'm surprised you don't already have your lighting set up for --

MS. BISHOP: We do.

HEARING EXAMINER DICKMAN: -- turtles.

MS. BISHOP: This building has been in place, so -- and I have even made revisions over the time. We had hurricane issues, so we have had to update that, as well as we enhanced the dune in front our property also.

HEARING EXAMINER DICKMAN: Okay. No disturbing of the dunes or --

MS. BISHOP: No.

HEARING EXAMINER DICKMAN: -- any vegetation, or anything like that?

MS. BISHOP: Uh-uh.

HEARING EXAMINER DICKMAN: All right. It's pretty straightforward. I was just curious why we're switching from building to premises, because -- you know, I get the -- what the building -- the fire marshal would allow, but, you know, if you take that and then you add more people, but I guess special events allow that.

MS. BISHOP: Well, I can also close that building up, so I can have an event inside, if it's raining, let's say.

HEARING EXAMINER DICKMAN: What's in the building?

MS. BISHOP: It's just a big sitting area, a bar and a kitchen and bathrooms that are air conditioned, which we are all thankful for.

HEARING EXAMINER DICKMAN: Okay.

MS. BISHOP: But that's it. There's really nothing else in there. It's just -- I mean, it's like a -- it's a big great room.

HEARING EXAMINER DICKMAN: Okay. Got it.

MS. BISHOP: But everything closes down. They have those hurricane shutters, so you can pretty much close it off and close the noise off, so you could do that during bad weather.

HEARING EXAMINER DICKMAN: Okay. Got it.

All right. I have no further questions. Anything else from the County?

MS. CASTRO: Nothing to add.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MS. BISHOP: Thank you.

HEARING EXAMINER DICKMAN: Thanks for being here. All right. Bye.
Have a nice day.

MS. BISHOP: Thank you.

HEARING EXAMINER DICKMAN: Okay. We are going to move on to the second and last item.

This is petition number FL-PL20210001966.

MR. WRIGHT: Hi.

HEARING EXAMINER DICKMAN: Good morning. We're going to -- we are going to start with the County, if you don't mind.

Just give us a quick overview of --

MR. ORTMAN: Good morning.

For the record, Eric Ortman, principal planner for Collier County.

This is petition PL20210001966, Mod Wash comparable use determination, a request for a comparable use determination that a new automated car wash is comparable, compatible, and consistent with the list of permitted uses in Section 4.4.A of the Artesa Pointe Planned Unit Development ordinance number 03-46, as amended.

The proposed development is on a vacant 1.01-acre parcel at the southeast quadrant of the intersection of Collier Boulevard and Pasedo Drive, approximately one half of a mile south of Tamiami Trail East, in Section 3, Township 51, Range 26 of Collier County.

The project complies with the Growth Management Plan and Collier County Land Development Code; therefore, staff recommends approval of this petition.

The applicant has complied with all hearing notices by our operation staff, and per Administrative Code Chapter 3-L, the advertisement -- advertising mailers went out on March 4th of this year.

For the record, on page 6 of the staff report, the newspaper advertisement posting date is incorrectly listed as May 4th. The correct date is March 4th. And I have copies of the actual advertisement, if you so desire.

On September 8, 2021, staff received a letter of opposition from a Mr. Craig Blume, public -- private attorney. That is on page 70 of your -- of Section -- page 70 of attachment F. I also have copies of that, if you wish.

This morning, today, a second letter of opposition was received from Mr. Blume. I have copies of that letter with me, too. Staff has not had time to fully review this letter.

HEARING EXAMINER DICKMAN: Yes. If you could provide me with a copy of it, I will -- we'll see how this goes.

Mr. Wright, do you -- do you have a copy of this?

MR. WRIGHT: It's the first I have heard of it.

HEARING EXAMINER DICKMAN: The first?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: Surprise.

MR. WRIGHT: Yeah.

HEARING EXAMINER DICKMAN: Want to take a minute to look at it?

MR. WRIGHT: Sure.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: To the extent it's appropriate, I would object to this coming in at the last minute.

HEARING EXAMINER DICKMAN: I understand.

Let me know if you want to read it or if you just want to go with your case in chief -- your case and go forward. And I don't know if Mr. Blume is here, but we'll go forward from there.

Did you see the first letter?

MR. WRIGHT: I did, yes.

HEARING EXAMINER DICKMAN: You did, okay.

MR. YOUNGBLOOD: Mr. Hearing Examiner, Mr. Blume is here.

HEARING EXAMINER DICKMAN: All right. We'll get to you, sir, wherever you are.

MR. WRIGHT: Mr. Hearing Examiner, the only thing I would ask is that they identify who their client is.

HEARING EXAMINER DICKMAN: Yeah. Understood. So we'll get to that.

MR. WRIGHT: Okay.

HEARING EXAMINER DICKMAN: Why don't -- why don't we, yeah, finish up.

MR. WRIGHT: Thank you.

MR. YOUNGBLOOD: Mr. Hearing Examiner, I have Mr. Blume as a registered speaker.

HEARING EXAMINER DICKMAN: Thank you.

Is that the only speaker?

MR. YOUNGBLOOD: We have five registered speakers for this item, including him.

HEARING EXAMINER DICKMAN: Okay.

MR. ORTMAN: I am done.

HEARING EXAMINER DICKMAN: Okay. I asked does he have anything else. He said, "I am done."

Good morning.

MR. WRIGHT: Good morning.

THE HEARING EXAMINER: Let's get on with this.

MR. WRIGHT: For the record, I am Jeff Wright. I'm here on behalf of the applicant. I am with the Henderson Franklin law firm.

We have our team with us: Ken Gallander, our planner; and Yury Bykau, our transportation consultant.

As Eric pointed out, we're here seeking your determination that a proposed automated car wash is comparable in nature to the list of permitted uses that are already in the Planned Unit Development known as Artesa Pointe. That's ordinance 03-46, as amended.

Got the slide? We are ready for the -- oh, there it is. Thank you.

As you can see, the parcel is just over an acre in size. It's close to the corner of U.S. 41 and Collier Boulevard. It's on the southeast corner about a quarter mile south of that intersection. Current use is vacant. And as I pointed out, it's within the PUD zoning district there.

Next slide.

There is an aerial to get you oriented as to the location of the site.

We have reviewed the staff report. We agree with staff's recommendation, that is that the use is comparable in nature to the permitted uses in the PUD.

We are also in agreement with staff's proposed conditions of approval. I believe that there were two attached to their staff report: One related to the hours of operation, limiting those from 8:00 A.M. to 8:00 P.M. and another related to noise mitigation.

MR. ORTMAN: Uh-huh.

MR. WRIGHT: As I mentioned, our team's here. Ken is going to present most of the testimony today. I don't intend to call anyone as a witness, anyone else, including Yury, unless we have to.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: And, of course, we are here if there's any questions that come up.

And on that note, Ken and Yury have both been recognized as experts in -- I believe in this very forum and also in similar proceedings. And we respectfully request that you recognize

them as experts for today's hearing in their respective fields.

HEARING EXAMINER DICKMAN: Okay. If each -- if they could just quickly put their credentials on the record. I don't know if it's part of the -- if you have done that. But I -- I know that they are experts, but I think part of the record needs to show that, what their expertise is.

MR. WRIGHT: Certainly. And I will start with Ken, if that's okay.

HEARING EXAMINER DICKMAN: Sure, absolutely.

MR. GALLANDER: Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. GALLANDER: I am Ken Gallander, again with RWA Engineering, certified planner. I have been a certified planner since 2003. Received my master's in city planning. So based on that, I have been in practice since '99, 1999, as a land use planner.

HEARING EXAMINER DICKMAN: So you're going to testify on the land use aspects of this, then?

MR. GALLANDER: That's correct.

HEARING EXAMINER DICKMAN: Okay, I will recognize you as an expert.

MR. GALLANDER: Thank you.

MR. WRIGHT: Next up we have Yury Bykau. And now, again, I don't intend to call him as a witness.

HEARING EXAMINER DICKMAN: Well, let's just wait. And if you call him as a witness, then we'll handle it that way.

MR. WRIGHT: Understood.

Okay, thank you.

Obviously, we are going to make our presentation via PowerPoint. I do have copies of that, which I have labeled Exhibit 1.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: And I'll be happy to provide that to you. Applicant's Exhibit 1.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: It's a copy of our PowerPoint.

HEARING EXAMINER DICKMAN: Thank you very much. And one to the County.

MR. WRIGHT: We appreciate the opportunity to present this morning. Appreciate your patience.

A couple of things I just wanted to mention before we begin.

Private restrictions. You may hear -- and I believe the letters that have been submitted in opposition have made reference to certain private restrictions that may prevent this from going forward. We have discussed this with staff at length. And the bottom line is, private restrictions are not part of the criteria for a comparable use determination. In fact, the County does not -- their -- their PUD application, for example, says they are precluded from enforcing private restrictions.

Another thing is, as I mentioned, alluded to earlier, we would just ask that any witnesses in opposition to this project identify who they are. We have reached out several times to Mr. Blume's office, had several conversations with them, and we still don't know who they are. We were just informed that there was no way that we could work with them, and they are opposed to our project.

But with that, I would ask Ken to come to the podium and make his presentation. Thank you.

HEARING EXAMINER DICKMAN: Thank you.

MR. GALLANDER: Next slide, please.

Good morning. Thank you again. For the record, Ken Gallander with RWA Engineering, director of planning.

Our request, again, to reiterate, looking at a proposed automated car wash is comparable and compatible with the existing permitted uses within the Artesa Pointe PUD.

In looking specifically at the uses within the PUD that we are comparing and looking at, a discount superstore, there is a Walmart Super Center. Also you have food stores with accessory. Gas pumps and car washes are permitted. There's a Murphy USA fueling station there. And car washes, as an accessory, are envisioned to be allowable within the Artesa Pointe PUD.

I want to clarify our opinion that approximately 20 years ago, the stand-alone membership-type automated car washes simply weren't as prevalent. The market hasn't dictated such type of use being as prevalent. They could have existed back then, but it wasn't identified. And we just feel that, with the auto -- associated auto-dependent uses within this PUD and the surrounding areas, this is a logical comparable use that would be appropriate based on customer and market demands.

Next slide, please.

This provides a site plan that we provided within the application submittal. North is to the top. The proposed tunnel or building where the car wash mechanics are, is on the north side. You can see the appropriate stacking for the vehicles, meeting code, the movements of the vehicles out, and the locations of -- I don't know if we have got -- I guess we don't have any pointers. But down to the southeast corner is the access points, and -- oh, thank you.

The red button. It's not going to blow up, right? Okay.

MR. YOUNGBLOOD: There it is.

MR. GALLANDER: Down here is the access point onto the access road.

Additionally, down on this side is the access point within this portion of lot 3.

Next slide, please.

So what I want to do is go through the criteria under the LDC. Under section 10.02.06.K, the first main criteria is possessing similar characteristics to those permitted uses within the PUD. Specifically, a sub-cat -- or criteria are operating hours, traffic volume generated, type of vehicles, required parking spaces, and business activities and practices.

Next slide, please.

So under operating hours, we believe -- our opinion is the automated car wash is comparable and compatible to those existing and permitted uses. Walmart hours of operation are 6:00 A.M. to 11:00 P.M. The Murphy Fueling facilities are 5:30 to 10:30. Again, as we mentioned before, the automated car wash, 8:00 A.M. to 8:00 P.M., fully fits within the, and comparable to those, hours of operation of other uses.

Traffic volume generated. Significantly fewer trips generated, based on the information provided in our application. A freestanding discount superstore, you're looking at 703 trips; convenience markets with gas pumps at 111; and our automated car wash at 78.

Next slide, please.

Type of vehicles associated. Comparable to those vehicles exiting -- existing with the permitted use. Same level of -- type of vehicles again.

I just want to note, no large service vehicles, delivery types, or fuel trucks, or those type of things that are allowed to go to the super centers or convenience stores, obviously, will not be part of this use, so we won't be enhancing or looking at that type of impact.

Number of, and type of, parking spaces. The Artesa Pointe has a shared parking allowance. They are providing over a thousand parking spaces. Under code, the automated car wash is required to provide for the number of spaces based on the largest shift of employees. That equates to four spaces.

As we -- I failed to point out on the site plan, this car wash, like many others these days, has the post-wash vacuuming and detailing areas, so there are spaces for cars to park there as well.

Next slide.

The business practices. Significantly less intense than the existing Walmart Super Center and comparable to the food stores with gas pumps that may include a car wash.

We feel it complements the surrounding other existing uses and serves the need of the surrounding population, similar to the operating hours that people are coming and going, get a car wash based on those similar uses, retail service and other service uses.

Next criteria -- or slide, please.

This is criteria B. The effect that the proposed use would have on neighboring properties and effects no greater than that of what's in the PUD.

Opinion is compared to the permitted uses in the PUD, proposed car wash would not have a greater effect on noise, glare, or odor.

We have -- as mentioned before, based on a sound study that is typically done, the proposed car wash will not be negatively impacting the noise -- noise levels that are required in the Land Development Code.

We will, obviously -- the site lighting is similar to those of convenience stores. It won't be any more -- it will be comparable to that.

And odor. This is a car wash. It provides for cleaning agents and those type of -- versus the fueling stations, which potentially has that effect of -- of gasoline or those kind of aspects of it.

And, obviously, as it goes through the site development plan process, be adhering to all noise, glare, and odor requirements that may be required in the LDC.

Next slide, please.

Consistency with the Growth Management Plan, meaning the applicable future land use designation does not specifically prohibit the proposed use. The property is within the Henderson Creek mixed use subdistrict. Proposed car wash is permitted as a nonregional commercial use. And focusing on consistency with the statement that the maximum intensity of the commercial uses are those allowed in the C-4, General Commercial Zoning District, car washes, thus, are permitted use in the C-4.

Next slide, please.

Last criteria. The proposed use shall be compatible with other uses in the PUD. Opinion is an automated car wash is compatible with other existing commercial service and retail uses. Again, reiterating, we have general merchandise, retail uses, the discount superstore, auto tire and lubricating, food stores with gas pumps and car washes. Also, the car wash pumps and car washes as accessory to convenience stores.

In terms of looking at any residential compatibility, a -- residential uses are a permitted use and exist within the PUD. Those are separated to the east of the property by approximately 900 feet.

And just to clarify, referring back to the aerial photo, it's separated by the Walmart Super Center, so we feel that the proposed use is compatible.

Next slide please.

And as Mr. Wright pointed out, the professional opinion that we're consistent with the Growth Management Plan, Land Development Code, and the criteria just outlined.

And, again, we -- I concur with the staff report analysis and recommendation to HEX. So be happy to -- appreciate your patience on that, but got through it, so --

HEARING EXAMINER DICKMAN: No, that's -- that's fine. Why don't you just stick around.

MR. GALLANDER: Okay.

HEARING EXAMINER DICKMAN: Mr. Wright, do you have anything else for right now?

MR. WRIGHT: Nothing right now. Thank you.

HEARING EXAMINER DICKMAN: Okay. So I'm going to let you reserve some time to address anything that comes up during the public comments. Let me make a few

comments about that.

So there are two parties to this hearing. There's the applicant, and then there's the County. During public comment, I realize that the law does -- case law and other law does define what interested parties are or affected parties are. It is not my responsibility to make that determination here. In fact, I don't want to, because it would require me to go into deeper detail to determine whether you have standing, whether you're adversely affected, or anything to that effect. So, in -- in my opinion, yes, members of the public are here. There may be -- however, I do offer some -- some leniency when there are professionals that have been retained and out of a courtesy to allow that. But please keep in mind that it -- you know, you're not on equal standing with the two parties that are here.

Now, I do have the letter, the one letter here that was just submitted. I do find that to be -- I don't want to say ambush, but it's a little difficult when you get a very extensive letter here and you really can't go through it. And I'm going to consider and think about whether or not I'm going to give the applicant time to submit an analysis of this after the hearing, because it's just out of fundamental fairness -- to bring a letter and ask everyone to read it and understand it and evaluate it may be fundamentally unfair.

But with that said, we have five speakers? Is that right?

MR. YOUNGBLOOD: Yes, sir. We have five speakers.

I did notice there were a couple that came in after we convened. If anybody else is wishing to speak, there are speaker slips on the table to -- on the right side of the room, so please fill those out and bring those to me.

HEARING EXAMINER DICKMAN: Okay. So we'll just go through it and see how it works out.

And also, I want to put on -- put out there that lawyers are not experts. They can't put expert testimony on the record. Lawyers just argue. They argue about the law. They argue, argue, argue. You know, I have presented -- I have been on the other side of this as well, where I have had to present.

So if you -- to the extent that, Mr. Blume, you are going to make legal arguments, I would ask you to confine your arguments to legal arguments, because I can't consider you as an expert.

So why don't we go ahead and get started with the first speaker.

MR. YOUNGBLOOD: Our first speaker is Craig Blume, followed by Ken Noble.

Mr. Blume, you will have five minutes, sir.

HEARING EXAMINER DICKMAN: Mr. Blume, do you mind being over here, please?

MR. BLUME: Not a problem.

HEARING EXAMINER DICKMAN: And I am interested in who your clients are.

MR. BLUME: Craig Blume. I represent Dolphin Auto Spa, National --

MR. YOUNGBLOOD: Mr. Blume, speak into the microphone, please.

HEARING EXAMINER DICKMAN: Yeah. You'll be --

MR. BLUME: Craig Blume. Been a practicing attorney --

HEARING EXAMINER DICKMAN: -- in trouble --

MR. BLUME: -- since --

HEARING EXAMINER DICKMAN: -- with our court reporter. Don't do that.

MR. BLUME: -- practicing attorney since 1998 here in Collier County. My client is Dolphin Auto Spa, National --

HEARING EXAMINER DICKMAN: Where are they at?

MR. BLUME: -- Auto Spa, Inc., which is --

HEARING EXAMINER DICKMAN: Where are they?

MR. BLUME: -- which is located at 6240 Collier Boulevard --

HEARING EXAMINER DICKMAN: Okay.

MR. BLUME: -- right down the road.

It should be noted that our client was aware of these PUD restrictions prior to investing the property down the road, which operates as a full service car wash.

The PUD in question specifically doesn't allow this type of use.

Although not recognized as an expert, but as a member of the public, we need to point out some of the issues that have not taken place.

This is not a letter of ambush. We raised these issues --

HEARING EXAMINER DICKMAN: Yeah, and forgive me. I didn't --

MR. BLUME: I just want to set the tone.

HEARING EXAMINER DICKMAN: It's difficult to consume when it's brought forward on the first --

MR. BLUME: I understand that. These issues were raised back in September.

HEARING EXAMINER DICKMAN: Got it.

MR. BLUME: They have been reiterated to Mr. Wright's office through discussions through associates in my office and to the County as well. Our position has been made clear.

HEARING EXAMINER DICKMAN: So there's nothing new that's been -- okay.

MR. BLUME: The only thing new here which would be considered a surprise is that we brought with us today some industry leaders who are -- participate in this field, who can give some further detail about some what we'd call misrepresentations or inaccuracies that are contained in the applicant's petition that have not been recognized by the staff, since the staff has gained their -- their approval on this position.

Essentially, the PUD in question -- you know, it's interesting. The applicant states in one breath, disregard it, it's private restrictions, but in the next breath they -- they say that the PUD has permitted accessory uses which would permit this specific type of car wash, and that's not true.

The permitted type of car wash is vastly different than the one that's contemplated today. And the one that's contemplated today isn't a new creation. This is something that has been around for much over 20 years. It's been in existence here in Collier County for over 20 years.

The applicant's car count for this type of use -- they have 120-foot tunnel. And these tunnels are designed, you will hear today, for one car per foot, or 120 cars, that can move through there in an hour. Yet, their number is less than half of that per hour.

Interestingly, I stopped on my way here to this meeting over at Clean Machine, which is right on the corner over here, which is an express car wash, very similar to the concept that is being proposed here today. I was there for less than two minutes. I counted 22 vehicles in service, more vehicles coming in and leaving within that two-minute time period.

HEARING EXAMINER DICKMAN: So let -- let me just -- yeah, I know -- I know where you're going, and I appreciate that type of -- so you're not an expert in trip generation. I mean, there is -- there has been -- maybe you've got an expert that wants to speak to that. But the Institute of Transportation and Engineers, ITE, Trip Generation Manual, has evaluated this. So, I mean, to the extent that you have done your own counts, you know, is not -- again, I encourage you to stick to legal arguments, and --

MR. BLUME: Sure, but --

HEARING EXAMINER DICKMAN: -- if you have an expert --

MR. BLUME: -- we'll fill it with the facts, too, the facts as far as trip counts generated by people who not only supply the equipment but also who service it and own the equipment that's in question here today.

I understand the manual makes suggestions on suggested trip counts. But, in actuality, the trip counts are much higher.

HEARING EXAMINER DICKMAN: Just keep in mind that I'm -- I'm not expecting a full 30-minute presentation here from you.

MR. BLUME: I'm probably done in a minute here.

HEARING EXAMINER DICKMAN: Perfect. Thank you.

MR. BLUME: Okay.

You'll also hear from people about the extent and nature of the noise, and essentially this type of car wash is prohibited by the PUD. It was permissible at one point in time, when the C-4 zoning was there. But when it was considered and the overlay was -- the PUD was put into place, the PUD specifically excluded this type of use.

So I'm going to let the other -- the other professionals here speak about it.

HEARING EXAMINER DICKMAN: Okay. Once again, tell me your client, your actual client.

MR. BLUME: Dolphin Auto Spa, National Auto Spa, Inc., at 6240 Collier Boulevard.

We did raise objection. And I should also note we didn't receive notice of this hearing.

HEARING EXAMINER DICKMAN: Okay.

MR. BLUME: We also have some letters from some affected businesses. Those did come in recently. There's a business owner that is a part of the PUD who is objecting to this use as well.

HEARING EXAMINER DICKMAN: Okay. Thank you.

One quick question. Would you -- I mean, do you agree that there is a process in the code that allows for this type of comparable use to come in front of the hearing examiner? And the reason for that is that, you know, it's impossible to list out every single use at one time and that things change. And so do you -- do you disagree that this is -- this is something that's appropriate and allowed to happen?

MR. BLUME: Of -- of course, I don't disagree with the process. What I disagreed with were the facts that were stated in the applicant's position.

HEARING EXAMINER DICKMAN: Okay.

MR. BLUME: Specifically the nonexistence of this type of car wash 20 years ago, which you will hear testimony that will suggest that it was not only in existence, it was prevalent.

And the trip counts as it relates to the service capacity. Somebody doesn't design a 120-foot tunnel to service 38 cars in an hour. It's designed for 120 cars.

HEARING EXAMINER DICKMAN: Okay.

MR. BLUME: Okay?

HEARING EXAMINER DICKMAN: All right. Thanks for being here.

MR. BLUME: Thank you.

HEARING EXAMINER DICKMAN: Who's next?

MR. YOUNGBLOOD: Our next speaker is Ken Noble, followed by Diane Calabrese. I hope I'm pronouncing that right, Diane. Did I pronounce your name right?

HEARING EXAMINER DICKMAN: Ken's coming up. Ken is coming up first.

MR. YOUNGBLOOD: Mr. Noble, you'll have five minutes, sir.

MR. NOBLE: Hello. My name is Ken Noble. I'm the owner and CEO of Washline, LLC. We are a supplier of car wash chemicals to car washes from Naples north to Tampa, over to Orlando. We have been in business for ten-plus years, and we service currently over 50 car washes.

Most of our customers are running express tunnels, which is the type of tunnel that is proposed here. And I was asked to come here just to comment on the number of cars that can be washed at this type of facility.

We have many customers with 100- to 120-foot tunnels that are washing well over a thousand cars a day. This is a model that was designed to do volume.

They have unlimited wash plans, where people pay a monthly fee so they can just pull

up to the gate, and it has a barcode reader or a license plate reader, opens the gate, they run through the tunnel, wash their car, pull around to the vacs, vacuum it, and get out of there.

Most of our customers, when they look at building one of these, they're not building it to operate at less than 50 percent capacity of what it's capable of doing. They want to do the full -- I mean, 120, 140 cars an hour in a 120-foot tunnel is not unrealistic at all.

HEARING EXAMINER DICKMAN: Can I ask you a question, quick question?

MR. NOBLE: Sure.

HEARING EXAMINER DICKMAN: Are you being compensated to be here?

MR. NOBLE: No.

HEARING EXAMINER DICKMAN: You're not, okay.

MR. NOBLE: No.

HEARING EXAMINER DICKMAN: Who has asked you to be here?

MR. NOBLE: Mr. Blume and Dolphin Express Car Wash.

HEARING EXAMINER DICKMAN: Gotcha, okay.

MR. NOBLE: So basically that's -- that's -- you know, my point is that these facilities are designed to wash a lot of cars.

HEARING EXAMINER DICKMAN: So your point is, is that the -- the number that's being presented by staff and also by the applicant is lower than what is the norm --

MR. NOBLE: Right.

HEARING EXAMINER DICKMAN: -- as far as how many cars are going to be there.

MR. NOBLE: Correct. And, obviously --

HEARING EXAMINER DICKMAN: And what's the -- what's the point of that, though? What is the point of that? Is that too many cars queuing up, or too much noise? What is your --

MR. NOBLE: Well, the amount --

HEARING EXAMINER DICKMAN: What is the point you're trying to make?

MR. NOBLE: The amount of traffic that is in the overall complex where this thing is going to be built I just think is being underrepresented.

HEARING EXAMINER DICKMAN: The traffic on site, on the site?

MR. NOBLE: On site and in the surrounding areas, coming to and out, ingress and egress.

HEARING EXAMINER DICKMAN: Okay. But you're not a traffic expert. You're not a -- you don't do traffic engineering --

MR. NOBLE: I am not a --

HEARING EXAMINER DICKMAN: -- traffic planning?

MR. NOBLE: No.

HEARING EXAMINER DICKMAN: You're just in operations. You have a lot of familiarity with operations and --

MR. NOBLE: I know how many cars that car washes of this type wash --

HEARING EXAMINER DICKMAN: Okay. So --

MR. NOBLE: -- in a day.

HEARING EXAMINER DICKMAN: -- have car washes changed over the last 20 years?

MR. NOBLE: Oh, for sure.

HEARING EXAMINER DICKMAN: How? How is that?

MR. NOBLE: Well, they used to be the full-serve model, where, you know, you came in, got -- left your car with the attendant, they vacuumed it, sent it through the tunnel. You know, you go sit in the lobby. You come out and get your car and leave when it's done. That's evolved to the express wash, where you stay in the car, you ride through the tunnel, pull around to the free vacs, vacuum if you want to. Many cars don't even vacuum, because if

they're -- if they're on an unlimited plan, they may wash more than once or twice a week and so they don't need to vacuum every time. So you get a lot of customers exiting the tunnel and just leaving as well.

But it's -- it's evolved to where they can wash a lot more cars in a shorter amount of time.

HEARING EXAMINER DICKMAN: Okay. And what's the size of -- I guess you're here on behalf of Dolphin Auto Spa? Is that --

MR. NOBLE: Yes.

HEARING EXAMINER DICKMAN: What's the size of Dolphin Auto Spa? How many -- how many acres is that?

MR. NOBLE: I don't know the acreage.

HEARING EXAMINER DICKMAN: You don't know that?

MR. NOBLE: I know it's over an acre.

HEARING EXAMINER DICKMAN: It's over an acre. And how big is it? How many cars does it process?

MR. NOBLE: They are washing right now 800 to 900 cars a day.

(Inaudible comment from audience.)

HEARING EXAMINER DICKMAN: Uh-uh. Time out. We're not going to do that. This is -- I'm just asking questions. Again, it's the parties or the County. I'm trying to be fair here. I want to do that, but we'll get to everyone that signed up to speak. And any questions that I'm asking that this gentleman doesn't know, then the next speaker can answer that question.

So you're not 100 percent familiar with that?

MR. NOBLE: No.

HEARING EXAMINER DICKMAN: What's the difference between that car wash and this one?

MR. NOBLE: Well, basically they are very similar. I mean, it's a very similar-sized tunnel. It's got the free vacs. It's the same type of operation. I don't know if the lots are the same size or not, but as long as you can fit the tunnel and the free vacs on it, that's what you need to operate a car wash.

HEARING EXAMINER DICKMAN: Okay. Do you think the two are going to compete with each other, from a business point of view?

MR. NOBLE: I do.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. NOBLE: Yep.

HEARING EXAMINER DICKMAN: Thank you.

MR. NOBLE: Yep.

HEARING EXAMINER DICKMAN: All right.

MR. YOUNGBLOOD: Our next speaker is Diane Calabrese, followed by Jose Contreras.

The speaker will have five minutes.

MS. CALABRESE: Hi. My name is Diane Calabrese, and I am one of the owners.

HEARING EXAMINER DICKMAN: One second.

Did you get that?

THE COURT REPORTER: Yes. If she could lower it a little bit more. Thanks.

MS. CALABRESE: Oh, a little lower.

So I am one of the owners of Dolphin Car Wash. I'm -- I'm not an expert, but I have been in the business a long time. I had car washes for about 25 years. And recently, five years ago, 2019, I decided to purchase with a partner an express car wash, which is Dolphin, in 2019.

I work every day. I'm hands on. So I know the size of the property. I can answer a lot of questions as far as what goes on at the business.

I'm here today because I am concerned about the competition. We're about a half a mile away from them, and it's unheard of that local people would open up a car wash so close.

So from what I can tell for Mod Wash, they are planning to build 49 car washes in Florida, not all in Naples. But if you go to their website, they just throw pins on the map. And I feel that they are going to saturate the Naples market, because if you do this, they're going to try to change the zoning on the next -- on their next location.

We spent premium money on property that's zoned for a car wash. And to just open up a half a mile down the street, it's just, you know -- so, like I said, I'm here full-time. I'm -- I raised my children here, and I'm just trying to make a living. And I just oppose what's going on and that they can so easily turn it into a C-4 and make it a similar car wash.

HEARING EXAMINER DICKMAN: When did your business, Dolphin Auto Spa, open?

MS. CALABRESE: September of 2019.

HEARING EXAMINER DICKMAN: Brand new, or did you buy it? The -- well, did you buy the business, or did you build it?

MS. CALABRESE: Yeah, it was in the middle of construction when we bought it. It was a high-premium price. And we did look into surrounding areas. In fact, I looked in Frankie's, and I saw that it wasn't zoned for car wash at the time. And we looked sort of around the area and I said, "Well, this may be a good spot." And I planned to bring my children in eventually and, you know, just be part of the community of Naples.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. CALABRESE: So --

HEARING EXAMINER DICKMAN: Okay. Well, anything else?

MS. CALABRESE: No. I think that's all I would like to say. And thank you for your time.

HEARING EXAMINER DICKMAN: No, yeah. Thank you for being here. And, of course, we all appreciate the business that you offer to Collier County.

MS. CALABRESE: Thank you.

MR. YOUNGBLOOD: Our next speaker is Jose Contreras, followed by John Varela. Speaker will have five minutes.

HEARING EXAMINER DICKMAN: Good morning, sir.

MR. CONTRERAS: Good morning.

My name is Jose Contreras.

And I'm not have any credentials like the guys back there, but I have 25 years' experience working with car washes. And I know what implies to competitor next to us. One, smell-wise, noise, pollution, chemicals, because obviously you still have the chemicals. And by allowing these guys back there, adding a new car wash right next to us, it going to impact personally to myself. I'm going to lose customers, and that's going to lower my volume.

HEARING EXAMINER DICKMAN: Yeah.

MR. CONTRERAS: My -- I operate with the -- I manage the place, and I have a -- eight employees which depend from us to survive. We all with families. We all own homes. We pay our mortgages, our taxes. And I just want to -- you will see the impact that that's going to do to -- to us.

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: And if you have any questions. I mean, I can answer smell-wise, noise-wise.

HEARING EXAMINER DICKMAN: Well, tell me about the -- what's going to cause smell?

MR. CONTRERAS: Every time you wash a car, they come with dirt, obviously. Trucks with debris, leaves. They run over dead animals. The chemicals themselves --

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: -- all goes to a pit that needs to be cleaned twice a -- twice a week to comply with the smell.

The noise. The car wash and the cars, 125 feet. Close to -- like what this gentleman said, close to 800 cars a day.

HEARING EXAMINER DICKMAN: Is that enclosed, though?

MR. CONTRERAS: It is, but that doesn't prevent the noise --

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: -- from going out.

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: We have a fence around our property --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. CONTRERAS: -- for the car wash to go around, and trees, which helps with the noise.

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: And on Collier side, obviously, there is nothing, so we're good there.

But the car wash is enclosed, like you said.

And the vacuums. Even though that it's a suction, the handles produce a very, very, like, loud sucking noise if you don't maintain them properly.

HEARING EXAMINER DICKMAN: Are those the ones outside that --

MR. CONTRERAS: That's on the outside, that's correct.

HEARING EXAMINER DICKMAN: -- are for doing the inside of the cars?
Okay.

MR. CONTRERAS: And the 15-horsepower motors with the impellers, the turbines that produce suction --

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: -- they cannot be inside. Has to be outside somewhere. So that's another noisemaker right there.

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: And, again, going back to the smell, we clean it every -- twice a week. We use chemicals for -- like the gentleman here, that we apply every day to prevent from smell. So you got to stay on top of every single thing.

HEARING EXAMINER DICKMAN: Okay.

MR. CONTRERAS: All right?

So that's what I have to say. Do you have any questions?

HEARING EXAMINER DICKMAN: No. I appreciate you being here.

MR. CONTRERAS: All right.

HEARING EXAMINER DICKMAN: Thank you for all your hard work.

MR. CONTRERAS: Sure. Thank you.

MR. YOUNGBLOOD: Mr. Hearing Examiner, I have two more speakers. Looks like a third one is coming here.

Our next speaker is going to be John Varela, followed by Alex Rivera.

HEARING EXAMINER DICKMAN: Good morning, sir.

MR. VARELA: Good morning.

My name is John Varela, and I am an investor. I have been a resident of Naples, Florida, now for 17 years.

HEARING EXAMINER DICKMAN: An investor in what?

MR. VARELA: In properties, commercial properties --

HEARING EXAMINER DICKMAN: Okay. Not a --

MR. VARELA: -- strip malls.

HEARING EXAMINER DICKMAN: Are you associated with Dolphin Auto Spa?

MR. VARELA: I am a partner with Diane Calabrese, and I am the owner of Dolphin Auto Spa, yes.

HEARING EXAMINER DICKMAN: Gotcha, okay. Thank you.

MR. VARELA: So it is very troubling to me that there is a place that can open within the distance that we are in.

Our property consists of two acres. We have tremendous amount of fueling, parking, and we could accommodate all the cars that we're washing. We don't think that the model that they put forward --

HEARING EXAMINER DICKMAN: One second.

MR. VARELA: Sure.

HEARING EXAMINER DICKMAN: Gentlemen, if you could -- I am getting distracted a little bit.

Go ahead, sir.

MR. VARELA: So my point is that -- we invest in properties. We own multiple car washes, but we wouldn't dare open up a car wash next to another one. It just makes no sense.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. VARELA: And it will hurt us very badly. We carried all of our staff through COVID-19, a year and a half.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. VARELA: Kept them on payroll. We know what the car wash can do, but we also know how bad it can be.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. VARELA: So it would be a tremendous loss to us to allow that to open where it's going.

HEARING EXAMINER DICKMAN: Okay. Is that it?

MR. VARELA: That's it.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. VARELA: Thank you.

MR. YOUNGBLOOD: Our next speaker is Alex Rivera, followed by Sal Calabrese. And Mr. Rivera, you will have five minutes, sir.

MR. RIVERA: Good morning, everyone.

My name is Alex Rivera. I'm actually the manager for Dolphin Auto Spa as well.

I do have over seven years of experience. I have worked at over four car washes, Miami and in Naples. So I want to speak on the fact of the property layout, on how it is.

Being a person that's ran high-volume car washes, I understand how much car can go through a car wash. And in a place that I have seen where the said location would be at, is in a corner. They are speaking of putting it in a corner like there would be enough room for all these cars to be able to move. Now, there's always going to be situations that happens, whether it's inside the car wash or right outside the car wash. Now, when you have a high volume amount of cars that are trying to get into one location, if one thing goes wrong -- let's just say people are just trying to go to the car wash, the car is backing up in the shopping center, you're going to create chaos.

And let's just say inside the car wash itself, there is an incident, just that one car stopped in the car wash itself will create a mass -- a mass amount of cars trying to wait in line. And the shopping center nearby will be affected all the way out to the main road as well, people trying to come in and can't get out. I have seen it myself many, many times. There's other car washes on main roads. Just trying to get out of car wash, just to get into the main road is already backed up.

There's a lot of factors as well. They said they would have 16 vacuums in the area. Okay. I feel like that might not be enough, especially if now you got hundreds of cars within the hour, they are waiting in line. So what is it doing? It's creating another backup.

So the whole point is that the layout, where it's at, is not a good place for a car wash. It's just not enough room for them to go in and out. All the car washes are normally set up in the middle of an actual shopping center, not in a corner. You need room to -- to get away from wherever everything is at.

And that's the point I want to bring across here, and that's the main point I have to get here today.

Do you have any questions?

HEARING EXAMINER DICKMAN: No, no. That's -- that's good. Thank you for being here.

(Clarification by reporter.)

MR. RIVERA: Dolphin Auto Spa.

HEARING EXAMINER DICKMAN: I think he said he's one of the other managers.

MR. RIVERA: Correct.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. YOUNGBLOOD: Our final speaker is Sal Calabrese.

Mr. Calabrese, you will have five minutes, sir.

MR. CALABRESE: Good morning, gentlemen.

I'm the manager also at the Dolphin Auto Spa and husband of Diane Calabrese. So that sweet lady there has been married to me for 34 years.

HEARING EXAMINER DICKMAN: I think --

MR. CALABRESE: You got to give her credit.

HEARING EXAMINER DICKMAN: I think you're a lucky man.

MR. CALABRESE: I think so. She cooks really good, too.

HEARING EXAMINER DICKMAN: Okay. Even better.

MR. CALABRESE: My point is today that, I think that 20 years ago, this PUD, this Artesa PUD, was formed. And I'm not a lawyer, but the first page of the ordinance says -- I have to read this. My memory is kind of shot.

But this is an ordinance accepted by the Collier County, amending ordinance number 91-102, Collier County Land Development Code. And right on the bottom, it says Section 2. Well, first it says Wayne Arnold of Grady Minor drafted this. It says Wayne Arnold of Grady Minor & Associates. I'm not an engineer neither, but I know that was one of the founding fathers of the LDC in Collier County, that Wayne Arnold is a legend in this county as an engineer.

Also on this PUD, you have Richard Yovanovich, who is a very smart lawyer. And he was also --

HEARING EXAMINER DICKMAN: Wait. Who?

MR. CALABRESE: I said his name wrong. Yovanovich.

HEARING EXAMINER DICKMAN: You called him a smart lawyer. Good.

MR. CALABRESE: No, that's --

HEARING EXAMINER DICKMAN: He's not even here to hear that. He's a good guy.

MR. CALABRESE: He's a legend in the town also --

HEARING EXAMINER DICKMAN: He is, definitely.

MR. CALABRESE: -- and a hard-working community man who thought very carefully before he wrote ordinances like this.

And I have to bring out to you guys that this was drafted by him and one of the best engineers Naples has ever seen.

They knew what car washes were. They knew the noise. They knew the traffic. They knew the smells. Every -- every human that goes to a car wash knows.

Therefore, as a PUD goes, they purposely omitted car washes as a principal use in the PUD. They carefully explained the difference between a nonregional and a regional

commercial business. Regional was Walmart. This was designed for Walmart. In conjunction with Walmart -- they bought the 82 acres for Henderson Creek, whoever that was, to design their Walmart center. And Walmarts do not like car washes. Show me once center, one PUD, that Walmart -- not on Immokalee Road, that's a different center. But Walmarts, we have tried -- we have looked for properties. We were told time and time again, Walmart won't let you build a car wash. They purposely omit it from their PUDs.

HEARING EXAMINER DICKMAN: Did you look at this site when you --

MR. CALABRESE: Absolutely.

HEARING EXAMINER DICKMAN: -- when you tried to --

MR. CALABRESE: I have been here 25 years looking for sites.

HEARING EXAMINER DICKMAN: So you looked at this site and moved on.

MR. CALABRESE: We did, because, first of all, the storm drainage.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. CALABRESE: It's not even a lot. It was part of the shopping mall.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. CALABRESE: The deed says lot 3. We sold lot 3 to the Nook at Naples -- or the Rook at Naples, and it was 2.7 acres.

So in the deed it says only one building will be built on the lot, on this parcel.

So what do they do? The Nook goes, "Okay, Mod Wash, we'll split the lot. How's that? And bypass the deed."

So they split the lot, giving them an acre. Now they can build their car wash there. That's another building, but it's a -- it's another building on the same lot.

The deed by Walmart, I don't know if it's part of the record, but it should be. And I'll offer to bring it here or give it to the lawyer. It should be respected. That was a deed Walmart gave to the Rook and said, "You're only going to build one building there."

And it says that you're only to put businesses that are associated -- that are commonly associated with shopping malls: Restaurants, hair-cutting places. There's even a nail place in there.

These are convenience -- these are conveniences for -- these are nonregional businesses, which were meant for daily uses. People go to eat lunch at Frankie's deli. You're going to put a car wash right next to him, and you're putting the dumpster right in front of his place.

He's not happy. I don't know if you read his letter. But he has been paying rent there for three years, \$7,500 a month to the Rook at Naples. Now they are going to raise his rent. He says, "I don't even know if I'm going to stay. If they put a car wash there, I can't -- I can't do it."

They're taking his parking spots away and going to give it to the Mod Wash.

This is wrong. By taking this PUD and rejecting the work that Richard Yovanovich did, with Wayne Arnold, it's just wrong. They did not intend for a car wash to be in there. They put it off to an accessory. And everybody knows what that is. It's a cash wash/gas station. It says automatic car wash with a food store. A food store is allowed, but a car wash is not. A food store with accessory car wash.

And that's what Murphy's is. Murphy's is a little food store. It's a C store. They sell cigarettes, candy. And with that, they could put a car wash. Now, if Murphy's came here and said, "We want to put a little car wash next to it," they can by this PUD.

But Mod Wash is going to come in and put a car wash that runs 120 cars an hour. It's going to create a mess in that -- in -- in that shopping mall.

The ingress and egress will be -- it's bad enough. Go drive there. You'll have to wait five minutes just to get onto Collier Boulevard, because the little road there gets backed up now. Can you imagine with 120 cars an hour coming out of there?

Lunchtime, Frankie's, his customers can't find parking spots. We got letters from

three different customers that said, "I am having trouble now finding spots."

One of them works in the Goodyear. And she said, "I only have 30 minutes for lunch, I can't do it. I can't go to Frankie's anymore."

Another letter, I don't know if it came in, said, "I'll just drive to Wendy's. That's what I've been doing."

Because in season, you can't get in there. They put a license bureau there on the corner. It's very busy. It's great. It's great for Collier County. Everybody's buying licenses. They are all moving down here, and they are bringing, you know, their tax money here. It's a great spot for a tax place. But now the mall is jammed up with parking.

And Frankie's is probably going to leave that location, because he can't pay the rent and he cannot sustain the traffic and the noise and the smell.

Can you imagine walking into a restaurant and seeing a dumpster right in front of the place? He's not happy with that. And I hope his letter carries some weight.

In conclusion, I just want to say that Mod Wash is opening 186 stores nationwide. And I have the locations here. Here they are. Can I present it to you?

HEARING EXAMINER DICKMAN: Sure.

MR. CALABRESE: This is a national company with --

HEARING EXAMINER DICKMAN: Do you have copies?

MR. CALABRESE: Yes.

HEARING EXAMINER DICKMAN: Do you have a copy for --

MR. CALABRESE: For you.

HEARING EXAMINER DICKMAN: And the applicant as well?

MR. CALABRESE: Sure. Here, here. This is from your website.

MR. YOUNGBLOOD: Mr. Hearing Examiner, the speaker is at five minutes.

HEARING EXAMINER DICKMAN: Okay. Anything else, sir?

MR. CALABRESE: Just in conclusion, that it would be detrimental to my business, too.

Car washes space each other out. There's a car wash four miles down the road, Cloud 10. There's another one, Clean Machine, another four miles.

We respect each other in Naples. We are all welcome. We don't want to step on each other's feet, because, you know, what goes around comes around.

And what Mod Wash is doing is basically burning and pillaging. They're just coming up, shooting darts at -- on location. And if this gets passed, they will continue to do it. They will continue coming back in and rezoning, and we're going to have a lot of car washes in Naples.

HEARING EXAMINER DICKMAN: Thank you.

MR. CALABRESE: Thank you.

HEARING EXAMINER DICKMAN: Thank you for being here.

Anybody else?

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

HEARING EXAMINER DICKMAN: Okay. So I'm going to close the public hearing.

Got a quick question for County. I'm not sure who wants to answer this.

But are there any distance requirements between car washes?

MR. BOSI: Mike Bosi, Planning and Zoning Director.

We have no distance or separation requirements related to car washes. We have them for self-storage facilities. We have them for gas stations, separation requirements between places that sell liquor and schools, and -- and acres, but nothing related to a separation requirement for a car wash.

HEARING EXAMINER DICKMAN: Okay. So what was the -- what's the policy or purpose behind the distance or separation requirements? Let me ask it this way. Is it -- is it to

preserve the commercial viability, or is it --

MR. BOSI: No.

HEARING EXAMINER DICKMAN: Or something else?

MR. BOSI: No, I believe it -- it's the impact of -- of -- primarily of traffic considerations that have the separation requirements. We -- we try not to regulate the marketplace.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BOSI: We allow the marketplace to be a free marketplace.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: We -- the -- the restrictions upon those uses are based upon the -- the direction or the attempt to try to alleviate traffic congestion, conflicts that could be created when you have high generation of trip -- of trip retractors in close proximity.

HEARING EXAMINER DICKMAN: From a planning point of view, it's really for the public health and safety, and not to -- if I hear you right, not to regulate the marketplace, which I don't even know how you would do that.

MR. BOSI: No, it -- correct. It is for the health, safety, welfare. It's -- it has nothing to do with business practices or -- or providing for a fair -- or a competition --

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: It's nothing of that sort.

HEARING EXAMINER DICKMAN: Okay. So while I'm sensitive to the arguments, I wanted to make that clear on the record.

So there were a number of issues, Mr. Wright. So why don't we go ahead and walk through them.

First of all, I want to thank everybody. You guys were really good. You -- I don't know if your lawyer prepped you on that, but if he didn't -- either way, you guys did a really good job, really nicely -- gave me a lot of information.

Mr. Wright, I do want to ask you a question, or actually just -- we put this out there, that while expert testimony typically comes from experts, there -- there is case law that says that laypersons that have actual knowledge of specific issues can be relied on, information that has been presented. So I just -- I'm not saying that I'm doing that. I'm just pointing that out to you, in the event that you want to address that from a legal point of view.

MR. WRIGHT: Yes. I appreciate the opportunity.

We love the public being part of this process. We know that that's part of it, and we welcome their comments.

In fact, we hope they thrive as a car wash, as a neighbor. We have nothing against their existence.

And -- but one thing I want to point out in addition to -- and I realize that there's some weight you can give to nonexpert testimony, but it's clear that there were no experts. And when you look at the criteria that are applicable to this request, a lot of it is planning-related.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: In fact, the comparable use determination itself suggests that it's a planning question. And when I listened to the testimony - I think we had seven witnesses, or six, plus the attorney - we had a lot of talk about competition. And, obviously, I think, if I were to sum it up in one word, I would use that word, "competition."

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: And one thing that we didn't hear was the word "criteria." None of the witnesses mentioned any -- didn't mention the word "criteria," first, and they didn't address any of the criteria. And so their testimony can be given whatever weight you deem appropriate. We have nothing against that. But they never addressed any of the criteria.

Conversely, our professional planner, qualified as an expert today, went through each of the criteria with a reasoned explanation why we meet them. And staff has done the same

thing.

So when you look at the scale of competent testimony and evidence before you, the scale is tipped 100 percent in favor of the County's position, the recommendation of approval, and our request, which is to find that this use is comparable in nature to the existing uses in the Artesa Pointe PUD.

So, like I said, we would welcome the competition. We hope they thrive. But they have not presented any competent evidence to -- directed at any of the criteria to support a denial of our request.

HEARING EXAMINER DICKMAN: So, I mean, it's good, now we know who the client is. That's great. I -- I don't blame them for being concerned.

What -- I don't know if you have anybody, or I -- I know staff addressed some of this stuff, but it seemed like -- putting aside the competition, you know, they raised the issue of smell, noise, queuing, the size of the -- size of the -- the property, you know, not being able to contain the cars and things of that nature. Either the -- it seemed like there was a comment regarding smell, because there is a pit and the pit has to be cleaned out. Do you have anybody that will talk to any of that? I mean, I'm assuming that that's typical regulated practice for having to clean out -- clean out whatever it is that comes off the cars.

MR. WRIGHT: Sure. We do have -- I'm going to consult with our team to see who would be the best to answer those operational --

HEARING EXAMINER DICKMAN: If you want to. I'm not putting you on the spot. I'm just kind of -- I mean, they -- that's, to me, the only issues that were raised.

I think staff raised these and answered the -- for example, the noise. I found the study that's in here very good in terms of the noise issue as done by an expert and they looked at the topography and things of that nature. But I'm just giving you that opportunity, if you wanted to rebut any of that, in terms of the size, queuing, things of that nature.

MR. WRIGHT: Sure.

On the noise question, I -- I agree with you that that study is very thorough, and it shows the topography and the reach of the noise levels.

We also have a condition in this request that --

HEARING EXAMINER DICKMAN: Right.

MR. WRIGHT: -- that commits us to mitigating any excess noise. So I think that that should be sufficient. Obviously, we have to comply with the noise ordinance with respect to sound-receiving neighbor -- neighboring properties.

Now, as far as smell, I mean, I -- when I think of the big picture here, we're trying to figure out is this automated car use -- is it comparable in nature to the PUD? When I hear that there's roadkill on the tires, I think that's not one of the criteria. But to the extent that it's maybe part of your inquiry, we're happy to address some of those operational aspects.

HEARING EXAMINER DICKMAN: It's not necessarily my inquiry. I'm just giving you the opportunity, if you want to --

Sir, we have already closed the public comment. All you-all did a great job, so thank you very much.

I tend to think that operationally it seems like that's -- those things are standard procedures. I don't -- I don't know if you have someone here that you want to, you know, address that issue of -- but I think the main concern, again putting aside the competition, is whether the size of this site -- and you have a planner here, that -- whether this can actually contain -- I know the trip generations were put out there, but whether the site can contain all the queuing and then -- and then after that.

But -- and I don't know if you want to disagree whether or not Mr. Arnold and Mr. Yovanovich are legends in the neighborhood, but I certainly think they are.

MR. WRIGHT: I have great respect for both of them.

And I would add that it's impossible to know what they were thinking 20 years ago,

when they wrote a PUD.

HEARING EXAMINER DICKMAN: I don't remember what I was thinking 20 years ago. But they are good guys.

MR. WRIGHT: But, yeah. Those guys, you know, always do a good job, and I have no question about their skills or anything.

I do have a question about inferring what their intent was and whether they intended to prohibit stand-alone car washes.

HEARING EXAMINER DICKMAN: I know.

MR. WRIGHT: But I would point to - and this goes to our request today - that the fact that they have convenience -- you can have a gas station with a car wash. That's way more impactful than just a car wash.

So at this point I'll turn it over to Ken. Maybe he can hit on some of those operational concerns.

HEARING EXAMINER DICKMAN: Yeah, let's just do that real quick.

MR. GALLANDER: Again, Ken Gallander, for the record.

We do have a representative from Mod Wash. But our coordination with them, in understanding the operations and being familiar with these type of uses is that, in terms of the odor, there is a system that has been developed in place that when -- those materials are contained and they're processed and they're routinely removed, is what I understand, recycled, and so that is taken care of, in terms of the technology that's evolved over time to address those kind of uses.

Now --

HEARING EXAMINER DICKMAN: What about the site? Tell me --

MR. GALLANDER: So --

HEARING EXAMINER DICKMAN: -- a little bit about the site.

MR. GALLANDER: So we do have that site plan, but that -- the site plan is compliant with the Land Development Code that is in place, the standards for stacking of the type of number of vehicles. So we are adhering to the Collier County land development regulations for that, for the access points, for -- we'll address stormwater compliance, we'll address setbacks, buffers. All those things are being worked through at this time.

And it was appreciated that they wanted to see the site plan as part of the comparable use so they could understand, okay, we know what the use is, but let's see if this is going to be applicable.

HEARING EXAMINER DICKMAN: Okay.

MR. GALLANDER: So our opinion is, is that we will be compliant with all land development regulations.

HEARING EXAMINER DICKMAN: Right. So that's what I want to ask you.

In your professional opinion, do you believe that the site is large enough for this particular proposed use in terms of retaining traffic on -- on site rather than queuing onto any access roads?

MR. GALLANDER: My professional -- yes, it is, based on the land use regulations that we are abiding by.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you very much.

MR. GALLANDER: Yes, sir.

HEARING EXAMINER DICKMAN: Anything else? You want to wrap it up, please?

Well, let me do this. Let me ask, before you do that -- I'm not sure who here at the County can answer that. But going through the site plan approval process, the building process -- I mean, there's a lot to be done after this, a whole bunch of stuff, regulations. Would some of that -- some of that involve the operational part in terms of like, you know, how the pits have to be done and then cleaning that out? And I'm sure you have got -- and there's probably

Florida Building Code issues that have to be done. I mean, it's not just going to be a free-for-all there, I can't imagine.

MR. BOSI: Mike Bosi, Planning and Zoning director.

In terms of the frequency of the removal of the materials from a storage pit associated with that, we -- I don't believe that we would be involved in that type of discussion. We would look -- I mean, simply looking from a -- the building permit or for a site development plan process would be from landscaping, your bulk standards, your -- your ingress/egress, your queuing, all the functionality of how the site is going to work and its impact upon this -- the sounding properties. Those would be taken account for.

The building permit will look at how the operation of the systems work together.

But the one area where we wouldn't have much discussions at all with this car wash would be how many times -- how frequently will you need to have your -- your material trap, or whatever the correct term is, cleaned out. There's probably -- I'm sure there is industry standards. But I'm not -- I'm not -- I don't believe that we would get into that type of a discussion and monitoring of.

HEARING EXAMINER DICKMAN: But in terms of what -- once it gets to the building department, they're going to look at all the -- all the stormwater stuff. They're going to look at how this is being built, everything to -- I mean, the -- I guess what I'm trying to get at is there's a lot to be done after this if it's approved. Correct?

MR. BOSI: Correct. They would still need to satisfy the site development plan process, and then they would have to satisfy the building permit process as well.

HEARING EXAMINER DICKMAN: I mean, the odors, noise, things like that also fall under code compliance; is that correct?

MR. BOSI: Correct.

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

MR. WRIGHT: One thing I just wanted to emphasize is that traffic is often a vague thing. People drive by and see numbers and count them and jot it down or whatever. But the reason that they have standards is for that very reason, is people -- it could be vaguely counted. So, thankfully, we have the ITE manual, and that's what we have used here. We haven't had any expert testimony to contradict those numbers in our study, and it just --

HEARING EXAMINER DICKMAN: Yeah, I understand that. And so I agree with that 100 percent. It's a -- it's a science unto itself, data collected all over the country, all over the place, looking at similar uses, similar location types. And there are assumptions that are put into place, but it is more of a science than an art, so I do understand that. And I look at these ITE manuals, so I understand that as well. But I also know that people like to go out and count on their own, just to see if it's true. And sometimes, depending on the day, the season, whatever, it may be different. But that's what the County has to go from in terms of, like, evaluating these types of uses. Is that -- is that correct, Mike?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: Okay. All right. I'm just going to look at this.

Okay. Do you have anything else?

MR. WRIGHT: The only thing I have --

HEARING EXAMINER DICKMAN: This is your record. Put -- make your record as much as you can.

MR. WRIGHT: Well, you mentioned Mr. Blume's letter that we received this morning and an opportunity to respond to it. I just wanted to make sure that we're on the same page as to the time frame for that. If it's okay with you and Mr. Blume, I'll try to do that maybe by Monday, somewhere in there.

HEARING EXAMINER DICKMAN: I can give you a little bit more time. Maybe middle of the week and -- you know, maybe like 11:59 P.M. on Wednesday.

MR. WRIGHT: Okay.

HEARING EXAMINER DICKMAN: You can e-file it with me.

But I think, in fairness, to give you a chance to address -- address just the issues that he has in his letter. Don't raise any other issues. That's just out of fundamental fairness.

I do like it -- and I understand your point, you didn't -- you weren't being malicious in any of this stuff, but it's hard to consume that kind of information, written communication, when it's brought here during that day. So it's just going to be addressing your letter, nothing new. And, you know, that -- that, you know, you don't -- I don't need any rebuttal or reply from you at all. That's just going to be the only thing. You'll get a copy of it, but I just need to give, out of fundamental fairness, counsel the opportunity to address any of those issues.

MR. WRIGHT: So we'll aim for next Wednesday at the latest.

HEARING EXAMINER DICKMAN: Let's aim for next -- is that enough time?

MR. WRIGHT: Yes, it is. And we'll certainly provide his office with a copy of whatever we submit --

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: -- as a courtesy.

HEARING EXAMINER DICKMAN: All right.

I think everybody did a great job.

MR. WRIGHT: Thank you.

HEARING EXAMINER DICKMAN: Appreciate it. Thank you.

MR. WRIGHT: Thank you.

HEARING EXAMINER DICKMAN: All right. That was great. I got a lot of good information. I think everybody presented well, answered all the pertinent questions. That's the way I like these to go.

Do we have anything else on the agenda that you guys want to talk about? Anything new?

No? I'm getting a no from --

MR. BOSI: No.

MR. BELLOWS: And no from Ray Bellows.

HEARING EXAMINER DICKMAN: You do that again, you're going to put a dollar in the jar.

Okay. Then we're going to go ahead and adjourn the meeting.

Thank you, everybody, for being here. Appreciate it. Thank you.

March 24, 2022

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:30 A.M.

COLLIER COUNTY HEARING EXAMINER

ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on _____, as presented _____ or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING, BY MARIANNE E. SAYERS, COURT REPORTER AND NOTARY PUBLIC, STATE OF FLORIDA.