

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 23, 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 Director
Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner
Gabriela Castro, Principal Planner
Andrew Youngblood, Operations Analyst

PROCEEDINGS

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

Good morning, everyone. Grab the door out there, please. Shut that.

Good morning. Today is June 23, 2022. This is the hearing examiner meeting, Thursday. Happy Thursday. It's a little after 9:00 o'clock.

If everyone would please turn off your cell phones, and then we'll stand and do the Pledge of Allegiance. Thank you.

(Pledge of Allegiance.)

HEARING EXAMINER DICKMAN: All right. Thank you very much, everybody.

Let me go through a few preliminaries, if I can, for the record, and for your information as well.

First of all, my name is Andrew Dickman. I'm an attorney. I have been a member of the Florida Bar for over 20 years, in good standing. My primary practice has always been in land use, growth management, zoning, environmental law, things of that nature.

I have been contracted by the board of county commissioners. I'm not an employee of the County. I have been put under contract per the code of Collier County Hearing Examiner to hear the petitions that are listed in the county code, administrative code, that are under the jurisdiction of the hearing examiner.

My job is -- you know, I hate to say it's simple, because it's -- it seems simple to me after 20 years, but it is essentially simple, is that I conduct these hearings in a quasi-judicial manner, which is according to law and also under the code. And I take whatever testimony or competent substantial evidence, whether it's testimony or information that's provided to me here at a public hearing in front of the public - the public is invited - and I apply that to the code for whatever petition is being requested, and I make a determination.

I am required to make a determination within 30 days.

I will not be making any determinations here at the hearing. I will take in whatever information is gathered here -- and I have read everything that's available. There's been -- the agenda has been published, all staff reports have been published, the letters, everything that's been put -- been published and made available to the public, I have read.

I will be doing my own research into the code, into the law.

My job is also to make sure that this hearing, a quasi-judicial hearing, is conducted fairly and with due process.

And I will be asking the county to put on the record that all the proper notices were put out for the hearing so that the public were made aware of this meeting.

This is a -- Collier County has taken an extra step to make these types of meetings both in person and hybrid. So you see the screen here. There might be people that are going to attend via their -- wherever they are, Zoom, and participating. And the County has done that. And all the applicants have been made aware that they're -- that that is happening, and they have signed -- hopefully they have signed acknowledgment that they know that this is a hybrid meeting.

The way that we are going to conduct the meetings, which is best suited for -- I think for this type of quasi-judicial hearing is I'm going to ask the County to introduce the petition first. And whichever County planner is assigned to this will come up to the gray podium here in front and just give us a preliminary overview of the petition and recommendations and any conditions. And I may ask a few questions.

The bulk of the presentation will be done by the applicant or the applicant's representative. And they will come to the large brown podium and put on their case in chief.

And they have the burden of showing that they comply with whatever requirements are listed in the code in order to obtain whatever they're asking for. They may have a presentation that they're going to give, and I may ask questions as well.

Then we'll open it up for public comment. We have public comment cards here in the

room. And I believe there are people that will know how to log on.

And Andrew in the back over there is in control of all of that.

And then I will allow for the -- after the public hearing is finished, I will allow for the applicant to give any rebuttal statements, if necessary.

And then from there -- I also want to make you aware that everything we are saying here today is being captured by our court reporter here today. And so what that means is that we all have to speak very clearly and understandably and not make -- answer questions with hand gestures or nods and things like that. I'm giving a full green light to our court reporter to stop and -- stop anybody that she doesn't understand, because it's very important that 20 years from now, if somebody wants to go to the clerk of court or whatever and find the transcripts for a hearing and look up this -- and as an attorney, believe me, I have done this before, where I'm trying to find out what happened with a particular ordinance or decision, and you -- you find the minutes or the transcripts, and it helps very much. So I'm making a concerted effort to make sure that our court reporter has full rein to stop the hearing and say, "I don't understand what's being said, everybody's talking over each other, you know, I don't -- you know, please, please announce your name again." Whatever it takes, Madam Court Reporter, you can do that. It is very important to capture all this for posterity and capture the record.

Everything that's going to be submitted here today, if there are slide shows, or if anybody has submitted anything else, will be made part of the record, quote-unquote.

And after today, after I adjourn the meeting, I'm not going to be taking in -- unless there's a specific point of law that we'll want to hear about or know about from one or -- one or both of the parties, after today, this is it. The record stops right here. And then I take the record and I have 30 days to analyze it, compare it with the law, and render a decision. And everybody will get a copy of the decision from that point.

I think, with that, everyone who is going to be talking today and providing me testimony needs to do so under oath. That's part of a quasi-judicial public hearing process. And why don't -- what I would like to do is go ahead and -- anybody who is going to speak on any item here today, you know, please stand and raise your right hand.

And, Madam Court Reporter, would you mind administering the oath?

(The oath was administered by the Court Reporter.)

HEARING EXAMINER DICKMAN: All right. Great. Thank you very much.

I believe that covers it all. Do we have anything else that we need to address? Okay. We're good?

MR. BOSI: I think you got it.

HEARING EXAMINER DICKMAN: Okay. So that covers the preliminaries.

If anybody does need to have a conversation about something, just step outside in the hallway, so that we can keep moving on with the business here.

And we're going to -- we have three items on the agenda today; is that correct? Have any of these been continued, or are we going forward on all three?

MR. BELLOWS: For the record, Ray Bellows. We're going forward with all three.

HEARING EXAMINER DICKMAN: Okay. Great.

So why don't we just go ahead and start with 3-A, 3-A.

MS. CASTRO: Good morning.

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

So we have petition number NUA PL20210002953, a request for a nonconforming use alteration pursuant to LDC Section 9.03.03.B to allow the replacement and expansion of a second residential dwelling unit.

The subject tract is located on -- at 1006 Ridge Street. The project is compliant with the GMP and LDC, and therefore staff recommends approval.

Advertisements and mailers went out on or around June 4th, and the signage was

posted on the property May 31st.

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

So I have that information in front of me, I have reviewed it.

And we'll go to the applicant now.

MS. CASTRO: Okay.

HEARING EXAMINER DICKMAN: Thank you, Gabriela.

MS. CASTRO: Okay.

HEARING EXAMINER DICKMAN: How are you, sir?

MR. LOMBARO: Doing well.

For the record, Zach Lombardo here on behalf of the applicant.

We have the applicant present, Ms. Gill, the trustee of the Martha C. Gill Revocable Trust and the property owner, and the builder, Mr. Wall.

Next slide, please.

THE COURT REPORTER: And the builder's name is?

MR. WALL: Shane Wall.

MR. LOMBARO: Shane Wall.

So, as described, this is a -- a -- two combined lots on 1006 Ridge Street. It's .31 acres and zoned RSF-4 APO.

And what we would like to do is -- and you can see in the aerial, on the left side there's a smaller structure. And that is being applied for --

HEARING EXAMINER DICKMAN: This one?

MR. LOMBARDO: Yes, sir --

HEARING EXAMINER DICKMAN: All right.

MR. LOMBARO: -- to be replaced and expanded slightly.

If we could go to the next slide. I think we already made appearances, so we'll keep going.

Next slide.

This is the current existing structure. It was constructed in 1971. The lots were combined before 1971. There was a deed submitted of 1962. The structure to the right is 1951.

All structures currently on the site meet all of the setback requirements.

And the -- and we have here -- go to the next slide, please.

The -- and, I guess, just to address the legal issue here, the -- at the time it was built in 1971, the Collier County zoning code allowed for multiple structures, provided setback requirements were met. So it was a legal nonconformity.

If we go to the next slide.

This is the section we're traveling under, which allows for nonconforming residential structures to be, not just replaced, but replaced and expanded, which is the fourth line from the bottom, provided it goes through the hearing process.

Go to the next slide.

Just briefly I want to have the builder explain the -- the desire to replace the structure.

MR. WALL: Well, the current structure is starting to deteriorate. We're trying to create a safer environment for the homeowner in the neighborhood, build something that's up to the current code, and, you know, hopefully just improve the overall neighborhood.

HEARING EXAMINER DICKMAN: Okay. Are there two -- so there are two structures, two living units?

MR. LOMBARO: Yes, two dwelling units.

HEARING EXAMINER DICKMAN: On site.

MR. LOMBARO: On site presently and proposed. This -- and so this will show you that. The left side is present. The right side is proposed. Two dwelling units on the left side, two dwelling units on the right side.

And then setback-wise, we are maintaining the setbacks and including the 10-foot separation between structures on the -- on -- in between structures.

If we can go to the next slide.

Going through the evaluation criteria, staff found that the evaluations were met. We're not changing density, because this density already exists.

And there's no height issues, because we are not going above the 35-foot height.

Next slide, please.

Here's a table from the staff report on the setbacks showing that they are met.

On the parking areas, I did want to address -- the staff report indicates that it wasn't addressed. But the standard is it was not decreasing the parking areas and that we are not going into where any parking is now with the structures, so there should be no decrease, I think, specifically --

THE COURT REPORTER: I'm sorry. "There should be"?

MR. LOMBARO: No decrease was found in the -- in the opinion, because there's no decrease being proposed.

Next slide.

HEARING EXAMINER DICKMAN: Say that again.

MR. LOMBARO: Sorry. So what I'm saying is --

HEARING EXAMINER DICKMAN: Slow down.

MR. LOMBARO: -- if the -- because the structure is not going into the parking area, as opposed to saying that parking was not addressed, I think it should be that parking is not being negatively impacted by this replacement.

HEARING EXAMINER DICKMAN: Okay.

MR. LOMBARO: That's what we are arguing.

HEARING EXAMINER DICKMAN: Okay. Well, I guess -- so the point being is that you -- the existing driveways are going to stay existing driveways, right?

MR. LOMBARO: That's correct.

HEARING EXAMINER DICKMAN: And are they sufficient -- in your opinion, sufficient for the two structures?

MR. LOMBARO: In my opinion, yes.

HEARING EXAMINER DICKMAN: Okay.

MR. LOMBARO: And I think if we go back to the drawings a couple slides back, these -- these driveways are actually what I would call overly sufficient, because they're larger than what you would normally have.

HEARING EXAMINER DICKMAN: This is the right-of-way, so you've got -- all this is the brick pavers?

MR. LOMBARO: Yep.

HEARING EXAMINER DICKMAN: And then so you've got one little lane that comes in here and --

MR. LOMBARO: Oh, no. That -- that's a walkway.

HEARING EXAMINER DICKMAN: That's a walkway, okay.

So the parking -- there's circular parking here.

Okay. So all the parking is out here?

MR. LOMBARO: Yes, sir.

HEARING EXAMINER DICKMAN: Okay.

All right.

MR. LOMBARO: So we'd go back to slide 11, I guess, next slide.

Because this is bringing the structure up to modern building codes, we believe F will be met.

And regarding the neighborhood, I have included a collection of structures from that street and the street over. There's six of them that we found air conditioned dwelling units,

multiple structures, to show that this is something that is present in the neighborhood. And that makes sense, because the prior zoning of this has always been multifamily. And since the code previously allowed you to build multiple structures, that's what was done in this neighborhood.

If you could go to the next slide.

There was no -- there's no density changes. There doesn't seem to be any comprehensive plan issues here.

And then if you go to the next slide.

These are the structures that we are submitting as comparable.

1317 Ridge Street has two dwelling units. That's -- the blue line on the property appraiser's is the air conditioned space.

Next slide.

1221 also has two structures, and here we have two two-story structures.

Next slide, please.

1236 has two structures. These are all on Rose -- so Ridge Street and Rosemary are right next to each other.

Next slide.

This structure -- this property actually has three structures on Rosemary.

Next slide.

And we have two structures here, on 1208 Rosemary.

Next slide.

And two structures at 928 Rosemary.

Next slide.

And this is a graphical representation of the "no objection" letters received. The yellow and red circled property is the applicant's property.

So we believe we have met all the requirements. We don't think that there's any inconsistencies with the neighborhood.

And if there are specific questions, we will be more than happy to address them.

HEARING EXAMINER DICKMAN: Okay. A couple questions.

You know, I get that this is an older neighborhood. I understand that it was very common in most jurisdictions, really in a lot of areas, to have what are called mother-in-law suites or different types of housing in order to accommodate -- I mean, that's a -- just to have a mixed use of housing stock in a neighborhood. So I recognize that.

I also recognize that under Chapter 9 of the administrative code for the land -- I have jurisdiction to hear this type of -- this type of request.

My question is, is this a -- what -- what is the purpose of this? Is this going to be your client's home and then a rental, or are you renting --

MS. GILL: No.

HEARING EXAMINER DICKMAN: -- out both units?

I'll tell you why in a minute.

MS. GILL: Okay. This is going to be a garage with a one-bedroom apartment above that. I am living in the one-bedroom apartment, and my husband's living in the other house.

HEARING EXAMINER DICKMAN: Okay. All right. No problem. No problem.

The only reason I ask is that one of the things that I'm -- I'm starting to do when I'm dealing with residential homes that have situations like that, I want to make people aware of the County's vacation rental ordinance, you know. So I usually make people aware of that, that you have to register if you're going to use something for a vacation -- I don't know if it's allowed -- I guess it's allowed countywide here, but you have to register and make sure that you have a number associated with it. So that's the only reason why I was asking. Whatever you -- you know, however you want to set it up is fine.

MR. LOMBARO: Thank you very much. And I think that the plan is sort of an age-in-place situation to try to --

HEARING EXAMINER DICKMAN: Absolutely.

MR. LOMBARO: -- provide caregiving --

HEARING EXAMINER DICKMAN: Right.

MR. LOMBARO: -- space. But understood, and thank you.

HEARING EXAMINER DICKMAN: Yeah, no. It's a -- quite frankly, it's a good -- a good way to also allow for some attainable housing for people that might just be getting out of college and want -- want to become a school teacher or a firefighter and can't afford -- these are the types of housing strategies that I think are important to look at, especially in places like Collier County, where housing is -- is tricky, so --

All right. Let's go -- why don't you hang loose and then we'll open it up for public comment. Thank you for that presentation.

Let's see if there are any public comments on this. I do have all the -- I have your collection of "no objection" letters, but I want to open it up for public comment, if I could.

Andrew, do we have anybody here?

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

HEARING EXAMINER DICKMAN: Nobody. Okay, great. Well, you did your field work. Nice job. So -- let me see.

Gabriela, let me ask you a question, if I could, about this, or anybody here on the County side.

With regard to the parking, you know, this is -- this is really going to be basically two -- it's -- it's one lot that can't be divided, right, into two single-family lots? It's just going to have two dwelling units. So with regard to the parking, are you satisfied that the parking in the front is sufficient? I mean, it's really, you know --

MS. CASTRO: Yeah, they are -- so at the time a building -- so when a single-family home comes in, a single-family requirement is two parking dwelling -- or two parking spaces, which is 9-by-18. So when they come in for their building permit --

HEARING EXAMINER DICKMAN: It will be evaluated.

MS. CASTRO: -- it will be evaluated at that time. If found to be insufficient in parking, they will have to provide parking spaces --

HEARING EXAMINER DICKMAN: Okay.

MS. CASTRO: -- if it's deemed to be --

HEARING EXAMINER DICKMAN: Okay. So let me just make that clear.

So I'm not making any decisions on granting any variances on your parking or anything. You may have to reconfigure your -- your pavers or something depending on -- because of the new calculations, you are being able to -- you're bringing up to code. I acknowledge that you're not asking for any yard setbacks, variances, or anything like that. This is strictly a determination hearing, and then everything else will have to be to code. And so once you get to the administrative level, then you may have to make some adjustments to your parking, and things of that nature, to accommodate the two -- the two independent dwelling units. Is that clear?

MR. LOMBARO: That is clear.

And I just wanted to make it -- the reason I brought it up is I wanted to clarify that I didn't think it militated against approval of this determination, but certainly this is not an approval for reduced parking, because it's possible that it's determined, since it's two dwelling units, that it's really four parking spaces required, which that will be a determination that happens down the road, and I think there's sufficient room to address it when that time comes.

HEARING EXAMINER DICKMAN: Yeah, right, it -- I understand why you brought it up, because it is one of the criteria. So I think you were just explaining that.

Okay. So, having -- do -- does the County have anything else you want to add before I close this?

MS. CASTRO: I'm good.

HEARING EXAMINER DICKMAN: Okay.

It's pretty straightforward. I appreciate the presentation. Thank you for doing your due diligence on the "no objection" letters. I think that helps quite a bit, especially -- it shows me that the neighborhood is aware of what's going on. And if they wanted to be here, they would be here. We have made accommodations, both electronically and in person, for them to be here. So I appreciate you doing your -- your work on -- your homework on that.

So given -- I'll have -- I'm going to go ahead and close this public hearing.

MR. LOMBARO: Thank you.

HEARING EXAMINER DICKMAN: And then I have up to 30 days to render a decision. And I will do it as quickly as I can.

Thank you for being here.

MR. WALL: Thank you.

HEARING EXAMINER DICKMAN: Happy Thursday. Enjoy the rest of your summer.

All right. We're going to go to 3-B at this time.

MR. KELLY: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. KELLY: John Kelly, senior planner, for the record.

Before you this morning is item 3-B. This is going to be boat dock petition PL20210002628. It's a request for you to approve a 42-foot boat dock extension from the maximum permitted protrusion of 20 feet allowed by Section 5.03.06.E.1 of the Collier County Land Development Code for waterways greater than 100 feet in width, to allow a boat docking facility that will protrude a total of 62 feet into a waterway that is plus or minus 184 feet wide, for the benefit of property located at 96 Southport Cove, further described as Lot 2, Southport on the Bay, Unit 1, in Section 6, Township 48 South, Range 25 East, Collier County, Florida.

The residence is located within the Lely Barefoot Beach Planned Unit Development, Tract H, which is a residential component of the PUD.

Public notice requirements were as per LDC Section 10.03.06 I. Property owner notification letter and the newspaper ad were run by the County on June 3, 2022. And the public hearing sign was posted by me on June 3, 2022.

The review of this project was under the criteria of Section 5.03.06 H. Of the primary criteria, it satisfied 4 of 5; of the secondary criteria 4 of 6, with the sixth being not applicable, the Manatee Protection Plan; and it has been found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comment, I've received letters of objection from property owners on both sides of the subject property, 94 and 98 Southport Cove.

A more informational letter was received from 92 Southport Cove. And copies of the letter, as well as the location map, are contained in attachment F.

It's our recommendation that you approve this petition as described and depicted within attachment A and B, with the following condition: And that is that the restoration plantings described within the restoration plan, attachment C, must be installed and inspected by Collier County staff prior to issuance of a certificate of completion for the boat dock.

Going back to public comment, I did receive this morning a -- another letter that actually backs up one previously provided that was distributed to you, and that homeowner is with us today. They may desire to speak.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: And that concludes my presentation.

HEARING EXAMINER DICKMAN: Thank you. Thank you, John.

Who is here for the applicant?

How are you, sir? Come on up.

MR. NELSON: Hello. My name is Bill Nelson, and I'm representing the owner in this matter.

HEARING EXAMINER DICKMAN: Mr. Nelson.

MR. NELSON: Hello.

I really didn't plan on presenting the whole case, but I'm ready to definitely address any neighbor issues and help alleviate those.

HEARING EXAMINER DICKMAN: Okay. So I get that. This is your petition -- or your client's petition, and the burden is on you to demonstrate why you want to go beyond what the code allows. Clearly, you are aware that there's some opposition in the neighborhood. So it's not for me to put on your presentation for you. So if I were you, I would -- I mean, I recognize you as -- you have been here many times. You're an expert in marine construction. So why don't you go ahead and put on a presentation for the record and let's see how this goes.

MR. NELSON: Sure. No problem.

HEARING EXAMINER DICKMAN: I'll stop you if I have any questions.

MR. NELSON: Okay. As John stated, we are applying to go beyond the allowable 20-foot protrusion that the Collier County code allows. We are seeking to go out to 62 feet, which is 42 feet beyond the 20-foot protrusion.

We are asking basically for the normal setbacks, 15 feet on either side.

And this is to house a 25-foot boat and a 42-foot boat.

And part of the reason why it's taking up the full setback is that that is the length of the boat.

The reason we are asking to go out this far is due to the natural shoreline in the neighborhood.

There's also a conservation easement maintained by the conservancy. And because of the natural shoreline and the mangroves, you basically have to get the dock out beyond all that, into deeper water.

Beyond that, as far as the criteria goes -- let me see here.

We have an answer somewhere.

HEARING EXAMINER DICKMAN: If you have the staff report, it's on page 6 of the staff report, the primary and secondary. It's up to you.

MR. NELSON: All right. So as far as the primary criteria, criteria one, whether or not the dock facility and boat slips are appropriate in relation to the waterfront length location, upland use of the subject zoning property. This criteria has been met.

The subject property is improved with a single-family residence within the residential component of a PUD.

The petitioner desires to construct a dock facility with two boat slips, each with a boatlift. One for a 25-foot -- a 25.1-foot vessel, and the other for a 41.9-foot vessel.

HEARING EXAMINER DICKMAN: Let me ask you about this. So I'm going to help you, because I can read the staff report.

But in terms of appropriateness -- so that's the keyword to this one. You know, each single-family house is allowed for two slips, right? As of code. So I see you're asking for two slips. When I say "you," your applicant -- your client is asking --

MR. NELSON: Yes.

HEARING EXAMINER DICKMAN: So the question, I think, that jumps out at everybody is, is the larger vessel appropriate? Because that's what's really driving the dock, right? So if it was a smaller vessel, it would be a smaller dock or a lesser dock.

I totally understand the mangrove and the conservation easement and -- and preserving that. We have dealt with a lot of -- in fact, I think you have as well. In -- in this development, you know, there's lots of mangrove shoreline, so there's a need to deal with that and preserve that. And so the appropriateness, I think, is what I would like addressed here.

You know, you have a large 20 -- you have a 25-foot vessel and a 42-foot vessel with four -- with, what, quadruple 300s? Or what is this? Do you know?

MR. NELSON: It's the -- the depiction shows four engines. The actual boat -- do we have confirmation on that? A lot of times these owners don't have a boat yet.

They are planning on getting something about this size.

HEARING EXAMINER DICKMAN: Is your -- is the applicant here?

MR. NELSON: No.

HEARING EXAMINER DICKMAN: Okay, okay.

MR. NELSON: But basically this is an appropriate boat for the area. It is a little on the larger side compared to most others, but it's definitely able to navigate these waters and make it out of the passes safely.

HEARING EXAMINER DICKMAN: Okay. So let me -- I'm just going to kind of walk you through that.

Okay. So I get -- that's your professional testimony.

So going to number 2, the water depth, do you -- can you tell me a little bit about the water depth in this cove? This is kind -- what I'm looking at -- and tell me, what's across the cove here? Is that a multifamily situation with -- I see multiple lifts over there, so --

MR. NELSON: What's across the cove is the Barefoot community.

The Barefoot community --

HEARING EXAMINER DICKMAN: Over here.

MR. NELSON: -- docks, basically those are leased out to other residents of the community that live on the beachside --

HEARING EXAMINER DICKMAN: Gotcha.

MR. NELSON: -- that still want to have boat access.

HEARING EXAMINER DICKMAN: Okay. So in -- in here -- let's -- let's deal with primary criteria 2, which deals with water depth at the proposed site.

So I don't think water depth is the issue here. It's really the mangroves that's pushing you out? Is that correct? Is that a fair statement?

MR. NELSON: That's due to the -- the conditions of the conservation easement. We can't affect the mangroves. Only a 4-foot-wide walkway can be built through them.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: So to avoid any impact on those, we have pushed the dock out beyond the mangrove canopy.

HEARING EXAMINER DICKMAN: Okay. So let's go to number 3, which has to do with navigability, okay?

So navigability is something that refers to adverse impacts on navigation with adjacent marked or charted navigable channels.

So, clearly, this is kind of a -- I -- I see the measurements here are from shoreline to shoreline, which is a little bit -- I'm not sure if maybe the County can jump in here, or you can, to --

MR. NELSON: Sure.

HEARING EXAMINER DICKMAN: Like, the measure -- is that the proper measurement? Because it kind of seems a little --

MR. NELSON: We provided two measurements --

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: -- to view.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: One of them is the actual waterway width, the approximate 184 feet.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: The other measurement we have from the proposed dock to the furthest protruding vessel on the docks across the way is 78 feet between docking facilities.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: On this aerial you have displayed, you can see above in the center, where it says 40 feet --

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: -- that would about be the -- the longest vessel you could get in these docking facilities across the way.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: So there's almost double the length of that available to navigate from where we're proposing the dock.

So we don't believe there will be any adverse impact on navigation for the -- the docks across the water, as well as the neighboring docks.

You can see on the dock to the north, it's about -- approximately a 23-foot vessel. I believe we also received a letter from him stating he might get a larger vessel. But we're showing there's at least 36 available feet between the proposed dock and his current dock. So even a 30-foot boat would have room to -- to get in and out.

Also, the neighbor to the south is -- has a straight-in approach right now. So, again, this would not adversely impact their ability to use their current dock setup.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: Also, with the -- as far as the impact on navigation, this is not a marked channel.

And also there is only one single-family home and a couple community dock slips beyond this in this channel. So there's a very small impact as compared to like a main channel or entryway into a neighborhood.

HEARING EXAMINER DICKMAN: Okay. Yeah, so -- so then we go to the -- sort of the ratios on criteria 4, which says whether the proposed facility protrudes no more than 25 percent of the width of the waterway and whether the minimum 50 percent of the waterway width -- this is also in -- and by inference has to do with navigability, because they want to make sure that there's not a -- in here, this is the one that you don't meet, because what you do is you stack the two vessels together and you calculate that number. And the County has calculated that at 62 feet of total vessels, which --

MR. NELSON: Yeah, the total protrusion to the furthest corner of the dock from the mean high water line/property line, which is one and the same in this neighborhood, is -- and -- and basically, even if it was a smaller or shorter vessel --

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: -- we still would have had to go out that far to clear the mangroves.

HEARING EXAMINER DICKMAN: Right. But if -- if it were a smaller vessel, are you saying that you -- if it -- let's say that this was a 35-foot vessel or a 30-foot vessel. I mean, they have already got one there. I mean, is there a -- would it -- would it fit differently into that? I mean --

MR. NELSON: No. The dock is a -- is arranged basically shore-parallel with the mangrove canopy.

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: If the length of the vessel was shortened, the dock could be slightly shortened, but you're talking about a minimal difference from the protrusion.

HEARING EXAMINER DICKMAN: Are both on lifts, both vessels?

MR. NELSON: Yes. Both slips contain a proposed boatlift.

HEARING EXAMINER DICKMAN: Okay. And, okay, going back to number 5, the design and location will not interfere with the use of the neighboring docks. I think you've addressed that. You addressed the docks on both sides. And then you addressed the ones on the other side.

Do you have anything else you want to say to that point?

MR. NELSON: No. We -- we even received a letter from the neighbor stating he was an experienced boater, so I believe there will be no issue with access to any of the existing slips or docks.

HEARING EXAMINER DICKMAN: Okay. All right. I'm going to just skip into secondary criteria 2. Secondary criteria, I know that there are special conditions here with regard to the mangroves, then the shoreline and conservation easement.

I want to go to number 2, which has to do with -- whenever you're asking for a variance, it's not as of right. You know, everybody has the ability to -- to -- to their zoning standards, just -- if they meet them, they have that as a property right. But whenever you want to go beyond that, it's not as of right. That's the reason for a public hearing.

So I'm looking at the -- under primary criteria -- or secondary criteria, the excessive decking.

So I'm noticing that you have decking on both sides of the larger vessel, 5 feet of a gangway on both sides, and then you've got -- I acknowledge that you've got a -- what is that, about a 5- or 6-foot pathway through the mangroves? So it seems like you're being pretty sensitive there. But I'm questioning whether or not you really need to have that much decking around the 40-foot vessel.

MR. NELSON: Well, we believe it is necessary to maintain not only the vessel but the boatlift.

If there is no deck on the outside, the only way to access that other side is basically by another vessel or with like a walk plank, which -- which makes it basically a risk, a danger. So to be able to maintenance the lift itself, the boat, we do believe that you need access to the far side.

HEARING EXAMINER DICKMAN: You need 5 feet or 3 feet? Or what's the standard?

MR. NELSON: There is no standard. I can tell you that anything 3 feet or less is -- is basically like a catwalk, especially over -- like a low tide, when the water is low, you almost get a sense of vertigo --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. NELSON: -- when it's very skinny. So --

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: -- we do believe that that is appropriate, and --

HEARING EXAMINER DICKMAN: Okay. All right. So are -- are these going to be covered in any way? Are you going to have canopy covers on these at all?

MR. NELSON: We are not proposing that. They may in the future, but we don't get involved with that.

HEARING EXAMINER DICKMAN: Okay. So in criteria 4, whether the proposed facility would have a major impact on the waterfront view of neighboring property owners. So, obviously, boats down in the water, you know, I get it, you have got mangroves that are -- I don't know how high these mangroves -- how high have you observed these mangroves to be?

MR. NELSON: Some of them are well over 12 feet.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: But, yes, the docking facility is within the side yard setbacks.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: So we are not crossing over any property line views. As has been determined before, that the view is between your property lines.

HEARING EXAMINER DICKMAN: So -- okay. Well, first of all, I'm taking every case as it comes, so -- so I'm wondering, a 40-foot vessel up on a lift, with a -- and I don't know how big the cab is, or a canopy on top of that. I mean, how high is that going to go up? Like, once the -- once it's up, all the way up on a lift, how high is the top of the boat going to be?

MR. NELSON: Usually from the bottom of a boat to the top, you're talking 12 feet,

approximately 10 to 12 feet.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: You know, part of that would still be below the dock. So above the dock decking, maybe 8 feet.

HEARING EXAMINER DICKMAN: Okay. All right. So this would be views from the neighboring property owners. So if the neighboring property owners -- and I'll -- I'll ask some other questions about this, too. So if they all have these easements with -- with the mangroves, I think the views are going to be fairly filled with mangroves anyway from the property, not -- and it doesn't say from the dock, from their adjacent dock. It says from their property.

I acknowledge that there's been submitted there are no seagrass bed issues here.

MR. NELSON: No. We do have an environmental assessment, and there was no --

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: -- natural resources that --

HEARING EXAMINER DICKMAN: Okay. And the Manatee Protection Plan is not applicable in this situation, correct?

MR. NELSON: That is correct.

HEARING EXAMINER DICKMAN: Okay. All right. Let me -- why don't you hang tight and let me open this up for public hearing. I think we've got some here, so --

MR. YOUNGBLOOD: I have one registered public speaker, Mr. Robert Felsberg.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: Robert, if you want to come to the center podium here, you'll have five minutes, sir.

MR. FELSBURG: Five minutes? All right.

HEARING EXAMINER DICKMAN: Good morning, sir.

MR. FELSBURG: Good morning.

HEARING EXAMINER DICKMAN: And your name and address, please?

MR. FELSBURG: 94 Southport Cove.

And my sister and I are co-owners of the house.

My sister is a marine biologist with a master's degree from Massachusetts University.

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

I have a memo that's been provided to me. It's dated June 23rd. And it's from Robert Felsberg, that's you, and Nancy Felsberg Baker?

MR. FELSBURG: That would be Nancy Baker, my sister.

HEARING EXAMINER DICKMAN: This is yours, okay.

MR. FELSBURG: Yes, sir.

HEARING EXAMINER DICKMAN: Did you get a copy of this?

MR. NELSON: Yes, I received -- I received that this morning.

HEARING EXAMINER DICKMAN: Okay. I wanted to make sure you have that. Okay. Go ahead, sir.

MR. FELSBURG: Anyway, I would like an opportunity to read this for the record.

HEARING EXAMINER DICKMAN: Absolutely.

MR. FELSBURG: Okay. We reviewed the staff report dated June 23, 2022, and that favorably recommends the approval of a personal dock that would extend three times further into the water body of Little Hickory Bay --

HEARING EXAMINER DICKMAN: I hate to interrupt you.

Can you just help me out with -- location-wise, where are you?

MR. FELSBURG: That dock, that would be --

HEARING EXAMINER DICKMAN: This one?

MR. FELSBURG: That one right there. And that --

HEARING EXAMINER DICKMAN: This is you?

MR. FELSBURG: That would preclude us from building a bigger dock if that goes in, too. If we wanted to have a dock extension, that would kill that idea.

HEARING EXAMINER DICKMAN: Okay. I just want to make sure --

MR. FELSBURG: Yes, yes.

HEARING EXAMINER DICKMAN: -- geographically where you are.

MR. FELSBURG: That is our property.

The mangroves that are 12 feet or bigger are between the applicant's property and our property. I think --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And Terry McNutt, I don't think he has the mangroves that obstruct his vision from his house.

HEARING EXAMINER DICKMAN: Okay. Great.

Go ahead, sir.

MR. FELSBURG: All right. So it would extend three times further into the water body of Little Hickory Bay than is permissible. As detailed below, it does not appear that the staff has taken into account relative -- relevant factors affecting the criterion, which we ask the hearing examiner to consider, take into account.

The lack of documentation to support statements in the staff report calls into question whether any violation of the criteria would result in a recommendation not to approve the dock plan.

Even though the staff report determined that two criterion were not met by the dock design, and despite the fact that these criteria are relative to the safe use and preservation of waterway for all users, the report still recommends the project favorably.

So what is the County's responsibility to represent broader interests rather than a private party?

In this case, it would appear that an approval, the County would be ceding the rights of others for the benefit of -- of a private applicant, and it's -- is --

So with respect to the criterion which correspond to dock facility regulations pursuant to 5.03.06, we request you consider the following additional comments:

Although we are representing ourselves at today's hearing, we believe we speak for others whose interests also align with ours.

After reviewing the staff report, evaluation of the criteria, we find it arbitrary and confusing. Arbitrary because the report dismisses a primary criterion that has not been met without providing documentation to support their determination, and confusing because the most important primary criterion is the one that is violated. The dock protrudes further into the waterway by more than the length of three permissible docks.

However, this does not rise to a level of concern to even warrant further consideration in the report. It is dismissed as unimportant with a single sentence.

At a minimum, the public deserves a full accounting of why such a great deviation of the dock-size requirements would be allowable.

However, as will be explained, we believe this dock extension will have significant impacts and should not be approved as designed.

The following is our analysis of the criterion applicable to the boat dock permit, extension permits.

Staff report: Typical family use should be no more than two slips.

Response: The plan is for two slips. We note that criterion is applicable to all residences in this neighborhood.

Criterion 2. Staff report: The applicant argues that a vessel could be -- could not be moored or launched at the subject location, as the water depth at mean low tide within the 20-foot protrusion limit is only 1.2 feet.

Response: Based on the information available, it has not been demonstrated that this

criterion has been met.

Sheet 3 of 3 shows the water depth at the mangrove line to be 3.2 feet at the approximate location of the proposed dock.

The cross-section plan dated twenty -- 2-11-2022, shows the mangrove line approximately at 1.8 -- 18 feet from the top of the bank in the location of the proposed dock. This plan contradicts sheet 3 of 3, showing a mean low waterline at less than 1 foot in depth.

If sheet 3 is correct, the applicant would not have demonstrated that this dock extension is needed.

Criterion 3. Staff report: Criterion met. The dock does not intrude into any marked or charted navigable channel.

Response: There is no documentation within the package of information, including plans, that show the relationship of the dock to a marked or charted navigable channel. The determination that the criterion is met is unsupported by documentation.

Criterion 4. Staff: Criterion not met. The width between the dock facilities on the either shore is 78 feet. Therefore, only 42.39 percent of the total waterway width is maintained for navigation.

MR. YOUNGBLOOD: The speaker is at five minutes.

MR. FELSBURG: How much time do we got?

MR. YOUNGBLOOD: Five minutes.

MR. FELSBURG: Another five minutes? Okay. Thank you.

HEARING EXAMINER DICKMAN: Okay. Let me -- let me just point out to you, I have your memo.

MR. FELSBURG: Yes.

HEARING EXAMINER DICKMAN: And I have read it. And I'll keep reading it as I contemplate this over the next 30 days. So, do you want to highlight, like just --

MR. FELSBURG: I would like to --

HEARING EXAMINER DICKMAN: Because I do have some questions for you, and I don't want to --

MR. FELSBURG: Sure. Well --

HEARING EXAMINER DICKMAN: So --

MR. FELSBURG: -- what we're also worried about --

HEARING EXAMINER DICKMAN: In your own words. Because I can read this --

MR. FELSBURG: Okay.

HEARING EXAMINER DICKMAN: -- I mean. So go ahead and in your own words, if you want to hit some of these, like --

MR. FELSBURG: Yeah.

We're willing to work with our neighbor, and he deserves a dock. But this here, A, will be conflicting with our potential property extension of our dock.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: Number 2, this -- there is a manatee area up at the end of the cove, where the manatees bathe in the sunlight underneath the docks at the very end there.

HEARING EXAMINER DICKMAN: It's a manatee protection area?

MR. FELSBURG: Yeah. There's a sign across the other side.

HEARING EXAMINER DICKMAN: Okay. So we'll --

MR. FELSBURG: It says "Caution, Manatee Protection Area."

HEARING EXAMINER DICKMAN: Okay. So -- and what else?

MR. FELSBURG: So then --

HEARING EXAMINER DICKMAN: So, tell me, are you living there full-time?

MR. FELSBURG: Yes, sir.

HEARING EXAMINER DICKMAN: Tell me about the navigability in there. Just give me in your own words, because I'm -- I'm -- I want to understand, because I have to look at

safety, I have to look at navigability, I have to look at the rights of the adjoining property owners --

MR. FELSBURG: Yes.

HEARING EXAMINER DICKMAN: -- in terms of their views. So just, you know, take your time, relax.

MR. FELSBURG: All right.

HEARING EXAMINER DICKMAN: This is all just a conversation. I want to hear from you.

MR. FELSBURG: Currently navigability is -- it works. There's not a big problem. Now, there's -- there's going to be a boat extension, or a redo of those docks across the way.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: That's planned in the next year.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: So I don't even know what that means.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: My family has owned this property since 1988.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And my sister and I have closed the estate, decided to be co-owners of the property --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: -- because it's such a nice area.

HEARING EXAMINER DICKMAN: And what -- and so do you have -- what is your vessel there? Is that --

MR. FELSBURG: That's just a --

HEARING EXAMINER DICKMAN: -- it looks like a small -- okay.

MR. FELSBURG: It's a puffer.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: Yeah, it's just a little --

HEARING EXAMINER DICKMAN: Okay. So you really don't have a big dock there. You're just -- kind of have your little --

MR. FELSBURG: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: It's a standard size dock.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And it's not enclosed on both sides.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: There's only one side, and you can maintain the --

HEARING EXAMINER DICKMAN: Do you see a lot of boat traffic in this cove here?

MR. FELSBURG: Not really.

HEARING EXAMINER DICKMAN: Not a lot of boat traffic?

MR. FELSBURG: Part of it is due to the degradation of the docks now. They're -- they're in -- they're in a state of disrepair, a lot of them.

HEARING EXAMINER DICKMAN: The docks across the cove, right?

MR. FELSBURG: And there's 24 slips over there.

HEARING EXAMINER DICKMAN: 24 slips.

MR. FELSBURG: And my information that I got is you can actually buy those. I think there's ownership.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: One of my neighbors wanted one for 200 grand.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. FELSBURG: But my -- my main concern evolving is we're going to get a lot of scoping or scoring on our dock. This is going to be four 350-horsepower engines. And when they fire that up, that wake is going to go across our property and then back.

HEARING EXAMINER DICKMAN: Right.

MR. FELSBURG: And scoring is what happens when all the silt and the sediment is lifted up.

HEARING EXAMINER DICKMAN: All right.

MR. FELSBURG: So that will not cause the dock to fall apart, it's the next hurricane that will.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And it will -- it will sustain that damage and everybody will say, "Well, the hurricane did it."

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: So this is going to blow a hole down underneath those four engines 10 feet deep.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. FELSBURG: I -- I -- we are willing to work with something probably perpendicular to the property line. The guy deserves a boat like anybody else does.

HEARING EXAMINER DICKMAN: Yeah.

MR. FELSBURG: But, to me, this is --

HEARING EXAMINER DICKMAN: And you have mangroves -- how far -- how deep are your mangroves from the -- your property line going -- how far out would you have to -- if you wanted to build a dock, like -- let's just say a dock where you would, you know, want your neighbor to build, but something that's perpendicular, would you have to go out beyond and come here and request a -- a --

MR. FELSBURG: I don't think so. I think we would just extend the dock that's in place now --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: -- because the mangroves are intact.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: But we're -- we're suffering some erosion.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And we're working on how to reverse that.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And there's recommendations from the State how we can do that, but we are getting --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: -- a lot of erosion, shoreline erosion.

HEARING EXAMINER DICKMAN: Okay. All right. Is there anything else you want to put on the record and give to me? And I do have this, so it's --

MR. FELSBURG: Okay.

HEARING EXAMINER DICKMAN: -- officially in the record, and I promise you I have read it, and I will read it again as I go forward and evaluate all this. So if there's something else you want to tell me, you know, go ahead and finish up.

MR. FELSBURG: I would say basically what I have stated. We are willing to renegotiate this. This -- this interferes with the 25-foot riparian rights according to the State.

HEARING EXAMINER DICKMAN: So if they came to you and showed you a different configuration, would that --

MR. FELSBURG: We would work with them.

HEARING EXAMINER DICKMAN: -- you would -- would you give them a "no

objection" letter or something like that?

MR. FELSBURG: If they pulled straight in.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: That --

HEARING EXAMINER DICKMAN: Have you had a conversation with your neighbor about the dock at all?

MR. FELSBURG: Not at all. I got one piece of paper back in February with a little postie note that said, "Call me." It was on an unapproved dock plan. So it didn't --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: -- even have any --

HEARING EXAMINER DICKMAN: So there was no -- there was no communications?

MR. FELSBURG: None.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: Zero.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And he's -- he has communicated with Terry next door.

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: And several times I have seen him in the yard with his wife.

And --

HEARING EXAMINER DICKMAN: Okay.

MR. FELSBURG: -- they could have just knocked on my door.

HEARING EXAMINER DICKMAN: Okay. Fair enough. I understand.

All right. Anything else?

MR. FELSBURG: No. I appreciate your time.

HEARING EXAMINER DICKMAN: No, I appreciate you coming down here all the way, so appreciate you being here.

MR. FELSBURG: Yes.

HEARING EXAMINER DICKMAN: And thanks for your information. It's helpful.

MR. FELSBURG: Yes.

And so this will be solved in the next 30 days, you think, or no?

HEARING EXAMINER DICKMAN: I have to -- I am required to render a decision within 30 days.

MR. FELSBURG: Okay. Well, if you need more information, I can't give it.

HEARING EXAMINER DICKMAN: No. After this, it's over with and it's all on me.

MR. FELSBURG: Okay.

HEARING EXAMINER DICKMAN: I have the pressure, so it's all me. That's why I'm giving you --

MR. FELSBURG: Yeah.

HEARING EXAMINER DICKMAN: -- I wanted to get your --

MR. FELSBURG: No, this -- this --

HEARING EXAMINER DICKMAN: You're an adjoining property owner, so I wanted to give you the opportunity to give me your feedback. It's important for me to get that perspective as well, so --

MR. FELSBURG: Yeah.

HEARING EXAMINER DICKMAN: But I have this. I think you have done a thorough job, you and your sister both, and I will definitely take that into consideration.

And then, if you don't mind, I'm going to give the applicant's representative a little time to respond to anything that has come up, so -- but --

MR. FELSBURG: Sure.

HEARING EXAMINER DICKMAN: -- thank you for being here. I appreciate it.

MR. FELSBERG: Thank you for your time.

HEARING EXAMINER DICKMAN: You're welcome. Thank you.

Any questions?

MR. NELSON: Yeah, if I could address some of his concerns.

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: I would like to -- I think it will make him feel better about the situation and give you more clarity.

If you could turn to the last page of the site plan survey. This is to address his concern with the scouring.

HEARING EXAMINER DICKMAN: Do we have that in here?

MR. NELSON: I didn't put it on there, but --

HEARING EXAMINER DICKMAN: You didn't?

MR. NELSON: -- it's in the normal packet.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: It should be --

HEARING EXAMINER DICKMAN: I have it.

MR. NELSON: -- the last page of the one you have there.

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: Basically it shows the water depths, and it also shows the edge of the mangrove line.

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: And I just wanted to point out that it's 6 and a half feet to 6 feet and 7 feet deep out there where the boat is going to be moored. That measurement is measured from the distance -- from the bottom to the average or mean low waterline. So that is very good depth. I don't believe that the engines are going to be scouring anything, especially mangrove roots that far away from the shore. So I don't think erosion is going to be a concern there with the engines.

Also -- yeah, the -- the last page.

So, yeah, you can see on the bottom corner, next to his property line --

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: -- the depths at the edge of the mangroves are 6 and a half --

HEARING EXAMINER DICKMAN: Right there.

MR. NELSON: -- almost 6. More in the middle, up to 7 feet. So that -- that's -- that's great depth. The engines should never come close enough to the bottom to push up mud. And I don't see that as a concern for eroding mangrove roots, or anything like that.

As far as -- if you could go to the second tab on the PDF.

As far as his ability to build a dock in the future, I have an exhibit showing here that he does have over 95 feet of shoreline between his 15-yard setbacks, and he could build a similar dock facility without affecting either neighbor. So we don't believe that we're hindering his ability in the future to do a dock extension himself.

And then, if you could go to the third tab. As far as us setting a precedent or doing something out of the ordinary, this is an aerial showing the -- from the Naples zoning map, showing all the BDs are boat dock extension variances for this neighborhood. Because of the nature of the shoreline and the conservation easement, basically almost every dock in the neighborhood has a boat dock extension. So this is just to show that it is -- it is definitely common in that neighborhood, almost required. So --

HEARING EXAMINER DICKMAN: Tell me about the manatees. I know in the specific area where the dock is located, it may not be a manatee protection area, but ingress and egress mean there's a lot of winding inlets and things like that.

I mean, are there -- and is there -- it's on the record, so I want you to address it.

MR. NELSON: Yeah, there's definitely manatees in the area.

I am -- I'm an avid boater. I grew up in North Naples. I have boated in this neighborhood all my life. It's all a no-wake zone. Even through the years, the main bay beyond the neighborhood used to be where we would water ski, and -- and now that is shut down to full a wake operation. It's all no wake. So, there definitely is protections in place for manatees in the area.

HEARING EXAMINER DICKMAN: Okay. So -- all right. So one neighbor has -- they've testified that they really haven't had a conversation with your client, a meaningful conversation with your client. Is -- is there -- did -- I have to look and see. Was there a "no objection" letter from the neighbors to the north or west or -- I guess it's north.

MR. NELSON: No.

We also received a letter of objection from the neighbor to the north.

HEARING EXAMINER DICKMAN: Both sides.

MR. NELSON: His biggest concern was access to his existing slip.

And in that letter he mentioned different sized vessels. So the 30-foot vessel is the biggest.

And as we showed in the -- if you could go back to the first tab, there's over 36 feet of space between the proposed dock and his existing dock. So that vessel wouldn't have an issue accessing it.

The current boat there now is only 23 feet, so that one should be even easier.

And he also mentions in the letter he's an avid boater, very experienced. So, again, I don't think he'll have an issue.

HEARING EXAMINER DICKMAN: Okay. And do you have any information about the docks? Are there any pending docks -- dock repairs or replacements for the -- all the docks across the -- like, are they in disrepair? I mean, is there a reason why they are not being used? Because 24 lifts are a lot of lifts. That's all I'm --

MR. NELSON: Yes, I -- we have a lot of experience with those docks. We have repaired many boatlifts and finger piers there. We were actually involved with the bid to redo all of them. And they are rebuilding them in the same blueprint basically, so nothing is being extended or changed. Unfortunately, we didn't get the bid, I don't believe, or maybe it's still up for grabs, but --

HEARING EXAMINER DICKMAN: Are they privately owned, or are they --

MR. NELSON: I believe they are owned by the community, and they -- they sell them as a long-term lease.

HEARING EXAMINER DICKMAN: Gotcha, okay.

MR. NELSON: I would have to confirm that, but --

HEARING EXAMINER DICKMAN: All right. I'm just thinking about, if all of them are full at one time and everybody goes on Sunday at the same time, put their --

MR. NELSON: So they --

HEARING EXAMINER DICKMAN: -- boats in the water -- and everybody puts their boats in the water and takes off at the same time.

MR. NELSON: Yeah, yeah. So right now they're kind of empty, but I -- because I picture -- usually those aerials are taken in December, January, so --

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: -- you would have most residents down, but --

HEARING EXAMINER DICKMAN: Yeah.

MR. NELSON: -- that -- those community docks are also affiliated with the other ones to that waterway to the north there --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. NELSON: -- so there are quite a few of them.

HEARING EXAMINER DICKMAN: Okay. All right.

Okay. I want to give you a -- I mean, if there was anything else on this memo that you wanted to address -- it came in, you know, today. But if there's something in there you wanted to address, feel free to do it.

Same thing with the County. If there's anything that came up during testimony -- is there anything you want to address at all? Ray, John, anything? Any concerns that you -- new information that may have raised a red flag for you?

MR. KELLY: No, sir. Just that we don't utilize our own professionals to do surveys and such. We are dependent upon information provided by industry professionals.

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: And that -- and that information makes it into the staff report.

HEARING EXAMINER DICKMAN: But you do -- you do -- let me just clarify that, because, I mean, everyone has to understand. This is -- this is county government. It's citizens paying for people to be here, professionals where -- the County is not in the business of going out and surveying and doing all this stuff, but they rely on licensed contractors and people with licenses, that if they put their stamp and name and date on a survey, you fact-check that and make sure that that's stamped and everything when that -- that's --

MR. KELLY: Absolutely.

HEARING EXAMINER DICKMAN: That's all part of, like, getting a complete application, correct?

MR. KELLY: Absolutely.

HEARING EXAMINER DICKMAN: So you -- if somebody is going to submit something that is falsified or something, they're putting their own licenses on the line, just like I would as an attorney if I falsified something. Right?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: So it's not the County's job to put together surveys. It would be an impossible burden on the taxpayers for Collier County to do that.

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay. And -- and your opinion that this is a -- all the information that was necessary to have it in front of me is theirs to make it a complete --

MR. KELLY: Correct. And I believe that it also needs to be conveyed that within this area, the mean high waterline also serves as the property line.

Additionally, the -- I lost my train of thought. Sorry.

HEARING EXAMINER DICKMAN: I was also going to mention that, you know -- and, you know, a lot of people like to bring up precedent, the word "precedent." I -- you know, under the jurisprudence of variances, my -- my obligation is to look at every single one of these on their own merits. Absolutely on their own merits. I don't go looking at other decisions.

I know -- I get it, you know, the BDE graphic that you -- the boat dock extensions that have been put in this, I understand that. And it's a function of the conservation easements. It's a function of the mangroves that are being protected there. So I'm not looking at, like, oh, what decision did I make last week or the week before or did some other HEX make. I'm looking at this strictly on the merits that are being presented to me, what I gathered here today, and that's it, and based on the law.

MR. KELLY: As does staff.

What I wanted to add was that most of the residences here, if not all, are ones -- one- or two-story over parking. You had that question about the views. They -- if not all of them, they are over parking.

HEARING EXAMINER DICKMAN: So they will be up above -- I mean for the flood and stuff. So, in other words, their -- I would imagine their first living space would be

somewhere around 15 feet, something like that, up in the air? I would --

MR. KELLY: It's up in the air.

HEARING EXAMINER DICKMAN: Because you have an underneath garage that's not -- you know, I get that.

So technically, I guess, if you're in your house, on a porch, looking at the water and the mangroves are at 15 feet and you're at 15 feet, you're definitely going to see the water. And I don't know that it's going to be blocked.

MR. KELLY: When I went out there to post the sign, I did take a look. If you're at ground level, you can't see beyond the mangroves.

HEARING EXAMINER DICKMAN: Okay. But if you're up in -- up in your house, you may -- you may see that.

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: You may see the waterway and the boats and --

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: And then, lastly, I believe this would be -- it wouldn't be a waterway that is used by a lot of people. It looks to be a very secluded inlet, except for the docking facility on the opposite shore.

HEARING EXAMINER DICKMAN: Sure.

So it's -- it's definitely a cove, I guess. I don't know the -- if that's -- I look at it as a cove or an inlet, shared, and it comes to an end.

This is the second -- the subject property is the second single-family home in. So there's one more, the neighbor. And then on the other side is the 24, all -- all those slips, a lot of slips there.

So there's really -- in this cove, we're talking about two single-family -- three single-family homes, including the applicant, that really are affected by this.

But it's still -- I still have to take into consideration, you know, the -- the requirements are navigability. So who is going to be navigating this? Well, I guess anybody can really go in there. They're not precluded from going in there. But the property owners and the people that are -- have facilities in there are the ones that are going to use it the most. And we have to ensure that, if we are going to go beyond what the code allows, that it's a safe -- and not requesting more than what is necessary. You know, basically the minimal request necessary in order to get your -- the -- your client's enjoyment of the property. Understanding that it is, you know, a tradeoff, and you're preserving the mangroves, which is a good ecological thing to do. But at the same time, it puts a situation where you have to come in and ask for these boat dock extensions, so --

Yes, sir.

MR. BOSI: Michael Bosi, zoning director.

And Jamie Cook, the director of development services, she pointed out to me that within her team, Marcus Berman is the county surveyor, and he does verify the boundaries, easements, et cetera, were all drafted in terms of the surveys which were relied upon, but we do have a set of eyeballs on it as well. I just wanted to put that on the record.

HEARING EXAMINER DICKMAN: Yeah, and I -- and I do -- yeah, and I appreciate you doing that. But I just wanted to make it clear that a community can't expect the County to have its own -- unless there is an extraordinary situation where they want to have independent verification, but they rely on professionals to submit things and then, you know, you all have your own professionals and staff here at the County that review the whole application and make sure that the information that's being provided is accurate. And I would imagine you have other files that you can fact-check things if you have to, so I'm -- I understand that.

Was there anything else, John?

MR. KELLY: No, that's it. Thank you.

HEARING EXAMINER DICKMAN: Thank you for your personal observations pointed out there.

Anything else?

MR. NELSON: No, that's it. Thank you.

HEARING EXAMINER DICKMAN: Okay. All right. Anybody else to speak today? Was that it? One person?

MR. YOUNGBLOOD: That's all the registered speakers I have for this item.

HEARING EXAMINER DICKMAN: Okay. I will acknowledge -- I mean, you do -- I do have -- I mean, there's some other objections, I guess -- so I guess that's the -- I guess that's the same objection from that.

MR. NELSON: There was one other neighbor, I believe 92 Southport Cove. I spoke to him personally and basically went over his concerns with him.

He was also going to speak to the homeowner, Mr. Chaffee.

And basically it was -- his biggest concern was setting a precedent. And I -- I basically explained to him -- and one thing I forgot to add with the zoning exhibit is every single one of those docks is unique.

And to your point, everything is reviewed on a one-by-one basis. And that's just the nature of that area. But all those docks are unique to the angled property lines, different shorelines, et cetera.

HEARING EXAMINER DICKMAN: Okay. I will take a look at this. Thank you for your presentation.

The public hearing has been closed. So John, did you have something else?

MR. KELLY: I just wanted to say this is your attachment F, which is within your file. It demonstrates the correspondence that was received.

HEARING EXAMINER DICKMAN: Gotcha. Okay, perfect. Thanks a lot. Thank you.

Mr. Felsberg, we have already closed the public hearing, so I have --

MR. FELSBURG: I wanted to ask him a question.

HEARING EXAMINER DICKMAN: All right. In the interest of due process, what -- since you're the -- there's very few homeowners in this, come on up to the podium again.

MR. FELSBURG: Okay.

HEARING EXAMINER DICKMAN: And -- and, you know, this is not a big hearing. So let's go ahead and --

MR. FELSBURG: Before I filed the letter about anything, you obviously went and talked to other neighbors and you never came and saw me. Why is that?

MR. NELSON: I received a call from Mr. Gilchrist. I never received any direct contact from anybody else.

HEARING EXAMINER DICKMAN: Okay. All right. So why don't we do this. Thank you for that.

MR. FELSBURG: Thank you.

HEARING EXAMINER DICKMAN: Appreciate it.

If there's any opportunity for your client to go out and talk to the neighbors, and if -- that would be -- that would be useful. I encourage everybody -- I know the County encourages everyone to go talk to the neighbors. It makes it a lot easier when everyone has been -- you know, they feel like they have been explained what's happening and, you know, they're not caught off guard. So I would encourage your client to please talk to their neighbors about this and see if there's any accommodations that can be made to make them feel comfortable as this goes forward.

And I will -- I have all the information I need. I don't believe that I need anything else. And I will render my decision within 30 days.

MR. NELSON: Thank you very much.

HEARING EXAMINER DICKMAN: Thanks for being here.

All right. Last, but not least, item 3-C.

MR. KELLY: Good morning, once again.

This is PCUD PL2022000887. It's a request for a decision of the hearing examiner that storage sheds for single-family dwelling units are comparable in nature to other listed allowable accessory uses in Tract B of the Esperanza Place Residential Planned Unit Development adopted by ordinance number 2008-28, as amended.

The Esperanza Place Residential PUD encompasses 31.63 plus or minus acres located on the north side of Immokalee Road just west of Dilsa Lane in Section 32, Township 46 South, Range 29 East, Collier County, Florida. Again, it's a Planned Unit Development, and Tract B is a residential component of that PUD comprising plus or minus 13.8 acres.

Public notice requirements. The sole requirement contained in LDC Section 10.03.06.A -- O, as in ocean, is a newspaper ad that was run by the County on June 3, 2022.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.K, and staff finds that storage sheds accessory to single-family dwellings are indeed comparable in nature to other listed accessory uses within Tract B of the Planned Unit Development.

Staff further notes that such storage sheds are not listed as an allowable accessory use within any of the County's residential zoning districts that allow for single-family use. However, they are included within the development standard table for accessory uses that appears in Section 4.02.03 of the LDC.

The Esperanza Planned Unit Development has previously been found to be consistent with the Growth Management Plan, and such storage sheds are not called out as being prohibited within either the Growth Management Plan or the Planned Unit Development.

No public comment has been received in response to this petition.

And it's our recommendation that you determine that, in fact, storage sheds are comparable in nature with other listed accessory uses within Tract B of the Esperanza Residential Planned Unit Development subject to the development standards contained within the Planned Unit Development document and the Land Development Code.

That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Don't go anywhere, John.

Okay. So a couple questions. We are dealing with Tract B. Tract B - I'm reading from Tract B from the PUD - is for -- principal uses: Single-family detached dwelling units, single-family attached dwelling units, and any other use. So, in general, generally speaking, in single-family zoning districts, are storage sheds allowed?

MR. KELLY: Yes. They are a typical accessory use.

HEARING EXAMINER DICKMAN: As a right.

MR. KELLY: As an accessory use --

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: -- yes.

I will note that this -- we wouldn't be involved in this if they didn't in another tract say that sheds are allowed --

HEARING EXAMINER DICKMAN: Well --

MR. KELLY: -- because they are typically allowed. Someone was being overly cautious when they added it to the list of allowable accessory uses in the other -- in the other section of the PUD. But countywide, they are accessory to --

HEARING EXAMINER DICKMAN: Yeah, and I think you're -- you're picking up on my question, line of questioning.

So, in general, it's not seen as an -- it's not unusual for someone with a single-family home to have a shed on their property to store lawnmowers, stuff like that, whatever.

MR. KELLY: It's rather typical.

HEARING EXAMINER DICKMAN: And -- and for some -- I mean, the way that the County does its zoning in large part is by PUD, so that, you know, you're kind of writing the zoning as you go and it's potentially -- I -- I don't know what the research was on this, but potentially someone may have left something out of this and without thinking about it. I'm sure you guys researched this.

But I'm -- I do recognize that you all -- you always seem to be putting in, the County does, any other use that it's -- you know, on the list of accessory uses, which is not an exhaustive use, because that would be, like, you know, almost an impossibility, because you have to, you know, think into the future of what would an accessory use be now back then, so you list this -- that's the whole point of a comparable use. But you say any other use that is comparable in nature with the foregoing list permitted uses, so that gives the ability for usually an administrative decision, or sometimes it has to come to me. I get that.

MR. KELLY: As I stated previously, except for the fact that it's contained in another section --

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: -- of this PUD --

HEARING EXAMINER DICKMAN: Geographic --

MR. KELLY: -- tract, that --

HEARING EXAMINER DICKMAN: Yeah, the geographic --

MR. KELLY: -- that it is allowable, we wouldn't be before you at all.

HEARING EXAMINER DICKMAN: And it says the BZA, which is now me, though. So the code has changed, so that people understand, that I'm -- that the BZA -- this has been redirected via code under my jurisdiction as a hearing examiner to hear these types of things.

So I just wanted to establish that for -- for you, in general speaking, the way I see this is very common in a single-family or single-family zoning district to allow for as an accessory use a -- storage sheds without having to go through a public hearing process.

MR. KELLY: Correct. They are not listed in any -- as a permitted accessory use in any of the standard zoning districts, single-family zoning districts. Rather, we rely on similar language in those zoning districts, any other use --

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: -- that's comparable.

HEARING EXAMINER DICKMAN: Okay. All right. I get it.

All right. Thank you very much.

Do we have the applicant here? Thank you, John. Appreciate it.

How are you, Mr. Arnold?

MR. ARNOLD: Good morning, sir.

For the record, I'm Wayne Arnold. I'm a certified planner with Q. Grady Minor & Associates. And I'm here representing Habitat for Humanity, who owns Tract B.

And with me today is Elizabeth Lazzaro from Habitat. She's the association manager for them. And she works in all of their communities in Collier County, including this one in Immokalee.

So, Andrew, if you could bring up --

MR. YOUNGBLOOD: Yeah, I'm working on that.

MR. ARNOLD: Okay.

So fairly straightforward request. I think John outlined that very well in the staff report.

We rely typically on Chapter 4 of the Land Development Code, which lists the setbacks for principal accessory structures. And then I guess through that, I'm sure you're familiar where it lists out different accessory structures, which include utility buildings and sheds

and things of that nature, and prescribes a setback for those.

So in this particular case, you have a developing community. So Esperanza Place -- and I don't know how familiar you are with that Immokalee area. But off of Immokalee Drive, you have some multifamily dwelling units that have been constructed by the rural neighborhood's developer.

We have a shelter that was the subject of an amendment from about four years ago.

And then Habitat is developing a single-family component, which is known as Tract B.

And to shed just a little bit of light on the issue with regard to naming in Tract C specifically a storage shed, Tract C is located here.

And if you could advance that, I think I've got a little bit of a different exhibit that may show that better.

And I think Tract C on the right inside, you can see. That contained a single-family home at the time of zoning, and it was specific to list the shed because they did, and we have setbacks for Tract A, B, and C together. So that's why it was distinguished. But I think we had anticipated we would be relying on Chapter 4 of the Land Development Code.

In fact, I think Elizabeth indicated to me that two sheds were permitted by the County in this -- under that same section. And then as others decided to go through this process, the County questioned whether or not -- because it wasn't specifically listed, that this might need to go through some other process.

So I think we all agreed that this was probably the least costly for Habitat and the most expeditious way to bring conclusion to whether or not they could have an accessory storage shed.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: So that's kind of in a nutshell where we are. I think that it's been laid out well.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: Clearly, we have met the criteria for this. No letters of objection. I don't think there's any audience here to participate in this.

But I'm happy to try to answer any questions.

HEARING EXAMINER DICKMAN: Mr. Arnold, I know you have drafted quite a few of these PUDs, right?

MR. ARNOLD: I, unfortunately, drafted this one.

HEARING EXAMINER DICKMAN: Yeah. Pro bono, right?

MR. ARNOLD: Nearly, yes.

HEARING EXAMINER DICKMAN: So as far as storage sheds, describe to me what -- what are you talking about, storage sheds?

MR. ARNOLD: So you can go to the local large format hardware store and you can buy one that can be assembled on your property. Ted's Sheds is a common one that we know of that you can purchase one and have it installed.

But in this particular case, and if you're familiar with Habitat, not all of your dwelling units are constructed with garages. And in this case, these homes do not have garages, so having a storage component is very important.

They have a neighborhood association that will eventually be turned over to the -- to the community. And part of those association documents talk about upkeep and maintenance of the properties. And certainly, when you have children and lawnmowers and bicycles, you know, you need a place to store those and you don't want them in your front yard.

HEARING EXAMINER DICKMAN: Okay. And they'll need -- I mean, obviously, once they're allowed, if they're allowed as an accessory use, then it goes through the administrative permitting process, and they may -- then there's -- some of this is rhetorical, I'm trying to just get it on the record.

MR. ARNOLD: Sure.

HEARING EXAMINER DICKMAN: And then administratively the County would ensure that all the setbacks are met and that it's installed correctly and things of that nature. Is that -- is that correct?

MR. ARNOLD: That is correct. They have to have what's known as a spot survey to locate one of the accessory structures on the property, and that would detail the minimum required setback, as well as the proposed setback.

HEARING EXAMINER DICKMAN: Okay.

So what we're talking about here is that I'm not granting any sheds to be installed whatsoever. I'm just making a determination whether or not sheds are a potential use or structure on the property. And then after that, it becomes an administrative issue, and all the setbacks would be -- everything else would be applicable, as far as, like, making sure they are installed.

And then you said there's an HOA that's going to be in place, and I'm sure that they'll also have some kind of regulatory or maintenance role in this.

And I totally understand. You know, without a garage, I don't know where you're going to put your -- your tools and things of that nature --

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: -- bicycles and so forth, so --

MR. ARNOLD: For sure.

HEARING EXAMINER DICKMAN: All right. Has anyone registered to speak here?

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

HEARING EXAMINER DICKMAN: No? Okay.

Let me check my notes.

Okay. Okay. I don't have any questions.

Do you have anything else you want to present now?

MR. ARNOLD: No, thank you.

HEARING EXAMINER DICKMAN: All right. Good. Then I will get a decision out as quickly as possible. Thanks --

MR. ARNOLD: Thanks so much.

HEARING EXAMINER DICKMAN: -- for being here. I appreciate it.

Thank you. Thank you for all your hard work as well, ma'am.

MR. ARNOLD: Thanks, John.

HEARING EXAMINER DICKMAN: And anything else on the agenda? Any business you want to talk about?

MR. BOSI: I don't have anything other than what was on the agenda.

HEARING EXAMINER DICKMAN: Okay. Great.

With that, then, I am going to adjourn the hearing examiner meeting. It's 10:30.

And everybody have a great day. Thank you.

MR. BOSI: Thank you.

June 23, 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 7/29/22, as presented or as corrected

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