

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 11, 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:

Raymond V. Bellows, Zoning Manager
Tim Finn, Principal Planner
John Kelly, Senior Planner
Eric Ortman, Principal Planner
Andrew Youngblood, Operations Analyst
Suzanne Perdichizzi, Operations Analyst

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everybody. Happy Thursday. Today is the August 11th, 2022, Hearing Examiner meeting. We are going to get started. It's now 9:00, and we are going to start with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

Let me go over a few just housekeeping items and preliminaries. First and foremost, if you have cell phones, please put them on vibrate or turn the ringer off. Also, if you want to have a conversation, please step outside. The acoustics in here are pretty good, and I can hear just about everything that's going on, and I want to give deference to the speakers that are here so that they're not interrupted. So just step outside in the hallway, and you can have your conversations.

This is a quasi-judicial hearing, and what that means is that I will be listening to each one of the petitions as they're presented. Each one are different. They have different criteria under the code. My job is to listen for competent substantial evidence, relevant evidence that would help me determine whether or not the code -- how the code is applied with that evidence.

This is an informal proceeding. I will be -- will want everyone to relax when you come up to speak, take your time.

We will be having -- the applicant or the applicant's representative will be using the larger brown podium here. We will have -- the county and the public will be using this other podium in the middle. We have a court reporter here today that will be -- at all of our meetings that will be taking verbatim minutes. So it's important that you speak clearly and you answer questions with "yes," "no." Don't nod your head; that can't be captured in a transcript.

She will stop -- she will raise her hand or stop us if she can't understand. If you speak too quickly, a lot of people do that, or if she can't understand, we want to make sure that everything is kept quiet. So if you get caught by the court reporter, you have to put a dollar in the "got caught by the court reporter jar." We don't want to do that.

The purpose of having this meeting is in order for me to -- as I said, to evaluate all of the information that's provided. I have had no ex parte communications with anyone regarding any of these applications. My job is to be here as a neutral decision maker. I have the materials that have been published to the public that you all have. I do my own research. I don't consult with the applicants or the staff ahead of time. My job is to simply be here as -- I'm a Florida Bar attorney, 22 years now in good standing working in land use and zoning, so I'm very familiar with the codes.

I'm not an employee of the county. I'm a contract attorney by the Board of County Commissioners, so I report to them.

And it's very important that we get all the information out today, because in a quasi-judicial hearing everything is on the record. So after this hearing, it's not permissible for me to go and have conversations and collect more information that one side or the other wouldn't have the benefit of hearing. So after today will be the end of the record per se, and I will be making a decision per code within 30 days and be rendering that decision.

This is a meeting that is in person and virtual. So when we go to -- so the county has set up a procedure for anyone who doesn't feel comfortable to be here live, in person, they've set up a virtual technology for someone to call in and speak. So when we go to the public hearing phase of each application, we'll be -- you may have someone that has been called in via Zoom, or however they're doing it, and we'll go to them.

So there are speaker cards. If you haven't turned them in, turn them into Andrew over here, and I think that's just -- that's about it. I think we've covered everything, so...

MR. YOUNGBLOOD: Mr. Dickman?

HEARING EXAMINER DICKMAN: Yes.

MR. YOUNGBLOOD: We also have -- for overflow, we also have Conference Rooms C and D.

HEARING EXAMINER DICKMAN: Those are open now?

MR. YOUNGBLOOD: Yes, sir.

HEARING EXAMINER DICKMAN: So we have Conference Room C and D, right, if there's a need for overflow.

And with that, what I want to do -- I've taken a look at the agenda, and there are -- there are two boat dock extensions on here, Ray, that the -- that has the same representative here for both those applications.

So what I'm going to do is rearrange the order in which I hear these petitions. And I'm going to have those two boat docks, which is Item 3A and 3D, I'm going to hear those two last on the agenda, okay. So what we're going to do is we're going to do 3B, 3C, and then 3E, and then we'll get to the boat dock extensions and hear those two so that we have those together. All right.

MR. BELLOWS: So we're moving 3A to the end of the agenda?

HEARING EXAMINER DICKMAN: Correct. So it will be -- the order in which we go will be 3B, 3C, 3E, and then it will be A and D will be last. Okay.

MR. BELLOWS: Okay.

HEARING EXAMINER DICKMAN: Since those are both boat dock extensions, and Turrell Associates is the representative for both of those, it's just easier to have them just stay up there, and we'll go from one boat dock to the next, okay?

MR. BELLOWS: Very good.

HEARING EXAMINER DICKMAN: Does that cause a problem for any of you? Do you have all your planners here?

MR. BELLOWS: Yes, we do.

HEARING EXAMINER DICKMAN: Okay, great.

***All right. So we're going to get started with -- it will be 3B, which is St. John the Evangelist comparable use item. So why don't we get started with that.

MR. ORTMAN: Good morning. For the record, Eric Ortman.

THE COURT REPORTER: Do you want me to swear everybody in?

HEARING EXAMINER DICKMAN: Sir, I'm sorry. I apologize. So are you the representative?

MR. ORTMAN: No, I'm not. I'm the county --

MR. BELLOWS: County.

HEARING EXAMINER DICKMAN: Oh, I'm sorry. So what we're going to do is also swear everybody in. Anybody who's going to give testimony today, please stand and raise your right hand, and we'll administer the oath.

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

MR. BELLOWS: He just looks like a lawyer.

HEARING EXAMINER DICKMAN: He does. Yes. You look very lawyerly. Scared me there.

MR. ORTMAN: Ready?

HEARING EXAMINER DICKMAN: How are you? Yeah, I'm ready.

MR. ORTMAN: I'm very well. How are you?

HEARING EXAMINER DICKMAN: Let's go.

MR. ORTMAN: For the record, Eric Ortman, principal planner.

HEARING EXAMINER DICKMAN: One second. I apologize for the interruption.

MR. YOUNGBLOOD: It's not me.

MR. ORTMAN: All right.

HEARING EXAMINER DICKMAN: Reboot.

MR. ORTMAN: Reboot. Okay. Good morning, everybody.

This is Petition CUD PL20220001253, a request for a comparable-use determination that a rectory is comparable, compatible, and consistent with the list of permitted uses in Section 5.3 of the St. John Evangelist Church -- Catholic Church community facilities Planned Unit

Development, Ordinance 03-46, as amended.

For this petition, a rectory is defined as a single building with a maximum height of 35 feet with up to four dwelling units for priests associated with St. John the Evangelist Catholic Church or for active priests visiting from another congregation -- from other congregations and churches. This definition is included in staff's recommendation.

And at this point, there is a typographical error in this, and it shows up in two places: On Page 4, the first paragraph, and on Page 7 in the staff recommendation. It says, single-story building. It should say single building.

HEARING EXAMINER DICKMAN: Yeah, okay. What was the other page?

MR. ORTMAN: Page 7 in the recommendation.

HEARING EXAMINER DICKMAN: Okay.

MR. ORTMAN: My apologies for that.

Okay. The subject property is a 15-acre campus on the north side of Route 111 about a quarter of a mile east of Vanderbilt Drive intersection. It's in Section 21, Township 48, Range 25 of Collier County, Florida.

The proposed rectory would be in the northeast corner of the property.

MR. YOUNGBLOOD: I'm having a little bit of an issue.

MR. ORTMAN: If he can bring it up. The proposed rectory is going to be in the northeast section of the property. It would be adjacent to a golf course and to the Naples -- the playgrounds for Naples Park Elementary School, as you can see there. And the closest residence will be a little more than 500 feet, and all the other residences are noticeably more than that.

The current uses at the community center -- I mean at the community facilities include a life center, a private school, health and fitness centers, adult and children's daycare, maintenance facilities to support on-site uses, and an indoor swimming pool. Each of these accessory uses are generally quiet in nature but generate more traffic and, therefore, more noise when compared to the rectory which is, by nature, a quiet residence without a lot of comings and goings.

Based on the evaluation criteria listed in LDC 10.02.03.K, the addition of a rectory would be inconsequential compared to the existing permitted uses.

Currently, the rectory is required to provide 411 parking spaces but provides 530. And where it may be built in the back, it is possible that a few parking spaces may be consumed. The exact location has not yet been determined, but there is an excess of 117 now, and the construction will not take anywhere near that amount.

And the proposed rectory, it's also in keeping with the future land-use designation of urban mixed use, urban residential. If this were a residential development, they would be entitled to develop 45 residential dwelling units, but they are proposing four units.

The applicant has complied with all hearing notices by our operations staff. The advertising and mailers went out on June 22nd and, per Chapter 3L of the administrative code, no signs were required to be placed on the property. And there was no public opposition that was received at the -- in the zoning office.

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

HEARING EXAMINER DICKMAN: Okay. And I guess the attachments that I'm looking at, the height -- the maximum height is 35 feet.

MR. ORTMAN: That is correct.

HEARING EXAMINER DICKMAN: Four dwelling units?

MR. ORTMAN: Up to four dwelling units.

HEARING EXAMINER DICKMAN: Up to four dwelling units.

MR. ORTMAN: And a single building.

HEARING EXAMINER DICKMAN: So these will be akin -- if you had to analogize, this would be kind of a -- they're going to have shared walls or --

MR. ORTMAN: That's what -- well, with a single building, I would think they would

have to have shared walls.

HEARING EXAMINER DICKMAN: So each one will be individual units, so it's not going to be a single-family home with --

MR. ORTMAN: No, separate dwelling units.

HEARING EXAMINER DICKMAN: All right. And it's for the use of the -- well, obviously, the definition of a rectory is for the rector, who is usually the head priest, but that's the typical definition. So it's for the priests that are associated with this church, correct?

MR. ORTMAN: This church or visit -- priests from visiting congregations or other churches.

HEARING EXAMINER DICKMAN: Gotcha. But they would be still part of this?

MR. ORTMAN: Part of the priesthood, the church.

HEARING EXAMINER DICKMAN: Catholic church.

MR. ORTMAN: Yes.

HEARING EXAMINER DICKMAN: Okay, great. And you said how many excess parking spaces are there?

MR. ORTMAN: A hundred and seventeen, I believe it is right now.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. ORTMAN: No, 119.

HEARING EXAMINER DICKMAN: Okay. And it's not going to be -- there's not going to be any change. I'm not quite sure how the Property Appraiser handles this, but there's not going to be any change in property boundaries. In other words, I want to make sure that this rectory stays associated with the church and is not at some point sold off as a residence -- as a typical residence.

MR. ORTMAN: As far as we know, it will remain part of the PUD, and it will be a single parcel.

HEARING EXAMINER DICKMAN: Okay. All right. Okay, great. All right. Thank you very much. And we'll get to the representative of the applicant.

Good morning.

MR. ARNOLD: Good morning, sir. I'm Wayne Arnold with Q. Grady Minor & Associates. I'm a certified planner and representing St. John the Evangelist.

We have -- Mike Delate from our firm is a civil engineer that's done a lot of work on the church campus, is here with us if there are any detailed questions. We also have representatives from the church, including Father Tom, Joe Rego, and James Culcock (phonetic).

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. ARNOLD: So we appreciate staff's clarification -- we appreciate staff's clarification of their recommendation. Our proposal had set the limitation of the height for the rectory building at 35 feet. The normal height for other accessory and principal structures is 45 feet within the PUD. But it's assuming that this is going to be a two-story potential quad building, as you had some discussion.

I have a short presentation. But just using the aerial that Mr. Ortman has displayed, the rectory building would be built somewhere in the northeast side of the property. You can see that the surrounding uses are either the elementary school fields or the golf course.

The PUD's fairly generic with regard to the master plan. It doesn't locate all of the accessory uses and structures that are allowed to be built, but it does have limitations because of setbacks. And I don't believe the PUD contemplated lot creation, so I don't think we have an issue with regard to creating a separate entity that would be purchasing the residential units. They really are for the priests and visiting priests that serves this large congregation.

HEARING EXAMINER DICKMAN: Just so -- and to be clear, the only reason I bring that up is, you know, we have to think to the future. If this property for some reason were to change hands and --

MR. ARNOLD: Sure.

HEARING EXAMINER DICKMAN: -- and then they have four dwelling units there, it could be -- you know, so we have to think about it in terms of that. That's the only reason I brought it up. I'm not suggesting that there is some plan for that.

MR. ARNOLD: Okay. I think -- with regard to the other uses, I know Mr. Ortman listed some of those in the staff report. But if you're not familiar with that church campus, it's pretty active, and there are a lot of things going on. There's a parish life center, private schooling, health center that's been constructed, there's a cafe, there's going to be a swimming pool complex, and then the rectory makes sense to have the priests live on campus as well. So we think it is a comparable use to those other accessory uses.

The PUD gives that ability to the Planning Services director which, obviously, now the Land Development Code is superseded by the presence of the Hearing Examiner to make those determinations. So we would certainly ask that you opine that a rectory is comparable to the other accessory uses subject to the single building and four dwelling units.

HEARING EXAMINER DICKMAN: Okay. And you heard staff, they mentioned the use of this, but I also wanted you to elaborate on this. This is really for the -- the head priest or the priests that -- this is a very successful church, obviously. It's large for a lot of activities, so there's obviously a need for more than one priest there, and I'm sure they have visiting priests. So is that how it's going to function; it would be for the priests?

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: I just want to get that on the record.

MR. ARNOLD: Yes, it is for the head priest as well as they have other priests that serve the congregation, and then they oftentimes bring in a visiting priest that would have a residency there as well for some period of time.

HEARING EXAMINER DICKMAN: Okay. So is it fair to say that this -- none of the four units would be used for someone else or rented out or short-term rental or any of the things that --

MR. ARNOLD: No, sir. The priests --

HEARING EXAMINER DICKMAN: If somebody wanted to put together a list of horrors, you know, we want to make sure that none of those happens, but this is really and truly a rectory, not a --

MR. ARNOLD: It truly is a rectory.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: And that would be the specified use that we requested.

HEARING EXAMINER DICKMAN: Just so everyone knows, I'm asking some of these questions just because I want to have them on the record, and that's important. So -- all right. I'm familiar -- I've looked into this. I'm familiar with the area. It's -- and was that number, the excess parking, correct, 117?

MR. ARNOLD: That's approximately the number.

HEARING EXAMINER DICKMAN: Approximately. Do you anticipate losing any at all?

MR. ARNOLD: We may. We may lose a handful, but those are in the back part of the facility that are not often used anyway.

HEARING EXAMINER DICKMAN: All right. I don't have any questions. Do you have anything else you wanted to --

MR. ARNOLD: I would just say that my opinion, too, that we were consistent with the Comprehensive Plan and the Land Development Code provisions governing this.

HEARING EXAMINER DICKMAN: Okay. Andrew, do you have anybody from the public here to speak on this?

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

HEARING EXAMINER DICKMAN: For this item at all, okay. So we're going to close the public hearing.

Anything else? Any last words on this? I think I have plenty of information to make a decision.

(No response.)

HEARING EXAMINER DICKMAN: All right. So we're done with this. Thank you very much for being here, Mr. Arnold.

MR. ARNOLD: Thank you. Appreciate it.

HEARING EXAMINER DICKMAN: Nice to see you again. Thank you.

MR. ARNOLD: Good to see you.

HEARING EXAMINER DICKMAN: Okay. All right.

***So now we're going to go to 3C; 3C, which is the Wentworth Estate MPUD indoor self-storage.

MR. BELLOWS: For the record, Ray Bellows, Planning and Zoning manager.

The petition before you today is a comparable-use determination for Wentworth Estates Planned Unit Development. It's for the nine-acre -- approximately nine-acre commercial tract, and the applicant is requesting a comparable-use determination for a self-storage mini warehouse facility within this commercial tract.

And as noted in the staff report, under the proposed use and descriptions, we talk about the criteria for comparable use and that the project complies with those criteria and that it's consistent with the permitted uses of the PUD and how parking is done, the operational characteristics. The building is going to be designed to look like an office building with limited indoor storage. No outdoor storage.

The project is -- as noted in the conditions of approval, we have about 10 conditions of approval. The idea of Condition 1 is to more limit it to an auto condo storage unit. The second one is vehicle loading or unloading shall be accommodated on site and shall be oriented toward Via Veneto subdivision.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: The use of metal roll-up garage doors is located on the exterior perimeter of the buildings, which are visible, should -- are prohibited. So we don't want them facing the front.

HEARING EXAMINER DICKMAN: Right.

MR. BELLOWS: Access to the individual units, whether direct or indirect, must be from the side of the building that is oriented internally. No outdoor storage. Storage units shall be utilized for storage purposes only which allows for uses within the individual units. No outdoor amplified sound. The building architecture shall be similar to the image depicted in their application. Building height is limited to 35 feet and a maximum actual height of 45 feet, and the lighting shall be shielded to avoid glare on the adjacent areas.

Staff is recommending approval of this comparable use.

HEARING EXAMINER DICKMAN: Okay. All right. Do we have the applicant here or the applicant's representative?

Thank you, Ray.

Good morning, sir. How are you?

MR. SCOTT: Good morning.

HEARING EXAMINER DICKMAN: I see a green light on this side, so you could go ahead.

MR. SCOTT: My name's Chris Scott. I'm with Peninsula Engineering representing the client and property owner, Prima Partners.

With me today I have a few of the representatives. If you'll go to the next slide. Marco Pompeo, Tony Pompeo, and Ken Hackett are with us today. I also have project architect with PK Studios, Ray Pezeshkan and Peter Kulicki are here as well, should we have any questions moving forward.

This project, if you go ahead to the next slide, please, is a request to find self-storage, mini

warehousing indoor only, and it's specific for car storage. Collier County utilizes SIC codes, as you're aware. Those haven't been updated since, I believe, 1987. These car condos are a relatively new use, gaining in popularity, especially in this part of Florida where garage space is at a premium, and you've got some higher income people that have a collection of vehicles that they would like to store in a controlled climate area out of the humidity.

So these car condominiums don't really fit within the current SIC codes. Collier County historically classifies these as mini warehousing self-storage, but I just want to emphasize that this is not your typical self-storage facility where people are going to put extra furniture away. This is really for high-end luxury storage. People with RVs. They will be a condo association, so they are owned by individuals for their personal use.

HEARING EXAMINER DICKMAN: So it will be not just cars, but RVs as well, large spaces for RVs?

MR. SCOTT: It would -- they will be sized to accommodate RVs if an owner wanted to store an RV in there.

HEARING EXAMINER DICKMAN: Got it.

MR. SCOTT: It also -- these units would typically also provide areas of private recreation. A lot of them, it's up to the individual owner, but they may do up-fits and have, you know, just a common space where they could have a pool table, relax, listen to music, those types of things.

If you'll go to the next slide.

This is the Wentworth Estates PUD, more commonly referred to as Treviso Bay. The project site is highlighted. It fronts on U.S. 41. It was previously used for the sales center for Treviso Bay. Currently there's an access road for construction purposes so that large trucks don't have to utilize the Treviso Bay bridge on Treviso Bay Boulevard.

If you'll go to the next slide, please.

We'll zoom in a little bit. You can see the old sales center location with the trees. On the south side is the access road for construction. North of the property there is a canal easement and maintenance and access road for the canal. To the west is the Via Veneto subdivision, which is single-family. It is separated from the commercial tract by a FP&L easement and a 15-foot landscape buffer. To the south is more stormwater and the rest of the Wentworth Estates PUD. And on the east side, obviously, you have U.S. 41, and there's commercial uses on the opposite side.

Next slide.

So as Ray had mentioned in his presentation, we feel that the proposed use is consistent and compatible with the uses that are permitted within the PUD. The Wentworth Estates PUD is designed to -- the commercial area is designed to accommodate a full range of commercial retail and office uses to serve the residents of the PUD in the immediate vicinity. We would imagine these car condos may be used by some of the residents within Treviso Bay.

And I would also point out that the owners, Prima Partners, actually some of them are residents in Treviso Bay, so they have a strong desire to make these a desirable, high-end facility.

The proposed use of indoor self-storage is a conditional use in the C-4 zoning district. It's permitted in C-5, industrial, in the business park zoning districts. The existing commercial area in Wentworth Estates has similar uses that would be allowed only in those zoning districts that are also higher intensity than what this would be. This would be relatively low intensity. But the PUD currently allows for movie theaters, bowling alleys, car dealerships, rentals, gas stations, some repair shops as well. So it is comparable to those uses.

I'll go through each of these relatively quickly. These are the criteria. Operating hours for this facility, it would be open to the owners 24 hours a day. Same as gas stations, which is another permitted use. This would be access controlled, so there'll be gates and security for the owners, but it would be open to these owners 24 hours a day.

The traffic volume generated would be significantly less than the other retail uses allowed

in the PUD. It would service the same types of vehicles, personal vehicles, and the parking requirements would be significantly less for this type of use than it would be for other commercial and retail uses.

Next slide, please.

The effects would not have any more -- there would not be any more effect on neighboring properties as it relates to noise, glare, or odor. It's a very low-intensity use. These are all internal. No outdoor storage.

We have worked with staff to incorporate some additional conditions to help make it even more compatible or reduce the potential for incompatibility such as a reduced height, the orientation of the buildings, to make sure that the garage or the openings to the units are all internally oriented to the site. There's some lighting requirements and restriction on no amplified sound.

The use is consistent with the GMP. This is an existing commercial area. It was found consistent by policy in 2013. So the use is consistent with the GMP.

And, finally, the use will be compatible and consistent with other uses as previously noted.

Staff was able to work -- we were able to work with staff on conditions to ensure the compatibility. Ray discussed those. We have no objection to those and are fully supportive of those. Those are on the screen now. But I just want to emphasize, this is going to be limited to vehicle indoor storage. Any loading and unloading of vehicles would take place on site, not in any public right-of-way, and it would not be where it would be oriented to any of the adjacent single-family residential uses.

Same with the way the buildings will be designed. It would be all internal. The doors -- roll-up doors wouldn't face the streets. They would be kind of around an internal courtyard. We would not permit any type of outdoor storage nor any type of amplified sound system for the facility.

The units themselves would be for storage purposes, primarily auto storage. I did want to just specify that, you know, there could be some minor maintenance of the property internal to these. A lot of people do some oil changes or tune-ups of their vehicles while they're there. It would also allow for some personal hobby and recreation uses that could potentially be done within those units.

These units would not be used for any type of sleeping accommodation, or they would not be any type of dwelling units or any business office. These, again, are strictly car condos and the uses that are enumerated in this condition.

Building heights. We would limit to no more than 35-foot zoned height or 45-foot actual height, which is significantly less than what would be allowed throughout the rest of the commercial area.

Lighting would be shielded to avoid any glare on adjacent residences. And then we did provide a conceptual architectural elevation done by PK Studios, who is here, to show what this facility would look like. If you'll go to the next slide, I believe that would show it. This is a view which would be from the street. So you would see gated entrances to actually access it.

Those are faux windows. You know, the design would be consistent with what is in Treviso Bay. PK Studios has a lot of experience working in Treviso Bay and with the Treviso Bay Architectural Review Committee. We were actually able to have a brief Zoom meeting with that Architectural Review Committee last week to discuss this property project and our future vision for the entire nine-acre commercial site.

So I will emphasize, this is only intended to be part of the site. So we anticipate reserving the rest of it for more traditional upscale shopping center uses.

And with that, if you have any questions for me, I'm happy to answer those. Again, I do have some of the client representatives here with Prima Partners and the architectural.

HEARING EXAMINER DICKMAN: So I have a couple questions for you. Okay. Thank you for putting -- I mean, I list -- they're listing -- staff has listed out 10 conditions. You

put bullets on there, so I just want to make sure you've seen the Attachment A with conditions. They're 1 through 10.

MR. SCOTT: Yes.

HEARING EXAMINER DICKMAN: And you've indicated that you're in agreement with that. I kind of tracked yours, and it looks like you flipped a few of them around, so...

MR. SCOTT: That was more for spacing on my PowerPoint.

HEARING EXAMINER DICKMAN: I gotcha. PowerPoint, gotcha.

MR. SCOTT: Yes.

HEARING EXAMINER DICKMAN: But I think you got them all. I was checking them off as you went along, so okay.

MR. SCOTT: Yes.

HEARING EXAMINER DICKMAN: From an operational point of view, a couple things. So this is going to have 24-hour access by the unit owners. I guess it's condominium-style type of situation where someone's going to own a unit?

MR. SCOTT: Correct.

HEARING EXAMINER DICKMAN: Is there going to be security staff on site 24 hours? Someone's going to be there at all times in case someone's violating one of these conditions?

MR. SCOTT: That has not been determined yet whether there would be staffing at the site. There will be security cameras and gate access for the actual condo owners themselves, but at this point I don't believe there's any intention to --

HEARING EXAMINER DICKMAN: Okay. So here's a scenario. My office happens to be in North Naples very close to a Ferrari dealership, about a quarter mile away, and I can hear those cars, high-end cars, high-performance motors. They have to be run from time to time or else they're not going to, you know, be maintained.

What if somebody were to be -- go there, want to drive their Ferrari or Lamborghini around the site just to run it, they gun the engine, it's 3:00 a.m. in the morning. I don't think -- I think that would be a violation of one of the conditions. I think we need to think about that, especially if you've got a residence near by.

So how -- operationally, how do you anticipate dealing with that? I'm sure someone's going to buy one of these and sign contracts that are going to list out all the rules and regulations, that kind of thing, but...

MR. SCOTT: There will be a declaration of condominium documents that would have covenants and restrictions on it as far as the operations for the individual unit owners and what can take place on the common property. I mean, the scenario you've outlined, I don't know if there's a way to put that into restrictions other than generally having that listed. But that would typically be Code Enforcement if it was something that was required by zoning that they couldn't rev engines at night or --

HEARING EXAMINER DICKMAN: Right. I understand that. And what I try to typically do is try to avoid Code Enforcement problems because noise is one of the hardest things in Code Enforcement world to enforce. And so I'm just -- I know we've got minor maintenance. It's only for storage except for minor maintenance of personal property which conforms with applicable standards of noise, vibration, glare, fumes, odors.

Ray, do you want to jump in on this? I mean, is that a concern of yours? It's a concern of mine. I mean, what if you have two or three or four very high-performance motorcycles or cars, and they just want to drive around the property, you know, in the middle of the night just because they can't sleep or whatever. You know, that could potentially become a nuisance to an adjacent commercial -- future commercial property or residences.

MR. BELLWS: Yeah. We did -- for the record, Ray Bellows. We did look at that a little bit, and given that some of the other uses included a car dealership where you would be test driving cars as well, I didn't think of that --

HEARING EXAMINER DICKMAN: Not during the middle of the night.

MR. BELLOWS: No, that's true. We could put more restriction on that kind of --

MR. SCOTT: My personal observation from these facilities elsewhere is you would generally not find owners going out to --

HEARING EXAMINER DICKMAN: I know.

MR. SCOTT: -- do a little speed track around the internal property. I mean, there is nothing that would restrict them from going and get one of these vehicles and taking it out and driving around.

HEARING EXAMINER DICKMAN: I get that, and I have to think of, like, the worst things that could possibly happen so that I'm not dumping this on Code Enforcement to deal with.

MR. SCOTT: Yeah.

HEARING EXAMINER DICKMAN: So maybe operationally we can -- I can come up with something that suggests that you-all put in your contracts, whatever, that the property is not to be used for test driving cars or anything like that because it's -- you know, the idea that -- I mean, people live different lives. I mean, you know, frequently I'm up late at night working, and so let's say somebody wants to just go tool around with their -- on their toy car in their bay, and that's not a problem because it's not going to bother anybody.

MR. SCOTT: Sure.

HEARING EXAMINER DICKMAN: But if they want to take it out and just drive it around the property, and, you know -- I know that this could potentially be a problem. So I think that would be easily resolved by having some kind of condition that says if you're going to test drive your vehicle, you've got to go off property.

MR. SCOTT: Yeah. We would certainly be open -- and I'm going to --

HEARING EXAMINER DICKMAN: Yeah.

MR. SCOTT: -- to including a condition that says --

HEARING EXAMINER DICKMAN: Do you want to bring your client up, who's familiar with the operation of these things? I've never -- you know, have you worked on these types of -- these facilities?

MR. SCOTT: Not directly on these, but if we want to -- and if you want to, we'd be open to a condition that would restrict any maintenance or revving of engines after --

HEARING EXAMINER DICKMAN: Okay.

MR. SCOTT: -- 10:00 p.m. or something --

HEARING EXAMINER DICKMAN: Right, right.

MR. SCOTT: -- to be included in the declaration of condominium.

HEARING EXAMINER DICKMAN: All I'm saying is because it's 24 hours, it's so different than --

MR. SCOTT: Sure.

HEARING EXAMINER DICKMAN: Then you're indicating also you're reserving property for a future commercial use, and so that's going to be something adjacent to it. So I have to look down the road in the future to make sure that whatever is being put here is not going to be a nuisance to any potential -- there's already residences near by and then so forth and so on.

So it's different than a car dealership. You know, frankly, I don't -- I love high-performance cars. I don't really care. I'm joking about the Ferrari because they go out and run their cars around, and they sound great; the engines sound great. And, you know, everybody knows that Naples is full of very expensive, nice cars. And I would definitely want to put them in a secure place as well, although we are -- you're now advertising that you have, like, thousands of very expensive cars on one site, so I would really think that you'd want security. I'm thinking about the *Gone in 60 Seconds* movie.

MR. SCOTT: That's true.

HEARING EXAMINER DICKMAN: And as far as, like, RVs, you're not going to allow for emptying of gray water, black water tanks on site. This is just for storage of them?

MR. SCOTT: That hasn't been determined. There are some facilities that actually have

cleanout facilities put in. They're designed to accommodate the RVs even with a cleanout facility.

HEARING EXAMINER DICKMAN: Okay.

MR. SCOTT: But that is a decision that would be -- we haven't gotten that far.

HEARING EXAMINER DICKMAN: Okay. And I'm just coming up with some things that I had written down. Outdoor, like, washing facilities or anything like that. Some people want to have their cars or RVs washed out -- you know, they're not going to do it inside their unit.

MR. SCOTT: Yeah. At this time we're not planning any car wash facility on site.

HEARING EXAMINER DICKMAN: Okay. I hope you understand the reason I'm asking these questions, because I have to -- when I'm dealing with this type of situation, just like staff, we have to think into the future about what potential problems. And, like I said, I don't want to dump problems on the Code Enforcement department or the special magistrate that has to hear code enforcement case and try to interpret and figure out what's going on. And that's the worst thing that can happen is, you know, noise, things like that. Code Enforcement is just a sticky process. And if we could deal with that up front here today with conditions, and everything's black and white and clear, that's why I'm asking these questions. I'm not trying to be antagonistic at all whatsoever.

MR. SCOTT: No. I completely understand.

HEARING EXAMINER DICKMAN: All right. So I'm -- I'm thinking that I probably will come up with some kind of language that describes not using the property for test driving cars or some -- to some extent. I mean, it should be ingress/egress and not using the property as a --

MR. SCOTT: Sure.

HEARING EXAMINER DICKMAN: -- kind of like, hey, I want to take it for a ride, but I don't want to go out on the road type of thing; is that acceptable to you?

MR. SCOTT: Yeah.

HEARING EXAMINER DICKMAN: Do you want to ask your client or --

MR. SCOTT: We would not object to that.

HEARING EXAMINER DICKMAN: Yeah, okay. I didn't think so. Okay. Good. Ray, does that bring up any ideas for you?

MR. BELLOWS: Yeah. For the record, I'd like to add one other thing that I inadvertently missed.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: In the staff report, we talk about consistency with the East Naples Community Development Plan, the ENCDP. This is an East Naples Community Plan, and it has been created to promote strategic placement of land uses within the community in coordination with our Comprehensive Planning staff. And in reviewing the purpose and intent of this East Naples plan, that the Comprehensive Planning staff is of the opinion that the proposed motorcar condo project in its current form is inconsistent with the vision of the -- of this ENCDP.

HEARING EXAMINER DICKMAN: It's consistent or inconsistent?

MR. BELLOWS: Inconsistent.

HEARING EXAMINER DICKMAN: Inconsistent. Can you explain that a little bit more, please? Like --

MR. BELLOWS: Well, it's a vision statement that --

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: -- the plan has. It's -- and we have someone from Comprehensive Planning to talk about it in a little bit more detail if necessary. But staff is still recommending approval.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: It's just that the purpose of a comparable use is that the list of uses within the PUD are consistent with the East Naples plan as well, and this is consistent with those PUD uses. So we are recommending approval, but there is concern about too many storage facilities along the East Trail.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: And I think that's where the vision statement comes in.

HEARING EXAMINER DICKMAN: Okay. That helps. Thank you.

So when we're talking about overconcentration of storage units, are we talking about -- this is a very specialized type of storage rather than just your typical storage. I don't know if that made any difference in your deliberations.

MR. BELLOWS: It certainly did. And Mr. Scott hit upon it. The SIC Code in its current form does not really go into the more specifics as to hybrid nature of certain uses that are found in other land-use classification codes. This isn't a self-storage facility in the traditional sense.

HEARING EXAMINER DICKMAN: Right.

MR. BELLOWS: It is more of a social club storage facility in that their habitable space within some of these units as -- you know, they could have pool tables. So there's a more unique classification than our codes have. We are forced to put it under a storage facility, but it's not truly a storage facility.

HEARING EXAMINER DICKMAN: No, I get this. And I haven't -- this is the first of this type of storage use that I've dealt with, but it completely makes sense for Naples.

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: And places like Naples in terms of -- the difference to me would be your typical self-storage. Like, if my law office wanted to use -- you know, store stuff offsite, we would just go rent some air conditioned space, and we wouldn't buy the space. It wouldn't be open all the time. But this is -- they're actually condominium spaces for a specific thing. So there's a little bit of a difference.

MR. BELLOWS: Yeah. In my opinion, there's a big difference in operational characteristics of a mini warehouse storage facility that rents out defined space, and it's solely for storage. These are --

HEARING EXAMINER DICKMAN: Right.

MR. BELLOWS: -- more man cave like, I would say.

HEARING EXAMINER DICKMAN: Oh. Come on. It can be a woman cave, too. Lots of people like cars and stuff like that. Anyway.

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Let's hold up there, and let's go to the public. See if there's anybody here from the public that wants to speak.

MR. YOUNGBLOOD: I have one registered speaker with us. Marc Rosenberg.

Mr. Rosenberg --

HEARING EXAMINER DICKMAN: How are you, sir?

MR. YOUNGBLOOD: Go up to the center podium. You'll have five minutes, sir.

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

MR. ROSENBERG: I do. Okay. I'm -- I live in the Isles of Collier Preserve, which is one community south -- south? North -- north of the proposed -- of the proposed area. A couple things about this I'd like to ask about.

First of all, the side of the development that faces the canal also faces homes across the other side of the canal. We'd like to ask for a more extensive buffer -- landscaping buffer to hide the building as best you can from the homes that live across the street.

HEARING EXAMINER DICKMAN: Before you got started, let me ask you, so it's Marc Rosenberg?

MR. ROSENBERG: M-a-r-c, R-o-s-e-n-b-e-r-g.

HEARING EXAMINER DICKMAN: B-e-r-g. And are you a representative?

MR. ROSENBERG: No, I am not. I'm just me.

HEARING EXAMINER DICKMAN: You're just a homeowner.

MR. ROSENBERG: I'm a homeowner.

HEARING EXAMINER DICKMAN: Do you live right on the canal or --

MR. ROSENBERG: No, I don't. I live near it.

HEARING EXAMINER DICKMAN: Near it, okay.

MR. ROSENBERG: I live near it.

HEARING EXAMINER DICKMAN: Okay.

MR. ROSENBERG: And what we're looking for is a buffer so that when you look out of your home across the canal you don't see the building, or you don't see the building as much. I can still.

HEARING EXAMINER DICKMAN: Yeah. Just go ahead and make your statements.

MR. ROSENBERG: Yeah. The other issues that we have here, I understand the issue of noise from exotic cars because we're facing in our community the soon-to-be-opened Lamborghini dealership down the road.

My concern is that people who love their cars love to tinker with the cars. They're going to go over there on a Sunday or they're going to go over there on a Monday, and they're going to open the door to their condo, they're going to pull the car out in the sunshine, and they're going to work on it. They're going to repair it. They're going to polish it. They're going to rev it. They're going to do all of these kinds of things.

And the Lamborghini dealership agreed that they would do all the work inside the service bays with the doors closed. I remember because I was here when they said that. And if you're going to pull exotic cars out into the parking lot to work on them, that is going to create more noise during the day than I suspect would happen at 3:00 in the morning. That is -- that is our big concern here because even though you have no amplified sound, supercar noise is considerably amplified. So that is one of our major concerns; that and the buffer.

And one last one is, I assume there are no provisions for anyone to actually live in those units, either in the units themselves or in an RV that's parked inside the unit. We would not like to see that.

And, finally, what we don't know is how many of these units are being planned, and this is the first I'm hearing about retail shopping at the same location. We don't know where that would be positioned on the property. Again, going back to my buffer concern.

So summary of all of these things: washing, repairing the cars outside will create noise, and I know these guys are going to pull their cars out. They're going to bring their friends over, and they're going to rev them all day long out there, and the buffer, and living in it, basically my issues. So if you would like to respond, I'd appreciate it.

HEARING EXAMINER DICKMAN: Yeah. Well, thank you for your comments, and I'll address those. So thank you. Thank you for being here.

MR. ROSENBERG: Okay. Thank you.

HEARING EXAMINER DICKMAN: All right. Great.

MR. ROSENBERG: Was I clear enough for you?

HEARING EXAMINER DICKMAN: Absolutely clear.

MR. ROSENBERG: Okay. Thank you.

HEARING EXAMINER DICKMAN: I think we're thinking along the same lines, actually.

So I think you can understand the nature of this is, obviously, I'm trying to eliminate any potential nuisances -- that's what we have to do -- any potential nuisances that could occur. I think the living on property has been addressed in the conditions. There's not going to be any, like, permanent living on the property, correct?

MR. SCOTT: That's correct. The commercial area doesn't permit dwelling units, and we're not proposing that these could be used for any type of dwelling or overnight sleeping accommodations.

HEARING EXAMINER DICKMAN: And so just so you know, I'm not the only one who's obviously thinking about people who tinker on cars and want to drive them around and rev

them up and things like that. So we're going to have to address that. And, you know -- and maybe I'll figure out some language dealing with that.

And then the buffer issue. Do you have a -- do you have anything you want to say about that? I mean, I think, to me, if I were going to be putting in something, I would definitely want to, like, have some kind of buffer between the residential. I mean, you're a planner, right, AICP?

MR. SCOTT: Yes.

HEARING EXAMINER DICKMAN: So, I mean, it seems smart to -- for light and noise to have some type of landscape buffer or something along that area.

MR. SCOTT: Yeah. We'll comply with all of the required buffers. The property -- I don't know if we can go back to that aerial slide, if my presentation's still active. It might be easier to --

HEARING EXAMINER DICKMAN: I mean, I will say that it doesn't appear like -- it doesn't appear that there are any residences that actually live -- or any residences situated directly on that canal.

MR. SCOTT: Not on the north -- well, there are some further north and to the west. The red square you can see at the top left of that picture is a residential lot.

HEARING EXAMINER DICKMAN: Yeah.

MR. SCOTT: So everything immediately to the north is stormwater ponds.

HEARING EXAMINER DICKMAN: Here, you mean?

MR. SCOTT: No. Up further north. Up and to the left, very top left of the corner.

MR. ORTMAN: That's a residence. It's being built as we speak.

HEARING EXAMINER DICKMAN: Right in here there will be some residential.

MR. SCOTT: No. I'm on the other side of the canal, the north side of the canal.

HEARING EXAMINER DICKMAN: Up here?

MR. SCOTT: Yes, correct.

HEARING EXAMINER DICKMAN: So you're talking about this area?

MR. SCOTT: That's all stormwater and then --

HEARING EXAMINER DICKMAN: So I was thinking about this area.

MR. SCOTT: So that's the existing Via Veneto subdivision. So there is an existing 15-foot buffer within their site, plus a 25-foot FPL easement, and then --

HEARING EXAMINER DICKMAN: So what area are you thinking you're going to use for the condo storage area?

MR. SCOTT: If move -- it would be the northwest --

HEARING EXAMINER DICKMAN: North?

MR. SCOTT: Yeah, that general area.

HEARING EXAMINER DICKMAN: This area, the north -- the north part of this? So this area?

MR. SCOTT: Yes, about where your -- correct.

So the code would require a 15-foot Type B buffer, and also because this would be a nonresidential use adjacent to residential uses, there would also be the requirement for a wall per the Land Development Code. So both of those would be going in, and also that provides some of the security for the facility and the discouragement of Nicholas Cage coming in and taking the vehicles in the middle of the night.

HEARING EXAMINER DICKMAN: There are a lot of Nicholas Cages out there, believe me.

MR. SCOTT: So given that the -- you have the existing canals, easements off site plus the code-required buffers on site, I believe there's sufficient landscaping and screening for this use. We've also reduced the height --

HEARING EXAMINER DICKMAN: Okay.

MR. SCOTT: -- of this to be compatible with the allowed heights of the residential uses near by.

HEARING EXAMINER DICKMAN: Ray, question: As this moves down the regulatory process, site plan approval, that's all administrative. You guys will -- will you-all be addressing things like buffers and things like that when they come in, or how do you want to handle that?

MR. BELLOWS: Yeah. For the record, Ray Bellows.

The next step after zoning approval is to go through a Site Development Plan. At that time our landscape architect works with the applicant to ensure they meet the minimum requirements of code or any additional conditions added to the PUD to help ensure compatibility. We will base that --

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: -- landscape approval on the code --

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: -- and the PUD.

HEARING EXAMINER DICKMAN: So anything that I put in here?

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Okay. All right. I think you understand where I'm getting with this. Because, like, my biggest nightmare would be that two years from now we see this, and then there's actually a racetrack going around the condominium, you know, with cones and lights and things like that, and it's actually encouraged that people go there and test their vehicles, and we don't want that.

MR. SCOTT: We don't want that either.

HEARING EXAMINER DICKMAN: I don't think you would.

MR. SCOTT: And I do not anticipate -- I understand that you're looking at worst-case scenario --

HEARING EXAMINER DICKMAN: I have to.

MR. SCOTT: -- for the public benefit of the surrounding community. And if it helps, I know there are a number of these facilities that have been approved already in Collier County.

MR. BELLOWS: Yes.

MR. SCOTT: I don't know if you've been and viewed those, but I haven't seen any of them turning into racetracks yet, and I wouldn't envision that for us either.

HEARING EXAMINER DICKMAN: Okay. I think I have everything that I need from you. Do you have anybody else that you want to speak from your team, or you feel comfortable?

MR. SCOTT: They're here if you had specific questions for them, but...

HEARING EXAMINER DICKMAN: I don't know if anything that I've spoken to causes them to want to come up and speak. This is the last opportunity.

How are you, sir?

MR. POMPEO: Good. Anthony Pompeo, one of the owners and also a resident at Treviso Bay, along with my other partners on this project.

HEARING EXAMINER DICKMAN: Okay.

MR. POMPEO: In listening to what was discussed, I just have to say what I wanted to say.

HEARING EXAMINER DICKMAN: Go ahead.

MR. POMPEO: In Treviso Bay, there are streets that are straightaway, homes that are very close to each other, like, five -- three feet, five feet apart, condos, four units or more. And in regard to the noise and when these cars could come out of these warehouses, I personally hear more of that in Treviso Bay than I have experienced in traveling everywhere from Fort Myers to Sarasota -- not Sarasota -- Sarasota in visiting these sites that are either built, being built. And every time we were there, we barely saw one or two people out of the maybe 40 or 50 units. Nobody I saw working on a car. Some of them had wash bays.

But I just -- because I'm a car buff myself, I don't feel that the noise from these units would be any more than the noise from the neighborhood that I live in.

HEARING EXAMINER DICKMAN: Yeah.

MR. POMPEO: I mean, there's longer stretches, and they're not straightaways; they're not racetracks. But I do hear the Lamborghinis and the Ferraris go by, and the motorcycles. It's more annoying than I've ever heard on any one of these sites.

HEARING EXAMINER DICKMAN: I understand.

MR. POMPEO: Okay. That's all I wanted to say.

HEARING EXAMINER DICKMAN: And so the noise in Treviso Bay, I'm thinking of, since this is 24-hour -- and they may have permitted some of these things in Collier County, but none of this has been brought to my attention, so my --

MR. SCOTT: That's true.

HEARING EXAMINER DICKMAN: -- requirement is to think about potential nuisances. So if you hear those noises within the neighborhood, you can imagine, like, a collection of very intense high-performance vehicles in the middle of the night being used on that property. But I think you get the point that we're making; it's very easy to control that with your documents, whatever you develop when you're selling these units --

MR. POMPEO: Terminology.

HEARING EXAMINER DICKMAN: -- about how the property is going to be used --

MR. POMPEO: We agree.

HEARING EXAMINER DICKMAN: -- because you clearly are very sensitive to the situation since you're having to deal with it yourself.

MR. POMPEO: Right.

HEARING EXAMINER DICKMAN: And a long, long time ago, right after graduate school, I lived on Miami Beach, and it was fun for a while until the Harley Davidson stuff started in the middle of the night, and it would set off car alarms. And I finally -- by the time I got -- it was fun until it wasn't fun. So I understand. So that's all I'm asking. So we can --

MR. POMPEO: Even that Route 41 presently, I mean, there's cars with these loud mufflers --

HEARING EXAMINER DICKMAN: Yeah.

MR. POMPEO: -- and, you know, what do you do?

HEARING EXAMINER DICKMAN: Yeah. But this will be your project, and you can control it. I'll make sure that these conditions that you've agreed to, that we're clear that it's -- you know, if you're going to be inside your unit working on it, that's fine, but let's not take it out for test rides within your property or work out in the back lot, you know, drive it out in the back lot and be in the sun. No outside mechanical, you know, stuff like that.

MR. POMPEO: We'll address that.

HEARING EXAMINER DICKMAN: I appreciate that.

MR. POMPEO: Thank you.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. POMPEO: Thank you.

HEARING EXAMINER DICKMAN: Good luck with this interesting stuff.

All right. Anything else? You good?

MR. SCOTT: Not for me.

HEARING EXAMINER DICKMAN: You conclude?

MR. SCOTT: I conclude if you are done with me.

HEARING EXAMINER DICKMAN: I'm done with you. Thanks. Nice presentation. I appreciate it, and thanks for tolerating -- again, a lot of these questions are necessary for me to be proactive. I don't want to dump problems on Code Enforcement. And I have -- anybody else here to speak? Nobody else?

MR. YOUNGBLOOD: Not on that item.

HEARING EXAMINER DICKMAN: Okay. So I have enough information to make a decision on this, and I have 30 days to render a decision. Thank you for being here. Wait one

second.

MR. BELLOWS: I just had a sidebar with our Comprehensive Planner, Michele Mosca, and I think the clarification Mr. Scott made about having some commercial uses on the site as well improves that visionary compatibility statement, so...

HEARING EXAMINER DICKMAN: Okay. So they're softening that position?

MR. BELLOWS: Yes, with knowing that there can be --

HEARING EXAMINER DICKMAN: Knowing that they're reserving part of it for commercial use, so they're softening their position on the compatibility with the East Naples plan, right?

MR. BELLOWS: Well said, yes.

HEARING EXAMINER DICKMAN: All right. Just reiterating.

Thank you. Thank you, gentlemen, for being here.

All right. That was fun.

I wondered where that Lamborghini site was.

***All right. So we're going now to the -- this is 3E, the last, then we'll get to the boat docks. This is 1385 Wood Duck Trail Wicklund. I think I said that right.

MR. KELLY: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

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

Before you is going to be Agenda Item 3E. It's Variance Petition PL20220001854. It's a request that you approve an after-the-fact variance from Section 3.5.I, Table 1, side yard for single-family detached dwellings, from 7.5 feet to 2 feet as provided for in Ordinance 02-70, as amended, the Pelican Marsh Planned Unit Development document, and to reduce the maximum allowable setback for roof overhangs pursuant to Section 4.02.01.D.8 of the Collier County Land Development Code from not closer than one foot from the property line to 8 inches from the property line.

This request is to allow the continued existence of a pergola constructed 2 feet from the western property line with a roof overhang that is 8 inches from the western property line of the subject property.

The subject property comprises 0.29 acres located at 1385 Wood Duck Trail, further described as Site 36, Pelican Marsh Unit 2, in Section 27, Township 48 South, Range 25 East, Collier County, Florida. It's located within a residential component of the Pelican Marsh Planned Unit Development.

Public notice requirements were as per LDC Section 10.03.06.F.2. The required agent letter was sent by the applicant's agent on June 8, 2022. Property owner notification letter for the hearing as well as the newspaper ad and the public hearing signs were all taken care of by the county on July 22nd, 2022.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 9.04.03.A through H, and was found to be consistent with the Growth Management Plan and Land Development Code.

With respect to public comment, the applicant was able to obtain a letter of no objection from Robert Lubin, owner of 1379 Wood Duck Trail, which was dated December 1, 2021. It's contained within Attachment D, Page 21. They are the adjoining property owner.

It's the recommendation of staff that you approve this petition as described in accordance with the sketch of boundary survey provided within Attachment A with the condition that an after-the-fact building permit must be applied for and obtained and for which a certificate of occupancy and/or completion must be issued.

That concludes my presentation.

HEARING EXAMINER DICKMAN: Thank you. I appreciate that. Great.

Applicant or the applicant's representative here?

Yes, sir, good morning.

Good morning.

MR. DAVIES: Good morning, Hearing Examiner Dickman. For the record, Noel Davies from the law firm of Davies Duke. Our firm represents the Wicklunds, who are the current titleholders for the property located at 1385 Wood Duck Trail in Pelican Marsh.

Our request this morning, as you heard from Mr. Kelly, is a variance in two parts. The first part -- if you could go to the next slide, please. The first part is a traditional on-the-ground side-yard setback variance from 7-and-a-half feet to 2 feet, and then the second part is an aerial setback variance from 1 foot to 8 inches.

Next slide, please.

The subject property is located in Pelican Marsh at the end of the cul-de-sac called Wood Duck Trail. As you can see from the aerial, and as Mr. Kelly mentioned, there's only one immediately abutting neighbor, and that is the neighbor from which we received no objection. You've got preserve to the north and the east, and then a sizable right-of-way to neighbors to the south, along with a sizable cul-de-sac.

For the record, the neighbor who submitted the letter of no objection, Mr. Hearing Examiner, is the neighbor on the pertinent side where the variance is being requested.

HEARING EXAMINER DICKMAN: Right there.

MR. DAVIES: Right there. You got it.

Next slide, please.

Here is a depiction of the existing encroachment. What's circled in yellow is the aerial overhang which extends slightly farther than what's on the ground, and that's essentially the two parts that I mentioned. My office -- next slide, please -- has worked closely with county staff and appreciate their efforts. As you heard, county staff is recommending approval, and there's no disagreement from my client with respect to the building permit condition.

With respect to the variance criteria, we do believe that we have submitted sufficient evidence, sufficient documentation to meet the criteria which you see on this slide. And, importantly, as you heard from county staff, this was not a condition created by my client but rather his predecessor in title. The purpose of this variance application is to conform and comply with the governing codes for a number of different reasons, including potential resale title issues, et cetera.

That concludes my presentation, Mr. Hearing Examiner. We do respectfully request that you issue an approval today, and we appreciate your time. Thank you.

HEARING EXAMINER DICKMAN: Okay. Yeah. This happens from time to time. I mean, actually more frequently than you would believe.

MR. DAVIES: It does.

HEARING EXAMINER DICKMAN: Sheds, houses built slightly to the left or the right. Things happen from time to time, and these after-the-fact variances do come to my attention from time to time. And I do understand the need for legalizing them for purposes of resale and clearing up any legal issues going forward. So it's not uncommon for this to happen. We've had -- I don't know. It seems like almost every agenda there's some type of situation.

MR. DAVIES: Yes, sir.

HEARING EXAMINER DICKMAN: Small, minor, de minimus situation like this that happens. And, you know, I know that county administration tries to avoid all this at all times, but I think in an abundance of caution, it seems like you're doing the right thing by making sure that this is all legal and put together and tucked up real nicely so that if there's a future purchaser, then there aren't any issues.

And one other thing, which is really important to me, is the communication with neighbors. I think that that's really key for any petition that comes before me that -- you know, that's why I ask staff to go through the notice procedures so that it's clear that everybody has been put on notice. But I do appreciate it when the applicants or the petitioners take that extra step and actually get no objection letters so that it's clear that there's been communication and there's no ill intent to try to

offend a neighboring property owner, so that helps quite a bit.

Is anyone here to speak or registered to speak?

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

HEARING EXAMINER DICKMAN: Okay. All right. I really don't -- do you want to rebut anything that has been said?

MR. DAVIES: No major rebuttal, sir.

HEARING EXAMINER DICKMAN: Know when to be quiet, right? Okay. So those darn pergolas.

All right. I have all the information I need on this one. You covered everything.

And is there anything else, John; do you have any last-minute comments before we close this?

MR. KELLY: Nothing further, sir.

HEARING EXAMINER DICKMAN: Okay, great. Thank you for that information. I will get out a decision within 30 days. Thank you for being here.

MR. DAVIES: Thank you, sir. Good to see you.

HEARING EXAMINER DICKMAN: You, too.

MR. DAVIES: Take care.

HEARING EXAMINER DICKMAN: Yes, sir.

All right, thanks. We're going through these nicely.

***Okay. So now we're going to do two boat docks, and we have the boat dock guy here. So this is going to be 3B, starting with not -- no, not 3B. What are we at? 3A.

MR. ROGERS: We can take them in whatever order you'd like.

HEARING EXAMINER DICKMAN: 3A.

MR. ROSENBERG: For the record, Jeff Rogers with Turrell, Hall & Associates here today representing the applicants, or the applicant, Matthew Pikus, who currently resides at the subject property of 336 Oak Avenue up in the Vanderbilt Lagoon area.

We're here today basically requesting for a 23-foot boat dock extension from the allowed 20 feet for an overall protrusion of 43 feet into the subject waterway, which is a hot topic waterway right now. It's across from Naples One basically, so...

HEARING EXAMINER DICKMAN: Let me ask you a question, because I was trying to figure this out on the images. So this is the existing --

MR. ROGERS: There's an existing boat dock.

HEARING EXAMINER DICKMAN: -- personal watercraft right here.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: And there's an existing dock right there, like deck.

MR. ROGERS: Correct, yep.

HEARING EXAMINER DICKMAN: So is this going to -- this is going to stay. That's going to stay, correct?

MR. ROGERS: Correct, yes, sir. So that's all with -- inside the allowable 20-foot protrusion, which is why it was never presented for a BDE previously for what's there.

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: Next slide. I'll try to zip through as quickly as I can. So that's the existing conditions. That shows you the existing boat dock in blue. It's 12 feet wide by 16 feet out from the seawall. Let me stress that. From the property line, it's 20 feet, as you can see on the far west side of that dock. So, therefore, it's within that box. Setbacks are met as well which, in this case, this shoreline is greater than 60 feet in length so we have to maintain 15-foot setbacks.

Next slide, please.

This is what the applicant is currently -- what we are here today in front of you requesting. Again, on the far west side, left, we see the 43-foot protrusion measurement. Again, let me stress that's from the property line. It is -- the property line is not 100 percent square, as you can see. So that -- where that line is taken is where we need to make sure that 43 is maintained.

Looking at that right now, if you take it from the eastern side, it would potentially be a little bit further out, if you see what I'm saying on that. If you recognize the red dotted line is not square to the seawall. Potentially I should have added a measurement on the eastern side which could have increased that number slightly.

And now that I'm looking at this -- and this is a heck of a time to look at that, but -- so we need to make sure the as-built survey, when it is built, shows the 43 foot where I show it as well. Do you follow me on that?

HEARING EXAMINER DICKMAN: I do, actually. And I also -- yeah, this protrusion.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: If we take it on the other side of the existing boatlift that's decked over, it could potentially be greater than that, and that might cause an issue for the CO when the dock is built.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: I should have been a little bit thorough and caught that before right now.

HEARING EXAMINER DICKMAN: That's okay. So what we're talking about is --

MR. ROGERS: That's the platted property line.

HEARING EXAMINER DICKMAN: Right. The platted property line, the seawall doesn't align perfectly with that.

MR. ROGERS: It happens often, obviously, but in this case, the property line is the most restrictive, and the reason why I took it from the western side is because that's where most of the project and the greatest protrusion is from.

HEARING EXAMINER DICKMAN: Is this white the seawall cap right here?

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: And can you back up to the picture of the actual photographs?

MR. ROGERS: Yeah. Go back one. Go back two, actually, if you would. So there's a little bit of what's called a --

HEARING EXAMINER DICKMAN: What would you say the width of that is? It looks like 2 feet, maybe, at the most.

MR. ROGERS: At the most.

HEARING EXAMINER DICKMAN: Of the cap.

MR. ROGERS: That's an older seawall. So I would assume it's 18 inches, 12 to 18 inches, and then there's also -- the gravel is called a French drain system, and what that does is allow stormwater to percolate down on the back side of the seawall.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Getting into the weeds. It relieves the hydrostatic pressure from stormwater runoff into the wall and causes damage.

HEARING EXAMINER DICKMAN: What I'm getting at is -- let's call this 18 feet -- 18 inches.

MR. ROGERS: Eighteen inches, yes, sir.

HEARING EXAMINER DICKMAN: So let's go now back to your site plan.

MR. ROGERS: Okay. Go three forward, please. There you go. That one.

HEARING EXAMINER DICKMAN: Okay. So let's say that this is 18 inches. We're really talking about 18 inches, so there's really just -- let's say this is right -- you're measuring this, like, it looks almost like right from the middle of the --

MR. ROGERS: Yep, I'm with you.

HEARING EXAMINER DICKMAN: The middle.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And then if you go over here, it's slightly towards the back side of it.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: So --

MR. ROGERS: You're getting to 2 feet.

HEARING EXAMINER DICKMAN: So you could be talking about plus or minus 10 inches.

MR. ROGERS: Yes. And the only reason I'm stressing this is because when the Building Department receives an as-built survey, if it is an inch over 20 feet, you are getting denied and having to go through a boat dock extension, which I have done that numerous times with previous clients. So any inch over what we get approval here today for, if we get approval, could be problematic for the contractor when getting his CO.

HEARING EXAMINER DICKMAN: What would be -- from the front of the seawall, what would that be? So let's say 18 inches. If we move this 6 inches, add 6 inches to this, so it would be 43-and-a-half.

MR. ROGERS: Probably, yes, sir.

HEARING EXAMINER DICKMAN: So can we --

MR. ROGERS: Can we increase that?

HEARING EXAMINER DICKMAN: Right. So, actually, we didn't even do county presentation. Did we do that?

MR. ROGERS: No.

MR. BELLOWS: Tim is disappointed that you didn't go to him.

MR. FINN: I'm very disappointed right now.

HEARING EXAMINER DICKMAN: Tim, I'm going to get to you.

So, procedurally, I want to give, like, sort of a plus-or-minus situation here, because I think we're talking about a de minimus situation. If you saw what I was talking about, I don't think -- at the very most, that seawall cap is 2 feet, but I bet it's more like 18 inches.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: And so what we're talking about is maybe a half a foot plus or minus based on his measurements. And I don't want to force his client to have to come back here. And there's really no need for continuance or to table this. Is there a way that I can, you know, put in something that says, if necessary based on as-built this can go, you know, 43-and-a-half? Because we're talking about this situation right here. Like, if -- when they go in to pull permits and it turns out that this piling right here is really at 43-and-a-half, he's going to get denied, and we're going to have a big snafu.

MR. BELLOWS: For the record, Ray Bellows.

I've seen situations like this in the past, and if the contractor's measuring from property line on both the east and west sides, it's still going to come out meeting the protrusion amount.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: But if they're not paying attention and they just measure from one corner --

MR. ROGERS: Right.

MR. BELLOWS: -- and base everything on that, then they'll probably run into the situation you're talking about. We are advertising this for a certain distance, and so you've got to be very cautious not to exceed that total distance that was advertised.

HEARING EXAMINER DICKMAN: Okay. So --

MR. BELLOWS: But I believe there is a de minimus --

HEARING EXAMINER DICKMAN: -- do you have an administrative code process where if they come in there's no -- okay.

MR. BELLOWS: No.

MR. ROGERS: My recommendation, if I may make one, based on my experience and knowledge, I would say maybe condition the approval that the overall protrusion measurement needs to be taken where it is currently shown on the approved plan so that the as-built

survey -- surveyor and contractor -- and I can stress this to the contractor, and we'll be involved, Turrell will be involved. I'll make sure I can walk this through with the applicant, because I would then be eating the cost to come back to you guys because of a small thing that I --

HEARING EXAMINER DICKMAN: No. I understand -- I understand that.

MR. ROGERS: So -- and I'm with Ray in regards to advertisement, that we are advertised for a certain distance, and we have to circle back.

HEARING EXAMINER DICKMAN: So you just have to stay within that 43.

MR. ROGERS: I'd have to stay within that 43 feet, yes, sir.

HEARING EXAMINER DICKMAN: That's your envelope.

MR. ROGERS: That's it. That's it.

HEARING EXAMINER DICKMAN: Second question. Can you reduce this to 4 feet?

MR. ROGERS: I would like to talk to you --

HEARING EXAMINER DICKMAN: Talk to me about that.

MR. ROGERS: -- yeah, about that. Originally -- can we jump, Andrew, way ahead on these slides.

HEARING EXAMINER DICKMAN: The reason I'm asking you is that there is a requirement to keep the decking at a minimum.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: And you're already maintaining a large deck. I knew you were going to do this.

MR. ROGERS: This is what was -- so this is what are originally proposed. This is what the applicant would like, and I'm very glad -- this is why I wanted to have you move me to the end, because I wanted to have this conversation on the record. I spoke to John Kelly briefly about this on numerous occasions. There is no criteria for staff or any of us to follow for what is excessive, okay. The code reads -- the 5.03.06 code -- I came prepared to talk about this -- lists in criteria -- Secondary Criteria B, you know, the language that staff has to follow and I have to follow when I represent these clients is whether the proposed docking facility would allow reasonable, safe access to the vessel for loading and unloading and routine maintenance without the use of excessive deck area not directly related to these functions.

So, basically, my interpretation of that is, there's no deck area allowed for recreational purposes or other uses than vessel and safe access to the vessel. And it's hard for me and staff to say what is excessive other than, ah, I think that's excessive. And it's -- this -- I'm just using this one as an example because it came up on this one. This was what was originally proposed. Structurally it makes sense to build this because the pilings are all there, and you just extend it out and make it a smooth transition.

I understand we have this criteria. So that's why I played in the sandbox and have in front of you today what we are presenting.

Now, also, regarding your question, 4.8 feet, that's taken outside to outside of pile, okay. So the decking doesn't go to the outside of the pilings. So the cleared walkway in between the pilings is 4 feet. You're walking down the dock with a cooler, it's -- you know, you're getting pinched every time you go through the pilings.

So in regards to your question, if I dumbed it down to 4 feet, I'm now down to 3-and-a-half feet clearance in between those pilings. So you're walking, you're turning. It's just -- can it be done? Of course. Is it a little bit of inconvenience? Yes.

HEARING EXAMINER DICKMAN: Yes.

MR. ROGERS: But structurally when this is built, I want to just stress to you 4-and-a-half -- 4.8 is not 4.8 deck. It's pile to pile because we have to work -- we have to show you guys the true dimensions of pilings as well.

HEARING EXAMINER DICKMAN: Yes, I understand.

MR. ROGERS: So the applicant wants this, and my personal opinion is it's not -- it is a big dock; however, if you go forward, Andrew, to the next slide, look at the other docks in

Vanderbilt Lagoon, you know. Look at their canopies. If they stay inside the 20-foot measurement -- so this property's 80 feet wide, 15-foot setbacks. There goes 30 feet, right? So I've got 50 feet by 20 feet. I can deck the whole thing over and not be subject to this criteria if I go right to the Building Department. In my opinion, that's a little unfair, because I can get a 2,000-square-foot dock, 50 feet -- you know, 20 feet out by 50 feet wide.

HEARING EXAMINER DICKMAN: Tradewinds, by the way.

MR. ROGERS: What's that?

HEARING EXAMINER DICKMAN: That's Tradewinds.

MR. ROGERS: I know it is, but I'm just south of there. I'm just -- I used this aerial because it's the same subject waterway. It's Vanderbilt Lagoon. It's -- we're all ingressing/egressing the same waterways here. We're just to the south. I chose this one because of -- especially the south canal. You can see the canopy covers. You can see the large decks upper -- I wish -- I don't have -- you know, I'm just -- I'm having the conversation with you. That's all I'm trying to do.

HEARING EXAMINER DICKMAN: Yeah, I know, and I appreciate the conversation you're having with me, and, you know, every petition I take individually because each one is situated differently.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Like, for example, you're showing me something that's actually on a true waterway canal, and your current application is on a -- it's facing, actually, a much larger water body.

MR. ROGERS: A larger bay, correct.

HEARING EXAMINER DICKMAN: But in the -- for me -- so, for example, as of right, you have the ability to go to 20 feet. You know that, right?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So if you're going beyond that -- and you're here. It's a public process. And the point of that is that you're asking for something that you don't get as of right.

MR. ROGERS: I agree.

HEARING EXAMINER DICKMAN: And so there -- the reason for that criteria, the way that I read it, is you don't want to over -- you don't want an intensification --

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: -- of something beyond the 20 feet --

MR. ROSENBERG: Okay.

HEARING EXAMINER DICKMAN: -- that the code has -- as a policy, the code has said, okay, homeowners, you guys get 20 feet to accommodate whatever you want to do --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- with your vessel. So once you go beyond that, then you're asking for something special that isn't -- that isn't necessarily going to be the same for another property owner two properties down --

MR. ROGERS: I gotcha, right.

HEARING EXAMINER DICKMAN: -- because it might be a totally different situation.

MR. ROGERS: Understood.

HEARING EXAMINER DICKMAN: That's the whole point of the public process.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: So when I look at that, it's totally functional. It's not -- you're not intended to be extending out like in the graphic that you showed me. What I would deem as excessive decking for recreational purposes, for storing your kayak --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- or storing -- you know, hanging out on the dock.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So you can envision, like, a dock like that where you're going to have someone out there night fishing, and all of a sudden they're 20 feet further than anybody else, and then you have lights and you have other things.

MR. ROGERS: Sure.

HEARING EXAMINER DICKMAN: So those are the -- that's the reason, to me, why I look at this is that that is strictly for -- you know, if somebody chooses to get a bigger vessel than, you know, fits their yard --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- or how they want to orient it, then the thing that I'm looking at is, one, you know, we don't want to permit something that is going to make it difficult for -- or even hazardous for someone to get on and off the vessel, right. That's the primary thing is function.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: And then, secondarily, that you don't over-intensify anything beyond the 20 feet.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: That's how I'm looking at this.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: And so, you know, I've been on -- I don't know. I'm born and raised in Florida, so I've been on, like, thousands of docks in my time, and, you know, 5 feet, 6 feet catwalks on both sides of the boat, I think, are getting to a -- getting excessive.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: It's getting beyond the functional part.

MR. ROGERS: Understood.

HEARING EXAMINER DICKMAN: It's getting more convenient, you know, where those catwalks can become used for other things, you know, like mooring on the other side or this, that.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: And then that affects what I have to look at is, like, what are the unintended consequences or the adverse effects to, perhaps, adjacent property owners.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: That's why that's happening.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: So -- and I know you -- you do a great job. Your company does a great job, and I'm glad you're asking these questions, because then when you talk to your clients, you can tell them to go back and listen to me say this right now.

MR. ROGERS: No. It's a great explanation. Thank you.

HEARING EXAMINER DICKMAN: And just say, look, you know, this is the -- this is -- once you go beyond 20 feet, this -- we have to be looking at this more as a function and not freedom for other things.

MR. ROGERS: Right. You're all given the 20 feet. Everyone's given the 20 feet. If you go beyond that, you are subjecting yourself to additional scrutiny. I get that. I understand that.

HEARING EXAMINER DICKMAN: Right. And every dock is different. I've seen some that are now angled. A lot of people are using angles.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: It seems like everybody wants to get in a 40-foot yacht. I mean, that's a yacht to me. I mean, come on.

MR. ROGERS: That's, unfortunately, where we're going.

HEARING EXAMINER DICKMAN: So everybody wants to get -- and they don't want to put it in a marina. They'd rather have it behind their yard. And now they have to -- if they

have a 50-foot-wide lot, they have to angle it and -- you know, we're getting all kinds of different configurations.

MR. ROGERS: Oh, yeah.

HEARING EXAMINER DICKMAN: And I'm looking at everything, you know, based on each application, because each one's different. Sometimes there's riprap. Sometimes there's mangroves.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Sometimes there's -- I have to look at the surrounding neighborhoods --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- and what -- is there going to be adverse impact here.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: I have to think about -- you heard the discussions before. I have to think about any potential nuisances that could occur down the road for not just the property owner here but a subsequent property owner that may say, okay, well, now I'm going to put, you know, lights up or --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- I'm going to put up canopies, and then does that block views. And I have to think through all of these things.

MR. ROGERS: Understood.

HEARING EXAMINER DICKMAN: So this is all -- I'm putting this all on the record because you do a lot of this work, and you can communicate this to your clients --

MR. ROGERS: Yep, yep.

HEARING EXAMINER DICKMAN: -- that you've got 20 feet, but once you go beyond that, you know, you're going to be scrutinized in terms of, like, the intensification. So they're keeping their personal watercraft dock and their other dock, and then they're adding in another one. So it is an intensification of what's going on behind their house, and they don't have a right to it --

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: -- but they have a right to ask, and if they meet the criteria -- so I hope that, from a land-use attorney and a hearing examiner, hope that helps you understand, you know, my thought process when I'm looking at these things. I'm looking strictly at, okay, if you're going big on these big boats, you know, I just want to make sure you can go on and off safely --

MR. ROGERS: Functionality.

HEARING EXAMINER DICKMAN: -- and you're not overdecking, you're not over-asking, you're not overreaching, and you're not interfering with the property or riparian rights of any adjacent --

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: -- and all the other stuff, too. Like, in this case, it's a big waterway but, you know, you're not getting it into a waterway and making it a hazardous situation where, like, if you had across -- you know, 100 feet across where you had a whole bunch of boat lifts and everybody's trying to back out at the same time on a beautiful Sunday, and you've got like --

MR. ROGERS: A mess.

HEARING EXAMINER DICKMAN: -- you know, chaos, and especially with people who don't really have -- I don't think you're required to have a -- are you required to have a license to run a 40-foot --

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: -- boat?

MR. ROGERS: Unfortunately, no. Well, insurances are getting a little bit more

restrictive, but that's another conversation.

HEARING EXAMINER DICKMAN: I'm not sure I could drive a triple engine or quadruple engine.

MR. ROGERS: It's a lot of easier than you think, to be honest with you.

HEARING EXAMINER DICKMAN: Okay. Well, I trust you.

MR. ROGERS: Can we go back to the proposed design, Andrew --

HEARING EXAMINER DICKMAN: Yeah. Okay. Does that help you?

MR. ROGERS: -- if you don't mind.

Yes, sir. That was the best explanation I've ever had of this. It clarifies -- it helps me. I want to just help myself and help staff -- me with clients, and staff with --

HEARING EXAMINER DICKMAN: Yeah. So you can tell your clients --

MR. ROGERS: I'm not arguing with staff.

HEARING EXAMINER DICKMAN: -- I'm not making this up. Go watch -- on the 11th of August, go watch that hearing.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: You know, Andrew Dickman explained to you how he --

MR. ROGERS: His thought process.

HEARING EXAMINER DICKMAN: -- interprets that criteria.

MR. ROGERS: So back to your original question, I would say if we could trim anything here, I would be willing to trim the western's finger pier, because that side is more for just access where the other side would be, in my opinion, the more egress-to-egress side.

HEARING EXAMINER DICKMAN: This one?

MR. ROGERS: Yes. And the other side is more of a catwalk slash maintenance.

HEARING EXAMINER DICKMAN: I agree with you, because you're going to stay --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: To your example of the ice chest --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- so let's go out on the boat, beautiful day, let's stage everything right here and start loading the boat. So you want to come up and down here.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So, yeah, if you can narrow this down to --

MR. ROGERS: I can make that true four foot, you know, wide.

HEARING EXAMINER DICKMAN: -- true four foot on this side.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: That way, you know, it's on a boatlift, and you're going to want to, like, wash your boats, spray it down, clean it, you know --

MR. ROGERS: That's all that's going to be used for.

HEARING EXAMINER DICKMAN: -- stuff like that.

MR. ROGERS: Right, yep.

HEARING EXAMINER DICKMAN: Yeah. So -- yeah.

MR. ROGERS: Okay. And if I'm going to give up anything, that's where I would be able to --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- agree and --

HEARING EXAMINER DICKMAN: But does that make sense to you?

MR. ROGERS: Hundred percent; hundred percent.

HEARING EXAMINER DICKMAN: This is just truly -- I have to look at this from a functional point. That's that criteria to me is purely for functional purposes.

MR. ROGERS: That's why I want to bring it up today.

HEARING EXAMINER DICKMAN: Safety and function.

MR. ROGERS: Right. And that's why I was cool with you moving me to the end of the agenda today, because I didn't want to waste people's time for this conversation.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: And the only time I get to talk to you is in these hearings.

HEARING EXAMINER DICKMAN: That's the whole quasi-judicial hearing. So everybody gets to hear what's being said.

MR. ROGERS: John Kelly's sick of hearing me, you know, about this. He and I have got a great relationship, but it's --

HEARING EXAMINER DICKMAN: Ray, did you have something you want to say?

MR. BELLOWS: I just wanted to make sure about what the recommendation from Jeff is on the west side. Are you going to propose it to be 4 feet now?

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: Four feet.

MR. ROGERS: 4.0.

MR. BELLOWS: Okay. And keep it at 4'8" on the --

MR. ROGERS: Other side, yes, sir.

HEARING EXAMINER DICKMAN: And this is -- he's going to stay clearly within the 43 because it was advertised that way.

MR. ROGERS: Yes.

HEARING EXAMINER DICKMAN: It's a reduction, so even though it was advertised that way, a reduction's fine. It's not an increase, so we're good there.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: And so do you have anything else you want to say? I do want to hear from the county.

MR. ROGERS: Oh, I can run through the criteria. I mean, we -- you know, I can do all that, but --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- as we kind of just hashed everything out, you know, staff is recommending approval. I agree with staff. I've worked with Tim on this one, and the design is 23-foot extension request, and we meet setbacks.

HEARING EXAMINER DICKMAN: Tim, can you jump up? Or you could do it from there, too.

MR. FINN: Yeah, I'm going to do it from here.

HEARING EXAMINER DICKMAN: I do want to hear -- make sure that the notice criteria was put out and everything like that, please.

MR. FINN: Yes. For the record, I'm Tim Finn, principal planner.

This is for Petition No. BDE PL20210000087, 336 Oak Avenue, for a request for a 23-foot boat dock extension over the maximum 20 feet allowed by Section 5.03.06 of the Collier County Land Development Code, for a total protrusion of 43 feet to accommodate a boat dock facility with two vessels for the benefit of property described as Lot 1, Block 1, Conner's Vanderbilt Beach Estates, Unit 2, also described as 336 Oak Avenue, in Section 32, Township 48 South, Range 25 East, Collier County, Florida.

The project is compliant with the GMP and LDC; therefore, staff recommends approval. The applicant has complied with all hearing notices by our operations staff. The advertisements went out on July 22nd, and the mailers went out on July 15th. The hearing advertisement's property signage was constructed at the property by staff on July 27th included in Attachment D of the backup materials, and that concludes my presentation.

HEARING EXAMINER DICKMAN: Okay, great.

Andrew, do we have anybody signed up to speak on this item?

MR. YOUNGBLOOD: I have one registered speaker online, Ronald Cohen.

Mr. Cohen, are you with us, sir? Whoops, I'm sorry. I accidentally muted you again.

MR. COHEN: All right. Do you have me?

MR. YOUNGBLOOD: Yes, sir. You have five minutes. Go ahead.

MR. COHEN: I don't think I'll need five minutes. I'm Dr. Ron Cohen. I'm in 432 Oak Avenue.

And we've been off-and-on residents since 2017, love where we are, and wanted to be there because of the serenity of the bay, the views that are there and all that.

Obviously, putting in One Naples is going to change that quite a bit, and the significant number of docks that they're going to put in there is also going to change that as well.

The dock that we have, which we built in 2017, went with all of the guidelines, stayed within the 20-foot range, and by extending the dock that our neighbor six doors down would like to do, it's going to set a precedence to allow the remainder of the docks on that side to double their sizes and put in large yachts as well, which, along with the length, also comes the height. And part of the reason for living there has to do with the views and the serenity and the ability to see the water.

The more large docks you put in there, the more large boats you put in there, the more you're going to see nothing but boats. And so part of the reason that we purchased was because of doing the research on what was able to be placed in the water.

And I want you all to really not only protect the rights of 336 but also protect the rights of everyone around them and seriously consider the intrusion that a double-sized dock would place on the neighbors. And, yeah, we're six doors down, and it might not have quite as much of an influence but, again, it sets a precedence that could really make it difficult for all of those, including, you know, the new one going in next to me and possibly a new dock on the other side and the crowding that's going to happen on our quarter-acre lots extended to the water, I think, is something that seriously needs to be considered, and I would like to not suggest that this be approved.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MR. ROGERS: Can I respond?

HEARING EXAMINER DICKMAN: Yes. I have a question, though.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: Do you have any -- do you have letters of no objection from any of the neighbors or --

MR. ROGERS: Actually, I did, because we had to permit this with the state, and this is a state lands --

HEARING EXAMINER DICKMAN: Yes.

MR. ROGERS: -- and they require 25-foot setbacks, and we are meeting the county's, so we've encroached 10 feet on each side. So I did not submit those to Tim, I don't believe. It wasn't required.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Because we met your guy's. But for the state and federal permitting, I had to get setback waivers, they're called.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: And I do have those.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So both parties signed them. I have them at the office. I could supply them to Tim today.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: But just real quick, on the screen it shows two to the west, a 37-foot dock. It's actually -- Gigi Sarazin is the owner, and I did their BDE about a year ago. I might have done it with John. And I wrote it down. I got a 44-foot -- 24-foot extension on that one. The measurement there shown is -- per the note on the bottom of the -- of our exhibit, the dimensions shown are approximate. What I should have done is shown the true approved

protrusion on that, which was 44 feet on that one.

And it is the same design, straight-out finger piers, but that one has two boat lifts proposed, larger boat lifts than what we have. So it's a wide waterway. We're inside 25 percent. We've minimized decking. The view of a subject property has been held up in court that it's within your riparian rights. I do understand that, but I appreciate the comments but, unfortunately, this dock as proposed does meet the criteria, and like you said before, boats are just getting bigger.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: So it's a vicious cycle. Sorry.

HEARING EXAMINER DICKMAN: It really is. You know, once upon a time this subdivision was small --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- 3/2 single-story houses, and they're all becoming mega-mansions.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: And so it seems to be now the obvious effect would be, like, let's get a mega-boat.

MR. ROGERS: I want a bigger boat.

Andrew, could you go to my last slide, the very last one.

I just want to show you a dock that I got approved -- yeah, go back one.

So that's, like, the other option is do an angle. When you go on an angle, you definitely increase the decking. And this was approved by the HEX in 2018, you know. And it's in the same waterway. It's just -- Palm Court is just to our immediate south. And, you know, that wasn't considered excessive at the time, you know, either, where you could easily make the argument, there's a lot of decking there.

That dock has been built and is approved but, you know, there we get a -- where's the protrusion measurement? It looks like 31 feet. The property line's on the face of the seawall in this case. You can see the red dotted line. So we've got an 11-foot extension. It sounds better on paper than 23 feet. But it all -- you know, that's the other bone in regards to excessive decking. This isn't considered excessive but -- you know what I mean? So it's difficult with these.

But I understand your explanation from before. I don't want to rehash that. But it's a domino effect, unfortunately.

HEARING EXAMINER DICKMAN: No, I get it. And I definitely think the -- you know, the -- I understand the logical thought process of precedent and, et cetera, et cetera. Just so folks know, I look at these one at a time.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: And I look at --

MR. ROGERS: Each one's different.

HEARING EXAMINER DICKMAN: -- the criteria, and I look at the information that's being presented. That's my job. My job is not to establish policy or set new codes.

My job is to determine whether or not, based on the primary and secondary criteria, whether they meet that based on competent substantial evidence from an expert, and you're obviously an expert.

I can take into consideration lay testimony from neighbors who have factual information --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- and I do that.

So I look at everything from a case-by-case basis. Like I said, if the County Commission decided, well, you know, everybody's going with 40-foot boats now, so we're going to change the -- change the permissible as-of-right, you know, we're going to make it bigger because all of a sudden on every single agenda on the HEX has a boat dock extension for giant yachts. I'm not saying one way or the other whether I like it or not, but, you know, I don't -- you know, I have to look at the criteria. I have to look at -- I do appreciate Dr. Cohen's comments, and I'm glad that he

called in. This is a public process. That's the exact reason why we put the notice provisions on the record, because I want to make sure that everybody has been put on notice and that anybody that wants to be a proponent or opponent of it, that they have an opportunity to hear everything that's being discussed.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: I do want you to provide to us today those no objection letters, if you would, and forward those to my office, if you would, Tim. Appreciate that. That would -- I'd like to see those. And I don't -- we don't have anybody else to speak on this item?

MR. YOUNGBLOOD: I don't have any other registered speakers.

HEARING EXAMINER DICKMAN: All right. Thank you.

Well, this has been a fruitful conversation. I appreciate it.

Tim, do you have anything else you would want to add before I close this?

MR. FINN: No, nothing to add.

HEARING EXAMINER DICKMAN: Nothing else.

Okay. Anything else?

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Anything else on this one?

MR. ROGERS: No, sir. We're good.

HEARING EXAMINER DICKMAN: Don't go away. You're staying there.

Okay. All right. That was good.

MR. ROGERS: I want to thank you, too, for that conversation.

HEARING EXAMINER DICKMAN: I hope it helps.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: Hi, John.

MR. KELLY: Good morning. For the record, I didn't recognize that last dock. It wasn't my petition.

HEARING EXAMINER DICKMAN: It wasn't yours?

I have to admit, I probably threw everybody off by changing the agenda around, but I apologize.

MR. KELLY: ***Okay. Before you is Agenda Item 3D. It's Boat Dock Extension PL20220001854.

I do have a correction to the staff report. Last night, in an abundance of caution, I checked the front desk if anything had been left for me, and I did, in fact, have a letter of objection for this project. I prepared Attachment E, which I left for you at your --

HEARING EXAMINER DICKMAN: Does the applicant have a copy?

MR. KELLY: (Nods head.) -- desk space today. And so that letter now is Attachment E to the staff report. And you can see circled in yellow --

HEARING EXAMINER DICKMAN: Got it.

MR. KELLY: -- is the objector.

HEARING EXAMINER DICKMAN: Got it.

MR. KELLY: And 1668 is the applicant petitioner.

HEARING EXAMINER DICKMAN: Got it.

MR. KELLY: So with that said, this is a request that you approve a 23-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a boat docking facility that will protrude a total of 41 feet into a waterway that is 121.6 plus-or-minus feet wide pursuant to Section 5.03.06 of the Collier County Land Development Code for the benefit of the subject property, which comprises .23 acres located at 1668 Vinland Way, further described as Lot 16, Landings at Bear's Paw, in Section 35, Township 49 South, Range 25 East, Collier County, Florida, which is located within a residential component of the Landings at Bear's Paw Planned Unit Development, Ordinance 13-66, as amended.

Public notice requirements were as per LDC Section 10.03.06.I. The property owner notification letter for the hearing, newspaper ad, and the public hearing signs were all taken care of by the county on July 22nd, 2022.

This petition was reviewed by staff using the review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfied 5 of 5. Of the secondary criteria, it satisfies 4 of 6, with the sixth being not applicable, as it's the Manatee Protection Plan, and it has been found to be consistent with the Growth Management Plan and the Land Development Code. Other than that letter of objection that was just provided, there was no other public comment.

And it's staff's recommendation that you approve this petition as described in accordance with the proposed dock plans provided within Attachment A.

And with that, I turn it over to the applicant's agent.

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

MR. ROGERS: Thank you, John.

Quickly, I do have another slide PowerPoint. I will address --

HEARING EXAMINER DICKMAN: For the record, your name.

MR. ROGERS: Oh, sorry. For the record, Jeff Rogers with Turrell, Hall & Associates representing the applicant today, which is Alan Wortzman who lives -- resides seasonally at the residence of 1668 Vinland Way, which is located just on the south side of the Bear's Paw development along Golden Gate Parkway on the north end of the Gordon River, the manmade waterway section of it.

So the petitioner and I are presenting a request for a 23-foot boat dock extension from the allowed 20 feet. So, again, like the previous one, 43-foot overall. There is an existing dock on this property, as you can see on the screen, which was built within the allowable 20 feet. It does not have a boatlift on the outside.

We are here today basically looking to reconfigure that dock into the proposed dock to accommodate the vessel. I believe -- I believe there was a previous owner, and this guy bought the dock -- bought the house, and the dock was existing when he bought it.

HEARING EXAMINER DICKMAN: Let me ask. So Mr. Gilmore is the individual who's submitted a letter.

MR. ROGERS: Yeah, and he's the gentleman -- yeah.

HEARING EXAMINER DICKMAN: That one right there?

MR. ROGERS: Hundred percent, yes, sir; yep.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So this is -- let me go through, and then I'll address his concerns --

HEARING EXAMINER DICKMAN: Thank you; appreciate it.

MR. ROGERS: -- because I did speak to him on the phone.

HEARING EXAMINER DICKMAN: You did?

MR. ROGERS: I did. He called me before he supplied this letter to the county and said he was going to actually be here today. I'm not sure if he's calling in or whatever.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: I ran through how we came up with this design and the design criteria to accommodate his concerns, and it was difficult for him -- to get his support on that.

So moving forward to the next slide. So that's existing, obviously.

I want to stress here, looking at this aerial, the Landings at Bear's Paw PUD that was approved -- I believe it was a PUD -- language had special conditions within it that allowed this development and all the 11 single-families along the shoreline to have less restrictive setbacks than what is typical for all of Collier County anywhere else in regards to length of shoreline.

The criteria is typically 60 feet or greater, 15-foot setbacks; less than 60, 7-and-a-half. So the PUD that was approved for this development went to the lesser and was approved and, basically, any docks built are allowed to maintain the 7-and-a-half-foot setback. So everybody, all the 11 property owners, are allowed that.

So what's on the screen today, we -- the dock that's there today does -- is more than -- it's double. It meets the 15, basically. Just -- I wanted to get that on record.

So go to the next slide, please.

So this is what's being proposed. I know there's a lot of noise going on with these dimensions. I should have made it cleaner. But, basically, this being proposed, the vessel size is 39 feet LOA, length overall. It's a 36-foot vessel but, with the motors and everything, you're at 39 feet. And with that, the dock is at 11-foot setback from the subject gentleman who wrote the letter, and the vessel is still within the 7-and-a-half feet, you know, barely, but it's in there.

And that's -- we do have room to slide it the other direction to kiss the 7-and-a-half foot setback, which is applicant is willing to do to accommodate the objector's concerns, but it's -- you know, the criteria, like John said, we meet all five of the primary, and the secondary was the length of shoreline one that we did not meet besides the manatee protection in regards to the 50 percent. And, you know, none of -- I've done seven of the docks on this -- within this development, gotten BDEs for them, and we've maintained the 7-and-a-half-foot setback consistently through the whole thing.

Andrew, if you want to slide forward. Keep going, please, if you would. Keep going. So here's the protrusion, but -- keep going if you don't mind. There's the width of shoreline. There's the criteria that we meet. I won't run through all this. But go to the next one, I believe it is. Okay. Here's the PUD that allows the vessels and the setbacks associated with it.

Forward. There's the Criteria No. 4 that allows the 7-and-a-half-foot side setbacks for private single-family community facilities located in this section of Golden Gate, yada, yada, yada. So that right there is what was the development's approval.

Moving forward. Here it shows the ingress/egress for the vessel into the slip. Is it tight? Yeah, sure, it is. It would be even tighter if we were maintaining the 7-and-a-half-foot setbacks. And, unfortunately, we're working within the box, and every homeowner's going to maximize allowable box other than the protrusion. Now, we are subject to other criteria, with the BDE process, obviously, excessive decking, views, things like that. But in my opinion, views don't come into play here because it's part of the community vibe in regards to having a dock along these 11 properties behind it.

And you can see on this aerial -- I've got better aerials. The one just to the east of us with the canopy cover does meet the setback of 7-and-a-half feet. You can see that large deck area. And his ingress/egress to his slip, because he's bow to the east, like we are showing, we've trimmed our dock -- if you can see the angle of that dock on the outer U portion of it -- to not be square there to provide a little bit better access for him to that existing slip.

HEARING EXAMINER DICKMAN: So let's just stay here for a minute.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: You know, thank you for this -- showing this path of ingress/egress.

MR. ROGERS: Yep. There's that one.

HEARING EXAMINER DICKMAN: That particular path right here would be the same for this?

MR. ROGERS: Yeah. Well, no, because the one that we're showing, the one where -- for our particular slide, for whatever reason, I don't know why, not that it matters -- there's no restrictions on how you moor your boat to your dock and what direction you moor it to. When we design these docks, we tried to -- stormwater runoff in this canal's huge, right? Because it's basically a flushing canal for Golden Gate. The current's constantly coming from the east no matter what the ocean current is doing because it's so landward of the Gulf, of the Gordon River. So the influx of saltwater, tidal influx is minimal up here, okay. So we've always tried to design it where the bow's going.

HEARING EXAMINER DICKMAN: Hold on. We're back on.

MR. ROGERS: Okay. So back to where I left off, basically, when we -- we take all the

factors into consideration when we come up with a dock design. And in this case, we -- it's much easier to -- in our opinion -- and from my experience, I am a licensed captain -- to drive your boat onto a boatlift into the current and back out with the current. And in this case, you know, for whatever reason, there's no -- whatever, he chose to go the other way. So his ingress/egress, because of that, is definitely a little bit tighter. And I understand that, and I spoke to him before that.

HEARING EXAMINER DICKMAN: "His" meaning?

MR. ROGERS: Our neighbor to the west.

HEARING EXAMINER DICKMAN: This one?

MR. ROGERS: Yes, sir. I forget his name, the gentleman that wrote the letter.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So these are things we look at as a firm, a professional company bringing these forward.

Go to the next slide, Andrew, if you would. I've got a slide.

So these are the other docks that we've approved in a typical design that has been approved. Now again, I say "typical." There is no guidelines by the HOA on what you can or can't build. And if you're within the overall allowed -- or excuse me -- precedence set previously in regards to protrusions, you know, that's how we look at it. Okay. I've gotten 41, 42 feet, 44 feet approved already, yeah, okay, you can put an outside walkway on it and come on an angle and still be within that relatively [sic] box.

HEARING EXAMINER DICKMAN: Let me ask you this.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: This is helpful.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: So this does not have an outside catwalk, right?

MR. ROGERS: Correct, correct, yes, sir.

HEARING EXAMINER DICKMAN: Nor does this one?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: But this one does?

MR. ROGERS: No, that's a canopy cover that you're looking at.

HEARING EXAMINER DICKMAN: So they're all three on --

MR. ROGERS: Those three I did, and they're all consistently designed the same. Little L-shaped docks with a seating area on it and one boatlift.

HEARING EXAMINER DICKMAN: Okay. So you would access on the starboard side?

MR. ROGERS: The walkway -- no, that's port side is the left side, yes, sir.

HEARING EXAMINER DICKMAN: Port side. So they're on lifts.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: Right?

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: And the --

MR. ROGERS: Those docks kiss the setbacks, by the way. You know what I mean?

HEARING EXAMINER DICKMAN: I understand. I understand. But just from a navigability, they're still going to have to come in -- because there's outside pilings.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: They're still going to have to come in this way.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So I suppose your client could have proposed a similar arrangement like this where it's just access on the port side of the boat --

MR. ROGERS: Correct, most definitely. In Turrell's defense, just real quickly -- and I am working for the contractor on this --

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: -- who did do the dock design with the client and brought it to me --

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: -- to walk it through the county process. So I did not get involved in actual initial design work.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So looking at it, what did they do to accommodate concerns? And one of them being is they didn't maximize the setback utilization with the dock or boat. Are they close? Yes. Did they trim the dock, the outer portion of the dock, to be on an angle to not square off and provide a hazard for the neighbor to the east -- not the gentleman to our west that wrote the letter, but to the east and block his access?

So those are design features in this proposed outer catwalk that were taken into consideration. And they do provide more recreational value that you can go out there when the boat's on the lift and actually fish on the outside.

Just -- my sister lives in this community. She's the middle dock on the upper thing, and she has kids, and they can't really fish that well from the dock when the boat's sitting on the lift; you know what I mean? So that extra U does provide a little more recreational value. And is it consistent with others? No, it's not.

HEARING EXAMINER DICKMAN: No, I get that. I'm just -- as far as going back to navigability, because the pathway is going to be through here.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Even if -- even without the outside catwalk, it's the same, because you're not going to pull your boat through this way --

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: -- because when you drop your lift, you have your engines. You have to -- you still have to back it out that way regardless.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So you really can't push off --

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: -- unless you were just mooring your boat there without the lift, you could potentially push off. But you would not do that with a boatlift because you have outside pilings; am I correct?

MR. ROGERS: Right, yes, sir.

HEARING EXAMINER DICKMAN: So you're still going to have that same path, same path, same path.

MR. ROGERS: Correct. I should have shown those.

HEARING EXAMINER DICKMAN: But I understand your point here. All right.

MR. ROGERS: So, you know, in regards to his letter and his concerns, you know, I've got it in front of me. There's four points that he made. I would like to just walk through these with you.

HEARING EXAMINER DICKMAN: Go ahead.

MR. ROGERS: Concern 1 was the size of the proposed dock lift along the design -- sorry. I won't read so fast. I apologize. Basically, in a nutshell, it's the 7-and-a-half-foot setback requirement appears to have been met. This assumes that the petitioner's boat will be docked all the way forward to the east as shown on the drawing. That was a concern he brought up that you -- how can you guarantee that this boat's not going to hang over?

I mean, if it does -- and I told him, I said, if it does hang over or -- you know, then it is problem -- then it is a problem. But we do have a buffer built in where we're not kissing the 7-and-a-half-foot setback. That's why I stressed that. We're not right up against it with the 39-foot dimension. The boat is actually 36, and the motor's -- it's probably more like 38, but I grew it to show you and everybody that it fits in that box. And in the application you're supposed

to list the largest-size vessel that's going to be moored there.

Realistically, 39's bigger than what's going to be there, but I went with 39 to be on the safe side to show you it still fits within the 7-and-a-half or greater than the 7-and-a-half setback. If something's in the setback, I know you don't like to get Code Enforcement involved, and you take that into consideration, but I don't think that is going to be a problem, in my opinion.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So, No. 2, the proposed dock contains excessive decking area. You and I kind of talked about the design and understanding that the boatlift piles do provide an ingress/egress issue no matter what. The outside catwalk is provided in this case because the angle of the slip -- the slip is on an angle, for one, which is not directly shore parallel, which does provide us an area to potentially go out further but still be consistent with others, and it does have a recreational value to it for them to use.

HEARING EXAMINER DICKMAN: But I will add that -- you did -- you didn't square that off.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So that would have caught my eye.

MR. ROGERS: That would have been a little bit more excessive. It would have definitely been another two to three foot of decking for sure.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: So that was -- and also let me -- on this exhibit, we're 11-and-a-half feet. I've spoken to the applicant, and he's more than happy to slide that and meet the 7-and-a-half-foot setback on that eastern side to accommodate this gentleman's concerns, but that then pinches --

HEARING EXAMINER DICKMAN: You're saying move it this way --

MR. ROGERS: Correct, to be 7-and-a-half feet; you know what I mean? So that would gain us, what, 3 foot -- you know, 3-and-a-half -- 4 feet basically -- 3-and-a-half feet. So, you know, that's something we could do, but it does, then, get us that much closer to the other neighbor. But, again, that's what the neighborhood allows, you know. So it's a --

HEARING EXAMINER DICKMAN: Well, you're within -- what you're saying is you're within --

MR. ROGERS: We're within our box, yeah, within the box.

HEARING EXAMINER DICKMAN: You're within the box, okay.

MR. ROGERS: Okay. Number 3, the design of the dock is inconsistent with others, and so we've discussed that.

HEARING EXAMINER DICKMAN: That's true.

MR. ROGERS: The proposed dock is excessively large and is designed to accommodate a 39-foot boat, which is greater than the 60 percent. It is. I agree with that 100 percent. The other docks that I have done here as well do not -- previously approved do not meet that criteria either. As you know, boats are getting bigger.

HEARING EXAMINER DICKMAN: Let me address that issue, the design. John or Ray, whoever, does the code prescribe how the design of the dock has to be? Does it have to be parallel? Can it be catty corner? Can it be angled? Is there anything in the code that says that they can't design the dock like this?

MR. KELLY: No, sir.

HEARING EXAMINER DICKMAN: Okay. So there's no guidelines in the code that says it has to be either parallel or perpendicular? There's nothing in there in the city -- in the county codes?

MR. ROGERS: There is in Port of the Islands.

HEARING EXAMINER DICKMAN: I know, okay, okay.

MR. ROGERS: That's the only place --

HEARING EXAMINER DICKMAN: In other areas.

MR. ROGERS: -- the Manatee Protection Plan and the LDC say you have to go shore

parallel.

HEARING EXAMINER DICKMAN: Okay. That's correct. But my point being is going to the issue of this is designed differently than everything else in this neighborhood. There's nothing that the county can say, well, it has to be perpendicular or it has to be lateral.

MR. BELLOWS: For the record, Ray Bellows.

And that is a correct statement. And sometimes on a site-specific basis, you might need to have a greater angle to improve ingress/egress into the space, and it looks like that was part of the consideration for the design here.

HEARING EXAMINER DICKMAN: Yeah. Okay. When was this PUD done? You showed the ordinance. What year was that?

MR. ROGERS: Yeah, honestly, we did the work.

HEARING EXAMINER DICKMAN: Do you remember that?

MR. ROGERS: It was -- it's 2022 now. I'd say it was probably 2015. I don't know.

HEARING EXAMINER DICKMAN: Were they thinking about 40-foot vessels, yachts? I looked up the definition of -- it's technically a yacht.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: I don't know.

MR. KELLY: If I may, John Kelly, for the record.

The ordinance number is 13-66 --

MR. ROGERS: 2013.

MR. KELLY: -- so that would indicate it was done in 2013.

HEARING EXAMINER DICKMAN: Okay, all right. Great. What else? Let's see if we have public comment.

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

HEARING EXAMINER DICKMAN: Nobody's registered. Nobody's here in the audience. Nobody's -- okay.

So we have the neighbor that has put in -- and I appreciate the neighbor's very detailed letter. It gives me an idea of what their objection is. I appreciate you speaking with Mr. Gilmore, David Gilmore. You did speak with him?

MR. ROGERS: Hundred percent, yes, sir.

HEARING EXAMINER DICKMAN: Okay. So you did reach out and talk --

MR. ROGERS: He reached out to me initially, and I told him, basically the public notice is his way to object, and please send a letter or come represent his objections and get it on the record.

HEARING EXAMINER DICKMAN: Well, I always encourage conversations --

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: -- among applicants, and that's the whole point of putting notices out. Hopefully people can resolve differences before it even gets here.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Sometimes it doesn't. That's okay. This is a public process. I'm taking everything into consideration. You know, I've taken in all of your testimony, the county's testimony. I know this -- we've had some other docks in this particular waterway at the very -- I don't know if it's called the headwaters of the Gordon River.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: It's really just kind of -- so you don't get a lot of, you know, drainage in that area.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: So you get -- okay. Anything else from the county? Nothing? I'm just making John get up and down. He needs the exercise.

MR. KELLY: No, sir. Hey, now. I resemble that remark.

HEARING EXAMINER DICKMAN: No, no. I just don't want your knees to get stiff on

you.

MR. KELLY: Okay. Much appreciated, sir. Nothing to add.

HEARING EXAMINER DICKMAN: Nothing else?

MR. KELLY: No.

HEARING EXAMINER DICKMAN: All right. You're welcome to make a comment about my condition as well if you want in return. Sorry about that.

If there's nothing else, then we'll close this, and I'll get a decision out within 30 days.

Thanks for being here. I appreciate it.

MR. ROGERS: Appreciate all your time, everybody.

HEARING EXAMINER DICKMAN: I hope the conversation helped.

MR. ROGERS: Sorry this took so long.

HEARING EXAMINER DICKMAN: No, no. It's okay. I think it's good to get the information out.

Anything else today?

(No response.)

HEARING EXAMINER DICKMAN: Nothing else? This was fun. I appreciate it, some interesting applications.

MR. BELLOWS: Just one other item on conditions of approval. If you would want any of the applicants to provide clarified documents.

HEARING EXAMINER DICKMAN: Yes.

MR. BELLOWS: We can do it before issuance or --

HEARING EXAMINER DICKMAN: Yes.

MR. BELLOWS: -- we can stipulate that -- like on the one, the 4-foot.

HEARING EXAMINER DICKMAN: No -- yeah. That's a good point. So I think what I'm going to do -- what I'm going to do -- because usually if I do have any changes, it's pretty easy to describe.

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: And that way it doesn't require submittal of new plans or new plans and designs. Because once my decisions go out, it immediately -- they immediately get recorded, and -- before plans could be published or new plans.

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: So I think if anything does change, then I'll just sufficiently describe what that change should be and -- in the dialogue of my decision, and that will override whatever plans are attached, okay?

MR. BELLOWS: That will work.

HEARING EXAMINER DICKMAN: Did you -- do you understand what I'm saying?

MR. ROGERS: No. I just wanted to make sure. I can update exhibits and get it to you.

HEARING EXAMINER DICKMAN: No, come over here. I just want to make sure you understand what I'm saying. So the point being is that when my office publishes the decisions, they immediately get recorded.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: And if I have said, well, okay, change the catwalk from 10 feet to 5 feet and submit new plans, it's too late because they've already recorded it.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: So what -- I think as a policy I'm going to just start -- if I can't -- the only reason I would require new plans is if it's too hard to describe in a decision, and then a plan -- a new plan would be necessary. And if that happens, then what I'll do is I'll have my office reach out to the county and to the applicant and say, let's get some new plans so I can attach those before I render a decision.

MR. ROGERS: I will say, real quickly, sometimes the resolutions do have the exhibit attached to it, right? And staff in the Building Department look to that as their guideline and

maybe not read the fine print.

HEARING EXAMINER DICKMAN: They don't read the fine print, okay.

MR. ROGERS: So I am happy to supply a new updated drawing with the 4-foot catwalk and the setbacks at the same time.

HEARING EXAMINER DICKMAN: I haven't made my decision yet.

MR. ROGERS: Yeah. I'm just telling you sometimes it does get backfired at the Building Department level, so --

MR. BELLOWS: It can happen, but then staff from Zoning or the applicant say, look, there's some conditions here, to remind them to look at conditions. But they should be looking at the conditions.

HEARING EXAMINER DICKMAN: So here's what we'll -- because I'm always conscious of cost --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- of these things, and it's not cheap for people to be here, hire folks to be here. So that was the point about the plan.

MR. ROGERS: Gotcha.

HEARING EXAMINER DICKMAN: So if -- what we can do is we can ensure that the copy that goes to staff, that they actually mark up -- you know, in their files, in your files, you can mark on the plans, this has been changed per the decision of, you know, condition whatever. That way -- I understand when their processing plans they're not going to -- they're not even interested in reading my wonderful decisions as much as I try and put --

MR. BELLOWS: They should be.

HEARING EXAMINER DICKMAN: They go right to the plans.

MR. BELLOWS: But the CityView system where all the -- they come from a master of property lists, that we could flag the property that this particular HEX decision has conditions --

MR. ROGERS: Conditions.

MR. BELLOWS: -- that need to be looked at, or they're different from the documents.

HEARING EXAMINER DICKMAN: Okay. So I'm just going to proceed in that manner, that if I can describe the changes sufficiently, then I'm not going to require new plans, because I feel like that's a burden -- an extra burden on the applicant to have to redo plans, and it takes time. And then until such time -- unless it gets to be a problem, and then the county staff says, well, procedurally, let's do it a different way, okay? Is that fair for everybody?

MR. BELLOWS: Yes, great.

HEARING EXAMINER DICKMAN: Is that good? All right, good. Great.

All right, great. Thank you. Everybody have a great day, wonderful day. Have a good weekend.

All right. We're adjourned.


August 11, 2022

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 11:16 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 8/25/22, as presented  or as corrected .

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