

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 25, 2022

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

HEARING EXAMINER ANDREW DICKMAN

ALSO PRESENT:

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

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning, everyone.

Today is August 25, 2022. This is a hearing examiner meeting. We're going to start with the Pledge of Allegiance.

(Pledge of Allegiance.)

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

My name is Andrew Dickman. I am the Hearing Examiner appointed by the Board of County Commissioners.

I am a Florida Bar attorney in good standing; have been practicing for over 22 years now in the area of local government, land use, comp plans, zoning, things of that nature, things -- my job is -- I am not an employee, first of all, of the County. I am appointed by the county commission to hold -- conduct these hearings in order to evaluate petitions that are put on the agenda under the jurisdiction of the HEX, or Hearing Examiner.

My job is to hold these quasi-judicial hearings and to gather whatever competent substantial evidence there is that will be relevant to the particular criteria based on the petition and the code.

So how we do that is, first and foremost, we are going to have the County start off with introducing the petition and giving us their -- giving me their recommendations and any conditions.

Then the applicant or the applicant's representatives will come up to this larger podium and do their primary presentation.

There will be -- we'll open it up to the public to speak. And we have both in-person and virtual capabilities here. And anybody who wants to speak needs to, I guess, fill out a card and hand it in.

Everyone will be testifying under oath, and we'll administer the oath shortly.

I will give time for rebuttal to the applicant after the public has spoken. And I may have questions as we go along.

My job, again, is to get all relevant information from all the -- all parties, the County, the applicant, anybody in the public, and also -- and then finally render a decision within 30 days. I will not make decisions today, at this hearing. I have up to 30 days to render a written decision, and I will do that as expeditiously as possible.

Why don't we -- if anybody has any phones, or anything like that, please turn them off, or at least silence them. If you're going to have a conversation with someone here, you want to speak with someone, just ask them to step -- to step outside, in the hallway, so it's a little easier for us to continue the meeting and we don't get interrupted.

Take your time. If you're going to speak, take your time, speak clearly. We have a court reporter, who is going to capture everything that's said. And if you speak too fast or nod your head or use hand gestures, that can't be captured. So we're going to make sure that everything is captured correctly by the court reporter.

So with that, why don't we go ahead and -- anyone who is going to testify on either item -- there's two items on the agenda today. Anyone who's going to testify here today, please stand and have the oath administered to you by the court reporter.

(Oath administered.)

HEARING EXAMINER DICKMAN: All right. Thank you very much. I appreciate that.

We have two items on here. Before we get started, is there anything else I need to mention? I think I covered everything. We're ready to go, then.

Looks like we've got 3-A and 3-B. Why don't we get started with 3-A.

Who do we have here? Mr. John.

MR. KELLY: Good morning, Mr. Dickman. John Kelly, for the record, senior

planner.

Before you is item 3-A. It's a request for you to approve a 13-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width, to allow the addition of a second boatlift to an existing boat docking facility that will protrude a total of 33 feet into a waterway that is 1,118 plus or minus feet wide, pursuant to Section 5.03.06.E.1 of the Collier County Land Development Code, for the benefit of the subject property, which is located at 170 Tahiti Circle, further described as Lot 153, Isles of Capri Number 2, in Section 32, Township 51, South Range 26 East, Collier County, Florida.

It's located within a residential single family 4 zoning district.

Public notice requirements pursuant to LDC Section 10.03.06.I, the property owner notification letter and newspaper ad were taken care of by the County on August 5, 2022. And the public hearing sign was posted by me on August 4th.

The petition was reviewed by staff based upon the review criteria contained in LDC Section 5.03.06.H.

Of the primary criteria, the petitioner satisfied four of five of the secondary criteria. It satisfied five of six, with the sixth being not applicable, the Manatee Protection Plan. And the petition was found to be consistent with both the Growth Management Plan and the Land Development Code.

No correspondence was received pursuant to this action.

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

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you.

All right. Who do we have here?

How are you, sir? Good to see you.

MR. ROGERS: Good morning.

HEARING EXAMINER DICKMAN: Gotcha.

MR. ROGERS: Good morning.

Jeff Rogers with Turrell, Hall & Associates, here representing the applicants, Michael and Linda Evans, who currently reside at 170 Tahiti Circle, the subject property.

As John mentioned, and as -- always does a thorough overview. The existing property has a dock already in place, and the overall proposed project is to add an additional boatlift on the outside of the dock.

Can you go forward?

Here's a quick, little picture of the existing dock from the water, and it shows the boat that's currently on the lift. And then that is the area where the new boatlift will be installed.

Moving forward.

There's a quick, little overview of -- when I turned in the application and when I got the survey, as required per the application process, we -- it came to light that the existing dock actually is 21.8 feet out from the property line/mean high waterline.

And it was -- there was an initial building permit issued, as you can see in your staff report, for the dock. And it did not go through the boat dock extension process originally. We concluded that it's probably a survey discrepancy, or -- or whatever the case may be, we're -- we're cleaning it up today as part of this petition request as well, because the existing dock is technically beyond the 20 feet as well. So, with that being said, one of the goals here today is to clean up what's there as well.

So real -- real quickly, I just want to touch on -- this property is within the Rookery Bay aquatic preserve area. And as you can see, the required setbacks are 25 feet per the State rules. The dock does meet that rule and which exceeds the County requirements of 15 feet.

HEARING EXAMINER DICKMAN: So the current -- the current dock, what are the -- what's the width of these approximately --

MR. ROGERS: Each --

HEARING EXAMINER DICKMAN: -- on either side?

MR. ROGERS: -- shown --

HEARING EXAMINER DICKMAN: So you have access -- how big -- first of all, how big is the current vessel?

MR. ROGERS: 30 -- 30-foot vessel.

HEARING EXAMINER DICKMAN: It is a 30-foot vessel.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: LOA, overall. I think it's a 28-foot hull, and the motor's 30 feet LOA.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: To answer your question, I don't have a dimension, but I believe the outside finger is 4 foot overall, outside to outside. That's the pile, like I discussed with you previously. The -- in between the decking area is probably 3 and a half foot wide.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: And then the inside is wider than that, as you can tell. I'm assuming it's 5 feet, plus the larger deck --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- surface area in front of the vessel itself.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. ROGERS: So moving forward, please.

Here's an overview, with water depths, of where the boatlift would be installed. It is for -- to accommodate a 20-foot vessel.

You know, based on the criteria, the -- the addition of that vessel does not exceed the overall 50 percent of the -- of the property so, with the two together, it still doesn't. It's a 30-foot and a 20-foot, so overall that's 50 feet. And the shore length, I believe, is 102 feet. So that -- technically, that criteria is still met with both vessels. I just wanted to point that out. We don't exceed any of the criteria in that case.

You know, realistically, with the waterway here is well over 1,000 feet wide. It's a huge bay.

Yes, there is local knowledge for navigation in the area, as this water body is not a marked channel.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: There are sandbars just basically off the screen, as you will see moving forward in my other exhibits.

Let's go ahead and move forward.

There's a quick, little cross section with the depths of where the vessels would be.

Moving forward, please.

So here's a quick, little exhibit of -- you can kind of see the sandbar off to the -- to the left.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: I have got a little handy, dandy laser myself.

So right in here.

Yours is red, mine is green.

So out in here, there is a local knowledge sandbar. And you can see the channel kind of does hug this shoreline, and then you kind of go out right here. And also you can go north, you know, and get up to the restaurants and things that way, if you choose to go that way.

But overall, it's -- the width of waterway, if you draw a straight line across from the property, is very wide. It's -- you know, going to the right, it gets a little bit tighter. But, all in all, there is no impact in navigation. We are well within 25 percent width of the waterway, and

that's, you know, part of the criteria, obviously.

And the driving force here is basically the dock is existing and it meets the criteria, so we just propose to add the lift to the outside without having to put a financial hardship on the applicant to modify the dock to do this. It -- it -- you know, could we come up with a better configuration to reduce the protrusion? Potentially. But then you would have to do a lot more structural work to the dock itself, so our office and the applicant chose to present it this way and, you know, move forward depending on, you know, how --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- you felt about it.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So, all in all, that's -- that's really it in a nutshell. If you have any questions, happy to answer them.

HEARING EXAMINER DICKMAN: I don't have any feelings. Feelingless. That's my job. I'm neutral.

MR. ROGERS: Cold.

HEARING EXAMINER DICKMAN: Cold and calculating.

Anybody here from the public to speak? Anybody registered at all?

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

HEARING EXAMINER DICKMAN: Okay. I don't have any questions. I understand what you're trying to do.

I guess part of this, as you say, is trying to legalize the -- call it a survey oversight probably.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: So I assume that's part of this.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: And then adding on a smaller lift.

There's really not any additional decking, right?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: It's just a lift.

MR. ROGERS: Boat lift, yeah.

HEARING EXAMINER DICKMAN: Small lift.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: Okay. I don't -- is there anything else from the County? I don't have any questions for the applicant.

MR. KELLY: No, sir.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Then we will close this. And I will get a decision on this item as soon as possible.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Do you happen to have this next one?

All right. We're going to 3-B.

Hi, John.

MR. KELLY: Good morning again.

Before you is item -- agenda item 3-B. It's BDE PL20220002144.

It's a request for you to approve a 34-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a new dock facility that will protrude a total of 54 feet into a waterway that is 224 plus or minus feet wide pursuant to Section 5.03.06.E.1 of the Collier County Land Development Code for the benefit of the property.

Staff notes that there is no -- presently not a principal structure on the site. However, a building permit, number PRFH20220416412, has been applied for.

And with exception to the health department, all reviews have been approved. The

permit will be issued upon the issuance of approval by the health department.

The location of this property is 178 Tahiti Circle, further described as Lot 155, Isles of Capri Number 2, in Section 32, Township 51 South, Range 26 East, Collier County, Florida.

It's located within a single family 4, RSF-4, zoning district.

Public notice requirements were effected pursuant to Land Development Code Section 10.03.06.I. The property owner notification letter and newspaper ad were taken care of by the County on August 5, 2022. And the public hearing sign was posted by me on August 4th.

This review was by staff, based upon the criteria contained in LDC Section 5.03.06.H. Of the primary criteria, it satisfied four of five. Of the secondary criteria, it satisfies four of six, with the sixth being not applicable, the Manatee Protection Plan.

And it has been found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comment, I have received five emails within the last two or three days. I put together for you an Attachment D, which was emailed last evening. The court reporter and you both have a copy at your station.

And so with that, if I could get you to put Attachment D on the screen, please. Just the first page.

And I just want you to note from the photograph or aerial where these letters of objection came from. They're circled in yellow. The -- the property address for this petition is circled in blue.

It is staff's recommendation that you approve this petition, as described, in accordance with the proposed dock plans provided within Attachment A, with two conditions of approval: One, a railing must be incorporated into the dock design to prohibit use of any open area of the dock as an additional slip; and, two, a certificate of completion for the dock cannot be approved until a certificate of occupancy has been issued for the residence.

And that completes staff's report here.

HEARING EXAMINER DICKMAN: Quick question. I just want to be clear. You said that the property has been razed. So we're looking at vacant property? Is that the situation?

MR. KELLY: Presently, yes. We expected the permit to have been issued by now; however, they ran into an issue with the health department. Again, we expect it to be issued within the next couple of days.

HEARING EXAMINER DICKMAN: Okay. So describe for me -- since docks are accessory to the principal use, describe to me how you're going to control that so that a dock isn't built and no principal use is put on the site.

MR. KELLY: That would be your condition of approval --

HEARING EXAMINER DICKMAN: Oh, okay.

MR. KELLY: -- that they can't have a certificate of --

HEARING EXAMINER DICKMAN: So it --

MR. KELLY: -- or a certificate of completion for the dock.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: For the record, Ray Bellows. The staff had anticipated the building permit being issued. They just ran into a glitch in the timing. But it is in the works and it's almost ready to be issued.

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

MR. ROGERS: Good morning, again.

For the record, Jeff Rogers with Turrell, Hall & Associates, here today representing both applicants, Kenneth and Kathleen Demaret, and who reside down the street but have purchased this lot to build their new home at 178 Tahiti Circle. And as -- part of that project is to build a new dock as well, as there is no dock currently.

To touch on the permit issue, I know it is an accessory -- the dock is an accessory

structure to the -- you know, for the house. And I don't like coming in front of you without the house permit being issued. We tried to avoid that, and was told over and over and over again that dock -- building permit would be issued at this point, but, however, the septic tank and the health department was a holdup. I was going to ask for a continuance today until that happened or postpone this until the next hearing; however, working with Ray and staff, we decided to move forward and just condition your approval.

Just so you know, the inspector was out there yesterday, and we're confident that approval is in the works as we speak.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So just want to touch on that with you.

So moving forward, yes, the existing shoreline is a -- is a new seawall. And moving forward, I have got a couple pictures here of -- of it.

So this one I'm going to run through the criteria with you and spend a little bit more time due to people and neighbors voicing their concerns with the proposed dock and its overall protrusion into the waterway.

Moving forward, please.

Here's a couple photos of the site, just to give you a reference of what's there.

There's a boathouse immediately to our northwest. That's a grandfathered structure. It was built years ago, and it's literally right on the property line.

I have the survey on the next one.

And then the properties just to our southeast, I believe, do not have docking facilities currently, but they do have a seawall as well and enjoy views of the bay themselves.

So moving forward.

HEARING EXAMINER DICKMAN: What is --

MR. ROGERS: Oh, go back.

HEARING EXAMINER DICKMAN: What does that sign say?

MR. ROGERS: C-3 for Capri.

HEARING EXAMINER DICKMAN: Okay, sorry.

MR. ROGERS: There's a lot of -- there's a lot of development going on in Isles of Capri right now and some --

HEARING EXAMINER DICKMAN: I thought it said "For sale."

MR. ROGERS: No, no, no, no. No.

Moving forward.

So here's a survey. And the importance of this survey is -- we always are required to get a certified survey from a licensed and permitted surveyor who establishes -- you know, when Turrell is hired to do these dock designs, the first thing we do is get surveys and get water depths associated with that, which then the survey establishes the property's riparian lines.

And riparian lines are extensions of your property line out into the water. There's criteria that the State has established that dictate what riparian -- how riparian lines should be laid out.

And in this case, the -- not in this case, but in all cases, riparian lines extend from the property out to the thread of navigation or the deepwater contour of the associated bay. And in this case, the property is square to the bay; therefore, the riparian lines are basically extensions of the property line straight out, square, into the bay, basically just off Johnson Bay.

So moving forward.

And then from there, we take the survey and overlay it onto an aerial. Everything is georeferenced. Everything is locked in exactly where it should be. And then we do offsets, obviously, for the required side yard setbacks.

The previous presentation that I just did is literally two houses to your left.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: If -- here you go, at this property.

And just to get in the weeds real quick with the State, that's kind of -- that's state lands in this area, and this is more -- this is classified as a manmade waterway. And so we are not required to maintain the 25-foot setbacks, as 170 Tahiti was required. That just goes to show you how close that line is.

So we do the offsets and then work inside that box to fit the client's vessel or proposed vessels to be moored at the facility.

Moving forward.

So here's -- here's the proposed dock. The owner currently has a 40 -- 400, it's called, Intrepid. And LOA is 44 feet. And he currently moors that at his property right down the street and is looking to get -- he's in line to get the new boat in the next -- you know, things are crazy right now with boat building, like everything else -- 18 months to two years, and kind of in line with the house, and ultimately get this new boat and build the dock upon -- before completion and CO of the house.

So we are here early, ahead of the schedule in regards to the house, but ultimately he's looking to get a -- it's a -- Tiara is the model, and it's a 48-foot Tiara, which is an outboard boat. And it -- it is LOA of 50 feet, when you take the motors into consideration.

And it also has storage of two Jet Skis on a boatlift.

Also I want to stress, everything is within the required side yard setbacks and it fits within the box that we are given.

This is not the only design that Turrell did for the clients. We do multiple concepts to ultimately reduce the overall protrusion out into the waterway.

We always -- we know the criteria. We -- I have been personally doing this 16 years, with BDEs and everything with the County. So I look at angles. I try to 45 them. I try to do what I can. And with that, it's gotten -- become noticed that going straight, perpendicular to the shoreline, is the best design for these docks, to avoid ingressing and egressing any proposed dock or slip over your riparian lines and shared riparian lines with your neighbor, to avoid any conflicts. So we try to, you know, avoid, where we can, crossing over side yard setbacks and/or the subject property's riparian lines. That's just part of our design criteria as a firm.

Moving forward.

I want to run through the primary and secondary. I want to get this all on the record. Primary number 1, whether the number of dock facilities and/or boat slips proposed is appropriate in relation to waterfront length, location, upland use, and zoning of the subject property.

In this case, this one is appropriate. It has two slips. The Jet Skis are two vessels; however, it's on one boatlift, so therefore they are considered, even with the State, two slips, which is what you are allowed per code and the Manatee Protection Plan for Collier County. So that one is satisfied.

HEARING EXAMINER DICKMAN: Okay. So let's take this slowly --

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: -- one at a time.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: Criteria 1 has to do with the number of dock facilities. I mean, it talks about appropriateness --

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: -- which could be a subjective word. But here we are talking about the number of dock facilities and/or boat slips. So here how many boat slips do we have?

MR. ROGERS: We have two.

HEARING EXAMINER DICKMAN: Two boat slips, okay.

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: And in your opinion, is that appropriate for the

waterfront length, location, and upland land use zoning of the subject property, which is single family?

MR. ROGERS: 100 percent, yes, sir.

HEARING EXAMINER DICKMAN: So in your professional opinion, that's appropriate?

MR. ROGERS: This is not a unique design for a single family dock, by any means.

HEARING EXAMINER DICKMAN: Okay. So let's go to number 2. Let's talk about water depth.

MR. ROGERS: Yep. Water depth.

So in my application, I want to clarify, there was a statement made that riprap was in front of the seawall. And that has been brought up by some of the public. When I dove the site, there was some scattered rock in front, and I -- that's just, by nature, riprap.

Looking at the engineering of the wall, which we did not do, riprap was not placed -- typical riprap was not placed in regards to going up to the mean high waterline and having a slope and pushing it out.

But, you know, criteria number 2, basically whether the water depths and proposed site is so shallow that the vessel or the -- excuse me -- general length, type, and draft, as that's described in the petitioner application, is unable to launch or moor at mean low tide.

HEARING EXAMINER DICKMAN: Okay. So I take this to mean a situation where someone cannot -- you cannot enjoy the same rights that everyone else has, because, for some reason, there's some shoaling or some reliction or --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- accretion or whatever --

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: -- and you can't launch there, so you have to go out further.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: In this case, is that true?

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: So water depth is not an issue here, so that --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: So, in your opinion --

MR. ROGERS: The statements that I made about riprap -- I just want to get on the record that I did say this criteria is still not met, and --

HEARING EXAMINER DICKMAN: Yes.

MR. ROGERS: -- it is one of the primary criteria, and we are allowed to miss one of the five. So I -- in my application to staff, I did make a statement about riprap, but it was not the driving force of this petition --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- request. It's the vessel --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- itself.

HEARING EXAMINER DICKMAN: So you're in agreement with staff that this is not a -- I mean --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- the purpose of --

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: -- this dock is not to -- is not driven by shallow waters?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: That's right.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: Okay. So number 3.

MR. ROGERS: Number 3.

HEARING EXAMINER DICKMAN: We're talking about adverse impact, whether the facility will have an adverse impact on navigation within the adjacent marked or chartered navigable channel. So --

MR. ROGERS: Can we move forward? I didn't mean to cut you off.

HEARING EXAMINER DICKMAN: Let's talk about navigation here.

MR. ROGERS: Keep going forward. There's other aerals. I want to show -- maybe it's back. I'm sorry, Andrew. Keep going back. Yep. My fault.

Yeah, go to the nine -- eight or nine.

Go to nine, please. There, that.

So again, I want to just -- this shows the thread of navigation in the area and the shoaling that I discussed in the other petition.

The -- this is exactly the same bay. You have a local-knowledge channel. The bay itself is -- could you go up one more, please, if you would?

So here's the bay. Here's the subject property, obviously. Here is the bay to the east, where everyone has to ingress and egress to get to their property via boat. When they pass through here, they can pass through. And then ultimately, like I said, they hug the shoreline and go out, or they come out here and hug this shoreline and go out that way, because there is a sandbar, a naturally occurring sandbar, in that area.

My point being is this whole entire bay here, there is no standard thread of navigation. There is no marked channel. So basically what that means is it's a local-knowledge channel. And you, from experience, have to know basically where you can and can't go, because it is a sandy sandbar. It is very volatile. It does change with tides and currents and things. And believe you me, the current in this area is significant. And fetch will also change the location of the bar. So it is a local-knowledge channel.

HEARING EXAMINER DICKMAN: So the -- okay. So we're talking about 54 feet out into an area that is -- I mean, the dark -- the darker area is deeper water, right?

MR. ROGERS: Correct. Well --

HEARING EXAMINER DICKMAN: It could be --

MR. ROGERS: Yes, it is.

HEARING EXAMINER DICKMAN: -- seagrass or something like that, but --

MR. ROGERS: It's --

HEARING EXAMINER DICKMAN: -- you're -- I get it. I mean, it's tricky coming in and out of there.

So the question that you need to answer right now on this thing is, does -- is this going to interfere with navigation?

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: Okay. And why is that?

MR. ROGERS: Because the whole bay between our proposed dock and the dock across the waterway is open for navigation. And it's -- I have got an exhibit showing the width, and it -- I believe it's well over a hundred feet of navigable area for --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- boats to pass through.

The number 10, it looks like. There you go.

So 137 feet from the proposed dock to -- or vessel, stern of the vessel, to the vessel across the waterway.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Obviously, as you go eastward, there is further pinch points that are less, which -- or potentially less. I don't want to say they are, because I don't have the

dimension there.

But, you know, as proposed, I have gotten -- if you go up one again, Andrew -- other docks permitted. Go one more, if you would. I don't -- yeah, okay.

So, you know, these -- these two right here, I personally did the boat dock extensions as well. And this one right here was granted a 51-foot extension, so, you know, 31 feet over the allowed 20.

HEARING EXAMINER DICKMAN: You say your clients are already in this neighborhood?

MR. ROGERS: They're right here.

HEARING EXAMINER DICKMAN: And that's -- that's --

MR. ROGERS: There's their current boat.

HEARING EXAMINER DICKMAN: So they're going to sell this and move here.

MR. ROGERS: I don't know what their -- they're here today.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: They're here today to speak, so we -- they could clarify that. I don't know if they're going to sell that house, but they are obviously living in it while they build this other one. You know --

HEARING EXAMINER DICKMAN: What size vessel is that?

MR. ROGERS: That's a 44 LOA.

HEARING EXAMINER DICKMAN: And you brought that one in at an angle?

MR. ROGERS: Yeah. I personally didn't do that dock. That -- I'm not sure if that dock -- they will have to speak to that. If that went through a boat dock extension, I -- I can't speak to the knowledge of that situation.

HEARING EXAMINER DICKMAN: Okay. So this -- so on this particular issue, it has to do with the dock facility --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- and navigability, and you answered the question.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: And you're -- in your --

MR. ROGERS: So moving on --

HEARING EXAMINER DICKMAN: -- opinion, this is not --

MR. ROGERS: It's --

HEARING EXAMINER DICKMAN: And you're also -- on the next one, number 4, we're still talking about navigability in a way, but we're talking about percentages, so you have to maintain --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: So discuss this.

MR. ROGERS: Okay. So, Andrew, can we go up to the survey? Go up on your slides. Keep going. The survey -- keep going. Keep going. Right there. Number 4, please.

So I want to stress on that one -- if you could make it larger, that would be great. Up here in this corner, right here, the surveyor makes a statement of 219 feet plus or minus to opposite seawall of east line basically from mean high to waterline. Mean high to mean high. So that's how the County and the State interpret width of waterway, from mean high to mean high.

So if you take 219 times .25, which is 25 percent, it comes up to be 57.45 feet. I believe it's 57.45 feet. I wrote it down. So my point being is, even with the most restrictive width of waterway - which I state on my drawings that it's 224 feet wide - at 219, we still meet this criteria, being the survey is more restrictive.

So as proposed, you know, we know as a firm that 25 percent width of the waterway for the State, for the feds, and for Collier County, is the standard. And you cannot exceed that,

because the properties across the waterway are allowed 25 percent protrusion as well, leaving 50 percent open for navigation, which, you know, in this case --

HEARING EXAMINER DICKMAN: All right. So, in other -- in other words, I mean, what this criteria does is it's a failsafe, basically. It ensures that there will always be that percentage of the waterway open, at --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- at all times.

MR. ROGERS: At all -- 50 percent of the waterway has to be --

HEARING EXAMINER DICKMAN: At all --

MR. ROGERS: -- at --

MR. BELLOWS: -- times, no matter what. After buildout --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: After everybody builds out.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: It's not --

MR. ROGERS: That's the rule.

HEARING EXAMINER DICKMAN: -- preserved, and --

MR. ROGERS: Nope.

HEARING EXAMINER DICKMAN: -- it will always be open.

MR. ROGERS: Nope, not at all. You are 100 percent right.

So that criteria we met as well.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So number 5.

HEARING EXAMINER DICKMAN: Will this interfere with the neighboring docks?

MR. ROGERS: As designed, no. And that's why we went perpendicular to the shoreline, which is what's, you know, driving some concerns with this proposed facility, is the overall protrusion of this dock is -- is greater than most out there, but it's not inconsistent with Isles of Capri and the overall vibe of the island.

If you -- Andrew, if you would go forward to some other exhibits, I've got -- keep going. It's towards -- you know, it's the one showing all the widths of the waterway.

Keep going.

So, yeah, eight and nine, those areas. Go to eight, if you would, please.

So again, on these I show -- don't get me wrong, these are taken off an aerial. So the note down here shows these dimensions are approximate, taken from aerial imagery, so they're not surveyed dimensions.

However, the one up here, this 51, I know -- and this 45 I know are correct, because our office did those boat dock extensions, and they have been approved for those shown protrusions. So those are 100 percent accurate.

Moving around, I mean, yes, this dock is, as proposed, greater than any others on the waterway, in this subject waterway. You do have a 43 over here, a 51. So we are 3 feet past this previously approved boat dock extension.

HEARING EXAMINER DICKMAN: Let's talk about the site, this --

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: -- your site.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: Your site.

What are the options? Straight in? Parallel to shore? Angled?

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Tell me which one works best.

MR. ROGERS: Move forward, if you would.

The perpendicular worked out best.

Keep going, please. I did some other exhibits for this. Keep going. So after all this -- here you go.

So, you know, like I said, we work with -- after we get the survey, I try to work on the design. And this is one of the concepts. You can see at the bottom, I call it concept plan 2. You know, we tried to fit the vessel in the box. And the box is 25 percent width of the waterway in required side yard setbacks. And that's basically my design box that I tried to fit the proposed vessel in.

In looking at this, you know, on an angle, this is the best I could do. I mean, I could probably gain a little more here and bring it in, but right here, I believe that's --

HEARING EXAMINER DICKMAN: So what --

MR. ROGERS: -- 55 feet out.

HEARING EXAMINER DICKMAN: -- I'm getting at is, like, so you have a dock on -- at 174, an existing dock.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: Is there a dock at 182, the neighboring dock?

MR. ROGERS: No, there's not.

HEARING EXAMINER DICKMAN: But still, we have to consider the fact that they are entitled to a dock.

MR. ROGERS: Yeah. 100 percent, yes, sir.

HEARING EXAMINER DICKMAN: So you want to imagine that --

MR. ROGERS: They'll have a dock.

HEARING EXAMINER DICKMAN: -- they will have a dock.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: And then, you know, the question being, in this particular criteria --

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: -- if you take this criteria on its own --

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: -- you know, will it interfere -- I have to look at interference, if any, of any neighboring docks. And this is not an esthetic issue. This is -- in my opinion, it's more of like -- is it -- more of a safety issue, in terms of, like, is this the safest, best way for accessing, you know, assuming that they have this vessel, they're going to get this vessel, you know, they're requesting what they're requesting. They're not entitled to it. They're --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Yeah. That's the whole point of this hearing.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: But will this interfere with -- you know, that's how I'm looking at this. And I'm asking --

MR. ROGERS: Absolutely.

HEARING EXAMINER DICKMAN: -- you to tell me, like --

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: -- do you think the arrangement that you're proposing is the -- the least -- the -- the best way to arrange this vessel at this property without having any interference on either side? Even though they don't have a dock on one side of the property, I want you to imagine that there is a dock on that side of the property.

MR. ROGERS: Uh-huh, yes.

HEARING EXAMINER DICKMAN: Okay?

MR. ROGERS: To answer your question, yes. We -- we feel that the proposed dock in front of you is the best design for, not alone just our property, but everyone surrounding us.

And it's also consistent with most of the other docks in the area, being a perpendicular

mooring design. It's the least impactive. You're not ingressing and egressing over others. It does extend straight out. But the property to our east does have a right to build a dock. And we have to take that into consideration. And, in my opinion, part of that consideration is meeting the side yard setback requirement of 15 feet. And they would have to do the same thing.

There's 30 foot of open area for an approach as well, if they did do a parallel mooring design versus perpendicular.

There's no design criteria that the County has that you have to follow --

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: -- for this area. So --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- in our opinion, yes, the proposed design --

HEARING EXAMINER DICKMAN: This is --

MR. ROGERS: -- is the best.

HEARING EXAMINER DICKMAN: -- the optimal --

MR. ROGERS: Design.

HEARING EXAMINER DICKMAN: -- design for not interfering with dock, a dock, on either side of the property.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: So --

HEARING EXAMINER DICKMAN: Let's go to the secondary criteria.

MR. ROGERS: Moving on to the secondary. Whether there are any special conditions not involving water depths relating to the subject property or waterway which justify the proposed dimension and location of the proposed facility.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Criteria met.

The unique one here is --

HEARING EXAMINER DICKMAN: You conclude that the criteria is met. So based on what? What is --

MR. ROGERS: Basically, you know, it's not water depths --

HEARING EXAMINER DICKMAN: -- is that --

MR. ROGERS: It's not water depths -- excuse me, sorry -- it's the vessel driving this. And that is -- that is unique in this case. It's --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: The vessel is larger than not most, but it is a larger vessel, and it is the unique driving factor of this. There are no environment concerns, seagrasses, things like that, shoaling going on.

We have designed this dock, in our opinion, 3 feet off of the existing seawall, which provides a buffer for -- we say riprap -- for the scattered rock, which, you know, I'm willing to dumb that down a little bit to be, you know, 18 inches.

HEARING EXAMINER DICKMAN: Okay, let me stop you here.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: So you said that this relates to the vessel. I don't agree with you.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: I think this says related to the subject property or waterway.

What special condition is there related to the property or the waterway that requires

this particular -- I'm isolating every single element so we can go through them, because you said it's their need -- you basically told me it's the need, that they want --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: They want.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: They don't need, they want this boat. But that's not what this criteria is about. It's about special conditions related -- not involving water depths, but related to the subject property, which is the property that they're purchasing, or have purchased, or the waterway.

So what special condition is there that requires this?

MR. ROGERS: The subject waterway allows the protrusion for us to go out, and that is related to this property. It's on a bay. If this property was on a smaller bay, we would not be able to propose a vessel of this size due to the other criteria of 25 percent.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So that was taken into consideration for these owners. When they bought this lot, they knew the 25 percent -- ideally you reduce your protrusion, but in this case we are allowed to go out 25 percent, and we are inside of that.

HEARING EXAMINER DICKMAN: Okay. So your answer is that there is -- within that, the percentages of the waterway, based on the waterway width, there's -- there's room for this dock, and that's a special condition.

MR. ROGERS: And to maintain navigation for everybody else --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- as well.

HEARING EXAMINER DICKMAN: All right. Let's go to secondary number 2.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: Whether the --

MR. ROGERS: Go for it.

HEARING EXAMINER DICKMAN: Whether the proposed dock facility would allow reasonable safe access to the vessel for loading and unloading. And we talked about this before.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: You know, this has to do with overdecking and -- but making sure that the vessel that they have chosen -- and they're choosing this vessel, and so this is driven by their desire for this vessel, and -- and the idea is that you don't -- you know, they -- they have got a vessel that requires them to come here and ask for more than what they're allowed as a right, so you got to keep the decking at a minimum --

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: -- but make sure that it's safe for access, ingress, egress onto the vessel.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: That's what this is about, so --

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: -- let's go.

MR. ROGERS: Can I go back to the proposed dock design slide, if you would?

Yes, sir.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: So on the screen you can see the -- it's a U-shaped dock, we call this. And on one side, we have 4 foot wide walkway. As you and I have previously discussed, that 4 foot is outside the pile, outside the pile, so the decking is, you know, less than that. It's about 3 and a half foot wide between the piles. So that side of the proposed slip is mostly for maintenance and just routine access to the vessel, for maintenance purposes, in our opinion.

On this side --

HEARING EXAMINER DICKMAN: Let me stop you for a minute.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: So what -- just for my own ability to calculate as I go along, when we're talking about piles, we're talking about, what, 12 inches? 10 inches, 12?

MR. ROGERS: Typically 10 to 12 inches. It depends on the contractor --

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: -- obviously. Yes, sir.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So it's a -- lift piles are definitely 12 inches.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Dock piles, they can dumb down to 10, and it does cut down on the overall dock cost.

HEARING EXAMINER DICKMAN: Okay, okay.

MR. ROGERS: So on this side, we did -- which is the east side, we did 6 foot wide. And the reason we did this is because this is the side mostly that patrons, the owners, would get on and off the boat and use this to load the boat, from this side.

This is a large deck area that they can store their coolers and stuff in order to then load onto the vessel.

The State did require handrailing here - you can see the orange line - as well as here, to prevent mooring of the vessel. So -- or an additional vessel. So, you know, this is the main point of ingress/egress to the vessel, on this side. And this, in our -- in our design, is more for maintenance.

The reason we do this, basically the -- the -- these boats are cleaned, waxed, professionally done. And having access to both sides is the only way to do it. Otherwise, you're taking this to a marina, paying for haul-out, and going through that cost and that process to get your vessel cleaned and detailed, which usually occurs on an annual basis, should occur on an annual basis.

So, again, it fits within the side yard setback requirements. That 6 foot is ultimately outside the pile, so you're working with, like, 5 and a half foot decking. So, like I said before, walking down that with coolers, you don't have to turn to get through your piles. You can just load the boat consistently.

Could we potentially reduce that? I'm just throwing this out as a conversation. Yes. That is something that, you know, could be dumbed down, in my opinion, to a 5 and a half -- maybe 5 foot would be the minimum I would want to go, in order to maintain access.

Also, I want to point out this, this dimension right here. We are 3 foot off of the seawall, facing the seawall. So we do that as -- as part of -- if -- if -- let me back up. Let me remind.

If there was riprap, complete riprap along this subject shoreline, which has been brought up, per my statements in the application, which is rightfully so, that there is not full typical riprap bank here, but we are able to bring this vessel 3 feet off of it. Could we -- could we reduce that a little bit to reduce the overall protrusion some? In our opinion, yes. I would not want to go less than half of that, maybe 18 inches, a foot and a half off of that seawall, for safety purposes of pulling your vessel on. We're all human. There's errors, you know.

What I would do if we would reduce that is put two pilings, down piles, right here, that would protect the boat from ever hitting this concrete seawall if something were to happen. So there is a safety factor into this design.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: If this was a typical riprap shoreline -- you know, you got a two-to-one slope of riprap. And riprap typically on a seawall is placed at the mean high

waterline elevation and ran down on a two-to-one slope to whatever the bottom contour is at this facility.

So typical riprap banks average 5 feet width, 5 to 10 foot widths. Now, 10 being a more of a natural bank with no seawall, so the ones with seawalls are usually about 5 foot wide. So if this shoreline was fully riprap, typically this number would be more like 5 to 6 feet, so that would crease our protrusion even more. And based on the vessel size, we would not be within 25 percent width of the waterway.

So that -- we had to take that into consideration with the overall proposed design as well.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So -- okay. So we are at number 3.

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: Single-family docks, whether the length of the vessel or vessel in the combination described by the petitioner exceeds 50 percent of the subject property's linear waterfront --

HEARING EXAMINER DICKMAN: So this is a relationship --

MR. ROGERS: -- footage.

HEARING EXAMINER DICKMAN: -- situation. So this is a ratio.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: You add up the length of all your vessels --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- and you make it a -- a comparison to the width of the -- of what waterfront they have --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- which is 70 -- 70 --

MR. ROGERS: 70 feet.

HEARING EXAMINER DICKMAN: -- feet, right?

MR. ROGERS: Yes, sir. Don't meet it.

HEARING EXAMINER DICKMAN: Don't meet it.

MR. ROGERS: Don't meet it. We don't meet it. There's no way to meet that criteria in this case.

HEARING EXAMINER DICKMAN: All right. Because?

MR. ROGERS: The length of the shore -- or the length of the vessel exceeds -- it's almost the length of the shoreline --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- basically.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: It's 20 feet less. And we have 30 foot of setbacks required. So, you know, 70 minus 30, 40 feet. So technically you could fit a 38-foot vessel parallel moored to the shoreline, and our vessel is 50 feet. So there is no -- even if their current vessel was brought here, we wouldn't meet that criteria either. Their current vessel is 44 feet LOA, so it's -- it's over that as well.

HEARING EXAMINER DICKMAN: Okay. So 50 percent of 70 would be what?

MR. ROGERS: 35.

HEARING EXAMINER DICKMAN: 35. So that would be the maximum --

MR. ROGERS: Vessel --

HEARING EXAMINER DICKMAN: -- in order to meet that criteria.

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: Okay. Let's go to number 4, secondary criteria number 4.

MR. ROGERS: Okay. Waterfront --

HEARING EXAMINER DICKMAN: This --

MR. ROGERS: Go for it.

HEARING EXAMINER DICKMAN: -- is -- this really has to do with the neighboring property owners and their views. Okay? So let's talk about that.

MR. ROGERS: Okay. We have received the numerous letters --

HEARING EXAMINER DICKMAN: Yes.

MR. ROGERS: -- of complaints.

So, you know, basically when I introduced the -- this petition, I talked about the survey. And what the surveyor does is establishes your riparian rights to the water.

So riparian rights to the water grants homeowners, waterfront owners, the right to potentially build a dock out into the waterway. They don't own the bottom lands. In some cases they do. But it basically grants you the rights to enjoy the waterfront and build the docking facility.

So Turrell, Hall & Associates, we do not establish riparian lines. We rely on the certified surveyors, who have the Florida statutes to follow, to establish the riparian lines, as I kind of previously touched on, on the design. So we get the surveys.

And within those riparian lines is your view. And that's, unfortunately, what people don't always understand.

HEARING EXAMINER DICKMAN: Okay. Let me -- let me stop you there.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: When you say "their view," you're -- you're -- so, in your opinion, someone's view that they're entitled to is just straight out?

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: You don't get to look that way, you don't get to look that way. You have no right to looking any way, view corridors. You have no -- you're just saying, like, you can't obstruct my view straight out? That's your opinion.

MR. ROGERS: That's our firm's opinion, as well as -- been -- I have a couple slides, if you would move forward, Andrew, that show court hearings --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: -- that have been brought up in the past --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- and voted on. Right there, number 12 and 13.

So the Florida Statute lays it all out. Basically -- I could run through all this. It -- it talks about how riparian lines are established, how they run out to navigable waterways, straight out to the middle of the waterway. And then also I have, you know, reference to court hearings that have been voted on by judges and held up in court in regards to views and what you're legally allowed, based on your rights to the water.

Yes. Can people look to their right and left? Of course. But technically speaking -- if you would move forward to the next slide.

These are some of the hearings that have gone on and been voted on, you know, back in 2011.

The most recent one that we were involved in, too, was Lee County, the bridge in Lee County. That was very confrontational, and we got involved as expert witnesses and such to dictate -- clarify your rights as -- your rights to the water in regards to your views and how that bridge affected that particular property's views.

The bridge crossed over their riparian lines.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: And that was basically judged on and said that, yes, they had to claim -- the County had to give them, you know, a financial re -- for damages for their view for the property value.

In this case, we're within our riparian area. Everyone is allowed to build within that

riparian area, and legally that is your view.

If you -- it's not me standing here telling you that's the case. I -- you know, we, as a firm, have done plenty of research, been involved in this numerous times to know that basically, you know, as stated above, the little bold note at the bottom, a waterfront property owner's special riparian rights are contained within the riparian area adjacent to his or her property. And that's been held up in court. That was decided by judges, and -- you know, again, it's not me telling you this as an expert. I'm deferring to the State and the judicial system --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- establishing those rights.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: So in this case, can the neighbors to our east look over our property, out to the bay, as -- as they have stated? Of course, they can. However, that view is not maintained, it's not guaranteed. It's there currently.

And is this proposed dock going to change that for them? Yes, it will, but it's not a guaranteed view. They have the same right to build a dock, and their neighborhood, you know, would be technically affected. But legally, we are within our rights.

HEARING EXAMINER DICKMAN: I -- I -- I get it. I understand.

So you're -- and you're saying you're -- any -- anything other than your direct riparian view is not protected by law.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So -- but you also acknowledge that the fact that you're here -- so as of right, you're allowed 20 feet out, you know, regardless --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- to do what you like, depending on if you meet the criteria, but you're not entitled to -- you're not entitled as of right to 30, 40, 50 feet beyond that, you know. So that's -- that's the point of putting all these criteria together.

But I get your -- I get what you're saying. I'll look at the cases about, you know, the view, view corridors and protected views, what's -- I know about the riparian areas and I know you're in the box.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: But as far as, like, you know, blocking views, you know, I also have to look at what was the intent of the criteria put into the code legislatively here locally --

MR. ROGERS: Understood.

HEARING EXAMINER DICKMAN: -- so but --

MR. ROGERS: Just so you know, too, I want to clarify. The riparian rights don't end at 20 feet. That's the County's --

HEARING EXAMINER DICKMAN: I know that.

MR. ROGERS: So your riparian --

HEARING EXAMINER DICKMAN: I'm saying what the code --

MR. ROGERS: -- rights go --

HEARING EXAMINER DICKMAN: The riparians are essentially the side yard property lines, going straight out.

MR. ROGERS: Out to the front --

HEARING EXAMINER DICKMAN: Straight out.

MR. ROGERS: -- elevation.

HEARING EXAMINER DICKMAN: So they go from property lines to riparian lines once --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- they get into the water. I get that part.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: And the County, like most local governments, sets up setbacks so that you're not building -- you're building within a box. And they have said, in this case, in this local jurisdiction, it's 20 feet out. And you just do that administratively, and you don't have to come in front of a hearing examiner.

But when you have special situations like this, boats, you have to come, do a public hearing, and you have to show a multitude of criteria and that you're meeting this, and so we're just -- right now, we're just focusing in on how is the impact -- what is -- what would be the contact on neighboring properties' views by allowing someone to exceed what they would have as of right. That's what we're talking about. And I understand your point of view. And it's well taken, and I'll -- I'll consider it.

MR. ROGERS: And I appreciate your interpretation of it --

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: -- and feedback on that.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: So, yeah, moving forward, I guess. Number 5, seagrasses.

Number 5 and 6 really are -- you know, typically a lot of times -- number 5 we meet. I dove it. It's part of the requirement for the City's submittal, as well as the State and federal.

This is in an area of a natural bay. This section is not considered natural, but sea -- my point being, there's a lot of chance seagrasses potentially could grow in this area. And in this case, there were not, when I dove the site.

But there are significant resources in this area, and that's just a part of the reason it's an aquatic preserve.

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: Yeah.

So number 6 is the Manatee Protection Plan, and it's really not applicable, but we are able -- we are allowed two slips per the MPP, and -- as proposed, that's, you know, it -- we meet that.

With that being said, that's the criteria. I do want to, you know -- move forward, if you would, Andrew. There's a slide where I kind of just -- move forward. Please keep going.

So here is -- we did receive, in the ninth inning, some comments from -- you know, after the advertisement went out, some neighbors, as John touched on, have voiced their concerns. And the biggest one being was views, and you and I just discussed that.

Navigation, I think, we touched on as well. In our opinion, there's 50 percent width of the waterway still open. There's no sandbar directly out across from this dock, so we're not creating a hazard to navigation and basically setting precedent for larger docks.

I mean, Isles of Capri is a boating community, always has been. And there are -- I could go back to a few of my other aerials in here and show you there are docks, not on this particular bay, but just to our south, that go out 75, 60 feet, with much larger vessels on it.

So it is a boating community. And, unfortunately, the trend with boats these days is bigger is better, and that's what's happening. And in regards to storing those boats, you need docks to accommodate it. So you go through this process; and if we meet the criteria in place, usually we can get it.

HEARING EXAMINER DICKMAN: Yeah, let's talk about that a minute.

The trend that you mentioned.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: And I appreciate you bringing that up, because I have noticed that there is -- definitely in my tenure here, there has been a trend, an uptick, in the desire for more -- or docking larger and larger vessels. And we are talking 40 feet-plus.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: And it does become -- I can understand why it would take the concern of neighbors and neighboring -- I mean, it's a big boat. It's a large boat.

And a lot of times, you might call it a yacht. I just want to make it clear to everyone that there's nothing -- there's nothing in the code that tells me, as the Hearing Examiner, oh, don't go beyond -- don't let people have a 35-foot vessel, no more than this, no more than that. I have to deal with the code and the criteria that's presented in front of me.

Obviously, if it were the County's desire, as a policy, to start saying, well, we'll allow boat dock extensions, but no more than, call it, you know, 15 feet beyond the 20 feet, they can do that legislatively. They can set that. That's not in there. That's what I would follow. I would follow the law that's presented to me. So I am following the law that's presented to me and the criteria that -- as it's presented.

I can't interject my personal feelings about whether I think this trend is a good thing or not or whether I think if you're going to have a 40-foot vessel with four 300-horsepower engines on it, whether that is better off at the marina versus at your house. I mean, I -- that's not my job, to put my personal feelings in on this. But I understand why, you know. And it's a good thing we're having public hearings on this, because they are noticed and people get out -- you know, informed of it.

And I certainly hope that the neighbor -- the applicant or yourself, Jeff, somebody would have at least tried to personally communicate with the folks that are adjacent or surrounding and not just wait for objections, because it isn't -- it is understandable that a vessel that large -- I mean, they are getting larger, for some reason, and I don't know why, but I have noticed that.

But, again, I want to emphasize that -- that's -- if -- if the County were to want to change the policy on how far out a boat dock extension would be capped at, they can do that. They can say we're not going to allow for anything beyond, you know, double the size of what the -- I'm just making stuff up -- but double the size of what -- that you're allowed as of right, which would be 40 feet.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: Okay? And that's it, no matter what. Regardless of the -- the -- the navigability issue, regardless of the view issue, you know, that's the most that we are going to allow single-family homeowners to have. You know, they could do that. But instead they drafted a two criteria -- two-tier approach to this, and it's kind of a scoring system, if you will, and that's what I have to deal with.

But I do want to -- I appreciate you acknowledging that this is starting to become a trend and an uptick in, like, larger and larger vessels being docked and kept behind single-family homes, you know, and it -- it does become complicated.

MR. ROGERS: I totally agree. And if I can elaborate just a little bit on that for you?

HEARING EXAMINER DICKMAN: Sure.

MR. ROGERS: Not to waste our time here.

But one of the driving forces behind it is, the industry itself is -- is growing in regards to outboard power. And a lot of these 50, 40 to -- 35 to 60, 70-footers typically were all called inboard vessels and diesel-powered boats. And since then, the industry has changed.

I'm deeply involved in the industry, and just on my --

HEARING EXAMINER DICKMAN: Good.

MR. ROGERS: -- you know, personal level. And outboards are now getting upwards of 600 horsepower. And, you know, you could never produce that much power with a gasoline engine as an outboard, you would have to go with diesel. And with diesel, you draft more depth in regards to the vessel, so getting into these canals that are local-knowledge canals at a lower tide was unrealistic. And now the industry has adapted and grown and has -- the boating -- the boat manufacturers have adopted -- basically had to scramble to adopt the new horsepowers that have been coming out to redesign their boats to the larger boats to hold the weight of these outboards on their stern. And just trying to educate you on the process.

And that's one of the driving forces behind this trend, is it's gotten a lot more

cost-effective and a lot more ease -- ease -- navigable and easier to operate these vessels, even with multiple outboards. You have, you know, quad-engine, you know, outboard boats these days that only take two throttles, and it's technology, and that's what it is.

The inner motors shadow the -- or the outer motors shadow the inner motors with technology. It's amazing. But it's an industry-driving thing. It's allowed vessels, larger vessels, to be powered by these boats that do trim up automatically with hydraulic, so you can take the vessel and make it -- make the -- motors hang down typically below the vessel, but you can trim those up at a slower speed to get through areas where the vessel would go and not cause damage or hit the bottom.

So, in my opinion, professional opinion on this, it's -- it's really -- it's not going to stop. It's only going to get worse. And I know there's bigger outboards coming, and that just means bigger center console-style boats or bowrider-style boats, which are very common around here, and it's --

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: -- kind of -- we're going to be coming in front of you a lot with all these moving forward --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- because of that. Just to educate you and --

HEARING EXAMINER DICKMAN: No, I appreciate that. And it does explain to me why this is happening. I mean, it does make perfect sense. If the engines are becoming more efficient, lighter weight, and they -- they don't -- as you say, they don't -- they're easier to control.

MR. ROGERS: The draft is --

HEARING EXAMINER DICKMAN: Much different than an inboard straight-shaft --

MR. ROGERS: I understand.

HEARING EXAMINER DICKMAN: -- engine with that kind of horsepower.

MR. ROGERS: I understand.

HEARING EXAMINER DICKMAN: Why don't we go to public comment, and let's get through that, and I will give you a chance to address any issues that come up, Jeff.

MR. YOUNGBLOOD: Mr. Hearing Examiner, we have one person with us in the room today, and we have two online. Our first speaker with us is going to be Robert Buckel.

Mr. Buckel -- Mr. Buckel, if you want, you can come to this podium right here. And you'll have five minutes, sir.

MR. BUCKEL: Sure.

HEARING EXAMINER DICKMAN: Good morning, sir.

MR. BUCKEL: Good morning.

Thank you for allowing me to come in. My name is Robert Buckel, and I'm a property owner at 168 Tahiti Circle, so I'm basically two doors down from the subject property. I'm actually right next to the property that was the subject of the previous hearing.

I have owned this property for 14 years. I have a dock, which -- on my property, which is basically within the 20-foot limitation. And I understand those limitations. And they're applied to all the docks on the Isles of Capri unless someone could show they have a particular problem, and -- and I understand that. Sometimes there's problems and there has to be variances or a solution to that problem.

But I do think that you are very astute in the prior -- with Mr. Rogers. You started to get into the differences between a need and a want. Sometimes people need a variance to solve a problem.

And in this particular case, the petitioner's -- in the staff report, where they're talking about the secondary criteria -- it would be page 5 of the staff report. In the secondary criteria number 1, the petitioners set forth why they have a need, as opposed to a want, for a variance.

And it says -- and you were very, again, astute in asking the question, are there any special conditions that would justify the proposed dimension and location of the proposed dock facility. And there must be at least one special condition related to that property.

So if we go down, we can see what the petitioners then said. Yes, we do have that and here's what it is. The subject property shoreline consists of a concrete seawall with riprap along the entire length. The applicant states that due to the riprap, the dock facility must be 3 feet away to prevent the vessel from striking the riprap upon ingress and egressing of the boat lift.

I respectively point out that that condition doesn't exist.

HEARING EXAMINER DICKMAN: Yeah. Actually, if you heard Mr. Rogers, he actually stipulated something different. He said it was -- the waterway is the special condition now. That -- that's what I heard. And we'll get him back up here, but --

MR. BUCKEL: Well, you can get him back up here.

HEARING EXAMINER DICKMAN: Yeah.

MR. BUCKEL: I think he foresaw --

HEARING EXAMINER DICKMAN: And you're reading from --

MR. BUCKEL: -- the point that I'm --

HEARING EXAMINER DICKMAN: -- the staff report, but I heard Mr. Rogers speak --

MR. BUCKEL: Yeah.

HEARING EXAMINER DICKMAN: -- to, like, the special condition relating to the waterway --

MR. BUCKEL: Right.

HEARING EXAMINER DICKMAN: -- was the width of the waterway.

MR. BUCKEL: Well, in the -- if you look at the staff report, numerous times this references to the riprap problem.

If I may have my picture up.

On Saturday of this -- I just got back into town last week.

On Saturday, I go out in my kayak, went by the subject property just to see what it looked like.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BUCKEL: And there is no riffraff {sic} at the base of the petitioner's seawall. I got out. I walked the entire length of the seawall in my bare feet. And despite what -- Mr. Rogers' statement, there's not a single rock there. So this statement by the petitioners, it is factually incorrect.

HEARING EXAMINER DICKMAN: Okay. I'll get to the bottom of that.

MR. BUCKEL: Pardon?

HEARING EXAMINER DICKMAN: I'll get to the bottom of that when you're --

MR. BUCKEL: Well, I'll help you.

HEARING EXAMINER DICKMAN: Okay. All right. Need all the help I can get.

MR. BUCKEL: This statement, when it was made by the petitioners, was a known-to-be-false statement when this petition was filed for the variance.

If I may move to my next exhibit, which would be -- because a year prior, 2021, the petitioners filed with Collier County a -- for a permit for a new seawall. And right here it is. And put in by Imperial Marine. And the permit has no reference to riffraff.

In fact -- if you can give me the next slide, please.

HEARING EXAMINER DICKMAN: Page 2.

MR. BUCKEL: In fact, the sketch -- stop right there. The sketch that's attached to the permit sets forth that there's not going to be any riffraff at the bottom, because they have already taken it out.

HEARING EXAMINER DICKMAN: Okay.

MR. BUCKEL: And what it's going to be is a berth and berm.

So this is in 2021. The riffraff was removed and a new seawall was put in. And thereafter, the petitioner applied for the variance and stated that he had a need, a need, for the variance because of a special condition on his property dealing with the riffraff, because he wouldn't be able to get his boat close enough to the seawall.

HEARING EXAMINER DICKMAN: Okay.

MR. BUCKEL: So when the petition was filed for their variance this year, making this statement that they have a need, that is clearly not a statement -- and that was known to be a false statement at the time it was made, which basically creates three problems.

The first one, they clearly don't fall within the criteria of number 1 under the secondary. There is no special condition.

Number 2, the -- the -- the need that they say that they need a variance for that underlined this entire proceeding doesn't exist.

And the third, and the most fatal, is that the petition was filed -- was not filed in good faith.

The request for a variance is an equitable remedy. And as most lawyers know, those who seek equity must do equity. And one of the bedrocks of equity is the proceeding in good faith.

And I would respectfully suggest that filing a petition, making factual allegations, as is premised, when you know that those factual allegations are false, it's not proceeding in good faith and the petitioners are then estopped from acquiring a variance, which then leaves us with your -- your -- the point that you so astutely raised, which is we have the need and the petitioner wants -- I want a 50-foot dock because I may be getting a larger boat.

What that leaves us with is a situation where -- the people next to the petitioner's property are the Clarks, and I believe they're going to be speaking. Down the way are this -- is David Switzer, all the different people along the -- the Marlin Bay. What it leaves us with is a situation where the petitioner is going -- is requesting a variance to put in a larger seawall -- dock, which will increase his enjoyment of the property, increase, enhance his property values, and for which he has to pay zero consideration.

On the other side of the coin, which is -- should be most important to -- to us, is that there's a -- the contrary, which is that the people down Marlin Bay, who have been enjoying their view out the entrance to the bay, are seeing their enjoyment of their property go down. Their property values, due to their lack of water view, will go down, and for which they will receive zero compensation.

MR. YOUNGBLOOD: The speaker is at five minutes.

HEARING EXAMINER DICKMAN: You want to wrap up your comments?

MR. BUCKEL: I'm going to.

The -- so the -- this becomes nothing more than a pure taking.

And if I may address the legal point that Mr. Rogers made.

The Hayes case and the Kiesel case, which he referred to, these aren't cases where -- yes, the Clarks have no reason to complain if a -- if something's built within the legal setbacks. But these cases, there was no variance where the -- the -- the expectation of the neighboring property owners was taken from them by a variance that they had no reason to expect when they acquired their property in 1976.

The one with the bridge, that's a different -- that is a compelling need that overrode the private property owner's view requirement rights. So big difference.

What's taking place here, they're asking you to take value from the other owners in Marlin Bay and give it to one particular property owner, who just happened to may want a bigger boat. And I just submit that that's just not --

HEARING EXAMINER DICKMAN: With regard to the view issue -- and I appreciate you touching on the cases.

So in your -- contrary to -- and -- and, again, I don't think anyone is here in bad faith.

I mean, I understand your point about equity, and it's well taken. But from what you're saying, that it would be -- it's fair to say that you don't have an expectation of the view within the known area where somebody would put a dock, because you know that when you buy your property, in other words, but you don't if it's -- you are asking for a variance, because it's not -- you -- as a property owner, you can't expect -- in other words, you shouldn't -- you can rely on the fact that somebody might put a dock that goes out 20 feet, but there's no -- there's no notice per se that a dock beyond that would go.

So, in other words, you're looking at more of like the view isn't straight out, but the view is anything that is -- would be outside of what the code permits. So, in other words, what the code permits is 20 feet, and you have no expectation of a view corridor within your neighbor's 20 feet of area, their box.

MR. BUCKEL: Exactly.

HEARING EXAMINER DICKMAN: Is that what you're trying to say?

MR. BUCKEL: And let's just say the boat's 120 feet long.

HEARING EXAMINER DICKMAN: Yeah.

MR. BUCKEL: Does that mean we put a pier in?

HEARING EXAMINER DICKMAN: I don't know.

MR. BUCKEL: I have one last point to make before this -- it has to do with the attachment to the petitioner's petition dealing with the submerged resource survey report.

HEARING EXAMINER DICKMAN: Okay.

MR. BUCKEL: I would simply point out this isn't even -- this is a report that doesn't even deal with the property in question.

On the introductory page, the middle paragraph, it talkies about piece of property in Bonita Springs, and it talks about it being found in little -- Isles of Capri, along the Little Hickory Bay that connects to the Gulf of Mexico, to Wiggins Pass; that the parcel contains an existing dock and boatlift, which this one doesn't and hasn't for 30 years; and that this property is bordered on the north by Bonita Beach Road and on the south by submerged bottom lands --

HEARING EXAMINER DICKMAN: Yeah.

MR. BUCKEL: -- which clearly --

HEARING EXAMINER DICKMAN: Yeah.

MR. BUCKEL: -- it's not --

HEARING EXAMINER DICKMAN: I got it, I got it.

MR. BUCKEL: -- this piece of property we're talking about.

HEARING EXAMINER DICKMAN: It's a different area of the County. I get it.

Thank you for your presentation, sir. Thank you for being here.

Who else do we have?

MR. YOUNGBLOOD: Our first speaker online is going to be Jeffrey Clark.

Mr. Clark, you're being prompted to unmute your microphone, sir.

Mr. Clark, are you with us?

HEARING EXAMINER DICKMAN: John, while we're waiting, was that just an error, that report being put in with this file?

MR. KELLY: I don't typically look at the SRFs.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: I leave that to environment staff, so I can't say one way or --

HEARING EXAMINER DICKMAN: Clearly, the wrong area.

MR. KELLY: It's possible that the wrong file got attached. I'm uncertain. I'll look into it.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. YOUNGBLOOD: Mr. Clark, I see that -- oh, you just muted yourself again. Please unmute yourself and let's try again.

HEARING EXAMINER DICKMAN: What's Mr. Clark's address?

MR. YOUNGBLOOD: Mr. Clark's address is 182 Tahiti.

HEARING EXAMINER DICKMAN: Yeah. On the document that I'm looking at, it says 182 and 186 Tahiti? Lynn and Mitch Clark. And then there's a -- same address for Sandra and Jeffrey and Mike Clark.

MR. YOUNGBLOOD: I also -- I also have a Mick registered as listed 186 and 182 Tahiti.

HEARING EXAMINER DICKMAN: Those are the two houses side by side, so maybe there's joint ownership? I don't know -- I would really like to hear from them. Is anybody going to --

MR. YOUNGBLOOD: Yes, sir.

HEARING EXAMINER DICKMAN: Here we go.

MR. YOUNGBLOOD: There it is.

All right. We can hear somebody. Please identify yourself.

MR. CLARK: My name is Michael Clark. I have a -- my brother and I own two houses jointly, at 182 and 186 Tahiti Circle.

HEARING EXAMINER DICKMAN: Got it. Thank you, sir. Go ahead.

MR. CLARK: I really hadn't planned on speaking today. I'm new on computers, so you have to bear with me.

HEARING EXAMINER DICKMAN: Yes, sir.

MR. CLARK: From what was said, verified my concerns for the criteria. And there's BDS attached to it, refer each to different points, so I have no way of knowing what number they're in.

Anyway, we have owned the property for 40 years. I've been exposed to a lot of changes on the island, both good and not so good. And this -- the growth of boat docks is a disturbing factor. We've been watching that for the last 10 years. Boats are just getting bigger and bigger.

However, my concerns are for the safety of getting in and out of the island. Sandbar, yes. It's not directly in the channel, but they're going to have to ask folks to build seawalls, which causes, you know, problems. It really causes a problem when it extends out to 54 foot, as requested.

As far as my brother and I having a problem with a 20-foot extension or a slightly bigger extension, we have no problem. But I think the 50 foot is excessive, 50 foot would be excessive the way it stands and it needs to be reviewed. Thank you.

In talking about the view, and you have seen there's three photos that showed -- that showed a -- the view that we would have. Now, what we would give up if the boat goes out to 20 foot, as allowed versus the 54 foot. And you can the diagrams show the actual blockage.

And yes, we -- we really have a view that is much greater than the direct -- tiny view straight across the shoreline of us, and I think you should take that into consideration. And it's -- you know, we have that same view, 186 and 182, so should have that same view going on down the neighborhood. Everyone has a lesser extent of that same view, not to mention what warrants something. In all honestly, how would you like to look at a 50-foot wall blocking your view? That's pretty much -- that's really all my concern.

As far as the riprap, yeah, I understand that, and I know it's not there.

I know that with the channel -- the usable channel is actually different than what your charts show. If you take a -- take a plane off your dock straight across, there's seawalls, probably about 50 foot less than your diagram is showing, but you put it under that -- under the 25 percent rule, over 25 percent.

That's really about all I have to say. You have the diagrams, pictures, and I appreciate you looking through them.

HEARING EXAMINER DICKMAN: Thank you, Mr. Clark. I do have your diagrams and your exhibits. They're in the record. I appreciate it. Thank you for your time.

Okay. Jeff, you want to respond to some of these?

MR. ROGERS: Certainly.

HEARING EXAMINER DICKMAN: And I also want to -- I want to -- what?

MR. YOUNGBLOOD: Mr. Hearing Examiner, let's try Jeffrey Clark one more time.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. YOUNGBLOOD: I have done all my diagnostics; it's not an error on our end.

HEARING EXAMINER DICKMAN: Okay. One more shot.

MR. YOUNGBLOOD: Jeffrey Clark, are you with us, sir?

All right. I guess Mr. Clark is having microphone issues, so --

HEARING EXAMINER DICKMAN: Okay. We'll move on. We have all the materials. They submitted quite a bit of materials into the record, I have that.

I want to -- Jeff, let me -- maybe this will be a back-and-forth between the County and you, Jeff, for the applicant.

First and foremost, let's deal with the submerged land report. I mean, was that the wrong report?

MR. ROGERS: I can't -- I'm not -- it looks like Ray has something to say.

MR. BELLOWS: For the record, Ray Bellows.

I'm looking in our city view file for this project, and I see the submerged study. And it has the correct folio number written on --

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: -- this study.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: And on the first page, it also references the correct address.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: So, without being a submerged expert, it looks like it's the right place.

HEARING EXAMINER DICKMAN: Okay. And, Jeff, you can talk --

MR. ROGERS: I'll clarify.

There could be some language within the report that was left over from a previous report, potentially. I will have to look and verify that. It's been --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- a while. So, happy to, if there is a discrepancy -- I mean, I did dive it myself personally. You know, I could look at that. I don't know if I actually wrote that report or if someone on my staff did. Either way, if it's in there --

HEARING EXAMINER DICKMAN: I mean, there's references to Bonita, and --

MR. ROGERS: -- obviously --

HEARING EXAMINER DICKMAN: -- that's clearly --

MR. ROGERS: -- clearly wrong.

HEARING EXAMINER DICKMAN: -- the wrong area of the County; right?

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: So there might have been some cut and paste there and something --

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: -- like that.

So why don't you take a look at that. I know that you have put on the record that you personally dove it. Right?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And with regard to that criteria about seabeds and things like that, you've put on the record what you put on the record.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: But if there's an erroneous -- and I don't think

it would be bad faith, but, you know, maybe a -- ministerial errors or oversights, and ask you to ask your staff, or whoever did it, to please take a look at it. You know, we don't -- I'm going based on what you are testifying here to me. You've done it. You do it yourself. You would have given information to put into that report, but that report needs to be correct.

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: Okay?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And then let's talk about the riprap.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: Do you agree there are -- there is no riprap there. Right?

MR. ROGERS: Yes, I do.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: So riprap is not part of the equation here anymore?

MR. ROGERS: You know, and I wanted to clarify.

On my submitted primary criteria -- I have it on my phone here. Excuse me for that. But the staff report is one thing. They take what we put into --

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: -- our submittal, and they put it into their own language. Okay?

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: So number 2, basically in here I did mention riprap. The boat dock extension is necessary to accommodate the owner's vessel, and due to the subject shoreline being seawalled with scattered riprap, the proposed dock cannot come any closer to the shoreline.

Total reference to riprap. And because --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- there is scattered rock --

HEARING EXAMINER DICKMAN: Let's call that leftover riprap.

MR. ROGERS: Leftover riprap --

HEARING EXAMINER DICKMAN: That's a --

MR. ROGERS: -- fine.

HEARING EXAMINER DICKMAN: -- practicality. I have been in the marine -- I've --

MR. ROGERS: But --

HEARING EXAMINER DICKMAN: Once upon a time, I used to build docks and stuff --

MR. ROGERS: -- moving forward --

HEARING EXAMINER DICKMAN: -- which is why I went to college, but that seems to be leftover rocks --

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: -- that are scattered around. You can't call it riprap, in terms of trying to justify any of the criteria here, and --

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: -- I don't think you're trying to do that.

MR. ROGERS: No.

And in my statement further -- I just want to keep reading.

The reason for the BDE request was due to both shallow water depths along the shoreline as well as the vessel size.

Clearly states the vessel size in here.

And after that, I also put in there criteria not met.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: I'm -- when I made this submittal --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- I right then and there, obviously, acknowledged the fact that we don't meet this criteria. And staff agreed and concurred with that conclusion.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So that is -- of the primary criteria, I'm allowed to miss one, and that's the one --

HEARING EXAMINER DICKMAN: I got it.

MR. ROGERS: -- that I --

HEARING EXAMINER DICKMAN: We want you to make all of them. You know, we --

MR. ROGERS: And I --

HEARING EXAMINER DICKMAN: -- we want people to --

MR. ROGERS: Understood.

HEARING EXAMINER DICKMAN: -- like, satisfy as many as possible.

So the point being is that I just want -- I mean, also for transparency and for the public's sake, you know, they see things like that, and, you know, they could -- you know, it's hard, because you -- you think, okay, well, maybe -- you know, riprap to me means a riprap shoreline, a bank, and that's not what this is.

I mean, if someone took out the riprap when -- it seems logical that this is what happened: They put in a seawall, they took out the riprap and some of the rocks were left over. So that's leftover riprap that's in the water.

I don't think you're trying to say that -- you're using that as a justification for this. I just want to make that clear, publicly transparently. They pointed it out; I think they have a right for an explanation.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: That's the explanation. I don't think you're here in bad faith trying to promote that to -- to -- to under oath tell the Hearing Examiner that there's riprap there when there really isn't. You're not doing that; I get it. You're being perfectly frank, but I want to make sure that we're all clear that, in my analysis, whatever I'm doing, I'm not looking at this as, like, okay, riprap is a problem. Okay?

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: Right?

MR. ROGERS: Please don't.

HEARING EXAMINER DICKMAN: Okay. No, I'm not. I want to be perfectly clear here, because I mean --

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: -- some of this stuff can -- and I get it. You got to be careful.

When you get these staff reports, if you see something that is -- could be perceived -- or is not the current situation out there, you know, it's your obligation to communicate with the County and say, hey, by the way, you know, that really isn't a riprap situation. But, you know, I understand the nuances that you just read to me in the record. So I get it.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: Okay. Anything else?

MR. ROGERS: Back to the view.

You know, there is no guarantee that a view is maintained over -- across anybody's property, whether they built a home on it, it's a vacant lot now, you know.

And riparian rights are the same way. Nothing is guaranteed. Something could be

built, whether it's 20 feet or 50 feet. No view is guaranteed.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: There has been a precedent set for this bay, Marlin Bay, for other docks exceeding 50 feet that have been approved. So as a firm, we take all of this into consideration before we even tell the client that we're willing to take this project on.

HEARING EXAMINER DICKMAN: I understand.

MR. ROGERS: So just in that regard, is it further out than any others on this particular bay? Yes, sir, it is.

And in that regard, I want to -- I want you to know and the applicants here that we are willing -- basically we want approval for him to be able to at least accommodate -- a dock to accommodate his current boat, which would still be a 45- to 46-foot dock.

HEARING EXAMINER DICKMAN: What's the current boat, the vessel?

MR. ROGERS: It's a 44 LOA.

So we are --

HEARING EXAMINER DICKMAN: And they -- and they already have -- they're purchasing a 48-foot Tiara.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Right?

So they have already gone forward? They're seeking --

MR. ROGERS: They're in line. It hasn't been started yet, so there is time to make adjustments.

I had this conversation with the applicant yesterday as a fallback. I want to communicate this to you because of your position and what you have to apply to this. And we want approval for at least their existing boat, at the minimum, which would reduce the overall protrusion. But from what I am hearing, I don't think it would satisfy everybody's objections even if we were to reduce it by 8 feet.

HEARING EXAMINER DICKMAN: But what I want to get at and what's unique about this criteria is this is not your -- I mean, this is a -- this is, yes, a variance to the code, but it's a specific type of variance, a BDE variance, that has criteria that, under the County, legislatively they have set up a point system, if you will, for primary and secondary. And one of the -- part of it is driven by the applicant's need, because they have a vessel or are about to buy a vessel.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: And what I'm trying to distinguish that between is speculation, you know, like somebody just, like, getting up and saying, well, I would like to have a boat dock for 50 feet because it's going to make my property values better.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: You know, that's not what this -- in my opinion, what the criteria is set up for. It's set up for someone that has a vessel or I'll give it, like, you know, is purchasing a vessel, not just going to --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- build a spec dock and a spec home and sell it --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- because it's -- hey, great, you got a gigantic dock now, but --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- that they actually have the intent -- and you're -- you're here under oath. You're -- I mean, you know, you're communicating what your clients have told you, that they intend on -- they're in line for a 48-foot Tiara, and that's what they -- that's what's driving their reason for hiring you and coming here and asking for this.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: You understand the distinction, like --

MR. ROGERS: 100 percent.

HEARING EXAMINER DICKMAN: -- I don't want -- the County's not in a position of like, you know, handing out boat dock extension variances to help improve property values.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: It's because people have vessels that they want to put behind their house. And the idea is to look at all these criteria and decide whether or not, you know, they mathematically met the number of criteria that are there.

MR. ROGERS: And that's why I'm trying to clarify and bring this up to you, because they do currently have the 44 LOA boat and ultimately would like to get the Tiara, and -- but worst-case scenario for them, would keep the current boat and bring it to this property once the house is built and be able to store their current boat that they own at this facility, as they do down in the bay.

So that's a fallback on our behalf because of the public concern. It's not what we're presenting to you, but it's -- you know, we're willing to -- open mind as to that. And I'll be happy to bring them up to discuss that. They're here. You know, I understand having them here is important as well, so --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: -- I asked them to be here to help, you know, speak.

HEARING EXAMINER DICKMAN: That's completely up to you. But, I mean, you get my point about the boat. I mean --

MR. ROGERS: I do, I do.

HEARING EXAMINER DICKMAN: -- I -- you have been here a lot of in front of us, and I have no reason to doubt your -- the veracity of your word, and you're testifying under oath, so you -- you've had these conversations, and I know that you don't bring things -- you have a business and you care about what you do, and I know you're not here -- I mean, so I just wanted to make sure that that was clear, that we're not just handing out things to --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- improve people's property values, you know. It's more about their vessel or the vessel that they are about to get or want to get, and so forth and so on. It's for them.

But there's a lot that I have to take in. I totally understand your interpretation of the case law. We have a different -- we have heard a different interpretation of the case law. I have read some of these cases, I'll read them again, about the view, because that goes to one of the criteria. Not all the criteria, but one of them --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- and we'll look at that.

And we have eliminated any issue of riprap.

John, does that change any of your opinion? I mean, you understand what we're saying? Like, riprap is not an issue here?

MR. KELLY: Correct. And we accept that it's the waterway width that is being used for justification of the --

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: Does that.

HEARING EXAMINER DICKMAN: Yeah.

So you understood that, like, you know, the --

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: -- the justification you're using is the waterway width for the special condition situation, so yeah.

So you see what's happening; right?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: So as these vessels get larger and larger, I'm going to have to look at these very, very carefully.

And it's putting pressure on me. I'll do it. I don't care. I mean, that's what my job is. I'm an attorney. I understand the criteria. I understand how to evaluate things; competent, substantial evidence; the whole thing.

I think we have provided due process; everyone has spoken, at least the people that could log in. And I'll just -- you know, this is -- you know, I don't know. This is just going to become one of those situations. I don't look at -- I'm not looking at other -- I'm not looking at trends. I brought up the trend just because, you know, that's -- we're taking more time now with -- I mean, the first application was much shorter than this one --

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: -- because of, you know, the -- just the gravity of the size of the vessels. And if these vessels continue to get larger and larger behind single-family homes, then I'm -- I'm -- I have no choice but to, you know, like really -- you know, it's pushing the boundaries of every single criteria that's presented in front of me, because, you know, that's the way that this is set up, until someone changes the legislation and maybe decides to cap the size of the vessels behind single-family homes, which they haven't done yet. You know, that's a different relationship.

But this has been a very fruitful discussion.

John is waving his hand at me. Speak up, John.

MR. KELLY: Yes. I would just like to add two things for the record, please.

And that is, I believe that there was -- that we had online perhaps Lynn and Mitch Clark. I wanted to mention that I spoke to Lynn personally yesterday.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: And I believe that they were looking to defer to Mike Clark, who provided the --

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: -- extensive letter of objection. So I don't know that they actually intended to speak today as much as monitoring the meeting.

HEARING EXAMINER DICKMAN: Okay. Well, I get -- I mean, I have -- there's a lot of good information that they supplied. I think there's been good arguments on both sides. It's been a helpful discussion.

MR. KELLY: And just one other issue.

With respect to the building permit for the house, we fully expect that to be issued within your 30-day review time frame. I will make sure a copy of that building permit gets to you --

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: -- if, in fact, it is received during that 30 days.

HEARING EXAMINER DICKMAN: Okay. And it has to do with a septic tank?

MR. KELLY: That's my understanding.

HEARING EXAMINER DICKMAN: Septic tanks out there, huh? Okay.

MR. KELLY: Or their septic field, one or the other.

HEARING EXAMINER DICKMAN: Okay. All right.

Jeff, anything else?

MR. ROGERS: No, sir. Thank you for your time.

HEARING EXAMINER DICKMAN: Anybody else? Andrew?

MR. YOUNGBLOOD: Mr. Hearing Examiner, Jeffrey Clark has decided to telephone in.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: Is the public comment portion still open?

HEARING EXAMINER DICKMAN: I'll go ahead and allow it.

MR. YOUNGBLOOD: Okay.

HEARING EXAMINER DICKMAN: I'll allow it. He's a neighbor, so let's go --

MR. YOUNGBLOOD: Okay.

HEARING EXAMINER DICKMAN: -- ahead and hear that.

MR. YOUNGBLOOD: Mr. -- Mr. Clark, are you still with us, sir? I have got you -- you are being prompted to unmute via telephone and via computer.

MS. SANDRA CLARK: Hello? Can you hear us?

MR. YOUNGBLOOD: Yes, loud and clear.

MS. SANDRA CLARK: Well, thank you. Sorry for the technical difficulties.

Obviously, we are opposed to granting this dock extension at 178.

Our family has owned this property for the past 45 years, and we very much have enjoyed sitting on our dock and watching the beautiful sunsets over our bay.

When you build a large, huge dock extension into Marlin Bay, you harm our views, along with many of the people that own properties east of us. And we really feel like the value of the petitioner's property will increase at our expense. The value of our properties may decrease as our views are lost.

I understand what they're saying about riparian views, but ethically I don't agree with that.

There are certain criteria that do not seem to be met, and we do have concerns about this extensive dock going into unmarked channels and sandbars and tides. And as the sandbar that extends that across Marlin Bay may change with every shifting storm, and you do have to follow the unmarked channels out, and we wonder what effect this pier will have.

I don't feel -- or we don't feel that within the Isles of Capri, to have more than a residential community, with smaller docks, to maintain this kind of pristine and natural waterways.

There are places for large vessels in marinas.

And I think the values and rights of the homeowners should be upheld by the Collier County zoning.

MR. JEFFREY CLARK: I think the primary criteria. And then somewhere through the conversation, we discussed that sandbar that moves and that there is an unmarked navigational channel crossing the proposed dock variance that will cause navigational issues for all, because the overhead view was not going to show the extent of that sandbar. I don't know when that view was taken, but it definitely moves into the opening and extends back into the bay, and so that is a serious concern.

And I don't know if my wife wants to say anything else or not, but thank you.

HEARING EXAMINER DICKMAN: I have a question for you.

MS. SANDRA CLARK: Yes, thank you.

HEARING EXAMINER DICKMAN: I have a question for you.

MS. SANDRA CLARK: Okay.

HEARING EXAMINER DICKMAN: Your -- your future neighbors have a 44-foot vessel. Would you oppose a 44-foot dock rather than their requested 50 foot?

MS. SANDRA CLARK: Well, it would be better than the extra 10 feet into the bay, but it still would impede somewhat of our views.

MR. JEFFREY CLARK: And still have a navigational issue.

If it could be turned, I guess, more at a 45, or whatever, degree back into the bay -- years ago, when my parents built their dock, that was a major requirement of the shallowness of the bay across there --

HEARING EXAMINER DICKMAN: Okay.

MR. JEFFREY CLARK: -- backing in and out, so the only permit they would give us

was to run parallel to the wall. And that's what we have right now.

So 40 some-plus years ago, it was a major concern in that bottleneck, boats traveling in and out, the sandbar.

And so any way we can stay out of that -- that area is a good thing.

HEARING EXAMINER DICKMAN: All right.

MR. JEFFREY CLARK: I don't know if anybody -- their neighbors bought their property to enjoy and have a wonderful boat.

HEARING EXAMINER DICKMAN: Okay.

MR. JEFFREY CLARK: But, like you said, to make all these changes for a presumption that you're going to be buying the boat, I think, is absurd.

HEARING EXAMINER DICKMAN: That's why I asked --

MR. JEFFREY CLARK: And when --

HEARING EXAMINER DICKMAN: -- about the 44-foot.

MR. JEFFREY CLARK: -- they bought that property --

HEARING EXAMINER DICKMAN: That's why I asked you about the 44-foot.

MR. JEFFREY CLARK: And --

HEARING EXAMINER DICKMAN: So you answered that question for me. I understand.

Thank you.

MR. JEFFREY CLARK: Okay. All right. Thank you very much.

HEARING EXAMINER DICKMAN: Thanks for joining us.

MR. YOUNGBLOOD: Mr. Hearing Examiner, for --

MS. SANDRA CLARK: Thank you.

MR. YOUNGBLOOD: -- for the court reporter, could we get both speakers online to identify themselves.

MS. SANDRA CLARK: Yes. This is Sandra Clark.

MR. JEFFREY CLARK: And Jeffrey J. Clark, co-owners of 182, 186.

HEARING EXAMINER DICKMAN: All right. Thank you.

MR. YOUNGBLOOD: Thank you.

HEARING EXAMINER DICKMAN: Okay. All right.

Are we all done over there?

MR. YOUNGBLOOD: That concludes our registered speakers for this item.

HEARING EXAMINER DICKMAN: Okay.

Jeff, anything else?

MR. ROGERS: I'm good.

HEARING EXAMINER DICKMAN: Okay.

John, anything else?

MR. KELLY: No, sir.

HEARING EXAMINER DICKMAN: Okay.

I want to thank everybody for all their work that they have done. This has been a -- a fruitful discussion.

They are going to -- they -- they become more detailed as the situation arises.

So I'll have 50 -- or 50 days, I'm thinking about the boat. I have -- I have 30 days to get my decision out, and I will do so as quickly as I possibly can.

Thanks for being here. Appreciate it.

MR. ROGERS: Thank you.


HEARING EXAMINER DICKMAN: Thanks, everyone, for being here.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:51 A.M.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 9/22/22, as presented  as corrected _____

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