

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

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:03 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  
Sean Sammon, Principal Planner  
Andrew Youngblood, Operations Analyst  
Suzanne Perdichizzi, Operations Analyst

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning, everybody. It is now 9:03, according to my clock. This is the Hearing Examiner -- I am the Hearing Examiner, and this is the Hearing Examiner meeting of November 10th, 2022.

Let's start with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay, great. Again, I apologize for a little tardiness this morning. We had some wind last night, and my pool furniture decided to go into the pool. So I went out to get it, and apparently my dog felt like that was an invitation to go swimming as well, so that was my morning. But life is fun, right?

My name is Andrew Dickman. Again, I'm the Hearing Examiner appointed by the Collier County Commission. I am not an employee of the county. County employees are to my right. I am here as an independent, neutral decision-maker. I'm a Florida Bar attorney in good standing, have been an attorney for over 22 years working in the area of local government, land use, zoning, environmental law. And, again, my job is to hear petitions, different types of appeals, things of that nature, things that come under the jurisdiction of the Hearing Examiner according to the Code of Ordinances, the Land Development Code, and the Administrative Code.

So just covering a few housekeeping items. First of all, we have three items on the agenda. Two are -- two deal with certain things, and one is an appeal. So what I want to do is take a -- after we do the first two items, before we get to the appeal, I want to take a short break and just kind of line up everybody and just make sure we've got the procedure set and everybody's in agreement with that. So we'll take a quick five or 10-minute break between that.

If anyone needs to have a conversation with someone, please step outside and do it in the hallway, because the -- everyone can hear you talking, and it might disrupt somebody. Turn off your phones; put them on silent.

The typical process that we like -- I like to follow is I like to have the county introduce items. It may be different for the appeal, but for the first two things anyway, have the county introduce the item, give some basics, their staff recommendation, any conditions that may apply, then have the applicant or the applicant and/or the applicant's representative come up here to the larger podium and do their case in chief. We'll open it up for public comment.

This is an in-person meeting and a virtual meeting. The county has gone through the trouble to set up technology to allow folks to participate via Internet. And, Andrew, wave of your hand over there. He's one of the masters of Oz over there. He's going to control the Internet folks, but -- so we're going to accommodate that.

So the public will be using the Internet as well as the middle podium, and then, of course, reserve some time for rebuttal if the applicant or the applicant's representative so chooses to do that.

What I'm going to be looking for is -- of course, you can say anything you'd like, but I would prefer that it be germane to the subject at hand dealing with the criteria for approval or disapproval. You know, I'm looking for competent substantial evidence, any legal arguments, things of that nature.

Everything's going to be on the record. We have a court reporter. And so it's

important that you speak clearly. Don't speak too fast or too quietly, or she's going to raise her hand or throw her water bottle at somebody and -- I've seen her do it, and it's not pleasant, but she's entitled to do it. So it's important that we get everything on the record. I want the record to be clean and clear. So we want to do that.

Everyone who's going to testify here today has to do so under oath. So what I usually do at the beginning of the meeting here is have everyone for all the matters, or at least the first two, and then we'll do the administrative one separately, to stand and take the oath. So why don't we go ahead and do that.

And, Madam Court Reporter, if you don't mind administering the oath.

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

HEARING EXAMINER DICKMAN: Did I miss anything?

(No response.)

HEARING EXAMINER DICKMAN: I don't think so. I think I got everything covered here.

And then the one thing I do want to do also is I have no disclosures. Again, you know, I do my best to make sure that you feel that you have a Hearing Examiner that's impartial, an impartial decision-maker. I don't have conversations -- I don't have private meetings with the county staff. I don't have private meetings with the applicants. I try to keep an arm's length position so that I read everything that's before me. I've read everything that's been filed on the agenda. And I haven't had any private conversations, so those are my disclosures for that.

\*\*\*So if we're ready -- I'm ready for the first item, which is 3A. Who do we have here?

Good morning.

MR. SAMMON: Good morning, Mr. Dickman. For the record, Sean Sammon, principal planner in the Zoning division.

Before you is Agenda Item 3A. It's for a sign variance, Project No. PL20220002991. This is a request for you to approve a sign variance from the Land Development Code Section 5.06.02 B.6.b which allows two on-premises ground or wall signs not to exceed a combined area of 64 square feet in residential districts to instead allow a total combined area of 75.61 square feet for two on-premises ground or wall signs and a second variance from Section 5.06.02. B.6 which provides residential on-premises signs may be located at each entrance to instead allow a second on-premises sign approximately 250 feet from the entrance to the condominium development for the benefit of the subject property located within the Pelican Bay Planned Unit Development, Ordinance 04-59, as amended, located at 8477 Bay Colony Drive, also known as the Windsor at Bay Colony, a condominium, in Section 32, Township 48 South, Range 25 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 5.06.08 B.1, a through f, which the proposed sign, based on its proposal location being inside the porte-cochère poses very minimal privileges and special conditions. The sign will not be on the face of the building and, therefore, will not be visible to other adjacent buildings, the Beach Club to the north and the Brighton at Bay Colony to the south.

The intent of the sign will be visible to residents and guests as a welcome sign when they enter the lobby upon arrival and being dropped off to the private multifamily

condominium.

The main entry is above street level; therefore, the sign will not be visible from the street nor the neighboring properties, nor will it have any impacts to natural habitats that border the property. The sign will face eastward, away from the Gulf of Mexico.

The literal interpretation of the sign code contained within the LDC Section 5.06.02 B.6, a through d, was utilized, and Section 5.06.02 B.6 states, on-premises signs within residential districts. Two signs with a maximum height of eight feet or wall residential entrance or gate signs with a maximum of eight feet may be located at each entrance to a multifamily or single-family development and mobile home or recreational vehicle park subject to the following requirements.

Requirement A determines that signs shall maintain a 10-foot setback from any property line. This is not applicable based on the proposed signs' location; Requirement B, the ground or wall sign shall not exceed a combined area of 64 square feet and shall not exceed the height or length of the wall or gate upon which it is located. The variance request is because the combined area of the proposed sign with the existing sign area exceeds the maximum allowed 64 square feet. Requirement C determines the architectural embellishments within 10 feet; there are no architectural embellishments, therefore this does not apply. And Requirement D determines official address numbers. The sign does not have proposed address numbers to be displayed.

Therefore, this request is twofold. One, primarily because the proposed sign is not being located at the entrance to the property but instead being located 250 feet and 10 inches away from the entrance and under the porte-cochère and, two, because the area of the proposed sign at 72 square feet and the ground sign area of 3.61 square feet have a total combined area of 75.61 square feet which exceeds the 64 square feet combined limit.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.F. The property owner notification letter and newspaper ad were taken care of by the county on October 26th, 2022, and the public hearing signs were placed by me on October 21st, 2022.

I've received no public comments pertaining to this petition, and staff recommends that you approve this petition as described in accordance with the attachments to the staff report. There are no conditions in association with the recommendation to approve.

That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you. That was very nice. Okay. And the applicant or the applicant's representative here?

(Raises hand.)

HEARING EXAMINER DICKMAN: Come on up to the large podium. Good morning, sir. How are you?

MR. HERSCOE: Good morning. I am Robert Herscoe of Herscoe Hajjar Architects acting on behalf of our clients.

HEARING EXAMINER DICKMAN: Okay.

MR. HERSCOE: I think the staff report said everything and, I think, again, the only thing I would reiterate is that this sign is well under the building porte-cochère and cannot be seen by any public building or street; therefore, we felt that it was -- we felt it was a reasonable request for a variance.

HEARING EXAMINER DICKMAN: Okay. So that's the extent of your presentation?

MR. HERSCOE: Yes.

HEARING EXAMINER DICKMAN: Okay. Well, staff did a good job for you, then.

MR. HERSCOE: They did an excellent one.

HEARING EXAMINER DICKMAN: I think you, at this point, need to say "I adopt staff's presentation."

MR. HERSCOE: I adopt staff's presentation.

HEARING EXAMINER DICKMAN: Okay. It's pretty straightforward. I understand everything. I have all of the -- I assume these are your designs here?

MR. HERSCOE: Yeah.

HEARING EXAMINER DICKMAN: I have a staff report. I have what you've submitted. Thank you for being here. I don't think it will be -- again, I forgot to mention I don't make decisions here today.

MR. HERSCOE: Understood.

HEARING EXAMINER DICKMAN: I render them within 30 days, so that applies to everybody. So thank you very much.

MR. HERSCOE: Thank you for your consideration.

HEARING EXAMINER DICKMAN: I'll get something out as quickly as possible. Have a nice day.

MR. HERSCOE: Sure.

HEARING EXAMINER DICKMAN: Okay. See what happens when you do such a great staff report.

MR. SAMMON: Thank you very much.

HEARING EXAMINER DICKMAN: You're the tallest planner I ever met.

Sorry, Mike.

\*\*\*Okay. We're going to 3B. Who do we have, John?

MR. KELLY: Good morning, Mr. Dickman. For the record, John Kelly, senior planner. Before you is agenda Item 3B. It's a request for you to approve a conditional use to allow therapeutic equestrian riding and stabling and its expansion superseding Resolution Nos. 2013-396 and 2000-63, and pursuant to Subsections 2.03.01.A.1.c.19 and 2.03.01.A.1.c.24 of the Collier County Land Development Code on four legal nonconforming lots that have been combined for development. The unified property comprising a .95 plus-or-minus acres.

The subject property is located at the southwest corner of Goodlette-Frank Road and Center Street and includes 170 and 206 Ridge Drive further described as Lots 18 through 21, Pine Ridge, in Section 10, Township 49 South, Range 25 East, Collier County, Florida.

The property's located within a rural agricultural zoning district and further located within either a Wellfield Risk Management Special Treatment Overlay District Zone W1 or Zone W2, dependent on the specific location upon the property.

Public notice requirements were compliant with LDC Section 10.03.06.C.2. The applicant conducted a duly advertised neighborhood information meeting on August 9, 2022, at the existing Naples Therapeutic Riding Center facility and remotely via -- as well as remotely.

The property owner notification of this meeting per letter and the required newspaper advertisement were taken care of by the county on October 21, 2022, and the

public hearing sign that was -- or signs that were required for the project were posted by the applicant on or about October 24, 2022, as evidenced by notarized affidavit.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 10.08.00.D, and has been found to be consistent with the Land Development Code and the Growth Management Plan.

There is an addition to the staff report. At 5:10 p.m. last night I received a letter of objection to the property, so I created Attachment F, which you should have a copy of before you. I have provided a copy to the court reporter as well as the applicant, and -- so that letter is now part of the record.

With respect to public comment, as noted within the staff report, a neighborhood information was conducted -- meeting was conducted, the results of which were explained in the staff report. And with the exception of the letter contained within Attachment F, I've only received requests for information, which was provided to the callers.

It's staff's recommendation that you approve this petition to allow for the expansion of the existing Naples Therapeutic Riding Center facility by incorporating Lot 18, thereby approving therapeutic equestrian riding and stabling on property less than 20 acres in size within an agricultural zoning district pursuant to LDC Sections 2.03.01.A.1.c.19 and 2.03.01.A.1.c.24, and to amend the current conditions of approval contained within Resolution No. 13-236, as set forth in Attachment A, and to accept the revised conditional use master plan depicted within Attachment B, and that concludes staff's report.

HEARING EXAMINER DICKMAN: Thank you very much.

Okay. The applicant or the applicant's representative, please.

Good morning.

MR. ARNOLD: Good morning, sir. I'm Wayne Arnold. I'm a certified planner with Q. Grady Minor & Associates, and representing the Naples Therapeutic Riding Center.

We have several people in attendance that I'll introduce. Rich Yovanovich is our legal counsel assisting on the project; we also have Martin De St. Pierre, who's the executive director for Naples Therapeutic Riding Center; we have Brian McNamara, a local attorney who's their president of their Board; and we have, from my office, Mike Delate, who's a civil engineer and has been working on the project; we have Jim Banks, a local traffic engineer who has prepared the traffic analysis. So our team is here to answer any questions.

I'm not sure how familiar you may be, sir, with the Naples Therapeutic Riding Center. Would it be helpful if I had Mr. McNamara come forward and take a couple minutes to explain who they are, what they do?

HEARING EXAMINER DICKMAN: I think it's good to put that on the record.

MR. ARNOLD: Okay.

Brian, do you want to?

MR. McNAMARA: Sorry I'm not as tall, so bear with me for one second.

Good morning. Thank you for having us and reviewing our application. Again, my name is Brian McNamara. I am the president of the Naples Therapeutic Riding Center for the current year.

I've had the pleasure of being on the board since 2018, and I've been volunteering as a side walker with programming since 2015.

The purpose of Naples Therapeutic Riding Center is pretty amazing from the fact

that we can help various members of our community, several of which are, you know, at risk. We have children and adults with physical and mental disabilities that benefit from our programming. We also have various programs to help other members of the community, whether it be David Lawrence Center and their participants and patients. We have different other relationships with organizations around town, again, addressing at-risk individuals.

Give you another example, Youth Haven, where, again, you know, children whose family life might not be as appropriate or able bodied, are able to participate and receive ground therapy to help them through their difficult times.

So we have a variety of benefits that we bring to the community. And by allowing our expansion request we will simply be able to further that mission in helping our members of the community.

I can tell you it's extremely rewarding what we do, and I am very appreciative of everybody's consideration and the staff report with the recommendation to approve.

And I'm open to any questions if you have any.

HEARING EXAMINER DICKMAN: Okay. Thank you. I appreciate you putting that on the record.

Why don't we just go -- Mr. Arnold, do you have a presentation you want to make?

MR. ARNOLD: I do.

Andy, if you could bring that up. One moment. I thought he had -- it's not opening.

While he's loading the presentation, let me just go through a couple of items. So the Naples Therapeutic Riding Center has been at this location for over 20 years. They've been a good neighbor. They've expanded a couple times. And this specific request is to add what we call Lot 18. It has a single-family residence on it today. Their primary goal will be to put their barn hands -- allow them to reside in that residence, and then they'll put additional paddocks on Lot 18, which is the newly added parcel to this. They acquired that sometime in the past year and we subsequently have entered into the process to revise the conditional use.

The existing facility, I'm sure you've driven by it any number of times. I don't know if you've ever had the opportunity to be on site. But there are several things that occur on the site, but they have a barn, which is the most prominent feature right at the corner of Center Street and Goodlette-Frank Road, and then you have a covered riding arena existing. There's a house that sits at the corner of Ridge and Center that's been utilized as their offices, if you will. There's another residential building on the property that's been used as office space as well as part-time residents. And then they have a new -- the newer riding arena we call the round ring, which was part of the 2018 approval which -- thank you -- which allowed them to have a different type of programming. But they have a training room and they -- because they train a lot of their volunteers. You have to be trained in order to do rider assist, and they also do training for other therapeutic riding facilities. So the -- can you advance that, Andy, or do I have control of that?

MS. PERDICHIZZI: No, I do.

MR. ARNOLD: Suzanne.

MS. PERDICHIZZI: Yes.

MR. ARNOLD: Could you advance to the next one, please.

Okay. This is an aerial photograph identifying the location. So I've highlighted

Lot 18. You can see it's the southernmost lot. You can see the residence on it. If you drive by, the lot has been cleared. It was almost 100 percent exotic vegetation that was removed from the site in the last year, so it's exposed. And then you can see immediately to the north of that is what was added previously. That's called the round ring in their nomenclature. These are paddock areas where they turn out the horses. This is the other residential building I referred to. This is the covered riding arena. The barn sits right at the corner, and then there is their office.

So -- can you advance that one more, please.

So this is how the lots break down for your information, because when you look at the conditions that we've worked out with staff and modified from the prior years, you can see that the reference will be to Lots 18, 19, 20, and 21. Lot 21 was the original approval for the therapeutic riding center, and it was excluded from the second conditional use we did in 2018 because it was already a stand-alone conditional use. But that will be rescinded as well as the 2018 if you approve our proposal today.

Next slide, please.

So this is a summary of what we're requesting and, as John mentioned in his staff presentation, we're asking for two conditional uses. One for the therapeutic riding, which is a sports and instructional camp conditional use, and the second one would be for stabling to be allowed on property less than 20 acres and, as John mentioned, with the assemblage of Lot 18, this is just under nine acres.

Can you advance that; next one, please.

So this is the current approved master plan for the site, and it shows, obviously, Lots 19, 20, and 21. Again, starting at the corner, the barn with paddock areas and then the riding arena that's covered, offices with paddocks along Center and Ridge, emergency access gate, offices, more paddocks in the middle, and then the round riding ring that was the last conditional use with additional paddocks against Ridge Drive.

Next slide, please.

So this is our proposed master plan. And with this proposal, we're expanding the barn facility to add additional horses, adding a new horse arena/riding ring in this location where there are currently paddocks and their office, proposing to tear down the residential structure and build a true office building. The paddock areas in the middle stay largely unaffected. The round riding ring area stays unaffected. And then Lot 18, which I'm highlighting here, will retain the residential structure for use for their own ranch hands to reside. Add a utility building closer to Ridge Drive to store some maintenance equipment in it so that they can maintain Lot 18, and then the idea would be to put six horse paddocks on the east side of the property on the Goodlette-Frank Road side.

So in a nutshell, those are the changes we're making. We have several conditions that were being modified, deleted, and expanded in reference to what we're proposing to do. Because of the nature of what we do and trying to remain compatible with the neighborhood, there are restrictions.

I don't know if you want to go through each one of the conditions, sir, but we have limitations on hours of operation that are 8:00 a.m. to 8:00 p.m. for programming. We have lighting conditions that require all lighting to be either bollard style or down lighting with cutoff shields on it so there's not light spillage into the neighborhood.

There's a limitation on the number of program participants. That actually has gone down on weekly basis. When we went through this process back in 2018, I think there



was an idea of how they could operate with having two riding facilities, but the reality is there's only a certain number of trainers and volunteers and horses. So when we go through all the numbers -- and Mr. Banks did a pretty extensive traffic analysis based on their programming schedule -- we think that the numbers, 320 participants, is probably the maximum capacity they can achieve, and that's reflected on a weekly basis.

So those are kind of the primary discussion items that we had relative to compatibility. We did also further limit the height of structures to 25 feet with the exception of an element for the -- if you can advance, I'll show you one feature. If you can advance that again.

So here's our rendering that -- and I forgot to introduce Randy Rosal, the project architect from Humphrey Rosal Architects. But this was a schematic showing the barn expansion with maybe a silo feature just to have as a little more architectural embellishment for the red barn that's been such a prominent feature in the community for over 20 years.

If you could go back one to the master plan, I'd appreciate it. There you go.

So with regard to the project, all program participants come in through the main entry on Center Street. We had access points and emergency access point on Ridge that's gated, and there's a condition that addresses that. The only other access on Ridge will be for the residential structure that will remain so the -- and they have -- anticipating to put up a gate at that location.

We've spoken to our neighbor to the south, a single-family residence, and we are required to put in a landscape buffer. We've talked to her about the fence material. She likes the fencing that's there today. It looks more rural in nature, and we've committed to go ahead and reinstall that type of fencing on that buffer as well.

If you drive out there today, all along Ridge Drive you'll see that there is an established Clusia hedge that's going to be expanded along that frontage. And if you drive down Ridge, you don't see much of what's going on other than you can see the roofline of the covered arenas.

I know that we had the letter of objection that was filed by the neighbor. Our office spoke with him yesterday as well.

HEARING EXAMINER DICKMAN: Are you talking about Mr. Duff?

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: Okay. So you did get a chance to read this?

MR. ARNOLD: I did, yes. John was kind enough to give us that in advance.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: So I did read it, and I certainly understand the concerns, but the reality is, under the agricultural zoning district, today you can have a stable. If this was a private residence, I could have a horse stable. Mr. Duff has a horse stable across the street.

So can we go back to the aerial photograph. There you go. So I think the other one might have been a little bit better. Can you go one back, please.

HEARING EXAMINER DICKMAN: You have one width.

MR. ARNOLD: There you go.

So the email came from this person across the street and there was concern, as I read it, light and having a structure of 11,000 square feet in that proximity. The reality is,

there's no limitation on the size of a barn or a stable building if this was a private residence, and we've committed that that building would be 10 feet less in height than the maximum allowed under the current agricultural zoning designation and the current conditional use.

So we have been concerned about that. We have a mature hedge that's going to be established around it. We have lighting conditions that affect that. The only other thing that he had mentioned was amplification of sound, and in the large arena here the trainers and the assist people do wear microphones, and they're amplification with sound. They're directed in. And I've been on campus many, many times, and I can say that from the parking areas that are located in this area, it's barely audible to hear the speakers --

UNIDENTIFIED SPEAKER: That's not true.

HEARING EXAMINER DICKMAN: One second.

MR. ARNOLD: -- inside the --

HEARING EXAMINER DICKMAN: One second. Please do not call out or yell out or clap or anything from the audience. You'll have time to speak. Thank you.

Sorry for the interruption.

MR. ARNOLD: No problem.

That's my experience. I'm sure Mr. McNamara or Mr. De St. Pierre or the project architect, who's also been on site many times, can talk to you about that, but we believe the conditions that we've addressed with staff address the compatibility and don't believe that there's any additional commitments that we would need to make in order to remain compatible with the neighborhood with that expansion.

HEARING EXAMINER DICKMAN: All right. Why don't we go ahead, unless you have someone else you want to bring up from your team for right now -- obviously you have time --

MR. ARNOLD: Sure.

HEARING EXAMINER DICKMAN: -- for rebuttal. I'll go ahead and open it up for the public comment.

MR. YOUNGBLOOD: Mr. Dickman, I only -- at last look, I only had one registered public speaker. Give me just a moment here.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: All right. Susan Meyers. I'm trying to get Susan Meyers. She's using an older version of Zoom, so bear with me.

HEARING EXAMINER DICKMAN: All right. Take your time.

MR. YOUNGBLOOD: Susan, are you with us?

MS. MEYERS: I am.

MR. YOUNGBLOOD: All right. You will have five minutes, ma'am.

MS. MEYERS: Well, I didn't realize I spoke to -- registered to speak, but I live at 221 Center Street, which is kitty corner from the stable, and I registered so that I could see the plan. I'm very supportive of the facility, and so far I don't see anything to object to. And I registered just so that I could be aware of what the plan actually was. I have not found it to be an issue in any way. So that's my input so far.

HEARING EXAMINER DICKMAN: Okay. Thank you for your comments, and thanks for participating.

MR. YOUNGBLOOD: All right. We do have one registered speaker in the room, James Duff.

HEARING EXAMINER DICKMAN: Okay. Mr. Duff, come on up.

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

MR. DUFF: Hello, I'm James Duff. I live at 235 Center Street.

And I'm basically across the street. We've run a horse barn stable for over 40 years. I've been involved over 20 years.

I'm reluctant to come forward just because I've had a great relationship with NEC -- or NTRC, I guess. Over the years -- we run a horse operation. They do -- we've helped each other out over the years, and I think they are very respectful, their operation they do.

My concern centers around the replacing a -- what I guess to be about 1,300-square-foot residential structure that's one story to go into a 25-foot story, 11,000-square-foot arena. I believe that the lighting and -- I have to disagree, the sound does travel, especially in those arenas. They do use microphones. I understand the reason for it, but it does reverberate. It's not just limited to the property. But we run the same type operation, but we don't use amplified sound.

So my -- well -- and I was just speaking with Martin, the director, just beforehand. And, unfortunately, I didn't -- I travel. I was out of town at the first preliminary meeting, so I didn't get a chance to see the plan, but I heard through the grapevine that -- the equestrian grapevine -- because we do talk -- that the plan was to put the new development on the acquired parcel, but that doesn't seem to be the plan anymore. It's -- it's now put paddocks on the new parcel and then put the bigger structure at the corner, which is basically directly across from my residence. I'm within 100 feet, I guess, maybe 120.

The -- they do use sound. They do use light. Generally their operation starts, like, at 5:30 in the morning. Their lights come on, and it is bright as day. And I think that they really should give some more consideration to placing the structure, which I'm not -- at a more appropriate location on their property, which would -- in my opinion, would be closer to Goodlette-Frank, maybe closer to their existing outdoor riding -- or covered riding ring.

Martin mentioned that there might be some additional improvements they could make to mitigate the sound and noise and lights, which I think is putting up walls on the -- the walls on the arena. And he's also talked about -- different than the plan that showed up here, but he showed me a plan that turns the arena so it goes more along Ridge. I don't know what's true or what's not true at this point, what could be approved. But my -- I respectively [sic] ask that they reconsider the plan in putting the 11,000-square-foot arena right in front of my house.

HEARING EXAMINER DICKMAN: Okay. I understand. So you live on the property, but you also have your own private equestrian operation?

MR. DUFF: Yes. We run an equestrian lesson/boarding stable for the last 40 years.

HEARING EXAMINER DICKMAN: Okay, I understand, okay. But for the fact that you live there, that's a similar type of use, I guess?

MR. DUFF: Very similar, very similar.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. DUFF: Thank you.

HEARING EXAMINER DICKMAN: Thank you for putting that into the record. I appreciate it.

Do we have anybody else, Andrew?

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

HEARING EXAMINER DICKMAN: Okay. Mr. Arnold, do you want to address any of that?

MR. ARNOLD: If we could we go back to the presentation and bring up the site plan again, I think it might be helpful because I think, Mr. Dickman, I'd like to bring up Randy Rosal, the architect, and let him tell you how we're treating that side of the new arena.

HEARING EXAMINER DICKMAN: Do that, as well as, you know, just maybe operationally, there was a concern about the microphones and the sound reverberating. And, you know, sound technology now is so sophisticated that it can be directional, you know, so address any of that that you can that would possible.

MR. ARNOLD: Okay. All right.

HEARING EXAMINER DICKMAN: All right.

MR. ARNOLD: If you go to the site plan, Andy, that we had, it should be a couple more slides forward. One more. There you go.

So this is the arena that the speaker was mentioning, replacing the single-story house. So I understand his concern. I'm going to have Mr. Rosal tell you how we're treating this edge of the building. It's going to be set back 50 feet. That's the required building setback. And in this area where they have the existing paddocks, the reason that the arena was sited in this location was, one, it's central to the barn facility, so it's easy to move the horses back and forth. It's easier to bring the participants in at one location and keeping them closer to Center Street rather than bringing the intrusion farther into -- along Ridge, which has single-family residences on this side of the road.

So, Randy, if you want to come forward and maybe just talk a little bit about how you're going to treat that side of the building. I don't know if you want to use a pointer or not.

MR. ROSAL: Sure.

HEARING EXAMINER DICKMAN: State your name -- give us your name for the record.

MR. ROSAL: Sure. My name is Randy Rosal. I'm with Humphrey Rosal Architects. We've been working on this property.

To give you a little background, David Humphrey was involved as a member of the community. He used to live in Pine Ridge, and he helped out. And at about the same time our son was born, and he had autism, and he has been participating in the program for about 14, 15 years. So we've seen the development of this property from a sand lot to what it is today. And it literally was a dust ball.

So more specifically addressing the concerns that have been raised, we did look at different opportunities for locating the new arena. And, obviously, there's the difficulties that Wayne mentioned in terms of accessibility not only to bring the horses over to conduct the lessons but also to keep the participants safe and not delve in too much, too deep into the property.

Some of the issues is that the arena has to have a certain length in order for it to be functional. There aren't very many places on the site that you can actually do that. But we did everything respecting the required setbacks. You have a 50-foot setback on the north side. You also have a 50-foot setback on the west side.

And one of the features, though -- in understanding that we don't want to offend

neighbors in any way, we created on the north side -- and I know it's hard to see on this plan, but there's a storage and restroom on that north side. It's a wall that is about 12 feet tall. It comes to about where the structural components of the arena are going to be taking place, because the arena may be 25 feet tall, but you're dealing with hip roofs so, really, the perimeter is much lower, right? Twenty-five is at the highest point. Your perimeter's probably going to be at about 20 feet, maybe even lower, 18.

So you have already a wall almost the entire length of the north -- north edge of the building, and that's going to, in itself, act as a buffer of any sort. That doesn't even take into account the fact that you do have paddocks here that have trees, and there's going to be a heavily dense -- already is partially there, but there's going to be a hedge, you know, the landscape buffers that are required by the county anyhow, so --

HEARING EXAMINER DICKMAN: So this -- I'll just interrupt you a minute.

MR. ROSAL: Sure.

HEARING EXAMINER DICKMAN: This is going to be the Type D landscape buffer on this side and then the Type C along this side?

MR. ROSAL: That is correct.

HEARING EXAMINER DICKMAN: Is that correct?

MR. ROSAL: That is correct.

HEARING EXAMINER DICKMAN: Okay.

MR. ROSAL: So, you know, the entry has not been relocated. The entry's there. And like I said, this is currently fairly well densely vegetated. There are some large trees in there as well, in addition to the required landscape buffer.

HEARING EXAMINER DICKMAN: And to be clear, this is a 50-foot setback from --

MR. ROSAL: The property line.

HEARING EXAMINER DICKMAN: -- the property line, 50-foot setback from the property line.

MR. ROSAL: That is correct.

HEARING EXAMINER DICKMAN: Who's moving me around? Okay. All right.

MR. ROSAL: That is correct.

HEARING EXAMINER DICKMAN: Okay.

MR. ROSAL: Any questions?

HEARING EXAMINER DICKMAN: No. Is someone -- can someone address just the sound and the noise, the lighting. Just give us a sense. I know it's in the conditions, but I'm assuming that you're taking precautions about directional lighting and, you know, sound controls and things like that.

MR. McNAMARA: For the record, again, my name is Brian McNamara. I'm the president of the board for the organization.

Again, I do volunteer, so, again, as first-hand knowledge, the amplification is used on the property, but if you're in our current barn as it exists to the north, if you're in that barn, you can't hear anything.

HEARING EXAMINER DICKMAN: Okay. If you could zoom all the way out so I could see the whole master plan, please.

MR. McNAMARA: So the current existing arena is, as you can see it on the screen --

HEARING EXAMINER DICKMAN: It's in here, right? Right in here.

MR. McNAMARA: To the left just a little bit. There you go. So if you're in that -- if you're in the arena, where the amplification is actually being used, if you're in the barn just to the north, on our same property, which is about 40 feet away, you can't hear the amplification in the barn.

HEARING EXAMINER DICKMAN: But where are the speakers at? Where are the speakers?

MR. McNAMARA: They're in the arena.

HEARING EXAMINER DICKMAN: Are they -- are they on a pole? How high up are they?

MR. McNAMARA: They are about -- they are at the top of the ceiling area, the roofline, but they are directed inward towards the arena.

HEARING EXAMINER DICKMAN: Got it, okay. All right.

MR. McNAMARA: And we're talking, like, little 4-inch, 6-inch Bose speakers that are spaced maybe 30, 40 feet apart.

HEARING EXAMINER DICKMAN: And this is a covered arena or --

MR. McNAMARA: It is.

HEARING EXAMINER DICKMAN: -- an open -- it's a covered arena.

MR. McNAMARA: It is a covered arena, sir. And all the lighting is down lighting. Currently we have about five lights that were damaged via Ian, so those will be getting replaced. But the lights, there's, I believe, 10 lights in the arena, as it stands.

HEARING EXAMINER DICKMAN: The reason I'm asking about this is just one of the things I try to avoid if I can is not saddle Code Enforcement with problems and just, like, kick the can to Code Enforcement.

So, you know, like, speakers even that small can be loud, especially if you have multiple speakers and then, you know, I don't want to just tell people, well, there's Code Enforcement. Call Code Enforcement. If we could solve a problem here, that's even better.

MR. McNAMARA: Yes.

HEARING EXAMINER DICKMAN: You know, I think that, you know, just being cognizant -- I don't know who has control over the maximum sound of those speakers or if anybody has control over it, or --

MR. McNAMARA: We do, Your Honor. We do, sir. Sorry. "Your Honor" is an attorney thing I got stuck in.

But, Mr. Dickman, we do have audio controls that are managed directly by the instructors --

HEARING EXAMINER DICKMAN: Okay.

MR. McNAMARA: -- so that can be addressed.

I would like to point out that, again, the current barn as it exists is simply the oblong red barn that you can see visibly from the corner. Part of the issue that I believe might have originally been objected to might solve its own problem because, again, we're expanding that to make more of an L shape, extending the barn farther against Center Road, and to that point, it will have its own noise and sound barrier from the physical structure that will be in place as well as the height that it will be increased to kind of give any ambient noise for sound pollution.

HEARING EXAMINER DICKMAN: Yeah. I mean, I just want to be aware of

that, because I've dealt -- over my career I've dealt with, like, sound problems.

MR. McNAMARA: We're not Celebration Park.

HEARING EXAMINER DICKMAN: Yeah. Well, that's not what I'm talking about that. But, I mean, I've had many other situations, and everybody says, oh, yeah, it's going to be this way, and then it's such a bad Code Enforcement scenario because by the time -- you know, nobody likes to complain, first of all. So by the time -- for someone to actually complain, it really has to be a problem, but then by the time someone gets there, the noise is gone, and it's just a big mess. And I hate to -- you know, so if design-wise or operationally-wise that could be handled with, you know, just sort of management having control over the volume control. You know, I've seen some people put the volume control in a lockbox where it can't get any higher than a certain amount. I mean, there are plenty of companies that specialize in sound, you know, where they will go off to the perimeter and say, okay, they'll check the hertz on it and say, okay, that's the top. You know, I don't know what it is in this area, if it's 65 or whatever. But I just want you guys to avoid any Code Enforcement issues. I mean, it just becomes a big headache, so just be cognizant of that.

MR. McNAMARA: Sure.

HEARING EXAMINER DICKMAN: And I'll take a look at this. But, you know, there's directional speakers and someone speaking on a microphone. As long as it doesn't turn into, you know, just somebody wants to get louder for the sake of being louder, you know, just be aware of that --

MR. McNAMARA: Certainly.

HEARING EXAMINER DICKMAN: -- and also the lighting.

MR. McNAMARA: And, again, as a volunteer myself, who goes on campus, goes on property when I'm helping with the side walking, even with the amplification, sometimes we have to be, like, what was the instruction?

HEARING EXAMINER DICKMAN: Okay.

MR. McNAMARA: Because, again, it is -- we were cognizant of it.

HEARING EXAMINER DICKMAN: Yeah. Well, if everybody's speaking at the same time, then you're trying to talk, okay.

MR. McNAMARA: Yeah. Anything further for me?

HEARING EXAMINER DICKMAN: No, that's it.

Mr. Arnold, do you have anything else?

MR. McNAMARA: Thank you for your time.

HEARING EXAMINER DICKMAN: Thank you for being here, and thank you for working on the board.

MR. ARNOLD: Again, Wayne Arnold.

Unless Mr. Yovanovich has something in closing, I think our -- we've made our case. We think the conditions that we've worked with staff are acceptable, understanding the issue. We've obviously been a neighbor of the complainant for a number of years, want to continue a good relationship with him, and I'm certain that we will.

HEARING EXAMINER DICKMAN: Yeah. He -- Mr. Duff did not seem to be an adversary here. He feels just -- it seemed to me he's just expressing a concern that he has about a few things, and if you guys take that into consideration, I appreciate his being here and you-all continuing a friendly relationship, and hopefully we can -- you know, these comments will be taken into consideration.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: But thank you. Nice presentation by everybody.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: Do we have any other speakers?

MR. YOUNGBLOOD: Those are all the registered speakers for this item and also, for the record, we did not have any registered speakers for Item 3A.

HEARING EXAMINER DICKMAN: I was going to ask you about that. Thank you. I appreciate it.

Anything else?

MR. ARNOLD: No. Thank you.

HEARING EXAMINER DICKMAN: All right. Then we're going to close, and I've got enough information, and I'll get a decision out as quickly as possible.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: Thank you for being here.

Thank you for being here, Mr. Duff. Appreciate it.

All right. We're going to take a 10-minute break and get set up for the administrative appeal.

(A brief recess was had from 9:54 a.m. to 10:03 a.m.)

HEARING EXAMINER DICKMAN: All right, everybody. We're going to return. Why don't we go ahead and get started. If we can shut the door in the back. All right. I couldn't tell if I was just being loud or not.

\*\*\*All right, folks. This is the last item on the agenda. It is an administrative appeal. I'm familiar with administrative appeals, but we have not had one -- or I have not had one as Hearing Examiner here, but what's most important for me procedurally is that we get the process established up front before we get into the substantive things.

So just to get started, under Chapter 9, it clearly says that the -- of the Administrative Code says the Hearing Examiner has jurisdiction over administrative Type 3 appeals, et cetera.

Why don't we start with getting whoever's the parties here. I know I have the county is a party here. Mr. Yovanovich, you're representing?

MR. YOVANOVICH: Lennar.

HEARING EXAMINER DICKMAN: Lennar. And who else is here as -- we've got Valencia Golf and Country Club. Are they the ones that filed the appeal?

How are you, sir? Why don't you just use that one for now.

MR. WHITT: Sure.

HEARING EXAMINER DICKMAN: So why don't we -- go ahead.

MR. WHITT: Yeah. For Valencia Golf and County Club, I'm Michael Whitt, W-h-i-t-t, for the court reporter. With me, Rob Cooper, also with my law firm, James Holiday, and we have Brian Farrar who's a consultant for the community.

HEARING EXAMINER DICKMAN: Okay. Great. So sit tight.

So what I want to do is talk about, first and foremost -- well, come on up back to the microphone. I want to make sure we're -- you're part of this, so I want to make sure we're all going to talk about how this is going to go down.

MR. WHITT: Sure.

HEARING EXAMINER DICKMAN: First and foremost, I want to make a



distinction between parties and participants, okay. So the parties obviously would be the county made the decision. This is an appeal of a county decision. And then there is a, I guess -- I assume your client filed the appeal of that --

MR. WHITT: Yes, sir.

HEARING EXAMINER DICKMAN: -- and then your client is a necessary party of interest, right? Correct?

MR. YOVANOVICH: It was our development order that was challenged.

HEARING EXAMINER DICKMAN: Right, right. Yeah, exactly.

MR. YOVANOVICH: Yes, yes.

HEARING EXAMINER DICKMAN: So I consider these the parties, right?

MR. YOVANOVICH: Correct.

HEARING EXAMINER DICKMAN: Any disagreement there?

MR. WHITT: No, sir.

MR. YOVANOVICH: No.

HEARING EXAMINER DICKMAN: Okay, great.

But there are -- under state law, this is a public meeting, so there are participants. So there are -- the members of the public are going to be able to speak. They're going to be able to talk just like any other meeting, but they're participants. They're not necessary -- they're not necessarily parties.

I don't -- I don't make determinations if someone says, well, I'm requesting to be an interested party or something like that. I don't delve down that hole. If they want to make a record and try to say that they are, they get five minutes. That's quite a bit of time. But I'm not going to go down that road right now. These are the main parties that we're dealing with.

Do we have any problems with that?

MR. WHITT: No, sir.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: I do.

HEARING EXAMINER DICKMAN: You don't think --

MR. YOVANOVICH: I don't think the public -- this is an appeal that involves the HOA --

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: -- and my client and the county. Nobody else has joined in that appeal. So I think the only parties for participation today is the HOA, Lennar, and the county because there's no -- and maybe I'm jumping the gun, but this is an appeal based upon the record. There's going to be no -- it's not de novo. So I think the only participants today -- they can watch, but the only people who can actually speak should be the three parties.

HEARING EXAMINER DICKMAN: Okay. So one of the things that the state law says, and you know this as lawyers, that public meetings are open to the public. And I recognize your point of view. That's why I'm making the distinction between a party versus a participant. And if somebody wants to speak in a public meeting that's been noticed to the public -- otherwise, what's the point of noticing it to the public other than to just sit there as potted plants and look at this thing?

So I am going to allow the public to speak. But, again, the parties that are represented here are the ones that are -- kind of have the time to be able to, you know,

cross-examine and have rebuttal, that kind of thing; whereas, the public would just make their comments and sit down or get -- you know, but you can put that objection on the record if you like.

MR. YOVANOVICH: Yeah. I guess can we -- before I get too much further, can we kind of really talk about the process, because when you talked about cross-examination and the like --

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: -- I didn't anticipate that there would be anything other than oral argument.

HEARING EXAMINER DICKMAN: Well, there may not be. Okay.

MR. YOVANOVICH: That's usually how the appeal works. It would be oral argument.

HEARING EXAMINER DICKMAN: Okay. It says here, public hearings, participants before the Hearing Examiner shall be the applicant, county staff, county agencies, proponents, and opponents, et cetera, et cetera. Let's just take one thing at a time. We know who the parties are, right?

MR. YOVANOVICH: Yes.

MR. WHITT: Yes.

HEARING EXAMINER DICKMAN: We're clear about that.

MR. WHITT: Yes.

HEARING EXAMINER DICKMAN: I'm going to take public comment, and there are people that are signed up to give public comment. I'm going to allow that to happen. And then the second step on this is going to be is there any -- I've looked at this, and I believe that I have jurisdiction to hear this. Does anybody have an issue with me having jurisdiction over this?

MR. YOVANOVICH: Are we agreeing that you have jurisdiction under Section 250-28 of the Code of Laws and Ordinances?

HEARING EXAMINER DICKMAN: I believe I have jurisdiction.

MR. YOVANOVICH: I just wanted to make sure that's the ordinance that we're here to participate under.

HEARING EXAMINER DICKMAN: Yes.

MR. YOVANOVICH: So with that noted, yes, I agree.

HEARING EXAMINER DICKMAN: All right. Any questions about that?

MR. WHITT: No. I agree you have jurisdiction to hear it.

HEARING EXAMINER DICKMAN: Okay. County, you agree I have jurisdiction?

MR. BOSI: The county's in agreement.

HEARING EXAMINER DICKMAN: Okay, great.

So then as far as the process, who are the appellees and who are the appellants? So while the appellee would be, typically, the person that is the county -- I guess, the county, whereas the appellant would be the person filing the appeal, and your client would be the co-appellee, call it that?

MR. YOVANOVICH: I think that's fair.

HEARING EXAMINER DICKMAN: I'm just trying to work out, at the end of the day when I leave here, I can't call anybody up and say, hey, what did you think about that? I'm not going to do it. So I'm going to take my time and really work this out.

But procedurally what I'd like to -- typically, if somebody's -- if we're in court, if somebody's challenging something, they go first, and then, you know -- but what I would like to do is to start it off with the county, since they're the ones that made the decision that's under appeal, to at least make an additional presentation of this is what happened, these are the facts, this is what -- the decision we made so that it just introduces the item, and then we'll go to the appellant and do the main -- main allegations or main arguments, case in chief, that kind of thing, and then you would have opportunity and the county would have opportunity to go next. I don't know if the county's going to defer to you or both of you guys want to go. How do you want to handle that, Mike?

MR. BOSI: Based upon the traditional order in which the Hearing Examiner proceeds on most of the matters, I envisioned that I was going to make the position -- establish the position from the county's perspective, Mr. Whitt would provide for the perspective of the HOA, and then Mr. Yovanovich would provide the prospective from Lennar in each points that they -- each one of the parties want to establish is, you know, is provided for within that. And then after that, I didn't know --

HEARING EXAMINER DICKMAN: There might be questions. Okay. All right. So we'll just do it like that. Is everybody in agreement with that?

MR. YOVANOVICH: Sure.

HEARING EXAMINER DICKMAN: Mr. Whitt?

MR. WHITT: That's fine with me, and it depends on what your call is if you'd like to hear evidence, if you'd like to hear from -- we were anticipating Mr. Farrar testifying, really just providing more background --

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: -- if necessary for you.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: Kind of elaborating on the things that we attached in our filing.

HEARING EXAMINER DICKMAN: Okay. And if anybody has any additional documents you want to supply, when you come up, just supply them to me, give them to me. I want to make sure -- well, okay. Let's talk about that for a minute.

MR. YOVANOVICH: Let's talk about that.

HEARING EXAMINER DICKMAN: So if somebody has additional documents, I think it -- I don't know if there was a rule in place where you have to file it ahead of time. Rich?

MR. YOVANOVICH: If I may -- and I'm being -- I'm going to be very particular. This is under 250-58.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: And it specifically says that when you file appeal -- the appeal, you're to transmit every document, all papers, all evidence that you have to support your appeal. So that's why I'm saying, I don't think any new documents are permitted.

HEARING EXAMINER DICKMAN: New documents.

MR. YOVANOVICH: And I don't think any new testimony is allowed today. I think this is purely oral argument based upon their appeal and the documents they supplied to support their appeal.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: So I think Mr. Farrar testifying is inappropriate. I think they're limited to just the documents they supported [sic], because that's the basis for the

appeal, and that's what's required under 250-28.

HEARING EXAMINER DICKMAN: Subparagraph --

MR. YOVANOVICH: A.

HEARING EXAMINER DICKMAN: -- A.

MR. YOVANOVICH: And that's why I said under C, it says any party may appear in person or by attorney. It doesn't say the public. Yes, we have to do this in the public, but we don't have -- I don't believe the public has a right to speak. I understand your ruling. But I think if you look at the process under 250-58 --

HEARING EXAMINER DICKMAN: I understand that. And I have looked through code, Land Development Code, Administrative Code, and there are places where party and -- I mean, there's some interchangeability going on there, so I'm going to have to rely on my -- what I know about the case law and standing and things like that. So I --

MR. YOVANOVICH: I understand.

HEARING EXAMINER DICKMAN: -- you guys are definitely parties, but I don't think I can disallow the public from speaking here. But I'm not going to deem them as parties.

And, you know, the question about whether or not this is de novo or not, let's address that, okay.

Mr. Yovanovich's position is that this is not de novo; that this is just strictly an appeal based on, you know, everybody -- you've made your filing, everybody's filed what they filed, and there is no new evidence that comes in. And I'd like to hear from you, sir, about your position on that.

MR. WHITT: I don't agree with that. I think that you can take additional evidence if you desire to do that. This would move up to the Circuit Court, ultimately, so I think the record needs to be complete. If you've got questions, if you need to have things answered, that's up to you. We're happy to provide it.

HEARING EXAMINER DICKMAN: Okay. I tend to think that it would be -- what I don't want -- what I don't want is -- and this is just sort of -- I don't want someone to be sandbagged, like -- basically, like, not have the information, all of a sudden there's a whole bunch of information that Mr. Yovanovich would have to digest and has not been prepared. I mean, you wouldn't do that in court.

MR. WHITT: Or vice versa.

HEARING EXAMINER DICKMAN: Or vice versa, exactly.

MR. YOVANOVICH: May I? What they're arguing is they want a trial. The word is "appeal." You're sitting in an appellate capacity --

HEARING EXAMINER DICKMAN: I understand.

MR. YOVANOVICH: -- based upon the record that's there. You don't -- you don't go to an appellate proceeding, and then the panel or individual that you're arguing to says -- they may ask you questions based upon the record, but they don't say, would you please supplement this with other things at the oral argument.

We're at oral argument and, essentially, that's why I think it would be totally inappropriate to bring anything new in. And what I don't want to do is then say, there's information coming in, I'm not prepared to address it, I need a continuance, and then I've got homeowners who don't know the status of their home and when they can actually enjoy all of the facilities because, as you know, everything is stayed right now because of the procedure they filed under. They chose the venue. They chose the process. It's an

appeal. We're at oral argument stage. And I think we should be limited to whatever documents they put in, and nothing further some come in.

MR. WHITT: First, if I could, Mr. Dickman --

HEARING EXAMINER DICKMAN: Go ahead.

MR. WHITT: -- I'd like to hear from the County Attorney. I'd like to hear the county's position under this code provision. If the county believes that it's strictly closed and oral argument, making air quotes there, "oral argument only," or if evidence can be introduced, I'd be interested to hear the county's position on that.

HEARING EXAMINER DICKMAN: Well, first of all, I mean, Rich -- sorry -- Mr. Yovanovich, I have been in appeals all over the State of Florida on various things and at the -- at the administrative level, whether it's in front of a board or something like that, and it's almost never just oral arguments, you know. It's because when you go up on -- if you go any further outside of the county, it's going to probably be writ of certiorari, don't you agree? And that would be definitely an appeal unless someone does a dec action.

MR. YOVANOVICH: All I can tell you is what happens in other parts of the state --

HEARING EXAMINER DICKMAN: World.

MR. YOVANOVICH: -- other counties, no disrespect --

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: -- doesn't matter. We have a very specific ordinance and section that tells you what this is to do. And it is very clear that we were required by the County Attorney to provide everything we got by a date-certain and that we are here to argue about everything we have. And allowing anything new in is not consistent with any administrative appeal I've done in Collier County based upon this section of the code.

HEARING EXAMINER DICKMAN: So the administrative official shall forthwith transmit to the Board -- I'm not the Board, but I'm the HEX -- all papers, documents, maps constituting the record of the administrative action upon which the appeal is to be taken.

All right. So why don't we do this: Why don't we get started. I don't want -- one, I don't see any reason to have any cross-examination, any experts or testimony or anything like that. I think at this point everything's been supplied. I don't know if you've got -- you know, I don't -- what other additional information did you want to put in the record, just out of curiosity, sir?

MR. WHITT: I don't necessarily need to put any other evidence in the record.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: We have made our filing, but what I want to ensure is under 250-58 it says the administrative official will forthwith transmit to the Board all papers, documents, maps constituting the record, which you just read from. You know, so long as that has been done, there's no way for us to get a public records request, get it done, get it from the county, and get it submitted to the Hearing Examiner. And at first we were supposed to go before the BOCC, and then the county said, no, we're taking that off the agenda. We're going to send it to the Hearing Examiner. So it has kind of had fits and starts since the beginning when we took the appeal.

HEARING EXAMINER DICKMAN: Yeah. Well, everything has been -- I mean, I've looked at the agenda. There's quite a bit that's been supplied to me as the

Hearing Examiner, so I have all that information. I don't -- I don't know that the County Attorney or -- the Assistant County Attorney's here to make a decision, but I think we're fine the way we're set up now. I mean, just -- why don't we just go forward with --

MR. WHITT: We're happy to do that. I just -- if you needed additional information about the background, some of the layouts, what caused the problems, where we are, how we got here, we're happy to do it.

HEARING EXAMINER DICKMAN: Yeah. I appreciate that, and I will tell you, I have read everything, read the staff report. I grasp the situation. I understand what's happening. And that was not based on -- that was not based on any conversations with staff or anybody like that. I just want to make that disclosure. I haven't met with anybody, really, but I've read everything. I totally understand what the issue is here, and so you don't have to worry about that whatsoever.

Okay. So why don't we get started. We're going to just have Mr. Bosi for the county, I guess, do preliminary introduction and make his position.

(Interruption by the stenographer for clarification.)

HEARING EXAMINER DICKMAN: Yeah. Why don't we go ahead and do -- swear everybody in, anybody who's going to speak today.

MR. YOVANOVICH: Even if we were previously sworn, do we have to be sworn again?

HEARING EXAMINER DICKMAN: Well, no, those were the first two items.

MR. YOVANOVICH: Oh, I thought it was everybody.

HEARING EXAMINER DICKMAN: I had specifically said we're going to take a break, so I want to swear -- I want you to swear twice.

MR. YOVANOVICH: I thought we had to tell the truth as lawyers.

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

HEARING EXAMINER DICKMAN: That is a good point. Frankly, you're obligated under the Florida Bar rules to be honest and candor to the tribunal, so -- but even more so you just swore to --

MR. YOVANOVICH: I really mean it.

HEARING EXAMINER DICKMAN: You really mean it this time.

All right. Mr. Bosi.

MR. BOSI: Thank you, Mr. Hearing Examiner.

This item is Agenda 3C within your agenda, and I'll read it. It's ADA-PL20200004725, Valencia Golf and Country Club of the Orangetree PUD, appeal filed by Valencia Golf and Country Club HOA, Inc., of the administrative approvals of Planned Unit Development minor change Petition PMC-PL20200003657, and Insubstantial Change to Construction Plans, ICP-PL20200003659, regarding sidewalks on private property. The subject property is located in Valencia Golf and Country Club, Phase 2B subdivision part of Orangetree PUD development in Section 23, Township 48 South, Range 27 East, Collier County, Florida, within Commission District No. 5.

Just for the public notification process, the advertisement and map was provided within the October 21st *Naples Daily News*, and public notice was provided as required by Section 250-58.

I am the -- in the role of the Planning and Zoning director. All appeals to -- again, this is an administrative approval. I'm in charge -- or I'm charged with the responsibility of representing staff. I wanted to let you know that this wasn't a decision that was made

unilaterally by myself, and I think I will be able to expand, that within this process, I was assisted by our County Attorney's Office, Ms. -- also our Development Services Division with Ms. Cook and Ms. Cormac -- or Mr. Cormac Giblin, who are both here as well, and we may bring them up if the issue is needed, as well as Mr. Bellows as the Zoning manager. So I'm going to try to represent what the actions of -- with the county.

And on the first slide that I have here is -- was when I first started becoming aware of the issue, and it was from Mr. Cooper from the law firm representing the HOA simply describing what the condition was. And as you can see, the sidewalk is provided for halfway up the individual driveways within lots that were owned by Lennar, one of the parties represented by Mr. Yovanovich.

And Mr. Cooper said, just so there's perspective on the sidewalk issue, this is one of the problem homes showing the sidewalks in the middle of the driveway, meaning that either the sidewalk is not accessible if the driveway is in use and/or the driveway is not functional for parking a vehicle. Either way, this problem presents a life-safety issue for the HOA and its residents. All of the impacted homes have this problem.

So when this problem -- and this email kind of accentuated what the issue was. And staff got together and started to have conversations with Lennar and trying to figure out what was the best remedy for that situation.

I will say there was correspondence from Mr. Cooper saying that the HOA wanted to participate within the -- within the solution process, there was problems within trying to find accommodations in terms of dates where everyone involved could meet.

This was coupled with the fact that we had individual homeowners, future members of the HOA, that were being denied entry into their houses because of this issue. So we were somewhat sensitive to timing. And, unfortunately, when we arrived upon the solution, which I'll describe a little bit more in my presentation, the HOA was not involved specifically with that, and that, I think, is the heart of the matter, or one of the issues that will be brought up during the testimony, that they weren't involved in the matter.

We tried to coordinate a meeting. We weren't able to find common ground. We took action based upon what we thought as a staff, which I will show you within the Land Development Code that we feel gives us the authority to make the decisions that we made to remedy the situation.

Next slide, Andrew.

This is from Page 1 of the appeal that was filed by Hahn, Loeser & Parks, LLP, representing the HOA in just describing -- it's objecting to the minor change within the Orangetree PUD master plan, the PMC, and that PMC approval was issued on May 20th and also the insubstantial change to the construction plan, and that's -- that approval was issued on May 31st.

We first received the appeal on June 17th of 2020. And I did bring copies of that with the date stamp from our intake folks. The problem was, is they filed the appeal on a zoning verification form that was somewhat modified to do -- to also stand as an administrative appeal application. I coordinated with the law firm and said this is -- here's the right form. Gave them the assurance that that date-certain, that June 17th was going to vest them for the 30-day window. Within an administrative appeal, the appeal has to be filed within 30 days of the approval of the instrument of the order that is being appealed.

So the appeal was initially submitted on June 17th. It was the wrong form. I personally conveyed to the firm that they would be vested; that they're not going to be

penalized because they used the wrong firm -- the wrong form; and that this will be the date; they just need to provide the updated administrative appeal application.

HEARING EXAMINER DICKMAN: Okay. So in your opinion, you believe this is a timely appeal?

MR. BOSI: In my opinion and in conversations that I had with the firm, that they were vested to that 17th date.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: And one of the things I highlighted within this -- and this gets to some of -- the heart of the issue, and it says, the proposed PMC sought to modify the required sidewalks according to the approved PUD master plan. The request entailed revising the construction plans to omit approximately 560 [sic] square yards of sidewalk approved within the PUE located on Hagen Court and Lema Court cul-de-sacs from Lots 14, 16, 18, 20 through 21 and 33 through 38, and add crosswalk signage and pavement markings on Hagen Court. It also was indicated -- or proposed for Lema Court.

But one of the things that I wanted to point out, sidewalks do not go in a PUE. A PUE is a public utilities easement. It's not an appropriate easement for sidewalks. And I will get to -- and maybe the next slide will be able to show it.

Within this slide is both Hagen Court and Lema Court. And as you can see back from where the cul-de-sacs is, back where the little red lines are, you could see the sidewalk. The sidewalk is within the right-of-way.

HEARING EXAMINER DICKMAN: Do you need a pointer?

MR. BOSI: Yes, that would be great.

So here's the sidewalks. They run along inside, and this is the right-of-way. Outside of this is the -- outside of the right-of-way is where the PUE extends to. So the sidewalks run all the way up here, and then you can see they start to cross. Here's the right-of-way issue. The sidewalk goes outside of the right-of-way and into the PUE area on private property, not dedicated to a right-of-way easement, but dedicated to a public utilities easement, and that highlights what the issue was.

And so what happened was these sidewalks were installed outside of the right-of-way within the PUE. And, furthermore, they were installed closer than 23 feet from the back of the garage creating the public issue that was highlighted from that original email that I showed you.

Staff recognized that this was a situation that had to be addressed. It was creating a public health-safety-welfare issue. And we bantered back a number of possible solutions, and the solution we arrived upon was to eliminate the sidewalks at the cul-de-sac, provide for a crosswalk to provide for public health and safety, and minimize those -- that encroachment into private property.

Next slide, please.

HEARING EXAMINER DICKMAN: Let me ask you a quick question.

MR. BOSI: Yeah.

HEARING EXAMINER DICKMAN: So is it standard practice to put sidewalks on private property, or is it standard practice to keep them within the right-of-way?

MR. BOSI: Standard practice is to put sidewalks within the right-of-way.

HEARING EXAMINER DICKMAN: And when you talk about a PUE, that's for utilities. Underground utilities, correct?

MR. BOSI: Correct.



HEARING EXAMINER DICKMAN: And so was there any discussion internally about the -- does that -- you know, does that somehow afford the ability to put sidewalks on top of that area? Was there any discussion about that?

MR. BOSI: No, there was no discussion among staff about that. The further -- the primary focus was that these sidewalks were outside of the right-of-way, and they were within that 23 feet of the back of the garage, which is the requirement as denoted within the PUD.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: And this -- it's tough, because it's cut off, but this is 6.06.02.A.2, and it requires sidewalks on both sides of the street within private right-of-ways unless otherwise determined by the County Manager or designee that the existing right-of-way cross-section is physically constrained or construction would result in unsafe conditions. Citing that in the discussion with Ms. Cook, with the County Attorney's Office, with Mr. Bellows, we felt that that provision of the Land Development Code gave us the authority to move forward with the PMC and the ICP to be able to eliminate the sidewalks and provide for that crosswalk before you get to the cul-de-sac.

I will say the PMC was done out of an abundance of caution. The construction plan insubstantial change was to show the modifications of where the sidewalks were going to go. Within the -- within the master plan, it's silent to sidewalks -- the location of sidewalks within the Orangetree PUD, but just out of an abundance of caution we also processed the PMC change as well.

Next slide, Andrew.

And here's the first of the approval that was related to the PMC dated May 20th, and we had added to omit the 566 square feet within the PUE located at both of those courts, and we added, "and add crosswalk signage and pavement markings on Hagen Court."

Next slide, Andrew.

And that was done out of -- to promote safety based upon one of the original issues that were raised.

And this is the ICP approval letter, and that was issued on May 31st. And, basically, it says the same thing with the added crosswalk signage.

We received the appeal, as I had said, on June 17th and, like I said, it was a -- you know, on the wrong form, but that's when we were first notified that we were going to get that appeal.

Had conversation with the County Attorney's Office, and they had said, we do have an issue. We have an issue with these original approvals, or the PMC and the ICP. We were obligating property that's owned by the homeowners association to do actions that they have not agreed to. So based upon that -- next slide, Andrew -- based upon that, we put an additional stipulation, and this is related to the ICP. And it says, if the Valencia Golf and Country Club Homeowners Association does not consent to the installation of crosswalks on Hagen Court and Lema Court by September 6th, 2022, then the sidewalks shall terminate at Lot 32 and at Lot 38 Hagen Court and Lot 22 and Lot 11 Lema Court, and the crosswalks shall not be installed.

We recognize we did not have the authority to impose that upon the homeowners association. Did not -- did not receive authorization that it could move forward and, therefore, there are no crosswalks there, but those sidewalks have been eliminated.

Next slide.

HEARING EXAMINER DICKMAN: The sidewalks that are on the regular lots that are part of the cul-de-sac --

MR. BOSI: Yes.

HEARING EXAMINER DICKMAN: -- that -- those sidewalks have been eliminated?

MR. BOSI: Those sidewalks have been eliminated.

HEARING EXAMINER DICKMAN: So the sidewalks just stop?

MR. BOSI: Yes, yes.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. BOSI: And this is the modifications to the PMC. It's the same thing. We put a stipulation that if it wasn't the consent of the homeowners association, that action would not be required on their property.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: Next slide.

One of the things I did want to point out -- and this was part of their supplemental findings, and let me put on the record, the original -- or the appeal application and the narrative, the original narrative that was provided for, as well as their supplemental information, contained -- from September -- dated September 7th, that was provided within attachment, I believe -- one second. Those were Attachments F and G, and the supplemental information that was provided by Lennar, by Mr. Yovanovich, that was Attachment H.

One of the things that I did want to point out, and this is just to clarify the record, within the supplemental information, it says, the Association is the sole owner of the PUD master plan.

Next slide.

The PUD designates Orangetree Association, a Florida general partnership, and Roberto Bollt as successor trustee under Land Trust Engagement dated June [sic] 27th, 1986, as the applicant/developer. This is the official entity that controls the PUD. Just to provide for clarification.

Next slide.

And once again, we have a requirement within the county, if you have a PUD, if you are the controlling interest within a PUD, that you have to submit the monitoring report to make sure that all commitments contained within the PUD are being provided for. The most recent monitoring report was submitted by the Roberto Bollt Trust associated with the Orangetree Associates.

Next slide.

And this is just a recognition. Within the original approval of the plats for the -- for the development, there was not enough right-of-way that was provided for within the cul-de-sacs. This is an existing cul-de-sacs [sic] within the -- within the community. As you can see, your property lines -- and I know the property lines aren't exact, but you can see where the sidewalk is. This condition exists in all three of the existing cul-de-sacs within this -- within this subdivision.

We have coordinated with our Development Review. We know moving forward any future submittals related to this, that we have to make sure that there is adequate right-of-way being provided for so the sidewalks will be able to be accommodated within

the future cul-de-sacs.

But these conditions exist within the Valencia Golf and Country Club today. Us eliminating the sidewalks, we felt was authorized by the Land Development Code, and we felt, at the very -- at the very end of the day, what it did -- it was -- it eliminated the unsafe conditions related to sidewalks interfering with driveways and the potential hazards that that would create to the pedestrian community within the community.

HEARING EXAMINER DICKMAN: Right. So, in essence, if -- you could easily see on one of these pictures, in order for someone to use their driveway, they have to park over the area that a pedestrian would need to access the sidewalk. That's, in essence, the problem, right?

MR. BOSI: Yes, it is. And I would also provide -- and this isn't -- I'm not trying to provide new information, but within Valencia -- within Valencia subdivision, which is to the west of the golf and country club, they have the same issue. Their sidewalks end right when they get to the cul-de-sac, because the cul-de-sacs -- the original platting did not provide enough right-of-way to accommodate the necessary area for the cul-de-sac, for the vehicle turnaround, as well as accommodate the sidewalks.

And I know with the amount of attorneys in this room, this might seem like an oversimplification, but that is simply how the view -- how staff had viewed this issue and how we addressed trying to create a solution to the issue.

So with that, any questions that you may have for staff?

HEARING EXAMINER DICKMAN: Okay. This is just more just for the record. You are the County Manager's designee --

MR. BOSI: Yes.

HEARING EXAMINER DICKMAN: -- to make these decisions?

MR. BOSI: Yes.

HEARING EXAMINER DICKMAN: Okay, great. Thank you.

All right. Who wants to go next? All right. The appellant.

MR. BOSI: I'll give the pointer --

HEARING EXAMINER DICKMAN: Who gets the magic pointer? Don't give it back to me.

MR. BOSI: Do you want it back?

HEARING EXAMINER DICKMAN: Come on up.

No, I don't need it. It is fun to play with.

How are you, sir?

MR. COOPER: Good morning, good morning. For the record, Robert Cooper with Hahn, Loeser & Parks, Valencia Golf and Country Club.

And I'll just address a couple of the issues, and then Mike will do...

Is it possible to put up the supplemental information regarding the owner of the PUD that staff used?

HEARING EXAMINER DICKMAN: It is possible.

MR. YOUNGBLOOD: Anything's possible.

MR. COOPER: Okay. Thank you. Thank you. I'm just going to point out a few issues for clarification, and then we'll move on to the presentation, because I think it's important to understand this aspect when you hear our presentation. So it's --

MR. YOUNGBLOOD: This?

MR. COOPER: No, one before it, I believe. One before that one, and we'll use

all those. So I'll -- no, back down to the owner of the PUD.

From the supplemental filing, I think it's important to understand the sentence, the Association is the sole owner of the PUD master plan, blank, blank, blank, for the community. It is the owner of the PUD for the community. The master plan itself encompasses many other properties. Mr. Bollt was the original, but if you -- and we'll get to that one in a second. But as you'll see, he sold off these properties to private developers.

One of the private developers, the original declarant was D.R. Horton of the Valencia Golf and Country Club and that aspect -- and that condition regarding to the master plan.

So as to Valencia Golf and Country Club, the property that submitted to the declaration, when Mr. Bollt sold, the PUD master plan and the community, the owner of that master plan is Valencia Golf and Country Club, because it succeeded to those rights when D.R. Horton turned over to the members.

So just to put it in perspective, Mr. Bollt, who owns a golf course somewhere else who has no ownership interest in Valencia can't modify my PUD as to my property, can't modify my declaration, has no rights in my community.

HEARING EXAMINER DICKMAN: So why is he responsible for assuring -- I mean, you saw the document.

MR. COOPER: We can go to that document.

HEARING EXAMINER DICKMAN: Why is he responsible for assuring that the conditions have been met in the PUD?

MR. COOPER: If we could go to that slide. Next one.

HEARING EXAMINER DICKMAN: There you go.

MR. COOPER: Yeah. So the master PUD encompasses a golf course, commercial property, and residential. Mr. Bollt owns the golf course and some other aspects of it. That's what he's responsible for.

In our documents, the declaration, we take on the responsibility of everything within the property that's submitted to the declaration for control, management, and operations of it. The way the master --

HEARING EXAMINER DICKMAN: Excuse me. When you say "we," I just want to be clear, you're saying the Association.

MR. COOPER: We, the Association, yes. The property was submitted to the declaration.

HEARING EXAMINER DICKMAN: It's handed over to the Association.

MR. COOPER: Right. And it's controlled by the members. No developer left. And the property that's administered is our property. So that's the roadways, the common elements, et cetera. All the restrictions, all the requirements, all of the architectural review requirements, sidewalks, et cetera within ours.

Mr. Bollt does have responsibility as to the master, but it's dealing with some of the green space. There's a master water system on there. So he does have those components related to his golf course, but he has no control, he has no rights, and he doesn't administer anything like that. And there was nothing submitted. So if you go back and look at the application itself, it's by Lennar, who then claims it can bind the community. It can't bind the community, and Mr. Whitt will address that issue.

HEARING EXAMINER DICKMAN: Okay.

MR. COOPER: And then one other issue that came up, it was raised by the county. I think the county should have put in the record, but I'll put in the record and Mr. Whitt will elaborate, the homes are located on the lots in the wrong location.

HEARING EXAMINER DICKMAN: Say that again.

MR. YOVANOVICH: Okay. Hold on. We're going way beyond the record.

MR. COOPER: We're not going beyond the record. It was --

HEARING EXAMINER DICKMAN: I'm confused. What are you talking about?

MR. COOPER: Okay. So the homes -- foundation of the homes are built --

HEARING EXAMINER DICKMAN: Yeah, that's irrelevant to me. I'm just talking -- just one second. One second.

MR. COOPER: And let me tell you why -- let me tell you why. Well, it was raised, and it was put in by the county, and it's in our supplemental filings, and it's in our filings.

So when we talk about the roadway is in existence, it is in existence. And we talk about the setbacks -- and we talk about the setbacks. The problem with the setback is not the road. It is the location of the home. The home is built in the wrong location.

HEARING EXAMINER DICKMAN: You mean --

MR. COOPER: On the lot.

HEARING EXAMINER DICKMAN: -- on each property?

MR. COOPER: On those lots built too close to the road in violation of the setback. And that, then, compresses everything from the roadway in. That's why the sidewalks could not technically be built in that area, because they would violate other setbacks. This was brought to the attention of the county. The county knows about this. It's in the supplemental filing.

Okay. We asked them not to do anything, to put everything on hold until we could work with them on this issue. This whole issue about homeowners being hurt or there's a problem is only because Lennar signed an agreement with the county to be responsible for any of these issues that were raised during this issue.

MR. YOVANOVICH: Mr. Dickman, can you ask him to cite me in the record where he's referring to this agreement? Because it does not exist in the record. And I've been patient. He's making -- he's now going into providing factual testimony on documents that are not in the record.

HEARING EXAMINER DICKMAN: Okay. So I understand what you're saying, but the -- just cite it.

MR. COOPER: Yep. It's in our supplemental filing, Exhibit B. It's an email from myself, and it is in the record.

HEARING EXAMINER DICKMAN: Do you have that, Mr. Yovanovich? I just want to be careful that we're not going down a rabbit hole here, because I'm not going to start talking about, you know, like, arguments about the footprint of houses and so forth and so on. We're here based on a very specific decision that was made.

MR. YOVANOVICH: I don't disagree there's email exchanges in the record, but he just alleged that there's an agreement between the county and Lennar that Lennar could go forward because they agreed to indemnify. Now, there's emails in the record that Mr. Cooper authorizes -- authored, but I'm asking specifically where is the written agreement between the county and Lennar that Lennar could go forward at its own -- if it

indemnifies the county. That's what he said. I'm just asking for that in the record.

MR. COOPER: I will address that first, and then I'll address you.

When an appeal is filed, all of the COs for the property are frozen. They could not issue any more COs, not even a temporary CO. When the appeal was filed, temporary COs were issued for the homes which caused further concerns. The only way it is issued when there's a stay pending an appeal is because there's an agreement between the parties. So does it need to be an agreement? It's in the record because there's no other -- there is no other mechanism to be able to issue an agreement.

HEARING EXAMINER DICKMAN: Do you have a formal, like, an agreement or some documents saying we agree just like -- you know, something expressly saying what you're saying but rather than an inference?

MR. COOPER: Okay. So I will -- we've move from that one.

HEARING EXAMINER DICKMAN: Because it does sound like you're making an inference.

MR. YOVANOVICH: I'd like that stricken from the record, any reference to an agreement. He's now beyond the documents that we're supposed to be talking about --

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: -- so I would like that stricken from the record.

HEARING EXAMINER DICKMAN: Let's move on to your -- talk about the sidewalks.

MR. COOPER: Why I say it's important is because, as the PUD owner -- as the PUD owner, we're the party that has to make the decisions and make the requests. We did not make those.

There are other options that we're going to talk -- that we can talk about. We were never given the opportunity to be able to address those options.

HEARING EXAMINER DICKMAN: Okay.

MR. COOPER: So as the -- so I'll move on and let Mike handle --

HEARING EXAMINER DICKMAN: Thank you.

MR. WHITT: Good morning. Again, for the record, Michael Whitt with Hahn Loeser for Valencia Golf and Country Club.

Mr. Cooper's comment kind of sets the stage for where I wanted to kind of go around the curve and address, I think, really, what's the main thrust of the issue here on this administrative appeal.

HEARING EXAMINER DICKMAN: Let's do that.

MR. WHITT: This is a case about who requested the change and plans and who requested the amendment to the PUD. It was Lennar. It was not Valencia Golf and Country Club Homeowners Association. And it has been our position, and that's the position of this appeal and the basis of this appeal, is that Lennar lacked the authority to pursue the change in plans and to pursue the amendment to the PUD. And the fact that the Association was told in writing representations that were made by the county, county staff, to the homeowners association that then, without any communication, any explanation, any notice, did a complete 180 in its approach and accepted the filings and acted upon the filings. So let me elaborate, Mr. Dickman, on those -- on those issues.

Mr. Cooper really covered the -- kind of the past problem, and Mr. Bosi did the same from the county's perspective on the sidewalks and kind of how we got where we are. Lennar is not a declarant. Lennar is not a developer. Lennar does not hold rights under

the PUD. I don't think that any of those statements are in dispute. Lennar is a lot owner within Valencia Golf, period. And Lennar filed the application with the county, and I'll get to that.

So understand that these sidewalks within this community are common areas, they're common facilities. There's sidewalks throughout the entire community other than in the cul-de-sacs now at Lema Court and Hagen Court because Lennar, on its own, without consent, without joinder, without involvement of the Association, files these applications, the county accepts the applications, and moves the process forward with no notice. The Association had absolutely no idea that this was going on, really, behind its back.

So let me have you turn to Tab 4, 4B. This is in the supplemental filing. Tab 4B contains a series of emails.

HEARING EXAMINER DICKMAN: I don't have that book that you're referring to.

MR. WHITT: Oh, okay. Well, this is why I was asking in the beginning. We had made this -- made this --

HEARING EXAMINER DICKMAN: Why don't you just refer to --

MR. WHITT: I'll read it to you.

HEARING EXAMINER DICKMAN: Is that everything that's in the record already?

MR. WHITT: Yes. Well, other than what the county was supposed to supply to you as far as the county's record under the ordinance.

HEARING EXAMINER DICKMAN: Right. Well, I mean, I have my own filing that I've put together, but it's not put together like yours, so if you're making reference, it might be a different -- yeah.

MR. WHITT: I got it. So Tab 4 --

HEARING EXAMINER DICKMAN: This is your letter. Tab 4 is your letter?

MR. WHITT: No. Tab 4 -- yes, yes. It starts with the letter. That's the supplemental filing.

HEARING EXAMINER DICKMAN: September 7th letter?

MR. WHITT: Yes, sir. That's the supplemental filing.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: And then there should be letters back behind it. If not -- yeah. There's A, B, C, and D.

HEARING EXAMINER DICKMAN: Right. Got it.

MR. WHITT: Okay. And then in the email -- in the email chain that you'll see there in Exhibit B, if you flip, there's pages on the bottom -- page numbers on the bottom. If you go to Page 11 and then on to Page 12, it's an email exchange, a rather lengthy email exchange between Brian Farrar, who is the consultant for Valencia Golf, and Cormac Giblin.

And on Page 12, just above his signature block, under -- there's a whole list of the properties, and you'll see CO hold, CO hold pending resolution of the sidewalk issues. And he specifically advises the Association in April of 2022, none of the remaining homes will be CO'ed until this issue, meaning the sidewalk issue, is resolved.

And then if you turn on -- under 4, under Tab D, it's the very last -- very last page in that binder is another email, April 25th, from Cormac Giblin to Mr. Cooper, copied to

Mr. Farrar and a number of people, and the county, and to the Association president, et cetera, and the last sentence there says, simply removing the sidewalks from those lots would not be in compliance with the Land Development Code without an approved deviation in the PUD, parentheses, requiring a public approval process, closed paren, period.

So the Association, as of the end of April said, okay, all right, we're going to try to work with Lennar, which the county kept telling us to try to do, work with Lennar. Let's try to get this problem resolved. Everybody -- everybody understood what the problem was and that we needed to try to resolve it.

We're told COs are going to be held. We're told that there had to be a PUD amendment and that it would include a public approval process.

So what happens is, without any notice whatsoever, Collier County then -- and this is the feeling of the Association -- pulls the rug out from under Valencia Golf and starts dealing with Lennar, and they issue the COs to Lennar with no notice to the Association. We have no idea that they are now issuing these COs after they've told us that they're going to hold them, and then they accept an application which we believe was a false application and was improperly filed by Lennar and improperly accepted by the county, and we're going to talk about that.

But they then accept the filing by Lennar for an insubstantial change to the plans and a minor change to the PUD, ah, which requires no public hearing. After we're told and assured by the county that an elimination of these sidewalks is going to be a violation of the LDC and is going to require public approval process.

So we are assured, we know, okay, we're going to try to work this out, but if not, it's going to have to go through some public approval process.

So unbeknownst to the Association, this application is filed, works its way through the system, county staff, everybody's involved. Bang, out come the letters. There you go, Lennar. You're good to go. We'll just eliminate the sidewalks. No public approval, no notice, no involvement.

As Mr. Cooper addressed, the Association now stands in the shoes of D.R. Horton which, as to the Valencia Golf community, was the one in control of the PUD. As I said in my opening comment, it's a matter of who made the application. The Association should have been the one -- they should have come to us and said, look, here's what we want to do, we believe we can do this, an application needs to be made, and you need to join in it. Or at the very least, when it was filed, we should have received notice of it, hey, we're just telling you this is going through the process so we have input and we can object.

We had no ability to object to it. And that's what brings us here today. This is our objection. Hey, you can't do this. You can't -- we have sidewalks through the entire community except right here, and they feel that this is insubstantial or a minor change. Well, it affects us, it affects the community, it affects the safety, it affects the aesthetics, it affects the walkability, it affects everything. And you have existing homeowners that the Association is in charge of -- basically is their class representative in charge of speaking for them, and we have absolutely no knowledge of this whatsoever.

So let's -- Tab 4C, if you just turn back, is the application that was filed by Lennar, an affidavit of authorization, part of the submittal pack by Lennar, signed by Russell Smith, VP, who says that they're the owner. Now, under oath, under penalties of perjury.

And Paragraph 1 says, I have full authority to secure the approvals requested -- and



here's the biggest problem -- and to impose covenants and restrictions on the referenced property as a result of the action approved by the county in accordance with this application and the Land Development Code.

Now, these affected lots were owned by Lennar, but nothing else is owned by Lennar. The PUD that they're seeking to amend is not owned by Lennar. The common areas are not owned by Lennar. The county says, well, we've solved that by just coming back and saying, nah, if they don't agree to have crosswalks put in, they don't have to do it. But the impact is there's now no sidewalks on these cul-de-sacs in the community, so -- and the county and Lennar just say, hey, that's good. It's all fine. That's good with us. You don't have to have sidewalks there, with the Association nowhere being involved in the process.

So imagine the situation like Valencia. There's so many other communities in Collier County where you have property owners, these homebuilders come in. They're not a developer. They don't have rights under the PUD. And if they all started coming in and filing applications with Collier County saying, well, you know what, we want to change this. We think it's insubstantial. We think it's minor, and the county says, okay, sure, go ahead. You file your application. You file your application. You can file your application. We'll just make all of these insubstantial, minor changes to the PUD without the owner of the PUD ever being involved in the process. No, that's not the way it's set up to operate, particularly when the county tells us and assures us that we'll be part of this, that there will be due process for us.

Had we known about this and it would have gone through public hearing -- and, ultimately, I'm going to swing around. This is where we get. If you set these letters aside, we don't believe Lennar has the authority whatsoever to file an application to amend the PUD; that they cannot do that without our joinder and our consent and our involvement in the process. We just don't think it can be done legally. Can they file something for an insubstantial change for plans on their lots? Yeah, maybe. But not a PUD amendment, especially one without any notice to the Association.

To say we're not affected by that and that we wouldn't have due process rights in that type of change, so -- and the county had an obligation under the Land Development Code when they processed this to make sure that everything in there was accurate and fine. They had an obligation to check all of that. And I know the county's position: Well, we looked and Lennar's the property owner. Eh, whatever. We'll accept it from them. But right on the face of it they have no -- they have no right to put covenants and restrictions on the Association.

This property, these lots, Mr. Dickman, are subject to -- and we've attached the declaration of covenants and restrictions. And I know that's beyond zoning and all of that kind of thing, but the county knew -- there was email after email after email. We put all the threads in here. They'd been dealing with us for weeks if not months on this issue.

So they know that we're there, they know we've got the declaration, they know what the Association controls, and they completely cut us out of the process after telling us that we're going to be involved in the process; that they're going to hold COs, and it's going to require public hearing. Nothing will be done without our involvement.

So Lennar is just a lot owner and not only builders, but during construction, where does this stop? Can any lot owner come in and come to the county and file an application to amend a PUD during the construction phase? Hey, we know there's ongoing

construction, but we want to change a setback, we want to put a playground in the back, and we know the PUD requires this type of setback, or whatever it may be under the PUD. Where does it stop? And it's insubstantial. It's a minor change to the PUD.

Is the county going to accept that application by Joe and Betty Johnson that are going to come and file a PUD amendment? They don't have any rights to do that.

So these are not -- these are -- they're not minor, and they're not insubstantial. Eliminating sidewalks in a community is not insubstantial, and it's not minor.

So the relief that we're asking for is that these approval letters done by staff and done, in essence, in the dark -- and what I mean by that is not in the light, not through a public process, not giving us a voice, not giving us any kind of due process rights and notice about these changes in our community, and that we would ask that you make a finding that Lennar, as a mere lot owner in the community -- I don't care that they're a builder. They're a lot owner -- that they had no right to file an application to amend our PUD, period.

HEARING EXAMINER DICKMAN: Okay. So if I could try to summarize something real quickly, just for my own purposes. One issue is who has the authority to request insubstantial, or whatever it is, who has the authority, or does -- the authority?

MR. WHITT: Yes.

HEARING EXAMINER DICKMAN: Secondly, is it an administrative insubstantial change or a substantial change that goes through a public process? That's -- in essence, those are the two things that I'm picking up from you.

MR. WHITT: In essence that's it. You've hit it. It's who has the right to file to get that PUD --

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: -- amended, and whether we would have to sign off and consent to it or, at the very least -- and that -- to put the final point on, if you revoke these letters, which we're asking you to do and say, staff, you did not have the authority to do that, you could not go through that process without notice to the Association and a public hearing, then the issue doesn't go away. So how do we address the issue related to the sidewalks? I believe that it would require the Association to --

HEARING EXAMINER DICKMAN: Hold on. Your microphone just went out. Yeah, I do want to hear this part, because there is that practical -- putting aside these legal -- which are important. And I'm not dismissing them or minimizing them, but there is that -- you do recognize that there is an issue here?

MR. WHITT: Oh, yeah, absolutely.

HEARING EXAMINER DICKMAN: Right. So what's your solution to this problem?

MR. WHITT: Well, I'm going to address the solution to the problem of how we work through the process with the county. And let me say --

HEARING EXAMINER DICKMAN: I'm just saying -- because I don't think putting sidewalks -- and the photographs tell a lot of this. Like, you can't have pedestrians being forced to navigate cars and things like that. That's just not normal practice for sidewalks. I mean, you know that.

MR. WHITT: I understand.

HEARING EXAMINER DICKMAN: So from a planning --

MR. WHITT: We believe -- we believe the cul-de-sacs can be reduced --

HEARING EXAMINER DICKMAN: I see.

MR. WHITT: -- to still allow vehicular circulation around the cul-de-sacs --

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: -- and provide ample area for the sidewalks to be installed.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: That's one -- that's one possible fix.

HEARING EXAMINER DICKMAN: The Association wants sidewalks and, in order to do it, shrink the cul-de-sacs?

MR. WHITT: I think that's one way to do it, yes, sir.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: We believe there is a physical way to solve the problem.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: It may have some financial impacts to Lennar, but we believe that there's a way to solve the problem.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: Okay. Now, the question that I really think that we need direction -- and I was here for the earlier presentations, and I heard your comment on the equestrian center about not wanting to simply create issues for Code Enforcement, and I like -- I like that foresight.

So I guess what -- if you rule in favor of the Association and you say the letters are revoked, you could not do it just on the staff level without notice to or involvement of the Association, at the very least some kind of due process right, or you could not do it without a public hearing, going through that process.

The question comes, then, how do we get back? Can Lennar file that application as a lot owner in the community? Do they have that legal right? Even if it would then go through a public hearing process, do they have that right?

We would ask, as part of your ruling, that you say, the only way the PUD can be amended in Valencia Golf and Country Club with respect to these areas and elimination of sidewalks is Valencia Golf and Country Club would have to file the application or at least sign off and join in or consent to that application proceeding. That would be the relief that we request or, at the very least, if you don't go there, that if they're revoked, if Lennar says, okay, we'll just go back through, that it's not going to go back through staff somehow, that it's going to have to go through a public-hearing process, that gives us the right to then come in and at least -- I guess we'll be back in front of you, but at least then on the application when it comes in and comes before you, we can say, they can't do this. We object. They can't do it, and here's why.

HEARING EXAMINER DICKMAN: I understand.

MR. WHITT: Any questions? Any questions?

HEARING EXAMINER DICKMAN: Yeah. I just want to make sure you do agree, though, that there are insubstantial changes that are appropriate for administrative decisions? There are -- there are certain things that, administratively, from the jurisdiction and just even common sense need to be made administratively and not necessarily through a public-hearing process; do you agree with that?

MR. WHITT: Oh, absolutely. The code is abundantly clear that there are substantial, insubstantial, and minor changes. And they'll go through that process.

Somebody's got to call the ball on that. Sometimes -- most often they get it right,

but we believe in this case -- and it's not so much --

HEARING EXAMINER DICKMAN: Right.

MR. WHITT: -- so much -- our argument, again, is we -- I want to make clear we don't believe that it was insubstantial or minor. We believe that it should have been ticked up, and it should have required a public hearing. But the main issue is who can file the application. I can't file an application to change some zoning that would affect your property without your input and approval.

HEARING EXAMINER DICKMAN: You've been very clear about that.

MR. WHITT: Okay. Thank you very much. Mr. Cooper has a couple final comments, and then we're done.

MR. COOPER: If I could clarify, because I think when Mike talks and we talk, we talk about the PUD appeal. There's actually two components. One being the PUD, and one being the construction drawings. Our position is they're the same. They're the same when we speak.

So there's no legal right to deal with the PUD, and there's no legal rights to deal with the construction drawing modifications. They're one and the same. Again, under the same concepts that Mike talked about, allowing a lot owner in any community to just go out there and change the construction drawings for their particular lots could cause havoc in the community, and the documents aren't set up that way.

And the communities with the PUD contemplate there being homeowners associations, condominium associations with restrictive governing documents.

So the PUDs are not, you know, immune from the concept that these residential communities will not be in there because there's no other mechanism to manage the properties that are subject to these PUDs.

So zoning does include a component of these covenants. So when we talk about the PUD, it's both the PUD and the construction drawings, and that's what we're here for, and we believe there's no authority on either. Thank you.

HEARING EXAMINER DICKMAN: Well, one last question for you.

MR. COOPER: Okay, sure.

HEARING EXAMINER DICKMAN: So Lennar's the property owner, and they would be, what, considered a member of the association?

MR. COOPER: They are. Their property is subject to the declaration, and they are a member.

HEARING EXAMINER DICKMAN: Okay. Well, you just answered my second question. So I was going to say, they have notice and have accepted the HOA declarations and all the restrictions and covenants, et cetera, just like any other property owner?

MR. COOPER: Just like any other --

HEARING EXAMINER DICKMAN: So that's your position, they're just like -- they situate just like any other property owner?

MR. COOPER: And I'll go one step further: As part of the documents, changes to the construction on the property goes through a process that Lennar's well aware of the process because its used it to actually build the lots, to get approval to build the lots. So it knows that any changes to the lots that were approved and the homes that were approved on there, which -- goes through the architectural review board process, and it goes through a process within the covenant restrictions themselves.

HEARING EXAMINER DICKMAN: So they were the committees and final decisions of the HOA?

MR. COOPER: Absolutely.

HEARING EXAMINER DICKMAN: Thank you very much.

All right, Mr. Yovanovich.

MR. YOVANOVICH: There's a lot to cover that -- I'm going to kind of take a little out of order.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: I know they get to come back up for rebuttal, I'm assuming. I want them to show me where in their appeal they argued this was not an insubstantial change. It's not in there.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: What they argued the entire argument in their appeal was the declaration gives them the unilateral right to control amendments to the PUD and the --

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: -- construction documents.

HEARING EXAMINER DICKMAN: Those are the two questions that I asked. One was --

MR. YOVANOVICH: Right.

HEARING EXAMINER DICKMAN: I asked whether -- that they were arguing whether it's insubstantial or not insubstantial.

MR. YOVANOVICH: Right.

HEARING EXAMINER DICKMAN: That was one. Secondly, whether or not they had the -- authority issue. Call it the authority issue.

MR. YOVANOVICH: Right.

HEARING EXAMINER DICKMAN: So you're saying that it's strictly the authority issue that they appealed on?

MR. YOVANOVICH: They never once put in the record that staff made the wrong call on whether this was substantial or insubstantial with regard to either one of those petitions.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: It doesn't exist in the documents.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: So why are we here -- I find it interesting that Mr. Whitt gets up there and acknowledges that we as an owner of property have the right to make changes to our property, and then Mr. Cooper gets up here and says, no, we don't. So one of them has the right legal opinion from their side, and I think it was Mr. Whitt who recognized that on our property, the lots, Lennar does have the right to make changes to the construction drawings pertaining to them, especially when, if they built to those construction drawings, it was unsafe. You haven't heard anybody here say that's a safe condition. It would be illogical to say, Lennar, you have to build that unsafe condition on your property.

You never once heard Mr. Whitt or Mr. Cooper say that the sidewalk was on Association property. It was on the property owned by my client, Lennar. No question that Lennar owned the property.

HEARING EXAMINER DICKMAN: So let me ask you this question. So

Lennar -- do you agree -- Lennar is a member of the Association by virtue of being an homeowner? You'll get to that?

MR. YOVANOVICH: Yeah. Let me --

HEARING EXAMINER DICKMAN: So let me just let you go and then --

MR. YOVANOVICH: Hold that question, if you will. And if I miss something, I know you'll jump in.

HEARING EXAMINER DICKMAN: I'll take notes, and then when you're done, let me know.

MR. YOVANOVICH: So the reason the county didn't get into this dispute over what the declaration says or what the declaration doesn't say is because the county doesn't care. That's a private covenant between a property owner and the HOA, and they don't want to be where they are right now, having to read the declaration and interpret whether their lawyers are right or we're right and then get into the factual dispute about whether or not we actually did get approval from the HOA association to do what we're doing.

The county doesn't want to be in that. You look at the records, and it says, the property owner must apply for a PUD amendment or an insubstantial change to the construction documents. They either have to apply for it, or they have to consent for the application. Undisputed that we applied for a change on our property, not the Association's property.

This belief that they somehow own the PUD, they don't own the PUD. The property -- the PUD is an ordinance that governs the property. I've done, I don't know, countless PUD amendments in master planned communities where I, as the owner representative, came in and said, I own X piece of property. I want to change the regulations that apply on X piece of property. I've gotten those reviewed and approved. I never had to get a sign-off from the master association or prove that I had the right under the declaration to come in and ask for a change on my property. If they have a right to challenge that, it's in Circuit Court; it's not here. This isn't the venue to challenge whether or not my client had the legal right to do that. You don't want your staff -- and your staff has never been in the position of ever interpreting covenants and restrictions that apply on the property.

HEARING EXAMINER DICKMAN: First of all, it's not my staff.

MR. YOVANOVICH: I understand, the county's staff.

HEARING EXAMINER DICKMAN: County's staff.

MR. YOVANOVICH: The Board of County Commissioners. And I'm sure if you were to ask the County Attorney's Office or ask your own staff -- you can ask Mr. Bosi if I'm right.

HEARING EXAMINER DICKMAN: But it's not my staff.

MR. YOVANOVICH: I understand.

HEARING EXAMINER DICKMAN: I'm here as a --

MR. YOVANOVICH: I understand, I understand. I apologize for using that --

HEARING EXAMINER DICKMAN: I want the public and everybody else to know that I'm not --

MR. YOVANOVICH: I understand -- I understand your wanting to clarify that. The county does not enforce covenants and restrictions.

So all of their arguments are dealing with covenants and restrictions and whether or not we have the right to apply. Under the county's process, we absolutely had the right to

apply. They may have an argument that we can't implement what we got approved, but we had a right to ask for it under the county's regulations, and that's what we're here to decide, did we have the right under the county's regulations, which I think is undisputed. They've said we're a lot owner. There's no dispute about who owns the property. No dispute as to where the improvements were. It was on my client's property, not on the Association's property.

So we followed the regulations. We may have to battle it out in Circuit Court as to whether or not we can actually not build a sidewalk that is unsafe. I find it ironic that other parts of this same community that Mr. Bosi put up that's in the record has sidewalks, and you saw the pictures. People are parking over those sidewalks. I guess the Association, as the owner of the common area, now has exposure to liability for a sidewalk that they have now stated on the public record is unsafe. It is unsafe.

Now, Mr. Cooper made some factual statements regarding the house is in the wrong location. The house is not in the wrong location. The house meets the setbacks that are in the code. The sidewalk was in the wrong location. The house itself meets the requirements. There's no dispute that we met the setback requirements for the front yard where that house should be. So any allegation that we don't meet the requirements, factually incorrect.

Now, I don't know how to handle something that Mr. Whitt did without asking you for permission to ask -- either ask Mr. Bosi or the County Attorney's Office. They made this sound like this was in the cloak of darkness that this plan was hatched to resolve this issue.

I know that the Association was invited to the meeting at which this solution was arrived at. They couldn't find an attorney to come to that meeting. So you can verify that either from Mr. Bosi or Ms. Ashton. I don't know how to address that because it was raised, and I think it's important because their whole -- whole argument was somehow we snuck this past them when we knew they were involved. Nobody snuck anything by anybody.

I also find it ironic that they claim they own the PUD, and they have not filed a single annual PUD monitoring report for the portion of the PUD they claim they own. You know you have to do that when there are vacant lots. You're supposed to annually update the county. If they owned it, they didn't fulfill their responsibilities. It was Mr. Bollt who kept control of that entirety under the PUD document, and my client, as an owner in the PUD, had a right to come in and ask for what they did.

I find it -- it's almost like no good deed goes unpunished. Mr. Bosi said we did the insubstantial change to the PUD in an abundance of caution. I guess I could withdraw that, because it's not a necessary document to do what we need to do. All we really needed to do was modify the construction plans, and the construction plans are on my client's piece of property.

I can't fathom a situation where the county would force someone to build an unsafe sidewalk because the community has sidewalks. There are many communities, and I think Mr. Bosi said even in this community, Valencia, where the sidewalk ends at the cul-de-sac, the circle for the cul-de-sac, it's not an unusual scenario.

I just want to -- I look at the record, and I -- you know, you and I, you're an attorney, I'm an attorney, Mr. Whitt and Mr. Cooper are attorneys. We're responsible for creating the record and putting in the evidence we want in the record to prove our point.

Now, what does the record say as far as the Declaration of Covenants and Restrictions in the record? If we go to -- I'm trying to find the citation. I think you have page numbers at the bottom of your record; is that correct?

HEARING EXAMINER DICKMAN: Of this one that was provided to me, no, it doesn't have page numbers on it.

MR. YOVANOVICH: No. The one that you print -- that you print out, the county's, does it have page numbers at the bottom?

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: Okay. I want to point out that the declaration that is in the record --

HEARING EXAMINER DICKMAN: What page?

MR. YOVANOVICH: And I'll get you the exact page, because I want you to look at the legal description of the declaration that's in the record, and that's Page 299.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: Conspicuously absent from that legal description is my client's property.

HEARING EXAMINER DICKMAN: And your point about that is that --

MR. YOVANOVICH: The burden is on them to back up everything they've said with the record, and they can't. They didn't meet that burden.

I didn't file the appeal. Also, they did -- you know, the county administrative action was revised and amended.

HEARING EXAMINER DICKMAN: Yes.

MR. YOVANOVICH: Mr. Bosi showed you the letter clarifying the administrative action. There was no appeal filed on the revised letter. I don't know that we have an appeal that was timely filed. It was amended. They knew it was amended. It was sent to them.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: It was sent to them.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: So I think you have an issue as to whether or not there was a timely filed appeal because -- and you can see on the CCs, Mr. Cooper was provided a copy of the change.

HEARING EXAMINER DICKMAN: So the revised letter where it's requesting authorization or consent, let's see, from the Association for the crosswalks --

MR. YOVANOVICH: Right.

HEARING EXAMINER DICKMAN: -- if I recall, Mr. Bosi stated that upon consultation with County Attorney's Office that, you know, because that's a roadway to put that in there, are you saying that that new letter, the letter supplanted the prior letter, so then the second letter is the real letter --

MR. YOVANOVICH: That's the administrative decision.

HEARING EXAMINER DICKMAN: -- that's the final decision?

MR. YOVANOVICH: That's the decision because, remember, they were chatting back and forth about who owns what, and, you know, the Association claims they own the sidewalks and that there was an obligation to do something in the street that was an Association piece of property, so it was amended.

HEARING EXAMINER DICKMAN: You've also heard Mr. Bosi say that he



doesn't have a quarrel about the timeliness of it?

MR. YOVANOVICH: Mr. Bosi had no quarrel about the timeliness for the first letter.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: And I have a quarrel, because I still have not seen what was actually filed with the first wrong application. I've asked, do you have a date-stamped copy of the backup, or did they just simply file the one page "this is an appeal"? Because, remember, under 250-38, I forget the exact number, you have to attach the entire basis of your appeal.

So I don't know. And, you know, if we can find something that date stamps it that says they did more than just file that one-pager -- you read my brief. I've said, I can't verify that, but I'll take on the issues anyway, assuming they did. And their whole issue was about who owns -- who owns the PUD under the declaration which, again, is not something the county process requires.

I would like to ask Mr. Bosi, was my client legally required to apply for a PUD amendment? Because as I understand PUDs, unless you deviate from the LDC, the LDC applies, and the LDC specifically said, as Mr. Bosi pointed out, when you have a constrained right-of-way, he, as the designee, has the authority to say no sidewalk on both sides of the street.

So I don't know why we did a PUD amendment, and if I didn't need to do that, I'd like to take that issue off the table. But I rely on Mr. Bosi telling me. I don't want to withdraw it and then find out staff's of the opinion that I really needed to do that.

And I find it -- I've got one of two ways to go here. And they proposed a solution which, as I understood the solution, was -- and can we put up Mr. Bosi's presentation where we had the two cul-de-sacs where they had one on top of the other, and can I borrow the -- there it is. Because I want to see if I understand their proposal.

Because I'm assuming they don't want an unsafe scenario, and I don't think they really think they're going to be successful in having these houses knocked down. And let's remember one important thing: Lennar didn't do the subdivision design documents. That was done by D.R. Horton. So Lennar is not the party who designed this wrong.

What I understood is they want to now move this sidewalk within the boundary of the circle, not make that circle bigger, but move the sidewalk. So I guess it would go -- continue on from here and then go -- I'm sorry my hand's shaking. I hope it's not making you as sick as it is me.

HEARING EXAMINER DICKMAN: I think their point was that it would probably hug the property line, so --

MR. YOVANOVICH: Is that what they're -- can I ask them a question while they're -- I just want to understand because, hey --

HEARING EXAMINER DICKMAN: I understood that they wanted -- that that, essentially, would shrink the cul-de-sac by putting the sidewalks --

MR. YOVANOVICH: I just want to make sure, so -- because there's going to be discussions, obviously, after this meeting. You'll give your ruling, but I just want to understand on the record what they said to you, if that's okay.

HEARING EXAMINER DICKMAN: Is that your position?

MR. COOPER: I think it's a totally appropriate question. What we would like to explore with them and their professionals and us and our professionals is whether or not

the sidewalks can be installed and the possibility of shrinking the small cul-de-sac green space -- see the green space -- shrinking that to adjust the roadway systems to allow for that. That was more one of the -- one of the concepts that we talked about that just got bypassed.

HEARING EXAMINER DICKMAN: Just to be clear, like, it wouldn't affect the property lines, but you would take, basically, the sidewalks, which normally are on the very -- normally, but sometimes -- you'd put it along the perimeter of the -- where the right-of-way is, the roadway is, which would require some space for pedestrians and it, essentially, would shrink the turning radius, which you would have to talk to fire and all these other people about whether it's even safe or permitted or acceptable under the LDC. That's a whole different --

MR. YOVANOVICH: I understand.

HEARING EXAMINER DICKMAN: That's a whole different dialogue than -- and we're not going to have that. We're not going to solve that problem here today.

MR. COOPER: We can't.

MR. YOVANOVICH: I understand. I just want to make sure I understood the -- (Simultaneous crosstalk.)

MR. YOVANOVICH: I understand.

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: Because I -- you asked a very important practical question of their side.

HEARING EXAMINER DICKMAN: So I think we're all in the same mindset. That's what you want to do.

MR. YOVANOVICH: I want to know, other than that, the only two options are -- I guess there's -- yeah, build the sidewalk somehow exactly where it is within a PUE and then tear down the houses or build it where it is and have potential cars parking over the top of the sidewalks. Because other than that --

HEARING EXAMINER DICKMAN: I get it.

MR. YOVANOVICH: -- I don't know what another option is.

HEARING EXAMINER DICKMAN: I understand.

MR. YOVANOVICH: And I just -- so that was actually -- one of my closing points was going to be to ask the question. Let's cut to the chase. What's the real fix? And we'll see if there is a permissible real fix for the sidewalk to occur. But that's outside this.

In conclusion, their sole argument was the declaration governs who could bring forward the application. The county does not enforce covenants and restrictions. That's for a different arena. There is not a scintilla of competent substantial evidence provided by them that we did not meet the criteria applicable to the two petitions. The competent substantial evidence that was provided was Mr. Bosi and explaining why the modifications needed to occur.

In fact, it was their email with the picture of the truck parking over the sidewalk where the Association recognized this was bad and unsafe and needed to be fixed, and staff did what they needed to do to fix it based upon the actual facts and ownership interests that are out there. And it was safe.

You can stop a sidewalk. There are hundreds of examples of cul-de-sacs that don't have sidewalks. And what we request -- and I think you really have no other alternative

under the rules that apply to Collier County, is to uphold staff, because their argument about ownership under the county documents don't hold weight. No dispute we own the property.

Under the county's process, we're allowed to ask for these changes, and there's no dispute that we met each and every one of the criteria for the approval that we received. And if they want to continue to fight, if you will, we'll take that out in Circuit Court where that's the appropriate place to figure out what the declaration really means and whether or not we did or did not need to get the consent or whether or not we did, in fact, get the consent.

With that, I'm available to answer any questions you may have.

HEARING EXAMINER DICKMAN: Okay. I just -- the one question I was going to get at is that you agree that you are -- or your client, Lennar, is a member like anyone else in the --

MR. YOVANOVICH: Actually, I don't, because --

HEARING EXAMINER DICKMAN: You don't?

MR. YOVANOVICH: -- the evidence outside of this record, which I don't want to testify to, indicates that we have not been treated as a member just like anybody else --

HEARING EXAMINER DICKMAN: Okay.

MR. YOVANOVICH: -- nor have the residents who own those homes been treated like members just like anybody else under the declaration. So I can't state on the record that, yes, we are.

HEARING EXAMINER DICKMAN: Okay. All right. Fine.

What I would like to do, if you gentlemen would permit, is take a five-minute comfort break. It's been a little bit of time, and everybody could take a quick break, and we'll come back and reconvene; do you mind?

MR. YOVANOVICH: I'm fine with that.

HEARING EXAMINER DICKMAN: We're going to adjourn for five minutes. (A brief recess was had from 11:38 a.m. to 11:44 a.m.)

HEARING EXAMINER DICKMAN: Why don't we try to get started here. Everybody take your seats, please.

MR. YOUNGBLOOD: You have a hot mic.

HEARING EXAMINER DICKMAN: Can everybody take their seats, please. I'm going to reconvene the Hearing Examiner meeting, please.

All right. I think we left off with -- I think we've got rebuttal by the appellant.

MR. WHITT: May I?

HEARING EXAMINER DICKMAN: You may. You're up.

MR. WHITT: Thank you. Again, for the record, Michael Whitt.

Let me address just a handful of things. I don't want to go back and kind of rehash.

HEARING EXAMINER DICKMAN: You're going to rebut anything you heard, right?

MR. WHITT: Oh, yes, yes. That's --

HEARING EXAMINER DICKMAN: Any new arguments would --

MR. WHITT: I got it.

HEARING EXAMINER DICKMAN: -- create a problem here.

MR. WHITT: I got it.

It's uncontested that Lennar is a lot owner and member, when you say "treated like everyone else," all right. But Mr. Yovanovich, rightfully so, doesn't want to get into a lot of those issues. We don't either. But I don't want the record to be in any way cloudy or murky. They own lots. They're a member. They're subject to the declaration.

The declaration, Mr. Yovanovich addressed that in some detail. And in our supplemental filing we have referenced this: Article 11, Section 2, says, and I'll quote, no owner or neighborhood association -- but, importantly, no owner -- shall initiate, undertake, or attempt to inaugurate or implement any variation from, modification to, or amendment of the development plan or any other governmental plans, land development regulation, development orders, or development permits applicable to the Capital P property, that's Valencia Golf, or to any lot, tract, or parcel without the prior written approval of the declarant, which was D.R. Horton, now the Association, which approval may be denied at the sole discretion of declarant.

So that language is valid and enforceable. It's in the recorded declaration. It binds Lennar as the owner of lots in the community which, again, says they cannot be an applicant to change anything.

Mr. Yovanovich said, we never raised in our filings that the insubstantial, quote-unquote, or minor, quote-unquote, changes in the applications were neither minor nor insubstantial. Perhaps he just overlooked the language on Page 4 of our September 7, 2022, supplemental filing wherein we specifically state -- I better just back up to the beginning. Notwithstanding the fact that Lennar Homes does not have any right or authority to modify or amend the PUD master plan and/or construction documents -- and I'll hit the pause button there. We do raise both. We continue to raise both, that they had no authority to modify either the PUD or the construction documents for the community set forth above -- the appeal or forcing the Association to appeal is also improper because Collier County has no authority to administratively approve the applications.

It appears that Lennar improperly alleged that the changes were, quote, minor, closed quote, and insubstantial to avoid applications being reviewed and approved by the Hearing Examiner at a public hearing. The changes are not minor or insubstantial as it relates to the entire community development plan.

And then we go on to say that the change is representing major and substantial change to the PUD master plan and construction plans. Lennar Homes' building lots in question are the only lots in the community without required sidewalks.

And it was stated by Lennar that the sidewalks are life-safety issues. I would argue that such life-safety issues and the ability of the members in the community to traverse on sidewalks throughout the community is a matter of life safety, and eliminating those and changing those, almost by definition, cannot be insubstantial or minor and certainly could not be done without the involvement or approval of the Association.

Hang on. I think I had one other note.

HEARING EXAMINER DICKMAN: Yeah, there was a question about the timeliness. Can you -- and you want to rebut that?

MR. WHITT: Yeah.

HEARING EXAMINER DICKMAN: Because there was two letters that went out. One -- the second one gave, basically, a request for you-all to be involved in it. So was that the second letter, like, basically to -- whether you consent or not to it.

MR. WHITT: Yes. We timely filed the application to the approval letters that

eliminated the sidewalk. The second didn't do anything to change that at all. The sidewalks were eliminated, and that's what we're challenging.

HEARING EXAMINER DICKMAN: Okay. So the question, I guess, the way that I'm envisioning it -- and maybe I'll ask this to the county or not. I'm not sure -- whether one supplants the other or if it's just supplemental to it. You know, if one eliminates/voids the second and when one's supplemental --

MR. WHITT: If you look at the letters, the first talked about they would eliminate it, and then the idea is where you see the red and you can see where they would put a crosswalk in, so that's where the sidewalks would end, and then any pedestrians would cross over to the other side, that they talked about a crosswalk being installed. And they said, okay, well, that's on Association common areas, so if they don't want to put in the crosswalks, they don't have to, but we're eliminating the sidewalks, and that's the biggie.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: Now, we appealed it. The county's made very, very clear it was timely appealed. This is a very insignificant matter. We don't have to file another appeal of that because all that does is say we're not going to bind the Association if they don't want to put the sidewalks in -- I mean, excuse me, the crosswalks in. And we supplemented our filings after that date. That was, I believe, in early August we supplemented, as you see in your packet, on September 7. So give me just one second. Unless you have another question, I'll go ahead and take that now. I had --

HEARING EXAMINER DICKMAN: No. Go ahead, if you need to consult with your associate.

MR. WHITT: I thought -- yeah. And let me just look at that.

Yes, I actually have two other points. Thank you for bringing -- yeah, for having this up.

There was a statement by Lennar of the -- there's nowhere that these lots are part of Valencia Golf and Country Club, et cetera. Well, their own drawing that they submitted in support of this, if you see on the right-hand side, shows Valencia Golf and Country Club Phase 2B.

So their lots -- now, if we didn't have the -- all of the stuff -- the declaration is constantly being amended, adding in these additional lots as they come online. So I don't know if that was or was not part of the declaration. I don't really know. I don't know that there's -- that that's going to be a fatal flaw. I'm sure Mr. Yovanovich thinks it is, but...

So the other question that you had -- I want to make very, very clear, I'm a lawyer, Mr. Cooper's a lawyer. We're not engineers. When you're asking questions about fixes, that's going to require people that have engineering degrees to come up with appropriate solutions, and it's going to require the county to be involved as part of that solution. Whatever happens, the county's going to be involved to say, yes, that could be done. It can be done by amending this. It could be done by granting a variance. Whatever may happen.

But as I was listening to Lennar's presentation, I remembered the photograph that was put up, and on these homes, it showed the truck that was parked out there. There's another very simple fix. The Association, with the consent of Lennar on these properties, could add a restriction that is recorded that says, as to these particular lots, they cannot park their cars on the driveways so as to block the sidewalks. They have to park their car in the garage and not block the sidewalk, so -- and it creates no additional life-safety issue,

because every single homeowner that turns in off the street drives across a sidewalk. These homes would be no different. You turn your car, you cross the sidewalk, and you're required to park your car in the garage.

Someone else may be able to park so as not to block the sidewalk, but that's just one solution that I thought of sitting in the back. How could we fix this? Well, that could potentially be a fix. But we're not going to be roped in today -- this is administrative appeal of letters.

HEARING EXAMINER DICKMAN: I agree with you. That was really just --

MR. WHITT: Okay. All right.

HEARING EXAMINER DICKMAN: I mean, we're all -- we're making a lot of legal arguments, but the reality is that there's an issue, and I think the county brought up -- I mean, they looked at this as an issue, and that's how it all started. So it was just -- we were just talking about, like, what the solutions were. But that's not going to be decided here by me or us, you know, unless you guys want to get together out in the hall and come up with a solution between yourselves, that's fine, but --

MR. WHITT: Ultimately, that would be the goal of the Association and I believe the goal of Lennar and certainly of the county as well if we can come to some resolution.

Now, the last point that I wanted to address was my comment that Lennar, then, brought up where I talked about this basically being done not through public hearing but through the applications that were submitted with no notice to the Association, no involvement of the Association.

The letters that ultimately went out, and there was a request for a meeting -- and I just don't believe that there were board members available or that my office was available for that meeting -- that doesn't change anything.

HEARING EXAMINER DICKMAN: I know, but I think the way that you're colorizing it seemed a little -- a little more nefarious than it really is. I think there was communication. Your point's taken. There's a difference between an administrative process and a public-hearing process. That's a point taken, but I don't -- I think there was just a commentary that, you know, perhaps, you know, there was a deliberate exclusion of your client, and it does sound like your client was somehow -- was in some ways involved, but there -- for whatever reason couldn't get to meetings, didn't have a lawyer at the time, whatever. So I think that that's the only thing is that it sounded a little bit more nefarious than it really is, because I don't think anybody did anything deliberately to --

MR. WHITT: And my apologies for making any inference that was nefarious. I don't believe that the county acted in a nefarious way. It just was what it was. The problem and why it was such a sting to the Association was they had been assured by Mr. Giblin that -- and I read that into the record earlier --

HEARING EXAMINER DICKMAN: I understand.

MR. WHITT: -- that it would require a PUD amendment and that it would have to be required to go through a public process.

HEARING EXAMINER DICKMAN: I understand that. I understand that part.

MR. WHITT: Yeah, yeah. All right. Thank you. Unless you have any other questions, I'm done.

HEARING EXAMINER DICKMAN: I don't right now.

I'd like to just take the public comment and get through that part of it.

MR. YOUNGBLOOD: Mr. Hearing Examiner, we do have some public

comments. We have one individual in the room with us and approximately seven online. Richard Goodrich.

MR. GOODRICH: I have nothing to say at this moment.

HEARING EXAMINER DICKMAN: Well, it's either yes or no. You are -- there's not going to be another opportunity.

MR. GOODRICH: Okay, no.

HEARING EXAMINER DICKMAN: Okay. Great.

All right. Next.

MR. YOUNGBLOOD: All right. Next we are going online to Chad Bushley. Chad, are you -- you're being prompted to unmute your microphone. Are you with us, sir?

MR. BUSHLEY: Yeah. Can you hear me?

MR. YOUNGBLOOD: Loud and clear. You have five minutes.

And Joel Rebholz will be after Chad.

MR. BUSHLEY: Perfect. I'm a resident on Lema Court, 1844, Lot 19. I am one of the houses where I guess you could say, you know, I can't necessarily park my car in the driveway over the sidewalk because there's not enough passing.

So, I mean, of course I would love to have sidewalks in my cul-de-sac. I have a daughter; I have a dog. But, you know, from what it seems like has transpired through all this is that, you know, the HOA kind of -- there was an oversight. There was opportunities for the HOA to correct this issue with Lennar, and as a -- you know, a new resident in the community, Lennar home, I just feel like the HOA has done a very poor job of representing the best interests of us on these streets on Lema and Hagen.

So, you know, I'm not interested in having to continue appeals and, as a member of the HOA, having to pay legal fees for, you know, something that, you know, to me it does seem insubstantial, right? Of course, I would love to have sidewalks but, you know, it's not the end of the world if there's not sidewalks that go through my cul-de-sac.

So, I mean, that's kind of where I stand. It's not a huge deal to me as a resident on Lema Court if we do or do not have sidewalks, but what is a huge deal to me is, you know, as a member of the HOA and other members in our community having to continue to foot the bill for, you know, issues or missteps that have happened by the HOA.

So that's my stance on it.

HEARING EXAMINER DICKMAN: Thank you.

Next.

MR. YOUNGBLOOD: All right. Our next speaker is going to be Joel Rebholz. Just one moment here.

All righty. Mr. Rebholz, you're being prompted to unmute your microphone. Are you with us, sir?

MR. REBHOLZ: Yes, I am.

MR. YOUNGBLOOD: All right. You have five minutes.

MR. REBHOLZ: Thank you.

I would like to say first it's been very interesting to listen to the legal arguments back and forth, but I would like to return to where we started in the county's presentation, and this is a question of safety. I live on Lema Court, Lot 16, 1856 Lema Court, and am affected by the sidewalk.

As the last speaker said, I cannot park in my driveway without parking over the sidewalk, which I recognize is a safety issue, so I don't do it because, in fact, the sidewalks

are there. There are some that are not there; there are some that are there. And, regularly, pedestrians come down the street and walk to the sidewalks, and they get to my house where the sidewalk ends, and then they're pushed into the street.

The condition, as it stands, is unsafe for the pedestrians, and I have heard only one side present anything that does anything in any amount of time to correct this safety problem that exists today.

I will also make a couple of observations, because I do live on the cul-de-sac, and I see what happens there. Large vehicles have a difficult time as it is now traversing those cul-de-sacs. I've seen many semi-trucks coming in either for construction or delivering household goods. I've seen fire trucks. I've seen other large vehicles. The radius of the cul-de-sac as it stands now is not large enough for them to maneuver easily. If it's made smaller, it will be very difficult for them to maneuver at all, and they will end up, more than likely, come in and having to back up to make room for themselves to turn around which is, in itself, a safety hazard for large vehicles to be backing up on residential streets where there are pedestrians, especially children.

The other point, not taking into effect with this idea of changing the configuration, is that the lots that exist on a cul-de-sac are pie-shaped. So if you bring the street further away from the lot and extend the lot, they will become narrower. It's already difficult for me to get into my driveway and line up with my garage because of that, the way it was designed.

I recognize that no one in the room today made that design of where the houses would sit on the lots and how that would be done, and it's not going to be corrected here. But the safety issue is the primary issue in my view, and I would hope that common sense would prevail, and we would address the safety issue in a timely way.

Thank you very much.

HEARING EXAMINER DICKMAN: Thank you.

Next.

MR. YOUNGBLOOD: Our next speaker is going to be Peter Manfredo.

Mr. Manfredo, you're being prompted to unmute your microphone. Can you hear us, sir?

MR. MANFREDO: I can.

MR. YOUNGBLOOD: All righty. You have five minute, sir. Go ahead.

MR. MANFREDO: Yeah. I'm a homeowner, 1805 Hagen Court. I am one of the homes that actually does not have the sidewalk put in, but if the sidewalk was there, I would not be able to park my vehicle in the driveway.

All I know is on our cul-de-sac here on Hagen Court, I do feel that if they made the cul-de-sac smaller, the trucks can still navigate if they take out the green median. I do live here. I do see the trucks. They are able to make the turn with no issue. And it is my belief that all we need is about five feet to make the radius smaller, five feet smaller. That's not going to make a big deal with the radius.

Having said that, there was one option that was brought up. I think it was by Lennar. I'm sorry, it was by the HOA, that we do not have to park our cars in the driveway to cure that problem. I use my driveway. I park my car in the driveway. I would disagree with that option.

I actually think the best option is just to have the crosswalks where they are. No one really uses the sidewalks in our area as it stands right now. I see them constantly



walking in the street. People ride their bikes in the street. I do not see them using the sidewalks.

There are very minimal homes here in the cul-de-sac that are affected. I feel that the sidewalk issue should just be left with just a crosswalk and be done with it. That is my feeling.

HEARING EXAMINER DICKMAN: Thank you.

MR. MANFREDO: Thank you.

HEARING EXAMINER DICKMAN: Thank you.

Next.

MR. YOUNGBLOOD: Our next speaker's going to be Henry Amaya, followed by Ronald Provost.

Mr. Amaya, you're being prompted to unmute your microphone. Sir, can you hear us?

Mr. Amaya, you have five minutes, sir. Go ahead.

MR. AMAYA: Yes, good afternoon.

I'm here to remind you -- and I'm the president of Valencia Golf and Country Club.

We have not given any authorization to Lennar to make changes as they have done to the sidewalks. We're willing to sit down with them and work together, as many times we have asked them to come and sit down with us and work together to make sure that we can (inaudible) an amicable decision for the new homeowners or for -- and for us, because the last thing that we want is to have people that are going to be in violation of our rules and regulations. So we need to work together with Lennar, if they're willing to work with us.

HEARING EXAMINER DICKMAN: Thank you.

MR. YOUNGBLOOD: All right. Our next speaker is going to be -- let's see -- Ronald Provost.

Ronald, can you hear us, sir?

MR. PROVOST: Yes, sir. I can hear you.

MR. YOUNGBLOOD: All right. Hang on one second, Mr. Provost. All right. Continue, sir. You have five minutes.

MR. PROVOST: Actually, I think all the comments -- relevant comments have been said, so I have nothing to add. Thank you, sir.

MR. YOUNGBLOOD: All right. Our final speaker is going to be Maria Mercola.

Marie, you're being prompted to unmute your microphone. Can you hear us?  
(No response.)

MR. YOUNGBLOOD: Ms. Mercola, can you hear us?

(No response.)

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

HEARING EXAMINER DICKMAN: Thank you. We're going to close the public hearing part of that.

Everyone's made some very good arguments here today. I really appreciate it. I think everyone's done a good job.

I have just -- I guess I want to resolve something. Maybe this should be directed to Mr. Bosi.

So there's been -- there's been a reference to an email that is from Mr. Giblin who's a planning manager, Development Review, with the county. This is dated April 25th, 2022, wherein there's a reference that this would have to be done through a public approval process.

Now, I guess what I want some explanation from you, about the process that occurred, because this was not just sort of a -- it doesn't sound like this was like a "one day to the next" process. Like, there was a lot of discussions going on internally and that -- but at the end of the day, is it your call to decide whether -- if it's a question, ultimately you decide whether it's insubstantial or not insubstantial and what was issued.

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

And, yeah, I was not involved in coordination with Cormac in that determination as to whether a PUD amendment or an insubstantial change would have been required. After the issue was brought to our attention, as I mentioned, conversation with Cormac, with Mr. Bellows, with our County Attorney's Office, and Ms. Cook, and based upon the expressed authorization that was contained in 6.02.02 from when we do have right-of-way constraints, that there could be an elimination of the sidewalks, it was determined by myself that it could move forward as an insubstantial change.

HEARING EXAMINER DICKMAN: So, ultimately, I mean, to quote a famous phrase, the buck stopped with you. Basically, you ultimately made the decision. That's your job. You make the hard decisions. And, you know, while -- I can understand why this is being referenced, and maybe there was an expectation that this would be a public route, it's not uncommon, I would imagine, with difficult -- this is a difficult decision. I mean, there are difficult -- you probably are confronted with difficult issues every day.

MR. BOSI: The world of planning and zoning is an arranged shade of gray. The world of engineering is decimal points and numbers. The interpretation of zoning regulations and compatibility and issues associated with land development, for the most part, doesn't have those absolutes. So there are interpretations that are brought to the table.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: So, yes, ultimately, the decision was mine, and based upon our coordination and collaboration with the team, we felt that this was an appropriate way to address an issue that we thought was a health, safety, welfare issue.

HEARING EXAMINER DICKMAN: With regard to -- I also want to address this issue about the letter. You know, you explained why you issued two separate -- two different letters, actually, and I'm kind of thinking the same route that, you know, the initial letter didn't have the reference to the HOA about the crosswalks, because I think you had testified that upon consultation with counsel, county counsel, they stated that no, no, no, you need to make sure that they're on board with that and if not, then they don't go in, correct?

MR. BOSI: Correct. It was understood that we could not mandate a modification to property that was not owned by Lennar, but by the homeowners association so, therefore, we added that clarification.

HEARING EXAMINER DICKMAN: Okay. It's a clarification. I don't think it's -- I'm kind of -- are you seeing this more of as a supplemental to the original decision about the sidewalks?

MR. BOSI: Yes, because the prescription for the sidewalks did not change from

the first letter to the second letter.

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

I really don't have any other questions. I do think that everyone did a great job here laying out the facts, all the information that's here. I'm going to give -- maybe I'll regret doing this, but I'm going to do it anyway. I'm going to give Mr. Yovanovich, the appellant also, like, one minute if you want to have one last minute, because you heard public comment and things like that. If you want one minute to say some final words, I'll be happy to entertain that as well, because once we wrap up here, I'm not going to be able to phone call you, you can't phone call me. I want to get everything here on the record today and make sure we do that.

So, Mr. Yovanovich, I'll let you go first, and then if the other counsel wants to go, he can go first [sic].

MR. YOVANOVICH: And I -- thank you. I don't say this for your benefit. I say it for the benefit of the public hearing and people that are listening, you know that Mr. Whitt, Mr. Cooper, and I are advocates. We do not provide competent substantial evidence.

HEARING EXAMINER DICKMAN: I know that.

MR. YOVANOVICH: But I want the public to know that. The only competent substantial evidence regarding whether or not the insubstantial change criteria were met were offered by county staff. That's the standard. Is there competent substantial evidence? Did the criteria get met? The only competent substantial evidence is, yes, it was met.

Mr. Whitt provided an argument with no reference to any other engineering or any other document that substantiated his position that this was more than insubstantial. That is -- I want the record to reflect that and for that to be clear that that's the standard.

And, again, there was a comment by the president of the Association as to whether or not consent was given. That's not to be decided here. It's to be decided in a court, because we could have been here all day where I could have presented evidence upon evidence upon evidence where consent was, in fact, given, but that's not your -- this is not the arena, and the declaration is irrelevant.

HEARING EXAMINER DICKMAN: Thankfully, it's not my job to do that.

All right. Sir, come on up.

MR. WHITT: Michael Whitt, Valencia Golf. Put me on the timer. I won't be more than one minute.

This is the right forum. This is the forum, because you have to decide if those letters must be rescinded. And I'm going to go -- my last comment is going to echo my first comment. This case is about who filed the application, period. I understand that a very difficult decision, insubstantial or minor change, had to be made by the county. They do that all day every day. He called the ball; I get that.

Now, we don't agree with that, but oftentimes affected parties don't agree with that. But it's a matter of due process to the Association and the fact that Lennar, when they made the decision to say, under 6.06, whatever the section was, to eliminate the sidewalks, somebody had to file the application, somebody had to kick the ball off, and that's what this case is about. Can Lennar -- did Lennar have the lawful authority and did the county have the lawful authority to accept that application and process it and issue the letters with staff approval without a public hearing?

Thank you.

HEARING EXAMINER DICKMAN: Understood. Thank you. All right. Everyone did a wonderful job. I think you laid out your arguments really nicely. I appreciate the courteousness and the professionalism that each party afforded to each other, and I appreciate that greatly.

I can't make a decision today. I will get a decision out within the allotted time period that I have and everyone have a nice day. Appreciate it. Thank you.

Is there any other business we have to take care of today?

MR. BOSI: None that we know of.

HEARING EXAMINER DICKMAN: Okay. All right, then. I'm going to close the meeting. Thank you very much, everybody. Have a nice day.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 12:17 p.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 11/23/22, as presented  or as corrected .

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