

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
December 22, 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 9:02 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

PROCEEDINGS

HEARING EXAMINER DICKMAN: Okay. All right. Good morning, everybody. My name is Andrew Dickman. I'm the Hearing Examiner for Collier County.

Today is December 22nd, 2022. It's 9:02.

Let's begin with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Some quick preliminaries, if I will. Again, my name is Andrew Dickman. I am the Hearing Examiner. I was retained by the Collier County Board of County Commissioners. I'm not an employee of the county.

I am a board-certified attorney in good standing. I've been practicing in the area of land-use/local government for over 20 years. I'm familiar with the county's codes and procedures for quasi-judicial hearings. I'm here to be an impartial decision maker on the items that are presented to me.

The way that we handle this quasi-judicial -- these quasi-judicial hearings is to basically start off with the county presenting the petition, then I'll go to the petitioner or the petitioner's representative. We'll use two podiums. The county and the public will use this smaller one in the front. The applicant or petitioner's representative will use this other larger podium over here.

And we will -- everyone who is going to testified here today will have to be -- will have to do so under oath, and we'll ask the court reporter to administer the oath in a few minutes for everyone.

If you have a need to have a conversation on your phone or with somebody sitting next to you, please step out in the hallway. The acoustics in here are incredibly good, and I can hear pretty much everything that's going on, and I want to really pay attention to what's being presented to me.

The public will have an opportunity to speak not only here live and in person, but the county has afforded the ability for people to participate virtually. So this is a hybrid meeting.

And the -- I will not be making any decisions here today. My requirement is to file a decision within -- within 30 days, so I will not make any rulings here today.

The parties are going to be the county and the petitioner; however, the public will be able to speak. They're afforded five minutes each. If somebody is representing somebody, please let me know. I can make some accommodations with regard to that.

And outside of that, I think what we'll do is go ahead, and anybody who's going to speak today, please stand and be sworn in by the court reporter.

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

HEARING EXAMINER DICKMAN: All right. Good. That's the right answer.

Anything else before we get started? Ready to go roll?

MR. BOSI: Ready to go.

HEARING EXAMINER DICKMAN: ***Okay. We have three items. We'll start with Item A, 3A.

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

This is going to be your Agenda Item 3A, BDE-PL20210002681. It's a request for you to approve a 31.47-foot boat dock extension from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow construction of a boat docking facility protruding a total of 51.47 feet into a waterway that is 480 plus-or-minus feet wide pursuant to LDC Section 5.03.06.E.1.

The subject property is located at 52 Southport Cove, also known as Lot 44 -- that's Lot 44, Southport on the Bay, Unit 2, in Section 6, Township 48 South, Range 25 East, Collier County, Florida. It's located within Tract H, a residential component of the Lely Barefoot Beach Planned Unit Development.

The subject property is homesteaded and comprises 0.31 acres with 152.59 feet of water frontage. There's a 20-foot-wide conservation easement landward of the property line/mean high-water line. They're the same. A new -- a new three-story single-family dwelling is being constructed by authority of Building Permit No. PRFH20220732580, which is presently in "inspect" status.

Public notice requirements as contained within LDC Section 10.03.06.H were for a property owner notification letter, a newspaper ad, and public hearing signs. All were satisfied by the county on December 2, 2022.

The petition was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfied five of five; of the secondary criteria, it satisfied four of six with the sixth being not applicable, the Manatee Protection Plan; and has been found to be consistent with both the Growth Management Plan and the Land Development Code.

There is a letter of no objection from the Conservancy of Southwest Florida pertaining to the conservation easement as well as project approval from the Southport on the Bay Homeowners Association within Attachment F. To date, I have received no phone calls or correspondence from the public pertaining to this petition.

It's staff's recommendation that you approve the petition as described in accordance with the proposed dock plans provided within Attachment A subject to the following condition, and that is during the environmental review there was some concern with the riprap, and so the condition that they've proposed is, one, the restoration plantings must be installed and inspected by Collier County staff prior to issuance of a certificate of completion for the boat dock.

And I did not add one. It's sort of duplicative, but I would recommend adding a second condition of approval, and that is that a certificate of occupancy must be issued for the principal structure, the single-family dwelling, prior to issuance of a certificate of completion for the accessory structure, the dock facility.

HEARING EXAMINER DICKMAN: Slow down. Let me capture that one. So you want a CO?

MR. KELLY: For the house.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: For the principal structure.

HEARING EXAMINER DICKMAN: Okay. Prior to?

MR. KELLY: Prior to issuance of a certificate of completion.

HEARING EXAMINER DICKMAN: For the dock?

MR. KELLY: For the dock.

HEARING EXAMINER DICKMAN: So the principal comes first.

MR. KELLY: Correct. It's within the LDC, but we typically add this one.

HEARING EXAMINER DICKMAN: Okay. All right. Is that it?

MR. KELLY: That is it. Today we have a new person presenting to you. It's Mike Jones. If he can come up to the podium.

HEARING EXAMINER DICKMAN: All right.

MR. KELLY: Representing SteMic Marine.

HEARING EXAMINER DICKMAN: Good morning, Mr. Jones.

MR. JONES: Good morning. How are you?

HEARING EXAMINER DICKMAN: Fine, thank you.

MR. KELLY: And he did provide a copy of his resumé for you to qualify.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: It should be up in a minute.

HEARING EXAMINER DICKMAN: Yeah. Maybe if you -- if you could just touch upon that, I'd like to just establish that you're an expert.

MR. JONES: Okay. My name is Michael Jones, president of SteMic Marine Construction in Fort Myers. We're a family-owned company. Been in business over 30 years.

Well, right at 30 years. Let's see. Been working with my father and I. I was vice president till recently. He's sort of slowed down, stepped aside, and I became president. I attended University of Central Florida. I've been a state certified building contractor starting in 1998 until -- 2019 I received my state certified general contractor's license.

HEARING EXAMINER DICKMAN: Okay. I see you as an expert then.

MR. JONES: Thank you. I'm sorry. You're still waiting for me to continue? I thought we were -- okay.

HEARING EXAMINER DICKMAN: You've got the floor, sir.

MR. JONES: Okay. Well, as John mentioned, I'm here to request an extension for -- over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width.

I've provided drawings, all the asked-for documents. And you can see in the main drawing there's an existing dock there now which has -- to the point of deterioration. It's fallen down.

So what we propose is another -- a new dock there on the screen where it's more of a conventional design where the boat comes straight in and is moored on, in this case, boatlifts. It does extend a little further out than the existing dock that's, like I said, there now.

HEARING EXAMINER DICKMAN: Okay. So this is the shadow of --

MR. JONES: Correct. That's the --

HEARING EXAMINER DICKMAN: Is this the same walkway, though?

MR. JONES: Yes, sir. Same walkway.

HEARING EXAMINER DICKMAN: This will be demoed, and then you're going to go through the mangroves here. So there's no change in the pathway through the mangroves; is that correct?

MR. JONES: Correct.

HEARING EXAMINER DICKMAN: And then you're just going to zig over here and --

MR. JONES: Jog to the right.

HEARING EXAMINER DICKMAN: And you've got a 30-footer here and a 23-footer here?

MR. JONES: Yes, correct.

HEARING EXAMINER DICKMAN: All right. Okay.

MR. JONES: There was a boatlift in the old dock, but this -- in this layout we propose two docks -- I'm sorry -- two boatlifts, two new boatlifts electrically powered. We're out past the mangroves. As you can see, the walkway does parallel the shoreline for a little -- almost 25 feet outside the mangrove fringe and then turns out to the open water where the docks will be -- the boats will be moored.

HEARING EXAMINER DICKMAN: A quick question. So this platform, I see it's 20 by approximately what?

MR. JONES: Twenty by eight.

HEARING EXAMINER DICKMAN: Eight. Okay. Yeah, this 12 foot is different. This is 12 foot. So it would be 20 by eight, okay. Thank you.

MR. JONES: That is the maximum allowed by state rule in a natural body water, 160 square feet, which is where that number came from.

HEARING EXAMINER DICKMAN: Right.

MR. JONES: It's a wide-open body of water. We won't be impeding any boating access for any boaters in the area or residents. Next-door neighbors, there's no -- not going to impede their access to their docks.

HEARING EXAMINER DICKMAN: Yeah.

MR. JONES: Should you go through -- yeah. Should I go through the --

HEARING EXAMINER DICKMAN: Yeah, just --

MR. JONES: -- primary criteria?

HEARING EXAMINER DICKMAN: Well, we know the criteria. I assume you concur

with staff. And, by the way, you heard their last criteria, their last condition.

MR. JONES: Yes, and I -- not that I'm objecting to it, but I'm just curious why that's -- it sounds like that was a -- something that's been done before.

HEARING EXAMINER DICKMAN: They'll answer that. Go ahead and answer that.

MR. BELLOWS: Yes. Our Land Development Code lists permitted uses by right and accessory uses, and you can't have an accessory use without a principal use.

MR. JONES: Gotcha.

MR. BELLOWS: So the condition is we want the dwelling to be built first.

MR. JONES: Right.

HEARING EXAMINER DICKMAN: So, in other words, you can't have a vacant lot with just a dock there.

MR. JONES: Right. Funny enough, when this started, there was a house here, when this process started, and then they tore that one down and permitted the new one.

HEARING EXAMINER DICKMAN: Houses come and go, you know.

MR. JONES: Yes.

HEARING EXAMINER DICKMAN: What you got here?

MR. JONES: That's the -- it's an unmarked channel, but it's the normal route of travel for boats going in -- traveling in that area. You can see the Bonita Beach Road to the north there, and there's a little bridge the boats go under.

HEARING EXAMINER DICKMAN: All right. So this is the Bonita Beach Boulevard [sic] right here. Is that a little marina?

MR. JONES: That's Barefoot Boat Club, yes.

HEARING EXAMINER DICKMAN: Right. And the bridge that goes underneath and heads out?

MR. JONES: Correct, and if you're heading south, it heads out to Wiggins Pass, the route to Wiggins Pass.

HEARING EXAMINER DICKMAN: South. This is Wiggins Pass, right?

MR. JONES: Correct.

HEARING EXAMINER DICKMAN: This is north going up to --

MR. JONES: That goes up to -- you can get to the Imperial River that way and Fish Trap Bay, areas like that.

HEARING EXAMINER DICKMAN: Yep.

MR. JONES: You can see the distance from our -- the location of the proposed dock is at the bottom. The distance to that route of travel is approximately 258 feet.

HEARING EXAMINER DICKMAN: Okay. So the dock -- this is the north side dock?

MR. JONES: Correct, the neighboring dock and south.

HEARING EXAMINER DICKMAN: Neighboring dock on the south side, more or less -- east side. Okay. All right.

MR. JONES: The -- the dock to the -- I guess you could say it's to the east, southeast, that's designed in a similar way where the boats come in and out -- straight in and out, bow to the shore. The one to the north or northwest is moored alongside the dock, but there's -- I think there's another -- well, there's a lot of distance there between the two docks to allow them to get in and out.

Let's see. I'm not sure what else to --

HEARING EXAMINER DICKMAN: All right.

MR. JONES: -- mention.

HEARING EXAMINER DICKMAN: Okay. Why don't we do this: Why don't we go to public hearing and sit tight, and if you want to --

MR. JONES: Okay.

HEARING EXAMINER DICKMAN: -- speak to anything that's said, you have time for rebuttal.

So do you have anybody signed up to speak on this?

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

HEARING EXAMINER DICKMAN: Okay. Did we get any letters of no objection from the neighbors? I see there's one from the Conservancy, but is there any contact with the neighbors on this?

MR. JONES: We have not contacted any neighbors, no.

HEARING EXAMINER DICKMAN: Okay.

MR. JONES: I think the Rapps, the family we're representing here, they have a good rapport with the neighbors, and I'm sure they've mentioned it, but I didn't make any contact with the neighbors.

HEARING EXAMINER DICKMAN: Well, they would have gotten notice. John?

MR. KELLY: I've received no phone calls, no correspondence pertaining to this project.

HEARING EXAMINER DICKMAN: Okay. And the notices did go out, mail notices, and the signs are there and everything like that?

MR. KELLY: Correct. I gave the date previously.

HEARING EXAMINER DICKMAN: Okay. All right.

Then other than -- this is pretty straightforward. I think we've looked at docks in this area before. Do you have any last-minute -- any last things you want to mention on this?

MR. JONES: Yes. One thing I'd like to add, I should have added prior to this, the -- placing the dock with the permitted use with the maximum of 20 feet out would, basically, put the boatlifts and the docks in two shallow of water and even into the mangroves at some point. So that's the main reason for the extension out into the waterway.

HEARING EXAMINER DICKMAN: So as far as the water depths. So there is a water-depth issue?

MR. JONES: Water-depth issue, yes.

HEARING EXAMINER DICKMAN: All right. It looks pretty straightforward to me. It's really nice meeting you. Glad to see a new marine contractor face here.

MR. JONES: We try to do -- this is our first time here. We've done a lot of work in Collier. Just the first time for a boat dock extension.

HEARING EXAMINER DICKMAN: All right. I think I've said this before, but I thank the marine contracting business for convincing me to go to college, because I worked for a marine contractor right after high school, and I realized that this is a terrible job. And that was when Creosol was around. That was even worse. So there's got to be an easier way to make a living. You guys -- but anyway.

MR. JONES: You made a good choice.

HEARING EXAMINER DICKMAN: Those were good times. That was up in Tampa Bay, though. Trust me.

MR. JONES: I should hang around here or --

HEARING EXAMINER DICKMAN: No, we're done, and I'll render a decision within 30 days. Have a Merry Christmas.

MR. JONES: Thank you for your time. Thank you very much.

HEARING EXAMINER DICKMAN: What have we got next?

Good morning.

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

Before you is Agenda Item 3B. It's for an insubstantial change, Project No. PL20210003207.

I first must identify a typo in the staff report. In the paragraph titled "Transportation Element," it references PUDA; instead should state PDI.

For the petition, this is a request for you to approve an insubstantial change to the master plan of Ordinance No. 01-61, as amended, the Mediterra Planned Unit Development, to re-establish

the access point to Veterans Memorial Boulevard from the roundabout intersection of Giardino Lane, Celebrita Court, and Buonasera Court for the benefit of the subject area located approximately 850 feet east of the Livingston Road and Veterans Memorial Boulevard intersection within Tracts R and Q, Mediterra Phase 3 East, Unit 1 Subdivision, in Section 12, Township 48 South, Range 25 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.13.E.1, a through k, and the criteria for why this is an insubstantial change has been met as outlined in the staff report.

Therefore, per the request of the applicant to re-establish the access point to Veterans Memorial Boulevard from the roundabout intersection of Giardino Lane, Celebrita Court, and Buonasera Court, this will complete the original plan that was adopted in 2001 through Ordinance 01-61, since this access point was included.

There was a PDI Resolution No. 04-11, and this insubstantial change in 2004 removed this very same access point, leaving the Mediterra East community only one non-signalized intersection onto Livingston Road, and with the growing population/increase in traffic, it poses a safety issue primarily for anyone leaving Mediterra East turning south being required to merge onto oncoming southbound traffic and having to avoid northbound traffic.

The reestablishment of this access point onto Veterans Memorial Boulevard will help facilitate traffic safety reducing the congestion turning onto Livingston Road and increase roadway connectivity with the community and the community to the south.

The reestablished access point will be designed as a two-way traffic ingress/egress for Mediterra Ecoleast. The ingress will be permitted for emergency vehicles only, and the egress will be restricted to serve only the Mediterra residents.

The Mediterra Community Association will reserve the right to open the ingress for Mediterra residents according to Collier County permitting requirements. The agent has offered that the existing wall, landscape berm, and buffer on the southern boundary will be enhanced to reduce impacts on the existing homes and private property.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the county on Friday, December 2nd, 2022, and the public hearing signs were placed by the applicant on Wednesday, December 7th, 2022.

I've received a communication from a lawyer representing three members of the public that hold an objection to the project based on that this is more substantial than insubstantial. Generally, the interpretation of the provisions is that it should be handled as an amendment.

Since this was submitted after the review on Accela, this has been included in Attachment I, which was submitted to you on Wednesday, December 14th, 2022. Other than that communication, I've received no other 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 is one condition in association with the recommendation to approve. Ingress/egress connection to the public right-of-way at the southeast location on Veterans Memorial Boulevard east of Livingston Road shall require a right-of-way permit and maintenance agreement consistent with the county standards as well as any developer commitment required as part of the right-of-way permit approval process as applicable and/or determined by the County Manager or designee.

That concludes staff presentation.

HEARING EXAMINER DICKMAN: Thank you. Nice work.

The applicant or applicant's representative.

MR. BROOKER: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. BROOKER: Mr. Bosi, Mr. Bellows, Mr. Sammon, my name is Clay Brooker. I'm a land-use attorney with Cheffy Passidomo, the law firm of Cheffy Passidomo, 821 Fifth Avenue

South here in downtown Naples.

I represent MCA, Mediterra Community Association, the applicant for the request to revise the Mediterra PUD before you today.

MCA is the master property owners association for the Mediterra development located off of Livingston Road north of Immokalee Road. The general manager of MCA, Bill Bowden, is here today. But making the primary presentation today is Ben Smith of Morris-Depew Associates. Ben has over 15 years of land planning and zoning experience, and he is certified as a planner by the American Institute of Certified Planners.

Jack Morris of Morris-Depew Associates is here as well. Jack has been a licensed professional engineer since 2006, and his areas of expertise include stormwater design, flood control analysis, utility design, roadway design, and traffic control. We offer Ben and Jack as experts in their respective fields of expertise.

HEARING EXAMINER DICKMAN: I recognize Morris-Depew. They're well known in planning and in land-use issues, and AICP certifications I'm familiar with. So I'll recognize them as experts.

MR. BROOKER: Thank you, sir.

As I mentioned, Ben will be making the primary presentation for the application today; however, I would like to request that I be given the opportunity to make some closing remarks before we conclude our primary presentation.

We also request the opportunity to respond as appropriate and necessary to any public comment received today and to make final closing remarks once the public comment portion of the hearing is closed.

And with that, I'll turn it over to Ben for the presentation. Thank you.

MR. SMITH: Good morning, Ben Smith with Morris-Depew Associates, for the record.

HEARING EXAMINER DICKMAN: Good morning.

MR. SMITH: The request that we are here today to make on behalf of the Mediterra Community Association is to amend the existing Mediterra planned development through the county's established insubstantial PUD amendment process.

We are requesting to amend the Master Concept Plan associated with the planned development to add a vehicular access point connecting Mediterra East to Veterans Memorial Boulevard.

Next slide, please.

To give you an overview of the project area and the surrounding area, this aerial shows the Mediterra boundary in yellow. The planned development is bisected by Livingston Road with Veterans Memorial Boulevard running along the southern boundary. The portion of the development on the east side of Livingston is Mediterra East, with Mediterra west on the other side.

All of the amenities for the development are located with Mediterra West. If Mediterra East residents wish to use the golf course or visit the clubhouse, they must leave Mediterra East and travel to Mediterra West.

Labeled on this aerial with a star is the proposed access point on Veterans Memorial Boulevard as well as the planned extension of Veterans Memorial Boulevard, which will eventually extend all the way to Old 41 with a connection planned to that roadway.

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At this point I'd like to back up and provide a little historical context for this request. When the PUD was originally approved in 2001, the adopted Master Concept Plan at that time depicted the connection from Mediterra East to the internal roadway network of that planned development to Veterans Memorial Boulevard, so it was originally conceived at that time.

Next slide, please.

Then in 2004, the master concept plan was, again, amended through an insubstantial PUD amendment. Removal of the Veterans Memorial Boulevard access point was one of the changes approved through that amendment.

Next slide, please.

As recently as last -- as recently as last year, another insubstantial PUD amendment was approved by the county which amended the Master Concept Plan to add an access point from Veterans Memorial Boulevard to Mediterra West, so on the other side of Livingston Road for Mediterra West, and you can see that point in this diagram.

Next slide, please.

At this time the sole means of ingress and egress for Mediterra East residents is the non-signalized intersection on Livingston Road. So if any emergency vehicles need to enter, they have to enter there as well. There's only the one point as well.

Next slide, please.

This existing intersection presents traffic safety issues especially for vehicles exiting Mediterra East to travel southbound on Livingston Road. These vehicles have to cross both northbound travel lanes, avoid vehicles turning into Mediterra East from the southbound travel lanes, then merge with southbound traffic.

The benefits of adding the proposed access point on Veterans Boulevard include increased traffic safety, reduce congestion of Livingston Road, increased roadway activity, reduced emergency service response times, as well as providing a secondary access in the event of primary access closure.

It is for all of these reasons that affect the health, safety, and welfare of the residents and general public that planned developments of this size are typically required to provide two access points. It's our understanding that if this were to be permitted today, it is likely it would have been required to have two access points.

Next slide, please.

Here you can see a conceptual design of the proposed access point. This design is the result of coordination with the Department of Transportation staff. If need be, Jack Morris can elaborate on that process a little bit more. They actually directed this particular design which allows alignment with the access to Allura, which is the residential development on the south side of Veterans Memorial Boulevard directly across from Mediterra East.

The internal roundabout with Mediterra East will be refigured to provide the connection. The access is proposed to be gated, and significant landscape enhancements are proposed.

Next slide, please.

Here's a street-level view of the access to Allura on Veterans Boulevard directly across from the proposed access to Mediterra East.

Next slide, please.

Along with the request to amend the Master Concept Plan to provide this access point or to re-establish this access point, there are also two deviations which are being requested as part of this amendment. The first is a request to deviate from county LDC Section 5.03.02.C.1, which limits wall and fence heights to a maximum of six feet if located within a front yard.

The gated entrance has been designed to limit modifications to the existing berm and buffer, which necessitates a relatively steep drawdown from the elevated berm to the level of the proposed roadway. The wall is a step-down design that does create a technical wall height of 12 feet in a few locations.

This design was discussed with staff, and it was staff, ultimately, that directed us to request this deviation in order to ensure that this design could be accommodated at the time of permitting.

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The second proposed deviation is from county Section 5.06.02.B.1.a, which limits signage height to a maximum of eight feet. The decorative gate columns are proposed in order to uphold the existing established design motif found throughout the Mediterra development. This deviation is requested in order to ensure that proposed gated access can include logos and other established community design features.

Likewise, the specifics of this deviation were also directed by staff through coordination

and discussion of the proposed design.

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Here I'd like to conclude by saying that we appreciate the opportunity to come before you. For the record, the submittal and processing of this requested amendment has been in accordance with applicable Collier County requirements for an insubstantial PUD amendment.

Neighborhood -- a neighborhood informational meeting was conducted and appropriately documented. Notices have been mailed to all surrounding property owners, signage has been posted at the subject property, and Collier County staff has been involved throughout the entire process.

The request is in compliance with Collier County standards for the insubstantial PUD amendment, and we have established that and verified that with staff.

Most importantly, staff is recommending approval of this request in their staff report. We request that the application materials that have been submitted as backup for this hearing are submitted for the record. We're happy to remain and discuss any of those materials or respond to any questions that you may have.

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

MR. SMITH: Appreciate it.

MR. BROOKER: For the record, Clay Brooker again. Mr. Dickman, thank you.

Before we conclude our initial presentation, I'd like to try to ensure a clean record by offering full copies of the 2001 PUD document and the 2004 amendment to the PUD, both of which were referenced by staff and Ben in his PowerPoint presentation.

So I request that Ordinance 01-61 and PDI Resolution 04-11 be made part of the record. I provided copies to staff prior to the hearing and can provide written copies to the clerk as well.

Secondly, it is MCA's understanding that the vast majority of the Mediterra East residents support the proposed new access point onto Veterans Memorial Boulevard. In that regard, a few Mediterra East residents recently took the time to write letters of support and submitted them directly to MCA for the access point. Those residents are not here today, so I'd like to submit their letters as part of the record. It's included in that packet. Some of the letters come from official representatives of entire neighborhoods within Mediterra East; others come from individual residents in Mediterra East.

The general theme throughout the letters is one of concern for safety and emergency response times. I offer these letters to you for your review during your consideration of the application; however, I would like to read one letter which I think captures the essence of the reason behind this application.

This letter is from Lori Cerisano, 16515 Buonasera Court, which is directly east -- on the southern portion of Mediterra East directly east of where the proposed access point is located.

To whom it may concern: My name is Lori Cerisano, and I reside at 16515 Buonasera Court on the east side of the Mediterra community. I apologize for not being there in person. I am away on vacation with my family at the moment, but please note that I feel very strongly about my position, and if I was home, I would be there in person to advocate for this new gate.

When I moved to Mediterra in the first week of August and heard about the proposed gate, I did not feel it was necessary; however, after living here for four months, I now recognize the extreme importance of it. I cannot tell you how many times I've gone through the intersection between the east and west community to turn left down Livingston Road and felt like my life was in danger. That intersection is very difficult to navigate through, and even if I'm aware of how I'm going to go through it, there are other drivers that don't seem to know how to handle it properly and put others at risk of an accident. There could be up to five cars at one time trying to go all different ways.

Drivers are trying to make a U-turn, trying to turn across traffic into Mediterra. Some people are trying to go straight, and there seems to be no rhyme or reason on where you should position your car in that intersection. It is a complete nightmare. What makes it even worse is

when there are landscaping and construction trucks towing trailers behind them, that you can't even see the oncoming traffic.

I witnessed the aftermath of a collision a few weeks ago in that intersection, and it is scary. I also feel very strongly about this because I have a daughter that is getting her driver's license in March. Although she is a good driver, it scares me knowing every morning she has to navigate her way through that dangerous intersection to go to school.

Every one of us residents on the east side has no other exit option to keep ourselves safe like the residents on the west side has, not to mention it is getting even busier since season is upon us, and it is just going to get worse. Also, it is important for all of us residents on the east side to have of a second escape route out of our development in case of an emergency.

I believe this was poor planning from the very beginning of this development and should be rectified immediately. It's not an aesthetic issue. It's a safety issue, and if it does not get approved, it is a blatant disrespect for all of our safety.

Thank you for your time in this matter. Best, Lori Cerisano.

Finally, we've heard a lot about the concern for the safety of Mediterra East residents when exiting the community onto Livingston Road. I'd like to provide a bit more meat to that concern, some historical context. Back in the late 1990s, the developer of Mediterra, Long Bay Partners, had some of the property under contract but had a glaring problem facing them. Livingston Road did not exist. It ended several hundred feet north of Immokalee Road some two miles south of the development. Past that terminus point heading north, it was at that time, at most, a dirt road. So the developer had a "you can't get there from here" problem. The solution, build the road themselves.

So they entered into a developer contribution agreement with Collier County in February of 1998. There's a copy of it in the materials I provided to you and I submitted as part of the record. This DCA, Developer Contribution Agreement, is expressly referenced in the 2001 PUD document, Ordinance 01-61, as Section 7.4.B under the developer's commitments to transportation.

In general, the DCA required the developer to convey to the county the land that is now Livingston Road and to build a two-lane undivided road from where the road ended at that time, just north of Immokalee, to the Collier/Lee County line.

The requirement was to build only a two-lane undivided road. Why? As my last submittal for the record, I respectfully provide the two aerial photographs comparing the Livingston Road corridor area in January of 1999 to what it looks like present day.

What is glaringly obvious is back in 1999, the corridor area was undeveloped, unimproved. There was nothing there. The land was zoned rural agriculture; however, since that time, that is in the last 20 years or so, development has filled the corridor area. Traffic has significantly increased not only as a result of residents going to and from their new homes, but also as a result of the creation an alternative north/south route connecting Collier and Lee Counties.

Twenty years ago there was, arguably, no need for a second access point to Mediterra East. Today, however, it's different. The safety of the Mediterra East residents and motorists on Livingston Road depends upon this additional access point, and the timing could not be more perfect.

The county is currently at work expanding and improving Veterans Memorial Boulevard, and the proposed access point configuration shown during the presentation is the result of extensive collaboration with county transportation staff to ensure coordination and consistency with the county's Veterans Memorial Boulevard project.

With that, we conclude our initial presentation. Thank you for your attention. We're happy to answer any questions you may have. And, again, we respectfully request the opportunity to respond to any public comments and to provide closing remarks.

HEARING EXAMINER DICKMAN: Okay, great. I'll allow you some time for rebuttal after we -- we'll open it up for the public, and you can come back up afterwards, okay?

MR. BROOKER: Thank you, sir.

HEARING EXAMINER DICKMAN: Sure.

Andrew, do we have anybody signed up?

MR. YOUNGBLOOD: Mr. Dickman, I have two registered speakers in the room with us today.

HEARING EXAMINER DICKMAN: Awesome.

MR. YOUNGBLOOD: The first one's going to be Stephen Thompson followed by, or perhaps in tandem with, Scott Thompson.

HEARING EXAMINER DICKMAN: Okay. Come on up. Good morning, sir.

MR. STEPHEN THOMPSON: Good morning. My name is Stephen Thompson. I'm an attorney with the Thompson Lewis Law Firm practicing law in Naples at 745 12th Avenue South here in Naples, for the record. I've been practicing law in Collier County since 1987 and actually personally participated supervising and handling personally much of the land assembly for the Mediterra project for Bonita Bay Group through their affiliate, Long Bay Partners, back in the late '90s. So I'm very familiar with this project and its challenges, as have been ably described by counsel and consultants for the petitioner.

Our firm has been retained to represent Scott Thompson, Michel Beland, and Leon Asadoorian residing respectively at 16477, 16469, and 16473 Celebrita Court, respectively, in connection with the matter before you today. They are directly impacted by this proposed additional access point onto Livingston.

We oppose the proposed PL20210033207 [sic] PDI on both procedural and substantive grounds. First, I would like to confirm, which I have done with staff this morning, that all documents provided by my firm to the county per the 12 emails of my partner, Doug Lewis, have been included in the hearing packet and are attached to the official record as Attachment I.

I also would like to confirm on the record that our clients have raised these procedural and substantive challenges and objections to PL20210033207 [sic] PDI, and we hereby renew all those objections and challenges that have been raised to date.

We also would like to notify you that our clients have engaged litigation counsel, Michael Coleman of Coleman Hazzard law firm here in Collier County to initiate legal action against the applicant. And depending on the decision of this hearing, possibly the county, seeking declaratory relief among other claims and also to enjoin further county proceedings, should that be necessary.

HEARING EXAMINER DICKMAN: Just so I'm clear, I mean, have you -- has there been something filed already in Circuit Court?

MR. STEPHEN THOMPSON: No. Michael's prepared it. It's ready to go, but we don't want to file it necessarily until this decision is made. We want to exhaust the administrative channel first.

HEARING EXAMINER DICKMAN: Okay.

MR. STEPHEN THOMPSON: That could change, but that's the plan at the present time. This consequence will seek to request a continuance or stay of the further county proceedings until the Court makes a legal determination on the merits. We expect that soon. I would also like to point out that although Scott shares my last name, I had it first. I'm older. We don't know of any relation.

The other two clients that we have both are sick. One has COVID and is recovering. The other is also ill, and I'd like to request your indulgence in, perhaps, exceeding the five-minute time in order to fully explain their position.

HEARING EXAMINER DICKMAN: So granted.

MR. STEPHEN THOMPSON: Thank you.

Substantive challenges first. The HOA does not have legal authority to file the PDI and has no standing to file the PDI. Mediterra is controlled by developer-imposed Declaration of Covenants, which I think you can appreciate as a board-certified attorney in land use.

The covenants in question -- or the Declaration of Covenants, Conditions, Restrictions for Mediterra recorded in Official Records Book 2638 beginning at Page 961 of the public records of

Collier County, Florida, which has been amended. I will hesitate to say frequently, but it has been amended over time. I'll refer to that as the ECR going forward.

HEARING EXAMINER DICKMAN: And just to be clear, how much time do you need?

MR. STEPHEN THOMPSON: Probably between five and seven or eight minutes.

HEARING EXAMINER DICKMAN: Thank you.

MR. STEPHEN THOMPSON: Once I finish my notes, you can throw me out.

HEARING EXAMINER DICKMAN: You're welcome to stay as long as you want.

MR. STEPHEN THOMPSON: Thank you. That's a great invitation. I appreciate that. Christmas --

HEARING EXAMINER DICKMAN: You may not get to speak as long as you want. You get to stay as long as you want.

MR. STEPHEN THOMPSON: Well, I love a finished speaker, you know, I really do. Not so much one that's polished, but one that's really through. That's all the poetry you can stand this morning.

Under the ECR declaration for Mediterra, the proposed project improvements diminish or destroy portions of Tracts L and Q landscape buffer per the plat, and such proposed project areas will not be maintained in their natural open condition as required by the ECR.

Section 12.4 of the ECR expressly prohibits the association from proceeding with this proposed project as follows: Quote, 12.4, open space and buffers. Any property conveyed or dedicated to the association which is designated as open space, landscape buffer, preserve area, or common area on any plat, permit, or other document recorded in public records shall be only maintained by the association in a natural, open condition. I will add my own words: That's a mandatory. "Shall" is not "may."

Then continuing with a quote. The association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the user and enjoyment of such areas as open space, closed quote.

The PDI is the incorrect process procedurally for this petitioner to pursue. It's flat wrong. The items in LDC Section 10.02.13.E.1 are deemed substantial changes. These trigger a new PUD application that must be approved by the Planning Commission and the Board of County Commissioners as a PUD amendment, and it really doesn't matter that staff may have taken a position in the past and currently that this is not a substantive change. If one of these criteria are tripped, then it is a substantive change regardless of what staff's opinion is.

The words are, quote, from 10.02.13 Eco 1 under the heading "minor substantial changes" beginning in the introduction, for the purpose of this section, a substantial change shall be deemed to exist where -- and we'll just drop down, for instance, a change to G, as in golf, a change that will result in a requirement for increased stormwater retention will otherwise increase stormwater discharges. When you take pervious area and place impervious pavement on it, you immediately increase the stormwater discharge in that area. It just follows like night follows day, and there's no going around that.

I think petitioner would maintain that they're out-letting that outfall into the Livingston Road right-of-way or some such thing, but that's not the consideration. The consideration is what does it do within the boundary of Mediterra; not within the right-of-way, but what they do within the boundary of Mediterra, and that increase will hit Mediterra.

LDC Section 10.02.13.E.1.a, the required landscape buffering will be outside the lands currently submitted to the PUD, and the county will not be providing an easement for such landscaping in the right-of-way in order to satisfy the code requirements for the PUD. Instead, they're seeking a right-of-way use permit, I believe.

(Interruption by the stenographer for clarification.)

HEARING EXAMINER DICKMAN: Let me just make a quick statement. I probably should have said it before. We do have court reporter here, and she can only capture what is

clearly stated, so that's why I tend to speak slowly and carefully because I --

MR. STEPHEN THOMPSON: I've been around too many lawyers, and they speak fast.

HEARING EXAMINER DICKMAN: So she's going to stop anybody at any time when she doesn't understand what someone says.

MR. STEPHEN THOMPSON: I won't be offended.

The required landscaping buffering will be outside of the lands currently submitted to the PUD, and the county will not be providing an easement for such landscaping in the right-of-way in order to satisfy the requirements of the PUD. Instead, they're seeking a right-of-way permit, I believe, but that's not an easement and can be taken away by the county at any time.

There's been much made about the safety issue in regard to this access point, and I'll come back to that later. But at this point in the discussion, to not have an easement, the county can come and revoke the right-of-way permit to expand Livingston Road. It's presented ably that there's going to be increased traffic. There has been phenomenal increased traffic since we did this in the late '90s.

That's going to increase. It's not going to decrease. Livingston Road may be, indeed, further widened, and that's why they're not giving an easement, and it's a right-of-way permit that's revocable when the county needs to.

Land Development Code Section 10.02.13.E.1 is triggered given the proposed decrease in the landscape buffer within the current PUD boundary and proposed conversion of landscape buffer into road right-of-way/gate uses for the land zoned recreation/open space under the PUD.

LDC Section 10.02.13.E.1.d as in delta, is triggered given the proposed relocation of nonresidential land uses under the PUD for Tracts L and Q and with respect to land zoned recreational/open space under the PUD.

And it just goes on. LDC Section 10.02.13.E.1.g is triggered, as I mentioned, given the change that will result in increased impervious area and increased stormwater retention/stormwater discharges, and the applicant's permit filing with SFWMD, S-F-W-M-D.

Regarding LDC Section 10.02.13.E.1, the Veterans Memorial Boulevard is located adjacent to and outside of the land zoned PUD, and this is where the majority of the new pavement area will be located.

For purposes of LDC Section 10.02.13.E.1.g, as in golf, the code looks only at changes made in the approved PUD ordinance which does not include the Veterans Memorial Boulevard right-of-way as part of the PUD boundaries. In that regard, there is a new pavement area in Tracts L and Q that will clearly increase stormwater discharges and a SFWMD permit modification.

Tracts L and Q are located in Sub-basin D as in delta, A as in alpha, 10, per SFWMD ERP 10 -- I mean 1101-761-P as in Paul, and the proposed PUD amendment would increase the impervious area and resulting stormwater discharges occurring in the PUD Sub-basin DA10 from about 12.4 to close to 13.

Then we can go to vested private rights. Our clients purchased their homes at the rear of the community and adjacent to platted landscaping buffer easements in reliance on protections afforded them under, for example, the Mediterra PUD, Ordinance No. 01-61, which I will refer to as the PUD and have, the plat of Mediterra Phase 3 East, Unit 1, as recorded in Plat Book 40, Pages 59 through 68, of the public records of Collier County, Florida, that I'll refer to as the plat, and the ERC declaration for Mediterra that I referred to previously.

Under the PUD for Mediterra, the proposed project is located within lands zoned R/O, recreation and open space district. Per the PUD's Exhibit A master plan and the construction of a new permanent east entry road and gate, per the proposed project, is not a permitted use and structure under this zoning designation. In fact, the PUD only permits temporary construction access roads. That's not what this is in this zoning designation.

Our clients purchased their homes in reliance on the protections afforded them under the PUD in buying at the rear of the community adjacent to the lands zoned R/O and configured as a landscape buffer on the plat.

Regarding the plat, the proposed project improperly seeks to impair and infringe upon easements rights created pursuant to the plat and ECR which easement rights, related to the plat, include landscape buffer easements, which are all of Tracts L and Q per the plat as dedicated to the association, and sidewalk easements.

Our clients and all homeowners in East Mediterra purchased or bought in Mediterra after April of 2003, and all owners in East Mediterra purchased in reliance on the protections afforded them by right under the PUD, the plat, and the ECR.

In fact, the vesting deed into the HOA for Tract Q expressly states, quote, the property being conveyed shall be continually maintained by the grantee -- i.e., the HOA, I'll add that in. Back to the quote -- its successors and assigns as a landscape buffer, and by the acceptance of this deed, grantee agrees to maintain the property as required thereby.

And I'm going to return to the safety issue raised by counsel and petitioners.

HEARING EXAMINER DICKMAN: Approximately how much more time do you need?

MR. STEPHEN THOMPSON: About a minute.

HEARING EXAMINER DICKMAN: Okay. Great.

MR. STEPHEN THOMPSON: Lastly, the safety issue. If you -- I don't know if we can return to the conceptual plan screen.

HEARING EXAMINER DICKMAN: Andrew, can you pull that up, please.

MR. YOUNGBLOOD: One second.

HEARING EXAMINER DICKMAN: The concept plan.

MR. STEPHEN THOMPSON: Okay. When we look at that, you will see that as it makes its curving snake type approach to the roadway, there's pictured landscaping, and the landscaping over to the right in this photo appears to be very close to the road. As you're exiting out onto the main road -- this will do --

HEARING EXAMINER DICKMAN: Okay.

MR. STEPHEN THOMPSON: -- the driver is going to have to stop at those white lines that you see that are stop lines. If you look to your left and right of those lines as depicted on this mockup, there's no way you will visually see left or right. What you will see are bushes and trees. You will not see the oncoming traffic. It will be wiser, from a safety standpoint, for the association to petition for installation of a traffic light at the existing unlighted intersection that was described rather than to put a second un-signalized intersection into the road right-of-way. This would not decrease issues with traffic. It will increase them and possibly further reduce safety.

In conclusion, our clients hereby request a continuance or stay of the hearing on this matter pending a determination by the Court. If that is declined, as we've requested, then, procedurally, we ask that you conclude that the HOA does not have legal authority to file the PDI and has no standing to file the PDI. We further ask you to conclude that the PDI is the incorrect process for this petitioner to pursue, and that the items in the LDC Section 10.02.13.E.1 are substantial changes that trigger a new PUD application that must be approved by the Planning Commission and by the Board of County Commissioners as a PUD amendment.

Petitioners made a great deal of noise about the, quote, vast majority of Mediterra residents support this access point. If they do have a vast majority, they can go through their amendment process and amend the ECR declaration. It's a pretty simple process. If they don't have those votes, then their statement is incorrect and should not be relied upon at this hearing. Under the Mediterra ECR, PUD, and plat, we ask you to conclude that our clients have those private rights that cannot be ignored by the petitioner and that the petitioner's project would clearly violate those private rights and the procedural items discussed previously which constituted a complete bar to the petitioner's proposal.

Thank you.

HEARING EXAMINER DICKMAN: Thank you.

Anyone else here to speak?

MR. YOUNGBLOOD: One more speaker, Mr. Dickman, Scott Thompson, and he will be

our final speaker.

HEARING EXAMINER DICKMAN: This center one right here. She'll be finished with it in a second. Bear with her.

MR. SCOTT THOMPSON: Thank you. I'm Scott Thompson. I'm the homeowner at 16477 Celebrita Court. On the aerial view, the red star that was there would be my front yard.

HEARING EXAMINER DICKMAN: Okay.

MR. SCOTT THOMPSON: I'm representing residents of -- certain residents of Celebrita Court. I bought my house in 2008 in large part because of the location at the rear of a community that is very quiet with limited traffic. This gate would change all of that.

Safety concerns come in different ways. There's traffic, but there's also ingress and egress to a community. This gate is across from a newly-built 500-unit-or-so apartment complex with a new high school planned right down the road.

We oppose the gate for privacy concerns, safety concerns, and also the adverse impact on our property values. If approved, this would be the closest gate to any residences in Mediterra by a significant order of magnitude.

It has been mentioned that this was considered in 2001 but changed in 2004, and houses were built and homeowners built/bought/purchased their property in reliance of that fact.

We also would like to request, respectively, that the light at the intersection crossing Livingston Road be considered. I believe it's been proposed and discussed, but we'd like it to be considered again. I believe the residents of Mediterra would be very supportive of that.

With respect to the letter that was read earlier, I don't personally believe a gate -- or a second gate is needed, but we've proposed if that gate would -- was to go in, that it be moved down to the Buonasera neighborhood, and that has been rejected.

I also have a 15-year-old son who's going to get his license in April, and he navigated that intersection yesterday just fine. I've crossed that intersection thousands of times without incident.

We would respectfully request that this gate be denied, and thank you for your time.

HEARING EXAMINER DICKMAN: Thank you for being here, sir.

Anyone else?

MR. YOUNGBLOOD: That concludes our registered speakers.

HEARING EXAMINER DICKMAN: Okay. Mr. Brooker, do you want to come on up. I want to address a couple of things real quickly. So there was a request to continue this item. Traditionally, that needs to come from one of the parties. Does the county or the applicant wish to continue this?

MR. BROOKER: On behalf of the applicant -- Clay Brooker, again, for the record. On behalf of the applicant, no, sir.

HEARING EXAMINER DICKMAN: Does the county wish to continue that at all? Do you need a minute?

MS. ASHTON-CICKO: No. They can make the determination on the continuance. If it's going to continue to go forward, I just want him to put something on the record.

MR. BOSI: The county is not requesting a continuance.

HEARING EXAMINER DICKMAN: We're not going to continue this item.

The second question I want to ask is probably directed at the county. I just want to make sure that you -- we want to -- this is properly in my jurisdiction as a PDI. Do you want address that first?

There was a -- there was a procedural issue brought up regarding whether this should -- is a PDI at all and should be my jurisdiction. So you want to address that?

MR. BROOKER: I will -- yes, sir, I can.

HEARING EXAMINER DICKMAN: Do you want to do that? Let's start with the county first.

MR. BROOKER: Yes. I'll defer --

HEARING EXAMINER DICKMAN: The county put it on my agenda. I want to have

them stipulate that they believe it's --

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

As the official interpreter of the Land Development Code, the question was presented to me, would this qualify for a PDI, and I had responded in the affirmative that it could move forward as a PDI.

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

All right. I imagine you have a couple things you want addressed.

MR. BROOKER: Thank you. Again, for the record, Clay Brooker. I appreciate the opportunity and the attention again, Mr. Dickman.

I just wanted to make a few -- I'm not going to respond item by item to the comments from the public, but just a few comments there. One of the letters of support that were submitted to you earlier today is from a resident who lives on Celebrita Way [sic] just two or three lots down from the public speakers you heard.

As a matter of housekeeping, I would just want to make sure -- I made a note as I thought about it after the fact that we do want to make the PowerPoint presentation that was submitted today part of the public record.

HEARING EXAMINER DICKMAN: Okay, great.

MR. BROOKER: Authorizations from the -- from the board of the association authorizing the association to file this application are part of the submission -- the submittal materials.

Any issues or disputes regarding the declaration, I think it was referred to as the ECR, the declaration or the deed restrictions are civil disputes of a private nature over which the county has no jurisdiction, and it's beyond the scope of today's zoning hearing, and that same comment goes to any claim -- civil claims of private property rights impacts.

There were some comments about the plat and the right to use the county right-of-way outside of the boundary of the PUD. Those issues are the subject of other pending applications that we have with the county. They're not at issue here at the zoning hearing. This is basically one of the myriad things we must accomplish -- MCA must accomplish to actually put this gate into place.

One other comment was that the PUD doesn't allow the access point at this location. It's not zoned or categorized to allow the access point at this location. Well, that's the whole point of this application is to revise the PUD master concept to allow -- re-establish the access point at this location.

So as my conclusion remarks, under Florida law an applicant seeking a rezone or zoning amendment must show that the request is consistent with the local government's comprehensive plan. *Brevard County versus Snyder*, we've all learned and seen that many, many times. In this case the Comprehensive Plan is the county's Growth Management Plan or GMP. The application submittals demonstrate consistency with the GMP as well as the applicable provisions of the county's Land Development Code. County staff has evaluated the application, and they have come to the same conclusion.

So under Florida law, the burden now shifts to the county such that if the county wishes to deny the request, the county must demonstrate that the existing zoning, the existing status quo, accomplishes a legitimate public purpose, but no legitimate reason exists to deny this request.

The public purpose at issue here, the critical public purpose is to health, safety, and welfare of the Mediterra East residents and the motorists on Livingston Road. It's not a matter of if. It's a matter of when someone will die exiting the one existing access point from Mediterra East, whether it's a teenager who just got her driver's license, whether it's the middle-aged resident whose view is obstructed by a landscape truck and trailer, and whether it's a more elderly resident whose reaction time simply isn't as quick as it once was, someone is going to die, and that can be avoided, or at least the risk can be significantly reduced by adding the proposed second access.

County staff has recommended approval, and we respectfully request that you accept that recommendation and approve the application.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Mr. Bosi, do you have anything final you want to say that you need to put on the record, or did you -- you had a sidebar with counsel. Did you need to state anything else?

MR. BOSI: No further clarification.

HEARING EXAMINER DICKMAN: Okay, great.

Great presentations by everybody. I appreciate you-all being here. I'll make my decision as quickly as possible.

MR. BROOKER: Thank you, sir.

HEARING EXAMINER DICKMAN: Thank you. Have a Merry Christmas, Happy Holidays. Stay warm here. It's going to freeze in Naples.

***All right. We're going on to 3C.

All right. The room is clearing out.

MR. SAMMON: Good morning, Mr. Dickman. Again, for the record --

HEARING EXAMINER DICKMAN: Good morning.

MR. SAMMON: -- Sean Sammon, principal planner in the Zoning Division.

Before you is Agenda Item 3C. It's for a variance, Project No. PL20220003811. This is a request for you to approve a variance from the Land Development Code 4.02.03.D to reduce the required accessory side setback from 30 feet to 22 feet on the west property line and a second variance from Section 5.03.02.C.2.a to increase the required maximum height of a fence from 6 feet to 10 feet for the proposed tennis court for the benefit of the subject property located in Lot 7, Block K, Pine Ridge Extension Subdivision, also known as 89 Mahogany Drive, Naples, Florida, 34108, in Section 3, Township 49 South, Range 25 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 9.04.03, A through H. The proposed location for the tennis court is based on the position of the principal dwelling structure as well as the need for the proposed septic system.

The rest of the required variance criteria was responded to as outlined in the staff report; therefore, this request is twofold: One, primarily to reduce the west side setback from 30 feet to 22 feet for the plain surface of the tennis court and, two, to increase the height of the fence from 6 feet to 10 feet.

The primary land-related hardship that exists is due to the required position of the septic system drainfield and that it can't be relocated. The Florida Department of Health regulates septic systems to be more than 75 feet from subsurface wells. The separation distance from the drainfield to the potable well on the adjacent property to the east is 80 feet. This leaves the west side of the property as the only viable location for the tennis court to be constructed. Also, the increased height of the fence will provide better protection for the adjacent neighbors from any wayward or loose tennis balls from infringing on the properties.

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 Friday, December 2nd, 2022, and the public hearing signs were placed by the applicant on Wednesday, December 7th, 2022.

I've received five calls from the public primarily requesting information on the issue and what the variance was about as well as discussing issues that are more appropriate for when the subject property is in the site development review phase. Other than those calls, I received no public comments for opposition pertaining to this petition, and staff recommends that you approve this petition as described in accordance with attachments to the staff report.

There is one condition in association with the recommendation to approve: There will be no artificial lighting for the tennis courts.

That concludes staff presentation.

HEARING EXAMINER DICKMAN: Quick question. The -- I guess it's the neighbor adjacent to the tennis court. Are there any letters of no objection or anything like that?

MR. SAMMON: I have received no letters of objection.

HEARING EXAMINER DICKMAN: Very good. Is the applicant or the applicant's representative here?

Good morning, sir.

MR. FOLEY: Good morning. Good morning, Mr. Dickman, staff. My name is Blair Foley, professional engineer. I've been practicing here for 30 years. I represent Mr. Richard Forman, who is the property owner. Thank you for the opportunity today.

HEARING EXAMINER DICKMAN: You're welcome.

MR. FOLEY: I had a number of items on my presentation. Staff covered 90 percent of them --

HEARING EXAMINER DICKMAN: Okay.

MR. FOLEY: -- so this should be fairly straightforward.

HEARING EXAMINER DICKMAN: You're welcome to just say "I concur and adopt the staff's recommendation" and hit the points you want to hit.

MR. FOLEY: That's correct; that's what we do. And we will -- we do agree with the stipulation. That's not an issue.

HEARING EXAMINER DICKMAN: Okay.

MR. FOLEY: So we'll just briefly go through this PowerPoint if I could, please.

HEARING EXAMINER DICKMAN: Perfect, great.

MR. FOLEY: Okay. This -- thank you. This slide just describes what staff indicated. You know, we're looking for some relief on two different issues here, the side-yard setback and the fence requirement from 6 to 10.

Next slide, please.

Set of design documents just with all the pertinent information regarding the project location, zoning district, et cetera.

Next slide, please.

Kind of a helpful aerial view that shows the surrounding property. The tennis court is shown in green in the northwest corner of the proposed property. Completely opposite of that, which would be in the northeast corner, is where the septic systems would be going. So to what the staff mentioned --

HEARING EXAMINER DICKMAN: Is this the septic area?

MR. FOLEY: No, to the right of that, the corner. Opposite of where the tennis court would be, completely to the -- right in that area right there, yeah. So it's kind of right in that general location.

HEARING EXAMINER DICKMAN: Okay.

MR. FOLEY: Next slide, please.

Again, with removal of the aerial, it does show the septic systems a little bit more clearly there. And the dimensioning -- the minimum requirement for the setback on the wells is 75 feet. We have about 80 there. So this is currently under review by the Building Department, Collier County Building Department, and the Health Department.

Next, please.

This is an interesting exhibit, too. It shows a number of the tennis court variances throughout the community in Pine Ridge. So there's been -- there's been a bunch of them. And I just wanted to make this one point that over the course of the last few years I've been before you to present more than one of these. There's been a big push for -- since COVID that homeowners would like to utilize their on-property and their own property rights to be outside, tennis courts, pickleballs, et cetera, so this just kind of shows you the overview of the number in the general area.

Next slide, please.

Just a blowup of the same general area.

Next slide, please.

Yeah, this is important. This is the landscape plan associated with this project. There will be a Clusia hedge that will be planted along the west, north, and east property line, that after a

period of time of two years, it will be maintained at a 10- to 12-foot height. So I think that's important to note.

HEARING EXAMINER DICKMAN: So this right along here?

MR. FOLEY: Yeah. All around there, yes. That will certainly help buffer any activity on the tennis court.

The homeowner has been in contact directly with the surrounding neighbors, hasn't had any issues. I had one phone call, and it was really related to the septic system. Nothing to do with the tennis court.

Next slide. And that concludes the PowerPoint.

Again, a couple of main points. There are no lights proposed as part of this, too, which is important. I do appreciate staff's report, and their presentation was excellent and kind of limits what I really have to do here and say.

This really does conclude my presentation, and if there is any public comment, I'd like an opportunity to rebut.

HEARING EXAMINER DICKMAN: Absolutely. Let's see if there is anyone signed up. Anybody?

MR. YOUNGBLOOD: I have no registered speakers for this item.

HEARING EXAMINER DICKMAN: No registered speakers, okay. Then there's really nothing for you to rebut unless you have anything else you want to say.

MR. FOLEY: No, I don't. Thank you very much.

HEARING EXAMINER DICKMAN: All right. Thank you for your concise presentation. As I said, I don't make decisions here today. I have 30 days to render those decisions, and have a very -- Happy Holidays, Merry Christmas, and enjoy your day.

MR. FOLEY: Thank you. You as well. Everybody, thank you.

HEARING EXAMINER DICKMAN: Thank you. All right.

Okay. Do we have any new business that we need to cover today?

MR. BOSI: ***Mr. Dickman, Mike Bosi, Planning and Zoning director. We do.

I have a request related to your HEX Decision 22-55, which was provided for on December 9th of 2022. On November 10th, the appeal of the Valencia Golf Country Club sidewalk removal was heard by your office. The decision, as I said, was rendered on December 9th, the HEX Decision 22-55.

From staff's review of that decision and further review of the Administrative Code in Chapter 9, which deals with the Officer of the Hearing Examiner procedures within public hearings, allows for a reconsideration of a matter by the hearing [sic]. When a motion of the party, the Hearing Examiner may grant a rehearing on an application for the following reasons: Mistake, inadvertence, excusable neglect, or newly discovered evidence which was -- which, by due diligence, could not have been discovered in time for the original hearing, or fraud, misrepresentation, or other misconduct.

Staff, from review of that decision, feels -- has found additional evidence that bears upon that individual decision that staff would like to be incorporated withinto the decision-making process; therefore, we are requesting and staff is introducing this motion. And I have written copies for the Hearing Examiner as well as the court reporter and, from instruction from the Hearing Examiner, staff would be prepared to provide copies to both of the counsels for the parties for the Valencia Homeowners Association as well as Lennar.

HEARING EXAMINER DICKMAN: Okay. So we're referring back to the administrative appeal that I heard, and then the decision on that was rendered December 9th; is that what you said?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: And then I -- obviously, we have received a copy -- my office has received a copy of the Attorney General Opinion dated September 19th, 2012, that was not provided during that hearing but does have -- it appears to have relevant law.

And I did review the administrative procedures manual that you quoted, basically, referring to hearing a rehearing for the three different -- mistake, inadvertence, or excusable neglect, newly discovered evidence which may -- by due diligence could not have been discovered at the time of the original hearing, or fraud, misrepresentation, or other misconduct by adverse party.

Then it goes on to say, the motion for reconsideration by a party shall be made prior to the deadline for filing of an appeal. Filing of an appeal, I believe, is 30 days, so this would be within that period of time. So requesting a motion for rehearing is timely. So we're within that 30-day period.

Do you have a -- do you have a recommendation for how to handle it? Or let me put it this way. Like, perhaps -- obviously, there were other parties to this. There's the -- you know, the HOA was involved, and then the original petitioner, I believe, is Lennar. So I'm suggesting that we -- that I set out just a briefing schedule on just laying out the -- is this your -- is this the county's official and final brief, or would they need -- would you need more time to put together something more timely or more elaborate, or is this it?

MR. BOSI: This was the -- this was the information that I have related to support the motion.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: I don't believe -- we may want to expand a little bit more upon the secondary portion within --

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: -- of the reasons that we put forward.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. BOSI: But we wouldn't need a tremendous amount of time.

HEARING EXAMINER DICKMAN: Okay. So we would need -- in fairness and due process, we would have to give everybody an opportunity to weigh in on the issues, read what the county has done. I'm suggesting that, perhaps, we -- that, perhaps, I put out an email to all the parties involved establishing a briefing schedule, and then we put it onto an agenda in the future for any oral -- any final oral arguments or any questions that I may have on the new information and we go from there?

MR. BOSI: And staff was not -- you know, we understand that no decisions are made during the hearing, so we understand that, you know, your evaluations will still be made.

I would think that would be, you know, after that -- your decision, if it was to -- for a rehearing, I think that you providing a schedule, kind of, of how the events, you know, would be in terms of the additional package put together from myself, from Lennar's representation, and then how -- the rebuttal response time for the HOA's attorney -- or counsels would seem an appropriate schedule.

HEARING EXAMINER DICKMAN: Okay. Because this is being put on without notice to them.

Mr. Yovanovich, I see you're in the audience. Would you mind coming to the podium. You were the attorney for the petitioner, as I recall. Do you have any --

MR. YOVANOVICH: Lennar.

HEARING EXAMINER DICKMAN: For Lennar. Do you want to weigh in on this?

MR. YOVANOVICH: I do. For the record, Rich Yovanovich on behalf of --

HEARING EXAMINER DICKMAN: I don't want to go too far because --

MR. YOVANOVICH: I understand. I understand.

HEARING EXAMINER DICKMAN: -- counsel for the HOA is going to not be happy if we start talking about too much substantive --

MR. YOVANOVICH: I don't want to talk about the merits.

HEARING EXAMINER DICKMAN: Procedural.

MR. YOVANOVICH: I just want to talk about the schedule.

HEARING EXAMINER DICKMAN: Okay. Yeah. And remember, it is the holidays.

MR. YOVANOVICH: I appreciate that, but this is what I wanted to point out.

HEARING EXAMINER DICKMAN: All right.

MR. YOVANOVICH: Although the affected property owners live within the community, they have temporary COs, and because they have temporary COs, the master association is treating them as if they are in purgatory.

HEARING EXAMINER DICKMAN: In what way?

MR. YOVANOVICH: They are not giving them the full services and privileges of being members of the HOA which affects the maintenance of their homes and the access to the communities.

So there's -- for their benefit we need to get to a final resolution of this issue as quickly as possible. I recognize that, as attorneys, sometimes we don't know everything, and new law comes into effect, and we should consider those things.

HEARING EXAMINER DICKMAN: I want to be clear about this. So the county -- I mean, the county's trying to solve a problem here by giving a TCO, and you're telling me that the HOA is punishing the people that live there, because they have TCOs, by denying them their --

MR. YOVANOVICH: That's what I'm saying.

HEARING EXAMINER DICKMAN: -- ability to, what, use the pool and drive on the streets?

MR. YOVANOVICH: It's one of those communities where the landscaping is maintained by the HOA. They're not doing that. So my client, Pulte -- I'm sorry -- Lennar is actually cutting their grass.

So -- and I'm already briefed my position, because I was ready to file an appeal, and so I'm fully prepared to brief and submit. I don't want to file an appeal if you're going to reconsider this. I'm just asking you to have a quick briefing schedule and a quick hearing so that we can keep moving this forward as quickly as possible.

I would prefer, candidly, that this be heard at your first meeting in January. I don't think it's terribly complicated for the sides to brief and argue. But that's what I would ask you. If you're -- from a -- and I don't want to get into the merits, but that's why I'm asking you to do, a quicker turnaround because of the affected parties that are caught in the middle.

HEARING EXAMINER DICKMAN: Okay. So what I'm going to do -- I'm -- I'm actually pretty stunned that they would do that. It's unfortunate. I think the only people that are -- I don't want to say winning here, but benefiting -- are really the lawyers, including me, having to deal with this, because I'm getting paid to deal with it, but the homeowners are really -- they seem to be the ones that are -- in those houses in the cul-de-sac seem to be the ones that are really having -- and the people that are paying the attorneys to do this, so it's a sad situation.

But, yes, so what I think I should do is the county has provided me with this information. I will circulate it to yourself, Mr. Yovanovich, as well as the HOA's counsel, and I'll lay out -- give you an opportunity, since you're aligned with the county, to add your -- to this, and then give the HOA's counsel time to respond to that, and with those two documents, I don't need reply briefs, because that can all be done at a hearing, you know. So it will be -- basically, if you're talking in briefing or appellate language, basically, this is the motion or the initial brief, and then we'll ask for an answer from the HOA counsel, and then we'll bring it to a hearing.

I can't -- I'd like to get it to the first one in January, but that's a very, very fast turnaround for HOA counsel to do. But let me get this -- I think the best way in the interest of due process is for me to get this out into an email to all parties involved here, which is yourself, county -- they're already involved, but -- and the HOA attorneys and get that so that I have that information on filed before we get this scheduled into a hearing. But we'll do it as quickly as possible.

In the meantime is there any, any movement at all for you-all to resolve this privately? None? Yeah, I'm just -- in other words, I'm just going to say that I strenuously wish that this could be resolved privately, because that would be -- this seems to be a lot to do about 500 square feet of sidewalk.

MR. YOVANOVICH: And I don't want to go beyond what's been on the agenda, but it has always been my client's desire to resolve this since I think we all agree it was an unsafe condition that needed to be remedy. It's a question of who the applicant should be. Thank you.

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

Anything else, Mr. Bosi?

MR. BOSI: Just from further consultation, we don't believe that this requires -- a rehearing would require advertising, so I think we have much more flexibility because that -- because if we would require advertising, it pushes us almost all the way out to February before this could be reheard.

HEARING EXAMINER DICKMAN: Okay. All right. If that's how you want to do it.

MR. BOSI: Yeah.

HEARING EXAMINER DICKMAN: Okay. All right. Yeah, I think that's the way we'll do it. I'll get an email out with a copy of this to the other parties, and we'll go from there, okay.

Anything else?

MR. BOSI: Nothing else other than have a Merry Christmas.

HEARING EXAMINER DICKMAN: Yeah. Everybody get a nice hot cup of cocoa, get your fire going. It's going to get cold in Naples.

Have a Merry Christmas, everybody, Happy Holidays, and thank you very much, and have a -- see you guys next year, I guess. Take care.

We're adjourned.

MR. BELLOWS: Merry Christmas.


December 22, 2022

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:35 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 1/20/23, 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.