

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
February 9, 2023

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

HEARING EXAMINER ANDREW DICKMAN (via Zoom)

ALSO PRESENT:

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

PROCEEDINGS

HEARING EXAMINER DICKMAN: Thank you. Good morning, everybody. Can you hear me okay?

MR. YOUNGBLOOD: Yes, sir, loud and clear.

HEARING EXAMINER DICKMAN: Okay. Great.

It is -- by my watch it's 9:00 exactly, so I'm going to call the Collier County HEX regular meeting of February 9th, 2023, to order.

Why don't we start with the Pledge of Allegiance, please. Please stand.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Thank you.

So I'm looking at the agenda. We have -- under 3 we have one, two, three, four, five and under -- let's see, one, two, three, four, five, six, actually quite a few, and another one under A. Are there any proposed changes to the agenda at all?

MR. BELLOWS: Yes. For the record, Ray Bellows. We do have a request for the applicant on 3E to be moved up due to an appointment. She's here to explain the reason she needs to adjust the agenda.

HEARING EXAMINER DICKMAN: Okay. Come forward and explain that. That's the Immokalee -- an Immokalee item.

MS. BALDRICH: Hi.

MR. BELLOWS: Yes, it is.

HEARING EXAMINER DICKMAN: Good morning.

MS. BALDRICH: Good morning. My name is Diana Baldrich, and I'm just asking to see if we could move it forward. I have a doctor's appointment about 12:45 in Immokalee. So I just wanted to request to see if they could get it moved forward.

HEARING EXAMINER DICKMAN: Okay. Is there any objection to moving -- why don't we -- it is a -- nonconforming use alternative. So is there any objection from the county or anybody for moving this to the top of the agenda?

MR. FREY: I have an objection. I also have an appointment. We were scheduled first.

MR. BELLOWS: Mr. Patrick White will explain his objection.

MR. WHITE: Good morning, Mr. Dickman. Thank you.

I believe it depends upon the length of time you anticipate and the petitioner anticipates the actual item may take on the agenda. We have a substantial number of neighbors here, plus I have some remarks of my own that I believe -- we may be, roughly, about an hour or so for our total matter. I don't know if that's going to prejudice the young lady in making her appointment or not, but we would only object if it's going to be something that's going to delay the proceedings substantially.

HEARING EXAMINER DICKMAN: And your item -- which item are you?

MR. WHITE: We are the Seabee boat dock extension. I believe it's 3A.

HEARING EXAMINER DICKMAN: You're 3A. This was continued. I remember this one.

Okay. Your objection's noted. I'm going to go ahead and take Item 3E first. If the county's prepared to do that, I would like to go ahead and do that. But first, before we do that -- so we'll put 3E first, and then we'll go in order, A, B, C, D, E and then going to Item 4A. So we'll do that one first, and that will get you -- I know it's a bit of a trek to Immokalee, so I don't want you to be late for your doctor appointment.

MS. BALDRICH: Thank you.

HEARING EXAMINER DICKMAN: So if you'd just give me a minute and let me go through a few preliminary items real quick.

MS. BALDRICH: Okay. Thank you.

HEARING EXAMINER DICKMAN: All right, great.

So, again, my name is Andrew Dickman. I have been contracted by the Board of County Commissioners to be the Hearing Examiner for Collier County to hear petitions that fall under that code section. I do not work for the county. I do not report to county administration. I have been a Florida Bar attorney in good standing for over 20 years.

My job today is to, basically, conduct a quasi-judicial hearing and apply the rules of fundamental fairness, and I will ensure that due process is afforded to everyone. I will not be making decisions today under the code. I have 30 days to have -- to make decisions.

My job is to take in the testimony, hear all the evidence, take in the evidence and hear the testimony. I would ask everyone who's going to speak today at one or other of the podiums to try to address their remarks to the criteria that is applicable to each petition. While this is a quasi-judicial hearing, the rules of evidence -- the strict rules of evidence do not apply but, again, I will be affording fundamental fairness and due process to everyone.

There is a court reporter, I believe. I don't see her, but I imagine that she is there. The county has a court reporter contracted, so it's very important that everybody speak clearly into the microphone. If for some reason there's -- she's not able to hear someone or someone's gesturing with their hands or nodding their heads yes or no, she'll have the ability to stop and ask you to please slow down or do something to that order. It's important to a verbatim record of these proceedings.

The way that I conduct these hearings is that I ask the county to introduce the petition briefly and their recommendation, along with any conditions, and then the applicant or the applicant's representative will come up and do their case in chief. Then I will open it up for public hearing. Once the public hearing has ended, I will allow for rebuttal -- some short rebuttal from the applicant or the applicant's representative, and then we'll move on from there. I may have some questions along the way.

This is a hybrid meeting as there's -- I can see that there are numerous people there live and in person, but there's also people that are participating via Zoom. The county has set that process up for anyone that doesn't feel comfortable being in a public room at this time.

If you have -- if you want to have a conversation with someone that's sitting next to you or so forth, I ask that you please step out into the hallway so you're not disrupting any -- (unintelligible), and then from there what we'll do is we'll just start going -- I will have -- again, once again, I'll have 30 days to render a decision, and that will be sent out from my paralegal's office.

I believe that's it. If anybody is going to speak today, we need to swear you in. If the court reporter will please swear in anybody who's going to give testimony today, please stand and raise your right hand.

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

HEARING EXAMINER DICKMAN: All right. Thank you, everyone. I appreciate it.

I see that we have a number of people in the audience, and I want to thank you for coming in.

***We're going to go ahead and get started with Item 3E. If the county could go ahead and get started with that.

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

This is going to be Item 3E. It's a nonconforming use alteration, NUA-PL20220004583. It's a request that you approve an NUA pursuant to LDC Section 9.03.03.B.4 to allow the replacement of an old 19.5-foot by 20.55-foot wood carport with a new aluminum car port of like size. Said carport is accessory to an existing nonconforming single-family dwelling.

The subject property is located at 326 Alachua Street in Immokalee, also known as Lot 40 through 42, Block 53, New Market Subdivision, in Section 3, Township 47 South, Range 29 East, Collier County, Florida.

It's located within a heavy commercial zoning district in the Immokalee Agribusiness Overlay Subdistrict, C-5/AOSD.

The subject property comprises 0.42 acres supporting an existing single-family dwelling. A property card obtained from the Property Appraiser's Office reveals the home was initially constructed in 1962 by authority of Building Permit No. 61-3557.

At the time of permitting, the property was within the Immokalee Commercial Light Industrial I-C-3 zoning district.

The zoning regulation at that time allowed residential uses by means of Euclidian or pyramid zoning.

The subject carport was identified in 1966 when a building addition was noted on the property card. The new carport will be of like size and will be constructed fully within required setbacks.

Public notice requirements were as per LDC Section 10.03.06.V.

Property owner notification letter was sent by the county January 6th, 2023, as was the newspaper run -- newspaper ad was run on that date. And the public hearing sign was initially posted by me on January 6th. It was revised by me with respect to the venue and time on January 18th and again revised for a new meeting date on January 26th, 2023.

This petition has been reviewed by staff based upon the review criteria contained within LDC Section 9.03.03.B.5, A through F, and has been found to be consistent with the Growth Management Plan and the Land Development Code.

As far as public comment, I received one call from the residential neighbor to the east, and upon explanation of the project, they have no comment.

It's staff's recommendation that you approve this petition as described in accordance with the proposed plans contained within Attachment A for which I have provided a revision to the site plan. You should have received that by email. A copy has been provided to the court reporter.

HEARING EXAMINER DICKMAN: I have that.

MR. KELLY: Okay. And with that, staff offers the following conditions for approval: One is that the scope of the NUA is limited to the replacement of the carport and, two, that the building permit is required for demolition and construction of the carport. That's -- that concludes staff's analysis here. And if the -- if Diana Baldrich would come up.

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

MS. BALDRICH: Good morning. Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MS. BALDRICH: I'm here representing my client, Fernando Ochoa, for 326 Alachua Street.

I actually have spoken to him. I've been out to my property -- to the property myself. Basically, what he -- there's no changes -- no changing on the zoning. All he wants to do is just replace the existing carport that's there due -- because of his grandkids. They actually go constantly to the house, and it's kind of -- the carport that's there, it's really falling apart. So he is scared that, you know, the kids are playing, it might come down on them. So all he's just requesting is for it to be just replaced. All he wants to do is just put a new one.

HEARING EXAMINER DICKMAN: Okay. I understand. Could you please explain to me your capacity as -- you said you were representing the owner.

MS. BALDRICH: Yeah, I'm a permit runner. I'm doing his permit so he -- you know, yeah, I am the one that actually applied for the permit for him.

HEARING EXAMINER DICKMAN: Okay. So you've heard the conditions that the county have -- have requested. Is your client in agreement with that?

MS. BALDRICH: I believe he is, yes.

HEARING EXAMINER DICKMAN: Yes or no?

MS. BALDRICH: Yes.

HEARING EXAMINER DICKMAN: You said "I believe."

MS. BALDRICH: Yes.

HEARING EXAMINER DICKMAN: Okay. So you're basically having to affirm that you've got full authority to accept those conditions?

MS. BALDRICH: Correct.

HEARING EXAMINER DICKMAN: All right. So has anyone signed up to speak on this item from the public?

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

HEARING EXAMINER DICKMAN: Okay, great.

Is there anything else you would like to put in the record? This seems pretty straightforward, replacing an older -- very old carport with a newer carport. It seems like it's an improvement to the property and also a safer improvement to add.

Does the county or the applicant's representative have anything else they want to add before I close this?

MR. KELLY: No, sir. Thank you.

HEARING EXAMINER DICKMAN: Okay. Ma'am, anything else?

MS. BALDRICH: No, that's it. Thank you.

HEARING EXAMINER DICKMAN: Okay. Then I'm going to close this, and I'll get a decision out within 30 days, and I hope you make your doctor's appointment in Immokalee.

MS. BALDRICH: Thank you.

HEARING EXAMINER DICKMAN: All right, great. That was pretty painless.

***All right. So let's go back up to the top of the agenda. This is going to be 3A. I think it's 415 Seabee Avenue. And if I recall right, this last ended with, basically, both property owners on the adjoining lots having an attorney at the last minute and asking for a continuance, and we continued it. So I think that's my -- that's my recollection from a few

months ago.

So, John, do you want to take this one?

MR. KELLY: Certainly. This is going to be your Agenda Item 3A. It's BDE-PL20210002320. This project was previously heard and deferred to this meeting on October 13, 2022. The petitioner continues to request approval of a 12-foot boat dock extension from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow an L-shaped boat docking facility protruding a total of 32 feet into a waterway that is 213 plus-or-minus feet wide pursuant to Land Development Code Section 5.03.06.E.1.

The subject property is located at 415 Seabee Avenue, also known as Lot 19, Block Q, Conners Vanderbilt Beach Estates, Unit No. 2, in Section 29, Township 48 South, Range 25 East, Collier County, Florida, which is within a Residential Single-Family 3, RSF-3, zoning district.

The project was deferred to allow the applicant's agent to meet with neighboring property owners to decrease concerns. The applicant has since modified their plans as stated within the supplemental staff report.

Public notice requirements were as per Land Development Code Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the county on September 23, 2022. Public hearing sign was posted by me on October 3, 2022, the first date available post Hurricane Ian. The sign was subsequently revised for this meeting on January 18th of 2023.

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

With respect to public comment, a total of three letters of objection were received for the first hearing which are attached as Attachment D. Five additional letters were received prior to this meeting and are attached as Attachment H. Yet another letter was received yesterday and is being introduced as Attachment I. A copy should have been provided to you via email yesterday, and a copy has been provided to the court reporter as well as opposing counsel.

Staff's recommendation is that you approve this petition in accordance with the proposed dock plan provided within Attachment F. And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Okay. Thank you, John.

While the applicant's representative comes up to the podium, I just want to make it clear here that the parties in these petitions is the petitioner and the county. While there -- the public may be affected greater or less, depending on how they're situated, I am not going to make a decision about who's -- who's got party status with regard to substantially affected.

Now, I understand that there is -- there was an attorney retained. I typically give some professional courtesy with additional time when they -- when an attorney has been retained, but that does not grant party status whatsoever, but I will allow for some additional time but definitely not an hour.

So let's get started with the petitioner's representative. How are you, sir?

MR. PEARSON: Good. Thank you. For the record, my name is Nick Pearson.

I am a project manager with Turrell, Hall & Associates. We're a marine and environmental engineering company.

And we do have a PowerPoint.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: Mr. Dickman, are you able to see the PowerPoint?

HEARING EXAMINER DICKMAN: Yes, I see it very clearly, and I also have all the materials in the agenda packet as well.

MR. PEARSON: Okay. Some of this information is the same. Some of it is new, so I do want to rehash kind of some of the background details.

HEARING EXAMINER DICKMAN: Absolutely, go ahead.

MR. PEARSON: As you can see here, this is the project site. It's off Seabee Avenue off the north side. It's in one of the larger canals throughout Vanderbilt Lagoon. If you could go to the next slide.

Again, here are some of my credentials. Mr. Dickman, I think you've seen these before a few times, so I'm not going to harp on this.

If we could go to the next slide.

This is the project site currently. On the bottom left, this was the aerial we used in many of our petition exhibits. The top left shows more kind of what's going on on the site right now. There is a house under construction. The lot is a rectangular shape 80 by 120 feet with 80 feet of linear seawall on the shoreline.

Next slide.

So, again, this is what the site looks like currently. The top photo is looking straight across at the opposite side of the canal, and then the two lower photos would be, basically, looking at the neighboring lots respectively. So the left photo would be facing to the west. The right photo would be facing to the east.

As you can see, every -- really, almost every property on this -- in this area has a boat dock. Many of them have canopies. Many of them have boathouses. You can see canopies in both of the photos on the lower half of this slide.

Next slide, please.

This was the design that we had originally proposed. This is what you had seen at the last hearing. As you can see, it was a floating dock, 505 square feet, total protrusion of 32 feet, essentially, with the intent of the applicant being able to moor two of their vessels at their dock facility. And that would -- this design would have provided setbacks of 30 feet on both sides.

Next slide, please.

After the last hearing, as was mentioned, there was a continuance. We had come up with a couple of alternative designs that we thought attempted to address some of the more pertinent concerns by the neighbors, namely being navigability. I think -- personally, I think that was the biggest one. So the top photo we had chopped off approximately six feet off the end of the dock, leaving 36 feet backing distance for the western neighbor. The east neighbor, 30 feet seemed ample, so we did not change the setback on that side.

There was also a concern about the boatlift that we had proposed before. It was previously an elevator lift. We had -- we had increased our protrusion slightly just to accommodate a normal lift, and that was at, you know, the response of commentary that we got at the last hearing.

The bottom design, personally, I feel this is a more functional design. It,

essentially, eliminates any issue of navigability backing toward neighboring docks. Obviously, this is a greater deviation from the code, so that would have been a bigger ask from the county.

Next slide, please.

We did meet with -- or I suppose we communicated with the objector's attorney, Pat White. We did not get into suggestions on changes that could be made to either of those previous two designs. So we actually came up with this design on our own. This is -- we switched from a floating dock to a fixed dock that allowed us to bring the decking protrusion in a few feet, three feet specifically. So the decking protrusion is now 17 feet. Total protrusion at 32 would remain the same as our original design. We also removed seven feet from the west side of the finger pier. That means there's approximately 37 feet between the neighboring western dock and the end of our proposed dock.

Next slide, please.

After we had resubmitted our petition, the neighbors did come to us again, and I did meet with them in person. This was the suggestion that I had. Basically, it was just to remove the lift that we were proposing. I ran this by our client. This did not meet the needs that they were -- of their purpose, basically, which was to have a boat on a lift. So this design was also not agreed upon.

Next slide, please.

This is really just an exhibit to kind of observe navigability at this location. I don't personally feel that there is an issue of navigability here. The lift on this neighbor's western side has two jet skis. That shouldn't really be any issue navigating in and out of that lift, and I don't see this as an issue on our end either. They should be easily able to pull into the outside lift as well.

Next slide, please.

Sort of the same thing here. I just want to show kind of the basic navigability of the neighbor, how this dock would interact with -- with the design that I'm aware that she was proposing at her property. Personally, I think there are many more, sort of, I guess egregious encroachments throughout the Vanderbilt Lagoon, if you could call it an encroachment. And I actually have a couple slides after this that kind of depict some other examples around the area.

If you could go to the next slide, please.

So, again, I don't think this is really going to be an issue of navigation for anyone. The canal here is over 200 feet wide. The other canals in the area of Vanderbilt Lagoon are, essentially, 100 feet total. So even between both structures here, we still have more room than all of the other canals have in total. So it's more than twice as much room here.

Next slide, please.

And this was the slide I mentioned just a moment ago. This kind of shows a couple of examples of properties where the neighboring boat is actually greater in length than the backing distance provided. I don't -- I don't want to say this is ideal. I don't recommend this, but it's inherent in this area. It's just the nature of these shore parallel docking facilities being constructed in these linear canals and roadways.

Next slide, please.

So one of the other things that I heard was a complaint, essentially, that -- regarding having multiple vessels. That photo on the left shows -- it's a depiction of, basically, properties that have multiple vessels. It's nothing new. So there's plenty of other

properties around that have multiple vessels docked behind their houses.

And the image on the right is just a screen shot from the zoning page. It's a little bit difficult to see but, basically, all of those little red marks on the properties are deviations that have been granted here in the past. So that would be 39 BDEs and 18 variances, and that does not include grandfathered structures. So there's probably actually more than that that deviate from the code.

Next slide, please.

This is a slide you've seen before. Essentially, it's just the criteria. I don't want to run through all of these, but there are a couple that I think are important. Namely, the fifth criteria in the primary, which refers to interference with neighboring docks. I feel that we've addressed this, so I don't really think that there's much subjectivity here to speak about.

And then the other one, which I think was in question, is the fourth one down on the secondary relating to the impacts to views.

I am here, actually, with the applicant's attorney as well. I would like him to speak about some of the riparian views as opposed to me, and that is actually the end of my slide show.

HEARING EXAMINER DICKMAN: Okay. I have a question for you before you back away.

MR. PEARSON: Sure.

HEARING EXAMINER DICKMAN: Can you give me the boat model, make and models, please, for both boats.

MR. PEARSON: The smaller boat is a -- it's a 28-foot. With the engines, it would be 31 length overall Grady-White, and the larger boat would be -- it's my understanding it's a Yellowfin.

HEARING EXAMINER DICKMAN: Okay. Now -- so you've shown me several different, quote-unquote, alternatives. The problem with that is I need to know which one you're going with, because the staff has to review the criteria, primary and secondary, based on a proposal. And so when you come in here -- and I appreciate the demonstration of different scenarios to address different issues, but I want to make sure that we're all focused on the correct -- or at least the one that you're proposing. Is it still the one that you originally proposed?

MR. PEARSON: So the design that we want that we're pursuing is the fixed dock configuration. It was the only design that we proposed that was fixed. And if you want to go back to it, we can do that.

HEARING EXAMINER DICKMAN: Well, I just want to make sure that's the one -- I want to get on the record that that's the one the county evaluated and gave their recommendation on.

MR. PEARSON: Yes, I can confirm that.

HEARING EXAMINER DICKMAN: Well, let's have the county confirm that, please.

MR. KELLY: Mr. Dickman, the plan that was reviewed the second time is provided to you as Attachment F. It's the revised boat dock plans.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Now, one of the things I did notice is the -- so what's pretty obvious here is that you're running up against problems with when you try to satisfy one criteria, it interferes

with another criteria, and the problem is that usually -- and while I appreciate you showing us the map of other homes -- single-family homes with two boats, typically, what I see is a large boat and then a smaller boat. But here you've got two boats that are in excess of 30 feet.

And one of the things that caught my eye is that the area where you enter the dock or you get onto the dock seems to be very large, and the exterior lift could possibly accommodate a much larger boat, you know, in the future.

So I'm questioning whether or not that platform area with the gangway and all that needs to be that large. In other words, the exterior boatlift would -- would be moved west more parallel with the interior boat so that you wouldn't have to have as much decking, and then it would ensure that the sized boat that is being proposed -- because all of this is driven by the, quote-unquote -- you know, the need for an existing boat would be in place. So I'm questioning that amount of decking as you go onto the boat -- as you go onto the dock.

MR. PEARSON: Well, the one thing I can say is that this size of dock is actually smaller now than any of the neighboring docks, just strictly the decking alone.

HEARING EXAMINER DICKMAN: But keep in mind -- but wait, let me just stop you right there. Again, you know -- you know, it's always nice for you to show, like, all these pins all over the neighborhood, but you're asking for a variance. And under the law, variances I deal with case by case. There's no precedent. There's no nothing. You can't -- you're not going to show me all these other, you know, BDEs and things like that and say, well, just because these were approved, now you've got to approve these. I'm not handcuffed like that.

I'm dealing with case-by-case. These are not precedent. I have to review each one on its own merits. So I don't want to talk about what other docks are doing here. I'm looking at the overall criteria which involves not only navigability but it involves views from the neighboring properties, it also involves a mathematical equation of the total vessel lengths, so if you add both vessels together and their length as a mathematical equation to the shoreline.

So there's all these different factors, and this primary and secondary criteria was put in place for a reason, in order to not only -- you know I get it. Like, the canal is -- this particular canal is wider than some of the other canals. So, okay, you may get past that criteria, but still there remains this issue of, you know, are you requesting more decking than necessary? I have to look at the fact that whether or not, oh, okay, well, maybe there's going to end up being a much larger vessel on the exterior of this dock.

Frankly, I don't remember, you know, in my few years as Hearing Examiner, someone coming in for a single-family home asking for two vessels that are in excess of 30 feet. Usually it's one that's, you know, a larger vessel and then another one that's a smaller vessel, so...

MR. PEARSON: I understand. And I certainly don't mean to, you know, make any kind of argument that -- I guess I'm just trying to show, essentially, that there -- that this isn't necessarily a new thing. Obviously, that is -- that's a constant concern that comes up in the objections, so...

HEARING EXAMINER DICKMAN: Well -- okay, no. And don't take my comments personally, please, because I've seen --

MR. PEARSON: I'm not.

HEARING EXAMINER DICKMAN: -- you've come before me before. You're

very professional. I recognize you as an expert. I have no -- I get it, you guys do your work. But, again, you know, I'm looking at the diagram where you're showing the boat -- the fish boxes and the kayaks -- and the kayak and things like that, and then I'm wondering, why couldn't you move the exterior boat more west and just have a -- strictly an L-shaped dock with less decking so that, you know, a --

MR. PEARSON: Well, the reason for that is, essentially, the backing distance being provided to the west neighbor. We can't move that boat any further away, so we can't, essentially, give her any more room at this point.

If you look, the motors on that outside boat are right up against the east side setback. So that was really the reasoning for it being placed right there is to provide as much distance as possible to the other neighbor.

HEARING EXAMINER DICKMAN: Which neighbor?

MR. PEARSON: To the west neighbor. It would be --

HEARING EXAMINER DICKMAN: To the bow -- I'm talking about the exterior boat, the one, you know, that's, you know, the outside. Not the -- I mean, the --

MR. PEARSON: Right.

HEARING EXAMINER DICKMAN: -- one with the three -- the triple engines. I don't know if they're 300s, 400s, I don't know. But I was just wondering why you wouldn't move that boat more west so that the bow is in line with the end of the dock.

MR. PEARSON: Right. The issue -- the issue, as I said, is basically that one of the complaints we received was that we were blocking the ingress/egress path of the west neighbor, so...

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

MR. PEARSON: I personally don't -- okay. I'll leave it at that.

HEARING EXAMINER DICKMAN: No. I understand. I get your point.

And so in your opinion on the vessel that's hugging the seawall, the ingress/egress on that one, that seems to be pretty tight. In your professional opinion, is that a safe arrangement for that particular vessel?

MR. PEARSON: This is the arrangement that's commonplace in this area. So I do -- I mentioned earlier that I personally don't feel this is the best arrangement for -- I mean, just in general, but this is -- this is used everywhere in the lagoon.

HEARING EXAMINER DICKMAN: Yeah. No. I think your -- I think your proposal for the best was best for navigability and safety, which was pulling straight in, but that required a much greater protrusion, almost a significant amount of protrusion, right, if I recall right?

MR. PEARSON: Yes. It was quite a bit further.

HEARING EXAMINER DICKMAN: Yeah. So we're not going -- that's not what's before me right now, so we're looking at this particular --

So why don't we -- if you're done with your case in chief right now -- obviously, I'm going to give you some time for rebuttal, but I want to go ahead and go to the public and hear from them, and then we'll get back to you. Unless you have something else you want to wrap up or conclude.

MR. PEARSON: Well, the applicant's attorney is here. I think he did want to speak.

HEARING EXAMINER DICKMAN: Oh, he's going to speak. He's definitely going to speak, I imagine.

MR. PEARSON: Okay. Well, I mean, our applicant, my client.

HEARING EXAMINER DICKMAN: Oh, you have an attorney.

MR. PEARSON: My client has an attorney also.

HEARING EXAMINER DICKMAN: Okay. Well, let's have your client's come up. Like, do your whole case in chief with your attorney, your client's attorney.

MR. WHITE: Mr. Hearing Examiner, Patrick White. Point of order.

HEARING EXAMINER DICKMAN: Yeah.

MR. WHITE: Because it's quasi-judicial and I may have a question of a witness, do you want to do that now? Do you want to wait until their end of case in chief?

HEARING EXAMINER DICKMAN: Let's wait till they finish, wrap everything that they're going to present.

MR. WHITE: Very good, sir.

HEARING EXAMINER DICKMAN: Go ahead. And --

MR. WHITE: Just to clarify, my comment about an hour was with regards to the totality of the proceedings. I'm certainly not expecting to bore you to death.

HEARING EXAMINER DICKMAN: I didn't think so.

All right. Let's go. Who else have you got?

MR. THORNTON: Good morning, Mr. Hearing Examiner. My name is Chris Thornton with Thornton Law Firm at 100 Aviation Drive South in Naples, and I'm representing Max and Phyllis Maffei, the applicants.

I wanted to just summarize a couple points and make some legal arguments for the record.

HEARING EXAMINER DICKMAN: Okay. Sure.

MR. THORNTON: On one point on what the criteria and standards are, you mentioned the word "variance." I don't think we're operating under our LDC's variance criteria. The boat dock extension, in my reading, works more like a conditional-use type of standard, where in a variance it says, you have to establish that you can't use the property without getting a variance. For a conditional use, and similarly to the way these criteria read for a boat dock extension, what the code says is that if you want to do this, you have to meet these criteria. And actually it has a set of primary and a set of secondary.

And if you -- if you meet those, then it should be granted. It's not quite as heavy of a burden as a variance, I believe. And maybe you disagree with me on that, but I wanted to point that out. I think it's not -- it's not really a variance, because LDC has standards for a variance, and the LDC has a different set of standards for a boat dock extension which operates much more like a conditional use, by my reading.

I want to point out that you've -- I think you've recognized Mr. Pearson as an expert either today -- and I'd like you to do that for the record today.

HEARING EXAMINER DICKMAN: Yes. Yes, I've seen him many times. He's an expert.

MR. THORNTON: So at this point so far in the hearing we have testimony from your staff and from the applicants --

HEARING EXAMINER DICKMAN: Wait, wait, wait, wait. I don't have any staff here. The county is an independent --

MR. THORNTON: Right.

HEARING EXAMINER DICKMAN: -- so I'm an independent Hearing Examiner here. I just want to make that clear to everybody. I know people get that confused. But

the county is on its own here.

MR. THORNTON: Right. The testimony from the county staff and from the applicant's expert is that the application meets sufficient numbers of the primary criteria and sufficient numbers of the secondary criteria to be approved as a boat dock extension in accordance with the Land Development Code.

I think it was you have to meet, I forget, four out of five of the first ones and four out of six of the second ones. So, anyway, the petitioner respectfully requests that you do approve.

With respect to -- you were asking about why can't we move the boat further west. I think Nick explained that, that the whole point of shoving it further east was because the east guy isn't the guy with the access issues. It's the west guy with the access issues, so we're trying to accommodate the west neighbor's access.

I do want to point out on one -- one of the criteria is view. The two -- the two main criteria that seem to be at issue are view and navigation. I don't think there's any issue with the navigation as far as this canal. It's an extremely wide canal; that's not the issue. It's the issue of the neighbors backing out.

So I'll talk about view first. On the view, we're not asking for any canopies. We're not asking for any boathouses, and those are common in this area. The neighbor to the east has a canopy. I was there yesterday and I saw it. If the neighbors are concerned about view, they could get their own boats off of lifts and they could not have canopies and boat covers.

The view is one of the criteria in the Land Development Code that you're supposed to consider, but it's -- there is no common-law right to a view. I mean, the case law -- the *Fontainebleau* case says that there's no common-law right to a view.

There are statutes that say riparian owners, for example, our neighbors each have the legal right in Florida to have the view of their own riparian area. So that's what they have the right to, the view to their own riparian area. They don't have the right to a view across my property or my riparian area because that's where I have the right to build my improvements.

HEARING EXAMINER DICKMAN: Mr. Thornton, can I just interrupt you for a second.

MR. THORNTON: Yes, sir.

HEARING EXAMINER DICKMAN: It's been a little while since I've read the *Fontainebleau* case, and if anybody's not familiar with that, that's a Miami Beach case where the famous Eden Roc and Fontainebleau Resorts went to war against each other because the Fontainebleau, I believe, or the Eden Roc, one or the other, built a giant wall against the other one. But I believe in that case -- and you can go back and check it -- I believe in that case the caveat was that if the local government actually adopts something that addresses view, then that's different than common-law right to a view.

So you may want to go back and look at that case, but my recollection is that if a local government does, in fact, adopt some kind of criteria that addresses view, then, in fact, it can -- it can be enforced. But on its own that -- if there was -- if it was silent, if the code was silent on view, then I think the Court ruled that there was no black-letter, common-law right to a view.

So, you know, what you're suggesting -- and this has come up once before -- is that, you know -- you know, the view that, you know, any single-family homeowner on a

waterfront lot only has a right to what's directly in front of, them, doesn't really make sense if the county makes it a criteria saying that you don't want to have -- grant what I would say is a deviation.

And you make an interesting argument about this is not a variance; this is more of a conditional use or special exception, but -- and we'll get to that later. But I think that because the county adopted a criteria that addresses view and recognizes the view as an important element in approving these, I think that that is addressed in the *Fontainebleau* case maybe in a footnote or something to that effect. But I would go back and check that at your leisure.

MR. THORNTON: Thank you. Thank you for that.

I do agree with you that the *Fontainebleau* case -- and that was my point was that there's no common-law right to a view over your neighbor's property. There are two exceptions to that that I'm aware of. One is, if a local government has a code that protects a view, then that would be a local government code that apply. That's our case.

The other example is if you sign a contract to give up your view with the guy -- with your neighbor, like in an HOA declaration, or if you just sign a private contract that gives an easement for a view, that's another exception. So -- and we do have the first exception. We have a criteria in our Land Development Code. The criteria that we're looking at today is one set of primary criteria of which the staff and our expert have testified we've satisfied. We have a second set of secondary criteria of which one of those six secondary criteria is view.

The actual language says, whether the proposed facility would have a major impact on a waterfront view. So the testimony you have so far says that there's not going to be a major impact on the waterfront view, and it's also one of only -- one of six of the secondary criteria.

So, basically, that's all. You have --

HEARING EXAMINER DICKMAN: No, you make a good point, a good legal point.

MR. THORNTON: Okay. I also want to point out that the applicant came here -- I forget how long ago it was. I wasn't engaged at that point. But the applicant has made significant efforts to try to accommodate and appease the objecting neighbors. They've presented alternative plans, which were not accepted. To get where we are today, they have made major concessions by shortening the western end of the dock to accommodate the access for the neighbor to the west. We have pulled the dock in by three feet. We made the dock fixed instead of floating, which allowed it to be a little bit smaller.

So the applicant is doing what it can to accommodate. And Mr. Maffei apologies. He was supposed to be here today, but he had an emergency on a job site.

So we respectfully request that you approve the application since the staff and our expert testify that it meets the criteria for approval, and I would like to reserve the right to examine any other witnesses and do rebuttal.

And Mr. White is certainly welcome to do his cross-examination of Mr. Pearson.

HEARING EXAMINER DICKMAN: Well, okay. So I appreciate you laying out the rules, but I'm going to do that myself.

MR. THORNTON: Thank you.

HEARING EXAMINER DICKMAN: Again, you know, this is quasi-judicial, but also the -- I try to keep this as informal as possible with everybody getting their

opportunities.

I do want -- well, if you're done, I want to ask the county a quick question.

MR. THORNTON: Yes, sir, I'm done. Thank you.

HEARING EXAMINER DICKMAN: Okay. So this is going to be addressed to the county real quickly. There was an interesting argument made that this is actually not a variance; that this is more akin to a conditional use. But from -- because of -- the black-letter law of variances deals with hardship, et cetera, et cetera, but the county has enacted this legislation dealing with how to approve boat dock extensions.

So what I want to get from the county is what their viewpoint is on this because, you know, the Land Development Code allows for, as of right, a certain amount of dock space, which is, I believe, 20 feet, and beyond that you have to come to a public hearing, and you're essentially asking for a deviation, in my opinion, from that 20 feet.

So I want to know what the county's position is on this, because they're saying if they meet the criteria, then we're obligated to -- you're obligated to approve that. Now, I'm not saying I agree with that argument, but it's an interesting argument.

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

I would say that the variance petitions have a unique set of criteria that has to be satisfied for the evaluation. A conditional use has a separate and unique set of criteria that has to be satisfied for the evaluation. And, regarding a boat dock extension, I believe they have their own set of criteria that is unique to that individual petition type.

And I would remind -- I would say that staff's position in terms of whether they've satisfied the criteria is a subjective determination, and the Hearing Examiner most certainly has the ability to arrive upon its own conclusions whether those were satisfied or not.

So I don't believe that there is an obligation, if staff, in their subjective determination, feels that the criteria has been satisfied, that you're obligated to find the same conclusions. So you have the freedom to make your own individual evaluations as an independent Hearing Examiner.

HEARING EXAMINER DICKMAN: So as of -- as of right -- am I correct, as of right someone can have a boat dock that goes out 20 feet; is that correct?

MR. BOSI: Per the code, correct.

HEARING EXAMINER DICKMAN: Per the code. And beyond 20 feet you have to file an application and show up here and do -- and, you know, demonstrate the competent substantial evidence with experts that you meet -- you know, you satisfy the criteria; is that correct?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: Right. So I guess my point about this was that I believe that while it's not a termed -- I'll have to go back and look at it, but it doesn't say "variance." It says "boat dock extension." But, in essence, it is a variance beyond what is as of right. And so, for me, I don't feel compelled that I have to look at what other things -- what other boat dock extensions were approved in the area and what's normal. There's no criteria for me in here that says I have to, like, survey the surrounding area and count how many were approved or denied and make that part of my criteria.

MR. BOSI: I would agree with that, and we always say, whether it be to the Board of County Commissioners, the Planning Commission, or the Hearing Examiner, that each individual petition brings its own set of facts and unique circumstances, so they are individual decisions that sit and act independently of each other.

HEARING EXAMINER DICKMAN: Okay. All right. Thank you very much. All right. So why don't we go to the public comment period.

How many -- let me just ask, Andrew, how many speakers do we have signed up for this?

MR. YOUNGBLOOD: Mr. Dickman, I have seven speakers in the room, and I have one online.

HEARING EXAMINER DICKMAN: Okay. So as far as -- can counsel for the neighbors come up, and -- I mean I want to make sure that you're able to tell me, you represent all of these people or just the neighboring people?

MR. WHITE: Again, Patrick White, for the record, Mr. Dickman. I represent the neighbors to both the east and west --

HEARING EXAMINER DICKMAN: And west, that's right.

MR. WHITE: -- of the Dunns and DeSotos, respectively.

HEARING EXAMINER DICKMAN: Okay. Let me get that real quick. Dunns and DeSoto.

MR. WHITE: However, in preparing for today's meeting, knowing that there are time limitations, what we have are a few people who I believe are appropriate, from the objectors' point of view, to provide their testimony. That would be Ms. DeSoto, Mr. Dunn --

HEARING EXAMINER DICKMAN: No, I agree.

MR. WHITE: -- and one of the more nearby neighbors, Michael Kravitz, who also has --

HEARING EXAMINER DICKMAN: So, Mr. White -- this is what I want to do, Mr. White, because I want to keep your group together. So I'll let you go first and then, obviously, if you have the Dunns and DeSotos that want to put testimony on the record, I do think it is appropriate at times for me to take layperson testimony as to facts that they know about. So I do recognize that.

And then at the same time, I know you wanted to examine the expert that the applicant had. One of the ways that I've found is -- that works is that if you were to raise those questions and put them out there, and then I'll write them down, and then also I'll make sure that the applicant's expert writes them down, and then when they come up for rebuttal, to make sure that they answer those questions.

MR. WHITE: Thank you.

My first question was fairly specific. It went to what you said perhaps has limited precedential value about the exhibit pertaining to the number of locations in the Vanderbilt Connors where there are two vessels. My question would be two-part. One would be whether Mr. Pearson knows how many of those may or may not have required boat dock extensions or were grandfathered or, similarly, if he knows what the lengths of those vessels may have been.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. WHITE: And my second question --

HEARING EXAMINER DICKMAN: What's your -- go ahead.

MR. WHITE: -- was with respect to the ownership of the vessels as to whether the dimension -- I don't believe we got that on the record about the Yellowfin, what its LOA is, and if --

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: Before I turn it over, my preference would be that Mr. Dunn, Ms. DeSoto, and Mr. Kravitz make their brief remarks. I see my testimony as bolstering their positions.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: And if that's okay with you --

HEARING EXAMINER DICKMAN: Yeah.

MR. WHITE: -- I would cede, but before I do, if you want me to talk to the point of law, you were asking staff's assistance in finding some distinctions between conditional uses and variances, I have some thoughts on that. And if now is better or later is --

HEARING EXAMINER DICKMAN: So here's what I would suggest, Mr. White, is that, you know, lawyers are kind of handcuffed. You can't provide any expert testimony or evidence. You can make all the legal arguments you want. So, you know, if you have some legal arguments and you want to address some of the legal issues that have been spoken to or you have some new legal arguments that you want to make, I would go ahead and do that now. And then you mentioned three individuals: The Dunns, DeSotos, and somebody else. And perhaps let them address, you know, the factual issues of what they see, because they're going to be, essentially, providing perhaps layperson testimony.

MR. WHITE: Well, I'd prefer to only touch upon, quote, the legal issue, if you will --

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: -- that you heard from Mr. Thornton about the distinction and comparison between a conditional use and a variance.

HEARING EXAMINER DICKMAN: Please.

MR. WHITE: And I'm speaking from a wealth of experience as a former land-use attorney for both Lee and Collier and, in that respect, I believe this is certainly more akin to a variance than a conditional use. This is, in a sense, a subset of the type of bulk variance, or deviations, as the Hearing Examiner put forward, where things like yard setbacks, lot coverage, building heights have some actual physical component that's being evaluated, and some qualitative aspect does apply. Certainly, that's the case in variances where self-created hardships are something that can work against a request. And I think that that is particularly important here because this isn't just a black-and-white determination of criteria met or not.

And if you look into the code itself, not only is it just those matters under 5.03.06 -- I'm sorry, yes, 5.03.06.H, you also have 5.03.6.A that says generally -- and it talks about docks and the like. And it says that they're to minimally impact navigation, use of the waterway, use of neighboring docks, habitat, and key here, I think, is view of the waterway by neighboring property owners. Minimally impacting.

The other end of that spectrum, if you will, is the secondary criterion that says, okay, not have a major impact. So there's some balancing that the Hearing Examiner's required to make here. And I think that it is a blend of factual as well as, to some extent, legal analysis on your part that because this is, in our opinion, an outlier type of case where you have two larger vessels, that there are other aspects -- I'll go into more detail later -- that go right to your very first set of remarks about the size of the vessels, and that's why the LOA of the Yellowfin, I think, is a critical aspect.

And at this point I would ask if it will be okay -- I'm not sure whether Ms. DeSoto wants to go first, but my preference would be her, the Dunns --

HEARING EXAMINER DICKMAN: Before you do that, I want to talk a little bit further about this idea about a variance, because, you know, I recognize your experience in land use. I've been working in land use in Florida my entire career.

So, you know, once upon a time, you know, they -- like you said, they came up with this idea of variances. It was, like, the typical variance where you might want to be encroaching into the side yard or the rear yard, and they would call that a variance, and then the case law came up with how -- you know, how a variance could be justified. And one of the big things was, okay, it can't be self-created, you know.

But as time went by and local land development codes evolved, the legislative bodies have recognized that there might be times when it is appropriate to have some kind of deviation or variances. So now -- and I'm going to -- I guess I'm just kind of, like, putting this out there because I want to know whether you agree with me or not that as the zoning codes and land development codes have evolved to where they are today, you know, there have been situations where local governments adopt minor deviations or major deviations that might be for, let's say, mechanical equipment for an air conditioning unit in the side yard, and they would come up with criteria that, yes, while the need was created by the applicant wanting that air conditioning unit, it made sense to have it in the side yard.

So I kind of see this as -- this particular legislation that the county has adopted with the primary and secondary criteria as a variety of that type of new variance, basically. It is a variance, in my opinion, but that's a big umbrella term for going beyond what you can have as of right.

But they're -- the legislation that was adopted into the ordinance gives guidance on how to evaluate this particular type of variance, and, you know, keeping it -- and I think some of the language is -- while it is driven by the need -- the applicant's need for a boat, wanting a boat, that the -- I think the idea is to try to make it as minimal as possible in terms of when you look at -- and also as safe as possible, because when you look at the criteria, it talks about navigability, view. So there's the part about safety, boat safety. There's a part about, you know, respecting the views and navigability of your neighbor so you're not having boat collisions, things of that nature.

So I see this as more of the trend towards amending the -- the black and white -- the black-letter law on variances like many, many local governments have done for specific situations, and this specific situation is boat docks.

Does that make sense?

MR. WHITE: It certainly does. And the sidenote is, when I was advising the boards of county commissioners, I was a bit taken aback by the way I've seen it done here in Collier, because my distilled version of that is that the law of variances is, if you go ahead and do something and come back later and ask for a variance, you're denied because you didn't ask. But if you go ahead and ask, it then is seen as a self-created hardship, and you're denied.

So, yes, we have evolved the code. And I think what you have here is similar to what the courts have done with the case law over time, which is to try to find a more objective, less subjective way of doing it, but it cannot be eliminated. That is where I think you agree, hopefully, that you have discretion.

And in the first of those primary criteria, I believe that is one of the areas where there's a high degree of discretion, and I think it has some relevance to what the circumstances are in, quote-unquote, the neighborhood, which to me is the Vanderbilt

Conners lagoon area. And in that regard, I have done, I think a, perhaps, more detailed and relevant analysis of those things, and that is part of where I want to spend some of my time helping the Hearing Examiner to understand the words in that first criteria that -- because this case is a bit of an outlier with two larger, longer vessels, why it is and what it is that makes it either appropriate or inappropriate, and whether or not, as the criteria states, it's typical or atypical. Obviously, I think you can figure our position is, it's not typical and it's inappropriate.

With that said, unless you have something else you'd ask of me at this time --

HEARING EXAMINER DICKMAN: No.

MR. WHITE: -- I would ask Ms. DeSoto, if she's on, to offer her remarks.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: Then if -- Mr. Dunn and then Mr. Kravitz. I understand --

HEARING EXAMINER DICKMAN: Yeah, and then --

MR. WHITE: Excuse me. I apologize. Mr. Kravitz has asked me if he could go first because he does have an appointment as well.

HEARING EXAMINER DICKMAN: Kravitz.

MR. WHITE: I'm sorry, was that Ken? I'm sorry, my confusion. Let's start with Ms. DeSoto, please, if we could.

HEARING EXAMINER DICKMAN: Okay. So are we -- are you expecting to come back up and speak again?

MR. WHITE: Certainly so.

HEARING EXAMINER DICKMAN: Why don't -- why don't we do this: Why don't we roll through all of the public speakers. You could start with your clients, and then we'll do all the public speakers, and then I'll give you a minute or two to kind of wrap up at the end, and then I'll have the applicant's representative come up and address the two questions that you have.

MR. WHITE: I understand your desire for expediency. The reason I've asked some of these individuals to be here today is simply because I'm hoping to have their time ceded to me.

HEARING EXAMINER DICKMAN: Oh, okay. How much time do you need, actually, like, totally, like to -- for your legal arguments?

MR. WHITE: I think --

HEARING EXAMINER DICKMAN: You personally.

MR. WHITE: -- I could get it in in under 30.

HEARING EXAMINER DICKMAN: Thirty minutes?

MR. WHITE: Yes, sir.

HEARING EXAMINER DICKMAN: No, no, no. I can't -- I mean, the applicant didn't even get that much so, I mean, what legal arguments -- what other legal arguments --

MR. WHITE: Let me say it this way: I'm happy to put my remarks, printed copy, into the record along with the attachments and exhibits we have, which I believe are of record at this point.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: And after the testimony of those three who I believe are most pertinent for your consideration, I want to have a conversation with some of the other neighbors about ceding time. My understanding was I'd probably get at least 10 minutes and --

HEARING EXAMINER DICKMAN: Yeah. So we don't really -- I don't -- I mean, I know at some public hearings people cede time. It's very hard to coordinate. I don't really -- I mean, I think you need to say what you have to say. I'm willing to be flexible with that, but I think 30 minutes is a big ask.

But if -- I'd like to hear from the public, because they're the ones that can offer up any layperson testimony as to the criteria. You can't, unfortunately, do that, although I'm sure you're very qualified. But as lawyers, you know, you can only make legal arguments.

MR. WHITE: You are the expert on the law, there's no question of that.

My helpful commentary was intended to strike a proper balance in the exercise of that discretion based upon those criterion that I feel have some of that inherent in them. And I don't know that in all of the cases I've reviewed previously, Hearing Examiner cases that is, that I've seen that that level of detail be required.

I think this case, as I said, is an outlier because of the magnitude and number of vessels, and that first and primary criterion is something that's really key here, I think, to your consideration, not just as --

(Simultaneous crosstalk.)

HEARING EXAMINER DICKMAN: Your clients are the Dunns and DeSotos, right?

MR. WHITE: Correct, sir.

HEARING EXAMINER DICKMAN: And who is Kravitz?

MR. WHITE: There are two gentlemen last name Kravitz. One of them is Michael. The other, as I understand, as of today, is Ken.

HEARING EXAMINER DICKMAN: Are they your clients? Are they your clients?

MR. WHITE: No, but I've had substantial dialogue with Mr. Kravitz, and I believe that he does have something to add with respect to his experiences both in this immediate area and as the owner of a large vessel with respect to operating it in this canal.

HEARING EXAMINER DICKMAN: Okay. So let's do this: I'm going to -- I would prefer that we just roll through the public comment, let the neighbors who are the ones that are going to have to be living there, let's go through the public comment, and then I'll give you, you know, let's call it, you know, 10 minutes to start with and see how far you get with that at the end -- after the public comment is finished -- with your legal argument. So let's go from there.

So who's up first?

MR. YOUNGBLOOD: Mr. Dickman, we're going to go online to Linda DeSoto. Ms. DeSoto, I see you're unmuted. Can you hear us okay?

MS. DeSOTO: I hear you fine. Thank you.

MR. YOUNGBLOOD: Okay. Mr. Dickman, can you hear Ms. DeSoto?

HEARING EXAMINER DICKMAN: Yes, I absolutely can, yes.

MS. DeSOTO: Hello, Mr. Hearing Examiner, Mr. Dickman, I appreciate my time here, and I'm going to keep it as brief as possible.

I purchased my home about three years ago. Mr. Kravitz is to the west of me. Mr. Dunn is to the east of me.

And my concerns are the ability to be able to park or, excuse me, dock my own boat successfully without harming other, you know, vessels and to be safe.

And Mr. Kravitz has, say, over approximately a million dollars invested in his dock

and his boat and his apparatus.

So this is of real importance to me as well as my own boat. And I've been informed by several or many of the people that the way that this has been structured has been difficult for me to park or, excuse me, dock the way it is.

My concerns are also that -- really, that this is excessive. I agree that there should be growth in the area and people -- and beauty and people should be allowed to improve their property, but the structure itself that they're building is to the maximum. The boats and the dock are to the maximum. Everything's excessive, in my opinion.

And none of the other neighbors or -- we're all trying to compromise and -- we're not compromised but, rather, you know, work together for a solution which we tried and want to do.

One of the things we said was that we -- we all got together many times to discuss it and said, if this boat could -- their larger boat -- because they have two huge boats, 32, and one of the drawings shows a 43-foot boat. No one else has that, but we did -- we were even willing to say, okay, if you could keep that boat in the water, it would help substantially the situation.

The views are affected. The vessel lengths are excessive, in my opinion. I know I just said that. The navigability, the safety. All of this is just not typical, and it just leads me to feel like this is going to create a domino effect, because if they're allowed to do this, then I may need to try to get, you know, a dock revision, too, and an extension so that, you know, I can dock appropriately. That affects Mr. Kravitz to my east, which I really don't want to do. He's very happy with the way he is.

And I'm not even sure that Mr. Maffei and Mrs. Maffei own these boats. They may propose them, but I know all of you have said, is there a need or a want for this, and I'm not exactly positively sure they do need this -- this boat dock configuration.

It just -- I guess in my opinion, in the end it's not typical, and it feels excessive. I understand that they want two boats, but this is two large excessive boats.

And thank you for my time. And I'm just concerned about when I bought this property, I didn't buy it to have a boat marina. I had it -- I bought -- I paid extra money for this beautiful waterway I could look at and experience, and I just worry now that if we start putting 40-foot boats everywhere, it's going to not feel that way anymore, and that's an important part of this area.

Thank you for --

HEARING EXAMINER DICKMAN: Okay. Ms. DeSoto, are you on the west side or east side of the petitioner?

MS. DeSOTO: West. I am to the west.

HEARING EXAMINER DICKMAN: Directly abutting on the west side?

MS. DeSOTO: Yes.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Who do we have next?

MR. YOUNGBLOOD: All right. Our next speaker, we're going to go in the room to Greg Dunn. Mr. Dunn followed by Sheri Dunn.

MR. DUNN: Can we let Ken go? He's got an appointment.

MR. WHITE: Mr. Hearing Examiner, I apologize. Mr. -- Ken's last name is Frey, and he's the one that has an appointment. And I have no objection if you would allow him to go before anyone else so he can get to his appointment.

HEARING EXAMINER DICKMAN: Okay. Fine.

MR. YOUNGBLOOD: Our next speaker is going to be Ken Frey.

MR. FREY: Mr. Dixon [sic], it's nice to see you, once again. I think this is the fourth time, and I want to thank you for the way you've handled your variances in the past. You've been very fair about them.

A couple things were said by the petitioners.

HEARING EXAMINER DICKMAN: Can you give me your name and address, please.

MR. FREY: Ken Frey, 404 Connors Avenue. I live directly across and one house to the west from the petitioner.

HEARING EXAMINER DICKMAN: Okay. So you're not on Seabee. You're on the other --

MR. FREY: I'm on Connors.

HEARING EXAMINER DICKMAN: -- side of the canal?

MR. FREY: Yes.

HEARING EXAMINER DICKMAN: Okay, great.

MR. FREY: Now, a couple things concerned me about what the petitioner said. It was asked what type of a boat they're going to buy. And that's really not important, because once the dock is built, you can put any kind of a boat you want on it. So it's not about what they think they're going to put on today. They could say they're going to buy a 32-foot boat, but it could be a 42-foot boat. In fact, it could be up to 50 feet with the 50-foot dock, 15-foot setbacks at each end, and 20-foot-out rule that we have today.

So I think we have to look at what's being built and what potential you have to put a boat on it.

Secondly, the petitioner said, well, listen, view's not really an issue. If you look to the left and look to the right, there are docks that stick out 20 feet with large boats and boat covers on them, and they block the view. So if they want better views, they can simply take their boat covers down. Well, these people have all fit into the same template that the entire canal has, and I don't think it's fair to ask that to be changed. What the petitioner's trying to do is stick a dock out 15 feet further than any existing dock and hang a boat that, theoretically, could be 15-foot wide and 40-foot long with motors hanging off the back on the end of it.

Those boats, typically, from the keel to the top of the T top would be 15-foot. If you raise that boat up four feet out of the water, and in their case their seawall's two feet higher than anybody else's in the neighborhood, which is legal but, nonetheless, there, you're going to raise the boat up four feet above the dock, you are creating a block that could be 50-foot long, 15-foot high above the dock, which will absolutely block any view to the properties adjoining it and to properties two, three houses down in either direction.

And I think in the past hearings that we've had, substantially inhibiting the view of other properties, not just the ones next door, but further down, are a key criterion for the conditions of denying a variance like this.

The other problem that we have is that when you put this -- if this variance got put through and we had a large boat sitting off the end, it's true that they nudged the boat to the east in order to provide a space for Linda to the west to allow a boat to go in. But that says nothing to what Gary might want to do down the future. Right now he's got a couple jet skis and doesn't own a large boat, but in the event that he wants to get a large boat, his

entrance and egress is significantly encroached by having that boat sit to the east.

And he has the right to enter from the west or the east if he decides to redesign his dock, but by putting this dock in that way, you're eliminating his ability to be able to enter from the west.

So what we're looking at by looking at this variance significantly restricts the option for neighbors on either side to do what they may want to down the road without spending hundreds of thousands of dollars, significantly inhibits the views that are going to take place from all the neighbors on those sides of the canal, and it also affects views even from my side. We bought because Conners is an exceptionally wide canal and because Conners does have something none of the other canals have, and paid a big premium for it.

So to have boats being pushed out 15 feet on each side, if this domino effect takes place, is going to impair what we have in the future. So I just hope you have some overview and insight into the potential of what happens as this domino effect takes place going forward.

And I'll yield to the rest of the neighbors at this point.

HEARING EXAMINER DICKMAN: Thank you, sir.

MR. FREY: Thank you.

MR. YOUNGBLOOD: Our next speaker's going to be Greg Dunn, followed by Sheri Dunn.

MR. DUNN: Mr. Dickman, where do I look at you?

MR. YOUNGBLOOD: Right up there is fine.

MR. DUNN: Straight ahead, okay.

Thanks for hearing us today. My name is Greg Dunn. I live at 427 Seabee Avenue with my wife. We are directly to the east of the property.

And, you know, I really wanted to focus a lot on view today. I know that -- you know, that -- well, in my opinion -- because we don't give enough weight to view when we start talking about the criteria, you know, if we look at our area or any area that -- you know, the homes are designed and built to optimize the view. Homes are marketed, you know, and highlighted, you know, for the million-dollar view. You can't walk into a home on Conners anywhere in there without the realtor, first thing, saying, well, there's the million-dollar view. You know, it's just -- it's how we are.

You know, I think 415 Seabee is a good example of that. They are building a beautiful house there right now. You know, if you look at the ground floor, you know, you can go from their -- you know, of the lanai, and the pool area overlooks the canal. You go up to the first floor, and they've got a beautiful master and a first floor of a lanai that overlooks the canal, and you go up to the next floor up, they've got a third and a fourth bedroom. That both have balconies that overlook the canal. And if you get tired of those views, you can go to the rooftop deck and have the view from up there.

Our house is a single-level home with a pool. You know, our view is from the pool deck and the dock, you know -- you know, we can go out there, we relax, we celebrate, we entertain, and, you know, we have a wonderful long canal view right now. If this boat dock extension is passed, we'll lose that view and, you know, in our opinion, it will diminish the value of the property.

We also talked about the boat docks. And I don't think I could say it any better than Mr. Frey said it. You know, if we decide to do something from the west side, we are absolutely, you know -- would be prohibited from doing that on a redesign on our dock

because we couldn't get a boat in from the west side if we decided to do something there. If in the future we decided to go for a boat dock extension ourselves and do the same thing that the petitioner's asking for, would we be denied because then he wouldn't be able to get his boat out if we had the same configuration?

It's just that, you know, the unintended consequences of approving one, you know, are -- you know, are great.

And as far as our attorney, Patrick White, you know, he's done a lot of work just looking at each one of the criteria to try and bring, you know -- or shed some light on the individual criteria on, you know, why or why they shouldn't be -- you know, why it shouldn't have passed, you know, on that criteria, so I'd encourage you to listen to Mr. White. You know, I was encouraged when I saw his report.

And I did -- did you want me to introduce those photos or --

MR. WHITE: Yes.

MR. DUNN: I did have some photos, Mr. Dickman, if -- and what I had done is -- I didn't even know how to do it, I'm not smart enough, so I got a commercial photographer. His name is Rob Bach. He's a commercial photographer in North Naples. Had him come over to the dock and just shoot some pictures and then superimpose a like-sized boat, you know, in the canal, which would be 30 feet away from the edge of my dock.

HEARING EXAMINER DICKMAN: Okay. If you could just provide those to the county or to the court reporter, I'll need to get copies of those.

MR. WHITE: Those are in the record...

HEARING EXAMINER DICKMAN: Oh, you have them. Good.

MR. DUNN: So this is -- this is the view that we have right now without a boat dock.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. DUNN: And this is off mine.

The next slide. This is -- that's 12 feet out off of my dock. That's what he -- that's what the petitioner is asking for his dock -- his dock would be that much further out. So that -- you know, that's -- it's the possible blocked area. The next one will be the superimposed. So this is a view not in the right order, but this would be with two boats of like size superimposed. So it's not real. It's one that the photographer put together for us.

The next one -- and I'm not sure what -- this is what we would have if he gets -- this is a normal boat dock in Conners. So this would be the boat dock with a -- and this is the boat that's just to the -- to the west of me. So this would -- if this extension gets denied, this will be my view, which we're very happy with. If it -- if it passes, the view will be -- go to the next one, if you've got one.

MR. YOUNGBLOOD: The speaker's at five minutes.

MR. DUNN: Okay. Would be that. So it's something that we will never get back if it passes. We encourage you to deny the petition.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MR. YOUNGBLOOD: Our next speaker's going to be Sheri Dunn, followed by Michael Kravitz.

MR. THORNTON: Mr. Dickman, am I allowed to cross-examine witnesses?

HEARING EXAMINER DICKMAN: If you -- if you have -- why don't you wait until rebuttal. And if you want to address something -- you know, I don't want to get into, like, a formal cross-examining of witnesses that are just public neighbors. But do you have

something -- if you have something specific. I mean, they're going to -- I imagine they're going to stay, but do you have something that you can bring up during your rebuttal?

MR. THORNTON: I had three specific questions for that witness, but I can wait for rebuttal, I guess.

HEARING EXAMINER DICKMAN: Okay. Thank you.
Okay. Who else do we have?

MR. YOUNGBLOOD: Sheri Dunn is our next speaker, followed by Michael Kravitz.

MS. DUNN: I was just giving my time to our attorney.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. YOUNGBLOOD: Michael Kravitz, followed by Tim -- is it Cranch?

MR. KRAVICH: My name's Michael Kravitz. I live at 395 Seabee Avenue, to the west. So adjacent is Linda DeSoto. I'm the next house.

For the record, I oppose any change in the rules; 20-foot dock, and that's it.

That said, at your request, you asked us to get together with the homeowner and see if something could be worked out where everyone would be in agreement. We did so. We invited the owner to be there in person. He was unavailable in person. He was unavailable to be on the phone, but he did have his representative meet with us.

What we suggested to them was three conditions to the plan. I believe the plan is F that they -- that was on screen earlier. And the three conditions that we proposed are: One, no cover; two, no outside pilings; three, no lift. So all they would have to do is put in sliders and put bottom paint on the boat, and he could have his boat that he wants and have full easy in and out navigation.

Again, I oppose anything more than 20 feet, but if you're going to approve it, put him in the water. That will make Mr. Dunn's view totally different. And I know from my own personal experience, you can put in a dock now, and if you apply for a cover at a later date, as long as it conforms, it's just a permit. That's why I added the request that that be part of the condition. Even though in their proposal they mention that they would not be putting a cover on, things can change in the future.

In my opinion, Greg is entitled to his view, as he stated.

There's a domino effect. If this gets approved, Linda will have to reconfigure her boat -- her dock or maybe somebody buys the boat -- the house from Linda five years from now and that person's a serious boater. If this was next door to me, my current boat in my current dock, I could not get it out. I would be stuck with a useless dock, and I would then have to appeal and spend \$200,000, and the domino effect would continue down our street.

You made mention to something about you've never seen a 31- and a 36-footer. I have an extensive background. I own a marina. At one point, I had a 24-foot Sportfish, I had a 43-foot power boat cruiser, and I also had a 52-foot, 30-ton offshore sloop, that being downtown at Naples Boat Club. You wouldn't normally have a 31 and a 36. They are too redundant. I've seen it done before where they're a father and a son, and the son had one and the father had the other. But as a personal matter, I wouldn't have two boats that are that similar, and I agree with your question.

That's it. Thank you very much.

MR. YOUNGBLOOD: Our next speaker is going to be Tim Cranch followed by Bill Gonnering.

MR. CRANCH: Tim Cranch here. We live at 383 Seabee Avenue, just a couple

doors down on same side of the street. My next-door neighbor is Michael Kravitz.

We purchased our home and waited for that opportunity specifically to be on the wider canal for two reasons: Maneuverability, but also the view. I can't imagine being next door to this proposal and having -- you know, like, again, as someone else mentioned, paid a premium to be on that specific canal and then have my view destroyed.

Piggybacking on what Michael Kravitz said, the domino effect. Should this kind of thing be approved and then the next-door neighbor, then Michael has to change, then I have to change.

So I'll keep it short. That's my point. Thank you very much.

HEARING EXAMINER DICKMAN: Thank you.

MR. YOUNGBLOOD: Bill Gonnering is going to be our final speaker for this item.

HEARING EXAMINER DICKMAN: Thank you.

MR. GONNERING: Good morning, Mr. Dickman, Mr. Kelly. This is probably the fourth or fifth time that I've been here.

And I know you've heard every objection that there possibly could be or all the different reasons, but one of the problems that I have -- number one, I want to say I'm for the 20-foot boat dock, and I want to make it on record that's what I'm for.

But with the hurricane, there's been a lot of people in that neighborhood that have been rebuilding their houses, myself one of them. I spent the last -- it's going to take me nine months before I get back into my house. So I don't have time. I mean, a lot of people in the neighborhood don't have time to set up an objection or come here, write a letter, or do anything else. They're just trying to move into their house and have a roof over their head. So I just want to tell both of you, there's a lot more objections out there, but people could not get to you.

Thank you.

HEARING EXAMINER DICKMAN: I understand. Okay.

MR. YOUNGBLOOD: That concludes our public speakers.

HEARING EXAMINER DICKMAN: Okay. So are we finished with --

Okay. Mr. White, if you could please try to keep your arguments as brief as possible, but I will give you a little bit of latitude, and then we'll go back to the applicant and the applicant's representatives.

MR. WHITE: I really appreciate that, Mr. Hearing Examiner.

Going to the first criterion, the keywords to me again are, is it appropriate? And the number should be appropriate in saying typical single-family. So I have created for you in what will be submitted to the record an Attachment A where it details all of the most similar prior boat docks extensions. And my analysis of those is that there is none where there are two larger vessels similar to this.

The only circumstances that come anywhere close are places where the waterway view -- the waterway distance, perpendicular to the lot line, the shoreline, is 750 feet.

So I think that this truly is, in a sense, a real outlier and worthy of a far more detailed analysis.

HEARING EXAMINER DICKMAN: But you do understand that you cannot provide -- I mean, you can. You can try. But you're an attorney, so I don't know that I can rely on competent substantial evidence from an attorney doing an analysis of boat docks.

MR. WHITE: They're factual. They're all in the public record.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITE: And you can certainly take judicial notice of any and all of it.

HEARING EXAMINER DICKMAN: Right. But once again, I did -- I'm looking at the merits of this case. I'm not looking at -- and I've told both parties and all parties that I'm looking at the merits of this particular case.

MR. WHITE: Understood. I think you probably heard enough from me about the number not being appropriate as to location, as to what's typical in the neighborhood, and as to the length of the water line.

You had made mention earlier about the length of the vessels combined, the LOAs combined. This one's 27 feet longer than the third criterion, 67 percent than allowable.

My belief is that if this factor is properly applied, you have to consider what it says regarding the totality of length in that when you read the text in that criterion it has a parenthetical where it says, the facility should maintain the required percentages. If we're going to ignore that and only look at that and the other similarly stated parenthetical in another criterion, you're at a point where those words then become your surplusage.

So I think the argument can be made that you have a high degree of latitude in applying the first criterion when you start looking at these other primary and secondary criterion that have this mandatory parenthetical language in it and that the interplay between the two is why it is that we believe that that first primary criterion has not been met.

Much of the testimony you've heard are ones that don't have any substantive analysis of facts or applicable law, and to that extent, as you said, it's, in my opinion, neither competent nor substantial evidence.

Turning to the special condition criterion, the core of the argument, it seems to be, that's in the applicant's package, in the staff's analysis, is that because the existing standard size 80 typical platted lots and canal are, quote-unquote, uniform, that somehow that acts to transform it into a special condition. I don't see how that condition is met by what is effectively, again, kind of ipsi-dixit on the part of the applicant that's echoed by the staff.

Turning to the discussion about the riparian views, if we take the conclusion that's stated in staff -- again, echoing the petitioner's arguments, that you can only have any right to see what is effectively the extension of your lot lines waterward, we end up with a circumstance where the words in the code about minimal impact should not be a major impact, and the distinction between it being a riparian view as to what the code expressly states is a waterway view. I think that that is certainly critical in your consideration of whether this criterion has been met or not.

And to that point, in the materials I'll be submitting, I'd ask you to focus on, in particular, the attachment -- I'm sorry. It's the objector's exhibit. I don't know if you can put it up for me -- No. 2 of 5 where I went towards a more quantitative analysis of the angles of view in a more -- I think, again, Hearing Examiner discretion in applying the code, nothing tells you where that point of view is to be taken from. So in that Exhibit 2 of 5, which is effectively -- not the photographs, the actual drawings that were --

HEARING EXAMINER DICKMAN: They want the applicant.

MR. WHITE: Right. You can see that here there's no mention in anyone's analysis on the staff or petitioner's part about where that viewpoint is from, whether it's something that should be evaluated differently, if it's a single floor -- single-story building, whether it's to be taken from some viewing area in the rear yard. If it's a two-story building, does that kind of minimize the impact, if you will? Because you could have a waterway view from

the second floor.

Clearly, here the Dunns have, as you saw in the photos, single-family with a viewing area that they've traditionally used from the rear yard.

And the next one, please.

That's the DeSoto view. This is the Dunn view. And you can see that from a waterway view perspective of Angle A, there's a substantial loss of view based on where the proposed boat would be located.

I would reference you, just to make a note of two of your prior decisions, Hearing Examiner -- or the Hearing Examiner's. I don't know if, necessarily, they were yours, Mr. Dickman. Decisions 20-17 and 22-36. I think that they are on point in terms of how a comparative analysis between those approvals and our belief in denial of this petition are appropriate to consider.

I'm really doing my best here to synthesize the key aspects, but I want to reiterate the point you heard that if it is going to be your ultimate decision to grant a boat dock extension, that those -- that that approval should include a prohibition on the addition of a boat canopy or boathouse. It should limit the lengths overall for each slip. There should be, as you noted initially in some of your concerns, a reduction to the minimum safe size for the waterward protrusion of the second slip by reducing the finger decking. That's the L that's parallel to shoreline.

As you heard, in lieu of the boatlift, that the more waterward boat only be moored and secured to a fixed dock using available technologies and hardware typically in the language of those marine contractors what are called sliders.

We do not believe that the proposed petition more than minimally has an impact on the adjacent neighbors' waterway views. We believe that, as we're proposing, in the alternative, it would have a lesser impact on safe navigation.

We don't believe that there is truly a special condition here. And the boat dock application approval process I don't believe is intended to automatically allow dockage for two large recreational vessels.

The response to one of my questions I wanted to ask but will just tell you -- and, again, it's, I think, something you can take judicial notice of -- the U.S. Coast Guard has data on the percentage of ownership of recreational vessels. Those that are in this class, they're Class 2s, more than 26 feet, they're less than 5 percent of all vessels. And to go ahead and allow two of these sized vessels in one location where it's not typical, we consider to be inappropriate and isn't something that can be substantiated under that specific criterion.

In a kind of more pointed way, you know, the pursuit of extremes here that border on excess, it should not be a public policy basis for granting the extension. My belief is that from what we've put on the record and you will have in my written remarks, the attachments and exhibits, warrants denial of the request as proposed. And unless you have some questions of me, I'm happy to take my seat.

HEARING EXAMINER DICKMAN: No. Thank you. I appreciate it.

MR. WHITE: You're welcome.

HEARING EXAMINER DICKMAN: So I want to ask the county a couple of questions, if I may, before the applicant and their representative -- the applicant's representatives come up.

So one has to do with, obviously, a view -- major impact on neighboring views. Is

there a particular -- when you -- John or whoever did this, when you do your evaluation, is there any particular location on the neighboring properties that you take into consideration when you're evaluating major impact on views? That's a good question, I mean, because it could be from the dock, it could be from the pool, it could be from the very corner of the property, or is -- how do you handle that?

MR. KELLY: Again, John Kelly, for the record.

When we look at this, the only fair way that we can look at the view is the riparian view, what's inside the riparian lines because -- the opposition's counsel noted the number of reasons that it's not practical to consider outside views. We don't know where to take the view from. It's -- you know, someone with a one-story house is going to have a different view than someone with a three-story house. Is that view taken from standing on their dock, or is it taken from being in their living room? We see that they have a right to a view that's within the riparian lines.

HEARING EXAMINER DICKMAN: Okay. So I'm -- I have a little bit of a heartburn from that, because there would be no reason for having a criteria that talks to impact on major views if it was just going to be limited to what is directly in front of you, because the neighboring -- the applicant in this case has no right to build not only within the 15 feet setback but also over into the neighboring properties' riparian view.

So it seems counterintuitive for the criteria to address major impact on neighboring properties and then to limit it to, oh, is this impacting anything directly in front of us?

You know, I get -- I get your point. That's why I raised the issue is I guess there's some discretion here that I have to take into consideration about the views. But if -- I asked you to think about that, think about what you're saying is that there would really be no need for this criterion if the case law were to be just about the riparian views.

Do you understand what I'm saying?

MR. KELLY: Certainly.

HEARING EXAMINER DICKMAN: All right. So the other thing I was going to ask is -- well, I guess there's no reason to ask this, since you only evaluate what's in front of the neighboring properties. And, you know, maybe the applicant will address this. But, you know, I'm going to want to hear something about, like, how high up these boats are going to be in the air once they're on the lift.

John, the other question that I have is -- yeah, obviously, what's unique about the boat dock extensions are that they're really need-driven or want-driven. Like, I want -- I'm buying this boat or these boats, and I need a bigger dock.

So is there -- is there a verification process that the county goes through that verifies that, in fact, they have a contract on these boats and that these -- is there a way to ensure that the boats are actually going to be for the property owner as opposed to maybe the property owner and then the property owner's cousin?

Because I guess what's sticking out for me is that these are almost -- these are very similar-sized boats, and what I normally see is a smaller boat for smaller purposes and then a larger boat for other purposes. But here you have, like, very similar boats.

So is there a way that we can ensure that -- you know, that these boat -- a boat dock extension, which is driven by the owner's assertion that we're buying these two boats, that they, in fact, are just for the owner and not for somebody else?

MR. KELLY: The county does not require proof of ownership. We do not require proof of purchase or intent to purchase. They are asking for what is presented within their

application. They state the size of the vessels. Anything larger than what they propose would require them to come back for a future boat dock extension. The same holds true if they were to purchase a larger vessel than what they have proposed.

I believe there was a second part to your question, and it escapes me.

HEARING EXAMINER DICKMAN: That's okay. So, essentially, you're saying this would be a code enforcement matter. So if somebody were to call in and say, hey, look, they put a 40-foot boat on, you know, this lift and they had requested a 36-foot boat, then would it be assigned to Code Enforcement to go out there and say you've got too large of a vessel on this?

MR. KELLY: Yes. And that brings me back to the second part of your question. What is permitted is a private dock. You would need to reside at that residence to own a vessel that's moored there. Anything else would become a commercial activity that Code Enforcement would act upon.

HEARING EXAMINER DICKMAN: Okay. One last thing. I just wanted to make sure that -- so I noticed in some of the pictures the house is under construction. Are we -- and I don't recall if you had stated any conditions that, you know -- that this -- is there some condition with regard to making sure that the dock -- the house is -- the construction is finalized or anything to that effect?

MR. KELLY: It should go without saying that there is a requirement that an accessory structure cannot be completed prior to a principal structure. In that case -- in this case, I did not add that condition, but it certainly would be appropriate.

HEARING EXAMINER DICKMAN: Okay. So when they get a final for the principal structure, then they can final the dock. I know there might be some -- I would imagine that there's some concurrent construction happening with the seawall and the dock, but, you know, as far as, like, it being used as -- for boat docking purposes, it shouldn't happen until the house has got its final CO, correct?

MR. KELLY: That's correct.

And also, just to address one other issue that was brought up, were they to desire a boathouse, that would need to come before the Hearing Examiner as a separate petition, as it's not included at this time. What they could pursue is a canopy, a boat canopy; however, it's entirely within your purview to add a condition that that not be done.

HEARING EXAMINER DICKMAN: Okay, all right. Very good. Thank you. So let's have the applicant's representative come up. And -- Mr. White.

MR. WHITE: I apologize, sir. Point of order. Evidence is not my key thing. I'm not sure whether, from your perspective, I need to ask to have my prepared written remarks admitted into the record.

HEARING EXAMINER DICKMAN: No. Just -- yeah, please just submit them, please, so that I have them. Just provide them to the county, and they'll make sure that I get a copy of them.

So there were two questions from Mr. White that he wanted to have you answer. Did you take those -- it had to do with the precedent issue and also the ownership of the vessel. And I think it was specifically dealing with the Yellowfin. Like, he wanted to put on record the exact size of the vessels that your client is proposing to dock at this location.

MR. PEARSON: The exact -- the exact length overall for the vessels is as described in the petition. It's 31 feet total length and 36 feet total length. So that --

HEARING EXAMINER DICKMAN: Okay. The Grady-White is the -- how

long -- that's -- how big is that?

MR. PEARSON: That would be the smaller vessel, the 31.

HEARING EXAMINER DICKMAN: So you mentioned a Grady-White and a Yellowfin.

MR. PEARSON: Yes, sir.

HEARING EXAMINER DICKMAN: Give me the size of the -- respectively.

MR. PEARSON: Are you asking about the length of just the hull?

HEARING EXAMINER DICKMAN: Look, this is -- again, you know, if your client goes out there and puts a bigger vessel on there, I want to make sure that -- okay. So whatever -- what's the vessel that's going to be -- that you're proposing on the exterior? That's -- what's the length of that that you're putting in the record?

MR. PEARSON: That's the 36-foot vessel, so that would include motors, the hull, anything sticking --

HEARING EXAMINER DICKMAN: The whole length.

MR. PEARSON: -- off the front of the boat. So those numbers are intended to be total.

HEARING EXAMINER DICKMAN: Okay. That's what we're going to be dealing with. And so the interior one is how much, and that's --

MR. PEARSON: The interior one is 31 feet.

HEARING EXAMINER DICKMAN: Thirty-one total. And when it comes to -- what would be the -- like, the top of the -- I imagine there's some kind of canopy or something on the boats. But when the boats are on the lift, what is the maximum height of the top of that canopy when they're on the lift?

MR. PEARSON: That was actually something I wanted to address that several people mentioned.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: We are not proposing a canopy or boathouse at this time.

HEARING EXAMINER DICKMAN: No, no. I mean, the canopy of the boat, on the boat. Is there some kind of housing or -- of the top of the boat? Like, what would be the highest point that would be visible of the boat when it's on the lift?

MR. PEARSON: It would -- in relation to the top of seawall, it would probably be somewhere around 12 to 13 feet.

HEARING EXAMINER DICKMAN: Okay. So if I'm standing on the seawall, the top of, whatever, let's say -- let's just say there's some type of canopy on the boat that is over the -- over the area, so that would be 12 to 13 feet --

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: -- in the air.

MR. PEARSON: If it helps, there is actually code that does not permit canopies or boathouses from being more than 15 feet above the top of seawall height. So, obviously, we would not be exceeding that.

HEARING EXAMINER DICKMAN: Okay. All right. And, again, you're not asking for a canopy or a boathouse here. This is just about the dock extension.

MR. PEARSON: Correct.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: All right. And I think that your -- the attorney, Mr. Thornton, you had a question for Mr. Dunn. Did you want to ask those questions now?

MR. THORNTON: Yes, thank you. I might be able to just get it resolved by -- I think it's already in the record, but -- for Mr. Dunn, and all of the speakers, I just wanted to make the point they all have docks, and Mr. Dunn, in particular, has a canopy on his dock.

And I kind of -- I wanted to know how big Mr. Kravitz' current boat was. And then -- and I wanted to point out, all of the concerns about access, the code establishes, and we are meeting, a 15-foot setback from our side riparian lines. Everybody's meeting those. So we're meeting our 15. Assuming that our neighbors meet their 15, we're all meeting the side setbacks for access purposes.

We have an 80-foot-wide lot. I don't see any reason why we couldn't be able to fit a 50-foot boat in -- not that we are. But if we did park a 50-foot boat there, we would still meet the 15-foot side-yard setbacks and, according to your criteria in your code, we would be -- we should qualify still.

We're not asking for 50-foot boats. But everybody's concerned about access. Everybody needs to recognize that we're all leaving that 30-foot-wide highway down the middle for everybody to back out. That's still going to be there.

I have five photos here I want to introduce into the record. What these are is aerials that I printed yesterday from the Property Appraiser's website. They do go back to 2014 through today. They're from -- I only selected the ones here from the people who are objecting either in writing or spoke.

All these photos show the objectors having their boats parked on the outside of their docks. Now, these are just snapshots from 2014 for the Dunn property, 2018 for the Kravitz property, 2014 for the Palumbo property, 2015 for the Palumbo property, and 2020 for the subject property.

So all of these objectors saying that it's this a huge problem for a boat to be on the outside for navigation purposes, they're all parking their boats on the outside of their docks.

HEARING EXAMINER DICKMAN: How do you know that these aren't just, like, temporary moored --

MR. THORNTON: I don't know.

HEARING EXAMINER DICKMAN: -- for temporary --

MR. THORNTON: I don't know that.

HEARING EXAMINER DICKMAN: You don't.

MR. THORNTON: But all I can tell -- all we know is that at the snapshot, when the county flew its aerial photographs, there was a boat on that day parked on the outside for all -- for all those speakers that I just mentioned.

And I don't know how long they were there. Maybe it was only for five minutes, but I don't know that. The Palumbo one was -- the Palumbo property at 449, it's there in both the 2014 and the 2015 aerial. So it looks like it was there a year. I don't know that.

So that's all. Thank you.

HEARING EXAMINER DICKMAN: Okay. Anything else from the applicant?

MR. WHITE: I believe you wanted to hear from the gentleman that Mr. Thornton asked questions of. Do you want --

HEARING EXAMINER DICKMAN: No, no, no.

MR. WHITE: -- to start with Mr. Kravitz?

HEARING EXAMINER DICKMAN: No, no. He indicated that he could just make a statement. He was going to -- he was going to ask a question, but he -- Mr. Thornton, are you done?

MR. THORNTON: Yes, sir.

HEARING EXAMINER DICKMAN: Okay, great; that's what I thought.

Okay. All right. Any final -- any final statements you want to make or any rebuttal statements?

MR. PEARSON: I do want to make a few comments just about some of the objections that we just heard.

HEARING EXAMINER DICKMAN: Good. Great.

MR. PEARSON: I'm just going to go down the list. But, essentially, one of the suggestions that we heard from the neighbors was that if we -- that we could put up to a 43-foot boat behind our house without a lift, just as long as there was no lift. What we're providing now is a reduction from that. So I'm a little confused now at what is it that we should be doing. You know, if the neighbors are okay with a 43, how could they not be okay with a 36? The difference is it's on a lift. It doesn't make any difference to the footprint of the project.

You know, again, I don't want to really go down the rabbit hole of this whole precedence thing and showing you the BDEs but, really, the reason I had that slide was, I guess, to provide some education just onto onlookers. It's a consistent complaint that we have about the term that I've heard is domino effect. I believe --

HEARING EXAMINER DICKMAN: Well, you understand that that -- you understand the impact could go the other way, too, is it could be alarming to the community that this is, like, getting to become too much?

MR. PEARSON: I understand, and I also understand that you review each case individually. So that's all the reason I've provided some of those photos and slides that seem to indicate some kind of precedence or otherwise.

So one of the other things that I noticed was that there was -- there's complaints about the vessel specs. You know, the first criteria, it actually doesn't really address vessel size. It's -- it addresses the number of docks and the number of slips. There's a whole different criteria that's for vessel size, and we've already admitted we don't meet that criteria.

So to me it seems a little bit unfair if vessel length is counting against us for two different criteria.

One of the other corrections I also wanted to make, we're proposing 12 feet of protrusion beyond the normally allowed 20, not 15, which I heard someone say.

And sort of to address future use, you know, there's really no way that I can account for every possible future project. I mean, you could come up with some kind of project in every single BDE case where you might be obstructing somebody.

HEARING EXAMINER DICKMAN: I totally understand that, and the point was that if your client sells the house and then some other owner decides to locate a different size vessel there that's larger, I mean, one of the things that I think about as Hearing Examiner is I don't want to saddle Code Enforcement with a whole bunch of problems, so I try to eliminate as much work on that end as I possibly can. That's why I brought that up.

MR. PEARSON: Sure. One of the other things I wanted to talk about were the renderings that were shown. I understand the point that was trying to be made there. I just -- I do sort of question how they were scaled. All the renderings I saw showed canopies as well, and I already mentioned that. But it seems like it's a little bit of an embellishment off of what we were doing.

You know, one of the other exhibits showed someone viewing down the canal from the end of this -- from the end of the dock as well. You know, it doesn't seem like that location was really geared toward someone sitting there trying to take in the view.

Again, I know there's not really any description for -- there's not really any sort of description for where views are supposed to be taken, but that would seem like the worst-case scenario just to -- you know, and regardless of what you build, there's going to be some amount of blockage even if we weren't using a BDE at all.

To Mr. Thornton's comment, we could put a dock out there that was 20 by 50 feet and put a boathouse over it, you know. I tend to think that would block the view more than -- more than what we're proposing.

HEARING EXAMINER DICKMAN: Anything else?

MR. PEARSON: I suppose that's all I've got for now.

HEARING EXAMINER DICKMAN: Okay. Well, this is it. We're wrapping it up.

MR. PEARSON: Okay. Thank you.

HEARING EXAMINER DICKMAN: All right. All right. So just some final comments here. First of all, I want to thank everyone who's participated here today. I know we've had multiple hearings on this. And there's kind of a famous quote in a zoning case, a very old zoning case that says, you know, it's a pig in a parlor, not in a barnyard. You know, a lot of this has to do with -- like, this particular application in a different location may have no opposition whatsoever. But the point of that, as far as, like, compatibility and appropriateness has to do with the location, and that's why everything with regard to these boat dock extensions have to be taken on their own merits and what's around them.

And the criteria, I think, addresses a lot of different things, not just navigability, but water depth and views and even safety for the property owner themselves to get on and off of the vessel, whether there's too much decking. So it seems to me that the county has devised quite a bit of criteria to look at these boat dock extensions from a lot of different angles.

But I do, once again, want to thank all of the people that have participated. I know that it's -- and I do appreciate the opposing parties, if you will, that you did try to talk and meet, you know, and that's always a good thing, because sometimes these things can get resolved. Sometimes they can't. That's part of the process.

And I know that this has been a long hearing, but I think it's important that everything get out on the record, because once we end this hearing, the record is done, and I have to make my decision based on everything that has been presented.

I think all of the parties, also the public and the neighbors, did a wonderful job describing the situation. I fully -- and the county as well. You answered all my questions.

Just, once again, I appreciate everyone coming out and doing this, taking the time. I know it's important to you, or you wouldn't be here. But, like I said, I have to take this on its own merits where it sits in this particular location because, as I said, you put this in a different neighborhood, and it may be a nonissue, but in this particular neighborhood, it is an issue. So that's the nature of a public hearing.

So with -- unless -- does the county have anything else they want to add? Otherwise, I'm going to close this hearing.

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

The only thing I would add is that the dock structure itself, were it not for the outside mooring of the vessel and the outside lift, would have been fully compliant with the code absent a BDE. The reason you're here is because of the lift on the outside as well as the outside vessel.

With that, that's all we have to offer.

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

Okay. So I'm going to close this, and if the county could make sure that I -- whatever's been submitted there today during the hearing, if we could compile that and have it delivered to my office via email, that would be great.

And I appreciate -- everybody have a wonderful day, and hopefully you're still -- you're getting recovered from the hurricane. I know it's a -- you know, the area in Conners subdivisions in that area was very badly impacted by Hurricane Ian, so I'm very sensitive to that. So I hope all of you are getting your lives back together. So have a nice day. Thank you very much.

MR. YOUNGBLOOD: Mr. Dickman, may I recommend a court reporter break?

HEARING EXAMINER DICKMAN: Okay. Yeah, definitely. Let's take -- let's take about 10 minutes; is that enough?

MR. YOUNGBLOOD: That would be fine, and reconvene at 11:25?

HEARING EXAMINER DICKMAN: Very good. See you then.

(A brief recess was had from 11:15 a.m. to 11:25 a.m.)

MR. YOUNGBLOOD: Mr. Dickman, you have a live mic, sir.

HEARING EXAMINER DICKMAN: ***Okay. This is Item 3B. It's another boat dock extension at 167 Sunset Cay. Are we ready to go?

MR. KELLY: We are. Again, John Kelly, Planner II, for the record.

This is going to be agenda Item 3B. It's BDE-PL20220002146. It's a request for you to approve a 35-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 55 feet into a waterway that is plus-or-minus 338 feet wide pursuant to LDC Section 5.03.06.E.1.

The subject property is located at 167 Sunset Cay, also known as Lot 84, Port of the Islands, the Cays, Phase 2, in Section 9, Township 52 South, Range 28 East, Collier County, Florida.

It's located within a Residential Single-Family 4, RSF-4, zoning district.

The subject property comprises 0.35 acres supporting a new single-family dwelling with 149 feet of water frontage. The required 15-foot side riparian setback for lots with 60 feet or more of water frontage will be satisfied on both sides.

Public notice requirements was as per LDC Section 10.02.06.H. Property owner notification letter was sent by the county on December 23rd, 2022, the newspaper ad was run by the county on December 22nd, 2022, and a public hearing sign was initially posted by me on December 28, 2022, and was replaced to reflect the current date of this hearing on January 19, 2023.

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

Of the primary criteria, it satisfies four of five. Staff disagreed with the applicant on Criteria No. 5.

Of the secondary criteria, it satisfies five of six. And in this case the Manatee

Protection Plan was applicable, and it has been found to be consistent with the Growth Management Plan and the Land Development Code.

As for public comment, staff received four letters opposing the petition after publication of the staff report for the January 12th meeting. They have since been published as Attachment F for today's meeting. An additional letter of objection was submitted after publication of the February 9th meeting package and is being provided as Attachment G. A copy was provided to you by email and has been provided to the court reporter and the applicant as well.

Staff recommends that you approve this petition as described in accordance with the proposed dock plans provided within Attachment A, and that concludes our presentation.

HEARING EXAMINER DICKMAN: Thank you, John. I appreciate it.

Who's here for the applicant?

MR. ROGERS: Good morning. This is Jeff Rogers representing the applicant with Turrell, Hall & Associates. And --

HEARING EXAMINER DICKMAN: Good morning, Jeff.

MR. ROGERS: Good morning.

I'm here representing Robert and Judith Hutchins who do reside at 167 Sunset. And just to clear the record on the applicant -- on the application, they are now full-time residents here and do have this property now homesteaded. They are retired and now living down here now that the home is built.

As John stated, we are here in front of you requesting a 35-foot boat dock extension from the allowed 20-foot protrusion for a docking facility that is accommodating two vessels, one being a length overall 50-foot vessel and length overall 30-foot vessel with a finger dock extending out into the waterway that is approximately eight-feet wide and will protrude basically 55 feet from the most restrictive point, which will be a 17 percent width of the waterway.

This property is located in Port of the Islands where the canals are significantly wider than a typical canal throughout Collier County. So, therefore, protrusions can be greater in regards to the 25 percent if they go through the process.

Going through all that, basically we want to touch on the criteria. I do have a slide, you know, PowerPoint, typical PowerPoint, as you are, you know, aware that we do.

I'll have Andrew bring that up.

HEARING EXAMINER DICKMAN: Thank you. I can see it.

MR. ROGERS: So here's just to give you a perspective of the existing site conditions and the existing adjacent dock immediately to our south, which is, if you're standing on our shoreline, looking out to the waterway, it's immediately to the right. That dock does meet the 15-foot setback requirement which is consistent with the proposed dock on our property. These properties do have greater than 60 feet linear feet of shoreline so, therefore, are required to adhere to the more restrictive setback of 15 feet. We are proposing the dock to be right on the 15-foot setback.

So, with that being said, let's move forward, please.

Here's a survey showing the property that is required and water depths associated with it with the adjacent dock shown on it immediately to the right as referenced, and it does meet the setback requirement.

Moving forward.

On the screen is the proposed dock, and it's an aerial view of the existing subject

property -- adjacent properties to give you a full reference of the proposed docking facility. You know, you will notice that it is extending out as a finger pier further than the adjacent docks. We do provide a 26-foot setback from the shared property line with the adjacent property immediately to our right, which is to the east, excuse me. I've been referencing south. It's directly to the east.

Our protrusion is 55 feet out from the mean high-water line, which is the most restrictive point in this case. The dock will extend up to the residence and is included, but that part of the dock is not in the overall protrusion request because it just gives you a full picture here for it.

Twenty-five percent width of the waterways, approximately 84-and-a-half feet out from the mean high-water line. So we are inside that requirement, which is part of the, you know, criteria we have to meet.

So let's move forward, if you would.

Here's a cross-section view, if you would. Just for reference for you.

Moving forward, again.

Here's an -- you know, gives you an idea of all the other docks on this waterway. There are a handful of docks that do extend out. A majority of the docks, especially to our north, do extend past the allowed 20-foot. They do have a large approved boat dock extension variance, blanket variance that actually Turrell, Hall, myself did for that residence a few years back that granted them a protrusion for the whole HOA. So that was done as a full development versus an individual basis.

So, you know, it is consistent. We do meet the 25 percent. Impacting navigation, the waterway is extremely wide. Even if you have a 50-foot vessel or bigger, there is a marina across the way that does accommodate vessels up to 70 feet. So it is a very deep dredged waterway. It's part of the drainage ditch for Collier County Water Management. It's called the Fakaunion Waterway. I believe the Miller Canal also all dumps into this, and there's a weir just to our north that controls the water elevation and water flow for this area.

To touch on that, as part of the criteria typically, as you know, the Manatee Protection Plan does not apply to single-family homes, and in this case down here in this area it does, and it's unique in that regard for Collier County in regards to the high use of manatees in this area. It's a known attraction not just for the residents but a lot of tourists. There's a lot of tour boats that go down here so, therefore, when the MPP, the Manatee Protection Plan -- sorry, I abbreviated that -- the MPP was drafted, they called out specifically this waterway because of their high use.

And for single-families, just to clarify that for you, basically, any lots that have 100-foot or greater of shoreline length are allowed to have two vessels. That applies mostly to the ones on Sunset Cay as well as the other streets to our south. They are larger single-family lots, and they are allowed, per the Manatee Protection Plan, to have two vessels, and there's no restrictions on dock design layout. There are, however, dock design layout restrictions for other docks within this waterway outlined within the Manatee Protection Plan, but these ones have more flexibility than those.

So to run through the criteria real quick just to get it on the record. Primary criteria, the subject property is zoned single-family and, as I just said in the MPP, we are allowed two boat slips and, as proposed, we meet that.

The water depths -- number two is the water depths, and are they too shallow at this facility. This is a riprap, natural shoreline. If we were to turn this dock perpendicular to

the shoreline -- excuse me, parallel to the shoreline, then we would need to do some dredging and just some additional, you know, issues with access to this. Is it possible? Yes, it is, but in this case it was easier and less impactful to the environment to do a straight perpendicular mooring. It gets the stern of the vessels out in the deeper water, and it does not require any additional cost or impacts to the area that manatees -- it's been brought up the manatees do frequent the area and feed, and I totally agree with that. You know, they do tend to go in the shallower water area to feed on seagrasses or things that might be growing there. So that's why we went with a more -- a perpendicular design versus a parallel.

Number 3 on the primary is whether the dock facility has inverse impacts to navigation. As you can see on the screen, there's plenty of room for safe navigation. There are four boats that do travel these waterways on an hourly and daily basis with tourists that come out of the marina across the way, and there is other boat traffic, obviously, within the area, but there is plenty of room to navigate numerous boats on this waterway. So, therefore, there's no impacts.

Number 4, the proposed criteria is 25 percent width of the waterway. Does the dock extend out further or beyond that, and we do not. We're approximately 17.16 percent of the waterway.

Number 5, John mentioned that there was one criteria that you guys -- staff did not agree and basically said that we do not meet, which pertains to the proposed location and the design of the dock facility. As such, the facility would not interfere with the use of neighboring docks. The property immediately to our east, the owner has not objected to the proposed design. He's been in full contact with the applicants on what he is proposing. He did not provide a letter of support, but he did not object to the proposed project, has been fully aware of what we're doing. And the reason I bring that up, he's the one that is directly affected by this. And in this case, he has no objections to it. We meet the required setbacks. He has no navigational issues with ingressing/egressing his existing dock, which he would be the one that would be directly affected. And I did tell the applicant, just to get this on record, that if he were to object, we would need to accommodate his objections but, therefore, we don't -- we're not changing it because he has not objected to the location of the dock with his existing dock.

So moving on to criteria -- secondary criteria, No. 1 is special conditions not involving water depths. Basically, the shoreline length is longer here, and the riprap is the big thing in regards to going parallel versus perpendicular. So, you know, we pushed the boat out so we can avoid dredging, additional costs, additional impacts to the environment, et cetera.

Number 2, whether the proposed dock facility would allow reasonable safe access. As the -- you can see in the design -- Andrew, will you go back a couple slides for me real quick. Go back again. There you go.

As you can see on the screen, we're proposing an 8-foot-wide dock. That is more than enough area to access -- plenty of access and provide maintenance to the vessels. Approximately, with this design, we laid it out with four foot for each vessel, basically, is what you have to provide room for storing stuff, putting stuff down, loading the boats, getting off the boats. That was how this design came up.

Moving forward, No. 3, the single-family dock facility, whether the length of vessel is in length -- combination of the vessels described by the petitioner exceeds 50 percent of

the subject property's linear footage of frontage. This criteria is not met. Fifty-foot and 30-foot vessels is approximately 80 feet -- not approximately. It is 80 feet. And the 50 percent, I believe, is, like, 74 and change. So we're six feet beyond what's allowed in this criteria so, therefore, it is not met.

Moving on to No. 4, whether there's a major impact to view. View's been a hot topic, to say the least, on these petitions here lately, and I do believe I have some letters from people across the waterway as well as down our street that have voiced their concerns with view.

Just so you know, when we design these docks, there is no criteria or definition of view outlined in the LDC. So what we do is we apply the -- we apply what we're given in regards to how views are considered. I'm just telling you this so you know in regards to state and federal permitting. I know this is the county and it's different, so major impacts -- so your view, based on that, is your riparian area -- and I know we've had this conversation before -- out to the center of waterway.

So, technically, waterfront views, whether you can look left or right, that's fine but, technically, your view ends at the center of waterway. So I'm happy to have the conversation, but in this point I do not agree or do not think we impact anybody's view.

The adjacent property owners both are not objecting to this. The objections that we do have pertaining to view are further down the -- our Sunset Cay. I don't know the exact address, but I believe you have the letters. And then I believe three -- two or three across the waterway in Stella Maris have brought up concerns of bringing a large vessel and the impacts to that as well as the devaluation of their view with a large vessel like this.

On the screen you can see the boat three over to the right. It's 44 feet out. That does have a large vessel that does moor up to that dock and was a subject of one of the letters submitted to the county. And that vessel's not really apples to apples what our applicant is proposing to keep there, and that is definitely a more perpendicular mooring. And we're, you know, parallel -- excuse me. That's a parallel mooring versus perpendicular, and, you know, the impact to the view, in our opinion, is there is none.

So I'll leave it at that. If you have any questions -- or I can get back up if there's anything I need to address here further, but that wraps up my presentation. Let me know if you have any questions.

HEARING EXAMINER DICKMAN: Thank you, Jeff. Can you tell me the make and model of both vessels, please?

MR. ROGERS: Yeah. They have a -- I think it's a 47 Sea Ray, but LOA is 50 feet. I don't know the model of it, but it's a Sea Ray sun cruiser I believe.

MR. HUTCHINS: Express Cruiser.

MR. ROGERS: Express Cruiser is the actual model.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: But Sea Ray is the manufacturer.

HEARING EXAMINER DICKMAN: Okay. And the other one?

MR. ROGERS: The other one is -- they had a deck boat, a Hurricane deck boat, but they actually are looking to get a center console. So that boat is -- I can't give you the exact make and model for the 30-foot vessel right now, but they had a Hurricane deck boat that was approximately 28 feet. So LOA, 30 feet.

And to give you some insight on the vessels, the owners kept them up north but now are bringing them down, and the plan was to bring the Sun -- the Sea Ray down, the

50-footer down sooner; however, we're going through this petition, but he also tried to store it at the marina down in Port of the Islands, and everything's full. So as of now neither vessel is here in town, just to be clear.

HEARING EXAMINER DICKMAN: Okay. So the second smaller vessel is yet to be purchased or they have --

MR. ROGERS: Yes. That's safe to say, yes, sir, purchased.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. ROGERS: And I do believe they just got their CO for their house, excuse me. I do want you to know that. This house is complete. They are in residence at this time.

HEARING EXAMINER DICKMAN: Good. Okay. Welcome to the county.

MR. HUTCHINS: Thank you.

HEARING EXAMINER DICKMAN: All right. I'll let you have some time for rebuttal if necessary. Let's go to -- do we have any public speakers?

MR. YOUNGBLOOD: Mr. Dickman, we have four people in the room with us and one online. We will start with Wendel. You're going to have to help me with your last name, Wendel.

MR. DAFCIK: Dafcik.

MR. YOUNGBLOOD: Followed by Samuel Leishear.

HEARING EXAMINER DICKMAN: Good morning.

MR. DAFCIK: Good morning, Mr. Dickman. Can you hear me okay?

My name's Wendel Dafcik. My wife and I are currently building a house at 179 Sunset Cay, approximately two houses east of the 167 Sunset Cay where the proposed dock is being proposed.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. DAFCIK: So I strongly oppose of the dock extension, and here are my reasons: Every homeowner has a right to put in a dock. I feel that a 35-foot extension to the total -- to a total of 55 feet is excessive.

We moved to the Port for the water and the wide canals the Port has to offer. We're avid boaters and fishermen and enjoy the waterways. We enjoy the expansive water views from our property and the healthy array of wildlife like manatees, alligators, tarpon, and dolphin that thrive in the waterways of the Port.

I don't believe there's any other place in the county where you can sit at your dock and watch a tarpon roll, hear a manatee snort, see an alligator cruising the surface, view dolphins chasing mullet, and top it off with an amazing sunset. This is a diverse and rich ecosystem which needs to be protected.

I believe a 55-foot dock will alter the water landscape and may interfere with the annual migration of wildlife and fish. If this 55-foot dock gets approved, I'm afraid it will set a dangerous precedent for future docks and/or rebuilds to jut out 55 feet into the waterways and ruin the expansive waterways.

That's it. Thank you.

HEARING EXAMINER DICKMAN: Thank you for your being here this morning.

MR. YOUNGBLOOD: Our next speaker is going to be Samuel Leishear, followed by Floyd Gillespie.

MR. LEISHEAR: Yes. My name is Samuel Leishear. I am the president of Stella Maris Master HOA which is the HOA directly to the north of Sunset Cay.

We also would -- are not in favor of allowing this 55-foot dock, 35-foot extension.

The reason being is it's just -- you know, it's totally out of the ordinary for the Port. The Port is basically a fishing village. Most of the boats there are 20 to 30 feet. Probably 23 to 27 feet is probably the majority of the boats, because we're fishermen. We're -- the 50-foot boats are all over at the marina where they need to be.

Now, I will take issue with Mr. Rogers on one issue, which was that we have a very deep canal. Yes, in the Port we do, but try to get up and down Fakaunion Canal in a 50-foot boat or one of the boats that are at the marina. You're going to have to go there at high tide, and even at that, you're going to be serpentine down the canal to get out of the there.

So, basically, what happens with these big boats that we get in the Port is they sit at the marina, and that's where they stay. So, basically, if you take a 50-foot boat and they want to have two docks that lift the boat four to five feet off the water, it's just obtrusive to the rest of the neighborhood. It's just huge. And it's -- again, it's totally incompatible with the residential area. As far as the boats that are in the residential area, 30 feet is fine. We really don't have a problem with the 30-foot boat, but the 55 feet of dock and that 50-foot boat is just a little more than we really need to deal with.

Thank you.

HEARING EXAMINER DICKMAN: Okay. Sir, are you -- are you speaking on behalf of the association --

MR. LEISHEAR: Yes, I am.

HEARING EXAMINER DICKMAN: -- as president? You are officially speaking as the president of the HOA?

MR. LEISHEAR: Yes, I am officially speaking on behalf of the Stella Maris Master HOA.

HEARING EXAMINER DICKMAN: Thank you for clarifying that. Thank you.

MR. YOUNGBLOOD: Next speaker is Floyd Gillespie, followed by William Keyser.

MR. GILLESPIE: Good morning. How are you? My name is Floyd Gillespie, and I live at 298 Stella Maris Drive South, which is almost directly across from 167 Sunset. You'll excuse my voice. I had surgery recently, and it has affected in and out of my voice.

I have a prepared statement. I'd just like to read it so I don't ramble.

I'm also on the board of Stella Maris Master HOA and represent -- and we represent 50 units of which, no less, that are 20 units facing the project location at 167 Sunset Cay. Last month our board voted unanimously to oppose the 167 Sunset Cay project to extend perpendicular to the dock 55 feet into the canal. As to notifications that were mentioned -- I had listened to Mr. Kelly make those, the posting in the paper and such -- as of this date I'm only aware of three people that got a notification, and I'm one of them. Now, I'm not saying that there aren't any more, but as of the time that I wrote this, that's what I was aware of.

Looking at the Manatee Protection Plan at 3.2.3.4, it brings up the Port of the Islands reference, and it says, single-family resident docks should be restricted to one power boat slip per 100 feet of shoreline or increments, therefore with one power boat slip allowed for single-family property lots with less than 100 feet of shoreline. Of our 20 residents -- there are 20 residents affected at the location directly north of Sunset Cay, and we share the same canal that they are.

Again, per the Manatee Protection Plan, one power vessel per 100 feet, and what is

proposed is not consistent with boat size. The vessel of any size are docked at the marina right across the canal, which is probably about a 100 feet or yards from where this dock is being requested.

I feel this variance would be an enormous change from the docks already at the Port of the Islands and will negatively impact boat traffic, views of the sunset, fishing, and may set a precedent for future homes. Keep in mind the other canal south of the one in question, on the east side of the canal, the Fakaunion Canal, are all single homes ranging from seven to 10 homes on each side of the canal. In this situation, we have about seven homes on the Sunset side and 20 homes on the north side of the canal that consist off the road of Stella Maris South.

Also, of these 20 homes, about 85 to 90 percent have boatlifts with boats who will be navigating this canal at various times of the day; therefore, I would respectfully request you deny approving the building of a 55-foot dock perpendicular to the shore. I do not think a dock of this size with accompanying boats is appropriate for our canal.

That's all I have to say. I did -- I did have surgery a couple of weeks ago. I was not able to get this to Mr. Kelly. I asked him about getting it. He said to ask you, would I be able to email this to him?

HEARING EXAMINER DICKMAN: Yes. Please email it to him. I'll accept it into the record since you read it verbatim, but go ahead and email it to Mr. Kelly.

MR. GILLESPIE: Okay. Thank you, sir. That's all I have.

HEARING EXAMINER DICKMAN: And good luck with your health.

MR. GILLESPIE: Thanks.

MR. YOUNGBLOOD: Our final speaker in the room in William Keyser, and then we will go online to Dan Heffelmire.

MR. KEYSER: Can you hear me?

HEARING EXAMINER DICKMAN: Yes.

MR. KEYSER: My name's William Keyser. I live at 294 Stella Maris Drive South. My wife and I are members of the Stella Maris Homeowners Master Association.

We object to the 55-foot dock and 50-foot boat at 167 Sunset Cay because it may alter the marine life. It may interfere with the boating, fishing. It's going to object -- block our view to the beautiful sunsets and possibly even reduce the value of our property.

Regulations in the petition only refer to Cays Phase 2, Section 9. Half of the little canal waterway between Sunset Cay and Stella Maris is used by 20 residences. We have twice as many residences on this side as you do in the Sunset Cay. We feel that you need to consider us in addition to the Sunset Cay regulations when you make your decision.

Declaration of restrictive and protective covenants for Phase 2 in the Cays have restrictions on boat docks, boathouses in Section 2.06 B and F. B states, boat docks may extend 25 feet from the top of the bank into the water. F, which is more important to me, states, no boathouses or other structures can block the view of other owners. Twenty residences will have their view blocked if this dock is approved.

On January 22nd, a larger boat stopped in front of 167 Sunset Cay. Could we have Keyser 1 slide?

MR. YOUNGBLOOD: Wait just a moment.

MR. KEYSER: I do not know the identification of this boat, but it was --

HEARING EXAMINER DICKMAN: I don't see the -- let's get the slide up. I don't see the slide.

Mr. Keyser, did you provide a slide to the county?

MR. KEYSER: I did, and Mr. Kelly said it would be there if I just referred to Keyser 1.

HEARING EXAMINER DICKMAN: Okay.

MR. KEYSER: Sorry about the delay, but John sent me an email that it would be here.

MR. YOUNGBLOOD: Oh, I got it.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: I got it. Sorry about that.

MR. KEYSER: Very good, yes.

MR. YOUNGBLOOD: Sorry about that. Continue.

MR. KEYSER: I do not know the ownership of this boat, but it was a very large boat, and it would represent what a 50-foot boat might look like from my dock. The chairs to the left bottom corner are on my dock, and that would represent the view that I might have. I feel like that when this boat is on a lift and it's further out in the water, it's going to really detract from the value of my home.

Boats like this do not belong in the canal or waterway, but they belong in the marina. The dock with a boat like this is going to have to be lighted. We have people that fish all night long. We have mullet casters that are fishing commercially. They're in there at night with lights, and on a foggy night, that boat's going to be hard to see, and the dock.

Approval of this petition may result in property damage -- property value losses for myself because it's going to be hard to sell a house where you're looking at the top of a boat this big. It just blocks the sunset views.

That's all I have. Thank you for listening.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. YOUNGBLOOD: Mr. Dickman, we're going to go online to Dan Heffelmire now.

HEARING EXAMINER DICKMAN: Thank you.

MR. YOUNGBLOOD: Mr. Heffelmire, you're being prompted to unmute your microphone, sir. Can you hear us?

MR. HEFFELMIRE: Yes, I can. Can you hear me?

MR. YOUNGBLOOD: Yes, sir, loud and clear. You have five minutes.

MR. HEFFELMIRE: My name is Dan Heffelmire. I'm here with my wife, Connie Heffelmire, and we own the property at 290 Stella Maris South -- Drive South. And, you know, my neighbors, Bill and Floyd, have expressed our concerns very well, as well as Wendel Dafcik.

The main problem -- we just recently purchased our house and primarily for the views. So I think the views are the main issue that we have and the sunsets. So it's nothing that you haven't already heard, Mr. Dickman, and -- but I'd like to express that again.

And the -- for anybody that is east of this particular property is -- and I really feel sorry for the Dafciks in their situation, because they will not be able to see the sunset whatsoever with this current proposed dock.

So we strongly encourage you to decline this dock. And I agree with Bill that a boat of that size with his picture that he showed, I agree, it needs to be in a marina. And the representative indicated that the marina is full and can't accommodate that vessel. Then

I would suggest maybe going to another site, Marco Island or -- until a slip is available for this boat.

So with that, that's all I have to say here is that I agree with my neighbors, and I hope that you see and -- to decline this petition.

Thank you.

HEARING EXAMINER DICKMAN: Thank you.

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

HEARING EXAMINER DICKMAN: Great.

Okay. Jeff, I have a couple questions for you.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: Number one, I pulled up a 47-foot Sea Ray Sundancer Express cruiser, and it seems to have a lower profile than the photograph of the yacht that the gentleman put on the screen. Do you know that to be true or --

MR. ROGERS: Yes, sir, 100 percent, and that was something I wanted to point out to you.

HEARING EXAMINER DICKMAN: Okay. And then the photograph I'm looking at -- I don't know what year your clients -- I'm looking at 2012, but, you know, it does have a deck in the back of the boat with a dinghy with an outboard. Does your clients -- does your measurements include that little back?

MR. ROGERS: Yes, sir. Yeah, so that's called a swimming platform, typically, and a lot of people do put their, you know, tender, it's called, on the back of that. They'll put it on the back and use it as a multi-purpose use, but the LOA is 50 feet, and that does include the swimming platform bracket that you're referencing.

HEARING EXAMINER DICKMAN: Okay. My next question has to do with -- and you brought this up -- that I guess your company was involved in drafting or getting approved for the HOA area --

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: -- covenants, I think. Are there any covenants -- correct me -- I mean, elucidate me on that issue. Are there any covenants that are in place that apply to this property that would have to be taken into consideration at all?

MR. ROGERS: For the subject property you're talking about, or for the -- across the water?

HEARING EXAMINER DICKMAN: Yeah. I mean, explain to me, again -- you mentioned that you did an HOA --

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: -- wide permit. Was that just for the docks that are to the north at Stella Maris?

MR. ROGERS: Well, that was a very unique situation. A lot of those docks -- I know the history of that place really, really well, because I was deeply involved with prior HOA and board members and residents. I did that back in, I think, 2015-ish, something like that. Basically, what we got for them was they had a bunch of docks built in there that were not permitted fully with the county, so we had to do after-the-fact work there. And not to get in the weeds there, basically, they have no riparian line setbacks required in that -- and I think that's part of their -- don't quote me on this. That's part of their PUD that they have for the development, right? No setbacks are required for their docks; however, they are limited per the resolution of the BDE to -- docks are allowed to extend out 20 feet,

and vessels can extend out past that 20-foot protrusion line, whether they're in the water or on a boatlift. The stern of the boat can hang out I believe it was for 30 feet, Mr., you know, Hearing Examiner. I believe it was 30. It might have been as great as 35 feet that we got approval for. But, again, docks cannot extend past the 20-foot, but the vessel itself on a lift and/or mooring of a vessel on the outside of the dock can extend out to, I believe -- I think it was -- I think it was 30 feet in that regard.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So, you know, with that being said, you know, views, you know -- again, I understand all that, but this dock is across the waterway. We're not going parallel mooring with this vessel. The vessel's a low-profile vessel compared to what was shown on the picture. There is a marina there that does accommodate vessels, I believe, up to 70 feet that do ingress and egress this canal, so...

HEARING EXAMINER DICKMAN: Yeah. So my question, though, is that doesn't apply to Sunset Cay, though.

MR. ROGERS: Right, 100 percent, 100 percent.

HEARING EXAMINER DICKMAN: Right. And that's what I wanted to know is that there wasn't anything that was approved as part of that that applies to the Sunset Cay area.

MR. ROGERS: No, sir.

HEARING EXAMINER DICKMAN: Okay. Now, my final question has to do with the Manatee Protection Plan, which here, obviously, applies and, then, you know, the statement that's in the staff report refers to Section 3.2.3.4. You know, are there any -- I need you to tell me, is there anything in the Manatee Protection Plan that would -- you know, obviously, I'll have to look at this, but other than that section that would apply that might limit what's being proposed here?

MR. ROGERS: No. This is -- not at all. To answer your question short and brief, no, there is not.

HEARING EXAMINER DICKMAN: Okay. All right. That's the section that's being referenced. It's in the criteria for the code. It references 5.03.06.E.11, and then it also references some other areas. But I just wanted to make sure that we had that on record that we're not going to be contravening anything in the Manatee Protection Plan.

MR. ROGERS: And just so you know, through the review process with staff, it was brought up by the Environmental Department here, and we did have to have a conversation with them as well as Ray Bellows to confirm what we are proposing did meet the MPP criteria as outlined within that section that you're meeting, and staff did concur that we are consistent with that and, basically, it pertains to the linear footage of shoreline and number of vessels. That's the limitation as outlined in the MPP.

HEARING EXAMINER DICKMAN: Okay. Very good. Do you have anything else you want to put in the record, or are you done?

MR. ROGERS: That's -- I'm good. Thank you.

HEARING EXAMINER DICKMAN: Okay, great.

Anything else from the county? John, I'm just giving you exercise.

MR. KELLY: No, sir. We don't have anything else, unless you'd like to hear from our Environmental Services director about the MPP.

HEARING EXAMINER DICKMAN: No. I'm fine with what's in your staff report, and I'll fact check that myself as well.

So unless there's anything else, I've heard enough, and I'll close the public hearing. As I said, I don't make decisions here today. I'll issue my written decision within 30 days. And, again, I appreciate everyone's participation here, and your civil discourse today. Thank you. Have a nice day.

***So let's move on to 3C, which is 231 Dolphin Cove. It's another BDE, boat dock extension.

Hi, John.

MR. KELLY: Third time's a charm. This is going to be Agenda Item 3C, BDE20220000501. It's a request for you to approve a boathouse and a 2.75-foot boat dock extension from the maximum permitted protrusion of 20 feet or 25 percent of the waterway width, whichever is less, for waterways less than 100 feet in width to allow construction of a boat docking facility protruding a total of 22.75 feet into a waterway that is plus-or-minus 91 feet wide pursuant to LDC Section 5.03.06.E.2.

The subject property is located at 231 Dolphin Cove Court, also known as Lot 8, Dolphin Cove, in Section 5, Township 48 South, Range 25 East, Collier County, Florida. It's located within a Residential Single-Family 3, RSF-3 zoning district.

The subject property comprises 0.39 acres with 140 feet of shoreline on the manmade canal just off Little Hickory Bay with a riprap bank and mangroves located on a 10-foot conservation easement. A new one-story single-family dwelling is being constructed by authority of Building Permit No. PRDB20211040219 for which inspections have commenced.

The public notice requirements were as per LDC Section 10.02.06.H. The property owner notification letter was sent by the county -- by the county's agent on December 23rd, 2022. The newspaper ad was run by the county on December 22, 2022, excuse me, and the public hearing sign was initially placed by me on December 28, 2022, and revised with today's meeting date on January 18, 2023.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfies four of five. Of the secondary criteria, it satisfies five of six with the sixth being not applicable, the Manatee Protection Plan. And the boathouse was reviewed by Section 5.03.06.F and satisfied all seven of the seven criteria.

The petition was found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comment, I received one call expressing opposition from an Al Johnson on Fifth Street West; however, that was not followed up with any correspondence, and it's unknown if he's here today.

As far as recommendation, it's staff's recommendation that you approve this petition as described, in accordance with the proposed dock plans provided within Attachment A and subject to the following conditions: One, the riprap located within the conservation easement must be removed prior to the issuance of a certificate of completion for the dock facility and, two, 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 dock facility as an accessory structure to that principal structure.

That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you, John.

Okay. Let's go to the applicant's representative.

MR. ROGERS: Good afternoon now. Jeff Rogers, for the record, with Turrell, Hall & Associates.

Like John just said, basically, I'll give you a quick overview. I'll try to make this one quick.

Can you move forward on the screen, if you don't mind.

This property is located at 231 Dolphin Cove Court, which is on the very north end of Collier County, just south of Bonita Beach Road within a manmade waterway off Little Hickory Bay. Little Hickory Bay is a natural waterway that does exit out through Wiggins Pass to the south.

So existing conditions are a natural shoreline with riprap. It has mangroves on it as well as a 10-foot-wide conservation easement, which were all taken into consideration with the proposed dock design, as well as the width of waterway being the more restrictive factor on the design due to protrusion and trying to avoid the conservation easement as well as impacting as little mangrove as possible.

Moving forward.

There's a quick survey that we always get, like I always say, of adjacent properties as well as the shoreline as well as the width of waterway, so we design a dock based off of a certified survey so that the dimensions and everything are accurate as possible.

Moving forward.

On the screen you have the proposed dock. It's a typical shaped -- U-shaped dock that's got a 4-foot finger on the inside portion of dock mostly used for accessing the vessel from there, as well as a small 3-foot-wide dock on the outside creating the U with another boatlift that is decked over for two personal watercrafts.

You know, the dock design was very restrictive in regards to the width of waterway here. We are only requesting a 2.75-foot boat dock extension from the allowed 20 feet because the width of waterway is only 91 feet wide. So the 25 percent rule here, you know, basically applied a lot of pressure for us to get state and federal permits as well because we cannot go past the 25 percent. They don't have criteria. That is their rule. We can't go past that.

So I'd like to make it a little bit further out to reduce impacts to the mangroves as well as get some more room, but we can't. So, basically, in a nutshell, we meet most of the criteria. Water depths, as John said, on primary criteria, we do not meet, which is No. 2.

You know, the biggest thing there is, you know, we can't really bring the dock in any further due to the shoreline, due to the water depths there, as well as the rock that I guess we're being required to remove. I was not aware of that until I read the staff report, but that was negotiated, from my understanding, with the building permit that was issued for the upland structure. I was not aware of that condition, so I clarified that with county environmental staff this morning as I've been here all along.

So with that being said, there's no view to impact. I don't believe anyone here's objecting to this, so to wrap this one up, if you have any questions, I'm happy to answer them.

HEARING EXAMINER DICKMAN: Yeah. One quick question. Is there a boathouse associated with this?

MR. ROGERS: Yeah, thank you. I did not address that. You're correct, yes, sir. It's actually a boathouse, not a canopy, so that is part of your review. And it has been designed to meet the criteria as outlined in the LDC for height, overhang, four sides opened

air. It is -- it meets that, and staff is recommending approval for that as well.

HEARING EXAMINER DICKMAN: All right. Thank you.

Let's go to the public. Anybody signed up to speak?

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

HEARING EXAMINER DICKMAN: Okay. Then anything else from the county?

MR. KELLY: No, sir. Thank you.

HEARING EXAMINER DICKMAN: All right. Okay. Having no other comments, then I will close this hearing, and I'll get a decision out as quickly as possible.

MR. KELLY: Thank you.

HEARING EXAMINER DICKMAN: Thank you for being here. Take care.

***Let's go to the next item. It's a conditional use at 493 32nd Avenue Southwest. Tim, I guess you have this one.

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

This is for Petition No. CU-PL20210001657 for a request for approval of a conditional use for the Collier County Water/Sewer District to allow a sewage treatment plant and its expansion, superseding Resolution No. 94-533, and pursuant to Subsection 2.01.03.G.1.C of the Collier County Land Development Code on 16 acres located at 4931 32nd Avenue Southwest in Section 28, Township 49 South, Range 26 East in Collier County, Florida.

The project is compliant with the GMP and LDC; therefore, staff recommends approval. The applicant has complied with all hearing notices by our operations staff. The advertisements and mailers went out on January the 6th. The hearing advertisements/property signage were constructed at the property by the applicant per the affidavit of posting notice included in Attachment F of the backup materials.

And, also, I would like to put on the record that the applicant did update this signage showing this February 9th HEX date. The photocopies of these updated signs were provided to the court reporter and were emailed to Andrew and Heather, and that occurred around 9:06 a.m.

HEARING EXAMINER DICKMAN: All right. Great.

Let's go to the applicant's representative. Is Mr. Arnold there?

MR. ARNOLD: Good morning, Mr. Dickman. I'm Wayne Arnold from Q. Grady, Minor & Associates representing the Collier County Water/Sewer District.

I don't think all of our team members were in the room when you swore people in earlier, so I've got a couple county staff people who probably should be sworn in.

HEARING EXAMINER DICKMAN: Okay. If the court reporter would please do that.

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

MR. ARNOLD: Thank you.

Andy, do you want to forward that?

So, Mr. Hearing Examiner, as staff indicated, this is a conditional use, and it's a modification to an existing facility that has been in Collier County since 1984. The pinpoint here shows you the general location in Golden Gate City. It's at the far southern extent kind of central to Golden Gate City.

And, Andrew, if you go to the next slide.

This is a closeup of the facility, and you can see in the southwest corner of the site are where we have several tanks. You can also see some old settling ponds that are on the site today. The site's changing with the technology changes. This is becoming part the central wastewater collection system for Collier County, so it's going to have a larger role, and the city -- or, excuse me, the county did take over the old Florida Utility System several years ago now, and this has become part of the county's utility platform.

So I'm not sure how much detail you want to get into with regard to the technology changes, but I have Frank Feeney, one of our engineers here, who can give you a two or three minute just what the changing technology is and what's going to result as a proposed expansion for this facility, if that would be helpful.

HEARING EXAMINER DICKMAN: Okay. Let's do that.

MR. ARNOLD: Yeah.

HEARING EXAMINER DICKMAN: Yeah, it would be. Just a few minutes, just a high-level overview.

MR. ARNOLD: That would be great, thank you.

MR. FEENEY: For the record, my name is Frank Feeney. I'm one of the professional engineers assigned with the project.

Generally speaking at high level, the existing plant right now is an open-air system that treats the wastewater that comes in. You do have some odor control for the existing system, but it does still have an -- open air tanks, which is your main treatment area.

The new proposed improvements are actually an NBR system which will be enclosed and have odor control provided for the new systems. It does provide for additional capacity as well as treatment of the smell coming forth from -- instead of being open air, now it should be enclosed.

That's pretty much, in a nutshell, a high-level look at it.

HEARING EXAMINER DICKMAN: Okay. So when you say enclosed, do you mean fully covered and --

MR. FEENEY: The process --

HEARING EXAMINER DICKMAN: I'm familiar --

MR. FEENEY: That's correct. The process system -- the NBR systems are basically enclosed tanks, and the storage tanks would also be enclosed.

HEARING EXAMINER DICKMAN: Okay. And is this similar to the one that's on -- like, close to Airport and Immokalee; is that a similar design to this one?

MR. FEENEY: Goodlette-Frank, yes. It's very similar to the north --

HEARING EXAMINER DICKMAN: Goodlette-Frank, yes.

MR. FEENEY: That's correct.

HEARING EXAMINER DICKMAN: Okay. Fair enough. So it's going to be an improvement for the neighborhood, I guess, with regard to smell, odor, any kind of adverse impacts.

MR. FEENEY: It will be an improvement overall for the neighborhood. It provides additional capacity as well as some of the concerns associated with smell as well as light pollution.

HEARING EXAMINER DICKMAN: Okay. And no -- are there -- I don't see any other water -- any waterways around there. Are there any discharge -- well, I guess there are waterways. Are there any discharges into waterways there?

MR. FEENEY: The stormwater system for the site will actually discharge into the

adjacent canals, but the stormwater system will be designed to meet FDEP as well as other municipal and -- other municipal requirements and will be controlled -- the discharge will be controlled through a concrete control structure prior to discharging off site.

HEARING EXAMINER DICKMAN: Okay. So just to be clear for the public, this is going to be fully regulated so that the level of contaminants would be controlled under federal and state guidelines before it's discharged; is that correct?

MR. FEENEY: That is correct. We have to meet the Southwest Florida Water Management District requirement, FDEP requirements, as well as local municipal requirements to make sure that this meets --

HEARING EXAMINER DICKMAN: Okay. Thank you for that explanation.

Mr. Arnold, what else do you have?

MR. ARNOLD: For the record, I'm Wayne Arnold. One of the things I'm not sure that Frank mentioned was that the system right now uses a series of deep-well injections for the sewage that's treated. This is going to also now produce reclaimed water that will be available for irrigation quality water throughout this part of the county, so I think that's --

HEARING EXAMINER DICKMAN: I was wondering about --

MR. ARNOLD: -- an important distinction.

So the water coming in and the water going out are much cleaner. You'll see in your conditions -- and I don't intend to go through each and every one of those that we've discussed with staff and your County Attorney staff since the inception of this project, but there are some monitoring requirements that go along with these type of projects and, of course, you can see aerial that we have waterways on two sides, and then we have street frontages on two sides.

And what I would point out --

Andrew, if you could go to the next slide, which shows the site plan. There you go.

So this is oriented north/south. Tropicana Boulevard is to the east. So when you make your site visit, if you come down Golden Gate Parkway, you turn south on Tropicana, that is the same road that also serves Golden Gate High School as their back entrance. So just to orient you a little bit more to that.

But you can see that now we're going to have a series of enclosed tanks and enclosed systems that Frank discussed. So the treatment will take place indoors rather than in the years past when some of the materials were put into the settling ponds that you could see on that aerial photograph. The process changed to become a deep-well injection, and then this process will also produce some reclaimed water. But it's a series --

HEARING EXAMINER DICKMAN: Is there -- are there any pipes in the ground for reclaimed water, like, in the neighborhoods, or are they still yet to have to be installed?

MR. ARNOLD: I don't believe there are today, but I think that's anticipated that they will be installed.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: One of the things that's important with regard to the site planning effort here is probably your second condition. We spent quite a bit of time talking about the landscape buffer requirements that would be here for the site. You'll see the facility looks as though it hasn't been the best in terms of maintenance. It's been unravaged [sic] by Florida Power & Light trimming for the power lines that are there as well as hurricane damage over the last several years.

And then, frankly, the county just took this over in the last few years. So, in

fairness to the county, it has not been the county's maintenance obligation for that many years.

But we do have new landscape buffer commitments that are proposed. And one of the things that the county has intended to do here, and it's reflected in the No. 2 condition, is that they're going to go underground with the FP&L power line that runs along Tropicana which frees it up to not only establish new vegetation but to retain some of the more mature vegetation that will be on site. So they don't have to completely remove some of the more mature trees that can be pruned and established. So we'll have a more instant buffer for the community.

We did hold two neighborhood information meetings for this since we started the project. We had our second one just last year. We were going to time out. The utility staff, because of the hurricane and some other emergencies, this sort of got put on the back burner. But our meetings were not extremely well attended, although notices went out to the surrounding property owners. But there's also a commitment in there to deal with either a representative of the Golden Gate Civic Association or some other entity that the Board may authorize to have community input into the project, which we think are good changes, and we're in support with the staff recommendations for approval of the project.

So we have a team of people here from the county staff. We have Craig Pajer and Corine (phonetic) Trenton who are here to answer any specific questions you may have, and Frank Feeney's still here to answer questions, and we have a traffic engineer, Jim Banks, here if you had any transportation-related questions.

HEARING EXAMINER DICKMAN: Okay. All right. You've got to get cookies and desserts in order to get people to those meetings.

MR. ARNOLD: Yeah, exactly.

HEARING EXAMINER DICKMAN: I don't have any other questions.

Let's open it up for public comment, if there is any.

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

HEARING EXAMINER DICKMAN: Well, I guess we need to bring milk and cookies or something to the meeting.

All right. Anything else from the county? Anybody else have any other comments you want to put on the record? I think this is pretty self-explanatory.

MR. FINN: No, we don't.

HEARING EXAMINER DICKMAN: All right. Thank you. Thanks for your hard work, and I appreciate your patience. I'll get a decision out as quickly as possible.

MR. ARNOLD: Thank you, sir.

HEARING EXAMINER DICKMAN: ***All right. All right. So we've already done E. We did that at the very beginning, so now we're going to 4A, which is the rehearing of the administrative appeal by Valencia Golf and Country Club.

Let me get to that. Is everybody there? We've got the county. We've got -- do we have Mr. Yovanovich? Do we have -- who do we have here?

MR. YOVANOVICH: We're all here.

MR. BOSI: Hearing Examiner, this is Mike Bosi, Planning and Zoning director. I believe all of the parties are here represented for the reconsideration.

HEARING EXAMINER DICKMAN: Okay. So what I want to do is I'm going to go ahead and get this started.

There was a petition -- there was a decision that I rendered, and the county, under the code, filed for a motion for reconsideration, and part of that had to do with -- I'm just going to summarize -- had to do with the -- where they took issue with whether or not the HOA needed to be part of the application process, or be on the application, I should say.

So I want to start off with the county first to give them an opportunity to explain what they think was either a mistake or whatever, the various criteria. I think what they're indicating is that perhaps I made a mistake in my decision making. And I'd like to go with them first, and then I'll go to the applicant, which is actually -- I guess it would be Lennar. I think Mr. Yovanovich represents them. And then we'll go to the HOA. All right?

MR. BOSI: Thank you, Mr. Dickman. Again, Mike Bosi, Planning and Zoning director.

When the HEX Determination 22-55, which deals with the Valencia sidewalk modifications, was rendered, the county was concerned from a perspective in the manner in which we require or -- what we require when an individual seeks to amend an adopted Planned Unit Development.

Within the administrative -- or within the decision of the HEX, it had indicated that -- within the various analyses that -- within Analysis 10, is that based upon the foregoing legal provisions, that the applications are incomplete without an authorization from the Valencia HOA. And the manner in which the county requires amendments to PUD -- to PUDs, there are requirements for notification of surrounding HOAs, but it does not require the consent and authorization to amend those PUDs from the various HOAs or the individual landowners that are within a PUD.

And based upon that, our -- with the assistance of the County Attorney's Office, we were able to find a 2012 opinion -- or Attorney General Opinion 32 and, basically, within that provision it states that the Attorney General was not aware of any provision within the Community Planning Act that would authorize a local government to delegate its legislative zoning authority to other landowners by requiring their consent prior to the acceptance of the request for a rezoning.

And as I said, within our applications for a PUD rezoning, we do not require all owners of that PUD to sign on the request to modify that individual PUD. We require the owner of the property that would be affected.

Within the analysis, you do recognize that the county modified our original approvals of the minor change to the PUD and the insubstantial change to the plat to indicate that the crosswalks that were -- that were indicated that would allow for a pedestrian to cross the streets in front of the cul-de-sacs, that we could only require the HOA -- or we could not require the HOAs to install a crosswalk because they were not party, they were not an applicant seeking the change, and we could only process changes to the PUD that were affecting the property owner's property.

HEARING EXAMINER DICKMAN: Okay.

MR. BOSI: And based upon -- based upon those facts, we had requested and put forward the request for consideration recognizing that the HOA is the owner of the common area of the street area, but the modifications to the plans were only modifications towards where when the sidewalk left the right-of-way, which was -- which is owned by the HOA, and went onto private property.

And based upon -- and based upon that recognition and the recognition that sidewalks could not be accommodated within that right-of-way, we exercised the provision

that was provided to us by the Land Development Code, and that is in -- that encapsulates the county's position, and that's what the county was -- is hoping that the Hearing Examiner could take in those additional facts and review the determination based upon those facts.

HEARING EXAMINER DICKMAN: Okay. So here's -- I understand, and I understand why the -- why you would ask -- I understand the reasoning why you would ask for the reconsideration, because of -- the standard practice, as I understand it, based on the information you provided, is that it's the property owners -- the affected property owners are the ones that actually have the ability to file -- or the ones that file the application, right? Is that what you're saying?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: All right. So in this case we're talking about a few single-family homeowners who have a sidewalk, and I think if I recall right, it was somewhere on the order of just less than 600 square feet of total sidewalk in their -- within their lots. Even though they're within the homeowners association boundary, those are the people that own the property, correct?

MR. BOSI: Correct, the individual lot owners.

HEARING EXAMINER DICKMAN: So those individual lot owners should be on the application; is that correct?

MR. BOSI: That would be consistent with the way that we would require a request for a PUD.

HEARING EXAMINER DICKMAN: Okay. Okay. So let me just explain to you why maybe this went a little sideways, is because at the original hearing -- I guess what I need to know is who is Robert Bollt, trustee, care of Orangetree Associates, and Barraco & Associates, Inc.? Because nowhere in -- because it's my understanding that they -- if I recall right, it was the county that presented them as, basically, the reporting -- the required entity required to report on various PUD status, et cetera, and then, ultimately, Lennar was given authorization to represent them, but nowhere did I see any of the property owners on the application. So that kind of led me down the track of, okay, we're talking about other entities that are in charge of the PUD.

So, I mean, where -- I guess what I'm getting at is if we're staying true to form, and we want to make sure that any of these types of applications, that the methods and means that you-all -- the policy that you-all have adopted and follow isn't disturbed, then it seems to me that the property owners that are affected by the sidewalk need to be on these applications -- on this application. Am I right or wrong?

MR. BOSI: You are correct. And the -- it was the staff's lack of clarification and clarity within that issue, I believe, that you've identified as why you've made -- or what may have influenced that -- your original determination. We should have required the individual property owners that had taken control of their lots from Lennar to be, in addition, parties to the application and sign off on that application, and that was -- that was staff's misgivings, or that was staff's lack of follow-through, and because of that, I do believe that the control of the PUD and who was authorized to be able to amend that PUD was called into question.

I will put a clarification out there. The Land Development Code in Section 10.02.13.F, which is the PUD monitoring requirements, identifies an owner of a PUD as not -- as the individual -- or the entity that allows or does not allow a PUD to be modified, but the owner of a PUD for the -- for Collier County purposes is the entity that's responsible

for providing monitoring reports and whether the commitments that were contained within that PUD have been satisfied, not the entity that can say who can and cannot amend that individual PUD.

HEARING EXAMINER DICKMAN: Right. So I understood that to be true, and I'm looking at it right now, because it's part of the submittals, is I understand the monitoring report, and it seems as though, you know, the original -- I mean, it clearly says that the original applicant is not off -- I'll put it in my language -- not off the hook. You know, they always stay responsible for those types of commitments and monitoring. But there was also -- I think, under Subsection 4 of the section you cited, it talks about the county will be given at least six months prior written notice to a change in ownership to a community association. So I think I addressed that as well.

So we kind of went down a train of thought, because it seems like the county was presenting other -- the monitoring report entity rather than the property owners. But, in essence, what I'm being told, I guess, is that none of this really is applicable. What's really applicable is that the property owners that own the lots that have the sidewalks within them need to be on the application and give authorization to somebody like, you know, Lennar, to basically come forward and process the insubstantial change; am I right?

MR. BOSI: Yes, 100 percent correct.

HEARING EXAMINER DICKMAN: Because this is just for monitoring. This has nothing to do with -- I mean, I get it, you want to know, like, who's got some kind of control over the PUD. But this is strictly for -- this section is strictly for monitoring of PUD commitments originally as granted.

And then I see also that there's a definition in LDC 1.08.02 which talks about the applicant, and it says, the owner of record of property or his -- his -- his or her agent -- authorized agent make an application or other submission to the county for approval for development. And then I'm also looking at your minor change to a PUD master plan or minor text change application itself, and it has a place for the name of the property owner, name of the applicant if different than the owner, but then on the checklist one of the things that is there is the affidavit of authorization signed and notarized. And can you tell me, is that the authorization by the property owner to give authorization to whomever is processing this?

MR. BOSI: Yes. That is the authorization of the property owner for an agent to take action on their behalf.

HEARING EXAMINER DICKMAN: Okay. All right. So at the end of the day, Lennar -- if I recall right, Lennar is the builder of these -- the single-family homes that are on these lots and, ultimately, they were the one that came forward in order to get the sidewalks resolved for a very -- at the end of day a very practical reason, because the parking area on the lots were -- there's a conflict between the pedestrian walkways and parking areas. For whatever reason, that happened.

But I think what's being conveyed here -- and I think it was an honest mistake on my part because of the information that was presented to me at that time, but I think, ultimately, to stay true to what the county -- the county's policy and their application is that it's got to be the property owner on the application for this type of application. And then if they choose to hire someone like an attorney or a planner or somebody else, or a builder to represent them, then they file this affidavit of authorization.

So I think that -- I just want to be perfectly clear, because I don't want to upset some

longstanding process and all of a sudden interject HOAs into something -- I mean, because -- I don't know. There must be thousands of HOAs across the county, and, you know, if that's not the policy, if it's the policy that it's got to be the property owners that sign onto these applications, then I want to make sure that that's -- that we're being clear here and that -- whoever -- Barraco & Associates has nothing to do with this. That's just a monitoring issue.

MR. BOSI: The entity that is the owner of the PUD for monitoring purposes is Barraco.

MR. YOVANOVICH: Roberto Bollt.

MR. BOSI: I'm sorry, Roberto Bollt Trust. And for the applications to be complete, the county still needs to -- would need to gain the authorization from the -- from the property owners that were affected by the change.

HEARING EXAMINER DICKMAN: Okay. So what you're -- what I see is -- that the change needs to be is that -- again, you know, my ultimate conclusion was that the applications were incomplete, but in this case now I think they're incomplete because the property owners -- the subject property owners, the single-family homeowners that own that property where the sidewalks are, they need to be on the application, and if they choose to give Lennar authorization, then they need to do that.

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: Okay. All right. I just wanted to be clear. Okay. So let's sit tight, and let's go to Mr. Yovanovich, and then we'll go to the HOA.

Good morning, sir.

MR. YOVANOVICH: Actually, it's good afternoon. How are you?

HEARING EXAMINER DICKMAN: All right.

MR. YOVANOVICH: I don't really have much more to add. You had the -- you answered -- you asked the questions that I -- regarding different procedures.

First of all, I want to make clear it's not a policy. It's actually the adopted regulations that require that --

HEARING EXAMINER DICKMAN: I misspoke.

MR. YOVANOVICH: Yeah. No, that's okay. I just want to make sure that we're clear that those are the rules that we're under.

I agree it got a little confusing when people started asserting ownership of a PUD and staff was pointing out who was responsible for monitoring. What really happened was Lennar did, in fact, own most of the lots at the time they made application. I didn't get involved in this until the appeal was filed, so I wasn't involved in the original application or processing the applications. I just got involved after -- after the appeal was filed.

Lennar then assigned or hired Barraco, an engineering firm, to process the insubstantial change and the modification to the plans. I think there may be a couple of property owners [sic] that Lennar did not own at the time the applications were made. So we are obtaining, and I think we already have, the consents from those property owners that had already had the properties conveyed to them before the applications were filed. So that was documentation -- that documentation will be provided to the county. So you will, in fact, have all of the property owners consenting to the modifications to the improvements on their property.

So I think that you have my written response in support of the county's motion for reconsideration. I'm not going to reread it. If you have any questions regarding it, I'm

happy to answer those. I would note that you referenced a statute under the HOA rules, and that statute you referenced was regarding, really, a public records process that when there's a turnover, the property owner -- the developer is to turn over records to the HOA. That doesn't mean that the -- that's an ownership statute. That would just certainly provide them all permits. That doesn't mean those permits are owned by the association.

And I would also point out that this is a rather large PUD. There are several sections of this PUD, including Pulte owns a large portion of this PUD, and there's a commercial portion in this PUD. None of those properties are subject to the HOA that filed the appeal. So those are facts that you were not aware of, I don't believe, as we were talking about the appeal. Those -- I, candidly, didn't think those were questions as to the basis of the appeal. So that's some additional information that I don't think you had at your -- at your hands at the time we were going through this appeal.

And with that, we support the county's motion for reconsideration. We think your order should be modified to require that the lot owners be the applicants, not the HOA. I think you would turn Collier County zoning procedures on its head if we had to go to every HOA to get permission to amend the zoning on a particular piece of property owned by someone else.

I think the AGO was very clear that that cannot happen. The county can't -- the county cannot require the consent of an HOA or anybody other than the property owner to seek a rezone.

And with that, unless you have specific questions, I support --

HEARING EXAMINER DICKMAN: No. I just -- yeah. I just want to be clear with you, just like I was with the county, that -- so I would be -- in essence, the -- it's pretty straightforward. Under the code, the applicant has to be the property owners, and here we're talking about single-family property owners, regardless of whether they're in the HOA or not. And if they choose to give Lennar or you authorization to proceed and handle this -- and, again, this was an administrative process, not -- it wasn't before me. It's only before me because it was appealed as an administrative decision. But we're not -- I think what went awry was the whole discussion and dialogue about who's in charge of the monitoring responsibility, and I think that's --

MR. YOVANOVICH: Right.

HEARING EXAMINER DICKMAN: I think that's a moot issue. It has nothing to do with any of this, right?

MR. YOVANOVICH: I agree. I think what happened was, though, in fairness to staff, there were some assertions by the HOA that they, in fact, owned the PUD, and I think staff was trying to address that by saying no, no, no, they don't own it, and then we got a little sideways on this PUD monitoring report. And apparently when I got up there and said no, no, no, nobody owns the PUD, it's a zoning document, and it's the property owner that has the right to ask for the rezone, I must not have been forceful enough in making that argument. But we did get a little sideways on that.

HEARING EXAMINER DICKMAN: Well -- yeah. And, then, to be honest with you, there were no property owners on the application.

MR. YOVANOVICH: Well, Lennar, in fact -- Lennar, in fact, when the application was filed --

HEARING EXAMINER DICKMAN: Yeah, when it started.

MR. YOVANOVICH: Yeah. And you have --

HEARING EXAMINER DICKMAN: By the time it got --

MR. YOVANOVICH: I know. And we're correcting that, and you're right, Mr. Dickman. But I'll let you know that the people who spoke in favor of the petition were all the property owners that are being held hostage to this -- to this process right now.

HEARING EXAMINER DICKMAN: Yeah. I understand. Okay. All right. So we're clear so far.

Let's hear from the HOA. And I do have all your materials, by the way, everybody.

MR. WHITT: Okay. Good.

HEARING EXAMINER DICKMAN: Thanks for submitting them.

MR. WHITT: Michael Whitt for Valencia Golf and Country Club.

It seems we're off track again. There are a few things that we need to cover. You have our submittal, and I want to just hit some of the highlights there.

MR. YOVANOVICH: Mr. Hearing Examiner, I don't have a copy of their submittal. I didn't get a courtesy copy of it, if we're talking about the response --

HEARING EXAMINER DICKMAN: I'm sorry. What's happening?

MR. YOVANOVICH: Is this in response to the motion?

MR. WHITT: Yes.

First of all -- and there's the initial procedural determination that you would have to make that the county is even allowed to have a rehearing on this issue. The county and Lennar, as an affected property, they have remedies. That remedy was to appeal your decision.

And, for the record, that would be your Hearing Examiner Decision 2022-55. They did not do that.

The county filed a motion for rehearing of your decision, and in order to do that, they have to demonstrate in their filing that there was mistake, inadvertence, or excusable neglect -- they did not allege that -- or that there was newly discovered evidence which by due diligence could not have been discovered in time for the original hearing -- they did not allege that -- or they need to allege that there was fraud, misrepresentation, or other misconduct of an adverse party, I guess in this instance Valencia Golf. They did not allege that. I don't believe that they can.

So they cannot demonstrate and have not put anything in any motion, they've not demonstrated at all that there was any mistake or inadvertence or excusable neglect.

What they've raised is, after the fact they filed with you a 2012 Attorney General Opinion which was provided by the Attorney General's Office to Clay County. Not to Collier County. To Clay County. And the first thing, as we point out in our response, that would be a, quote-unquote, judicial error with a mistaken view of the law. But under the *Commonwealth Land Title* case and the *Curbelo* case that we cite in our response, that type of mistaken view of the law, quote-unquote, is not a basis for you to even grant a rehearing or reconsideration of this issue.

So the law is abundantly clear that the county doesn't even have a basis to seek rehearing in the first place to say, oh, hey, we went back to the County Attorney's Office 20 days after you rendered your decision, and they dredged up this 10-year-old Attorney General Opinion to a different county on a different issue.

And we lay out in our response -- you can read through that -- it's not binding on you in a quasi-judicial proceeding. It's not binding on you, and it's not persuasive authority either. So they've demonstrated no basis at all for you to even have this hearing and rehear

anything.

They have remedies. The clock -- they're not prejudiced. The clock restarts again because of this improper motion for rehearing. Under the Land Development Code, the clock will start again once you render your decision for them to take an appeal.

Here's what you found. I would invite you to go back and look at your decision. The evidence was very, very clear. When we, Valencia Golf, was forced into the position of having to take this appeal because Lennar filed these applications, went to the county, all of this was done without any notice whatsoever to Valencia Golf and Country Club who was not involved in the process, who had no rights to appear, no right to object, and then found out when the county issued its letter rulings and said, okay, yeah, we're going to modify the plans. We'll do the insubstantial change. We're going to grant everything that you asked. You can just eliminate all the sidewalks, Lennar.

So that's when Vanderbilt -- excuse me -- Valencia Golf was forced into taking this appeal. It shouldn't have had to happen anyway. We raised that below.

When we filed originally, we raised the issue of the PUD. We raised the issue of the declaration of restrictions that bind every lot, every bit of property within Valencia Golf. And I don't want to go back because it's inappropriate to re-litigate everything that was litigated before, and that's exactly what Lennar's trying to do, that's exactly what the county's trying to do is have you go back and say, okay, well, let's just fix everything. We'll just get the owners to sign off now on this application, and we'll fix it.

So we introduced before and you considered before the declaration of Valencia Golf and Country Club that binds these properties, not only the common properties, including the streets and the easements, but these particular lots. And Article XI, Roman numeral XI says, Roman numeral XI, Section 2, under use restrictions, and I quote, no Owner -- capital o, owner, and that would be owner Lennar as an owner of lots or third parties to whom Lennar has conveyed -- shall initiate, undertake, or attempt to inaugurate or implement any variation from, modification to, or amendment of the, capital D, Development plan or any other governmental plans, Land Development Code regulation, development orders, development permits applicable to the, capital P, Property, which would be all Valencia -- and here it is -- or to any lot, tract, or parcel without the prior written approval of the, capital D, Declarant, which approval may be denied at the sole discretion of Declarant.

Now, D.R. Horton was the declarant. Roberto Bollt, in this PUD, sold off this huge chunk of land to D.R. Horton who developed Valencia Golf. D.R. Horton went under water, but Valencia Golf was developed and turned over. That's why you looked at Chapter 720, because transition of control under Chapter 720 governing homeowners associations, has transferred from D.R. Horton to Valencia Golf and Country Club. And we hold all rights of the declarant.

So now what the county wants is, and Lennar, they want you to modify your order to say, that's okay, you can fix everything, have these owners give consent, have these owners sign off on an application, so -- they have no right to sign off on the application. So the position of Valencia Golf is they never had the authority to sign off, neither Lennar nor the property owner, to sign off without the joinder of the successor to the declarant. That would be Valencia Golf and Country Club. That's what the dec states. That's recorded in the public records. That binds all the property. That binds the lots that Lennar owned. That binds the lots that Lennar sold off.

And that's what you held, because we said we would succeed to those rights of the declarant in the zoning documents, in all the governmental plans, everything else. And that's what you ruled in your -- in your decision to say you can't modify because, if you remember, we said, look, this is no different than Joe and Janie Smith who say, we're going to seek to modify the PUD in the community and then so do the Johnsons and so do the Joneses and so do other individual lot owners who then go to the county without any -- any notice to the homeowners association and say, we're going to modify the PUD, the underlying PUD that binds all of this. And we don't need to notify you. We don't have to say anything. We can just go to the county. That was the issue that was presented, and that's in your ruling. You said, I'm not buying that. That's the reason it was improper is because you have to have the association.

Now, the association -- this is huge. This is, I think, I don't know, a thousand or two thousand-acre PUD. There's commercial stuff. There's other developments. They don't have to have Valencia Golf and Country Club join in and sign off and give the okay for any PUD modifications that are sought on other properties. But on this property that was sold off by Roberto Bollt to D.R. Horton, D.R. Horton develops, D.R. Horton turns over to Valencia Golf, Valencia Golf stands in the shoes of D.R. Horton who received all of those rights to the PUD from Roberto Bollt when Roberto Bollt conveyed everything to them.

So it's completely improper for a PUD to eliminate sidewalks -- there are sidewalks throughout this community -- and for Collier County to say, yep, we're going to do that by some letter ruling and not even involve the association as a party to be able to be heard, to be able to have input.

So that's the box we were put into by having to take this administrative appeal. So it should have gone through a different mechanism. It should have come before you in the first instance where we could have appeared as an affected party, an aggrieved party, and had our voice heard and had input into the determination.

So now what they want to do is say, nope, just go back and fix it. Carve out -- just ignore your ruling that you made. Carve out the association. We'll just get these individual people to sign off, and everything's going to be okay, no problem.

So -- and, again, the association has no input. Sidewalks eliminated in the community. And, again, it's important -- and this evidence was presented -- Lennar is the one that created the problem. The setbacks of these homes were inappropriate, and it was a mistake on the part of the engineers, and that's why there's insufficient room to park automobiles is because the homes did not meet the appropriate setbacks and were built too close to the street.

So instead of fixing it, instead of working with the HOA to try to fix things, they come in and file this application, these -- with the county that results in these letter approvals, administrative approvals.

So we would ask you, one, just deny the motion for rehearing. You shouldn't even rehear it. You shouldn't consider it. The Attorney General Opinion was out there. If they wanted you to consider it, they should have. They did not. A mistaken view of the law is not something that can be reconsidered by motion, by you in this instance. It's -- the law's very clear on that. You'd be going contrary to stated -- and it's a Second DCA case, although we're not the Second DCA anymore, but it's a Second DCA case which would be binding precedent for you.

So we would ask that the motion just be outright denied.

HEARING EXAMINER DICKMAN: Does your client own the subject property where the sidewalks are being requested to be removed? Does your client own that?

MR. WHITT: The -- no. The lots are owned by either Lennar or now some individuals to whom they were conveyed. That's --

HEARING EXAMINER DICKMAN: Okay. And -- okay. So -- and -- okay. So this -- so as far as the HOA -- and this is -- have you all notified the county and taken over all the monitoring reporting process? Have you filed all those -- that proper paperwork?

MR. WHITT: No, no, no. But you -- but you made that as part of your ruling, and that is in process to say as to this portion of the --

HEARING EXAMINER DICKMAN: Well, when did you-all take over?

MR. WHITT: I put that date in our --

HEARING EXAMINER DICKMAN: How many years -- how many years has it been? Because you know it's a requirement under the code to notify the county within six months?

MR. WHITT: We know that now, yes, sir.

HEARING EXAMINER DICKMAN: Okay. I mean, it's a big deal.

MR. WHITT: Well, I -- yes, I understand that. I was trying to see if we have that in our -- in our filing, because I know -- I know in our filing we reference D.R. Horton being the declarant and all of that. But when that -- when that turnover occurred, I don't -- I don't know. I'd have to go back and look at the materials. I believe it was --

HEARING EXAMINER DICKMAN: Okay. No problem.

MR. WHITT: -- materials that we filed in the underlying administrative appeal.

HEARING EXAMINER DICKMAN: I understand. Okay.

So, I mean, I think we all understand that the train of thought in the original hearing about who is the -- you know, Bollt, Horton, HOA, who's got reporting duties kind of took things in a different direction. And in my opinion, I think the county in their -- in their filing for a rehearing, the totality of it seems to suggest very clearly that, hey, it's -- the property owners have to be the ones that file the application, and that's really why this is in front of me, because that's a totally -- that that is a sea shift in ramifications if all of a sudden, you know, the HOAs, the various thousands of HOAs across the county were now -- or let's put it this way: The county would have to read the articles of incorporation, the decs, the bylaws, everything. They would have to evaluate all that before they took in an application and declared an application complete rather than what their code says, which the property owners are the ones that have to file the application for an insubstantial change.

So I think -- in my opinion, I think the county timely requested a hearing that -- a rehearing which meets the criteria for that, and what stood out to me was, very clearly, that, okay, I think I had good reason for ruling the way I did because I saw that, you know, the county was presenting you-all and talking about your declaration and -- but that apparently had only to do with the right-of-way cross-path, and then they were also bringing up these prior reporting agents which, really, at end of the day, have nothing to do with it. It's very simple -- it's very simple that this has to be the property owners.

So that's why we're here today, because I see that as, you know, a major shift in what the code -- contrary to what the code says, which says it's got to be property owners and/or their authorized agents.

And so I get what you're saying. I don't know that it's practical -- it's administratively practical or even possible for the county to have to evaluate every article of incorporation, decs, bylaws, everything, in order to decide who has authority and whether an application is complete. I think they've adopted a code that's more straightforward which says the property owners. And in this case we're talking about a little less than 600 square feet of sidewalks that are crossing over into private property ownership.

Now, I'm not going to -- I mean, you as HOA and the prior property owners may have some kind of private civil action against each other, I don't know, but I think as far as county procedures go, it seems to me that the more straightforward path is what is required under the code that the property owner file this, and the county's already said that they are going to make sure that they have that amendment made in the application.

MR. WHITT: So, then, as I understand, if they were going to do that, there would have to be new applications filed?

HEARING EXAMINER DICKMAN: I don't know how they are going about doing this. This is an administrative -- again, it's an administrative decision. I mean, you have the ability -- now that you're aware of this, you have the ability to ask for public records or do whatever you want to do, but, you know, I think here my ultimate conclusion was the application's incomplete, but I decided that saying that the HOA needed to be in it based on a whole train of discourse and discussion rather than -- I still think the application's incomplete if the property owners are not on it.

MR. WHITT: Okay. That's fine, Mr. Dickman, but I guess if they file new applications, now that the county is aware of the recorded restriction that says they have no authority, yeah, the county's on notice. It's been on file in this action. It was -- it was on file in our initial filing and in the supplemental filing that were made in the underlying case. The county is now on notice of a recorded restriction that says the lot owner has no right to do that without joinder of the association as the successor to the declarant.

MR. YOVANOVICH: Mr. Dickman, if I again --

HEARING EXAMINER DICKMAN: Yeah, but I don't think -- go ahead.

MR. YOVANOVICH: Mr. Whitt's done a very skillful job of talking about a declaration that really has no application to this motion for reconsideration.

You are absolutely correct, the county does not read or enforce private covenants when it makes land-use decisions. The fact that Mr. Whitt is arguing that he believes his client can stop what's going on would put the county in a position of now judging -- and I brought this up, and I'm not going to get into the details -- the prior approvals we did, in fact, get from the association.

Now the county's got to decide, did I get the right approval? Did I not get the right approval? Mr. Whitt's client's got a place to go. He's got a civil remedy. If he thinks we did not have the authority to request it, he can file a lawsuit, and he can stop the implementation of this.

The county does not ever enforce private covenants. The county attorney has advised the Board of County Commissioners many, many times that that's not their job. The code is clear on who has to apply for the request. We are the property owner. Mr. Whitt can -- he's doing his job in trying to convince you that now the county somehow, because they're on notice to his legal argument, has to give it credence and enforce it. That's what a judge does, and that's the proper remedy.

We will move forward with the county the way the county tells us to with regard to

the application, and the county will decide whether or not they can just simply get the consent to say we agreed that Lennar had the authority to do everything we've asked them to do.

One thing they didn't dispute and argue was your conclusion that the county made the right decision under the applicable regulations to modify the plans. You said they did the right decision. The question was, did the right applicant ask? You did not dispute county's decision as to modifying the plans.

And I think -- I've said my point. I just wanted to address some things that were brought up by Mr. Whitt that I think were a little bit beyond what we were here for, but I want the record to be complete.

MR. WHITT: Okay. And I don't believe --

HEARING EXAMINER DICKMAN: Yeah, I agree.

MR. WHITT: Well, if I could just say -- I just want it on the record, Lennar never moved for rehearing. So Lennar showing up to try to ride the coattails and piggyback, the county's motion for rehearing, the only thing they said was, hey, Mr. Dickman, here's an Attorney General Opinion to Clay County, which has --

HEARING EXAMINER DICKMAN: That's not all they did. That's not all they did.

MR. WHITT: Pretty much.

MR. YOVANOVICH: No. And in fairness, the Hearing Examiner told both of us to respond to the motion for reconsideration. That's what I've done.

Candidly, I was ready to file the appeal, but because the county filed its motion for reconsideration, I was not allowed to file the appeal. I had to wait. So I'm -- you've heard -- we did what we were requested by the Hearing Examiner which was to provide written --

HEARING EXAMINER DICKMAN: Well, I think -- yeah, your -- I see you as a party to this, so I don't see any reason why you shouldn't be here to have everybody, you know, on record.

But I do disagree with you. I think the totality -- with the HOA. I think the totality of what the county submitted in a timely manner clearly illustrates to me that, hey, we've got a problem here. It's supposed to be the property owners that file the application, you know, not HOAs. And then, you know, I can see the administrability impossibility of having to evaluate, you know, every single -- I mean, I've done condo law. I know about HOAs and stuff like that. And it can become very complicated, and I certainly wouldn't want my government having to review all those documents. They would have to give it to their legal department and say, do we have a complete application or don't we?

So I don't think that -- I don't think the statement that you made that, oh, all they did was submit an Attorney General Opinion, that's not true. I think they made it clear that it's got to be the property owner and that I made a mistake or an inadvertence or excusable neglect, whatever you want to call it, in that -- deciding that the HOA needed to be a party to the application.

I think my ultimate conclusion was correct, and I was clearly confused by the information that was presented by the county as well. But I think we're -- I think it makes more sense now to me based on the arguments that have been put forward in your written statements. I do agree. I mean, you have plenty of civil remedies as an HOA under the statutes and other things if, in fact, you want to attack the property owners and do that and

drag them through the courts.

And you're now very aware that the county has to -- if I rule in that way, that the county would have to amend their application. There's public records laws that allow you access to any of that information, so you wouldn't be caught off guard, as you say; you'd be aware of it.

So I personally think that this is properly before me and that I can make a decision based on what all three of the parties here have submitted to me and presented today.

MR. WHITT: Any other questions of me?

HEARING EXAMINER DICKMAN: No, that was my statement.

MR. BOSI: Mr. Dickman, Mike Bosi, Zoning director.

I just want to be -- to put on the record that that is the case, that the county does not enforce private covenants.

Second, we do not have partial monitoring reporting responsibilities. There's one entity that is responsible for each PUD. I'm not sure what the statement was that they were in the process of assuming that responsibility for the PUD. There is one entity for that PUD for monitoring.

HEARING EXAMINER DICKMAN: Well, let me help you out with that. Yeah, let me help out with that, though, because I mean, even -- let me see. What -- I believe what you-all submitted had to do with -- let's see. One second.

You-all submitted to me LDC Section 10.02.13, Subparagraph F, PUD monitoring report requirements. And, you know, I think that somebody has to be responsible for what the original commitments were in the PUD. And if I recall right, it does say that the original applicant, in my words, is never off the hook, but then I'm reading here and it says, county will be given at least six months prior written notice to a change in ownership to a community association including, but not limited to, transfer of all or part of a development to an HOA, blah, blah, blah, blah, blah. So, I mean, that's what I was referring to. And this is a little bit off track and off sidebar here but, you know, my point being is that if the HOA is now in charge of the responsibility of those commitments, then they need to file that.

But that's a whole different animal to me now. It's very clear. That's just about reporting requirements and who does the county go to and say, hey, you're not providing enough impervious surface area. You committed to that. Somebody's got to do it. Somebody has to be responsible. I mean, the original PUD owner is (indiscernible) -- it says they're off the hook but, ultimately, I think the -- I think the HOA does at some point have to notify the county when they take over. The burden is on them. I don't -- but this is -- again, it's for monitoring reports purposes, which is totally different, in my opinion, now, than just filing an application for an insubstantial change. I don't even know why we have gotten into this discussion about monitoring reports other than the fact that that's what was given to me at the original hearing, you know, as the reason for why we're listing these people on the application, you know.

MR. YOVANOVICH: Just to drag this out just a hair longer, because I'm a little concerned --

HEARING EXAMINER DICKMAN: Yeah, let's keep -- yeah, let's keep doing this.

MR. YOVANOVICH: Only because I'm concerned about what I'm hearing from the HOA. The monitoring report has two components --

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: -- to check off how many houses have been built that year, how many commercial square feet, but also to say that we've complied with the various development commitments.

HEARING EXAMINER DICKMAN: Yeah.

MR. YOVANOVICH: The HOA, I don't want them to take over and say, now -- by saying we're in charge of the monitoring reports, I don't want the developer off the hook on the ultimate development commitments.

So the developer, Mr. Bollt, is still responsible for the monitoring report and responsible for the commitments. Just because there's been turnover to the HOA, the only -- the HOA didn't somehow take over those responsibilities. Yes, they need to let the county know they're out there, but they're not now the monitoring report requirement for that portion of the PUD. So I want to make sure that's clear.

HEARING EXAMINER DICKMAN: Yeah. Well, maybe we shouldn't even talk about this anymore, because --

MR. YOVANOVICH: Okay.

HEARING EXAMINER DICKMAN: -- that's really about monitoring reports and, you know, the fact that this was interjected in the original hearing on the administrative decision was totally a red herring and led me down a track of, okay, the county's looking at this entity that is required for reporting instead of the property owner and so it's definitely, to me, a mistake. It's not anybody's -- you know, it was inadvertent. I think it was just out there, but I can see why there's a need to rehear this because it would be completely contrary to what the code requires, which is the property owner, and then the property owner has the option of giving somebody the authority to represent them. And it's pretty simple.

So, you know, that's how I see that. I don't -- I know the HOA's going to disagree with me. They're entitled to that. They have their remedies. But I definitely have an obligation as HEX to correct something if it's done -- if something that I've rendered is in error.

Mike, did you have something you wanted to say?

MR. BOSI: One more thing, Mr. Dickman, just to clarify the record. The HOA was invited to be part of the solution. The HOA did not participate in any of the discussions at their own choosing.

HEARING EXAMINER DICKMAN: Yeah. Yeah.

MR. BOSI: And there has been -- there was emails that we can provide that reached out, and there just wasn't -- there wasn't a lot of -- there wasn't a lot of willingness to be part of a solution. The response was, bring us a solution, we'll evaluate it. And we never --

HEARING EXAMINER DICKMAN: Yeah.

MR. BOSI: We never got a participation. So we never excluded them, but we've invited them to -- but it was just -- it wasn't something that we were reached in the middle.

HEARING EXAMINER DICKMAN: No, and I understand, and I remember that part of the hearing, and I don't think that the HOA was totally caught off guard here about the problem. And, again, I want to emphasize, I think the county planning department was clearly recognizing a problem. There's a -- there's a public safety conflict problem here where -- you know, whether or not it's the fault of Lennar putting a building someplace in

the wrong place, that has nothing to do with this. That's a private matter. It's a private matter between other people.

But, you know, in this case, I think that the intent was to try to do something correct, which was try to protect pedestrian and motor vehicle conflicts, and I think that was -- that's pretty clear to me. So the reasoning for this being in front of -- or being decided administratively was correct. I think at the end of the day, it's still -- the application just needs to be cleaned up and the proper parties need to be on it.

MR. WHITT: Okay.

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: We'll await your ruling then.

HEARING EXAMINER DICKMAN: So I will -- is somebody talking -- somebody?

MR. WHITT: I said we'll just await your ruling, then.

HEARING EXAMINER DICKMAN: Yes. I will get a ruling out as soon as I possibly can. But I think -- I want to make sure everybody -- I feel like everybody's got their -- put their information on the record. I have all the written information in the record. Everybody's got their own avenues of appeal if they want to take them. There's also the courts. But at the end of the day I just want to make sure that whatever comes out of my office as Hearing Examiner doesn't go contrary to what the code says with regard to the procedural process for filing these applications.

Okay. Anything else?

(No response.)

HEARING EXAMINER DICKMAN: Okay.

MR. WHITT: Nothing from Valencia.

HEARING EXAMINER DICKMAN: Yeah. And, you know, just one final statement. I think that the real -- the real losers here are the people that own those lots. I feel bad for them because they're the ones that are actually being disadvantaged the most here while a bunch of us lawyers sit around arguing about, you know, the legal -- the legal ins and outs of the application of this. Anyway, that's just my little commentary.

But let's get this -- I'll get this out as quickly as I possibly can, and I appreciate everybody's hard work and your submittals. And have a nice day. I appreciate you waiting around. It's been a long day.

Okay. So any other business? Any other final things we need to do?

MR. BELLOWS: Mr. Dickman, this is Ray Bellows. After the meeting we have a follow-up question in regard to the Mediterra HEX decision that was issued. I think it's a procedural cleanup issue. Do you have time to talk about it now?

HEARING EXAMINER DICKMAN: Yeah, I guess.

MR. BELLOWS: We can call you and set up a meeting to talk about it. It's basically the packet that you received for the Mediterra petition included correspondence and emails. Those were attached as exhibits to the packet you got, but included in there -- those emails were additional attachments, and those additional attachments didn't get copied over into your packet. So we wanted to figure out the best way to get you that information.

HEARING EXAMINER DICKMAN: So you're saying that the decision that was rendered already didn't have --

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: -- all exhibits?

MR. BELLOWS: I believe the decision itself had the exhibits. It's the backup material that didn't have all of the attachments. You didn't include all the attachments in your decision. This was just part of the packet you received.

HEARING EXAMINER DICKMAN: Okay. All right. Why don't you do this: Why don't you -- yeah, can you explain -- yeah, let's go ahead -- and this is under other business, so let's just tell me what the problem is.

MR. SAMMON: The lawyer who was representing the homeowners that were in opposition, in the email chain, which is Attachment I, he had attachments in the emails. Those attachments weren't included in that Attachment I.

HEARING EXAMINER DICKMAN: Okay.

MR. SAMMON: So he was asking for that to be part of the record.

HEARING EXAMINER DICKMAN: Okay. So you're just talking about the record itself. Like, the record is incomplete. It has nothing to do with my decision?

MR. SAMMON: Correct.

HEARING EXAMINER DICKMAN: Okay. So you're asking my -- I mean, I don't know that I can do that at this point. I mean, if it was submitted to you-all. I mean, was it submitted to you-all in a timely manner before or at the hearing?

MR. SAMMON: Yes. It was -- it was submitted on December 14th, so...

HEARING EXAMINER DICKMAN: Okay. So if it was submitted to you-all, then it seems like it should be part of the record, as long -- because I can't allow something into the record after the hearing has been ended; that's where it stops.

MR. SAMMON: Correct.

HEARING EXAMINER DICKMAN: So you're -- these are not new records --

MR. SAMMON: No.

HEARING EXAMINER DICKMAN: -- or new documents or anything like that?

MR. SAMMON: No, not new documents.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: Again, for the record, I believe that information's in the staff records. It just didn't get copied over into the agenda packet that you received.

HEARING EXAMINER DICKMAN: I see. Okay. All right. But, then, I still think that that's -- if it was submitted to you-all, then it's part of the record.

MR. SAMMON: Okay.

MR. BELLOWS: That's correct.

HEARING EXAMINER DICKMAN: Okay. All right. Because I can't -- you understand I can't reopen this hearing and allow new records to come in.

MR. BELLOWS: Yeah. And that wasn't the purpose of my question. I wanted to make sure that you didn't want an extra copy of that for your records.

HEARING EXAMINER DICKMAN: You can send it to me, and I'll be happy to add it -- I mean, add it to whatever we have, but it's just going to be part of it. I don't think it's going to change -- I'm not going to -- nobody's asking me to change my decision on it, you know, so...

Okay. Does that help you? Does that solve your problem?

MR. BELLOWS: Yes, it does.

HEARING EXAMINER DICKMAN: Okay. All right. Anything else? Otherwise, we'll adjourn the meeting.

MR. BOSI: I believe that's -- I believe that's it, Mr. Dickman.

HEARING EXAMINER DICKMAN: All right. It's been a fun day. I appreciate it. Thank you, everybody.

MR. BOSI: Thank you.

MR. YOVANOVICH: Thank you, sir.

HEARING EXAMINER DICKMAN: Take care of yourself.


There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 1:33 p.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

3/8/22

These minutes approved by the Hearing Examiner on _____, as presented  or as corrected _____

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING,
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