

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

ALSO PRESENT:

Michael Bosi, Planning and Zoning Director
Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner
Sean Sammon, Principal Planner
Eric Ortman, Principal Planner
Andrew Youngblood, Management Analyst I
Ailyn Pedron, Management Analyst I
Suzanne Perdichizzi, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Okay. Good morning, everybody. Good morning. I'm going to call the meeting to order. It's May 11th, 2023. This is the Hearing Examiner for Collier County.

Let's all rise and honor the flag with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

Some quick introductions. My name is Andrew Dickman. I am an attorney in good standing with the Florida Bar. I was retained by the Board of County Commissioners to fulfill the duties of the Hearing Examiner that are outlined in the Code of Ordinances.

To my right is county personnel, and they will be handling the petitions here today.

The way we're going to handle this hearing is that the petitioners will come up to the hearing -- to the podium -- to the large podium over here to my right -- my left, petitioner or the petitioner's representative, then we'll give time for the public comment. The public can speak here in the center. If you haven't filled out -- if you want to speak today, you need to fill out a speaker's card. We have the speaker's cards over there on the table, and see these fine people over here. And then -- and then we'll have some time for rebuttal.

So what I want everyone to do is to just relax. My job here today is to gather as much information as I can on each petition. I've read all the materials that have been published in the agenda.

As far as disclosure, I've had no other outside communication or work done on any of these files. I've had no conversations with staff or the applicants or folks from the public. I've just read everything that's been filed and that's made available to the public. So my job is to be here as a neutral and impartial decision-maker, apply the law based on whatever substantial competent evidence I can gather here.

This is a quasi-judicial hearing which means that the rules of formal evidence do not necessarily apply. I can listen to experts. I can take layperson testimony if it's relevant and I feel like it's relevant, and then take that information.

I will not be making any decisions today. I have 30 days to render a written decision, so I won't make any final decisions here today.

So anybody who is going to speak here today will have to do so under oath. So if you would, stand and raise your right hand, and the court reporter over here will swear you in.

THE COURT REPORTER: Do you swear or affirm the testimony you will give will be the truth, the whole truth, and nothing but the truth?

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

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

Just real quickly also, anybody who wants to have a conversation, please do so out in the hallway so it doesn't interrupt anybody's train of thought while they're speaking.

And, as I said, just as far as disclosures, my disclosure is I have had no ex parte communication on any of the items on the agenda today.

So why don't we get started with the first item, and we'll have the county introduce that.

Good morning.

MR. SAMMON: Good morning.

Hello. All right. Sorry about that.

***Good morning, Mr. Dickman. For the record, Sean Sammon, principal planner in the zoning division.

Before you is Agenda Item 3A. This is a request for you to approve a minor conditional use to allow coin-operated amusement devices, SIC Code 7993, pursuant to LDC Section 2.03.03.C.1.c.5 on approximately 2.78 acres for the benefit of the subject property located at 5488 Rattlesnake Hammock Road, Naples, Florida, 34113, also known as Charlemagne Plaza on Rattlesnake Hammock Road in Section 18, Township 50 South, Range 26 East, of Collier County,

Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.08.00.D, 1 through 4, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

The conditional-use request is tied solely to the Unit 5488, Rattlesnake Hammock Road, inside Charlemagne Plaza, which is a coin-operated arcade that has been operating for over four years until the previous owners left, and the current owner prefers to continue operations for the sake of the employees and patrons.

The applicant conducted one neighborhood information meeting on April 6th, 2023. One member of the public attended, and there were no further commitments made by the applicant aside from what is already committed.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.C. The property owner notification letter and newspaper add were taken care of by the county on Friday, April 20th, 2023, and the public hearing signs were placed by the applicant on Saturday, April 22nd, 2023.

I've received 11 requests for information by phone, email, and in-person visits. And of the 11, only one was a public comment for opposition pertaining to this position [sic].

Staff recommends that you approve this petition as described in accordance with the attachments to the staff report.

There are two conditions in association with the recommendation to approve. One, the operating hours are seven days a week from 11:00 a.m. to 10:00 p.m., and, two, there is an age restriction for customers to be 21 years old or over.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Thank you very much. Is the petitioner or their representative here?

MR. KAJY: Good morning.

HEARING EXAMINER DICKMAN: Good morning, sir. Why don't you use the podium over here to the left, the big podium.

MR. KAJY: My name is Amil Kajy. I'm the owner of the Charlemagne Plaza. Also I'm here for that reason, like Mr. Sammon said.

HEARING EXAMINER DICKMAN: One second.

MR. KAJY: Oh, sorry. Again, my name is Amil Kajy. I'm the owner of the Charlemagne Plaza at 5422 -- 5498 [sic] Rattlesnake Hammock Road.

Everything that Mr. Salmon said, that's what I'm here for. That place, it exist over four years now. The tenants left for whatever reason. Their lease expired, so I kept it open just to keep the jobs going, and the neighborhood likes it; the patrons there love it. It just -- I think it's good for the community. A lot of people that come in there, they enjoy it. They've been coming there for four or five -- you know, over four years, so -- and I'd like to keep it open, and hopefully I can get the special use for it.

HEARING EXAMINER DICKMAN: Okay. So it's basically going to be the same. You're just -- it's just change of management, change of ownership?

MR. KAJY: Yes, sir.

HEARING EXAMINER DICKMAN: Right.

MR. KAJY: Everything is the same. It's been the same. I'm using the same company that, you know, brings the machines and everything else, and then -- the coin-operated machines. Nothing's going to change except for better staff, you know, and everything else, and make things way better.

HEARING EXAMINER DICKMAN: All right. Let's see if anyone's here from the public. Is anybody signed up to speak on this item? Anybody in the audience? Anybody online?

MS. PEDRON: Good morning, Mr. Dickman. At this time we have no speakers.

HEARING EXAMINER DICKMAN: No speakers. Okay.

All right. Anything else from county staff?

MR. SAMMON: The applicant/owner has a brief presentation if you wanted to see pictures from the unit.

HEARING EXAMINER DICKMAN: Okay. Yeah. I didn't know if he had that or not. Yeah, let's go ahead and go through that.

MR. KAJY: Yeah, I don't know if you guys got ahold of it. Basically, like I said, it's at 5488, just that unit itself, and I'd just like to keep it the way it is and --

HEARING EXAMINER DICKMAN: One second. You want to bring it up?

MR. YOUNGBLOOD: Yeah.

HEARING EXAMINER DICKMAN: All right. There we go.

MR. KAJY: And I'd just like to maintain the way -- oh, okay. Yeah, I see it. Yeah. I'm sorry.

It's located, again, at 5488 Rattlesnake Hammock Road, and it was opened the last three, four years. The old tenants, they decided -- when the lease expired, they decided to leave, so I decided to keep it open to keep the employment for the staff there and create jobs.

And the people actually that comes there, they enjoy coming there for a lot of reasons. We do have, you know, free food, bingo. You know, all this is free, and they -- the community like it. They come in there and enjoy themselves almost every day. They became like family in there. So they come and mingle over there and do whatever, you know. And it's -- it's a good environment. It's a good environment. I'd like to keep it that way. And hopefully it will stay -- continue doing what we do in there. And, basically -- and I hope we can get the special use for it to continue, you know, doing what we do in there.

These are some of the pictures from the inside.

And we've been there four years and never been any issue or any problem or any police called upon or anything. And everybody that comes in there, even with new people that we had with the ad for this -- for today's hearing and stuff, everybody enjoyed it, and they like and said we're going to continue coming there. And hopefully we get the approval from you guys. I appreciate it.

HEARING EXAMINER DICKMAN: All right. Nice presentation.

MR. KAJY: Thank you. I tried. Thank you.

HEARING EXAMINER DICKMAN: So are they actually coins nowadays? They still use coins?

MR. KAJY: They call it coins, yes.

HEARING EXAMINER DICKMAN: They call it coins, okay. My pinball days.

Okay. I don't have any questions for you. Do you have anything else you want to say?

No one else is signed up for -- I just want to check one more time. Anybody from the public? No.

MS. PEDRON: Mr. Dickman, at this time we still have no speakers registered.

HEARING EXAMINER DICKMAN: Okay. All right. Pretty straightforward request. Thank you for the information. Thank you for being here. Nice job doing it on your own.

MR. KAJY: Thank you.

HEARING EXAMINER DICKMAN: And I'm sure I'll get a decision out as quickly as possible.

MR. KAJY: Appreciate it. Thank you very much.

HEARING EXAMINER DICKMAN: All right. Take care. Have a nice day.

MR. KAJY: You too, thanks.

HEARING EXAMINER DICKMAN: All right, great.

***All right. Let's go to 3B.

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

HEARING EXAMINER DICKMAN: Good morning.

MR. ORTMAN: This is Agenda Item 3B, Petition No. PL20220008529, a request for a variance from Exhibit B of Ordinance 07-85, as specifically amended by HEX Decision 2020-21, to reduce the minimum front yard back from 15 feet to 10.1 feet for a new casita in Naples Motorcoach Resort Commercial Planned Unit Development.

The subject property is plus-or-minus 0.11 acres located at 13451 Snook Circle within the CP -- within the PUD, and the PUD itself abuts U.S. 41 on the south side and is approximately 4,000 feet southwest of the intersection of U.S. 41 and Collier Boulevard and is in Section 3, Township 51, Range 26.

And before I start, there is a clarification that staff would like to have made, which is on the top of Page 6 of the staff report. It is just to clarify that the staff -- the permit that staff approved was for a 15-foot setback, and it wasn't -- it was somewhat ambiguous, possibly, in the statement. I have rewritten that section. I can either hand it out, or I can read it into the record. As you wish, sir.

HEARING EXAMINER DICKMAN: Yeah, go ahead and read it into the record.

MR. ORTMAN: Do you want the original or the final?

HEARING EXAMINER DICKMAN: The final.

MR. ORTMAN: Okay.

HEARING EXAMINER DICKMAN: Whatever the final is.

MR. ORTMAN: This is the response or the staff answer to Question A, which starts at the bottom of the Page 5 and continues on the top of Page 6.

The building plans and permit for the casita showed a 15-foot front yard setback. The building runs parallel to the eastern property line and sits at an angle with respect to Snook Circle. The contractor appears to have measured the setback from the northeast corner of the building, where it should have been measured from the northwest corner of the building, as the northwest corner is closer to the road, the front setback.

Given the orientation of the casita to the front setback line, only a small corner estimated at 7.5 square feet of the casita's floor area encroaches into the setback.

The applicant has 20 letters of support for this variance from neighbors and the Architectural Review Committee of the HOA. And I can --

HEARING EXAMINER DICKMAN: If I could have a copy of that, that would be great. Thank you.

MR. ORTMAN: Okay. All right. The applicant, Mr. Schwerin, who is also a snowbird, hired a contractor to build the casita in March of 2022. The building permit was issued on August 18th of 2022.

When Mr. Schwerin returned to Florida for the winter in November, he discovered that construction on the casita had come to a stop, and the reason being that the spot survey was rejected for the encroachment.

Can you bring up, please.

Okay. As can be seen in the graphic there, the encroachment is -- you know, it's 4.9 feet into it, but it is just a point of the building. The blue horizontal line references the 15-yard setback line approximately, and that little triangle is what is encroaching, which is estimated at seven-and-a-half square feet. So it's just the point of the building that is making the first encroachment. Thank you.

Okay. Mr. Schwerin and the contractor discussed ways that they could remedy this situation, including moving the concrete slab, tearing down, and starting over. This followed somewhat shortly after Hurricane Ian, and a contractor to move the slab was not able to be obtained. And the applicant has stated that he had spent about \$87,000 to date at that time and really did not wish to tear it down and start again.

Also, construction is prohibited in the PUD between December 1st and April 30th. Being that this was November, the applicant decided to complete construction of the shell of the building. Not the whole -- the inside, but just the shell of the building for the winter.

There have been 20 letters of support. There has been not one letter or phone call of objection. All public notices have been adhered to. The mailers and the sign was placed on the property on April 21st, 2023.

And the county Growth Management Plan does not consider dimensional issues, only land uses; therefore, the casita is consistent with the Growth Management Plan. And aside from the encroachment, the casita meets all requirements of the Land Development Code, and staff recommends approval of this petition.

HEARING EXAMINER DICKMAN: All right. Good job. Thank you very much. Is the applicant or the applicant's representative here?

MR. SCHWERIN: Yes.

HEARING EXAMINER DICKMAN: Come on up, sir.

MR. SCHWERIN: Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. SCHWERIN: Good morning. I'm Dave Schwerin. My wife, Diane. Along also is the contractor from Marvin Builders, Richard Durling.

HEARING EXAMINER DICKMAN: Okay.

MR. SCHWERIN: I agree with Eric's assessment of the project. The reason that we actually started this variance was those 20 letters or the support we have within our community there. They actually said, go get a variance. Go get a variance, because the majority of the people in the park don't even know the building is out of place, and the neighbors around me will say that -- don't start over. Don't make the mess. This isn't worth moving. They don't want to see construction start to tear it all down, put it back together, and have that mess again.

So if you have any questions for me, I guess --

HEARING EXAMINER DICKMAN: Let's see if -- do you have anything else you want to present or any presentation?

MR. SCHWERIN: No.

HEARING EXAMINER DICKMAN: Anybody signed up to speak on this item?

MS. PEDRON: Mr. Dickman, we have no registered speakers for this petition as well.

HEARING EXAMINER DICKMAN: Okay. So we have no public speakers.

It seems pretty straightforward. This happens from time to time. I see a handful of these every year, you know, de minimis type of situations. I guess, based on the dates, while you were away we had a hurricane.

MR. SCHWERIN: Yeah.

HEARING EXAMINER DICKMAN: You must have been sitting -- both you and your wife were probably frantically worried about your property while you were wherever you are. Where is home?

MR. SCHWERIN: Nice warm Minnesota. You know why we like it here in the winter.

HEARING EXAMINER DICKMAN: Well, we hope you become a permanent resident at some point.

MR. SCHWERIN: Yeah, we'd love to.

HEARING EXAMINER DICKMAN: All right. If you don't have anything else, I don't have any questions for you. I have all the information I need. Staff has done a great job. Thank you for that. And I'll get a decision out as quickly as I can.

MR. SCHWERIN: Thank you. Okay. Appreciate it.

HEARING EXAMINER DICKMAN: Thank you. Have a great day.

MR. SCHWERIN: Thank you.

HEARING EXAMINER DICKMAN: All right.

***3C.

MR. KELLY: Good morning, Mr. Dickman. For the record, John Kelly, Planner III.

HEARING EXAMINER DICKMAN: Good morning, John.

MR. KELLY: Before you is Agenda Item 3C. It's BD-PL20220006502.

The petitioner requests that you approve an 18-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 38 feet into a waterway that is 133 plus-or-minus feet wide pursuant to LDC Section 5.03.06.E.1.

The subject property is located at 72 Southport Cove, also known as Lot 14, Southport on the Bay, Unit 1, in Section 6, Township 48 South, Range 25 East, Collier County, Florida. It's located within Tract H, a residential component of the Lely Barefoot Beach Planned Unit Development.

The subject property comprises 0.3 acres with 117.6 feet of water frontage consisting of a riprap and mangrove shoreline. There is a 20-foot-wide conservation easement landward of the property mean high-water line. The proposed dock facility has been designed with two boatlifts, one to accommodate a 35-foot vessel and the other for two personal watercrafts to be moored side by side.

The applicant has also provided a second less desirable concept plan, which is contained within your Attachment C for consideration. This concept was also reviewed by staff.

Environmental staff has reviewed the docking facility and found that the conservation easement has been disturbed and has, therefore, required that a restoration plan be made part of this petition.

The Conservancy of Southwest Florida has provided a letter of no objection.

With respect to public notice, that was taken under LDC Section 10.03.06.H. The property owner notification letter and the newspaper ad were satisfied by the county on April 21, 2023, and the public hearing sign was posted to the front of the property by myself on April 20, 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 five of six, with the sixth being not applicable, the Manatee Protection Plan. And it has been found to be consistent with both the Growth Management Plan and the Land Development Code.

One phone call was received in response to the advertising of this project. The caller stated that he owned the property to the east and wanted to view the plans. I contacted this person on Tuesday, and he stated that the proposed dock would not interfere with the use of his dock and, therefore, he had no further comment.

Staff recommends the Hearing Examiner approve this petition as described in accordance with the proposed dock plans provided within Attachment A or Attachment C subject to the following condition, and that is that the restoration plantings must be installed and inspected by Collier County staff prior to the issuance of a certificate of completion for the boat dock.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Just to be perfectly clear, so they've provided Alternative A and Alternative B, I'll call it A and B, and you've reviewed both, and your analysis applies to both of those, right?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay, great. All right. Thank you.
Good morning, Jeff.

MR. ROGERS: Good morning.

HEARING EXAMINER DICKMAN: It's good to see.

MR. ROGERS: Same here.

For the record -- good morning. For the record, Jeff Rogers, with Turrell, Hall & Associates, here today representing the petitioners, Andrew and Jennifer Hobbs, who live at 72 Southport on the Bay, which is within the Barefoot Beach development off Bonita Beach Road North, Collier County.

As John stated, we are requesting an 18-foot boat dock extension from the allowed 20 feet

overall for a 38-foot protrusion out into the subject waterway that is considered a natural man-altered waterway within Little Hickory Bay that ultimately comes out to the Gulf of Mexico through Wiggins Pass as you work your way south.

So, basically, going through the subject property, the property is unique compared to other properties in Collier County in regards to this development has a 20-foot conservation easement that is deeded to Collier County/Conservancy of Naples that is throughout the whole area that we have to cross through in order to get out to the subject waterway.

With that, there is criteria that we have to follow in regards to the type of dock/access walkway that we can develop or propose through, which is a 4-foot-wide walkway only, no bigger. And that is also consistent with the state DEP's criteria for walkways through mangrove fringes.

With that, I have received both state and federal permits for this dock.

Running through the criteria real quickly. As John stated, we do miss one of the five on primary. Basically, the first one pertains to the number of slips being consistent with single-family residential lots, or the subject property in this case is a single-family residential lot. So we are allowed two boat slips. The dock does propose two boatlifts.

Actually, go ahead and forward. We'll show you the proposed dock.

This is the existing subject property. The easement, as you can see -- I'll jump around here. I apologize for that. The mangroves, the taller trees that you see are the mangroves, and there is sod that does encroach into the conservation easement that is 20-foot wide.

HEARING EXAMINER DICKMAN: How far back does the easement go? Is it back here?

MR. ROGERS: Yeah, roughly; yes, sir. It's a good ways. They're going to have to restore probably at least 10 feet of that.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: So -- and it is a common issue in this neighborhood that, you know, some building permits were issued with the county unaware of the easement, so there's been a lot of repairs done over the years to this, and this is how we get that fixed, basically.

HEARING EXAMINER DICKMAN: Okay, good.

MR. ROGERS: So I've done lots of them in here, and they're all pretty much consistent, so...

HEARING EXAMINER DICKMAN: I think it usually happens when they do the land clearing for the building of the house --

MR. ROGERS: And they never restore it.

HEARING EXAMINER DICKMAN: -- and those guys get a little aggressive?

MR. ROGERS: Yeah, yeah. So at least the mangroves are still there, which is a natural buffer to keep the bank there. And, you know, it's better than a seawall for this particular area.

So the mangroves are in good health. They're there. They're established. So no issues with that. We are proposing to do native landscaping requirements, which environmental staff has reviewed the restoration planting plan for the area.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So moving forward, so this is just another view of the waterway. You can see the house is on the bottom right corner. That's the pink structure. It has since been painted, so it's no longer pink or a coral color.

So the owner is doing heavy renovations to it. I don't believe he's tearing it down, but he is doing renovations as we speak. So the dock will accommodate the residence. There is no dock on site and, to my knowledge, there never has been one. So this is a new -- a new thing for this area.

Moving forward, this is a survey that we're required to get. ABB, a local surveying company that we probably all know, did the survey for me. It's not real clear here, but the water depths are shown, the width of waterway is there, which is mean high to mean high, showing the true width of the waterway.

Now, I'll get into a little bit of this. The waterway width is a little bit more restrictive due to the mangrove overgrowth into the waterway, so the navigable waterway is less than that, and I have some slides to talk about that. But the true width, water line to water line, is 133 wide.

Moving forward. So here is a proposed dock with the water depths in yellow pointed around. It is a natural shoreline so, obviously, closer to the shore it is shallower. So bringing the dock in any closer, A, would impact the mangroves which is -- we are doing lateral trimming, which we're allowed to do, lateral branches, but bringing it in any closer would have been a little bit more problematic with the state agency to potentially reduce the protrusion. That's one of the criteria we did miss, and I'll talk about that, but...

HEARING EXAMINER DICKMAN: Which property owner contacted the county? Was it this one?

MR. ROGERS: I think John said the east, yes, sir.

HEARING EXAMINER DICKMAN: It must be this one.

MR. ROGERS: Yeah, which on a -- moving forward I've got other aerials zoomed out, and I believe his dock is, literally, around a corner.

HEARING EXAMINER DICKMAN: Way over?

MR. ROGERS: Yeah. His property's got a unique shape, kind of like ours.

HEARING EXAMINER DICKMAN: Gotcha.

MR. ROGERS: On the primary criteria, No. 2 is the water depths; is it too shallow? And this one's -- the answer to that is yes. We can't bring it inside to 20 feet because, A, the water depths are too shallow as well as the mangroves. So there's -- it's a two-item answer to that. But the depths -- to answer the question, the depths are too shallow to bring the boat any closer to the shoreline. So that's No. 2.

Number 3, whether the proposed docking facility may have adverse impact on navigation with the adjacent marked or charted navigable channel. This is a non-marked channel. This is a kind of, what I would call, local knowledge channel, but it's mostly a canal for these property owners on this waterway.

If you move forward, I've got some zoomed out aerials. Keep going, if you don't mind. There you go. So this gives you a better idea of the subject waterway and how it naturally flows. So it's not a square, concrete dredge-and-fill kind of waterway that we're used to in other parts of the county.

So you can see how we're offset from the channel, so to speak. So we will not impact -- our stance is we will not impact navigation as boats could go up into that cove but, typically, they're not. They're just ingressing and egressing to a further house. So there should not be any impacts to this current, today, navigation situation on the waterway.

If you go forward, Andrew, I've got -- there you go.

So -- and, again, as proposed, we are, you know, still maintaining a consistent width of the waterway that's there today, because the dock on the bottom of the screen south of us is there, and they have a chokepoint a little bit less than what we would be creating, so it's not more restrictive now than it is currently with this proposed structure.

So moving forward to No. 4 of the primary, that's where, you know, the Concept 2 or Concept B that you have and staff reviewed came into play, because the overall protrusion into the waterway does exceed the allowable 25 percent width of the waterway. I believe we're at 28, 28-and-a-half percent.

So Concept B still does not meet the 25 percent. I believe it gets us down to more like 26, I think it was, so -- 27, excuse me.

So, you know, there's really no way to meet the -- the only way to meet the 25 would be to ultimately eliminate the outside portion of the dock which does provide additional access to a vessel moored up on the boat on a temporary -- on the dock, excuse me, on a temporary basis.

HEARING EXAMINER DICKMAN: Are you talking about this right here (indicating)?

MR. ROGERS: Yeah. Yes, sir. Exactly.

So it's -- in our opinion -- in our, you know, firm's opinion, it's a great place -- low tides -- to pull up the boats and load, unload, because you're technically not allowed to ride the lift up and down per the manufacture's engineering specifications of a boatlift. Do people do it? Yes, they do, of course, but, technically, you're supposed to provide an additional lay-along area, if possible, to be as safe as possible for people getting on and off the boats.

So that's what that outside finger provides, as well as, you know, if they have a friend to come over for temporary, you know, there's a place to tie up a boat for a temporary basis without being in the setback or anything like that. So that's the one criteria that we don't miss of the primary.

Number 5 of the primary, whether the proposed location and the design of the dock facility is such that the facility would not interfere with use of neighboring docks.

I guess the gentleman to the east, as you heard on record, he's okay with it, totally around a corner. No inference there. Them, they pull -- they pull their --

HEARING EXAMINER DICKMAN: They go in this way?

MR. ROGERS: Yes, they do; exactly.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Yeah. So that's -- it is tight, but we are providing, I believe, a 30 -- yeah, 33 -- a 30-foot setback at the most restrictive closest point.

HEARING EXAMINER DICKMAN: (Indicating.)

MR. ROGERS: Which -- yeah. So -- which doubles what the county -- is required of us, which is 15 feet. So we provide a significant buffer there.

HEARING EXAMINER DICKMAN: So you're within the setback on this side, right?

MR. ROGERS: Yeah, we meet the setback.

HEARING EXAMINER DICKMAN: You meet the setback.

MR. ROGERS: Yes, sir. We double it, basically, yeah. Setback requirement's -- to be honest with you, 15 is more -- is more restrictive than what -- actually, the state's more restrictive, excuse me here, because it is a natural waterway. They require a 25-foot setback. So I had to design it to meet that as well, which was more restrictive in this case. So a manmade canal, we have more flexibility with the state but not here.

So moving on, Secondary Criteria No. 1, whether there are any special conditions not involving water depths related to the subject property or waterway which justify the proposed dimensions and location. So in this case, it's -- the natural shoreline/conservation easement does ultimately affect us in regards to protrusion and limiting impacts to the mangrove fringe there that we're ultimately only allowed to trim lateral branches for access purposes only. So that was the factor in that one.

Secondary No. 2, whether the proposed dock facility would allow reasonable, safe access to the vessel for loading, unloading, and routine maintenance. And that is why we do a U-shaped dock here. Ultimately, to provide, you know, routine access on both sides of the vessel as well as maintenance to the vessel, which is very nice for homeowners. It is a consistent design for this area. As you can see, the boat -- the dock immediately there is the same shape and relative size as we're proposing.

If you go to the next slide, Andrew, I think I've got one zoomed out even further. Yeah, so you can see a lot of U-shaped docks here in the subject waterway. So we're pretty consistent.

And, oh, also on this one -- I'm glad this popped up. You can see I put two 35-foot vessels navigating through the chokepoint of the waterway, and those are to scale. Those do, you know, match, so that gives you an idea of what impacts the dock would have potentially on navigation, and then our position is there are none based off this visualization.

Secondary Criteria No. 3, for single-family dock facilities, whether the length of vessel or vessels, in combination, described by the petitioner exceeds 50 percent. And working with county staff on this one, we meet this criteria, the 35-foot vessel, plus a 12-foot personal watercraft, we're under the 50 percent threshold. I believe we're right around 40 percent, 39.97. So we meet that

criteria as well.

Number 4, whether the proposed facility would have a major impact on the waterway -- waterfront view. This has been a hot item with Lely and docks in the past, and in this case the mangrove fringe provides a natural buffer to people's views. So the dock and boatlift, when the boat is up, ultimately, you probably still won't even see the vessel. You might see the T-top of the vessel over the mangroves in this case from neighboring properties. You -- like I said, this mangrove shoreline has to stay natural as much as possible. No reduction in height is allowed. So, you know, mangroves can get up to 20 feet tall or greater, even. So, you know, there's going to be a natural buffer there for everybody for visualization.

Number 5 pertains to seagrass beds being within 200 feet of the property. I dove the whole area. It was a lovely dive, let me tell you. The water was relatively dark. The sun doesn't go through here, so I did not find any resources other than the mangroves and some barnacles and oysters along the shoreline. So there was no impacts to that. The Submerged Resource Survey was provided as well to staff.

And then No. 6, obviously, is the Manatee Protection Plan. Single-family; doesn't pertain to us on this.

HEARING EXAMINER DICKMAN: You didn't meet any manatees while you were there?

MR. ROGERS: No, I didn't meet -- not in this area. To be honest with you, I don't know if I've ever seen a manatee up in this -- up in this area. But, no, I did not.

So that really concludes it. Happy to answer any questions.

You do have two concepts in front of you or, excuse me, you do have Option B in front of you, which staff has reviewed. Ultimately, we'd like to stick to what was originally proposed. I don't believe that should create any issues, but if you feel --

HEARING EXAMINER DICKMAN: This is your preference?

MR. ROGERS: Yes, sir, 100 percent.

HEARING EXAMINER DICKMAN: All right. So next time if we could have a little GoPro video of you diving just to prove --

MR. ROGERS: I can provide that.

HEARING EXAMINER DICKMAN: I want to have proof that you've actually --

MR. ROGERS: Well, if you go back to the beginning, there's some photos I provided from the waterway. I'm in the water in some of those photos if you go back. Go all the way back to the second or third slide, there's video -- not video, but there's pictures. There you go. See, I'm in the water in -- those top two, I'm in the water looking back, so...

HEARING EXAMINER DICKMAN: There's no proof there.

MR. ROGERS: You don't know it's me for sure either, so...

Anyways, that concludes my presentation.

MR. BELLOWS: Selfies.

MR. ROGERS: Yes. I'll make that my cover thing in the back.

HEARING EXAMINER DICKMAN: True, true story. So I grew up on the Little Manatee River in Hillsborough County and, of course, that's a dark river.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: Recently designated as one of the Outstanding Florida Waterways. And as a kid, you know, we would just swim. We didn't care. You know, we'd swim anywhere. I'm sure you -- being a Floridian, same with you.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: Jumping off the dock one day, the Little Manatee River, you know, landing on a manatee, because manatees love to play -- you know, they hear the splashing. They're very friendly. It was probably the scariest moment in my life. You don't know --

MR. ROGERS: Look at that tail. Those things are powerful.

HEARING EXAMINER DICKMAN: You land on a manatee; you have no idea that --

MR. ROGERS: They're slow, but they can move if they're scared.

HEARING EXAMINER DICKMAN: You don't expect to be landing on something underwater like that.

MR. ROGERS: No, underwater.

HEARING EXAMINER DICKMAN: A pretty scared 12-year-old, I tell you that.

MR. ROGERS: Did that traumatize you forever for the rest of --

HEARING EXAMINER DICKMAN: Forever. Terrified of manatees.

Has anyone signed up to speak on this item?

MS. PEDRON: Mr. Dickman, we have no online or in-person registered speakers.

HEARING EXAMINER DICKMAN: All right. Thank you for that.

Okay. Anything else from the county?

MR. BELLOWS: No, sir.

HEARING EXAMINER DICKMAN: Okay. Nice job. I don't have any other questions. I'll get a decision out as quickly as possible. Thank you for going through that so thoroughly. I appreciate it.

MR. ROGERS: No problem. Thank you, guys. Appreciate it.

HEARING EXAMINER DICKMAN: Anything else on the agenda? Any new business? Anything you want to talk about?

(No response.)

HEARING EXAMINER DICKMAN: No. I'm seeing a lot of no shaking -- head shaking. So I appreciate everyone being here, and nice meeting.

MR. BOSI: I do have a note from Mr. Dick -- or not Mr. Dickman -- Andrew Youngblood who let me know that we have passed the advertising deadline for the June 8th meeting and so, therefore, we're proposing that we cancel that meeting.

HEARING EXAMINER DICKMAN: Okay. All right. Yeah, so there's no --

MR. BOSI: Yeah, no petitions scheduled.

HEARING EXAMINER DICKMAN: Okay. All right. I know that there's a meeting maybe later in the year or -- I have to find out. It's pretty far out. And I have to get with you about it, when I may have a conflict.

MR. BOSI: Okay.

HEARING EXAMINER DICKMAN: But it's pretty far out. I'll have to find that date, but I'll let you know, okay. So that was the June --

MR. BOSI: June 8th.

HEARING EXAMINER DICKMAN: June 8. Okay.

All right. Everyone have a wonderful day. Thank you for your help.


May 11, 2023

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:44 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 6/8/23, as presented  or as corrected _____.

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