

July 27, 2023

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
July 27, 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
(Appearing Via Zoom)

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner
Sean Sammon, Principal Planner
Tim Finn, Principal Planner
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Let's give our pledge to the flag.
(Pledge of Allegiance.)

HEARING EXAMINER DICKMAN: Okay. Thank you, everyone.
We have four items on the agenda.

As far as the disclosures that I need to give, I have none, other I have -- I am aware of two of the items that have come before me in the past couple of years, and so I'm familiar with that. I have had no ex parte communication regarding that. I am familiar with those two properties. And that would be the 3-A, and I believe it's -- it looks like it's 3-C.

So with that, anyone who is going to speak today or give testimony will have to take the oath in a few minutes.

And if anyone needs to have a conversation or something like that, so we don't interrupt anyone, step outside in the hallway, if you would. Please mute your phones or anything else that might interrupt somebody.

The way that we're going to handle this is that the petitioner -- or the County will go first and they will give me a quick overview of their staff review, any recommendations. And then we'll go to the petitioner, petitioner's representative. And then after that, we'll go to the public, any public comment.

So you have to fill out a speaker's card and provide it to -- provide it to the County staff, and then from there I'll state -- I'll allow some time for rebuttal, if it's necessary, to the representative, if he wants to have rebuttal.

So you guys can switch me around, so -- okay. I can see myself, but I'd rather see the -- can you guys switch it back to the view you had it on so I can see the group?

MS. PADRON: Can you see the room now?

HEARING EXAMINER DICKMAN: No, I can't -- I'm looking at myself. I'd rather see the room.

Yeah, let's leave it like that, if you would, please.

MS. PADRON: Absolutely. Thank you.

HEARING EXAMINER DICKMAN: All right. Thank you.

So, as I was mentioning before, this is an -- this is a quasi-judicial hearing. My job is to get all of the evidence, competent substantial evidence, that I need to make the decision on the petition that we'll be hearing. And specifically I'm looking for the evidence that applies to the specific criteria for the specific petition that's in front of us.

So while -- this is mainly to the public, but it's for the petitioner as well. While you can say whatever you want to say, talk about whatever you want to talk about, it's more important to get to the very specific details, the facts, evidence, that I need in order to make a decision.

I will not be making a decision today. I have 30 days to render a decision. But after this meeting, I will not be able to collect any more information. That's the nature of a quasi-judicial hearing. So try to use your time judicially.

This is an informal hearing. It's -- I don't want anybody to get nervous or worried.

You know, we'll try to -- we'll follow the procedures that are laid out, but it's more important to me that I get the information that I need for the criteria applicable to the petitioner.

So with that, let me go ahead and ask the court reporter to apply the oath to anybody who is going to speak today. So this applies to anyone who is going to speak on any of the items. So Madam Court Reporter.

THE COURT REPORTER: Mr. Dickman, can you hear me?

HEARING EXAMINER DICKMAN: Yes, ma'am.

THE COURT REPORTER: Okay. I couldn't hear your introduction, anything before we did the Pledge of Allegiance. So I don't know if that needs to be on the record.

HEARING EXAMINER DICKMAN: I didn't really say much.

THE COURT REPORTER: Okay, thank you.
(Oath administered.)

HEARING EXAMINER DICKMAN: All right. Great.
So why don't we just jump right into item 3-A.

Well, first of all, are there any changes to the agenda that we need to know about?

MR. BELLOWS: Good morning. For the record, Ray Bellows. No, we have no changes to the agenda today.

HEARING EXAMINER DICKMAN: All right. Thank you, Ray.
Why don't we go right to 3-A.

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

Before you is Item 3-A. It's a boatlift canopy deviation, PL20230003026.

The petitioner requests that the hearing examiner approve a boatlift canopy deviation to increase the allowable length from 35 feet to 45 feet to allow a boatlift canopy measuring 45 feet long by 15.2 feet wide, pursuant to LDC Section 5.03.06.G.3.

The subject parcel is located at 10090 and 10091 Gulf Shore Drive. It is further identified as the North 50 feet of Lot 14, Block C, Re-Subdivision of part of Unit Number 1, Conners Vanderbilt Estates, in Section 29, Township 48 South, Range 25 East, Collier County, Florida.

The subject property is located within a Residential Single-Family 3, RSF-3, zoning district.

The subject parcel, 10090 Gulf Shore Drive, measures 30 feet by 50 feet and is joined by means of a deed to 10091 Gulf Shore Drive, a single-family residence located adjacent to and across the road.

The combined parcels have historically been treated by Collier County as a single combined property dissected by Gulf Shore Drive, with the subject parcel serving to support a residential boat dock facility.

The existing dock facility was constructed in accordance with Building Permit Number PRMAR20220207585, for which a certificate of completion was issued. Said permit was issued subsequent to the approval of two land use petitions, a variance, PL20210002276, HEX Decision Number 2022-01, which served to reduce the side setbacks to zero, and boat dock extension PL20200002573, HEX Decision Number 2022-02, which allowed for the 45-foot protrusion.

The petitioner now desires to add a boatlift canopy that exceeds the allowable 35-foot length, which -- for which it could have received administrative approval; however, it exceeds that length by 10 feet.

Staff will note that you haven't reviewed a boatlift canopy deviation before; however, the secret is now out and we suspect you'll see more of these.

The public notice requirements were satisfied as per LDC Section 10.03.06H. The property owner notification letter and newspaper ad were satisfied by the county on July 7th, 2023. And the public hearing sign was posted by me on July 7, 2023.

The boatlift canopy deviation was reviewed by staff on the review criteria contained within LDC Section 5.03.06.G, 1 and 2, and found it complies with all but the available length.

Staff notes that the subject dock facility is located at the terminal end of a canal.

As of this time, no public comment has been received by me.

Staff recommends that you approve this petition as described, in accordance with the canopy and site plan provided within Attachments A and B, subject to the following condition of approval: And that is that the boatlift canopy is to be removed upon issuance of a hurricane warning affecting the general vicinity of the referenced location.

That concludes staff's report.

And at this time, I believe Francine Holt will represent the applicant.

HEARING EXAMINER DICKMAN: Great. Thanks, John.

MS. HOLT: Good morning, sir. I don't know if that's --

HEARING EXAMINER DICKMAN: Good morning, Ms. Holt.

TECHNOLOGY TECHNICIAN: It will turn red if --

MS. HOLT: Okay.

TECHNOLOGY TECHNICIAN: -- it recognizes your voice.

MS. HOLT: I'm short, sorry.

Thank you.

Good morning. My name is Francine, and I work with Waterway Boat Lift Covers. I have been with them for about eleven months, but I was with a marine contractor for two years, helping with planning and things like that. So permitting is not a new thing for me.

But we are here today to request a boat dock canopy extension for Dr. Jaffe. He has other permits in place, as Mr. Kelly has given you, and that we were wanting to go an additional 10 feet, for his canopy to cover most of his boat.

He does have a 50-foot boat, so we are not covering the whole thing, like we normally do. And -- but if you look at page 7 in the presentation, it looks like we are going to be building -- sorry. Words. We will be building a canopy that will not go past the eyebeam, because he's actually getting what they call a gradient beam design, which on one -- the west side of the lift is going to be bound on the inside of the piling, so we do not go with the riparian lines. So we are going to go right along the side of that.

And then also, on the east side, we are actually going to go right on top of the pilings, like usual, also staying within those riparian lines as well.

And then if you also look at page 9 of the presentation as well, there is a survey that we had done to show where the canopy is actually going to lie within those riparian lines as well, so that we have a site plan and a survey showing where the canopy will be laid.

That's all.

HEARING EXAMINER DICKMAN: Is that it?

MS. HOLT: That's all I have for you, sir.

HEARING EXAMINER DICKMAN: Oh, okay. I was waiting for you and let that run a little bit long.

MS. HOLT: Sorry. Just trying to show you the survey.

HEARING EXAMINER DICKMAN: That's -- that's okay.

I do recall this application, a boat and a unique configuration of the parcel and bisected by Gulf Shore Drive. So whatever -- I'm just very familiar with that.

And so if you don't have anything else, why don't we go ahead and take public comment on this. Is anybody signed up for speaking on this? Hello? Anybody?

MS. PADRON: Yes. Good morning, Mr. Dickman.

At this time, we do not have any registered speakers.

HEARING EXAMINER DICKMAN: Okay. All right.

Does the County have anything else that they want to add?

MR. KELLY: John Kelly, for the record. No, sir.

HEARING EXAMINER DICKMAN: Okay. Great.

Well, this is pretty straightforward. As I said, I remembered this application when it came before me, so I'm familiar with it.

And I don't have any other questions. Unless the applicant has anything else they want to say, I'm good on this one.

MS. HOLT: Thank you, sir.

HEARING EXAMINER DICKMAN: Thank you very much.

MS. HOLT: Thank you.

HEARING EXAMINER DICKMAN: Okay. Why don't we go to 3-B?

MR. SAMMON: Good morning, Mr. Dickman.

For the record, Sean Sammon, principal planner in the zoning division.

Before you is agenda item 3-B. This is a request for a determination that the proposed use of an alternative learning and enrichment education facility is comparable in nature to other permitted uses in Section 3, Tract A of the Northbrooke Plaza Planned Unit Development, adopted by Ordinance Number 98-59.

The subject property is located at 2659 Professional Circle, Naples, Florida 34119, also known as Northbrooke West, a commercial condominium, units 1107 and 1108, in Section 19, Township 48 South, Range 26 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.06.K, A through E, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

Per the LDC Section 10.03.06.O and Administrative Code Chapter 3-L, a neighborhood information meeting sign posting on the subject property and a mailing to the surrounding property owners are not required for this comparable use determination petition.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.O.

The newspaper ad was taken care of by the County and posted in the Naples Daily News on Friday, July 7th, 2023.

I have received no calls from the public, and there has been no public opposition pertaining to this petition.

Staff recommends that you determine that the proposed use of an alternative learning and enrichment education facility that offers programs in the core STEM areas is comparable and compatible with a list of permitted uses contained in Section 3-A-2 of the Northbrooke Plaza PUD with the following conditions:

One, the age of the students that will be served are primarily elementary-age students, five to eleven years old; and two, the operating hours will be Monday through Friday from 2:00 P.M. to 6:00 P.M. during the school year and Monday through Friday from 8:00 A.M. to 5:00 P.M. during the summer.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Okay. Thanks very much.

MR. SAMMON: Yes, sir.

HEARING EXAMINER DICKMAN: Is the petitioner's agent there or petitioners?

Good morning.

MS. PASSIDOMO: Good morning. Good morning, Mr. Dickman.

For the record, Francesca Passidomo, 4001 Tamiami Trail North, Coleman, Yovanovich & Koester, representing the landowner and affiliated Stock Development.

I will be brief, because I think staff did an excellent job outlining the proposal. I do have a presentation, if you could pull it up, though.

HEARING EXAMINER DICKMAN: Sure, yeah, go through your presentation.

MS. PASSIDOMO: Sure. Thank you.

Next one.

Summary as addressed by staff. This is an alternative learning enrichment education facility that focuses on the STEM and art programs, which I think there's an acknowledgment that are underserved for children.

And it's basically an after-school and summer program.

And the next slide, please.

The location is Northbrooke Plaza, which is a commercial development at -- just east of the I-75 interchange. All right. It is right south of Hodges University. And I'll show you -- actually, there's a Hodges satellite within Tract A.

There was a prior interpretation -- you can move on.

There's a prior interpretation that you can see on the screen that educational facilities are compatible and comparable with other expressly enumerated uses in the planned unit

development. That's really the standard we look at, is compatibility and comparative, and -- and so that prior determination was made. I think that's very significant for this -- this proposal.

I do also see on the map that there are other educational and similar facilities in Tract A. There's that Hodges satellite campus I noted, which is what the prior interpretation speaks to. There's also the future Mason Classical Academy location and Destiny Learning Center.

HEARING EXAMINER DICKMAN: Okay.

MS. PASSIDOMO: Next slide.

Just for your benefit, these are some of the uses listed in the PUD. The prior interpretation noted that most of the uses are much more intense than the subject use, from a parking and traffic and -- and generally related to the way it -- externalities.

And number 12, you'll see that's what provides -- what provides for this process that we're going through, the comparative-use determination.

Next slide.

Staff hit on all of these, but again the operating hours are a condition of the approval. We don't disagree with that condition.

Traffic is minimal, and parking space requirements are minimal, both consistent, as noted in the staff report, with other uses in the planned unit development.

HEARING EXAMINER DICKMAN: So you're okay with the conditions?

MS. PASSIDOMO: Correct, from both -- both the hours and the -- and the grade levels that were noted in the conditions.

HEARING EXAMINER DICKMAN: Okay.

MS. PASSIDOMO: And that's really my presentation. If there are any specific questions, I'm happy to address them.

HEARING EXAMINER DICKMAN: No, no.

Let's -- why don't we go to anybody who has signed up to speak and take some public comment. And, if necessary, I will give you time for rebuttal.

MS. PASSIDOMO: Okay.

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

MS. PADRON: No, sir, Mr. Hearing Examiner. We do not have any registered speakers at this time.

HEARING EXAMINER DICKMAN: Okay. Well, I don't think there's anything for you to rebut, then.

MS. PASSIDOMO: Can I make one closing comment?

HEARING EXAMINER DICKMAN: Yes.

MS. PASSIDOMO: From a contractual standpoint, I represent the landlord-landowner, and we have some lease deadlines that we're already kind of running really tight to because the prior hearing examiner date was deferred. That's fine. But if there's any way you can expedite review of this petition --

HEARING EXAMINER DICKMAN: Noted.

MS. PASSIDOMO: -- I would appreciate it.

HEARING EXAMINER DICKMAN: Noted.

MS. PASSIDOMO: Thank you.

HEARING EXAMINER DICKMAN: Okay. Nice job. Thank you very much.

Unless the County has anything else, we'll go on to the next item.

MR. SAMMON: Sean Sammon for the record. Staff does not have further comment.

HEARING EXAMINER DICKMAN: Okay. Going on to 3-C.

MR. KELLY: John Kelly, Planner III, for the record.

Before you is going to be Item 3-C. It's boat dock extension PL20200001107.

The petitioner requests you approve a 20.3-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 40.3 feet into a waterway that is 872, plus or minus, feet wide pursuant to LDC Section 5.03.06.E.1.

The subject property is located at 275 Third Street West, Bonita Springs, also known as Lot 2, Block F, Replat of Unit Number 3, Little Hickory Shores, in Section 5, Township 48 South, Range 25 East, Collier County, Florida.

The subject property is located within a Residential Single-Family 4, RSF-4, zoning district.

This project was previously heard on August 26, 2021, as agenda item 3-D.

There has been no changes to the property or the zoning petition other than with respect to ownership and the issuance of a building permit for the principal upland structure, a single-family residence, which was issued on May 4, 2023. Its permit number PRFH20221257271.

As previously presented, the petitioner desires to replace an existing dock with a dock facility comprising two boat slips and a boathouse. The facility will have two boat slips, each with a lift, one to accommodate a 30-foot vessel and the other a 10-foot vessel.

The dock will protrude 40.3 feet into the waterway, as measured from the seawall. However, the boathouse requires an additional 1.3 feet to compensate for the roof overhang. Therefore, the total requested protrusion is 41.6 feet.

Public notice requirements were as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were satisfied by the County on July 7, 2023. And the public hearing sign was posted by me on July 7 as well.

The boat dock extension was reviewed by staff based on the review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfied five of five. Of the secondary criteria, it satisfies five of six, with the sixth being not applicable. It's the Manatee Protection Plan.

The boathouse was reviewed per Section 5.03.F.1 through 7, and satisfied all seven of the criteria.

Both the dock and the boathouse were found to be consistent with the Growth Management Plan and the Land Development Code.

As far as public comments, as of this time none have been received by me.

It's staff's recommendation that you approve this petition as described in accordance with the proposed dock plans provided within Attachment F, subject to the following condition: And that is a certificate of completion for the subject dock facility will not be issued until such time as a certificate of occupancy is issued for the principal structure.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Is the petitioner here or their representative?

Good morning.

MR. OREUS: Good morning.

Good morning, Mr. Dickman. Mark Oreus, Greg Orick Marine Construction.

Yeah, we're back for this petition that we heard about a year and a half ago for this dock extension. Everything seems to be exactly the same. We're just trying to get that protrusion out there.

We finally have the house and everything, as you can see from the drawings and everything. Nothing has changed at this time.

HEARING EXAMINER DICKMAN: Okay. So are you sure you want to do this one?

MR. OREUS: I've been trying to get it off my plate for the longest time.

HEARING EXAMINER DICKMAN: Your time has come.

MR. OREUS: I don't know if you have any questions.

HEARING EXAMINER DICKMAN: No. It's really up to you if you want to point out anything specific or if you -- obviously, if you -- you accept everything that staff is -- they're recommending approval, so it's your -- your presentation to make, however --

MR. OREUS: Yeah.

HEARING EXAMINER DICKMAN: -- detailed you want to do.

MR. OREUS: Yeah, Mr. John Kelly covered everything.

Basically we're just trying to go out 40.3, in terms of the dock, and 41.6 with the boathouse, with the 1.3 overhang on the boathouse.

HEARING EXAMINER DICKMAN: Okay.

MR. OREUS: Yep, that's basically it.

HEARING EXAMINER DICKMAN: All right. Well, yeah, I am familiar with this property, obviously. I mean, I have seen it before, the project.

So why don't we see if anyone has signed up to speak on this item.

MS. PADRON: We do not have any registered speakers at this time.

HEARING EXAMINER DICKMAN: Need to start making these meetings a little bit more interesting.

All right. Any last comments?

I don't know -- I'm fully aware of what this is all about. And I see the supplemental staff report. It explains why we're here again.

And if the petitioner has anything, last-minute comments, or staff? Would the County have any last-minute comments? This would be the time to do it.

MR. KELLY: For staff, John Kelly. We're complete.

HEARING EXAMINER DICKMAN: Okay. Great.

Okay. I think we're good here. I don't have any questions. And I'll get a decision out as quickly as I can.

MR. OREUS: All right. Thank you. Appreciate it.

HEARING EXAMINER DICKMAN: Yes, sir.

Okay. Let's go to the last item, which is Item 3-D.

MR. FINN: For the record, I am Tim Finn, Planner III.

This is for petition number NUA-PL20220003854, Northtide Naples RV Resort on North Road.

This is a request for a nonconforming use alteration pursuant to LDC Section 9.03.03.B to allow the continuation of nonconforming landscape buffers and nonconforming setbacks of recreational RV pads and park models for the property located within a travel trailer recreational vehicle campground, TTRVC zoning district.

The subject property is 16.3 acres located at the Northtide Naples RV Resort on North Road, in Section 2, Township 50 South, Range 25 East, Collier County, Florida.

The applicant has complied with all hearing notices by our operation's staff.

The advertisements and mailers went out on July the 7th. The hearing advertisements, property signage, were constructed at the property by the applicant per the affidavit of posting notice and which is included in Attachment F of the backup materials.

The project is compliant with the GMP and LDC; therefore, staff recommends approval subject to the following conditions:

First condition: The Northtide Naples RV Resort nonconforming use alteration shall be limited to that which is depicted on the site plan, Northtide Naples RV Resort site plan, dated May 17th, 2023, prepared by Kimley-Horn.

Second condition: The RV pads and park models on the rental RV and park model lots adjacent to North Road right-of-way are allowed to remain as shown on the conceptual plan within the required 25-foot setback on the condition that the applicant waives business and severance damages as to those lots adjacent to the North Road right-of-way, that would be on pads and models, within the 25-foot setback in the event that the County or City of Naples needs

additional right-of-way for Rock Road.

There was insufficient evidence presented that the RV pads and model homes met the setback at the time they were installed.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: All right. Thank you very much. Nice job. Is the petitioner there or the petitioner's representative?

MR. WRIGHT: Good morning, Hearing Examiner.

I'm Jeff Wright with the Henderson Franklin law firm here on behalf of the applicant.

HEARING EXAMINER DICKMAN: Good morning, Mr. Wright.

MR. WRIGHT: We had a presentation. We'll try to be efficient with our time, and a shout-out to the county's IT staff for their assistance this morning.

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: So next slide.

With me today, our team -- Jason Russo is on his way here. He got stuck on the Skyline Bridge, I'm told. And so he -- his navigation system tells him that he will be here a little after 10:00. So I'm not sure we'll see Jason, but he's trying.

Adam Pitts, our engineer from Kimley-Horn, is also here by my side, and myself with Henderson Franklin.

Before I begin the presentation, just a couple of administrative matters to address.

The first thing is recognizing Adam as an expert. I do have his résumé here. I have not yet provided that to staff, but I'm happy to do so. I just want to make sure the hearing examiner is comfortable recognizing him as an expert this morning.

HEARING EXAMINER DICKMAN: I am. Can you just provide the -- you know, provide the CV or résumé, whatever you have, to the staff so they can get that in the record. I recognize him as an expert.

MR. WRIGHT: And if it's possible, just to keep things clean, can we call that Applicant's Exhibit 1?

HEARING EXAMINER DICKMAN: Absolutely.

MR. WRIGHT: Okay. We have a 2 and a 3 that I'm going to get to in just a second.

The second exhibit is our PowerPoint presentation, which we will be giving this morning. If it's okay with the hearing examiner, I would like to label that as Applicant's Exhibit 2.

HEARING EXAMINER DICKMAN: Okay. So moved.

MR. WRIGHT: Okay. And the last thing, the last exhibit is Exhibit 3, and that's just a blown-up copy of the NUA site plan that will govern this approval. I have labeled that Exhibit 3 for the record.

And that will --

HEARING EXAMINER DICKMAN: Are these things that the County has already had a chance to look at?

MR. WRIGHT: Yes.

This is just a big copy of the NUA site plan. It's incorporated in our application. It's the latest site plan.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: I just thought a blown-up copy might be good for reference.

HEARING EXAMINER DICKMAN: All right. Very good.

MR. WRIGHT: And I'm just going to hand that last exhibit out to staff and then we'll get started.

HEARING EXAMINER DICKMAN: All right.

MR. WRIGHT: Okay. I'm not aware of any objection from staff on those three exhibits, and I appreciate you allowing us to make those part of the record.

I also wanted to take a moment to thank staff. This has been -- you can see from the

application number 2022, it's been a long hall.

And this is a project that's pretty close to home. It's right on the other side of the Naples Airport, about a mile away from here.

And you can see on the slide that -- the approximate location. It's just south of the Naples Airport, on the city line. So the northern boundary of this property touches the city of Naples.

And -- but the big picture, we have reviewed staff's analysis and recommendation of approval. We agree with it. We agree with the conditions of approval as well.

And as Mr. Finn pointed out, we're looking to memorialize what's there, basically.

And just a little background.

A new owner came in and wanted to make the park better. And in order to do that, they needed to amend the site plan. Unfortunately, there was no site plan, given the history. It's been there since the '60s. And through the years it's evolved, but there never was a plan of record for this site. So staff said, "Well, you can't amend the site plan until there's a site plan to amend." So that's how -- that's what led us on this process, the NUA process, to memorialize what's there and to allow these improvements to go forward with the park.

And I truly believe it will be an improvement overall in the park.

So as we get into this presentation -- next slide. I'm sorry, previous slide.

As I mentioned, we're looking for an NUA approval to recognize those nonconforming buffers and setbacks. It's been there a long time. And the big picture, we want to establish a site plan of record for the resort.

The big picture again, nothing's in dispute. We agree with the staff's recommendation.

Next slide, please.

As I mentioned, it's been there a long time, the southwest corner of Airport and North Road, a mile from here, 16.3 acres. It's comprised of five separate parcels just south of the city limits on Rock Creek.

Next slide.

The future land use is urban residential subdistrict. The TTRVC zoning and uses are consistent with the GMP, as Mr. Finn pointed out. And in the staff report, staff opined that the request does not have any impact on the consistency with the Growth Management Plan.

Next slide.

There's a picture of the zoning. As you can see, the property at issue in this petition is zoned TTRVC. It's surrounded by a mix of different uses. You have ag to the west. You have assisted living and memory care in a PUD to the southeast, a lot of RMF-6 to the south. And that squiggly line at the bottom of the TTRVC parcel is Rock Creek. So everything south of Rock Creek there is RMF-6, in the purple. And to the north, you have the city. That's where the airport is.

Next slide.

At this point I'm going to turn it over to Adam, just to go over some of the details of the NUA site plan. We'll try to keep it brief and simple.

And with that, Adam Pitts.

MR. PITTS: My name is Adam Pitts, civil engineer with Kimley-Horn. It's A-D-A-M, P-I-T-T-S, Adam Pitts, civil engineer with Kimley-Horn.

Okay. Yeah, so as Jeff was saying, we have had application meetings with Collier County. They said that we don't have a plan of record for the development or at least a full plan of record, a portion of it. So they requested that we develop a plan record. So that's what this site plan is.

It should not be construed as an engineered site plan. Essentially this is just an attempt to show you what's out there, as -- we'll call it site plan.

So we engaged with a surveyor. The surveyor went out there. They -- they staked

and they surveyed the existing RV sites and mobile homes and the clubhouse. And then from that, we created the site plan.

So we listed the -- the buffers and, you know, the property line and each individual -- we'll call it site. It's not -- it's not technically -- it's not a lot. So each of those sites for the mobile homes and the RV pads are shown on there.

The boundaries of the sites, so essentially the lot lines, those are not true lot lines. They're not -- you know, they have not been formalized. They were just from the survey. We used our engineering judgment just to determine between -- the separation between the pads and buildings, what they should be. So that's what's shown on there.

So, again, this is a -- essentially an existing-conditions site plan, not an engineering site plan, but it shows the property as it is today.

MR. WRIGHT: Next slide.

MR. PITTS: Yeah.

Furthermore, this is just a -- you can see it's a line and curve table, and that's kind of just outlining the boundary of the property, so it's just engineer information.

HEARING EXAMINER DICKMAN: All right.

MR. WRIGHT: Okay. Now, the approval criteria for this petition A through F, as in Frank, and the first one -- and staff covered this we very well in their staff report. And we're happy to have our engineer testify, but these are pretty straightforward, common-sense criteria and I don't think that they need expert opinion to establish.

There's no density increase. That's a matter of fact. We're not planning on increasing the density of this site or via this petition.

It does not impact building height. The building height requirements will not be exceeded.

The whole idea of the NUA site plan and establishing a site plan of record is to make sure there's no further encroachment beyond what exists there today. So that's criteria number C. I believe we meet that as well.

Next slide, please.

The next one is decreases in the parking. There's no plan to decrease the parking on the site via this petition.

Will not damage the character, the quality of the neighborhood in which it is located. As I mentioned, we're trying to memorialize what's there and make it better. So, if anything, it certainly will not be damaging to the character and quality of the neighborhood, but, if anything, it will improve both the character and quality of the neighborhood, as well as the maybe provide an incentive for development of surrounding properties, as that criteria mentions.

And next slide.

Will there be any threat to the health, safety, or welfare of the community or its residents? We don't foresee any threat. In fact, we're hoping to make it a better place to be. And we think we'll actually enhance the health, safety, and -- or welfare of the community or its residents.

Next slide.

Just to recap. The staff report we agree with 100 percent. It meets all the criteria for approval. They recommend approval. It's consistent with the GMP and it's consistent with the zoning, future land use map. And the two conditions of approval we agree with.

Next.

And just to conclude, we meet all the requirements. Consistent with zoning and future land use. It's an improvement on the community. It's going to establish a plan of record for the site. We're in agreement with staff, conditions of approval.

And we would respectfully request your approval of the petition.

Thank you.

HEARING EXAMINER DICKMAN: Okay, great. Yeah, no, great. That was very

straightforward. Thank you for that.

Why don't we check and see who's signed up, if anybody, to speak on this item, members of the public.

MR. MOGELVANG: Yes. I didn't sign up but just a few moments ago.

HEARING EXAMINER DICKMAN: Okay.

MS. PADRON:

TECHNOLOGY TECHNICIAN: Can you please come to the podium?

MS. PADRON: Mr. Dickman, we have Leonard Mogelvang to speak.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Good morning, sir.

MR. MOGELVANG: Good morning.

My name is Leonard Mogelvang, and I'm the landowner that borders the western side of the RV park.

And as they have noted, there is no -- there is no site plan. I think that they just kind of did it, well, you know, a fair amount of time ago.

The eastern part of that RV park is -- is there from so long ago, I believe it was barracks for soldiers when the -- when the airport was developed. And they turned -- the Davis family had owned it for a very, very long time --

MR. WRIGHT: Uh-huh.

MR. MOGELVANG: -- and developed it as they will.

But the western portion of the RV park was not done until probably, I don't -- I would guess about 20 years ago maybe, well after the initial park was, and I think they just did it.

And when I acquired the land that I have there, it was completely overtaken by exotics, which no longer are there. And when I removed the exotics and had it surveyed, there were protrusions into my own property. And -- and I brought that to their attention.

And they told all the people that had put their pavers and whatnot, brought it back -- brought it back to about the property line. And a few -- I think -- if you would bring back -- if you would like to bring back one of your exhibits, if it's possible, the NUA plan, the black and white one.

HEARING EXAMINER DICKMAN: Sir, you're referring to the pavers that are basically adjoining your property?

MR. MOGELVANG: I'm sorry? Could you repeat that?

HEARING EXAMINER DICKMAN: Are you looking -- referring to the pavers that are adjoining your property?

MR. MOGELVANG: Not only that, but the distance that some of the -- the mobile homes or RVs, however you wish to classify them, are -- how close they are to my property line.

I have no -- I have no idea what the proper setback should have been had it been developed today or even 10 or 20 years ago, but it is at one point -- the southernmost unit on there, 22 --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. MOGELVANG: -- is probably about 6 feet from my property line.

HEARING EXAMINER DICKMAN: Okay.

MR. MOGELVANG: And -- and some of them are closer. They vary a little bit, because somebody parks up in there, and then built their pavers, or however they wanted their yard, around it.

And also this -- the southern portion that seemed to be blank, the southwestern corner of it, also there's a berm there that is on my property line.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. MOGELVANG: And it kind of changed the hydrology of the area.

And so I'm -- I'm concerned about how -- how it values my property for future development if this is put in place without any variation or perhaps more proper setback.

HEARING EXAMINER DICKMAN: Okay. I see your point. I'll let -- are you finished?

MR. MOGELVANG: Well, I would also note that I have a home -- I live on -- on -- at 917 Preacher Court. I have a home there that backs up to it.

We consider ourselves to be good neighbors. We usually converse with our neighbors across the property line and are very friendly. And we wish to continue to be good neighbors. But those are my concerns, and I would like my concerns addressed.

HEARING EXAMINER DICKMAN: Okay. All right. I'm going to go back to the -- let's see if anybody else has signed up to speak.

MR. MOGELVANG: Thank you.

HEARING EXAMINER DICKMAN: Thank you. Thanks for coming.

MS. PADRON: Mr. Dickman, we do not have additional speakers.

HEARING EXAMINER DICKMAN: Okay. All right.

So, Mr. Wright, do you want to address these issues?

MR. WRIGHT: Sure.

I appreciate the opportunity and appreciate the good neighbor coming by.

I can actually vouch for -- the Mogelvangs are neighbors of mine, and they're excellent neighbors, so I appreciate his input.

Right now we're not aware -- you know, we did the -- mapped out the -- what's there today. And we're not aware of a specific encroachment that he's referring to and whether it is even an encroachment, but I will -- I would be happy to work with Mr. Mogelvang, and I'm sure the applicant would as well, to make sure that his concerns are addressed.

I heard two big things: The berm and potentially pavers that are too close to his property. And we would have to measure to see whether or not there's a -- some sort of a violation there.

HEARING EXAMINER DICKMAN: He -- yeah. So, I mean, the issue on the one specifically, you know, if there's anything that's an actual encroachment into his property, I think it's reasonable to ask that, you know, that not happen. You know, obviously, this is a property in a gray area that is -- the full reason you're here is because it was developed organically, as you would say, and, you know, the County is asking for some kind of formal -- a formal plan to be put in place so that, you know, things can go forward and you can improve it.

So I would think that, at a minimum, you could at least -- while you may not be able to meet the current setbacks, and I think that's the whole point of all this, it is to at least have something documented so that you can address any issues that -- you know, you really can't be encroaching -- you know, can't approve things that are encroaching on somebody else's property. I mean, I think that's a fair ask.

MR. WRIGHT: I agree with that, Hearing Examiner. Obviously, we can't go onto their property. We shouldn't get too close.

Now, the county attorney's office was kind enough to just point out to me that there's an existing condition of approval that requires a certain level of opacity between the two properties, and we'll take a look at that and make sure that we're also being good neighbors.

HEARING EXAMINER DICKMAN: Okay. Any problem with me putting that down in a condition, that -- for resolution of any encroachment onto adjacent property that's not owned by your client?

MR. WRIGHT: Well, Hearing Examiner, we would be happy to have a condition to that effect that says we can't be spilling over onto the neighbor's property. At this point I'm -- I understand that -- we'll address the opacity condition that's currently on the record and make sure that we comply with it.

HEARING EXAMINER DICKMAN: Okay. Do you want to -- if somebody could send me that language, whatever -- whatever the language is, the opacity language, or something to that effect, at least I could get it into the decision so that the neighbor is comfortable that this

wasn't just passed over.

MS. ASHTON: Hi. Good morning, Mr. Hearing Examiner.

For the record, Heidi Ashton, assistant county attorney.

So the condition that already exists is in Resolution 1995-690, which states that within the 25-foot boundary setback, existing vegetation shall be supplemented, if necessary, to achieve an opacity rating of 80 percent at the time --

HEARING EXAMINER DICKMAN: Okay.

MS. ASHTON: -- building permits are issued.

But what I wanted to point out is that that relates to one of the two parcels that's part of this project that abuts the prior speaker's property. So it would only have an 80 percent opacity on a -- a small part of his property.

HEARING EXAMINER DICKMAN: Okay.

MS. ASHTON: And --

HEARING EXAMINER DICKMAN: The recommendation is -- do you want to expand that a little bit to the full -- that any possible encroachments to that side, that --

MS. ASHTON: That's at your discretion.

On the site plan that's being provided and shown previously, the dimensions along the western boundary of the trailer pads are not shown, so they would need to show that.

HEARING EXAMINER DICKMAN: Okay.

MS. ASHTON: Site plan does show the setback and the landscape buffer --

HEARING EXAMINER DICKMAN: Uh-huh.

MS. ASHTON: -- where you can see it on the visualizer.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. ASHTON: So we would ask that they update those dimensions for those lots -- those pads that are on the western boundary.

HEARING EXAMINER DICKMAN: Okay.

MS. ASHTON: Thank you.

HEARING EXAMINER DICKMAN: All right. Let's do this. Why don't I -- I'll go with whatever language you all believe will solve the problem. You know, I just don't want the neighbor to leave here today thinking that, you know, this isn't going to get resolved, but -- because I know the intent would be everybody to be good neighbors and resolve these things. So I'm happy to entertain any kind of condition that the assistant county attorney just referred to, if you want to just submit it to me after this. You guys put your heads together and come up with something that will -- you know, will resolve this so that whatever de minimis changes have to be made here or shown here actually holds the applicant's feet to the fire.

Is that a fair request?

MR. WRIGHT: We'll be happy to work with the county attorney's office and come up with appropriate language.

I just want to point out that the speaker mentioned two things: The berm, and some of the pavers being too close. He also mentioned that he says hi to his neighbors, so I just want to make sure we're not going to put a wall in between him, and --

HEARING EXAMINER DICKMAN: Don't want them to not be able to say hi.

MR. WRIGHT: Yeah. He didn't ask for an opacity, so I don't know why we're going there.

But, in any event, we want to get this project going, and we're happy to work to come up with appropriate language to address the --

HEARING EXAMINER DICKMAN: Yeah, just come up with something. I don't think this is big, complicated stuff, but I definitely don't want to authorize any encroachments over there that are already --

MR. BELLOWS: For the record, Mr. Dickman, I just wanted to point out that you do have the ordinance or resolution in your backup file that had the language about the opacity.

And I think we just need a clarification, too, that that 80 percent opacity --

HEARING EXAMINER DICKMAN: Yeah.

MR. BELLOWS: -- that was to be abutted to the entire length of that western boundary or just along this property line, or --

HEARING EXAMINER DICKMAN: Okay. Yeah, I see. The one that's in -- the language that's in 1995-690, yeah.

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: Anything else?

MR. WRIGHT: Just to clarify. To the extent we're going to come up with a modified condition to make it a longer opacity, we're just right now, I think, addressing Mr. Mogelvang's concern. I don't know how many properties are involved. I don't know how many linear feet. I don't know how much it costs. So I don't want to overcommit when we have a speaker come in and ask about pavers and a berm and all of a sudden we're doing a 300-foot-long opaque buffer. It doesn't seem to be aimed at the --

HEARING EXAMINER DICKMAN: Yeah. I understand.

MR. WRIGHT: So just --

HEARING EXAMINER DICKMAN: I understand that.

I'm looking at this, and it does look like -- you know, based on the legend, it's showing, you know, RV pad, and it looks like there are at least a couple of parcels on that western side that show, you know, the -- the design or whatever it is for pavers. It looks like it's actually going into the northern -- you know, especially when you look at the sort of north -- the northwest parcels, whatever your client -- is that -- I mean, it just looks like there are some being shown, or is that more like an as-is existing survey/plan? Do you see that, or am I missing that?

MR. WRIGHT: No, I do see it. And it would be --

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: -- particularly lots that we have marked as 7 and 8.

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: We literally have pavers spilling onto someone else's property, so obviously --

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: -- that can't --

HEARING EXAMINER DICKMAN: That doesn't seem to be -- I think, in fairness, that needs to be dealt with.

MR. WRIGHT: Yes, and we're happy to deal with that.

Since it's off-site and we're happy to make it a condition, not to trespass and to remove any trespassing features --

HEARING EXAMINER DICKMAN: Yeah. I didn't want to say that, but yeah.

MR. WRIGHT: But -- and we're happy -- and I think that the law would dictate that anyways, whether it's a condition or not, but we're happy to agree to that.

HEARING EXAMINER DICKMAN: If we can -- if we can clean this up and make sure that -- why don't you -- why don't you guys put your heads together about getting any -- not having any unintentional trespassing of the pads onto the neighbor's property and then to whatever extent they want to have the opaqueness so they can say hi or not say hi, and I'm not --

MR. WRIGHT: We agree with that. Thank you.

MR. BELLOWS: Again, for the record, Ray Bellows, zoning manager.

I just want to also request that the site plan that was submitted be revised and updated to show the dimensions from the structures to the western boundary, just so -- to give confidence that other structures or changes won't further encroach closer to --

HEARING EXAMINER DICKMAN: Right.

MR. BELLOWS: -- the adjacent property, and --

HEARING EXAMINER DICKMAN: And then I'll wait to make sure -- I mean, do

you want to wait on my decision so I can see that, or -- Mr. Bellows, how do you want to handle that? Just administratively? That they --

MR. BELLOWS: I think we can stipulate that's changes for you. And that way, we won't delay the process.

HEARING EXAMINER DICKMAN: Yeah. And then if they -- if they don't -- the decision won't be effective until they make the change and to meet that condition.

MS. ASHTON: For the record, I'm Heidi Ashton.

I would recommend that they submit the revised site plan, staff review and approve it, so that it can be attached to your --

HEARING EXAMINER DICKMAN: I agree.

MS. ASHTON: -- decision.

Thanks.

HEARING EXAMINER DICKMAN: So that puts the burden on you, Mr. Wright, and your client to get that plan done as quickly as possible.

MR. WRIGHT: Yes, we'll take care of that. Thank you.

HEARING EXAMINER DICKMAN: In the age of computers, it can be done quickly.

Sir, did you have anything else you wanted to mention?

MR. MOGELVANG: Yes.

You had said that there were basically two concerns: The pavers and their items from their yards encroaching, and -- and the berm. And also, how far the actual homes are from the property line is a concern, because they butt up quite close. So that is a concern, the actual homes themselves.

HEARING EXAMINER DICKMAN: Well, I think part of this is to acknowledge that this is a nonconforming -- a nonconforming use alteration, so it's kind of understood. And I'm not sure that it's the intent to have everything pushed to the east. Is that what you're suggesting, is that they have to come into conformity with the current zoning?

MR. MOGELVANG: I am not suggesting that. I was unaware of what the zoning would be, and -- and perhaps there might be a few that are perhaps so close as to be in -- in -- almost intrusive to my concern, but I would be happy to look at that with them.

HEARING EXAMINER DICKMAN: Well, I mean, as you yourself said, that this was a -- took place a long time ago, back in -- it may have been barracks for the military. So --

MR. MOGELVANG: Right.

HEARING EXAMINER DICKMAN: -- it's pretty common in these situations, when, you know, lots of things have developed in Florida, for -- government and zoning and land use was more -- has become more official and more of a profession. So I don't -- I don't think that they need to ask for a variance here. I think that's the point, is that they're trying to legalize what is here and it's acknowledged as a nonconforming use.

MR. MOGELVANG: I understand.

HEARING EXAMINER DICKMAN: So I think -- I mean, it's a good -- I think that's a good move overall for the community, because you'll finally have something documenting what's there, which was a major problem, I guess. And this gives the owner the ability now to move forward with any improvements or anything else. Otherwise, you know, they couldn't, because there wasn't anything on record. You know, normally you would see a plat or some kind of zoning, you know, document.

But I think what we're going to strive for here is to make sure that nothing is encroaching into your property and that, you know, there be -- back to that -- you know, take a look at that, those northern properties and make sure that there's compatibility and nobody is being intrusive on the other party, and they can continue to be good neighbors and say hi to each other.

MR. MOGELVANG: Understood. That's fine.

HEARING EXAMINER DICKMAN: Okay.

MR. MOGELVANG: Thank you.

HEARING EXAMINER DICKMAN: Thank you for -- thank you for bringing that to our attention.

MR. MOGELVANG: My pleasure.

HEARING EXAMINER DICKMAN: Okay. I think we have a plan forward here, no pun intended. So I'll wait to see when the revised plan -- so that, you know, we're -- it's actually attached to the decision that I render. Okay?

MR. WRIGHT: Yes, sir. Thank you.

HEARING EXAMINER DICKMAN: All right. Anybody else have anything else to say? I shudder -- I shake when I ask that question.

No? Okay.

MR. FINN: No.

HEARING EXAMINER DICKMAN: Okay. I have -- I have nothing more on this. And I'll get a decision once I get that plan, and get it out as quickly as I can.

MR. WRIGHT: Thanks very much.

HEARING EXAMINER DICKMAN: Okay. Oh, I do want to just ask for, I guess, a little grace on this, because I want to make sure that we get the language right on the condition, you know, and so I need to look at what they -- the opaque language that's -- that was referenced and work through that. So there may be a need for some clarification. And I can do that through the County. And -- and I just want to make sure we get the language right so I don't have to render an amended or -- an amended decision. Okay?

MR. WRIGHT: Yes. Understood. Thank you.

HEARING EXAMINER DICKMAN: All right.

Anything else on this side before we go on?

MR. FINN: No, nothing else.

MR. WRIGHT: Nothing else for the applicant.

HEARING EXAMINER DICKMAN: Okay. Well, I'm sorry your colleague at Kimley-Horn is still on the road, and he might want to do a U-turn.

MR. WRIGHT: Thanks for your time this morning.

HEARING EXAMINER DICKMAN: Thank you. Take care of yourself. Have a nice day.

MR. WRIGHT: You too.

HEARING EXAMINER DICKMAN: Before we close the meeting, I want to make sure that the -- the court reporter had mentioned that maybe she missed something that I said, and I want to make sure before we close the meeting if there was something that I should go ahead and say now.

So where did you drop off, drop in, and did you just merely miss my introduction?
(Comment by reporter.)

HEARING EXAMINER DICKMAN: Yeah. My name is Andrew Dickman. I'm the hearing examiner for Collier County.

I am not an employee of the county's, but I was retained by the Board of County Commissioners to render the services that are required under the code for the hearing examiner.

And I think that's normal -- I think after that I went into the reasons for the meeting and some of the sort of normal things, but that's -- I think usually that's what I say at the very beginning.

THE COURT REPORTER: Thank you.

HEARING EXAMINER DICKMAN: All right.

MS. PADRON: Thank you, Mr. Dickman. Until next time. Have a great weekend.

HEARING EXAMINER DICKMAN: Okay. Thanks a lot. Appreciate your help. Have a good day, everybody.

July 27, 2023

MS. PADRON: Thank you.
MR. BELLOWS: Bye-bye.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:22 AM.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 8/31/23, as presented or as corrected _____.

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