

August 10, 2023

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
August 10, 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, Planner III  
Eric Ortman, Principal Planner  
Ailyn Padron, Management Analyst I  
Derek Perry, Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning, everybody. Good morning. We're going to get the meeting started, if you'd shut the door. Have the attorney have a seat, please. I'm just kidding around. He's a good guy, I heard.

Okay. Today's August 10th, 2023. This is the Collier County Hearing Examiner meeting. Let's all rise for the Pledge of Allegiance, please.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

My name is Andrew Dickman. I'm the Hearing Examiner for Collier County. I'm a Florida Bar attorney in good standing. I've been practicing in the area of land use and local government for over 20 years. I am a contracted attorney by the Board of County Commissioners which means that I'm not an employee of the County. I'm an impartial decision-maker here to run the quasi-judicial hearing for all the petitions and then to render a final decision.

I won't be making any final decisions here today. I have up to 30 days under the code to render a decision. My job here today is to listen to the petitioner or the petitioner's representative, to the County staff who did the evaluation of the petition, listen to the public, and ferret out the evidence that applies to the criteria for each individual petition.

This is an informal proceedings. Formal rules of evidence do not apply. I want everyone to just relax. I know there are some people that are un-confident sometimes speaking in public. This is a small room, small venue. Take your time. It's most -- the most important thing for me is that everybody gets their information into the record today because after today the record will be closed, and then I'll be making a decision based on all that information.

As far as my disclosures -- so I have no what's called ex parte communications, which means that I haven't had any communications with any of the applicants, the county, or anybody else about individual petitions here in front of me. That would be considered prejudicial, and for me to cure that I would announce that here today, but I haven't, so there are no ex parte disclosures for any of the three items that are on the agenda today.

So one of the things that we're going to do today is anybody who is going to speak in front of me today at one of the podiums is going to have to be sworn in, and I'll ask our court reporter to do that in a few minutes. So we'll swear everybody in at the same time.

The process that I like to use, which seems to be working well, is that the County will come up first to the middle podium, and they'll give us an overview of the petition and their analysis of the petition with regard to the criteria that's in the code and then any recommendations or conditions they're suggesting. Then the petitioner or the petitioner's representative will come to the larger podium over here to my left, I guess. They're all in front of me, but -- and then they'll have time to present their case in chief.

We'll open it up to the public. Anybody here who wants to speak on an item needs to fill out a speaker's card and hand it in to this young lady over here. Wave her hand. Right there.

This is a hybrid meeting, so the County has set up -- for convenience, anybody who can't attend in person here, there is a function for them to participate via Zoom, and we'll be accommodating that.

After the public hearing is closed, I'll give the petitioner or petitioner's representative time for rebuttal if they so desire, and then I'll close the hearing, and we'll move forward.

Everything is being recorded by our court reporter, so try to speak clearly and not speak over other people, not make hand gestures, like, for a yes or no, because that can't be captured. She'll let you know if she didn't capture something, and she'll stop you, and we'll make sure that it all gets on the record. This is very important. I frequently go back to the transcripts of the hearing just to refresh my memory on it, so I'm really cautious about making sure that we have a good verbatim record.

If you have a phone on or something like that, please turn it off so it doesn't interrupt anybody. If you have a desire to have a conversation with a colleague or something, please step out

into the hallway.

And with that, I think I've covered everything. Why don't we go ahead and swear in any witnesses that are going to testify today or members of the public that are going to speak.

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: \*\*\*All right. Let's start with -- the first item, I think, is 3A. Who's covering that one? We'll start with the County first.

MS. HARRELSON: I'm anxious.

HEARING EXAMINER DICKMAN: County first.

MR. ORTMAN: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. ORTMAN: For the record, Eric Ortman, principal planner. This is Petition No. DR-PL20220006120 for the Chokoloskee Church of God.

And after the staff report was uploaded to Accela and was therefore no longer able to be edited, two small errors were found, both of which were fixed before the meeting was advertised.

HEARING EXAMINER DICKMAN: Okay, good. Appreciate it.

MR. ORTMAN: All righty. Okay. The first was in the title. The title that was published in the *Naples Daily News* is correct and is shown on the screen.

HEARING EXAMINER DICKMAN: Okay.

MR. ORTMAN: Ailyn, show the other presentation. Sorry about that.

HEARING EXAMINER DICKMAN: Take your time.

MR. ORTMAN: Mr. Smith, is that you talking? If so, could you please mute yourself.

MR. SMITH: Yes, sir. I'm just not hearing --

MR. ORTMAN: Okay. Can you get rid of that, Ailyn. Thank you.

On the screen is the title that was published in the paper, the *Naples Daily News*, and it is correct. And the red box there shows where the correction is. Before it used to say "requirement for a wall on eastern side of the property." It is now where -- requirement for a wall where the property abuts a residential use.

Okay. And the correct title, in part, should read, a request for approval of a site plan with deviations from: One, LDC 4.02.02, to allow a reduction in a minimum lot size from 1.0 acres to 0.847 acres; secondly, from LDC 4.06.02, to allow for the buffer on the northern property to be eliminated for a plus-or-minus 67 feet from the western property line and to allow the buffer on the northern property line to be reduced from 10 feet to 7.9 feet where there is an existing building, and to allow two existing air conditioning pads to remain within the buffer; and, three, from LDC 5.03.02.H, to eliminate the wall for a requirement where the property abuts a residential use, and this is for the redevelopment of the Chokoloskee Church of God consisting of 0.847 acres and located at 1236, 1244, and 1250 Demere Lane, Chokoloskee, in Section 31, Township 53 South, Range 29 East of Collier County.

The next slide, please.

The second error may be found on page -- next slide; I'm sorry.

Okay. The second error may be found on Page 8 of the staff report. And under Letter D, it should read, a playground to the right of the purple square will be removed and replaced with two handicap spaces.

And next slide, please.

This is illustrated here. The red square on the right of the -- towards the right of the screen is where the existing playground is.

And next slide, please.

And this is a site plan. The red square is where the playground is currently and, as you can see, it's being replaced by two handicap parking spaces.

Okay. Next slide, please.

Okay. The Chokoloskee church -- ooh, that's the wrong slide. Go back two slides. One more. Keep going back. Back more. Back more. One more back. Okay.

The Chokoloskee church is in a village residential zone where churches are a conditional use. The church was originally built around 1913, which was 10 years before Collier County was even formed. Since the church was constructed before the formation of the county, it is considered to be a permitted conditional use and is, therefore, consistent with the Growth Management Plan. And as you can see, the church, what it is surrounded by, it abuts three right-of-ways, which is why they've asked for a deviation from the wall requirement, which staff wholeheartedly supports.

The original church was destroyed by a hurricane and was replaced with a wooden structure, and, in 1961, that wooden structure was replaced with the current structure that exists today.

As shown on -- next slide, please. Keep going. Sorry. Keep going. Next slide. There we go.

The red rectangle there represents the -- oh, I'm sorry. Okay. The red rectangle represents a second building that was on the church property. It was badly damaged by Hurricane Irma and was destroyed. This is -- what you see there is just the concrete pad for it. That was the church's multipurpose room, and the church would like to construct a new church building, use it as its church, and then make the existing church, which is just to the left of the red box, as its multipurpose room.

The blue box at the bottom of the picture shows 10 parking spaces, or nine parking spaces. Staff believes that this concrete has been there since at least 1961 but has not been able to confirm this.

And next slide, please.

This is a 1973 aerial from the Florida Department of Transportation, and it shows that the concrete was in existence back then. These spaces are not part of the DR petition, they are not part of the site plan, and they were not counted in the calculation for the parking requirements.

The applicant has completed all of the appropriate hearing notices, the advertising mailers were sent on July 21st, 2023, and per Chapter 6I of the Administrative Code, there was no requirement for a NIM or sign postings on the property.

And I can answer any questions, or we can go to the petitioner.

HEARING EXAMINER DICKMAN: Let's go to the petitioner. Thank you. I got everything. Thank you.

Hi.

MS. HARRELSON: Hi.

HEARING EXAMINER DICKMAN: How are you?

MS. HARRELSON: Good. Good morning. For the record, I'm Jessica Harrelson. I'm a certified planner with Peninsula Engineering, and I'm representing the applicant, Chokoloskee Church of God.

HEARING EXAMINER DICKMAN: Be careful with that.

MS. HARRELSON: I have a really short presentation. This is a pretty easy, straightforward request.

If you want to bring up that PowerPoint presentation, please. If you can just go to Slide 2.

So a site plan with deviations for redevelopment has been submitted for the property. It's located at 1236 Demere Lane in Chokoloskee, Florida.

The property is currently developed with an existing sanctuary building, a children's playground, a basketball court, and there is also a concrete pad that remains from a previous multipurpose building that existed on the property that was demolished due to extensive damage by Hurricane Irma.

Next slide.

The redevelopment plans include the construction of a new sanctuary building on the property with a total floor area of 3,115 square feet. The existing sanctuary building will become the church's multipurpose building.

Next slide.

The property is zoned village residential which permits churches as a conditional use with a required minimum lot size of one acre.

Next, please.

The site is designated as a Collier County Historic Site and has been developed with a church since the early 1900s.

Next slide, please.

This is just an earlier aerial from the property. The exist -- or, I'm sorry, the previous multipurpose building is circled with that yellow circle there. That was again removed because of the hurricane damage from Hurricane Irma.

Next slide.

And this is a 2021 street view aerial from Google Earth just showing that that multiuse building was demolished.

Next slide.

The deviation requests include to permit a lot area less than the required one-acre minimum for conditional uses within the VR zoning district. This approval will allow the continued church use on the property.

The second deviation is the request to eliminate the wall requirement between the site and adjacent residential uses. Currently, the code requires a wall on all sides of the property, which is unappealing, and it's the church's intent to continue, like, having a welcoming sense within their community.

And then the third deviation pertains to the northern Type D landscape buffer requesting to eliminate the buffer within the northwest corner where an existing drainfield exists, to also reduce the buffer to a width of 7.9 feet where the existing sanctuary encroaches into the buffer width and, lastly, to allow the existing air conditioning pads and equipment to remain within a buffer. So those buffers don't exist today.

Next slide, please.

This is the proposed site plan. The proposed sanctuary building will meet current code setbacks, which are 35-foot front yards and a minimum of 15 from the side yard. Perimeter landscape buffers, again, will be installed. A new drive aisle with grass parking will be constructed along the west, and two handicap spaces will be added along the east, and there is a network of sidewalks proposed.

Next slide, which is the last slide. It's just an architectural elevation of the new sanctuary building. It will be constructed to current FEMA requirements and built to Florida Building Code and will be ADA accessible.

And that concludes my presentation.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MS. HARRELSON: You're welcome.

HEARING EXAMINER DICKMAN: Hold tight and see if -- anybody signed up to speak on this item?

MS. PEDRON: Good morning, all. For this petition, we have no in-person or online speakers.

HEARING EXAMINER DICKMAN: Okay. So I guess there's nothing for you to rebut.

Yeah, that was going to be my main question was, like, the new FEMA requirements and everything like that. And I hope that that doesn't -- I mean, I wouldn't think so, but I would hope that it doesn't take away from, like, the historical look of that -- you know, that construction and everything, because it's such a charming -- charming element of the Chokoloskee community.

MS. HARRELSON: They will be keeping the existing sanctuary. It will become the multipurpose building, and the church would like to use the building when there are, like, major hurricane events or storms. They want to be able to have the, you know, community come. They're going to have generators --

HEARING EXAMINER DICKMAN: Right.

MS. HARRELSON: -- where they can plug in, get some A/C. I guess that's an issue right now on the island, so...

HEARING EXAMINER DICKMAN: Air conditioning?

MS. HARRELSON: Yes, during a major storm event.

HEARING EXAMINER DICKMAN: Yes. No, I would recommend getting it on, if you can, in a hurricane event. No one gets stuck down there.

MS. HARRELSON: No.

HEARING EXAMINER DICKMAN: You should have a boat. Everybody has a boat down there.

Okay. Does the County have any additional comments or anything left you want to say?

MR. ORTMAN: No, sir.

HEARING EXAMINER DICKMAN: Okay, great.

This is pretty straightforward. I understand it completely, and I appreciate you making that presentation, and I'll make a decision on it as quickly as I can.

MS. HARRELSON: Okay. Thank you so much.

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

MS. HARRELSON: Have a good day.

HEARING EXAMINER DICKMAN: Good luck to your clients.

\*\*\*All right. So now we're on 3B on the agenda. Who have we got?

(All participants were previously sworn.)

MR. ORTMAN: All right. Again, for the record, Eric Ortman, principal planner.

This is Petition No. VA-PL20220007504, a request for an after-the-fact variance from LDC 3.05.07.H.1.h.iii to allow a decorative wall that was built too close to a preserve to reduce the required preserve setback from five feet to zero feet on two properties. One is 0.027 [sic] acres and one is 0.38 acres. Respectively, they are 14690 and 14694 Beaufort Circle, also known as Lots 377 and 378 in the Indigo Preserve Subdivision in Section 34, Township 48 South, Range 26 East of Collier County.

The wall was built at 14690 Beaufort but carried past the property line to 14694.

On the line are the agent for the applicant and also the co-applicant, Brandi Morgan, who is the owner of 14694 Beaufort Circle.

14690 Beaufort was owned by Mr. and Mrs. Smith. Mr. Smith built a retaining wall parallel to and just inside his rear property line. Mr. Smith had researched the Florida Building Code and concluded that a permit was not required. While a permit was not required, Mr. Smith was unaware of the LDC requirement for 5-foot separation for a decorative wall on residential properties that abut a preserve. The wall in question is classified as a decorative wall due to its not having a structural reinforcement or anchoring to the ground. Having built -- been built simply by stacking one course of pavers on top of the other.

Code Enforcement became involved in this issue when a neighbor complained about the wall. Code Enforcement has visited the property and sent notices of violation to Mr. Smith. They have -- Code Enforcement has also agreed to not move further until this variance process is completed.

Mr. Smith then contacted the Zoning Department to pursue a variance. During the process of the variance, Mr. Smith's property was purchased by Mr. and Mrs. Sinks. Mr. Smith is acting as the agent for the Sinks, who are one the applicants. A review of a May 23 -- May 23, 2023, survey showed that in addition to the wall being too close to the preserve, it was also extending one foot onto the neighboring property of Mr. and Mr. Morgan, located at 14694.

The Morgans have joined the petition as co-applicants and, as I said, Mrs. Morgan is on the line.

This petition is only for the proximity of the wall to -- the proximity of the wall to the preserve for both 14690 and 14694 Beaufort. The encroachment of the wall onto the Morgans' property is a private matter between the two -- between the two parties.

And this slide shows the -- in the yellow box, there is the eastern section of the wall, which is the part of wall that is infringing.

And as you can see, it is stopped before the faux wrought iron fence that Mr. -- go back, please. Mr. Smith believed that was his property line, so he stopped short of that.

Okay. We can just go ahead two slides. Mr. Sinks is -- next one.

Mr. Sinks has hired a contractor to remove that section of the wall and move it over a foot to the left; therefore, it's only on his property.

On the left is a photo of the wall before the work, and on the right is the photo of the wall -- photo of the wall after the work was completed.

A survey has not been done, so we cannot guarantee that that wall is now completely on Mr. Sinks' property.

So we have maintained the petition to be for the proximity of the wall to the preserve for both 14690 and 14694 Beaufort, and that is it.

And if you'd go to the next slide, please.

Okay. These are three different slides of the -- of the wall itself. On the left is the chain-link fence that you can see. That runs on the border of the properties and the preserve, and it runs along the backyards of all the houses on Beaufort. And Mr. Smith built a wall on his side of the property of the fence, thinking he was good there. At the red arrow, at the top on the Picture No. 1 shows where the neighbors' fence is, and Mr. Smith built the wall to -- projecting into the preserve the same distance from that as the wall.

And the same on Picture No. 3. On the right, the wall is built inside a chain-link fence and stopping short of what he thought was his property line, and the middle picture is a picture of Mr. Smith and also it showing that the wall that he built is in line with the wall on the neighbors' property.

And fences are allowed to be built on the property line when they abut a preserve, but decorative walls are not allowed to be built.

The Growth Management Plan focuses on the actual uses of land and not on dimensional requirements and, therefore, this is also consistent with the Future Land Use Element.

And that is all I have, if you have any questions, Mr. Dickman.

HEARING EXAMINER DICKMAN: Yeah, I do, and you touched upon it, you know, the private-matter issue.

MR. ORTMAN: Yes.

HEARING EXAMINER DICKMAN: So what's going through my mind is what happens when there's a subsequent owner --

MR. ORTMAN: Okay.

HEARING EXAMINER DICKMAN: -- on -- for the -- for the small part that may or may not be encroaching into the other side?

MR. ORTMAN: This has been a matter of discussion between the former owner, Mr. Smith, the current owner, Mr. Sinks, and the property owner, the next-door neighbors' property, the Morgans.

We had advised them that this is a private matter and that it's really not our concern, but there would not be a clear title and that when the house is sold, either house is sold at some time in the future, this is going to come up in a survey, and it's going to be a problem, and it would be easier to take care of it now than later.

We had suggested that they try a lot line adjustment, which would -- and a survey, and then it would be all done and neatly packaged up. That was not followed through on. Instead, Mr. Sinks took it upon himself to actually have the wall moved to what he thinks is --

HEARING EXAMINER DICKMAN: We're not sure about that.

MR. ORTMAN: We are not sure. It looks in the photos like it is, but we're not sure. Again, it's a private matter between two parties, so we're not involved in it.

But they do know that when the property -- either property is sold, that a survey could find

that there is still an encroachment.

HEARING EXAMINER DICKMAN: Okay. So, I mean, I'm fine with coming up with some language that, you know, offers some ability for a subsequent owner who may not -- he's got an agreeable neighbor now who's okay with, you know, what may or may not -- because they're using fences as demarcations to guess where the property lines are, basically.

MR. ORTMAN: Yes. That's what Mr. Smith -- he did use the fences as a line of demarcation. And the survey, if you want to see the survey --

HEARING EXAMINER DICKMAN: I have it here. I have it.

MR. ORTMAN: Okay. And you can see there is a slight encroachment of it.

HEARING EXAMINER DICKMAN: Sure, sure.

MR. ORTMAN: And it is -- I think it's 1.0 feet in the survey, and so Mr. Sinks, when he hired a contractor, asked him to move the wall at least one foot to the west.

HEARING EXAMINER DICKMAN: Okay.

MR. ORTMAN: But, again, the survey was not done, so there is no guarantee that it is one whole foot.

HEARING EXAMINER DICKMAN: Okay. All right. So I'll -- let's listen to the petitioners and see how this thing unfolds.

MR. ORTMAN: Would that be Mr. Smith?

HEARING EXAMINER DICKMAN: I guess, whoever's up first. Mr. Smith's the primary, I guess. There's two -- co-applicants, right? Two co-applicants?

MR. ORTMAN: Yeah, there are two co-applicants.

HEARING EXAMINER DICKMAN: Okay.

MR. ORTMAN: Yeah. Mr. Smith is the agent for the main applicant, Mr. Sinks, and Mrs. Morgan is co-applicant just for that one little foot that's extending over.

HEARING EXAMINER DICKMAN: Okay. Let's just jump in with them and see how this thing unfolds. Thank you. Nice job.

Is the petitioner ready?

MS. PEDRON: Good morning, Mr. Smith. Can you hear us?

MR. SMITH: Yes, I can.

HEARING EXAMINER DICKMAN: Good morning, Mr. Smith, can you -- go ahead and make your presentation.

MR. SMITH: Okay. To begin with, the -- my interest in putting up what I'll call a fence or the wall there was that in the previous hurricane we had water coming up towards our -- right close to our property, and we were also having drainage problems where the slope down to the fence, which is the property line, was starting to erode the property.

So I decided that I would just build up a wall to the level of the property, which would just -- not change the property dimensions or anything. It had nothing to do with the structure.

In looking at the code, I think it was Section 105 -- I don't have it in front of me -- it just said that no permit is required unless a structure's going to be built.

In addition, when a code enforcement officer showed up, he was actually directed there by the HOA, not by a neighbor. He looked at it. He didn't understand why there was any question about anything. And he said, but he would follow up and research what might be an issue with the wall being there. There was nothing that he could identify then that was at issue.

It took about six weeks until he could come back with an answer saying what the issue was with being on a preserve. It has to be five foot back from the property -- property line, which everything, you know, arose from that.

There was no intention to encroach on the preserve. There was no interest in building a structure on top of it. And I used the neighbors' walls that were there, fences, as an indication of the property line.

The error was made on the south -- east wall, the east section, where the Morgans are, is that the wall -- the fence that they have there, that wrought iron fence, actually is at somewhat of an angle.



It angles towards -- to the -- let's call it the west a little bit so, actually, I built the wall closer -- or on top of their property at one point, one foot in.

Mr. Sinks brought the wall back to the same level that the -- that the pad for the air conditioning is at, which is 85 feet. So that is -- it's directly in line with that. That is inside the property, so I think that covers that area.

All I'm requesting is to be able to leave the wall there, you know, based upon what was built.

HEARING EXAMINER DICKMAN: All right. I understand -- procedurally, I understand how you got where you got to, and I understand that. Now, I guess you understand some of these code sections are in different places. They're not all laid out in the same place. So sometimes when you try to interpret them yourselves, you miss something and then --

MR. SMITH: If somebody could speak up. I'm not getting it loud enough.

HEARING EXAMINER DICKMAN: I'll try to speak a little louder. Can you hear me now?

MR. SMITH: Okay, thanks.

HEARING EXAMINER DICKMAN: Yeah -- no. Sometimes when you try to interpret the code yourself, you don't realize that there are other provisions in other areas, and then one thing leads to another, and this is where we are now.

So why don't we go ahead and hear from the co-applicants, who I guess are the Morgans?

MR. SMITH: Mr. Sinks?

HEARING EXAMINER DICKMAN: Yeah, Mr. Sinks.

MR. ORTMAN: Mr. Sinks is the -- Mr. Sinks is the applicant. Mr. Smith is acting as his agent. The co-applicant is the Morgans.

HEARING EXAMINER DICKMAN: That's what I thought. Okay. Whoever's speaking on behalf of the Morgans.

Is somebody representing the Morgans, please?

MS. PEDRON: Good morning, Morgan [sic]. Can you hear us?

MS. MORGAN: Hi. Hello, can you hear me?

HEARING EXAMINER DICKMAN: Yes, we can hear you fine.

MS. MORGAN: Hi, I'm Brandi Morgan. Can you hear me okay?

HEARING EXAMINER DICKMAN: Yes, ma'am.

MS. MORGAN: Yes, I'm here.

MR. BELLOWS: You may go ahead and do your presentation.

MS. MORGAN: I'm having trouble hearing you.

I just wanted to say that it does seem that the wall has been removed from my property. It wasn't an issue before. I never even realized it was there. I don't have, you know, a problem, you know, with getting it fixed the way that it has been settled. It's good for me.

But do you recommend that we go ahead and do another survey just to be sure?

HEARING EXAMINER DICKMAN: I'll tell you what. I think that this is going to have -- this is going to be something that's between you and your neighbor. You've joined in on --

MS. MORGAN: Okay.

HEARING EXAMINER DICKMAN: You've joined in onto this application, so I'm going to look at this as one application. But what I do -- what I am concerned about -- I mean, you're telling me on the record that it appears to you that it has been removed -- the wall in the rear has been removed from your property, but what I'm -- what I'm concerned about is the owner of your property, if you were to sell and then that person, obviously, through the purchase/sale process, is usually required to supply a survey somewhere in there, and it's discovered that it is not fully off of your property, that there's still an encroachment.

I don't know. I think that's a private matter. I can put language in this decision that stipulates that, you know, all parties to the application understand that the wall may have to be moved at some point if there's a -- if you have a subsequent buyer at some point and you don't want the sale to be held up because there's -- they find a minor encroachment. But at this point, I don't want to go

through any of these private -- private processes.

So I can come up with a condition that states that whoever the owner is at that time, let's say it's five years from now -- let's say that the owner of 14696 [sic] would be required to remove any encroaching wall onto where -- 14694. But in my view and in the County's view, this is a private matter between you-all. I'm okay with reviewing it right now, and you guys are okay with it right now. But just be aware that there may be a point in time, five years, 10 years, when somebody -- when you want to sell or the -- it's really about the '694 property. If there's an encroachment, then that has to be dealt with. But I don't want to be seen here, if I render a decision favorable to you-all, that I'm somehow legalizing or justifying an encroachment. I won't do that.

So I'll come up with some language that states that, that this is based on testimony that you believe that the wall is off of your property but that it may not be, and it may need to be adjusted later on and that you're aware of it and so forth and so on. However, if you feel like --

MS. MORGAN: Yes.

HEARING EXAMINER DICKMAN: -- you want to continue this process and take up another date and get another survey and be certain about it, that's up to you. But I would --

MS. MORGAN: I think -- I'm really not concerned about doing that. I think we should just --

HEARING EXAMINER DICKMAN: Okay.

MS. MORGAN: -- just probably go ahead and try to end it here, and we'll take care of it from there.

HEARING EXAMINER DICKMAN: Okay. Now, I'm going to ask a question real quick of the county. So if we do this and this gets approved and I have some saving language in here so that, you know, we're not getting ourselves in the middle of a private matter, will that resolve their code enforcement matter?

MR. BELLOWS: Yes. For the record, Ray Bellows.

Even though there was an attempt to remove the wall from the neighbors' property, this is an assurance because we didn't have a survey to verify that.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: So I don't see an issue with incorporating some kind of language.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. ORTMAN: Mr. Dickman?

HEARING EXAMINER DICKMAN: Yes.

MR. ORTMAN: As I may -- if I may, the petition is just for the proximity of the wall to the preserve.

HEARING EXAMINER DICKMAN: In the rear, right.

MR. ORTMAN: In the rear. It has nothing to do with encroachment onto the neighboring property.

HEARING EXAMINER DICKMAN: Okay. All right. But I can state that there's --

MR. ORTMAN: You may.

HEARING EXAMINER DICKMAN: -- a question about the intent to which it -- whether or not it is encroaching or not, and I can put some language in there that states that. This is really just -- I get it. It's for the rear preserve area. That's the subjective part of this. But I want to make sure that since they're not 100 percent sure about whether there may or may not be an encroachment, I want to just extricate the County out of any of that for the future.

MR. ORTMAN: You are entirely correct, yes.

HEARING EXAMINER DICKMAN: Okay. Counsel, do you have anything else?

MR. PERRY: Mr. Dickman, for the record, Derek Perry.

This is out of an abundance of caution and, essentially, it's staff's and the applicant's worry or concern that if they gave the variance on one property that, perhaps, an angry HOA member or someone else could then get them on the two inches, in theory, on the other side and then --

HEARING EXAMINER DICKMAN: I understand. I understand. So it could be very de

minimis but, at the same time, people argue over inches all over the place.

So, again, I'm thinking down the road five years. I don't want someone to come back and, you know, argue that the County somehow permitted an encroachment. So this is -- I get it. It's 100 percent about the rear -- the rear encroachment onto the preserve, but as an aside issue, we've got that little corner right there that I'll address in probably a condition or something like that.

MR. PERRY: Absolutely. And it's my understanding, based on the staff's faces and what they've said thus far, that they're amenable to any condition or language that you find suitable to explain it and make yourself comfortable with the ruling.

HEARING EXAMINER DICKMAN: Okay. So we have -- I just want to hear on the record from both applicants that, as of today, you believe that the encroachment has been cured.

Ms. Sinks, you stated that -- or Morgan, whoever's speaking. Is it Sinks or Morgan?

MS. MORGAN: Yes, I do believe that it is off the property.

MR. ORTMAN: That's Brandi Morgan speaking.

HEARING EXAMINER DICKMAN: Okay. So Brandi, who is at 14694, has stated, believes that the encroachment has been cured.

Is -- one of the Smiths who spoke earlier, do they -- are they still on the -- on Zoom at the property for 14696 [sic]?

MR. SMITH: Yes, we are. I'm on the -- I'm on the line.

HEARING EXAMINER DICKMAN: Can you state for the record that you believe that the encroachment into 14694 has been cured to your -- best of your knowledge?

MR. SMITH: Yes, I am.

MR. ORTMAN: Mr. Dickman, just to clarify for the record, the Smiths' property, which is now owned by the Sinks, is 14690 Beaufort, not 14696.

MR. SMITH: Correct.

HEARING EXAMINER DICKMAN: Sorry. My bad.

MR. ORTMAN: Okay.

HEARING EXAMINER DICKMAN: Okay. I understand what's going on here. I think I can put this together in a way that gets everybody moving again, gets the train moving, and hopefully you won't have any problems with this in the future.

Anything else anybody wants -- is there anybody here in the audience that's signed up?

MS. PEDRON: We actually do have a registered speaker in person.

HEARING EXAMINER DICKMAN: Okay. All right. Let's hear from --

MS. PEDRON: Todd Allen.

HEARING EXAMINER DICKMAN: Okay. Sir, you can use this one right here. That would be great. Thank you. Welcome.

MR. ALLEN: Thank you. Good morning. Todd Allen on behalf of Indigo Lakes Master Association. I'm, unfortunately, the guy that's going to argue over the inches.

I have a couple -- the association has several concerns about this. I think none of which really may impact the County's decision on this but do impact the contractual rights of the association.

The construction of this fence is a violation of the declaration of covenants, conditions, and restrictions of the association, which the former owner, Mr. Smith, and the current owner have not sought any accommodation from the board of directors for the installation of this fence.

The other issue that is of paramount concern to the association is at the end of this -- at the backyard of this property, there is an irrigation easement that is dedicated to the association, and there are irrigation lines that go through there, and there is a concern with the association that that would -- that this fence would interfere with that. So these are concerns that the association has, I guess, none of which really are maybe of the County's concern but are certainly contractual rights that the association has with regard to this property.

HEARING EXAMINER DICKMAN: Okay. And you're counsel for the association?

MR. ALLEN: I am.

HEARING EXAMINER DICKMAN: Okay. Okay. So I thought I understood that they went to the -- they -- okay. So the code enforcement process started with your client --

MR. ALLEN: My client.

HEARING EXAMINER DICKMAN: -- calling them out because of this issue, I guess. So I guess this hasn't been resolved. I thought that this had been resolved internally.

MR. ALLEN: It has not.

HEARING EXAMINER DICKMAN: Okay. So the County does not get -- you know, get involved in the private matters like this. Okay. So what would it take for this to be compliant with your -- with your documents?

MR. ALLEN: Well, initially, they would have to make an application to the board of directors. The board of directors would have to go through its processes and procedures to evaluate the application and make a decision.

I have a sneaking suspicion that it will be denied if it goes through that formal process because of these concerns, specifically the irrigation easement that's back there and the precedence that it may set for other people in the community.

HEARING EXAMINER DICKMAN: Okay. So the irrigation easement is -- I mean, how far -- how much adjustment on their wall would they have to make in order to be compliant?

MR. ALLEN: Well, I think the irrigation easement is 11-and-a-half feet off the property line. So, yeah, it's a fairly significant easement.

HEARING EXAMINER DICKMAN: Okay. Okay. This gets juicier and juicier.

All right. Do you want to make a full presentation, or do you want to --

MR. ALLEN: No, that's all I had.

HEARING EXAMINER DICKMAN: That's all you had.

MR. ALLEN: Very brief.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. ALLEN: Thank you.

MR. SMITH: Is it possible for people to speak up? I can barely hear.

HEARING EXAMINER DICKMAN: Okay. So I'll try to abbreviate this. So you have not received any kind of authorization for the wall from the board of directors of the association, and their lawyer has presented that, from their opinion, you're violating the irrigation area by having your wall there. So you're supposed to have not only county authorization to do it, but you have to go to your board -- whatever -- however they've structured the governmental process, the HOA process, for reviewing such construction. So you're encroaching into an irrigation area, and you need to have authorization from the HOA.

Now, somehow I understood that I thought the HOA got resolved, but -- since they were the ones that initiated this code enforcement process.

So do you have anything to say to that?

MR. SMITH: Yeah. I'd like to just add to this. First of all, as mentioned, the irrigation setback is 11 feet outside the property. So I don't even know how that involves anything.

Second thing is, while they were installing the new -- while installing the new Internet wiring across the property, they actually were putting -- having it dug up and put behind the fence, which is encroaching on that irrigation area. And I indicated to the -- I indicated to the cam that was actually involved with it that you really couldn't put the cable there because you'd have to get approval from the County for that, not irrigation. And I gave them approval at the time to put it across my property, and everybody was there from the board -- not everybody, but the cam was there representing the board, and he understood that I gave approval to put the cable across my property at that point.

At no time, you know, between that -- when I built that wall and now was I ever approached by the board to submit anything for any issues, you know, that had to do with the wall. They were clearly aware of the wall because I sat on the -- I sat on the committee, the Architectural Review Committee, and they had mentioned it to me, and we discussed it for a second, and they just sort of shrugged their shoulders and said, okay. So I don't understand what the -- why the issue is coming

up now.

HEARING EXAMINER DICKMAN: Okay. Well, on the code enforcement matter, is anything -- does that involve anything related to the irrigation setback or anything?

MR. SMITH: Could you speak up a second? I'm having trouble hearing. It would help.

HEARING EXAMINER DICKMAN: Well, all right. I'll speak up a lot. I'll speak up a lot.

Because right now it seems like a lot of people are trying to do things on their own by reading the code on their own and doing all this. So here we are where you've got an HOA who called the code enforcement officers because of doing work without a permit and the wall and the preserve.

So, Ray, once again, if the decision is favorable to the applicants, will it resolve the code enforcement matter, or is there some other reference to what the counsel for the HOA's stated?

MR. BELLOWS: For the record, Ray Bellows.

The code enforcement issue is just dealing with the --

HEARING EXAMINER DICKMAN: Preserve.

MR. BELLOWS: -- the wall from the preserve. That's a special requirement in the environmental section of the code for preserves. So that will -- this decision, if favorable, will take care of that code case.

HEARING EXAMINER DICKMAN: Okay. All right. So I'm going to -- I'm looking at just the code, the County code. I'm not looking -- I'm not -- you know, with no disrespect to counsel for the HOA at all, you know, that's going to have to be -- you guys are going to have to do what you have to do to enforce your Architectural Review Committee guidelines. I don't want to get down a rabbit hole trying to figure out who said what and who went where and who knew what, and -- you know, those are dangerous places to go, and we may never get out of here if we try to resolve that issue.

So, you know, I think the applicants here are going to have to travel on their own through that process. You know, I don't know why they haven't approached the HOA right -- you know, before now and, like, gotten all the ducks worked out, all the issues worked out. Can I ask one other question of you, Counselor? I'm sorry. I forgot your name. I apologize. Give it to me again, and I won't forget it.

MR. ALLEN: Okay. It's Todd Allen.

HEARING EXAMINER DICKMAN: Todd Allen, okay.

MR. ALLEN: Yes.

HEARING EXAMINER DICKMAN: Todd -- Mr. Allen, I'm sorry. I recognize your name somehow.

MR. ALLEN: I was a student of yours at Ave Maria.

HEARING EXAMINER DICKMAN: I knew it. I've still got some kind of memory. Well, you seem to be doing well.

MR. ALLEN: Thank you.

HEARING EXAMINER DICKMAN: Congratulations.

Have they been put on notice already, written notice? What kind of notice have you given them?

MR. ALLEN: I don't believe a violation notice has -- I think we were alerted to this through the public hearing notice --

HEARING EXAMINER DICKMAN: Okay.

MR. ALLEN: -- and then this was brought to my attention, but I do believe the board intends to initiate some covenant enforcement actions --

HEARING EXAMINER DICKMAN: Okay.

MR. ALLEN: -- during this -- notwithstanding what the County does. I think the board will enforce its covenants.

HEARING EXAMINER DICKMAN: Yeah. I don't want to keep kicking this ball around.

I just want to deal with the County issues, and then you guys do what you will with it.

MR. ALLEN: I understand completely.

HEARING EXAMINER DICKMAN: Thank you very much for that.

MR. ALLEN: Thank you.

HEARING EXAMINER DICKMAN: Okay. Thank you.

All right. I've got this covered. Everybody online, thank you very much for your help.

And do you have anything else final you want to say, any final words before I close this? Going once going twice.

(No response.)

HEARING EXAMINER DICKMAN: Okay. So I have -- I understand this completely. I understand what's going on. I'll let the -- I'll let them work out whatever they have to work out with the HOA, and we'll go forward from here.

MR. ALLEN: Thank you.

HEARING EXAMINER DICKMAN: All right. Thank you. Nice to see you.

I was wondering how that was going to work out.

(All participants were previously sworn.)

\*\*\*Hey, John. We're going to Item 3C now. 3C.

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

This is going to be Agenda Item 3C. It's PDI-PL20220006949. It's a request for the Hearing Examiner to approve an insubstantial change to the I-75/Collier Boulevard Commercial Center Planned Unit Development by adding a deviation from LDC Section 5.06.04 to allow one pole or ground sign up to 18 feet and 6 inches in height and 132 square feet in size facing Davis Boulevard for Parcel ID No. 34690080008. I'll repeat that number. It's 34690080008.

The subject properties comprise 19.54 plus-or-minus acres located at 8760 Davis Boulevard situated at the southwest corner of Davis Boulevard and Collier Boulevard in Section 3, Township 50 South, Range 26 East, Collier County, Florida.

The subject property comprises the entire commercial component of the PUD and the existing use, as a logistics facility was approved by means of PCUD-PL2020000543, BCC Resolution No. 20-97, adopted on June 9, 2020.

Public notice requirements were as per LDC Section 10.03.06.H. The applicant had scheduled a dually advertised neighborhood information meeting for 6:00 p.m. on May 18, 2023, at the South Regional Library on Lely Culture Parkway; however, no members of the public arrived to participate, and the meeting was subsequently terminated at 6:15 p.m.

The property owner notification letter and ad for this meeting were satisfied by the County on July 21, 2023, and public hearing signs were posted by the applicant on or about July 25, 2023, as per notarized affidavit.

This petition was determined to be eligible for the PDI process using the review criteria in LDC Section 10.02.13.E.2. Said determination required evaluating LDC Sections 10.02.13.E.1 and E.3 to determine that the requested change is neither substantial nor a minor change.

The proposed insubstantial change does not change the analysis or the findings in criteria used for the most current PUD document.

As for public comments, none have been received in response to this project.

Staff recommends that you approve this petition in accordance with the documents contained within Attachments B and C subject to the following condition, that being that a building permit must be applied for and obtained and a certificate of completion must be issued for the subject existing pole sign on Parcel No. 34690080008.

That concludes staff's presentation, and I believe Todd Mathes, director of development for Benderson Development, will be here for the applicant.

HEARING EXAMINER DICKMAN: All right. Great. Thank you. Thank you, John. Come on up.

MR. KELLY: And I'm not certain if the applicant's been sworn.

HEARING EXAMINER DICKMAN: Oh, okay.

MR. MATHES: Thank you, gentlemen. I was here during the swearing.

HEARING EXAMINER DICKMAN: That's what I thought.

MR. MATHES: And did raise my right hand.

My name is Todd Mathes. I'm the director of development at Benderson. My job is primarily acquisition, due diligence, design, development, planning, entitlement of our commercial properties. I've been doing that for about a dozen years throughout the U.S. but primarily in Florida.

Mr. Kelly's presentation is very complete, and even if he wasn't recommending approval, I think I'd say that because it's very comprehensive and complete.

So all I would offer is that we, obviously, concur and agree with all of his recommended findings, including the criteria for insubstantial change, that we comply with the master plan criteria, and that we meet all of the rezoning thresholds.

I'd add two things, primarily. First and foremost is that the sign in question will be two feet lower than the existing sign at that location but designed in the manner that is more compatible with the existing aesthetic of the building as we finished it, which was presented in the PowerPoint as we went through. It might be the next slide. The design of the building as opposed to -- or as -- in reference to the proposed final design of the final sign.

And the other thing I'd offer is that as pointed out in the staff report, this request is really necessitated by the reality that there is one user within this PUD, which is Amazon. But I would point out that the original Site Development Plans that Amazon was built based on include a proposed second building on the site which, obviously, could be a second user. There is not one there. That is why this insubstantial change request is necessary. But it certainly is possible in the future that there could be two users and they could use this single sign in the future.

And then, finally, what I would point out --

HEARING EXAMINER DICKMAN: Mr. Benderson [sic]?

MR. MATHES: Yes.

HEARING EXAMINER DICKMAN: Why wouldn't this be considered a monument sign -- or maybe this is for the County. Is this just -- it falls under a pole sign rather than a monument sign? It looks a lot like a monument sign.

MR. MATHES: Two things. I do wish I was Mr. Benderson.

HEARING EXAMINER DICKMAN: Sorry.

MR. MATHES: Oh, sorry. No, I appreciate that. Just for the -- my name's Todd Mathes. I work for the company. And I -- equally, to me it wasn't a pole sign, but it falls under the definition of pole sign when we get into the weeds of the zoning code, was our understanding, as we applied for this request.

HEARING EXAMINER DICKMAN: I just went through on Tuesday a whole hour presentation in a different jurisdiction on signs, and it was pole signs, monument signs, and that was called a monument sign.

MR. KELLY: John Kelly, for the record.

The difference is going to be that it's a single-occupancy building.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: Single occupant at the property. I believe the other was a directional sign.

HEARING EXAMINER DICKMAN: Okay. Thank you. That explains it.

MR. MATHES: The final bit of testimony I was going to offer was, given the scale of the building, the scale of the property, the speed of vehicles on Davis, and the unique quality of Amazon, which is that they have tractor trailers which really access the property from Collier versus Davis, and then they have van drivers and they have associates showing up to work inside the building or to park their car and get in a van. You have a lot of different types of traffic, different users. It is a transient employee that works at Amazon, and providing good visibility to the entrances of the property and separating that traffic is certainly a paramount concern of ours, of theirs, and we believe

the sign and its visibility from the road lends to safe traffic operations.

HEARING EXAMINER DICKMAN: What does that mean, "transient employee"?

MR. MATHES: Amazon employees who work at this facility, they don't have a consistent, constant workforce. They have a lot of new employees. They lose a lot of employees, and so there's a lot of people who might pick up a job during the holidays and show up here all of a sudden. It's a new place to them. They're going to go get in a van and drive around Collier County. Knowing which driveway they need to enter and not getting lost and not creating a traffic operational issue is certainly a relevant concern.

HEARING EXAMINER DICKMAN: Keep it simple.

MR. MATHES: Yeah.

HEARING EXAMINER DICKMAN: Okay. All right. It sounds good. Gotcha. Is that it?

MR. MATHES: That's all.

HEARING EXAMINER DICKMAN: Anybody signed up to speak? Any public?

MS. PEDRON: We have no registered speakers for this petition.

HEARING EXAMINER DICKMAN: Nobody showed up at the NIMs. Nobody shows up at John's NIMs meetings for some reason. I'm starting to wonder.

MR. MATHES: The best kind. The best kind. Thank you.

HEARING EXAMINER DICKMAN: Okay. All right. We'll close this item, and I'll get a decision out as quickly as possible.

MR. MATHES: Thank you.

HEARING EXAMINER DICKMAN: Thanks for being here.

MR. MATHES: Appreciate it. Thanks.

HEARING EXAMINER DICKMAN: I always wanted to go in one of those Amazon places. It's like Santa's workshop.

MR. MATHES: There's a lot of power and a lot rats and a lot of moving stuff.

HEARING EXAMINER DICKMAN: Now I'm not going, then. Me and rats --

MR. BOSI: I imagine there's a lot of automation.

HEARING EXAMINER DICKMAN: A lot of automation. It would be fun.

All right. Anything else before we close the meeting? Anything on anything -- new business? Jokes? Anything?

MR. BOSI: Nothing else from the County, sir.

HEARING EXAMINER DICKMAN: Okay. All right. Great. Thanks, everyone, for all your hard work, and I appreciate it, and see you in two weeks. Have a good weekend.

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August 10, 2023

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:04 a.m.

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 TERRI L. LEWIS, REGISTERED PROFESSIONAL REPORTER, FPR-C, AND NOTARY PUBLIC.