

February 8, 2024

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
February 8, 2024

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
Sean Sammon, Planner III
Eric Ortman, Principal Planner
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Okay. Good morning, everyone. Good morning. It's 9 a.m.

This is the Collier County Hearing Examiner meeting of February 8th, 2024.

Please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay, great. Thank you.

And welcome, everyone, please. This is a -- my name is Andrew Dickman. I am the Hearing Examiner appointed by the Board of County Commissioners. I'm a Florida Bar attorney, and I have been in good standing with the Florida Bar for over 20 years. My expertise is in local government and land-use zoning, environmental law, the kinds of things that have to be dealt with under the HEX code.

My job is to be here as a neutral decision-maker. I am not a county employee -- thank you very much. I am not a county employee. I am here, as I said, as an independent decision-maker.

My job is to conduct these quasi-judicial hearings for the types of petitions that are -- that fall under the Hearing Examiner. Some things fall into the Planning Commission agenda; some things fall into the Hearing Examiner agenda item.

So I am here, again, to essentially review each one of the petitions one by one, listen to the evidence that's being presented either by the applicant, the county, or the public, ask questions, and then close the record and render a written decision within 30 days. I do not render decisions here today. I go back and I look at the files again and the information that was presented here and then prepare a written decision.

I have not had any outside communications with the county who are here on my right, these folks who are with the county. I have not had any outside communications with any of the applicants or anybody related to the applicants, and I haven't had any outside communications with anybody, really. So that's the whole point is for me to be here totally neutral.

I've read all of the material that's associated with each one of the applicants that's been published on the website. I've read through all of it. I'm familiar with the codes that relate to each one of the petitions that are being requested. And what I really want to do here, one, is provide a fair opportunity for everybody to speak their minds and get the information -- and, more importantly, for me to be able to get enough information as it applies to the criteria in the code as it relates to that particular agenda item.

Now, that sounds maybe a little bit legal, but what I want the public to understand, that if you're here to speak today, number one, relax. This is an informal proceeding. I'm very much interested in hearing what the community has to say because all of these are noticed to the public, and that's why this is a public meeting, and so it's important for me to give an opportunity for the public to speak. If you are going to speak, we have speaker cards, and if you can hand them in to this young lady over here, that way we'll have that.

This is a hybrid meeting, meaning that some folks are here in person. There might be some people attending via Zoom virtually. That's a convenience that the county has offered to the public for folks that can't be here live and in person.

We do have a court reporter here who is going to take down everything verbatim. So it's very important that you speak clearly into the microphones, articulate as clearly as possible. We'll try to avoid talking over each other so that she can capture everything and that the transcripts are clear in the event that I need to request them or somebody needs to request them to see -- to go back and look at the record.

So, also, if anyone is going to testify here today, meaning speak here publicly, they need to do so under oath. That's part of the rules of a quasi-judicial hearing, and in a minute, I will ask the court reporter to administer the oath to anybody that is going to speak.

Just real -- just as a courtesy, if everyone could please turn off your phone ringers and things that make noise. If you need to have a phone conversation, just step outside in the hall, or if

you want to talk to somebody you're sitting next to or somebody, please step outside in the hall. Believe it or not, the acoustics are really good in here, and I can -- you know, so I'm trying to really pay attention to who's speaking, and it's difficult when someone's also speaking in the audience, and I also don't want to disturb somebody that's trying to give a presentation.

So with that, I would ask that anyone who is going to testify here today on any of the items on the agenda, please stand and raise your right hand, and I'll ask the court reporter to administer the oath, if she would, please.

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

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

HEARING EXAMINER DICKMAN: Okay, great. So the procedure that -- how we go about doing this is that I ask the planner who is -- the county planner who is assigned to the particular petition to come up first to this middle podium and just give us an overview, give me an overview of the petition, their analysis, recommendation, any conditions that they're recommending, and any -- any advertisements that's gone along with it, because I like to get that into the record in terms of, you know, making sure that these -- that the proper notices were put out.

Then we'll ask the applicant or the applicant's representative to use this other podium over here by the court reporter, and they'll put on their case in chief and then reserve some time for rebuttal, because then we'll go to public -- the public hearing portion and allow the public to speak.

And then after that, we'll close -- I may ask some questions along the way. If when you're speaking and I'm looking down and I'm writing or I'm looking away, please don't be offended, because I'm taking notes, and I don't want anyone to think that I'm not listening to you. I am listening, trust me. That's the main reason why I'm here. But I don't want you to be offended if I'm writing notes and not listening [sic] to you.

So very important to be very succinct and just try to address the issues that are relevant to the criteria for approving or evaluating each one of the petitions. I mean, you could say whatever you want. It's a public hearing. Almost anything you want, within reason, but I would ask that you focus your comments to how the petition affects you or doesn't affect you or whatever your position is and try to be as succinct as possible.

So with that, are we ready to get started with the first item? All right, great. Thank you. Good morning, John.

MR. KELLY: Good morning, Mr. Dickman.

***Before you is Agenda Item 3A. It's Boat Dock Petition PL20230007149.

The petitioner requests the Hearing Examiner approve a 103-foot boat dock extension from the maximum permitted protrusion of 20 feet allowed by Section 5.03.06.E.1 of the Land Development Code for waterways greater than 100 feet in width to allow a new private multifamily boat-docking facility with 12 slips for vessels of up to 35 feet in length that will protrude 123 feet into a waterway that is 1,695 plus-or-minus feet wide.

The subject property is located at 9380 Gulf Shore Drive, also known as the Watermark Condominium, in Section 32, Township 48 South, Range 25 East, Collier County, Florida.

It's located within a residential tourist district, RT, and is also located within the Vanderbilt Beach Residential Tourist Overlay zoning district, abbreviated VBRT0.

The Watermark Condominiums comprise of 1.38 acres, 22 property owners, and 304 feet of shoreline which is composed of riprap and vegetation; therefore, the mean high-water line has been determined to be the most restrictive point for the purpose of determining protrusion.

The subject waterway is unmarked, man-altered, and part of the Vanderbilt Lagoon.

The required side riparian setback for this dock facility is 15 feet. As proposed, the dock will be set back 30 feet from the southern side riparian line and 183 feet from the northern side riparian line.

The project will need approval by means of a Site Improvement Plan insubstantial change

and/or amendment to proceed to construction.

Public notice requirements were satisfied as per LDC Section 10.03.06.H.

The project was originally scheduled to be heard on January 11. However, the ad didn't run; therefore, the hearing was rescheduled for this morning.

The property owner notification letter and newspaper ad for this hearing was placed by the county on January 19, 2024, and the public hearing sign was posted by the applicant on December 21, 2023, and was updated accordingly.

This petition 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, and of the secondary criteria, it satisfied five of six, with the sixth being not applicable. And this time, rather than the Manatee Protection Plan, it's the criteria pertaining to single-family docks that's not applicable.

This petition has been found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comment, one letter of objection was received late Tuesday from a Mr. Smith of 9566 Gulf View Drive, and I would like to introduce that into the record at this time as Attachment H. There's a copy in front of you, and it was provided to your office yesterday.

HEARING EXAMINER DICKMAN: That's what I wanted to know. I think I have it already in my file, so I didn't know if there was a different one. Okay. Thank you.

MR. KELLY: Okay. And the staff recommends that you approve this petition as described in accordance with the proposed dock plans provided within Attachment A subject to the following condition of approval, and that is the applicant must provide a Manatee Awareness and Protection Plan consistent with LDC Section 5.03.06.E.11 before approval of the building permit for the proposed docking facility.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you. Thank you, John. Appreciate that. Let's go to the applicant or the applicant's representative.

Good morning, Mr. Rogers.

MR. ROGERS: Good morning. Can you hear me?

HEARING EXAMINER DICKMAN: Give it a minute.

MR. ROGERS: I think the light's on now. There we go.

Good morning. For the record, Jeff Rogers with Turrell, Hall & Associates here representing the applicant, which is Watermark Condo Association.

As John described, it's located at 9380 Gulf Shore Drive, Naples, which is in the North Collier area off the Vanderbilt Lagoon waterway.

As mentioned before, this is a multifamily -- existing multifamily condo that currently has 304 feet of linear shoreline that has consisted of riprap, as you can see on these pictures here, along with two areas -- two large areas of mangroves, which were taken into consideration with this overall proposed application in front of you and the associated dock design.

Moving forward, if you would.

On the screen you've got some more existing-condition photos for you. You can see on the top photos you're looking kind of southeast there over towards where the OneNaples project is currently being constructed. So this is on the southern end of the Vanderbilt Lagoon waterway.

Basically, across the waterway is all single-families, and along our western shoreline consists mostly of multifamily condos. Very similar to the applicant, Watermark Condo.

Moving forward.

As required, when we do one of these, one of the first things we do is get a bathymetric survey and a site boundary survey, which dictates the -- or depicts the water depths on the subject waterway. As you can see, those lines with small dots working out to your right are the depths. The depths are referenced to mean low water, which is part of the requirements for not just Collier County application but the state and federal permitting process. They want to know what the

mean water tied is there. So on an average high tide, you have this. So that's what all of our data is referenced to. As well as -- let me bring this up. The surveyors also depict the width of waterways for us. I do not determine those. I make sure it's mean high water to mean high-water elevations.

Moving forward.

Here is an overview of the subject property with some dimensions of the waterway. This -- you know, I'll talk about this a little bit. Basically, when we were asked to look at this by the applicant, it has a little bit of a unique situation with their shoreline in regards to the width of waterway, as you can see here. It is not exactly clear when you draw a straight line across the waterway from where the docking facility is giving you a full picture of what the actual width of waterway is. But the criteria is basically a straight line across.

So that's where that 1,695 number came from. But, really, the most restrictive point is the northern end of our shoreline which is approximately, you know, 460, 461 feet. So I bring this up because of the letter that was issued yesterday from the concern, which I will address as I go through the criteria.

So, yeah, but this basically -- go back to this. This depicted on where we should put the docking facility in regards to the widest part of their shoreline to potentially lessen any impacts to existing navigational conditions in this lagoon area.

Moving forward.

So here you can see the proposed dock. This is where I'll start, I guess, jumping into the criteria.

The Primary Criteria No. 1 is whether the number of dock facilities and/or boat slips proposed is appropriate in relation to the waterfront length location, upland land use, and zoning of the subject property. So, basically, yes, the answer to this is yes. The property is zoned as a multifamily residential property which is allowed to have a docking facility. The LDC does outline criteria for that, and if you go outside of that, you do what we are doing here today, is request for a boat dock extension or an SDPI, you know, whatever the county requires in that regard.

So part of this application concurrently being reviewed, as John said, is an SDPI to update the existing Site Development Plan to reflect the proposed dock configuration that you see on the screen and which staff has reviewed.

Basically, that, to my knowledge, has been satisfied as well. We had to do some fire with that, just to touch on that with you. Fire reviews this, and we had to do a fire layout, which was all laid out, approved, and it's pending the approval of the BDE if we do get granted that.

So with that, the answer to No. 1 of the primary is yes, we are consistent, and it is an allowed use for the area.

Number 2 of the primary is whether the water depth at the proposed site is so shallow that a vessel of the general length, type, and draft as that described in the petitioner's application is unable to launch or moor at mean low tide.

So with that being said, yes, the issue here with designing anything with inside 20 feet, the allowable 20 feet, is the natural riprap shoreline. It creates a little bit of a shallower area versus a seawall where you can dredge right up to.

In this case, another hurdle -- design hurdle was the mangroves, to avoid them. Obviously, they do have a lot of shoreline to work with. But, again, this was the area of the waterway that was the widest and got the vessels out to sufficient water depths.

Also, this is considered state lands with the Department of Environmental Protection, DEP. So we had to staff some of their requirements and ended up with the design in front of you today as being the most permissible -- if that's a word -- design with all three agencies that we had to satisfy.

So the request is for 123-foot dock out, so -- excuse me -- a 103-foot extension request from the allowed 20. And if you measured 20 feet out from the mean high-water line being the most restrictive, there's really no way, without going along the whole shoreline, to accommodate

the 22 residents of this place and get 22 slips. If we were to do a "more shore parallel" design and space them out, which would reduce the overall protrusion -- but it -- we couldn't -- we worked on that in office and tried to come up with a layout that would be satisfactory for all agencies as well as, you know, provide them everything they need, like fire and electric, out there with a marginal dock. And it wasn't -- it was determined that this design was the best.

The applicant only has 12 residents right now interested in slips, so that's why we are only proposing 12, so we're under the threshold of one-to-one slips. You know, the applicant could ultimately move forward one day with additional slips, but that would have to be under a different configuration and a separate application as well.

So No. 3 of the primary is whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. I kind of like meshed No. 3 and 4 together on this criteria because No. 4 touches on the 25 percent width of the waterway, which is also part of the impact to navigation.

So as an applicant, you are allowed -- as a riparian-right owner on a property onto a waterway, you're allowed 25 percent. It doesn't mean you're going to get it, but you're allowed 25 percent of that width to construct a dock.

We're well within the allowable 25 percent. You know, as stated in here, we're about 7 percent, a little bit over, but that's a waterway width of 1695 where -- is the greatest part. But, again, I do understand that section is not -- you know, it's not -- it's realistic, it is, because it's a straight line. It meets the criteria, but it does meander on the other side. So there are areas of chokepoints that do result in that. But at the skinniest it was -- I think 461 is what I measured.

So with that being said, we would be -- I think I did the math somewhere. It was still under the 25 percent width of the waterway if we were to -- you know, I think the waterway width was 115 at 461 is what we would be allowed.

So my point being here, it's not a charted waterway. There is no channel. So the whole waterway is open for navigation, so we're not approaching -- we're not impacting navigation. Yes, the docking facility does stick out a little bit further than some of the others along here but, again, we're confident, as well as the DEP and the Army Corps who -- part of the Army Corps review is the U.S. Coast Guard -- have issued the permits for what's in front of you today.

So they agreed that it is not an impact to navigation, so does staff, so do we. But I've just kind of elaborated on this based on the gentleman's concerns that were brought up in his letter. So that's kind of 3 and 4 there.

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

Yes, in this case the state is more restrictive because it is state lands. Here is a, you know, example of it. It's -- we have a 20 -- the state requires a 25-foot setback. Collier County requires 15. So we're in excess of that. We're actually at 30, which is double the required amount.

And why did we do that? Well, we have plenty of shoreline to work with, A. That's number one. And number two is the neighbor to the south has an existing dock, and we did not want to interfere with their backing distances or ingress/egress of their existing facility.

Their facility -- if you go forward a little bit, I think I've got a slide. One more, if you would. No. Okay. Maybe I didn't include it.

It's in the packet for you. Their facility is approximately 26 feet off of the shared riparian line, and we're 30. So there's 56 feet in between. Typical industry standards for backing distances is length and a half of a slip.

So, you know, that's how we -- there's an exhibit. That's how we took their slip length into consideration and backing distances and provided, you know, a little bit more buffer there.

So long answer to that is, no, there should not be any impacts. They did not complain. They haven't written any letters of objection to this. They're well aware of the application. So it's in harmony with the existing conditions for them. So that's primary information.

The secondary criteria is -- No. 1 on this is whether there are any special conditions not

involving water depths related to the subject property or waterway which justify the proposed dimension and location of the proposed dock facility.

Things taken into consideration here -- I've already touched on them -- is the natural riprap shoreline, the mangrove shoreline which, if you're not aware -- but the state really limits what we can do to impacts to the mangroves, obviously, being a natural native plant that helps with water quality. So we try to get out past that, which ultimately put us out past the 20 feet right off the start.

So those were some of them, and then also the width of waterways is a, you know, special condition as well. It allows a little bit further protrusion out without choking off the channel/waterway for navigational purposes.

Number 2 of the secondary, whether the proposed dock facility would allow reasonable, safe access to the vessel for loading, unloading, and routine maintenance. In this case, the dock is pretty wide, as you can see. The main walkway out is 8 feet and then expands out to 10 feet.

Why did we do this? Well, A, we want multiple people to use dock carts to get up and down the dock to, you know, get their stuff to the vessel as well as the requirements that a multifamily place has to do versus a single-family in regards to fire as well as electrical codes. There's a lot of equipment that's going to be installed on these docks for those purposes, transformers and the standpipe system for the fire department. So all that takes up area. And then also provide enough access for ADA as well. Not that that's part of the criteria, but that was taken into consideration as some of the residents are elderly and in wheelchairs. So that's No. 2.

Number 3 is for single-families which in this case, on this particular day, it's not applicable. So moving forward.

Number 4, whether the proposed facility would have a major impact on view for adjacent properties. The unique thing here is the mangroves, and they do provide a natural buffer. I would say, you know, the ends of the dock -- the further out of the portion of the dock would be visible from the adjacent properties as well as their docks, but also here the buildings -- as staff pointed out in their report, the buildings are constructed upward -- high due -- to get above, you know, flood as we all have recently experienced.

So the views are up and over the mangroves and out into the waterway. So there should be no additional impacts or no new impacts to the waterway. And, again, no one to our north or south objected to this in regards to a view issue.

Number 5 is pertaining to the environmental portion, which is seagrasses. I personally got in the water here and dove the site. I also have to do that for the state and federal guys to satisfy their review, as it is state lands. So it was -- no resources other than the mangroves were observed on site, so that criteria is met.

And then No. 6, the final one, whether the proposed dock facility is subject to the Manatee Protection Plan requirements. The answer to this one today is yes because it is a multifamily facility, and part of the permitting process, I had to reach out to Collier County Environmental Department to get what's called a Manatee Protection Plan consistency letter request, and that was provided to me as well as to the DEP to allow them to issue, which the county gave us -- well, the facility qualified -- the county didn't give us. The facility qualified for a preferred ranking based on the criteria within the MPP. So that was -- an answer to that is yes.

Before I conclude this or see if there's any questions, I do want to touch on the recommendations in the back of the staff report. I didn't have time to talk to John about this. They recommend that I do a Manatee Awareness and Protection Plan. That was actually part of my package to the environmental department. So one has already been done for this. So I don't know if that -- you know, I don't know how we get through that, but I have it. I can supply it no problem, but the county does have record of that. So there is a document outlining that criteria in the environmental department. So that was just something I wanted to bring up.

HEARING EXAMINER DICKMAN: Okay. I'll get to that in a minute. So, you know, you're looking -- I want to make sure that -- so these docks are exclusively for the condominium.

They're not -- this is not going to be for outside folks to lease correct, right?

MR. ROGERS: Correct, yes.

HEARING EXAMINER DICKMAN: Okay. And you're establishing here this is predominantly built for vessels of a maximum of up to 35 feet, correct?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: I mean, I do note, I'm just -- I'm sure you went through this exercise, but just out of curiosity, you know, had you have -- the instead of the configuration you took, which isn't a unique configuration because I notice that some other properties also go out and have that kind of configuration. But if you were to just have a -- instead of going all the way out but just go out and then run the dock along the shoreline at an appropriate depth, how many slips would you be able to get in if they were to -- if the slips and the boats were to be pulling in perpendicular to the shoreline?

MR. ROGERS: When -- on our exercises of going through the designs, we got about 18 to 20, and it all depends on the beam widths of the vessels, right, and then the spacing of the finger piers in between.

So just so you know, a 5-foot-wide finger pier as what we're proposing is more like 4-foot clearance because of the pilings that encroach in the walkway.

So with a multifamily facility, we always like to provide enough room for ADA access if that ever were to come up. So with that being said, the design of a more parallel -- we couldn't get to the 22 number with a design without adding another layer further out, per se; stacking the marginals.

And also one other thing real quick is state lands issue. We're restricted on overall preempted area, is what it's called, with the state, which encompasses the whole facility. So there's criteria to get a submerged land lease, which this place was granted a submerged land lease for this facility as designed.

It was very limited and hard to meet the state's criteria and, you know, walking a fine line with the width of waterway, with the county, with the boat dock extension part. So this was ultimately concluded to be the best design for this facility and get the ability potentially to do something on the north end for the others.

HEARING EXAMINER DICKMAN: Well, that was my other question --

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: -- is that I assumed that you oriented this to the southern end in order to have -- because this is not going to accommodate all of the number of units.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So there is a possible anticipation of doing the same thing on the north side?

MR. ROGERS: You are correct. And we -- I didn't -- Don and I talked about this, whether or not we were going to bring it up, but here we are.

The design over there is -- would be less protruded -- wouldn't protrude out as much, A, because the width of the waterway is more restrictive. So we would -- based on my math, would be allowed 115 feet but, ultimately, we wouldn't need 12 slips over there either.

So, you know, to get to 22, we would just be doing 10 slips. So our protrusion out would be, you know, based on what you see right here, would be the 12 and a half for the lifts, minus the five, so you're down 17, you know, feet right there, basically easy math so we're getting down to that width of waterway.

So if we were -- the applicant is not proposing that at this time, and I've been told they will not be doing that, but things change, as you know. If they were to do a design similar to this, it would have to protrude less. It would accommodate two vessels -- two less vessels than the 12.

HEARING EXAMINER DICKMAN: Yeah. And I think it's important that everyone understands that it's not -- so you're looking at the mathematical -- one of the -- one of the

criteria -- or a couple of the criteria are strictly mathematically driven.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: And one is the width of the waterway and, in reality, you're only entitled -- because I just think you just misspoke a little bit. I mean, you're only entitled to what the code says you're entitled to; otherwise, you wouldn't be here.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: But when you say what would be -- and to paraphrase you, is that what we would be able to ask for would be that 25 percent, right?

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: So that's what you were saying?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: I mean, it's not that you're entitled to; otherwise, you wouldn't be here in the first place.

MR. ROGERS: Correct. I get confused because I've got to do state, federal, and they're 25 percent only. You guys are more restrictive. So, yes, you are correct. I misspoke, yes, sir.

HEARING EXAMINER DICKMAN: Okay. Let's address this condition, if we could, John.

MR. KELLY: I don't know if Environmental reviewed it before or after the staff report comments were requested. It does apply to the building permit, not necessarily your approval or denial of this project.

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: So I was going to ask if the applicant could please put on record, for the purposes of navigability, is this area a slow speed, idle speed, or perhaps no wake zone? And what exactly does that mean?

MR. ROGERS: Yeah. Part of the Manatee Protection -- the answer to his question is yes, it is a slow idle speed zone all the way up to Wiggins Pass, basically, is how you enter the Gulf of Mexico.

And part of the criteria per the Manatee Protection Plan is this slow wake zone for manatees, right. So, yes, and that was outlined within my application for the consistency request.

So I'm not against -- you know, I just want to make sure the county knows that one was provided, and it easily can be provided to the Building Department with the application. That's fine, you guys.

HEARING EXAMINER DICKMAN: What was provided exactly?

MR. ROGERS: Oh, sorry.

HEARING EXAMINER DICKMAN: Because the county's -- the county's code is referenced there on Page 8 of 8 for Manatee Awareness and Protection Plan, so I don't know what --

MR. ROGERS: That -- and part of my -- excuse me. I didn't mean to cut you off. But the Manatee Awareness and Protection Plan document was part of my submittal for the request outlining the criteria of the MPP in that document, which basically is water depth, resources, slow speed, no -- you know, things like that were all outlined in that application, which then allowed the county to issue a preferred ranking for the proposed facility.

HEARING EXAMINER DICKMAN: Okay. Well, I mean, I think the condition's important.

MR. ROGERS: That's fine.

HEARING EXAMINER DICKMAN: And so if you have to do more or less, I think --

MR. ROGERS: No problem.

HEARING EXAMINER DICKMAN: -- you need to meet -- every government has their own, and Collier County is a local government with Home Rule powers to adopt its own codes.

MR. ROGERS: I'm not against supplying it I just wanted to make aware it was already submitted. That's all.

HEARING EXAMINER DICKMAN: Okay. Why don't we take a break and go to public comment, and why don't you -- we'll reserve a little time for rebuttal. Please take notes if you get any comments, and we'll address those.

Do we have any public speakers?

MS. PADRON: Good morning. We have no registered speakers.

HEARING EXAMINER DICKMAN: Okay. All right. Okay. So with that --

MR. ROGERS: I did notice, on my way back, Craig Brown is here who does review the MPP consistencies on the county's behalf, if you wanted to talk to him.

HEARING EXAMINER DICKMAN: Sure.

Mr. Brown, talk to us.

MR. BROWN: I haven't been sworn in, so...

HEARING EXAMINER DICKMAN: Go ahead and be sworn in.

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

MR. BROWN: I do.

Craig Brown, Environmental Services manager.

He talked about -- he was asking about that condition in relation to what we have in the staff report. We want to put conditions in these petitions to ensure that everyone's aware of what we're looking for as they move forward. Sometimes things get lost in the shuffle, and then we're having to ask the applicant, which may not be him. It could be a -- you know, a dock builder --

HEARING EXAMINER DICKMAN: Yes.

MR. BROWN: -- who is not aware of the condition.

HEARING EXAMINER DICKMAN: Right.

MR. BROWN: So we just try to make sure that all these things are put on paper so everyone's aware of what's required.

HEARING EXAMINER DICKMAN: I think that's a good procedure, and I don't think there should be any objection to that. I mean, I think that at the end of the day --

MR. ROGERS: No.

HEARING EXAMINER DICKMAN: -- we need to make sure that -- I mean, this is a waterway where manatees frequent, and we need to make sure that there's awareness about that. And so, yeah, we'll leave the condition the way that it is. Are you satisfied with that condition?

MR. BROWN: Yes, I'm satisfied with it.

HEARING EXAMINER DICKMAN: Okay. Great.

MR. BROWN: And as to the Manatee Protection Plan, as he addressed, he's gone through the criteria. We've evaluated it. There's -- you know, there's several criteria that he has to meet for us to give him a set ranking. There's preferred, modified, and protected.

So he met the preferred ranking with this request and, moving forward, as long as he meets the state and federal criteria, provides the manatee awareness management stuff, we're satisfied with that.

HEARING EXAMINER DICKMAN: Thanks for being here.

MR. BROWN: No problem.

HEARING EXAMINER DICKMAN: Appreciate it. Thank you.

So there were no public speakers.

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

MR. ROGERS: No, sir.

HEARING EXAMINER DICKMAN: Okay. Anything from the county at all, anything else?

MR. KELLY: No, sir.

HEARING EXAMINER DICKMAN: Okay. I do have this letter of objection. I'll review it, and I'll go forward and render a decision accordingly.

Thank you for being here, everyone.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: All right. Great.

***We'll go to 3B.

MR. KELLY: Okay. Before you is Agenda Item 3B. It's a conditional use, PL20230012220.

It's a request for the Hearing Examiner to approve a conditional use to allow an essential service and administrative office and payment center with a drive-through for the Immokalee Water and Sewer District pursuant to Section 2.01.03.G of the Land Development Code for those portions of the subject development that are located within a residential zoning district.

The subject development's comprised of four separate properties totaling 2.23 acres located at 414 New Market Road West which is bounded by New Market Road West, Flagler Street, and Madison Avenue West in Section 33, Township 46 South, Range 29 East, Collier County, Florida.

Parcel 6385880004 and half of Parcel 63858760005 comprising of 1.1 acres along Madison Avenue West are within a Residential Multifamily 6, RMF-6, zoning district, and the remainder are located within a general commercial C-4 zoning district as well as the Jefferson Avenue Commercial Overlay Subdistrict, abbreviated JACOSD.

The conditional use specifically applies only to those parcels located within the RFM-6 zoning district.

Public notice requirements were as per LDC Section 10.03.06.C.2. The applicant conducted a dually advertised neighborhood information meeting on October 16, 2023, at the Immokalee Community Park, and no members of the public -- of the public participated.

The property owner notification letter and newspaper ad for this meeting were run by the county on January 19, 2024, and public hearing signs were posted by the applicant on or about January 2nd, 2024, per a notarized affidavit.

The proposed use was determined to be a bona fide essential service, a government facility, per LDC Section 2.01.03.G.1.E.

This conditional-use petition was reviewed by staff using LDC Criteria 10.08.00 and Chapter 3.C.1 of the Administrative Code. It is consistent with both the LDC and the Growth Management Plan.

One call was received in response to the posted signs. Once the project was explained, we heard nothing further from that party.

Staff recommends the Hearing Examiner approve this petition to allow the proposed Immokalee Water and Sewer District administrative office and payment center with a drive-through as depicted within Attachment C, the conditional-use concept plan, and subject to the conditions of approval detailed within Attachment B. I can go through each of the conditions if you like; however, they are in the staff report.

HEARING EXAMINER DICKMAN: I have them.

MR. KELLY: And that would conclude my presentation.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

Is there an applicant here? Great.

MS. MARTIN: Hi. I'm Amanda Martin with Johnson Engineering representing the applicant, Immokalee Water/Sewer District. We do also have Lea Holmes with Johnson Engineering. She's the traffic engineer on this project.

HEARING EXAMINER DICKMAN: Okay.

MS. MARTIN: John's done a great job, so it's going to be a lot of repeat, but I'll go through the project with my presentation.

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

MS. MARTIN: So the applicant is proposing a conditional use to allow a new administrative office with payment drive-through center. The project consists of four separate parcels on 2.23 acres located at the northeast corner of New Market Road West and Flagler Street in Immokalee.

Next slide.

The site is within the Immokalee Commercial Mixed Subdistrict Future Land Use designation, and uses allowed within the subdistrict include those uses allowed in all commercial zoning districts per Land Development Code, and it does include essential services.

Next slide.

Approximately half of the site that fronts New Market Road is zoned C-4 and is within the Jefferson Avenue Corridor Overlay Subdistrict, as seen in red here on the screen, and this zoning district allows essential services, and a conditional use is not required for this portion of the site.

The other half of the site is zoned RMF-6 along Madison Avenue, as seen in dark blue here on the screen. Although this zoning designation does not allow essential services by right, Section 2.01.03 of the Land Development Code allows essential services in any zoning district pursuant to a conditional-use approval.

The site is within a transitional portion of the neighborhood and is a good location for the Immokalee Water and Sewer District to be more accessible to the public for payment and administrative services.

Next slide.

Again, the Immokalee Water/Sewer District is requesting conditional-use approval to allow this essential service government facility which will include an administrative office and payment center with drive-through.

Next slide.

This is the proposed concept plan. It depicts a centrally located 7,000-square-foot administrative office and payment center with the associated infrastructure. The public entrance is proposed off of New Market Road. Drivers can use the parking area here along New Market Road or continue through this site to the drive-through payment center and exit along Flagler Street. Pedestrians will have access from the connecting sidewalk along New Market Road, and as demonstrated in the TIS, the roadways are anticipated to have sufficient capacity.

Employees will enter from Madison Avenue West and will have a separate parking area. The water management is strategically placed nearest the single-family lots to create a greater distance between the uses.

The site setback will be 25 feet along the street frontages, and a 10- to 15-foot Type D landscape buffer is provided along those street frontages. The required setback along the northwest portion of the site varies, but a 15-foot Type B landscape buffer with a 6-foot wall will be provided as required. So that wraps up the general site layout.

Next slide.

These are the conditions, copied and pasted, screenshot from the staff report. Staff -- we agree with staff to these conditions as displayed that address trip cap, operating hours, lighting, buffers, and hazardous material storage. We do agree with staff that the project meets the conditional-use evaluation criteria outlined in the Land Development Code and Chapter 3(C)(1) of the Administrative Code, including being in compliance with the Growth Management Plan, providing sufficient access to the site, and is compatible with the surrounding properties as outlined in the staff report.

HEARING EXAMINER DICKMAN: On No. 2, the board meetings and special workshops or hearings, do you have any gauge on what the frequency of that would be?

MS. MARTIN: So they do operate their meetings monthly. I know that recently they've had a little bit of fluctuations in exactly what time those start. So I think they're just looking for a little bit of flexibility if they start at 4:00, if they start at 5:30. They are typically short meetings, but when COVID happened, there's been some hot topics. They will extend a bit longer.

HEARING EXAMINER DICKMAN: Okay. And the parking is set up to accommodate those meetings as well as just the daily operation, right?

MS. MARTIN: Yeah. So there is sufficient parking in the front of the building, but the employee parking has a bit more and does accommodate those needs.

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

MS. MARTIN: All right.

HEARING EXAMINER DICKMAN: That's it. Any public speakers?

MS. PADRON: We have no registered speakers.

HEARING EXAMINER DICKMAN: No registered speakers, okay.

All right. Great presentation. Nice to see you, and I'll get a decision out as quickly as possible.

MS. MARTIN: Perfect. Thank you.

HEARING EXAMINER DICKMAN: Thank you.

***All right. 3C.

See you later, John.

MR. KELLY: Take care.

HEARING EXAMINER DICKMAN: Mr. Sean, how are you?

MR. SAMMON: Good. How are you?

HEARING EXAMINER DICKMAN: Fine, thank you.

MR. SAMMON: Good morning, Mr. Dickman. For the record, Sean Sammon, Planner III in the zoning division.

Before you is Agenda Item 3C. This is a request for an insubstantial change to Ordinance No. 04-56, as amended, the Collier County Government Center Community Facilities Planned Unit Development, by amending the community facilities development standards Section 3.4.D, distance between principal structures on the same parcel to allow separation between structures housing primarily electric, gas, emergency generators, or HVAC equipment to be at zero feet.

The subject PUD is located at the northeast corner of the intersection of U.S. 41 and Airport-Pulling Road South in Section 12, Township 50 South, Range 25 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.13.E.1, a through k, and 10.02.13.E.2.a, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

The applicant conducted one neighborhood information meeting on Thursday, October 26th, 2023. Six members of the public attended in person, one other person was online, and details from this meeting are included in the backup package, Attachment A to the staff report.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the county on Friday, January 19th, 2024, and the public hearing signs were placed by the applicant on Wednesday, January 24th, 2024.

I've received two calls from the public that were only requesting information. And other than that, there has been no public opposition pertaining to this petition.

Therefore, staff recommends that you approve this petition subject to including Attachment B, PUD revised text in the HEX decision.

That concludes staff's summary.

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

And who's representing the applicant? Good morning, sir.

MR. BROCK: Good morning, everyone. How you doing this morning?

HEARING EXAMINER DICKMAN: All right. Wonderful.

MR. BROCK: Thank you for your time. We appreciate it. My name is Chris Brock. I'm with Stantec. We're representing Collier County Facilities this morning on this project.

I've got a brief, just several slides, very basic topic.

HEARING EXAMINER DICKMAN: Let's do it.

MR. BROCK: I think Sean did a great job this morning explaining the location. I won't go through that again.

But this is basically the government center. We're all probably very familiar where that's

located.

This is basically right in the heart of it. So a little bit on the public hearing -- if you go to the next slide, please.

Applicants are myself. I have Mr. Rygiel this morning, Mr. McCormick and, of course, Sean with us today.

So next slide, please.

Sean did a good job of going through this request but, in essence, what has happened and why this request is coming forward is everything, no matter what kind of structure it is on this facility, is considered a primary structure. When the ordinance was set up, there was no differentiation between accessory structures. So we've run into a bit of a snag as this project was moving forward.

So if that -- if you could go to the next slide.

So there's the information Sean had gone through. So what we're looking for is the star down there, is that separation distance between primary and what we're considering this is more of an electric support, gas support, emergency generators, all the things we need out there to make sure that complex can run during difficult times.

So next slide, please.

HEARING EXAMINER DICKMAN: Is that to operate the entire complex? Because there's a lot of -- a lot of stuff going on on that property.

MR. BROCK: Actually, our project will be the chiller system for the entire complex. Most -- not the entire, but I can get the client to tell you more. It's probably two-thirds of the complex.

Tim, is that correct? I don't want to mis- --

MR. RYGIEL: It's 11 structures on the complex, and the chill water services and all, minus the gym.

MR. BROCK: So repeat that: 11 structures minus the gym. I believe the jail is one of them, so --

MR. RYGIEL: Yeah.

MR. BROCK: So just kind of some critical infrastructure we need to take care of out there.

HEARING EXAMINER DICKMAN: Would you mind just mentioning his name so that it's in the record.

MR. BROCK: I'm sorry. That was Tim Rygiel. He is the -- he is with Collier County. He is my project manager on the project so -- guiding us through, so apologies on that.

Thank you, sir.

So in the particular location, we're expanding the existing central energy plant. These are difficult things to move, right? Damn impossible.

And what we've got is a lot of piping and infrastructure that comes to that building, and what we're doing is expanding that and modernizing that equipment. And what we're doing is there's the chiller yard, I'm going to call it, adjacent to that. Right -- it's open. We're going to expand that essential energy plant to the right, as you see it there, which is to the east. Up is to the north towards the fitness building.

Next slide, please.

One item that I want to stress, we did have public at our meeting that came out, and one of the items that they were concerned about that we addressed and wanted to make sure you understand, too, we're not changing any of the buffer requirements along the property. So that is something we did have -- the public really came out, and that's -- I think was one of their main concerns, and we addressed that during the meeting. We are not modifying any of those buffers at all. So everything will be internal to the site, and it's just the distance between what we're calling a primary and accessory structure.

HEARING EXAMINER DICKMAN: Gotcha.

MR. BROCK: Next slide, please.

Just to kind of -- I think Sean hit on all this, really did a good job on that. I appreciate that.

One point I would make, trying to get this thing done. I know it's a 30-day process. We've got construction beginning. We have some critical infrastructure of generators, and these items that -- they're on their way, and this has kind of delayed our progress.

HEARING EXAMINER DICKMAN: Noted.

MR. BROCK: So we would appreciate any assistance in that effort, if possible. So we understand you have that 30-day review period, but thank you.

Nothing further.

HEARING EXAMINER DICKMAN: Okay. Great. Thanks.

Anybody here signed up for the public or online?

MS. PADRON: No speakers, sir.

HEARING EXAMINER DICKMAN: I'm just not entertaining enough, I guess. We have to change that.

All right. Anything else? This is really straightforward.

MR. BROCK: If you had any questions for me.

HEARING EXAMINER DICKMAN: No, no. Between you and Sean and the staff report, everything's pretty straightforward. All the information's in the packet. I understand you're on a -- the shock clock and the time, and timing is money, so --

MR. BROCK: Appreciate it.

HEARING EXAMINER DICKMAN: -- I understand that. It's noted. I'll do the best I can.

MR. BROCK: Thank you, sir.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. BROCK: Have a great day.

HEARING EXAMINER DICKMAN: ***All right. Last, but not least, 4D -- or 3D, excuse me.

MR. ORTMAN: Good morning, Mr. Dickman. For the record, Eric Ortman, principal planner, and I also need to be sworn in.

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

MR. ORTMAN: I do.

HEARING EXAMINER DICKMAN: He does that on purpose. He likes to come in late so he can get sworn in by myself.

MR. ORTMAN: Not really.

All right. This is Petition No. SV-PL20230013949, a request for a directory sign variance from Section 5.06.04.F.3 of the Land Development Code to allow a directory sign to be located along the collective frontage to Ave Maria Boulevard where there is no entrance to a public street.

Section 5.06.04.F.3 states that multi occupancy parcels or multiple parcels developed under a unified development with a minimum of eight independent units and containing at least 20,000 square feet of leasable floor area shall be permitted one directory sign at one entrance on each public street. The subject property meets these criteria, as will be discussed by the agent.

The roughly six-and-a-half-acre property abuts Ave Maria Boulevard approximately one mile south of the intersection of Ave Maria Boulevard and Annunciation Circle where the University of Ave Maria is located.

Ave Maria is approximately five miles south of Immokalee in Section 4, Township 48 South, Range 29 East.

The property is within and is surrounded on all four sides by the Ave Maria SRA. The SRA has been found to be consistent with the Growth Management Plan; therefore, staff concluded its proposed development and sign are also consistent with the Growth Management Plan.

Resolution 21-67 updated parts of the Ave Maria SRA, in particular, adding that signs could also -- let me just read it. Signage within Town Center 2 and 3, which contains the subject property, shall comply with town core standards, community general standards, or LDC Section 5.06.04.F, which was what was added. It provided for greater flexibility in the regulation of signage. The SRA itself requires that commercial buildings along Ave Maria Boulevard be designed so that the buildings' front facades face Ave Maria Boulevard with access to the buildings being provided to the rear.

This would -- in this instance, this would require the directory sign to be located on little-traveled Useppa Drive where it would not be very visible for traffic driving along Ave Maria Boulevard.

The Ave Maria standards for building placement and the requirements of LDC 5.06.04.F may create a competitive disadvantage for businesses on the subject property compared to those in the town core that front the road and have signage on the front of their buildings.

Staff is of the opinion that the proposed sign meets the criteria of 5.06.04, including those that protect the health, safety, and welfare of the public. A sign variance does not require a NIM.

And this project was duly noticed and advertised with signs posted on the property on January 25th and a legal ad run in the *Naples Daily News* on January 19th.

There have been no objections to this petition, and staff finds that it meets all the criteria of both the LDC and the Growth Management Plan and recommends approval of Petition SV-20230013949.

HEARING EXAMINER DICKMAN: Fantastic. And you didn't get stopped by the --

MR. ORTMAN: That was a little fast.

THE COURT REPORTER: I was watching his mouth.

HEARING EXAMINER DICKMAN: You were watching his mouth. I was ready for her to stop you.

MR. ORTMAN: A little faster than normal.

HEARING EXAMINER DICKMAN: Gotcha.

Is the applicant here?

No questions. Very good job; nicely done.

How are you, sir?

MR. SCOTT: I'm well. Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. SCOTT: I do have a presentation I had sent.

HEARING EXAMINER DICKMAN: We might as well do it.

MR. SCOTT: For the record, my name is Chris Scott with Peninsula Engineering, AICP, certified planner, representing -- if you go to the next slide -- the property owner, which is Ave Maria Development Corporation.

The property's also -- it has a couple -- multiple parcels, and there is one parcel with the existing gas station. I don't know if you're familiar with Ave. That parcel is owned by Armento Family, LLC. They have also signed the letter of authorization for this and are aware of the sign variance petition.

I'm going to move through this pretty quickly. This is just a general location. Left is the overall Ave Maria SRA boundary. The yellow circle on the left one indicates where we're zoomed in on the right, and that highlighted grouping of parcels bounded by Ave Maria Boulevard, Useppa, and Merritt, I believe, is the other one. So it's a full block. One single Site Development Plan is the subject property.

This is the SRA, Ave Maria Stewardship Receiving Area master plan. Again, on the left is the overall SRA boundary. Zoomed in, you can see this is within Town Center 3A.

Next slide.

And as Eric had mentioned, the SRA document has specific sign criteria established for the different context zones within Ave Maria, but within Town Centers 2 and 3, it also notes that they

may elect to utilize the Collier County LDC sign provisions of 5.06.04.F.

So within that section is a provision for directory signs. This is a large shopping center group of commercial buildings that meet the shopping center definition. Shopping centers within Collier County are allowed a directory sign. Unfortunately, the code requires that those be placed at the entrance of a street, so that is what the variance is for. The other criteria this sign will meet.

You can go ahead and skip this one.

Again, this is the existing Site Development Plan. The circle in red is the proposed location of the directory sign. The blue circles are the existing access points. There will be one future one most likely on Merritt Lane on the southern boundary in the future, but there is not going to be any access points on Ave Maria, which is where all the traffic are.

So this is a copy of the sign. Again, it does meet all the standards of 5.06.04.F.3, a through d, with the only exception being the location being at a driveway.

Next slide.

The variance does meet the criteria for -- or the request meets the criteria for a variance to be approved.

The special condition is there's no direct access on Ave Maria, which is where all the road traffic is and the fronts of the building. If we were required to put the signage where the driveway is, it would be at the back of the structure where it's not conducive to bring people in and direct people to what businesses would be located there. It's the minimum relief necessary, and it does -- the sign will comply with all other LDC provisions.

So with that, I will leave it there. It's a pretty straightforward, simple case. Unless you have any questions, I will rest and let you-all get on with your day.

HEARING EXAMINER DICKMAN: Well, let's hear from the public.

MS. PADRON: No registered speakers.

HEARING EXAMINER DICKMAN: All right.

Yes, this is pretty straightforward. I understand it, and I know -- I got all the information I need. You did a great job. The county did a great job. The staff report's very thorough. Thank you very much. I'll get a decision out as soon as possible.

Nice to see you.

MR. SCOTT: Thank you for your time.

HEARING EXAMINER DICKMAN: Take care.

Any other business we need to take care of today?

(No response.)

HEARING EXAMINER DICKMAN: Taking bets on the Super Bowl or anything like that? Anything important?

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

None that I'm aware of. The one thing I would say about the Super Bowl and the playoffs is -- one thing I learned this playoff season is don't bet against Pat Mahomes. That's all I can say.

HEARING EXAMINER DICKMAN: Well, you know, there were quite a few Dolphin players in the Pro Bowl games, so we're happy about that.

MR. BOSI: Yes.

HEARING EXAMINER DICKMAN: Thanks to everyone. The meeting's adjourned. Thanks for all your help putting this on. Have a nice day.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:11 a.m.

COLLIER COUNTY HEARING EXAMINER

ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on _____, 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.