

August 30, 2024

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 22, 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 1:00 p.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
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good afternoon, everyone. Good afternoon. Thanks for accommodating the time change. It's much needed. Thank you very much.

This is -- my name's Andrew Dickman. I'm the Hearing Examiner for Collier County. This is the August 22nd, 2024, 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. Thank you very much.

Just for a quick introduction, as I said, my name's Andrew Dickman. I'm an attorney. I've been practicing in the area of land use and zoning for over 20 years. I'm a contracted attorney by the Board of Commissioners. I'm not a county employee. I'm here to be an impartial decision-maker for the items that are on the agenda today. All of these are prescribed in the county's codes which things come to me in my jurisdiction.

I will not be making any decisions here today, formal decisions anyway. I have 30 days to do that. I'll try to do them as quickly as possible.

The goal of this meeting, No. 1, is everyone to relax; enjoy yourself. We'll get through this as expeditiously as possible, but it's important that we give attention to each one of the items carefully. Each one of the items on the agenda, what I'm looking for is testimony from staff, from the applicant or the applicant's representative, or from the public as to the criteria as it applies to that particular item.

The criteria is established not only in the code but staff's -- staff report -- county staff's report will have that as well.

So if you could try to focus your -- whatever presentation you have, although take your time, but try to focus it on evidence that would be useful for me to be able to make a decision when I go back and look at everything.

I have read everything for all the items here today. I have not had -- just for disclosure purposes, I have not had any prior conversations with any applicant, applicant representative, no one from the county. Again -- and I haven't done any other outside research other than looking at all the materials that have been filed for each application. So, again, I'm here strictly to be an impartial decision-maker, knowing the law, knowing what the code says, hearing the testimony.

As far as the procedure, as I said, we'll start with the county. They'll give us their overview/introduction of the item, they'll give us their recommendation, any conditions that they're recommending, talk about any of the notices that were put out. I always want to make sure that we get that on the record. Then we'll have the applicant or the applicant's representative at that podium.

Am I going too fast?

THE COURT REPORTER: No.

HEARING EXAMINER DICKMAN: Okay -- at this podium, and then we'll open it up for public comment.

I will reserve some time to allow the applicant or applicant's representative to have time for rebuttal if necessary. Again, I want everyone to relax. This is -- we're not in the chambers. We're not -- this is -- the intent of this is for me to get the information that I need in order to make a clear decision after the hearing.

It is a quasi-judicial hearing, however, and for those purposes, I need to have anyone who is going to testify here today to be sworn in. So for all items, anyone in the room that is going to testify, if you would just please stand and raise your right hand, and I will ask Madam Court Reporter to swear everyone in.

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

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

HEARING EXAMINER DICKMAN: All right. Thanks, everybody.

Well -- and if anybody has phones on, turn them off. If you want to have a conversation with whoever you're with, step outside in the hallway so we can concentrate on what we're -- the item that we're on. But with that, I think we can get started with item -- are there any changes to the agenda? I see one, two, three, four, five items. No changes?

MR. BELLOWS: For the record, Ray Bellows. No changes to the agenda, and just a reminder the last two items are companions.

HEARING EXAMINER DICKMAN: Companion items. Thank you very much. Okay. Thank you, Mr. Bellows.

***Let's get started with 3A. Just so you-all know, I had my cataract surgery, so I'm happy to be able to see everybody's beautiful faces and the colors and everything, so thank you.

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

Before you is Agenda Item 3A. This is a request for a determination that the proposed use of a hybrid wholesale and retail lumber and building material dealer is comparable in nature to other permitted uses in the heavy commercial C-5 zoning district described as lumber and other building materials dealers as SIC Code 5211.

The subject property is located at 4720 Radio Road, Naples, Florida, 34104, also known as CMG Plat Lot 2 in Section 1, Township 50 South, Range 25 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.06.K.2, a through e, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.O. The property owner notification letter and newspaper advertisement were taken care of by the county on Friday, August 22nd, 2024.

I've received no calls or other communication from the public regarding this petition request, and there has been no public opposition pertaining to this petition; therefore, staff recommends that you determine that the proposed use of a hybrid wholesale and retail lumber and building material dealer is comparable in nature to other permitted uses in the heavy commercial C-5 zoning district described as lumber and other building materials dealers with the following two conditions:

First, the approval of this comparable-use determination is made as -- made at this specific location, 4720 Radio Road Naples, Florida, 34104, and shall not be construed to mean the use is entitled in a different location and, second, the operating hours will be as follows: Monday through Friday from 6:00 a.m. to 4:30 p.m., Saturdays from 6:00 a.m. to 3:00 p.m., and closed on Sundays.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Thank you, Sean. Appreciate that.

Mr. Lombardo, come on up. It's good to you.

THE COURT REPORTER: I didn't swear you in.

MR. LOMBARDO: Oh, okay. I figured as an attorney I wasn't providing testimony, but I will do it.

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. LOMBARDO: Yes.

HEARING EXAMINER DICKMAN: You do make a good point. I always think the

same thing, but go ahead. Everybody likes --

MR. LOMBARDO: I wasn't planning on lying, so I think we'll proceed as planned.

HEARING EXAMINER DICKMAN: For sure you can't lie, though, now.

MR. LOMBARDO: Is there, by chance, a clicker or --

HEARING EXAMINER DICKMAN: No, you just say --

MR. LOMBARDO: This is going to be rough. I apologize.

HEARING EXAMINER DICKMAN: She's your clicker over there.

MR. LOMBARDO: Okay. Sounds good. Next slide, please.

So for the record, Zach Lombardo here on behalf of Sandal Real Estate Holdings, which is the applicant. That's the property owner. The expected tenant is L&W Supply, and that's the use we're going to be analyzing.

Next slide.

An aerial for staff's description. This is 4720 Radio Road.

Next slide.

As described by staff, and we agree, we would like to adopt staff's recommendation with all conditions. The specific use we're looking for here is a hybrid wholesale retail lumber and material building dealer, and the reason why we're asking for this as opposed to traveling under lumber and other building materials dealer is on the next slide. This is the description from the SIC on this particular property, and it describes this by saying that while these establishments may sell primarily to construction contractors that are known as retail in the trade, and L&W Supply is not known as retail in the trade, so we are applying for this to make sure that we are complying with the code as closely as possible.

Next slide.

So the distinct piece here is because there are general public consumers that can purchase from this use, it also does not fit into the corresponding industrial category because it's not exclusively wholesale, and so that's where we find that hole, because it's not -- the comparable-use process can't be used to take a use from one's own district and move it to another. It has to find something that isn't present. And so what we're saying is we're not known as retail in the trade, but we're also not exclusively a wholesale dealer.

Next slide.

This -- I don't know that we need to go into this level of detail unless there's questions, so I'm going to skip to the next slide. And skip to the next slide one more time. Here we are.

So the -- and one of the major-use cases that we put in the application, and we've brought an L&W representative here to testify about, is that in the hurricane-affected areas of the country -- L&W has locations all over the country, but in these areas, there's an especially increased usage of these facilities by the general public because L&W is a major provider of drywall. And so after hurricane events, there's a significant amount of general public consumption at this property.

And so if it would be appropriate at this time, I'd like to call a witness from L&W to provide some record testimony on this point.

Sir, if you'd come to the -- can we use this one?

THE WITNESS: This one?

HEARING EXAMINER DICKMAN: Why not.

MR. LOMBARDO: If you could state your name for the record.

MR. MAHAFFEY: Sure. Tim Mahaffey.

MR. LOMBARDO: And your employer?

MR. MAHAFFEY: L&W Supply.

MR. LOMBARDO: And what is your role at L&W?

MR. MAHAFFEY: I'm the vice president of the South Atlanta region. I've been with the

company for 38 years now, believe it or not. The South Atlanta region is North Carolina, South Carolina, Georgia, and Florida.

MR. LOMBARDO: And to confirm, you're here on behalf of L&W as their corporate representative?

MR. MAHAFFEY: I am.

MR. LOMBARDO: Do you have knowledge of the plans for the L&W Supply planned at 4720 Radio Road?

MR. MAHAFFEY: I sure do.

MR. LOMBARDO: What kind of products are going to be sold at that site?

MR. MAHAFFEY: Primarily drywall, metal studs, plaster, stucco, lumber, tools. We have all kinds of accessories; fasteners, whatnot.

MR. LOMBARDO: As far as L&W's position in the market here, is L&W known as retail in the trade?

MR. MAHAFFEY: We're not.

MR. LOMBARDO: And will this location sell to wholesale buyers?

MR. MAHAFFEY: We will.

MR. LOMBARDO: Will it also sell to the general public?

MR. MAHAFFEY: Absolutely.

MR. LOMBARDO: Regarding the existing L&W locations in areas impacted by hurricanes -- this is a long question. We're almost there -- do those locations experience increased sales to the general public after hurricane events?

MR. MAHAFFEY: It can be really crazy. Ian was an example. I use Charley. We talked about that. When Charley hit Punta Gorda, we lost half of our building, all of our roof, and the next day, we had about 100 customers lined up looking for materials to fix their homes. We actually had to call the police to direct traffic. So there's a huge, huge need for the general public right after a hurricane. Actually, it can extend for months.

MR. LOMBARDO: And is it anticipated that this is going to be true for this location?

MR. MAHAFFEY: Well, we would hope not, right? But yes.

MR. LOMBARDO: Sure. I guess that question was a bit much.

I don't have any further questions for the witness. That's what I wanted to put onto the record. Do you have any questions or does staff?

HEARING EXAMINER DICKMAN: No. Although, I will recognize you as an expert, so that was expert testimony. Thank you.

MR. MAHAFFEY: Thank you.

HEARING EXAMINER DICKMAN: Are you finished? Have you got more to go?

MR. LOMBARDO: I can be. There's -- there is an unbelievable amount of slides here going through the factors, but since staff agrees with our analysis of the factors, I don't want to belabor the point, so...

HEARING EXAMINER DICKMAN: All right.

MR. LOMBARDO: But I also didn't want to deprive you of these colorful slides, given you the cataract surgery.

HEARING EXAMINER DICKMAN: Well, let's take a few minutes. I'm here. My eyes are working really good now.

MR. LOMBARDO: Next slide.

Staff has approved. And so if you could go to 11, yeah, next slide.

Just for record purposes, one of the -- one of -- the first category is looking at comparable operating hours of surrounding businesses.

So the three listed here, Floor & Decor, Home Depot, and Lowe's, these are all publicly traded companies that declare themselves in this SIC code. And these are their operating hours for

the Collier County locations as posted. And as you can see here, by going to the next slide, that proposed hours here are less intense. We're closed Sundays. Typically, this location will close before every other example location. And so it was our position that this was less intense and -- next slide -- staff agrees with that.

For the next element, next slide. From a traffic volume perspective, if -- when we looked at the ITE and what codes would apply, it's essentially the same code. And I think this is where it's important to note for the record that this is a very -- it's a very narrow request in the sense because in many ways the impact of this is the same as a lumber yard, which there's a currently existing lumber yard on Radio Road.

In fact, if you go to the next slide, and then the one after that, and then the one after that, and then the one after that -- there we go -- the parking requirements are the exact same. So the type of vehicles that go there and the requirements in the parking code and the ITE analysis is essentially the same whether it were wholesale or retail, and so hybrid is really the same end result. So from the first requirements of making sure there's similar operating hours, there's not a different traffic impact, there's similar vehicles, and there are the same kind of parking, all these things, in our position, have been met by this analysis.

Next slide.

And, again, staff has agreed with that analysis.

Next slide.

From a business practice standpoint, which is another piece of this analysis -- and it's our position that the business practice activities are essentially indistinguishable, and part of this can be seen by looking at Home Depot. Home Depot has a wholesale component to the store, but it's known as retail in the trade, and so it's not subject to this kind of application. But the kind of vehicles that go into Home Depot are the same kinds of vehicles, because we're talking about contractors loading up before jobs early in the morning and then going out to the site.

Next slide. Next slide.

I think this is important just to cover. One of the additional pieces of the analysis is the effect it would have on neighboring properties but specifically in relation to other permitted uses that are already in the C-5 district. And here, this is C-5, so we have automotive repair services. And, in fact, the property is sort of an L shape, and in the top of the L is a tire store currently existing, and I believe its operating hours actually run longer than what we're proposing.

But you have crematories, hardware stores, hospitals, welding repair. And so it was our position here that there's really no distinguishing factor between doing something like this and what's already permitted in the district.

Next slide.

And staff agreed with that analysis.

Next slide.

On the GMP piece, because we consider this to be essentially, especially from a parking and traffic standpoint, identical to the lumber yard. If that's consistent with the GMP, our position is this is consistent with the GMP.

Next slide, and next slide again.

Similarly, for the compatibility analysis, lumber yards are deemed consistent by already being in the LDC, so we feel, again, that we're consistent in that process.

The only other additional criteria here is any other additional information as may be required by the County Manager. We weren't made aware of any requirements for that. And so I will -- mainly so that "next slide" doesn't have to keep being typed, I can stop there.

HEARING EXAMINER DICKMAN: Just real quickly, you mentioned it is an L-shaped property. As far as, like, deliveries, so your hours will start at 6, but will the deliveries of things be before that? I don't know who wants to answer that.

I'm sorry. I should have probably asked you that question already. I just want to talk about, like -- because, you know, I would imagine you get deliveries via tractor trailer, right?

MR. MAHAFFEY: We do, but we wouldn't take them in the middle of the night. We wait till opening hours.

HEARING EXAMINER DICKMAN: Okay. And you feel like that's enough room to get in and out of the property there?

MR. MAHAFFEY: We do, yeah.

HEARING EXAMINER DICKMAN: Okay.

MR. LOMBARDO: And just for record clarity on that, there is a Site Development Plan amendment that's working its way through. So that --

HEARING EXAMINER DICKMAN: Yeah.

MR. LOMBARDO: There will be an analysis on the drive aisle and the fire access and these sort of things.

HEARING EXAMINER DICKMAN: Well, it's appropriate on Timber Lake Drive. I guess that's meant to be, right?

MR. LOMBARDO: That's exactly how we feel.

HEARING EXAMINER DICKMAN: Okay. That's all I wanted to find out, so -- and as you said, there is a Site Development Plan going through the administrative process?

MR. BOSI: Right.

MR. LOMBARDO: And it's an SDPI. I'm not sure -- I know that Grady Minor is working through this. I don't know if we've filed or we're in review. I'm not sure where we are, but we acknowledge that there will have to be one done.

HEARING EXAMINER DICKMAN: So they'll look at a lot of the details of that?

MR. LOMBARDO: (Nods head.)

HEARING EXAMINER DICKMAN: All right. Anybody signed up from the public to speak here tonight -- today?

MS. PADRON: We have no speakers for this petition.

HEARING EXAMINER DICKMAN: No speakers and nothing to rebut, then.

Okay. This is pretty straightforward. I think I have enough information. Thank you for being here. I'll get a decision out as quickly as possible.

MR. LOMBARDO: Thank you very much.

MR. MAHAFFEY: Thank you.

HEARING EXAMINER DICKMAN: Thank you.

Nice job, thank you.

MR. SAMMON: ***Good afternoon, Mr. Dickman. For the record, Sean Sammon, Planner III in the Zoning division.

Before you is Agenda Item 3B. It's for a variance, Project No. PL20240000927. This is a request for a variance from the Land Development Code Section 2.03.08.A.2.a.(4)(a)iii to reduce the required agricultural Rural Fringe Mixed-Use Overlay Receiving Lands side setback from 30 feet to 12.8 feet on the east property line and to reduce the rear setback from 50 feet to 28.1 feet on the northern property line for the two existing accessory storage buildings on approximately 7.94 acres located at approximately 2,000 feet north of U.S. 41 and approximately 850 feet east of Greenway Road at 2441 Maretee Drive, Naples, Florida, 34114, in Section 7, Township 51 South, Range 27 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 9.04.03, A through H, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.F. The agent letter was distributed by the applicant on Monday, June 10th, 2024.

The public hearing signs were placed by the applicant on Thursday, August 1st, 2024, and then the property owner notification letter and newspaper advertisement were taken care of by the county on Friday, August 2nd, 2024.

I've received no calls or any other communication from the public regarding this petition request, and there has been no public opposition pertaining to this petition.

Therefore, staff recommends that you approve this variance petition to reduce the required agricultural Rural Fringe Mixed-Use Overlay Receiving Lands side setback from 30 feet to 12.8 feet on the east property line and to reduce the rear setback from 50 feet to 28.1 feet on the northern property line for the two existing accessory storage buildings for the subject property as depicted in Attachment B to the staff report.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Thank you, Sean. Appreciate it.

MR. SAMMON: You're welcome.

HEARING EXAMINER DICKMAN: Is the applicant or applicant's representative here?
Good afternoon.

MR. DuBOIS: Good afternoon. Thank you all for your time today. My name is Richard DuBois. I'm here with RDA Consulting Engineers also here on behalf of our client, Brightview Landscaping to discuss this variance application with you today.

Just a quick summary, that's the subject parcel there in the center. It's just shy of an 8-acre parcel, and this property is currently used as a landscape services headquarters local branch. So they provide lawn care services, nursery services, things like that, out of that location.

Next slide, please.

So a quick overview. We came in with this property for a Site Improvement Plan application to permit some ADA improvements that were being made and some service drive improvements that were being made. During that process, we found that the two storage buildings that are in the northeast corner of the parcel -- yep --

HEARING EXAMINER DICKMAN: These two right here?

MR. DuBOIS: Those two buildings right there, yep -- that they did not meet current setback requirements for this agricultural RFMUO receiving property. So with that being said, we then chose to go through the process of requesting a variance in order to save these two buildings.

Next slide, please.

So as you can see, they're older buildings. They've been there for over 35 years for the best we've been able to find in our records of the buildings that the property owner has. At the moment, the county has not been able to obtain any records for these buildings. Part of this process we understand and have agreed with staff that after-the-fact building permits will be obtained if this variance is approved. And they're in good working order. They're not in disrepair. They've been used consistently throughout history. Our client, Brightview Landscaping, purchased this property in late 2018. And they inherited this issue, but they'd like to correct it and fix it.

Next slide.

So the variance that we're requesting to the north is for a 28.1-foot setback to be allowable instead of the 50-foot that's required per code, and then to the east for the other storage building. It would be for a 12.8 setback instead of the required 30.

HEARING EXAMINER DICKMAN: So this one meets the rear setback here; it's just the side?

MR. DuBOIS: That's correct.

HEARING EXAMINER DICKMAN: Okay.

MR. DuBOIS: And then the other one meets the side setback, but it doesn't meet the rear.

HEARING EXAMINER DICKMAN: Okay.

MR. DuBOIS: So they're exist buildings. They've been there quite some time, and that's what we're looking to request for the variance.

Next slide.

So as you can see, these buildings have been here quite some time. The furthest aerals we were able to obtain showed both buildings in 1995. Again, our client wasn't aware of this when they purchased the property, but they're here to try to correct it to the best of their abilities while maintaining the buildings and being able to keep them where they are.

One item that was found to be consistent with our report as well as the staff's report was that these are compliant consistent with the goals of the GMP, and staff also has mentioned in their report that they are recommending approval for this variance.

We don't anticipate any -- any negative impacts to the health, safety, or wellness of adjacent neighbors. They've all been notified via mailings about this, and none of them have reached out to us or to staff.

And one thing I did want to note is that it would cause undue hardship to our clients to have to try to move these buildings or try to demolish them and rebuild new buildings.

Next slide, please.

Just to quickly note, we are going through the SIP process, as I mentioned, to permit the other improvements on site. Throughout that, we were found to be mostly compliant with other sections of the code. Anything that we found not to be compliant is what's currently being addressed.

With that being said, we are improving the landscape buffers on the north side of the property and the east side of the property to bring them up to current code.

Next slide, please.

And with these buffers, we're required a 15-foot-wide Type B to the north and a 5-foot-wide Type A to the east.

Most of the existing landscaping there -- as this has been used historically as a nursery for many years, a lot of landscaping's in great shape. There's some exotics that have moved in that will be removed, but a lot of this area is nice, mature landscaping. We will be adding some plant material in order to make sure these buffers are up to code, but it's pretty -- pretty wooded back there already.

Next slide, please.

So that's a summary of our variance petition. Thank you for your time today, and if you have any questions, I'm happy to answer any questions you might have.

HEARING EXAMINER DICKMAN: Okay. All right.

I understand what's happening here. Even if I were to grant an affirmative decision, you still have to go through the building permit process, and this doesn't in any way guarantee that, I mean, because I don't know what kind of construction these are -- how they're constructed or --

MR. DuBOIS: Right.

HEARING EXAMINER DICKMAN: -- you know, so this is no guarantee to that --

MR. DuBOIS: Understood completely.

HEARING EXAMINER DICKMAN: -- I mean, because they're going to require you to have engineering plans or whatever, okay?

MR. DuBOIS: Understood completely.

Yeah, even if we get this approved today, we still need to go through the building permit process for both of those buildings in order to keep them, which our client has agreed to go through that process in order to keep them.

HEARING EXAMINER DICKMAN: Okay. So I have a question. So in the event that -- I mean, have you inspected the buildings? Do you feel like they're in -- are they in good shape? I mean, you wouldn't be --

MR. DuBOIS: They've got good bones. They're in good condition. We anticipate being able to obtain building permits. It's going to be a hurdle for the client, but we believe it will be possible.

HEARING EXAMINER DICKMAN: Okay. Because here's what I'm thinking, so if these things are deemed to not be compliant at all with Florida Building Code and they have to be demolished, then I'm not sure -- then at that time you would need to rebuild something new, and it would have to be in compliance with the zoning code.

MR. DuBOIS: Absolutely. Anything new constructed would be built within the setbacks, and we wouldn't need this variance. We agree to that condition.

HEARING EXAMINER DICKMAN: You agree to that?

MR. DuBOIS: Yeah, absolutely.

HEARING EXAMINER DICKMAN: I just want to make sure. From the outside, just those few pictures, they look like they're pretty solid, and they've been there for a while, but you never know. Okay.

MR. DuBOIS: They appear to be maintained, and the goal is to keep them.

HEARING EXAMINER DICKMAN: Okay. Anybody sign up from the public to speak?

MS. PADRON: We have no speakers.

HEARING EXAMINER DICKMAN: When was the last time I had speakers? Couple months?

MR. BOSI: Two meetings ago.

HEARING EXAMINER DICKMAN: I don't know what's going on here. I'm getting a little worried.

Okay. Anything else from county staff?

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

Nothing from staff other than I think that between the applicant and our staff planner, they reach out and coordinate with the adjoining neighbors on all the issues, and we address those concerns before they get to the hearing; therefore, it probably takes away from your popularity, and we apologize.

HEARING EXAMINER DICKMAN: Okay. And you guys are in agreement with the idea that, like, if for some reason these structures are deemed not -- you know, it's not fiscally possible or economically reasonable to have them in place and they have to come down, that this is -- this decision would only apply to these buildings, and anything new would have to be meet the setbacks, right?

MR. BOSI: Yes. Staff would agree with that. Looking at the picture, there would be enough clear area within that area to adjust -- to make the setbacks and still have the storage square footage, I would think, if that was the ultimate goal and conclusion.

HEARING EXAMINER DICKMAN: Okay.

MR. SAMMON: For the record, Sean Sammon.

In our recommendation, it's for the existing accessory structures.

HEARING EXAMINER DICKMAN: Thank you. I appreciate that.

Okay. I have no other questions. Do you have anything else you want to --

MR. DuBOIS: No, I'm all set. Thank you all for your time.

HEARING EXAMINER DICKMAN: Nice presentation. Thank you.

All right. I was really hoping the 1:00 would improve my ratings. I guess not.

Hi, John.

All right. This is 3C.

MR. KELLY: ***Good afternoon, Mr. Dickman. For the record, John Kelly, Planner III with the county.

There are two corrections to the staff report for this project, which is Agenda Item 3C. Boat Dock BD-PL20230017548. The first correction is that Primary Criteria No. 2 should have been noted as "satisfied" or "met," not "not met." So I'm reading that into the record at this time.

And the second item is Attachment A provides the wrong document. It should have been the plans that were just distributed to you, so that is a correction to Attachment A, and I will e-mail your office with the file for the purposes of rendering your decision.

HEARING EXAMINER DICKMAN: Okay. Just to be clear, Primary Criteria 2 is met, not "not met."

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: It seems to be a tongue twister. Okay, got it. And these are the revised plans. Got it.

MR. KELLY: Correct.

Okay. With that, the petitioner requests the Hearing Examiner approve a 20-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow the construction of a boat dock facility protruding a total of 49 feet into a waterway that is 278 feet wide pursuant to LDC Section 5.03.06.E.1 for the benefit of the subject property which is located at 156 Pago Pago Drive West, also known as Lot 187, Isles of Capri, No. 2, in Section 32, Township 51 South, Range 26 East, unincorporated Collier County, Florida.

It's located within a Residential Single-Family 4, RSF-4, zoning district. The subject property comprises 0.18 acres and supports a single-family dwelling adjacent to Snook Bay.

The petitioner desires to remove the existing dock and boathouse to then construct a new residential dock facility with two slips each with a boatlift to accommodate a 45-foot vessel and a 28-foot vessel.

Said property has an existing concrete seawall with approximately 70 feet of water frontage. As the property line is landward of the seawall, it is the most restrictive point for measuring protrusion.

The new dock facility will protrude 49 feet into the 278-foot-wide waterway, and the required 15-foot side riparian setbacks will be respected on both sides of the new dock facility.

As far as public notice, they were taken care of within the confines of LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the county on August 2, 2024, and a public hearing sign was posted by me on August 6th, 2024.

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

No public comment has been received in response to advertising of the subject petition, and staff recommends you approve this petition as described in accordance with the proposed dock and boathouse plans provided within Attachment A.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you, John. Appreciate that.

Mr. Rogers, how are you today?

MR. ROGERS: Pretty good. Thank you. How are you, sir?

HEARING EXAMINER DICKMAN: Doing great.

MR. ROGERS: All right. Well, for the record, Jeff Rogers with Turrell, Hall & Associates here today representing the applicant, who is listed as the land ownership South Bend [sic], LLC. Mike Vangessel is his last name -- is the owner, and he is my client.

So he moved into this house probably about two years ago and built a home and has proposed to rebuild the existing docking facility first removing the boathouse and existing dock that is located on site.

Jump ahead. Moving forward.

I've got a few pictures here for you of the existing site conditions. Obviously, the new home is built up looking down onto the dock and the associated boathouse. There is currently only one boat slip on site.

Moving forward.

Some more detailed pics for you. I know you like seeing the pictures of the existing site conditions. So currently the dock does meet most of the rules for docking facilities per today; however, it is considered a grandfathered structure being built prior to the 1990 Collier County boat dock extension rules grandfather date as well. So we could technically rebuild and replace this existing docking facility as it exists today.

Moving forward.

Survey. We always get the survey, as you know, before we do anything here in regards to developing a new dock design giving us site conditions as well as existing waterway on-site conditions in regards to width of waterway, linear footage of shoreline, things of that nature that are pertinent for designing a new docking facility.

Moving forward.

Also included in that are the water depths associated, which are required for not just Collier County permitting but also the state and federal permitting process. The depths that we do get on these surveys are referenced to mean low water, so these are the depths that you get on an average low tide on site.

I'm not sure the county requires them that way, but the DEP, the state agency, does and gives us a realistic idea of design criteria to shoot for with the dock.

Moving forward, start -- just touch on -- that's an aerial view of the existing conditions, just for reference.

Keep moving forward, if you would, please. Again, one more.

Moving into the proposed dock, as staff -- John has outlined for you, the applicant is requesting -- proposing to protrude 49 feet into the subject waterway, so we are requesting a 29-foot boat dock extension from the allowed 20 feet to safely moor their current boat that they're storing at a marina, which is a 45-foot vessel, on site on a boatlift as well as a smaller boat that they do have, which you did see in the existing site conditions pictures onto a platform lift on the other side.

HEARING EXAMINER DICKMAN: But that would be -- the current location is where --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- the decking is now. Like, basically that's a deck, right?

MR. ROGERS: Yes, sir. Yeah. That was a fixed dock that you saw. Yeah, 100 percent.

HEARING EXAMINER DICKMAN: Gotcha. So that's currently a deck. This is a boathouse currently, right?

MR. ROGERS: Yes, sir. Correct.

HEARING EXAMINER DICKMAN: Quick question. If I'm on either side of the property, what would you think the height, the top of the boat -- the current existing boathouse is?

MR. ROGERS: It's lower -- the county requirement is 15 feet from the top of deck to the crown of the roof. I don't have that exact dimension, but to me, in that picture, I believe it's more like 10 to 12-foot. It's a lot -- it's an older -- very older style boathouse --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- back in the day when vessels used to be average size. As you know, they've grown over the years --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: -- which puts me in front of you quite often.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: So that's basic -- you know, real quick, also, we do meet side-yard setbacks. The decking has been minimized to the fullest extent possible. So those are the important things that we take into consideration when designing this as well as the overall protrusion out into the waterway. It is a relatively wide waterway, which I'd like to move forward on a couple aerials before I hit the criteria just to give you an overview.

Keep going, if you would, please. I've got a couple zoomed out. There's a cross-section.

HEARING EXAMINER DICKMAN: This is the one that I wanted to --

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: So the reason I was asking about this is if I'm a neighboring property owner and I'm looking at this, I'm kind of looking right now at a big boathouse, right?

MR. ROGERS: Basically, yeah.

HEARING EXAMINER DICKMAN: The roof and then -- I mean, obviously, when it's up on a lift, it's going to be higher, right? Like, this is going to be -- this is showing the vessel at water level, right?

MR. ROGERS: And that's the way county staff wants me to show it on these cross-sections.

HEARING EXAMINER DICKMAN: No, that's okay. I understand.

MR. ROGERS: But I totally agree; it would be able to come up higher. And especially during storm events, they would get it up as high as they possibly can. However, typically the bottom of the boat, I would say, hangs down about a foot below the deck area --

HEARING EXAMINER DICKMAN: Right here?

MR. ROGERS: -- typically. Yes, sir.

HEARING EXAMINER DICKMAN: So then --

MR. ROGERS: You're going up another four feet, three feet.

HEARING EXAMINER DICKMAN: All right. Thank you.

MR. ROGERS: Which is, in my opinion, consistent, kind of, with the requirement of a 15-foot boathouse today for an average vessel.

Jumping to the criteria really quickly, the Primary Criteria No. 1, 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. This is a residential single-family lot and is allowed two boat -- two boat slips. And as proposed, we do meet that criteria as outlined in the staff report.

Number 2 is the one that John brought up. That was a correction, and that pertains to 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 moor -- launch or moor at mean low tide.

And this image doesn't really paint that picture for you, but if you look at the water depths on site, they are shallower closer to shoreline, which is typical. We did not propose to dredge in this case to make a little bit of a deeper waterfront, but with the vessel size and the restraints of setbacks and, you know, size of vessel, in this case, there was really no other option but to protrude out past the 20 feet, even looking at a more shore-parallel-style mooring, which we did consider, and we kind of stuck with what was common practice on this waterway, and previously, you know, been presented before the county for approval on boat dock extensions. Not that that matters, but this is kind of consistent with what's happened out there before.

HEARING EXAMINER DICKMAN: Right. So if I'm looking at -- I'm looking at what John handed out, the new exhibits --

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: -- on the cross-section of this --

MR. ROGERS: Could you go back?

HEARING EXAMINER DICKMAN: Yeah, if you want to go back. I mean, I think these are the water depths, right?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: The numbers that are in each pile, so it's -- each one -- the very -- the furthest-out pile is negative 5.5 --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- NAVD; is that right?

MR. ROGERS: Yep. No, that's not -- it's mean low water.

HEARING EXAMINER DICKMAN: Mean low water. Sorry. I apologize.

MR. ROGERS: No, you're good. So I just want to clarify that. It's not NAVD.

HEARING EXAMINER DICKMAN: At low tide. The median of lowest tide?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Gotcha. Is that over, what, 19 years, something like that?

MR. ROGERS: Honestly, I'm not sure how it is over a course of time. I think it's a 10-year period. So it's a reference point that the surveyors, we -- the state provides the mean low tide elevation for areas, and then you just deduct it off of the common elevation that the surveyor shoots.

HEARING EXAMINER DICKMAN: So if at 20 feet you're saying -- let's say 20 feet, you're talking about maybe four and a half feet at mean low tide, that's just -- you're saying that for a vessel like this, that your testimony is that it's -- there is a shallow-water issue.

MR. ROGERS: Yeah, correct. The size of vessel, I would say, draft's a solid three foot just to float.

HEARING EXAMINER DICKMAN: Just to float.

MR. ROGERS: And then you put a -- put it onto a cradle system, which is I beams supporting the boat, that's another 10 to 12 inches. So you need a solid four, maybe at most four and a half feet to even float this vessel.

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: So getting the deepest part of the vessel out into the deepest part of the bay is, you know, ideal for, you know, safe ingress/egress at all tides, basically, onto the -- onto the lift.

HEARING EXAMINER DICKMAN: Gotcha. Thank you.

MR. ROGERS: Number 3 of the primary, whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or unmarked channel. This is a -- this whole entire bay is open for navigation between subject docks on the waterway. There is no marked channel on it. So -- and based on the width of the waterway, you know, we're -- there's no expectations of any navigational issues on this waterway.

Number 4, whether the proposed dock facility protrudes no more than 25 percent of the width of the waterway and whether a minimum of 50 percent of the waterway width between dock facilities on either side is maintained.

And the answer to that is yes. The waterway's approximately 278 feet wide from mean high to mean high. So with that, you know, math, we're about 18 percent. So we're well -- well, we're within the allowable 25 percent width of the waterway.

And just as a sidenote, we do have state and federal permits for this, and that's part of their review criteria, and that's a little -- scrutinized pretty heavily by them as well.

Number 5 of the primary, whether the proposed location and design of the dock facility is

such that the facility would not interfere with the use of neighboring docks. That's --

HEARING EXAMINER DICKMAN: Yeah. So you know this is always something that I like to talk about.

MR. ROGERS: Yeah, 100 percent.

HEARING EXAMINER DICKMAN: Because the other ones, some of them are just mathematical formulas, so those are self-evidence. So here you're pulling straight in. I can see that the neighbor here already has a facility that's -- it looks like a boathouse, right?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And then what's going on on this one?

MR. ROGERS: That's just an old existing -- it terminates at the 20-foot mark. It's an old existing dock that's been there.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Just a full picture, the applicant did just purchase that house.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So, you know, I don't know what his plans are there, but he -- it's an old existing dock that does protrude out, so...

HEARING EXAMINER DICKMAN: Okay. But the idea would just be pulling straight in. The smaller boat is on a float lift; is that what that is?

MR. ROGERS: It's a plat platform.

HEARING EXAMINER DICKMAN: Platform.

MR. ROGERS: Just imagine a section of your dock lowers down, and so you can get around the whole thing. It's a cleaning and -- you know.

HEARING EXAMINER DICKMAN: Gotcha, okay. And you're within the riparian setbacks?

MR. ROGERS: Correct. Yep.

HEARING EXAMINER DICKMAN: And so let me ask you about this. So over here, what's going to happen over here?

MR. ROGERS: That's technically the setback area. So --

HEARING EXAMINER DICKMAN: Any mooring going to happen over there?

MR. ROGERS: I mean --

HEARING EXAMINER DICKMAN: Temporary, but not permanent.

MR. ROGERS: Yeah. I was going to say, you technically are allowed to do some temporary mooring in there, but nothing permanent nor anything structural can go inside the setback.

HEARING EXAMINER DICKMAN: You understand that there's two slips here and that's it for single-family homes, right?

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Okay, good.

MR. ROGERS: Yes, sir, yep.

And in certain cases, handrailing is even required to prevent mooring, you know, but there's ways around that, too. But --

HEARING EXAMINER DICKMAN: Yeah. I think this -- yeah, the state sometimes requires that. I've only required it a couple times.

MR. ROGERS: Okay.

HEARING EXAMINER DICKMAN: But I think you understand, like, there wouldn't be any piles put out here or here to make that a permanent, you know, after-the-fact kind of stuff.

MR. ROGERS: No, sir.

HEARING EXAMINER DICKMAN: That would be --

MR. ROGERS: That would technically not be compliant and would not be permissible

under a building permit, and if it was done, it would be done illegally.

HEARING EXAMINER DICKMAN: Gotcha okay.

MR. ROGERS: But nothing proposed.

HEARING EXAMINER DICKMAN: And just for the record, like, I don't think this is in my jurisdiction.

MR. ROGERS: No. I just like to show --

HEARING EXAMINER DICKMAN: You're just showing me that?

MR. ROGERS: -- this because when the contractor goes in for a building permit, if the Building Department -- if it's not straightforward and totally match exactly what the boat dock exhibits show, they will ask questions --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- and say, you know, even though it doesn't protrude out over the water, I've had --

HEARING EXAMINER DICKMAN: Right.

MR. ROGERS: -- experiences where I've had to clarify that with the Building Department.

HEARING EXAMINER DICKMAN: Yeah. I just want to make it clear, because there is a criteria about overdecking and things like that, and that has nothing -- that's not even over water, so I'm not going to look at that.

MR. ROGERS: That's why I hatched it, too. It's really there, but don't -- it's not really part of this petition request. It's technically over the seawall and over the land.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Moving forward. I'll try to pick this up.

Secondary Criteria No. 1, whether there are special conditions not involving water depth related to the subject property or waterway which justify the proposed dimension and location of the proposed docking facility. You know, in every project, there's at least one special condition outside of water depths, and in this case, you know, it's the length of shoreline trying to fit the vessel -- the proposed vessel. It is a large vessel, but, you know, coming up with a design that would, you know, ultimately --

HEARING EXAMINER DICKMAN: So if it was -- honestly, if it were parallel to the shore, what --

MR. ROGERS: That's all you're going to end up getting. You would protrude out further, because we would have to put it on an angle of some sort, a 45, 30-degree angle to --

HEARING EXAMINER DICKMAN: And then they would have to come through here --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- or through here.

MR. ROGERS: And you're passing over shared riparian lines. And we try to avoid -- we try to keep all ingress and structures within our riparian area as -- you know, just to avoid any conflicts of your neighbor backing out. You know, just any potential future docks your neighbor might do. Just, if we have an open field, so to speak, to play with, we try to keep it inside the box.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MR. ROGERS: Number 2 of the secondary, whether the proposed dock facility would allow reasonable safe access to the vessel for loading, unloading, and routine maintenance without excessive decking. The answer to this is yes. There is a 4-foot-wide walkway proposed on the outside and then a 6-foot-wide down the middle, so to speak, of the two lifts.

We made the middle one a little bit wider because it is providing access to both boats and does give more deck area for recreational access to the water, you know, launching kayaks and/or fishing off of the dock. It does provide some service area for those activities without being excessive.

Number 3, for single-family dock facilities, whether the length of the vessel or vessels in combination described by the petitioner exceeds 50 percent of the subject property's linear footage. This is the one criteria of the secondary that we do not meet mathematically with the vessels proposed. We're well over the 50 percent length of shoreline. The shoreline is 70 feet -- 70 feet, yes, that's correct, and combined vessel length is 73. So we -- there's no way we meet that.

HEARING EXAMINER DICKMAN: Yeah. And to me, like, this is -- if the county ever -- from a policy point of view the higher-ups wanted to look at things because of this, like -- you know, this trend towards larger vessels, I mean, this could be one of the sort of nonarbitrary criteria that they could set, you know, because the combined -- I mean, what you have as far as shoreline compared to the two boats, I mean, it's mathematically -- it's just --

MR. ROGERS: It's not there.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: Usually when I stand in front of you doing this, this is one that we commonly miss.

HEARING EXAMINER DICKMAN: Yeah. The vessels are getting bigger.

MR. ROGERS: Right. Right. Yes, sir.

So No. 4, whether the proposed facility would have a major impact on the waterfront view of neighboring properties. We touched on this. You know, there's an existing boathouse, you know, so the view into the waterway is already elevated on the subject property, and we are eliminating the boathouse. But we are technically replacing that with a vessel that will be up in the air, so to speak, when it's on the boatlift. So it should not be really much of a change in regards to obstruction of anybody's view, plus the neighbor has a boathouse -- you know, the neighbor to our west has a boathouse, too, technically. It looks to be like a potential grandfathered structure, too. It doesn't look like it really meets the 15-foot setback, just looking at it. I'm not 100 percent sure on that, but -- so the view is tight through those two -- the shared riparian line as it is right now.

Number 5 is pertaining to seagrasses being within 200 feet of the proposed docking facility. I do not have a picture of myself swimming like you like to see occasionally, but --

HEARING EXAMINER DICKMAN: I don't believe it.

MR. ROGERS: I have started taking pictures of myself in the water, and my staff look at me like, "Why you taking a selfie of yourself?"

And I'm like, "There's a reason. There is a reason." So you'll see one. Not on this one, but they're coming.

HEARING EXAMINER DICKMAN: I want to see you out there with your pole and surveying things.

MR. ROGERS: So this one there is not. We dove it. I've dove this one actually three or four times, and there was no observed seagrasses at all from here.

Number 6 pertains to the Manatee Protection Plan, and it's not applicable here due to it being a residential single-family zoned property, the MPP doesn't -- allows for two vessels, and that's basically it.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: With that being said, that concludes it. Happy to answer any questions. And I'd like to request approval based on --

HEARING EXAMINER DICKMAN: Okay. Let me ask the county staff, anything he said contradicts anything, or is it all in line with what you've been hearing all along?

MR. JOHN: It's all good with --

HEARING EXAMINER DICKMAN: Everything you're hearing?

MR. KELLY: Correct. And just to add, swim softly and carry a selfie stick.

HEARING EXAMINER DICKMAN: Any public speakers?

MS. PADRON: We have none.

HEARING EXAMINER DICKMAN: I figured.

All right. Thank you very much. I'll get a decision out as quickly as I can.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Thank you.

Do you guys really think that he's swimming out there? I don't think he does. I really don't.

***Okay. So D and E are companion items, right?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: So we're going to have one presentation, but I have to make two decisions, right?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: So that's the way it's going to work. Okay.

MR. KELLY: Okay. Before you is Agenda Item 3D, as in David, is NUA-PL20240006168. I will add, for the record, John Keller, Planner III, for the county. And Agenda Item 3E is BD-PL20220005339.

The petitioner requests the Hearing Examiner approve both a nonconforming-use alteration per Section 9.03.03.B.2.A of the Collier County Land Development Code resulting in a 0-foot setback along the southeast side riparian line and a 5-foot setback along the northwest side riparian line instead of the required side riparian setback of 15 feet as provided for in LDC Section 5.03.06.E.5, for dock facilities on lots with water frontage of 60 feet or greater and for a 51-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a private multifamily boat docking facility with 44 slips protruding up to 71 feet into a waterway that is 748 plus-or-minus feet wide to the north and a canal that is 100 plus-or-minus feet wide to the east.

The subject property comprises 1.3 acres located at 271 South Bay Drive within Barefoot Pelican, a waterfront condominium, in Section 29, Township 48 South, Range 25 East, unincorporated Collier County, Florida. The location is within a commercial intermediate C-3 zoning district which makes for the nonconforming use.

Public notice requirements for the NUA were as per LDC Section 10.03.06.V, as in Victor, and boat dock extensions were as per Section 10.03.06.H.2. The property owner notification letter and newspaper ad were satisfied by the county on August 2, 2024, and the public hearing sign was posted by the applicant's agent on or about August 7, 2024, as per the affidavit, which is attached.

The NUA application was reviewed by staff based upon the review criteria contained within LDC Section 9.03.03.B, as in boy, .5, a through f with findings stated within the staff report.

The boat dock extension was reviewed based upon the review criteria contained within LDC Section 5.03.06.H.

Of the primary criteria, it satisfies four of five. Of the secondary criteria, it satisfies five of six of the criteria, with Criterion No. 3 being not applicable, and has been found to be consistent with both the Growth Management Plan and the Land Development Code.

A Site Development Plan insubstantial plan is required for work to proceed and will ensure compliance with the land development.

I have been contacted by three individuals on this project, two requested details and who were provided additional information that included information as how to provide objections and how to attend the meeting both live and via Zoom. No letters of objection have been received.

It's staff's recommendation the Hearing Examiner approve the nonconforming-use alteration in accordance with the proposed plans contained within Attachments B, C, and D subject to the approval of the companion boat dock petition. Should the boat dock not be approved, approval of the nonconforming-use alteration will only allow for the depicted seawall and pool and

spa improvements.

Staff also recommends approval of the companion boat dock extension in accordance with the proposed plans contained within Attachment A subject to the following conditions: One, that approval is predicated upon the approval of the companion nonconforming-use alteration. Absent such approval, the boat dock extension is void and, two, the dock is private in nature and shall not be used for rental or commercial purposes.

That concludes staff's presentation.

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

Is the applicant's representative here? Good afternoon.

MS. BERKEY: Good afternoon, everyone.

For the record, Katie Berkey, Becker & Poliakoff, land-use attorney for the applicant, Barefoot Pelican Condominium Association, Inc., with respect to both the NUA and BDE that Mr. Kelly graciously summarized.

And with me today, I have two experts from Turrell, Hall & Associates, Jeff Rogers, who you're familiar with from the prior agenda item, and also Tim Hall, principal and senior ecologist. And if I may, I'd like to first submit their résumés into the record and also provide a hard copy of our PowerPoint.

HEARING EXAMINER DICKMAN: Thank you.

MS. BERKEY: And with that, I'll turn it over to Mr. Rogers.

HEARING EXAMINER DICKMAN: Thank you.

MR. ROGERS: Good afternoon. For the record, Jeff Rogers with Turrell Hall & Associates, as you know and was just introduced. I want to -- before I jump into the --

HEARING EXAMINER DICKMAN: I will recognize you as an expert.

MR. ROGERS: Thank you. Thank you. I appreciate that. I wasn't sure if I'd ever been at this point. It's crazy. I've been with Turrell for 18 years now doing these things. Time flies.

HEARING EXAMINER DICKMAN: It's about time you become an expert.

MR. ROGERS: Yeah.

This one I want to run through a brief little history just for you. So the place was damaged, ultimately, during Hurricane Ian. Obviously, this area was hit very hard, as well as Turrell's been working with the condo for years with them to develop a marina redevelopment plan as well as monitoring their seawall for movement because it's time to replace it.

So part of this project originally started -- let's move forward on the slides. I do have some on-site photos for you.

Next one.

This is just a little overview. I can come back to this one, but let's go forward one more.

So this is the existing shoreline, and it, over the years, has been kind of Band-Aided and kept alive. The docking facilities are aged and extremely old, and then boatlifts were added to each slip, you know -- not each, not every slip, but occasionally slips -- boatlifts were added to slips individually. The docking facility's not modernized to today's standards.

And then Hurricane Ian came along and basically caused significant damage not to just the shoreline but as well to the uplands. And part of this petition request is to bring some of those nonconforming current uses, basically, into compliance, mostly consisting of the swimming pool area.

HEARING EXAMINER DICKMAN: Okay. Just real quickly about the seawall. It looks pretty low to me. Are they going to be replacing the seawall?

MR. ROGERS: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So the overall plan is to basically raise the seawall up.

HEARING EXAMINER DICKMAN: Good.

MR. ROGERS: Collier County does not limit the height. But typical elevations are about 4.8, you know, 5 foot-ish, somewhere around there, and I believe we're going up to a 4.8. So some of those step-downs that you see in the top left corner photo down to the docks -- we really dislike having stairs leading down to docks when you're carrying stuff to your boat. Tripping hazards, right?

So we are going to eliminate, I believe -- not all of them, but I believe we're eliminating two of those by elevating the seawall up, so -- which would, in turn, ultimately raise the docks, too.

HEARING EXAMINER DICKMAN: I agree.

MR. ROGERS: So that is one of the most important factors of this project. That has to happen and -- because it's holding, obviously, everything up, including their parking lot, which is the pavers that you see, you know, right here. That's part of their parking lot.

So moving forward one more slide. Give you a -- here's the -- here's the overlay pertaining to the NUA. The NUA request is basically to bring this swimming pool and spa area into -- you know, get it correctly stated on the record with setbacks. We do not meet the required setbacks for the pool, which -- let me just get to the slide.

So, basically -- yeah. So we're just basically trying to bring that into compliance for the NUA and showing you what the setbacks will be, and, obviously, with the proposed being in light blue, the gray hatched area is the existing pool.

Come to find out to the residents, probably most of their unknown knowledge, during Hurricane Ian the pool lifted, and we found out it's not pile-supported. Never was. So it allowed it to technically pop out of the ground with the water levels.

So that, obviously, is, you know, not the way things are done today, and that is a significant hardship on the owners and development to get that repaired and fixed, which is, you know, also just landward of the seawall, which also is failing, especially out here on the point. It's time to do this. It was probably time to do this before, but Ian definitely brought it to the top.

So they have been dealing -- the property -- a lot of this property had some issues because of the age of the property and land use versus the zoning. So we worked with staff here, Katie and myself and the residents, over a long period of time to figure out the right path forward to ultimately get the marina and the uplands brought into -- caught up with the county records and bring everything into -- you know, into compliance, so to speak.

So, you know, basically, the pool is driving the NUA as well as the side-yard setbacks. They are existing. The docking facility is fully permitted with the state and federal government; has been for years. They do have a submerged land lease for their facility and also has -- had that for a long period of time. The boundary of the submerged land lease -- if you want to move forward on the slides, if you would. You've got some aerial views here.

It's a 44-slip facility currently. It stretches around the full length of the property abutting to the west -- northwest, the OneNaples development, shares a property line with them, and then goes into the waterway, you know, working its way south to another residential development there and office buildings, I believe.

So it's 44 slips. And you can see the docks are kind of random, you know, and the boatlifts are kind of randomly placed. There's no aesthetic, you know, modernization to the facility, so the proposed plan is to ultimately modernize that, maintaining the slip count that we have today, working within the boundary that is established by the existing submerged land lease, and basically, working within that box, which that box does also include the encroachments that we have -- are proposing today through the NUA of a 0-foot setback on this side and technically a 5-foot setback on the northwest side.

Right now the biggest difference between existing and proposed is the docks do not ultimately -- they're not technically full-length finger piers, we like to call them. So these slips currently are 25-and-a-half-foot slips expanding as you get out the further waterway area and

around the corner. The boundary -- if you would move forward on the slide, actually. I think I've got the lease boundary shown. So the lease boundary -- I might have it -- but this is the lease boundary labeled right here by these mooring piles, so that's their visualization for the residents of the boundary. So they do have mooring piles out the full length that we are technically requesting to utilize with the proposed BDE/boat dock extension request.

Currently, from the edge of seawall, we're 73 feet out. Technically, our request is slightly minimizing that. We're asking for a 51-foot boat dock extension from the allowed 20 feet, so overall 71 feet is our request.

Moving forward on the slides. That's just -- so you get a visualization of the rebuild. It is very consistent with what we have today. It's just -- move forward one more slide. It's got a little less noise on it for you to see.

So the blue Xs that you see are -- we're proposing boatlifts in every slip all the way around, as well as finger piers between each slip, rebuilt above the proposed seawall, existing/proposed, and full-length finger piers.

Now, the finger piers are technically an extension of what's there today, so they're -- that is a change visually when you first -- existing versus proposed. But they are full-length finger piers. They do not go beyond the area that we're technically allowed to moor in and utilize per the submerged land lease that we have as well as the grandfathered allowance from Collier County that we currently have. You know, we're here today bringing it -- changing it so, therefore, we have to go through this process.

Moving forward. I'll touch on the criteria of both to get that all in the record. But the subject waterway varies in width, as you know, with the tightest part being on the canal side, and, you know, we are within the 25 -- allowed 25 percent width. It's just -- it gets tight over there on that side.

Moving forward, if you would, please; get to the criteria. Keep going. There's the waterway widths. So this is the NUA criteria. I personally have never done an NUA. We started off with county staff and worked with them. We started to go down the road of a variance for the encroachments into the setbacks, you know, the 0-foot encroachment as well as the 5-foot by working with staff and everybody. It was decided that the NUA was the proper path forward due to the noncompliance issues that the department -- or excuse me -- the property has from the docks to the pool as well as other things.

Going through the criteria evaluation for this NUA is, No. 1, the alteration, expansion, or replacement will not increase the density of the parcel or lot on which the nonconforming single-family dwelling duplex or mobile home is located. This -- as I've said, this place, you know, was constructed back in 1984. So this place has been in existence, and the docks have been there as well. So we are not proposing to change any of that. This is just a, you know, modernization of what they currently are allowed to do on site. So that criteria was met.

The next criteria was, basically, the alteration, expansion, or replacement will not exceed the building height requirements of the district most closely associated with the subject nonconforming use. And, basically, the proposed project is to modernize the dock, shoreline, and upland pool and spa layout. The proposed project will not increase heights at all in regards to the existing structures, upland structures, or anything like that. So there's no change in regards to that criteria.

The alteration, expansion, or replacement will not further encroach upon any nonconforming setbacks. We already technically encroach into the setbacks as it is, and we're looking to just maintain that encroachment.

If you'd move forward on the next slide, you can follow this. We're on the second one down for you that were looking at it.

So, basically, again, the setback is 0 feet on the southeast side and a 5-foot setback from

the northwest side, and that's -- you know, that's what we're proposing to maintain and, you know, keep as current. So there is no other encroachment proposed or additional encroachments proposed.

Next one, the alteration, expansion, or replacement will not decrease or further decrease the existing parking areas for the structure. The answer to that real quick is no. There are no changes proposed. I believe this place can't afford to lose any more parking places, so we are not proposing to change anything in regards to parking.

Moving forward, the next slide. The next two criteria are kind of wrapped into one. The alteration, expansion, or replacement will not damage the character or quality of the neighborhood in which it's located or hinder the proper future development of the surrounding properties, and alteration, expansion, or replacement will not present a threat to anyone or health or welfare of the community.

This is an existing facility. You know, we have 44 slips. We're maintaining the 44 slips. We're actually decreasing the overwater structure slightly from 3,792 square feet to 3,064 square feet. And part of that, just to touch on it, is we're taking the finger piers and making them a lot skinnier to make more beam width room for the larger -- not larger, but the modernized facility with the actual vessel sizes that are allowed in the boundary. So there's no changes there, either, to the neighborhood.

So that's the NUA criteria. And staff agrees. We concur that we, you know, met all that criteria. So the other, you know, part of this is the boat dock extension.

Moving forward to that on the next slide, if you would. Run through these as well to get them on the record. The Primary Criteria No. 1 is -- you know, is this -- is it -- is what we're proposing consistent with the allowed upland land use. And this is a -- you know, yes, we do. The property is technically zoned commercial C-3, but it is being used as a multifamily residential and has been for years, and per the Manatee Protection Plan, they let you have one slip per unit, which we are consistent with as well.

So technically speaking, if this was a new facility today, we would be able to do what we are proposing to do today; however it's grandfathered. So they do have 60 livable units, excuse me, and 44 slips. So that is -- we do have less than one-to-one, excuse me. I was wrong on that. So we are under that threshold.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: Number 2 of the primary -- let me read you what that is. Whether the water depth at the proposed site is shallow, that the vessel of the general length, type, and draft as described in the petitioner's application is unable to launch or moor at mean low tide. You know, the overall project here is to expand the facility and utilize full-length finger piers. The waters are shallow up along the shoreline, kind of in the previous petition I was talking to you about, shallower up in the shoreline and deeper out in -- out in the more central part of the waterway. So, therefore, keeping the vessel's sterns out in the waterway where it is deeper is the way to go here and maintain the current use of the slips ingressing and egressing.

HEARING EXAMINER DICKMAN: Yeah. So I have a question on that one.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: The width of the waterway. On the other side, it seems like your measurements go further upland. Is that -- do you have a --

MR. ROGERS: It's because that's where the seawall is, so technically that is where the water meets the shoreline, and, you know, Turrell did permit the Regatta Landing development --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- across the way years ago.

HEARING EXAMINER DICKMAN: Okay. That's another one where the seawall is back, and there is some kind of step-down or -- I get it. All right.

MR. ROGERS: Yeah. There's, like, a walkway, and then they have a --

HEARING EXAMINER DICKMAN: I'm looking at the aerial.

MR. ROGERS: -- dock out into the walkway. So their docks actually are marginal. They're only allowed to do marginal mooring over there, just so you know. Because our applicant in front of you today was there first and the waterway is tight, they couldn't do the, you know, perpendicular. They had to go with parallel mooring. So they do as well have a submerged land use in that area.

Tim Hall is here with me today, and he actually did that permitting then. So they do have a submerged land lease, and they are only allowed to do parallel mooring there --

HEARING EXAMINER DICKMAN: Gotcha.

MR. ROGERS: -- because we were first, so to speak, yeah. So technically that's why. That one was a battle, too, to say the least, from what I remember.

Number 3 of the primary, whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. This is not a marked channel. You know, Vanderbilt Lagoon is marked, but it's well further north up in the Water Turkey Bay. As you get closer to Wiggins Pass, that's where it actually becomes a marked channel. That means the waterway is open for safe navigation everywhere in between docking facilities.

So we are maintaining that boundary that exists today with marked mooring piles and just extending the fingers out to that full length dimension. So there should not be any new impacts to navigation with this proposed activity.

Number 4, whether the proposed dock facility protrudes no more than 25 percent of the width of the waterway, and, technically, over where we are, the vessel sizes on the canal side are 25.5-foot slips which, technically, is over -- you know, it's right at the 25 percent. It's -- we're slightly over it, but that's, again, existing. That's what we're allowed. So it is an encroachment in that, but it's -- it's maintaining what's currently there and allowed.

Number 5, whether the proposed location and the design of the dock facility is such the facility would not interfere with the use of neighboring docks. To our knowledge, you know, no one is subjected to this. It is existing, like I said, in regards to the encroachment. Slips are allowed to be within that setback, which, again, is why the NUA is being presented as well as the boat dock extension.

Naples One -- OneNaples, we did that most recently. The applicant did -- the owners did talk to us about it, and we clarified with them what we're proposing, and they had no objections.

The other neighbor we did not hear from in regards to this.

So moving on to secondary criteria. Number 1 with that is whether there are special conditions not involving water depth related to the subject property or waterway that justify the proposed dimension and locations of the proposed docking facility. It's -- you know, this is all -- it's all history.

Move forward on the slide, if you would. The facility is just -- oh, back one. I'm sorry. I guess I was on it.

The facility is grandfathered. We are just trying to reutilize and modernize the facility. So, you know, the special conditions is we're just using the existing allowable footprint and just reconfiguring what's there as well as adding a seawall that needs to be done.

So the method here is to demo the existing docks and then get to the shoreline, fix the shoreline, and then rebuild the marina aspect.

The next one of special is the -- it pertains to excessive decking. We are minimizing the decking on this. The finger piers are getting much skinnier just to accommodate larger beam vessels, basically. So we have minimized the decking, as I outlined before, by approximately 700 square feet overall.

Number 3, this one pertains to single-families. This one's not really applicable here.

So moving on to No. 4, whether the proposed facility would have a major impact on the waterfront view. This is -- again, I feel like I'm wash, rinse, repeat here on what I'm saying. It's existing or just utilizing what's there, and there should be no new impacts other than potentially every slip would have a boatlift now at this point, so -- but not -- the facility's not always full either, so it's not going to be 44 boats in the air at the same time. It could be, I mean, technically. Yeah, I guess we have to look at it that way. But it should be consistent with what's there today.

HEARING EXAMINER DICKMAN: With regard to that, I mean, this is strictly for the -- the unit owners, right?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: It's not going to be commercial; there's not going to be any commercial aspect to it --

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: -- or any non-unit owners renting out slips or anything like that?

MR. ROGERS: Correct. And that's one thing we had to clarify with staff because we are technically zoned commercial.

HEARING EXAMINER DICKMAN: I get it.

MR. ROGERS: But the use is multifamily. And I think it's conditioned in this -- if you were to pass this, that we would not be doing that, and, no, there's -- it's for the upland use only.

HEARING EXAMINER DICKMAN: Okay, gotcha.

MR. ROGERS: Then, basically, No. 5, pertaining to the seagrasses, and there are no seagrasses in this area either, so -- I dove this one a couple times and -- actually numerous times over the years that we've been working with them, and no seagrasses in this area.

Number 6 is the Manatee Protection Plan, and technically -- I touched on this before -- if we are coming in front of you today and asking this, you know, this place is a grandfathered, you know, facility, predates the MPP of Collier County being adopted. So anything that predates that was basically allowed to stay as-is, and if you changed it, you'd have to try to comply with the MPP. And if we did, we most likely would get the preferred ranking and be able to do 18 slips per every 100 feet of shoreline that we have, which we're well under that.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: So we -- if you have any questions, happy to answer. Both Katie and I are here. And we just would like to request approval of both of these petitions.

HEARING EXAMINER DICKMAN: I think you covered everything.

Any questions from staff at all?

MR. KELLY: No, sir.

HEARING EXAMINER DICKMAN: Do we have any speakers here today for this?

MS. PADRON: We do not have any speakers.

HEARING EXAMINER DICKMAN: Those must be your clients or --

MR. ROGERS: It helps when you pay them off. No, just kidding. It's summer, too.

HEARING EXAMINER DICKMAN: I take that back.

MR. ROGERS: John got some calls, but other than that -- we were expecting at least some, but...

HEARING EXAMINER DICKMAN: All right. Yeah. This is pretty straightforward. I understand. Yes, this area did get hit very, very hard. I think it was a 12- to 15-foot storm surge, and almost every dock in that area --

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: -- got really badly damaged.

MR. ROGERS: Yeah.

HEARING EXAMINER DICKMAN: So this is -- looks like it's going to be an improvement. I've looked at everything. I don't have any questions for you unless -- does counsel anything else to say or -- there's no rebuttal?

MS. BERKEY: One more thing.

HEARING EXAMINER DICKMAN: Ah.

MS. BERKEY: And if I may, that's the association's representative, the president, Matt Seely. He just wanted me to mention the hardship. Naturally, as you would imagine, post Hurricane Ian, that it's been two years without their pool and spa because of the seawall holding the upland improvements that are necessary. Again, with the pool and spa, it's really a reorientation, and, in fact, the setbacks will be more generous than they exist today, so we appreciate your time and attention to this very important series of cases.

HEARING EXAMINER DICKMAN: Yeah, no problem. I get it. There's a lot of activity right there. The residents are going to have -- living with the construction all over the place, so I get it.

Nice presentation. Nice to meet you and see you. Good job.

I'll get a decision -- decisions, plural, out as soon as I can.

MS. BERKEY: Thank you very much.

HEARING EXAMINER DICKMAN: All right. Great.

Are you sure there's nobody here to speak?

Okay. Thank you.

Anything else?

(No response.)

HEARING EXAMINER DICKMAN: All right. Well, I want to thank everybody for setting up this meeting. It's a lot of work for staff, and I appreciate all the behind-the-scenes work that everyone does and the court reporter being here. So thank you, everybody. Appreciate it.

We're adjourned.

August 30, 2024

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 2:29 p.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.