

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 29, 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
Eric Ortman, Principal Planner
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good afternoon, everyone. August 29, 2024. It's 1 p.m., and this is the Collier County Hearing Examiner meeting.

Please rise for the Pledge.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right. Wonderful. Thank you. And welcome, everyone.

My name's Andrew Dickman. I'm an attorney. I've been a member of the Florida Bar for over 20 years. I've been retained by the Collier County Board of Commissioners to execute the duties of the Hearing Examiner as prescribed in the code of ordinances.

My job is to be here as a neutral decision-maker to hear the evidence presented to me here before you, to read also the evidence that's in the record, that's in the packet, the applications, so on and so forth, and to render a decision within 30 days. I will not be making a decision today. By code, I do that within 30 days in a written decision that will be filed with the county.

Everything that -- anybody who is going to speak here today will have to do so under oath, and in a minute, I'll ask that the court reporter swear anyone in that's going to testify here today.

As I said, my job is to be a neutral decision-maker and, as such, I'm going to disclose that I have had no prior conversations with anyone about any of these applications whatsoever. I have read what is in the record that the public sees and have made myself familiar with these applications. But other than that, I've not met with staff, have not met with applicants, have not met with anyone to discuss anything outside of the confines of this hearing today.

Very important, if you're going to speak here today, the testimony I would like is really testimony that is directed -- directed towards the criteria that I have to look at to review each application. Obviously, you say whatever you like. It's a public meeting, so you can speak about almost anything, but it won't really help me very much.

We're an informal gathering here, so I want you to relax. Don't be worried about speaking in these microphones and so forth and so on; however, whatever you say will be captured for posterity and forever be recorded by our court reporter here. So please try to speak clearly and not too fast. She will stop you if you do, and we will have to all put money in the cookie jar for violating that rule.

This is a hybrid meeting. The county has graciously made it available to the public to attend not only in person, but via Zoom, so we may have some participation that way as well.

The process that we're going to follow is I like to have the county first come up and introduce the item. They have drafted a staff report. They don't have to go through the whole thing, but I would like to have a little introduction. Also, their recommendation, any conditions that they are recommending. They'll tell us a little bit about the noticing, put that into the record. Then we'll have the applicant or the applicant's representative at the podium near the -- nearest to the court reporter, and then from there, we'll go to any public speakers who have signed up to speak today, and then I will allow for some time for rebuttal, if necessary, by the applicant or the applicant's representative.

So having said all that, anyone who is going to testify here today or thinks that they may testify here today, please stand, raise your right hand, and our trusty court reporter will swear you in.

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

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

HEARING EXAMINER DICKMAN: All right. Very good. Thank you, everyone.

And once again, I want to thank the county for scheduling these at 1 o'clock. I hope it's not too much of a burden for them or for the public. It's just very difficult for me to be here at 9 o'clock on Thursdays when I'm frequently out of town on Wednesdays.

So anyway, we'll get started if -- unless there's changes to the agenda, we'll get started with the first item. There are two items that I see on the agenda here today. Are there any changes, or are we just going forward with those two?

That's what you get for being late.

MR. BOSI: Mike Bosi, Planning and Zoning director. No changes. No changes.

HEARING EXAMINER DICKMAN: All right. All right. 3A. Who's up?

MR. ORTMAN: Me. Good afternoon, Mr. Hearing Examiner.

HEARING EXAMINER DICKMAN: Good afternoon.

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

***This is Petition PDI-PL20240005412, a request for an insubstantial change to Ordinance 21-26, the Lawmetka Plaza PUD, which was created by Ordinance 02-51, as amended, to increase -- the purpose of the petition is to increase the time frame to construct turn lanes from Wiggins Pass Road into the PUD from 24 months to 48 months from the date that the Lawmetka Plaza PUDA was approved or prior to the issuance of the certificate of occupancy for Publix, whichever comes first.

The initial construction of the turn lanes was delayed due to a change in tenancy of the plaza, which required a change in the design of the roadway leading into the plaza. The 24-hour -- 24-month time frame expired in July of 2023. Design of transportation improvements has been completed and is or is going to be immediately put out to construction bid.

The 34-acre PUD is in the northwest quadrant of the intersection of U.S. 41 and Wiggins Pass Road, Section 16, Township 28 South, Range 25 East.

Transportation Planning Services is in support of the request, as it does not involve an increase in traffic or intensity of development. The project will also have to comply with the applicable concurrency management regulations.

Two sections of the LDC, 10.02.13.E.1 and E.2, list the criteria which are used to assess the petition. All answers to the criteria were negative, showing that there will be no negative impacts to the project or PUD as a result of this petition.

In fact, there may be a benefit. The area has been prone to some flooding. The transportation improvements will address stormwater management in the area, which will likely be a benefit.

A NIM was held July 30th, Doubletree Suites Hilton. Todd Mathes of Benderson Properties gave an overview of the petition stating that it was nothing more than the time frame being increased from 24 to 48 months. That was the sole purpose of the petition.

Six members of the public attended in person. Most questions asked of Mr. Mathes related to transportation improvements and not the petition at hand. Mr. Mathes offered to stay after the conclusion of the NIM as long as people had questions. I, myself, left when the official NIM was over.

All required publications were completed. The legal ad was run in the *Naples Daily News*, and signs were posted on the property on August 9th.

There was one member of the public who I see in the audience today -- we have had conversations by phone, in person, and I believe also in e-mail -- who has some opposition to the project.

Otherwise, staff recommends approval of Petition 20240005412.

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

Quick question, maybe for you or for the applicant. In any way did the law -- the actual citation escapes me, but I know there's new law now that when an area is affected by a governor's

emergency -- state of emergency. It does toll the time for certain development orders to a period of 48 months. I don't know if you guys looked at that. I know it's a complicated matrix now that local governments are having to keep track of these emergency -- state of emergencies in each county where it does toll the time on certain types of approvals.

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

We've had a number of requests that have specifically cited executive orders for the tolling of permits. I don't believe that that was submitted within this individual application, which is an application to amend the PUD in an unsubstantial way. I believe it would be supported -- the extension of time would be supported if he did -- if the applicant chose that other route. They chose a more direct route in terms of just the DPI application.

HEARING EXAMINER DICKMAN: Okay. I was just asking, because you mentioned that July it had expired. So we need to -- they're asking for that, but it may not have actually -- if we actually -- and I've had to do the math on some of these things. And if you actually sat down and did the math on the number of state of emergencies that have been declared since that law was enacted and since this approval took place, the actual deadline may not have actually come and gone, so -- but either way, we can just hear the application. I just want to put that out there as a reference for the folks here.

Very good. Thank you. Appreciate it.

Is the applicant here?

Good afternoon, sir.

MR. MATHES: Good afternoon. Thank you. For the record, my name is Todd Mathes. I'm here representing Benderson Development. We are the property owner.

I did prepare a presentation. I'll make it very brief because Eric's summary was very complete.

The property in question -- next slide -- is at the northwest quadrant of U.S. 41 and Wiggins Pass Road. We actually own that shopping center and the shopping center kitty corner to it that has furniture anchors.

Next slide.

We are requesting to amend Ordinance 060821 to provide more time in the ordinance to complete this turn lane improvement. You raised an important question: Is this -- is that time period -- was it tolled by and still being tolled by the executive orders. Our position was, yes, it is in a tolling period, and so no notice is actually required until six months after the tolling period expires. Nevertheless, because this is an important improvement both to us and to the county, in part, to remedy some situations not attributable to us but which -- I think you're going to hear about from Mr. Fee about flooding in the roadway and ponding. And for the avoidance of doubt, we agreed to amend the ordinance through this process to create a new hard deadline that would not be within that tolling question as we pursued other permits related to this property. So that's really why we're here. I do believe we are within a tolling period, but this will obviate the need to have that discussion, I guess, is a good way of looking at it, and ensure that those improvements are made.

So next slide.

The turn lanes, as Mr. Ortman indicated, were not built -- what -- it's a tragic story that hopefully has a happy ending. We did a shopping center expansion for Lucky's. We built out a Lucky's grocery store. They put all their racks in there, and they went nationally bankrupt and never opened their doors. And so we're going to tear that building down, that new unused building, and we're going to rebuild it as a different building all having nothing to do with what we're asking for from you, but interesting background.

HEARING EXAMINER DICKMAN: Yeah. Wasn't that during COVID when a lot of things in -- I'm familiar with that shopping center.

MR. MATHES: Exactly, exactly. The pandemic nationally had a really interesting effect on food supply and grocery stores, and lots of grocery stores were expanding, and --

HEARING EXAMINER DICKMAN: Okay.

MR. MATHES: -- the grocery business evolved.

HEARING EXAMINER DICKMAN: This is Wiggins?

MR. MATHES: That's 41. Wiggins is on the left side of the page.

HEARING EXAMINER DICKMAN: So north is this way?

MR. MATHES: North is to the right, yes; page right.

HEARING EXAMINER DICKMAN: Right.

MR. MATHES: Okay. So next slide.

Those are the traffic improvements which were designed and engineered by our professional engineers who are here with me today, Becca Bond and Kellie Clark from Kimley-Horn, and those are the improvements that we are going to undertake under this new deadline which, if approved, would be -- next slide.

The outside date would be July 13th, 2025. As written, it's the earlier of a CO for Publix for the revised time frame. It boils down to July 13th, 2025. We are ready to undertake those improvements, and we are ready to build a Publix there, so we're excited about it.

HEARING EXAMINER DICKMAN: But is -- you're naming a Publix there?

MR. MATHES: We are naming a Publix there. Publix --

HEARING EXAMINER DICKMAN: Why wouldn't you name -- or a -- or a similar grocery store of similar manner?

MR. MATHES: You know --

HEARING EXAMINER DICKMAN: Because --

MR. MATHES: -- we certainly could have, and that might be an appropriate adjustment. There is a signed lease with Publix. We are -- we received our permit to do this site work yesterday.

HEARING EXAMINER DICKMAN: Yeah.

MR. MATHES: So it's all pretty certain at this point.

HEARING EXAMINER DICKMAN: I love Publix. I'm just saying, things happen, and I would hate for you to have to come back to change Publix --

MR. MATHES: That is very --

HEARING EXAMINER DICKMAN: -- to something else. We'll talk about that in a minute.

MR. MATHES: A new grocery store to be constructed in connection with the SDPA we received yesterday. I'm sure we can provide the number for the record.

HEARING EXAMINER DICKMAN: Okay.

MR. MATHES: Next slide. I think that's all we have. So, again --

HEARING EXAMINER DICKMAN: Thank you. I hate to be rushing you. I'm not really trying to. Maybe it's the cookies that have got me jacked up on sugar here now.

I would like to get some testimony from your experts, your engineers, that 48 months is sufficient to get this done. I just want to get that on the record from -- you said you had your engineers here?

MR. MATHES: Sure, I do.

HEARING EXAMINER DICKMAN: Okay.

MR. MATHES: Kellie, if you could come up.

So where we are -- and I'll just introduce her. So Kellie Clark is our civil engineer from Kimley-Horn. We have these improvements designed. We have submitted for a right-of-way permit. We have comments. I'm going to respond to those comments. We also put this project out to bid, so we're ready to select contractors. So implementation by -- and delivery by July 13th,

2025, is adequate from our standpoint as the contractor, and certainly we'll let Kellie add to where we are here.

HEARING EXAMINER DICKMAN: Yeah. Hi, Kellie. If you could just put your credentials on the record as an engineer and whatever.

MS. CLARK: Yes. My name is Kellie Clark. I'm a professional engineer with the state of Florida. I work at Kimley-Horn & Associates.

HEARING EXAMINER DICKMAN: Okay. In your opinion, is 48 months enough time to adequately complete the permitting and construction of these road improvements?

MS. CLARK: Yes. As Todd mentioned, the permitting was complete for this, so we do have a permit in hand.

HEARING EXAMINER DICKMAN: Okay.

MS. CLARK: So really the next step is with the contractor and getting the improvement constructed.

HEARING EXAMINER DICKMAN: Okay.

MS. CLARK: So that would be the main item there. And so, yes, that should be sufficient.

HEARING EXAMINER DICKMAN: Thank you very much. Appreciate it.

All right. Are you finished? Or do you want to keep going?

MR. MATHES: No. That's all I have. Thank you.

HEARING EXAMINER DICKMAN: Okay. All right. Stick around. There may be -- we may need you.

Any speakers?

MS. PADRON: We have no speakers.

HEARING EXAMINER DICKMAN: Oh, wait. There's a gentleman over here. Sorry. I should have told you to fill out a slip. Sorry. My bad. I'll remember that.

MR. FEE: Good afternoon.

HEARING EXAMINER DICKMAN: How are you, sir?

MR. FEE: Good. How about yourself?

HEARING EXAMINER DICKMAN: Lovely. I hope that's not rain outside --

MR. BOSI: Yeah, it is.

HEARING EXAMINER DICKMAN: -- but it probably it is.

MR. FEE: For the record, my name is Doug Fee. I'll fill out a slip afterwards.

HEARING EXAMINER DICKMAN: Thank you.

MR. FEE: I have three pictures. I don't know if you have a visualizer, or do I just --

HEARING EXAMINER DICKMAN: No, we don't. We don't.

MR. FEE: Could I just hand these to you?

HEARING EXAMINER DICKMAN: You can if you'd like. Do you have copies for the applicant at all?

MR. FEE: You can have these.

HEARING EXAMINER DICKMAN: Well, okay. All right. I'm going to take a look at them, and then I want you to show them to the applicant so that he can see what you're showing me.

MR. FEE: Okay.

HEARING EXAMINER DICKMAN: Actually, I'm going to pass them down to the county so the county can see them, and then -- okay. That looks like flooding on Wiggins, got it, after a rain or something.

So let the applicant -- after you-all see it, let the applicant have a look at them so that he sees what's being shown.

Go ahead, Mr. Feeney?

MR. FEE: Fee, F-e-e.

HEARING EXAMINER DICKMAN: Fee. How do you spell that; F-e-e?

MR. FEE: F-e-e.

HEARING EXAMINER DICKMAN: Oh, great, okay.

MR. FEE: And I'm a resident of this area. I frequent Wiggins Pass Road every day. And I go to the plaza. I've lived in the area about 23 years; was involved in the original Lawmetka PUD approval meetings. And Mr. Ortman misspoke because I am not opposed to this --

HEARING EXAMINER DICKMAN: Okay.

MR. FEE: -- project at all.

HEARING EXAMINER DICKMAN: Okay.

MR. FEE: I'm pointing out some issues that we've had that I don't even blame the developer. They're on the county's road. Okay. The history is you had one lane that turned west on Wiggins Pass Road. This was 2019. They then did a second lane coming off of 41 going west. So now there are two lanes. They then merge about a half mile -- or not even a half mile -- to go into two lanes -- one lane, okay, which is very short. And you have a lot of traffic that goes around that curve going into the neighborhood, and you have to merge really quick.

HEARING EXAMINER DICKMAN: So are you -- so if you're -- if we're on Wiggins and we're heading west, that's back where you live in one of the neighborhoods on the left-hand side?

MR. FEE: Yes, sir.

HEARING EXAMINER DICKMAN: Okay. Which neighborhood is that?

MR. FEE: It's called Gulf Harbor.

HEARING EXAMINER DICKMAN: Okay. I'm familiar with the area. There's a golf course being built there down the road, right, and things like that, right?

MR. FEE: Yes, yes.

HEARING EXAMINER DICKMAN: Okay.

MR. FEE: And so, like any resident, we want to make sure that the roads are built and engineered properly. We've been waiting for the turn lanes to go in, because we've been told that this will eliminate -- this should do away with the flooding.

Now, you have to understand that for six months of the year, when it rains, you have water that stays on the one lane, and sometimes it goes into the second lane. So you have cars coming around 41, and they don't realize there's a flood.

There are vents that are there, but I don't know where they drain to, okay. But Mr. Mathes has told us, and the county has told us, that when this project is built, it should eliminate any of that water, and I'm excited about that because right now, almost on a daily basis, whenever it rains, our road is not safe, okay. And I'm not blaming Benderson. This is a county issue. It's a county road. The county knows all about it. The residents of the area know about it as well, okay.

So I guess I would say I support whatever they're asking for, but build it as soon as you can because it was supposed to be built last July. If we wait another two years, we're putting up with this situation, okay. But I am not opposed. I mean, the project's built.

HEARING EXAMINER DICKMAN: Yeah.

MR. FEE: This is in the right-of-way.

HEARING EXAMINER DICKMAN: Yeah.

MR. FEE: This is to get into the plaza which all of us go. But it is very important, and that's the reason why I'm down here.

HEARING EXAMINER DICKMAN: Okay. All right. I get it. So your concern, if I can summarize, is stormwater drainage flooding in the right-of-way? Okay.

MR. FEE: Right.

HEARING EXAMINER DICKMAN: Got it.

MR. FEE: Which I think is a county issue, and I don't always know the appropriate place.

HEARING EXAMINER DICKMAN: It may or may not be. We'll find out.

MR. FEE: Yeah. Okay, thank you.

HEARING EXAMINER DICKMAN: Thank you, Mr. Fee. I appreciate it.

MR. FEE: That's all.

HEARING EXAMINER DICKMAN: First and foremost, I want to -- I know that we're here -- the reason we're here is because it's an insubstantial change. If it was a substantial change, it would be out of my jurisdiction. Am I correct on that?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: Yeah. So I'm an insubstantial person/guy. I do insubstantial things.

MR. BOSI: I believe you're an insubstantial decider.

HEARING EXAMINER DICKMAN: Okay. I think -- so I would imagine that the applicant in this PUD, they've already gone through all the stormwater stuff. They have whatever's in place to keep their stormwater on site. That's usually the -- I'm just going to be generic about it; that's usually the policy is that any development typically either keeps it totally on site or they figure out a way -- how to treat it before it gets into a situation where there is flooding.

Now, I would think that -- I know that there is quite a bit of development happening on the other end of Wiggins towards Vanderbilt Drive, and I don't know if the drain -- can somebody at least -- just for information purposes, does anybody have any information regarding where that water should be draining off to? In the swales?

MS. CLARK: I can.

HEARING EXAMINER DICKMAN: All right. Come on up. Yeah, great. I'm just curious why it is ponding there. Thank you.

MS. CLARK: Again, Kellie Clark with Kimley-Horn.

So currently in that part of Wiggins Pass for that -- for the north side, that area is the upstream end of a drainage basin. And so, really, it's the water coming off the road that's getting into -- currently it's a swale, a shallow swale that flows to the west out into a swale that's definitely more substantial.

HEARING EXAMINER DICKMAN: And there's a creek down there, too, I think.

MS. CLARK: Yeah, I don't -- from there, that, like, ditch along the road continues to flow west, and then I'm not sure exactly where it goes from there.

HEARING EXAMINER DICKMAN: So there aren't any culverts that go into your client's property that are clogged or anything like that?

MS. CLARK: No. It's all --

HEARING EXAMINER DICKMAN: Like, there's nothing --

MS. CLARK: It's all, like, drainage within the right-of-way.

HEARING EXAMINER DICKMAN: Okay. So there's drainage that needs to be dealt with -- because I would imagine it flows west. It seems to be the way that it should go, because I believe that there is a -- some kind of creek or something in that area.

MS. CLARK: It's shedding off of the road and then making its way west along the road there.

The proposed project, as it's permitted currently, includes adding closed drainage, so inlets along that portion of the road and pipe network, that ultimately outfalls to the ditch further to the west. So still along that road along the right-of-way but out falling directly through pipes rather than the open drainage system that's currently there.

HEARING EXAMINER DICKMAN: Okay. All right. Fine.

Was there any -- I don't know if you or your client, either one of you, want to further rebut anything that was said by Mr. Fee, but he did say he's not opposed to it. His biggest

concern -- and we'll let him -- we'll make sure that those photographs are in the record. But his biggest concern is really just the pond -- it looks like in a heavy rain there's -- it shouldn't be sitting there like that. So there's obviously some kind of stormwater issue probably in the swale or something like that that's blocking the drainage. Maybe an old culvert that's not working or something like that. But that's probably a county issue.

MS. CLARK: Yeah. I can't speak to it directly other than if there's just not positive drain -- like, substantial positive drainage, that might just be a part of what is going on right there, so that's where adding those additional -- a way out would be helpful.

HEARING EXAMINER DICKMAN: All right. Any other speakers? Was that the only one?

MS. PADRON: That's correct.

HEARING EXAMINER DICKMAN: All right. I want to address a couple of things here. One I brought up at the very beginning is the tolling period because -- so I want to talk through this. So if we -- if I were to approve this request -- come on up. This is going to be a little bit of a dialogue here. I figure we'll get our mathematical stuff out.

If I were to approve this, does that start the clock over again upon rendition of my decision? So it would be 48 months from when? What are we saying here?

MR. MATHES: We believe -- our understanding, as written -- and I think it was important to staff -- is it's 48 months from the ordinance -- the original adoption, which provides that outside date of July 13th, 2025.

HEARING EXAMINER DICKMAN: So it reaches back, okay. So in the event that there is some kind of tolling period that may have occurred due to emergency, it could be -- that outside date could be different, but I don't really think that I need to do the mathematical calculations right now.

MR. MATHES: Again, I think, you know, our understanding is the applicant is -- this decision, if it supports the request, would wash out the tolling periods currently available because you would have an -- you would -- it would require a new executive order after the date of your decision to toll something that occurred after that.

So, again, I believe that this insubstantial decision is actually quite substantial because it's shortening our clock to get that work done tied to some other work.

HEARING EXAMINER DICKMAN: Well, I guess that's why I'm asking because what we're saying is that we're just making an insubstantial change, but it reaches back to the starting date, which may still -- I'm going to let you and your lawyers and everybody else figure it out. But it still may somehow mean that you get the benefit of those tolling periods as well.

But I'll go along with this, let everybody figure it out because -- but, you know, I don't know that this is -- so if we set this date, the applicant's saying that it wipes out any prior emergency orders and that anything after this date would affect it. But I'm not so sure about that, and I'm not -- I'll have to think about it, and -- but I don't -- I don't know that me making an insubstantial change just to that date, it eliminates -- because your underlying PUD is still alive, it's still there, it's still valid, and we're just talking about making an insubstantial change to it.

So that's neither here nor there, but I wanted to make that clear that that's something that I'm going to think about a little bit. And it's one of those things that every local government now has to deal with and is working -- they keep matrix -- you know, they have to do the math on all these different development orders to kind of keep track of everything.

The other question I do want to ask -- and I brought it up -- and I wasn't being flip about it, just so you know, about the Publix. And I wanted to ask the county what your feeling is about that, like, having -- actually naming a private business grocer in there, and if somehow that changes, what do we do?

MR. BOSI: And I -- Mike Bosi again, Planning and Zoning director.

I think you're correct in the term, the more generic probably the better for the protection of the applicant. But if the applicant is confident that he has secured that with a Publix and he's not concerned that we'll have to come back in a year and a half, that's a decision that he's well entitled to make.

HEARING EXAMINER DICKMAN: Okay. Fine. So if I were to say something like Publix, comma, or something of equivalent -- or a grocer of equivalent size and type, are you okay with that?

MR. MATHES: That would be -- that would be totally adequate, and because of the way we believe, and believe it's important to the county, the dates work, that July 13th date will be the earlier date that we have to comply by.

HEARING EXAMINER DICKMAN: Okay. And you're okay if I put that little -- I just don't want to have to change Publix here by hearing --

MR. BOSI: Staff is okay.

HEARING EXAMINER DICKMAN: And honestly, it's not about Publix, and I'm sure they don't make their decisions lightly. You know, they do their homework, and so they don't just change that quickly. But I just kind of feel like it's better to have some kind of caveat there that if for some reason down the road it changes to a, I don't know -- I don't know what the other equivalent is -- Winn-Dixie -- I don't know. I don't do the shopping much anymore.

MR. MATHES: Call it a Wegman's.

HEARING EXAMINER DICKMAN: We'll figure it out. All right. So you're okay with that.

Anything else that you would like to say at all?

MR. MATHES: I appreciate Mr. Fee's non-opposition and understand that the point is about the stormwater.

HEARING EXAMINER DICKMAN: Yeah, I know.

MR. MATHES: We do believe we are going to solve the problem that we have --

HEARING EXAMINER DICKMAN: Yeah. I think he just -- I think he made a valid point. Nobody likes to have flooding on the right-of-way. It's a problem. And, you know, I do know that your shopping center was -- I think there was a DSW or something in there. There were other stores that went out of business and --

MR. MATHES: We've had a lot of turnover.

HEARING EXAMINER DICKMAN: -- a couple of them held on in there. So -- so, yeah. I know it's good that it's back up and running again, I guess. Nobody likes to have empty space in those places.

All right. So anything else from the county? Nothing?

MR. BOSI: No.

HEARING EXAMINER DICKMAN: No other -- nobody online?

MS. PADRON: No, sir.

HEARING EXAMINER DICKMAN: Okay. All right.

Well, thanks for being here. I'll get a decision out as quickly as possible.

Mr. Fee, thank you for coming in the middle of the day like this. I appreciate it. And if I could -- if somebody can send me a copy -- scan his exhibits and send them to me for me, please, I'd appreciate it. Yeah, he's got them, or somebody's got them. I want to make sure we get them.

All right. That was fun. Let's go on to Item No. B.

Thank you.

MR. MATHES: Thank you.

HEARING EXAMINER DICKMAN: All right. Now we're going to a whole different topic.

MR. ORTMAN: ***Good afternoon, again. For the record, Eric Ortman, principal

planner.

This is Petition CUD-PL20240005623, a request for determination that a sterile processing facility, or SPC, is comparable with the list of permitted uses in Tract A and with the Purpose and Intent Statement of the Naples Daily News Business Park Planned Unit Development.

Those cookies look good.

The proposed use is to collect used non-sterile medical and surgical equipment from area NCH facilities, take it to a centralized facility, sterilize it, repackage it, and deliver it back to the NCH facilities. There is not a specific SIC code for a sterile processing facility.

The applicant and both -- staff both agree that SIC 5407 is the most appropriate code, and that includes the wholesale -- it's for the wholesale distribution of medical and surgical equipment.

There will be no sales, wholesale or otherwise. The sterilized equipment will be distributed back to the NCH facilities.

The 35-acre PUD is located on the south side of Immokalee Road approximately three-quarters of a mile east of the intersection of Immokalee and 41 North in Section 27, Township 48 South, Range 25 East, Collier County, Florida.

To the east and west of the PUD, there is commercial development. To the north and south, there is a mixture of residential and commercial development. The closest home to the proposed sterile processing facility is 900 feet from the loading dock, and the main structure building lies between the loading dock and the closest residence.

All activities associated with the SPC, except for the loading and the unloading, will occur indoors. Compared to the original use of newspaper production, the SPC will be a lower intensity operation. Pending demand, the facility may run up to three shifts a day; however, loading and unloading will generally occur between 7 and 9 in the morning and 4 and 6 in the afternoon.

LDC 10.02.06.K lists the criteria to assess the petition, and the petitioner successfully meets all of the criteria.

Tractor-trailers and other large trucks will no longer be needed to deliver rolls of paper as they were when it was used for newspaper production.

The traffic analysis shows that there will be slightly fewer trips generated by the proposed use compared to the former use.

Public notice requirements for a comparable use are limited to a newspaper advertisement, which was run in the *Naples Daily News* on August 9th, 2024. The applicant also posted three signs on the property announcing the petition and the public hearing. There has been no public correspondence regarding this petition, and staff recommends approval.

HEARING EXAMINER DICKMAN: Okay. Thank you. Appreciate it. Good job.

The cookies are right here. Come and get them. You get a cookie for that one.

Hey, Bob, over here.

MR. MULHERE: Oh, I've got to go over there?

HEARING EXAMINER DICKMAN: Yeah. Sorry. We have rules here.

MR. MULHERE: Oh, okay. This is a better podium anyway.

For the record, Bob Mulhere with Bowman Consulting. Thank you.

Here with me, sitting right over there, the last three non-staff persons in the room, Jack Ullrich, who is the executive -- I don't know if this is his title. It changes a lot, but I have him down as executive director of corporate real estate and construction. And Jack's been with NCH for a long time. Mark Shannon is a senior project manager and principal with Studio Plus. We work directly for Studio Plus, who is contracted with NCH.

And Norm Trebilcock is not here. He had an emergency. He had to go out of the town. David Dratnol is sitting here, who works with Norm, for transportation issues.

Next slide, please.

HEARING EXAMINER DICKMAN: Gotcha.

MR. MULHERE: I'll go through this quickly, because I think Eric did a really nice job summarizing the issues.

Just in case anybody's online looking or whatever, that's the location. This PUD was approved in 2006 and amended in 2011. It was then owned by the Naples Daily News. Obviously, the print journalism industry has changed a lot in a relatively short period of time, since 2006, when they had printing presses and trucks and a whole bunch of employees, and they were delivering paper and newspapers through Lee and Collier Counties.

The same thing has happened with NCH with respect to the growth of Collier County and South Lee County, and NCH has two major campuses, but they have numerable satellite offices and are the types of facilities serving Eastern Collier, facilities on Marco Island, facilities in the City of Naples, moving north all the way into South Lee County.

So with the population growth, NCH, to meet that demand, has a lot of facilities, and in addition to this being more economically efficient to handle central processing this way, in a building that NCH acquired for the principal purpose of centralizing so many of their operations that are supporting operations to the medical operations. For example, accounting and HR and all those types of things are housed in this building.

The other benefit that I refer to, though, is having control over that sterile processing operation rather than having it occur in so many different locations. You know, this is a necessary operation for instrument and equipment, and this will centralize that and allow for both economic and quality control in that function.

Next slide, please.

So I'll just go over -- you can switch to the next one. Eric addressed the SIC Code 5047. I talked to Ray, because there really wasn't an SIC code. This was the closest and most comparable SIC code. Although they're not actually selling; they're operating in a similar function to moving wholesale stuff.

This is just -- I only included one of the tables from the transportation, but you can see, as Eric mentioned, a nominal reduction, actually, in trips. The hours of operation -- the actual processing will occur throughout the day, but the trucks will be loaded and will leave the facility, for the most part, prior to a.m. peak hour and arrive back prior to p.m. peak hour. They'll be leaving early in the morning to make these deliveries. And if you had a medical procedure recently, like I did, I had to be at the hospital at 5:45 a.m., so they need to get that equipment pretty early, so they won't really be affecting p.m. peak-hour trips, which I think is important.

By the way, the last column there, p.m. peak hour, the exiting and enter numbers are juxtaposed. Actually, the titles are juxtaposed. So where it says "exit," it should be "entering," and where it says "entering" should be "exiting," just for the record. David picked that out.

Let's see. Next slide, please.

There's a criteria in the code. I think it's Section 10 -- 10.02.06.K, comparable-use criteria. We just talked about the operating hours and the traffic. On the types of vehicles, this facility was constructed with five fairly large loading docks in the rear of the facility when it was constructed for Naples Daily News, and NCH will use those facilities. There's no need to expand them. It's estimated that the number of trucks will be about 20 a day. These are not big tractor-trailers. They're you know, van-type trucks that would be able to bring the sterilized materials and collect the sterilized materials.

The site has 350 parking spaces, which is actually, at this point, significantly more than is necessary to accommodate the employees. This use would generate a few parking-space needs for employees who will be working in the centralized processing facility and manning the trucks.

Next page, please.

This just shows you the -- there's a photo of the loading docks in the rear of the building. That's the approved parking matrix. If you look on the right, it says "provided spaces, 350," not

including loading, and then that exhibit that is a little bit hard to read just shows you the graphic from the approved SDP as to where those five loading docks are located.

Next slide, please.

Business practices and activities. I think we kind of went over this. This former Naples Daily News site, now the NCH administrative facility, will house and continue to house probably some additional centralized kind of support facilities. That's that accounting, human resources, emergency management. A couple years ago, there was a comparable use approved for blood banking, and so this will probably continue.

At some point there may be a use that wouldn't fall under, appropriately, the criteria for a comparable use, and then they'll have to amend the PUD if that's the case.

Next slide, please.

So the effect of the -- that the proposed use would have on neighboring properties in relation to noise, glare, and odor, all of these activities will occur inside other than the loading and unloading of the trucks which is, you know, a use that, you know, occurred to a much greater degree under the Naples Daily News. In addition, it is over a thousand feet to the closest home, residential unit, from those loading docks.

Next slide, please.

So it asked the question whether the proposed use is consistent with the GMP. The future land-use designation doesn't specifically prohibit the proposed use, or where the future land-use designation contains a specific list of uses, the proposed use is not omitted. I'll cut to the chase. In this case, if the use is deemed to be comparable with the other uses, then it would be consistent with the GMP. So it's really a fairly simple analysis.

Next slide.

I'm not sure why E is there, because we already talked about compatibility, but Eric went over that. You know, you have -- to the south across the Creekside Boulevard is the parking area for Arthrex and for a golf course, and then to the east and west there's commercial development. This use is not incompatible with the surrounding area and won't result in any kind of increase in noise, odor, or glare that might negatively affect the neighborhood, so I think it is compatible and consistent.

And then F is any additional relevant information as may be required by the County Manager or designee. None was requested, so moving to the last slide.

In conclusion: With the staff recommendation for approval, we believe this request for this particular use is comparable. It will be a benefit to the public, again, because it will have a -- the effect of allowing for greater quality control in that process and centralized processing for that use. So thank you.

HEARING EXAMINER DICKMAN: A couple questions for you.

MR. MULHERE: Sure.

HEARING EXAMINER DICKMAN: So the building, I think, is a few stories. It may be one or two stories.

MR. SHANNON: It's almost three.

HEARING EXAMINER DICKMAN: Almost three. Two and a half. All right.

So it's going to continue to have its administrative work there.

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: And then what part of the -- okay. What percentage of the building -- that's going to continue --

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: -- the administrative work and --

MR. MULHERE: And some warehousing. There's storage.

HEARING EXAMINER DICKMAN: -- training. I think -- for some reason I feel like I

looked at this once before, this building.

MR. MULHERE: I can't remember if you were here when we did the last -- I think you were.

HEARING EXAMINER DICKMAN: I think that's why it's like -- I've refreshed my mind with this. But I know that there's -- there were quite a few people working there just doing training and --

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: -- things of that nature up -- and it was, like, on the second floor. So do you know what percentage of this building is going to be dedicated to the sterilization use? That's just one question.

MR. MULHERE: Yeah. It's relatively low. I thought I had the square footage number.

MR. ORTMAN: It's a little over 22.

MR. MULHERE: Twenty-three?

MR. ORTMAN: Twenty-two.

MR. MULHERE: Twenty-two. What's the total square footage of that building, Mark?

MR. ORTMAN: Total square footage is 186,000.

MR. MULHERE: 186-.

MR. ORTMAN: A quarter.

MR. MULHERE: So you're talking about 12 percent, 14 percent.

HEARING EXAMINER DICKMAN: Got it, okay.

So when -- just to get this on the record, so when you do the -- a big part of this analysis has to do with traffic impact, right?

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: So is that the cumulative impact of all the uses --

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: -- together with the new -- you know, the sterilization use?

MR. MULHERE: Yes. That table includes all of the existing uses, plus the sterilization.

HEARING EXAMINER DICKMAN: Okay.

MR. MULHERE: What happens is that there was actually a reduction in the amount of warehousing space, so yes.

HEARING EXAMINER DICKMAN: Okay. And the sterilization -- so it's my understanding that, you know, this is really -- I'm going to generalize it because I'm not in the medical practice, obviously, but, you know, NCH is going to use this as a place to sterilize its equipment that it will then distribute to its various either smaller offices or the hospital --

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: -- the north hospital or the south hospital and the various, you know, doctors that are affiliated with it.

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: And it will probably be -- what kind of trucks are we talking about? Smaller trucks? Tractor-trailers?

MR. MULHERE: No. They're not tractor-trailers. I forget what the classification is. They're bigger than a van but nowhere near the size of a tractor-trailer. I don't really know the classi- -- you see them making deliveries all over.

HEARING EXAMINER DICKMAN: Okay. And --

MR. SHANNON: More specific, they'll be --

HEARING EXAMINER DICKMAN: If you're going to speak -- maybe you should stand next to Bob. I know he doesn't --

MR. MULHERE: That's all right. You know the details, so...

HEARING EXAMINER DICKMAN: He's okay. I want to get this all on the record. Get your name and all that on the record. Sorry.

MR. SHANNON: Sure.

HEARING EXAMINER DICKMAN: I just want to go through this just to make sure the record's complete.

MR. SHANNON: Mark Shannon, Studio Plus, senior project manager and principal.

The trucks that will be utilized are going to be climate-controlled box trucks. So not full-blown tractor-trailers, because they need to be able to offload either at a bay or at grade level.

HEARING EXAMINER DICKMAN: Okay. Gotcha.

Next question is going to be -- and either one of you can answer it -- is going to be, this is only -- is this only for NCH affiliation -- affiliated offices or -- I know there's -- Arthrex is there. There's, I think, Regions -- or Physicians Regional might be in that area as well. Is it just NCH?

MR. SHANNON: The products are only going to serve NCH.

HEARING EXAMINER DICKMAN: Okay.

MR. SHANNON: Only processing for their equipment.

HEARING EXAMINER DICKMAN: For their equipment, okay. And then the other question that I had is -- and I only know this because my Post Office Box is right there, and the traffic patterns have changed a little bit.

MR. MULHERE: Are you talking about when will that road open again?

HEARING EXAMINER DICKMAN: That's what I was about to ask. So here's the question because --

MR. SHANNON: I can answer.

HEARING EXAMINER DICKMAN: -- you know, I know we did some approvals to the Arthrex redevelopment or something like that, and then the next thing I know is the road right by the gas station where I get my gas is closed.

MR. MULHERE: Yes.

HEARING EXAMINER DICKMAN: And then I loop around to try to get in there, and then I get lost in there because there's so many dead ends now, and it all used to be all open and pass through.

So is anything changing with regard to this as far as, like, closing roads --

MR. MULHERE: No.

HEARING EXAMINER DICKMAN: -- and changing any of the traffic patterns or -- because the roads that I thought used to go through are now not. They're ending. They're stopped.

MR. MULHERE: Yeah. I've experienced that myself. Recently had some medical procedure and had to go -- I'm sure you can tell. I had to go to a plastic surgeon's office --

HEARING EXAMINER DICKMAN: You look great, Bob.

MR. MULHERE: -- and that -- I couldn't get -- come to think of it, you can't get there from here, is an old joke, you know, and I couldn't get there from there. But I did finally figure it out.

Yeah, I think that's going to open pretty soon. It looks like you're getting finished with that construction.

MR. SHANNON: That's under a separate project that our company is actually working on, so it should reopen in the next few months.

HEARING EXAMINER DICKMAN: That's that roundabout right there, right? Okay.

MR. SHANNON: That roundabout. It's not part of our project.

HEARING EXAMINER DICKMAN: I know.

MR. SHANNON: There is an SDPI in for our project for the sterile processing department at this property. That's simply for a water connection.

HEARING EXAMINER DICKMAN: Well, look, I only bring it up only because this whole campus is really kind of turning into an interesting medical facility. Arthrex -- am I saying that right, Arthrex?

MR. SHANNON: Arthrex, yeah.

HEARING EXAMINER DICKMAN: Thank God. That it's turning into a really interesting campus. I wish the roads would be open, but the fact that, you know, you'll re-purpose the Naples Daily News building into something that's useful for the medical industry, because that whole area is being used even a little bit north of -- is that Airport -- is that Airport? -- is where I think Physicians Regional seems to have rented some space there. So there's quite a bit of medi- -- and NCH is on the north side of --

MR. MULHERE: It's the north campus, yeah.

HEARING EXAMINER DICKMAN: -- on Immokalee.

So it's really turning into quite a nice little medical hub, if you would. And I think it's nice that the -- it's a good-looking building, and I'm glad that it could be re-purposed for something that's going to fit in with the other medical uses that are in the area.

MR. MULHERE: You know, and, frankly, the location is really good. You know, 30 years ago, downtown Naples was maybe a more central location. Right now it is no longer a central -- this is a central location. So it works pretty well, because you could get, pretty easily, east, south, and north from there.

HEARING EXAMINER DICKMAN: Okay. Great. Thanks. Thanks for your time on that.

MR. MULHERE: My pleasure.

HEARING EXAMINER DICKMAN: Do we have any public speakers here? Or obviously not here, but...

MS. PADRON: We do not.

HEARING EXAMINER DICKMAN: Can I go out and hustle some up and bring a few in? I'm getting a little bored with this. Even the cookies don't help.

MR. BELLOWS: You should advertise the cookies.

HEARING EXAMINER DICKMAN: All right. No speakers. Anything else from the county?

Bob, do you want to, like, have your experts earn any more money since they didn't get a chance?

MR. MULHERE: No. Jack would be not happy with that.

HEARING EXAMINER DICKMAN: Okay. All right. Good. Know when to say "enough is enough."

All right. Well, I understand this one very well. I seem to be getting a lot of applications in this area. They're all of similar nature. I'll get a decision out as quickly as I can. Thank you very much.

MR. MULHERE: Thank you.

HEARING EXAMINER DICKMAN: And that's it, right, unless we have anything else to talk about.

MR. BOSI: Nothing else from the county.

HEARING EXAMINER DICKMAN: Okay. Once again, I've got to thank the county employees and everybody for setting this up. It's a lot of work for quite a short less-than-an-hour meeting. So thank you very much for doing that. I feel like I was just here, but I was, and I really appreciate our lovely court reporter for bringing in the homemade cookies. So they are very good.

(Applause.)

MS. PADRON: Good job, Terri.

HEARING EXAMINER DICKMAN: Yes. My blood sugar has gone way up, so -- I'm

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fine.

Thank you very much, everyone. Have a great day. Have a good long weekend and get some rest.

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There being no further business for the good of the County, the meeting was adjourned by order of the
Hearing Examiner at 1:54 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.