

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
October 23, 2014

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

Also Present: Scott A. Stone, Assistant County Attorney
Ray Bellows, Zoning Manager

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PROCEEDINGS:

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the October 23rd meeting of the Collier County Hearing Examiner.

Okay. Does that make -- now can everybody hear me?

If everybody would please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Some announcements this morning. Individual speakers will be limited to five minutes unless otherwise waived.

Decisions are final unless appealed to the Board of County Commissioners, and the Hearing Examiner will render a decision within 30 days.

Review of the agenda. We have five items on today's agenda. There are no changes to the agenda prior to this.

The prior minutes, there -- I don't believe we've gotten any prior minutes, so there's none here for approval.

We'll move directly into our advertised public hearing.

***The first petition up today is Petition No. PDI-PL20140001221. It's the Mercado Residences, LLC, for the Mercado Mixed Use Planned Unit Development.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court report.

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

HEARING EXAMINER STRAIN: Okay. Disclosures on my part. I've met with the applicant's representative, Wayne Arnold; Mike Hoyt; Mike Carr; various members of staff; and I've reviewed a lot of zoning files.

With that, I would like to ask how many members of the public are here for this particular item. Okay, thank you.

And with that, Wayne, we're going to need a presentation. I first want to announce some of the exhibits we have to date.

Exhibit A will be the staff report, Exhibit B will be the legal advertisement, and then I have a listing of several other exhibits, but I think I'll wait till you walk through your presentation to announce which those will be.

Also, one item that I discovered this morning, and I would like a clarification for the record, the requirement to list the agents and members of the corporation -- this is an LLC, Mercado Residences, LLC, and I find two people on Sunbiz listed as managers. One is Scott Lutgert, and that was the gentleman that was listed in the application; the other is a Howard B. Gutman. And I just want to make that clear for the record, and I have no conflicts with either of those.

So with that, Wayne, if you'd like to provide a presentation.

MR. ARNOLD: Good morning, Mr. Hearing Examiner. For the record, I'm Wayne Arnold, professional planner with Grady, Minor & Associates.

With me this morning is Melanie Peck, who is an employee of the Lutgert Companies managing Mercado; and Jim Carr, who's with Agnoli, Barber and Brundage, who's the professional engineer on the project.

We are amending an insubstantial change to the Mercado PUD, which was originally approved back in 2005. It was approved for two tracts of land, a mixed use tract, which has largely been improved where the commercial and some residential has been constructed, and there was a separate residential tract north of where the Wholefoods store is located. It, too, was previously approved and had a site plan approval for 84 multifamily residential dwelling units.

The owners have decided to take that product in a different direction and wish to do fee simple sales of lots rather than condominium sales. So they have asked us to come forward to modify the zero lot line product that was previously approved to modify some of the development standards in order and implement a very specific product type.

All of the perimeter setbacks, heights, standards, et cetera, that were previously approved for the residential tract at Mercato remain unchanged. We're making changes that affect only the internal parts of the project.

We've also asked for a deviation from the typical 60-foot county right-of-way cross-section in order to allow there to be a 24-foot-wide access easement. That's what was previously approved to serve the multifamily dwellings and that, too, will serve the zero lot line units very well, too.

We've had to make a few minor adjustments, and -- the deviation that we requested for the right-of-way, and we also had to add a footnote because one of the lots cannot meet the minimum lot frontage due to the unique configuration of these lots, so we've added a footnote reference that allows lot -- what will be known as Lot 34 to have a reduced frontage on the right-of-way. That's kind of a general overview.

I apologize. I know we don't have audiovisual equipment for overhead use here, but the changes are relatively minor compared to what has been previously approved.

HEARING EXAMINER STRAIN: Well -- and I think we need to focus on the previous approval and then understand the differences.

You had a multifamily product. And what height was that product going to be?

MR. ARNOLD: There were three-story townhome units that were approved that abutted the mixed use tract, and all of the units adjacent to Pelican Marsh were limited to the two stories, as is in the PUD document.

HEARING EXAMINER STRAIN: How many units total was that?

MR. CARR: Eighty-three.

MR. ARNOLD: Eighty-three units.

HEARING EXAMINER STRAIN: And the project that you're proposing now, in comparison?

MR. ARNOLD: We have 52 units on the proposed plan.

HEARING EXAMINER STRAIN: And the height of those?

MR. ARNOLD: Two stories.

HEARING EXAMINER STRAIN: No greater than two stories?

MR. ARNOLD: That's correct.

HEARING EXAMINER STRAIN: The accessway, the roadway is similar to what was previously provided for the multifamily?

MR. ARNOLD: That is correct. They all access through the mixed use project.

HEARING EXAMINER STRAIN: Did you pipe for the multifamily already?

MR. ARNOLD: I believe all the infrastructure was put in place for the multifamily dwellings, and it would be, I think, the desire to utilize some of that if we can.

HEARING EXAMINER STRAIN: So by you just using the same road system for the single-family product instead of multifamily, you're able to salvage some of that piping?

MR. ARNOLD: That's correct.

HEARING EXAMINER STRAIN: Okay. The utilities that are going to be placed -- and the utilities, you have both private and public utilities.

According to the cross-section, public utilities are going to go in where they are, apparently, and the access easement as well, and the private utilities are going on each side of that access easement?

MR. ARNOLD: I'll let Mr. Carr answer that question for you, sir.

MR. CARR: For the record, Jim Carr, Agnoli Barber & Brundage.

All utilities on the residential tract will be private. They're all privately owned and maintained. Collier County has no interest in those utilities at all. They've already been constructed and permitted that way. There's a master water meter out at U.S. 41 by Wholefoods.

So all utilities on site will be private, and that's how the right-of-way tract and the easements will be set up, as private utility easements.

HEARING EXAMINER STRAIN: Okay. So Collier County will not be involved in any maintenance or operations past that meter?

MR. CARR: Correct. We've met and discussed with them. We had our preapp meeting, and we submitted plans already showing that.

HEARING EXAMINER STRAIN: And then -- thank you for pointing that out, because I did talk to Kris VanLengen with utilities yesterday. He confirmed that as far as they're concerned it was a private system.

MR. CARR: Yes.

HEARING EXAMINER STRAIN: I just wanted confirmation on that from you.

And, Jim, I know you're the engineer and Wayne the planner. From the engineering perspective, I asked for a clarification on some points in your typical cross-section. You provided those. They look fine.

The one point, the valley gutter is going to be on one side. You're going to have an F curb or a standard upright curb on the other side where the sidewalk is?

MR. CARR: Correct, F curb on the south side that has a sidewalk adjacent, yes.

HEARING EXAMINER STRAIN: And the sidewalk will be five feet wide?

MR. CARR: Five feet. That's per the PUD.

HEARING EXAMINER STRAIN: And that will be within the easement area as well?

MR. CARR: Yes. It will be within the right-of-way tract or access easement tract. If -- any locations where it leaves the tract, there will be a separate sidewalk easement over the sidewalk.

HEARING EXAMINER STRAIN: Okay. I'm on -- I have a series of questions. I just want to make sure they've all been addressed. And it looks like we've gotten most of them.

I have -- let me pull up your exhibits. And let's start with the exhibits, and I'll need you to concur that we have the right one.

You have, I'm proposing, four exhibits. Exhibit C would be Lots 34 through 43 setback criteria, and what it does is define where your fronts, rears, and sides are in comparison to a standard layout, and then it also goes into Lots 34 and 35, which are at the end of a cul-de-sac. And they have a difference in their frontage on the roadway, or actually on the access easement.

Is that the right -- and it's -- I don't -- Kay was looking at the date. Can you provide the date for the most recent document? I believe it's the one I've -- 10/22/14.

MR. ARNOLD: Mr. Strain, I know my office sent out a corrected version of the exhibits with the corrected date change on it to Ms. Deselem yesterday afternoon.

HEARING EXAMINER STRAIN: Kay, I have 10/22/14 for that date. Is that what you've got?

MS. DESELEM: Yes, sir.

HEARING EXAMINER STRAIN: Okay. So we'll make that particular document Exhibit C. It will be titled "Lots 34 - 43 Setbacks."

Then there was provided a setback narrative. Kay, have you reviewed that narrative?

MS. DESELEM: Yes, sir.

HEARING EXAMINER STRAIN: Yeah. Did you find it consistent?

MS. DESELEM: Yes, sir.

HEARING EXAMINER STRAIN: Okay. Then we'll make -- Exhibit D will be the setback narrative.

There are a series of PUD revisions which were reflected in the staff report, somewhat refined in an updated exhibit to clarify some of the issues that I had come up with over the past week or so.

Wayne, would you walk us through the changes in those PUD revisions?

MR. ARNOLD: Okay. We had modified the footnote on Table 1 which expressed the minimum lot width reductions for cul-de-sac units. We've added a reference for what will be platted as Lot 34 due to the accessway modifications. It would not have the standard 40 feet so, therefore, we've asked for it to be as shown on the Exhibit C.

We have added a reference for the street cross-section as one of the exhibits to the PUD in the PUD document, and we added the deviation to reflect the revised 24-foot-wide cross-section as revised and in your packet.

HEARING EXAMINER STRAIN: Okay. And those PUD revisions we're going to add as Exhibit E. Within that text of the PUD revisions, it refers to an Exhibit G, which is the revised residential street cross-sections to those PUD revisions. We're going to enter that as decision Exhibit F.

MR. ARNOLD: Okay.

HEARING EXAMINER STRAIN: Although it will be the exhibit -- the reference to Exhibit G in the actual document.

And those are the only exhibits I believe we have to add to clarify the discussions that have occurred over the past week.

MR. ARNOLD: I think so, too. And just, informationally, we had provided to you an overall exhibit that showed the proposed 53-lot configuration just in the context of the Exhibit Z setback reference just for the general public's reference. The northernmost lots that abut Pelican Marsh will be more standard conventional style lots, more rectangular. The exhibit that we're referencing that's the setback exhibit is a small cluster of attached residences on the south side of our internal road that is configured a little bit more uniquely.

HEARING EXAMINER STRAIN: In designing this, had you designed it as a multifamily, would you -- could the layout have been a continuous building to a certain length?

MR. ARNOLD: I do not believe there are any restrictions on our --

MR. BELLOWS: No.

MR. ARNOLD: -- the bulk of the buildings other than two-story restriction adjacent to Pelican Marsh.

HEARING EXAMINER STRAIN: Okay. So the reduction to single-family reduced the density, but it also broke up the structure, so we're not having one continuous multifamily structure.

MR. ARNOLD: Correct.

HEARING EXAMINER STRAIN: Okay. Also, I happen to notice on the site plan that some of the setbacks are shown within the -- it's called a CDE. DE is a drainage easement. The C is either, what, community or common drainage easement?

MR. CARR: Yes. The CDE is a commercial drainage easement. There's a couple of storm pipes, as well as the dry pretreatment area on the north side of the site. Those are all covered by a commercial drainage easement, which is in favor of the Mercato commercial.

HEARING EXAMINER STRAIN: The Mercato commercial portion up front?

MR. CARR: Commercial site, yeah.

HEARING EXAMINER STRAIN: Just for clarification, there's no intention of putting buildings in that CDE, is there?

MR. CARR: No, not at all.

HEARING EXAMINER STRAIN: And is it prohibited by the CDE language?

MR. CARR: Yes. We are platting the property, so the CDE would prevent any structures from being constructed within those easements.

HEARING EXAMINER STRAIN: And I noticed on the concept plan that you kept the zero lot lines away from those easements, but I wanted to make sure because your setback plan does show the setbacks overriding those easement. So as long as you're not building in them I'm comfortable with that. Thank you.

And I believe that's all the questions I have.

Before we go to the public, is there a staff report?

MS. DESELEM: Yes, sir. For the record, Kay Deselem with zoning.

And you have the staff report, which is dated last revised September 23rd. It explains who the applicant is, provides the requested action, shows the geographic location, explains the purpose and description of the text changes that the applicant's seeking, and analyzes and lists the deviations that are being requested and goes through the insubstantial change criteria of the Land Development Code. And staff is recommending approval.

HEARING EXAMINER STRAIN: Okay. And, Kay, over the last week or so, on my read of this, there was some, I guess you could call it, tweaking or minor changes to some of the language to tighten it up. Do you have any problems with those as -- say, in contrast to your staff report, or are they consistent with everything that you had reviewed?

MS. DESELEM: I have no problem with them. They're consistent with the Growth Management Plan and the Land Development Code.

HEARING EXAMINER STRAIN: Okay. Now, this is somewhat informal. So I certainly want to

hear from the public, if any of you want to comment.

Does anybody in the public wish to speak on this issue? Sir, if you'll come up to the microphone, we'll have to swear you in, and then I'd like to hear what you have to say.

MR. SPARKS: Good morning. My name is Joe Sparks. I'm a full-time resident for 15 years in Pelican Marsh. I reside directly adjacent to this development at 1256 Grand Isle Court.

HEARING EXAMINER STRAIN: I'd first like to get you sworn in, sir, if that's okay.

Did you -- you didn't rise when I asked for those members who want to speak to be sworn in by --

MR. SPARKS: I'm sorry?

HEARING EXAMINER STRAIN: Were you sworn in by the court reporter when I asked earlier?

MR. SPARKS: No, I was not.

HEARING EXAMINER STRAIN: Okay. She'll have to do that now.

MR. SPARKS: That's fine.

(The speaker was duly sworn and indicated in the affirmative.)

MR. SPARKS: Absolutely.

HEARING EXAMINER STRAIN: Thank you, sir. Go ahead.

MR. SPARKS: I had some questions pertaining to the development. When there's changes, we get nervous because we're the nearest neighbors. And we are very much impacted by the water flow from the area into the Pelican Marsh water system.

Lake 8 is the nearest lake adjacent, and it borders the eastern region, the eastern perimeter of the Mercato. We have a number of inlets coming into that lake which flows through the entire lake system throughout Pelican Marsh. All of the lakes are interconnected.

And also we have input from Vanderbilt Beach Road from stormwater runoff. The stormwater runoff, due to the amount of increase of nonpermeable surfaces in the Mercato has always been a concern, and they have certain areas of containment that will restrict water flow and hold it at a certain GPM, gallons-per-minute flow into our system.

But in recent years, we have experienced levels that have brought the water up within -- and I have documentation and pictures -- day-to-day pictures of it where the water has come up within 3 feet of the houses in Grand Isle.

Obviously, the more nonpermeable surfaces -- my concern, to summarize it, is is this development -- the numerical count of homes and residences isn't really relevant to my concern and the concerns of the people in Grand Isle.

Our main concern is is the nonpermeable surface areas, are they going to be increased or decreased? As we add nonpermeable surfaces, we get more water runoff, more water runoff goes into the system that comes into our lakes, which, you know, in storm situations, obviously, we're very concerned.

And that's -- and also the other question is elevations. Will the elevations in the 205 permitting for the 84 or 83 units be the same as the new proposed one for 52 units? You know, visibly, we're very concerned because our homes all line that perimeter, as well as Sweetbay and Egrets Walk. So will there be a difference in elevation, and will there be a difference in permeability? That's the question I have --

HEARING EXAMINER STRAIN: Okay.

MR. SPARKS: -- for the developers.

HEARING EXAMINER STRAIN: Well, we'll definitely find out.

MR. SPARKS: Thank you very much.

HEARING EXAMINER STRAIN: Thank you for your input, sir.

Wayne or Jim, one of you will have to address this. And in the meantime, though, I would like to get staff's process.

As far as drainage goes, does the county defer on this project to South Florida, or do we review that internally ourselves?

MS. DESELEM: For the record, Kay Deselem. I personally don't know, but I can check with Jack McKenna or with one of the other engineers and see what the status of that is.

HEARING EXAMINER STRAIN: And I asked Jack, but he's -- I think he's at -- down on Isle of Capri right now, so --

MS. DESELEM: Okay. Let's go to Alison Bradford --

HEARING EXAMINER STRAIN: And I hadn't anticipated this question, but I was just -- wanted to know if he was going to be around today.

MS. DESELEM: Okay. Alison Bradford may be available to question.

HEARING EXAMINER STRAIN: Okay. If she's handy, it will be -- if we can bring her -- get her to come in, that would be helpful.

MS. DESELEM: Okay. Somebody is going after her now. Thank you.

HEARING EXAMINER STRAIN: Somebody, you mean Mike, right?

MS. DESELEM: Yes. There's always Mike and Mike, but, no, it's just Mike.

HEARING EXAMINER STRAIN: Okay. And Jim and Wayne, if you could start to address it, we'll get it confirmed by someone from the county, so please go ahead.

MR. CARR: Sure. For the record again, Jim Carr, Agnoli, Barber, and Brundage.

Yes, the whole Mercato site, the whole 53-acre site is covered by a South Florida Water Management permit. In fact, the entire Pelican Marsh system is all part of that same system. Before Mercato was even developed, this 53-acre tract was part of the master permit.

When this Mercato site was developed in 2005, we got a South Florida permit modification, which limited the discharge of the entire site. And from what was permitted then to what we're doing today, there is no increase in impervious coverage, and there's no change to the discharge rate that was previously permitted.

HEARING EXAMINER STRAIN: What about elevation?

MR. CARR: Elevation of architecture, I -- there's obviously going to be some difference because the building is a different building, but --

HEARING EXAMINER STRAIN: I think what we're talking about is elevation on the height of where you're going to -- where's your control elevation, for example, for your water discharge? Has that changed?

MR. CARR: Okay. Yes, there's no change at all to the water elevations nor to the building elevations, those proposed finished floor grades, the proposed roadway grades, and all storage areas, everything is the same as previously permitted.

We are going to go ahead and file a permit modification a minor modification to the Water Management District for the site plan change. But in terms of actual design calculations, there's no increase in the impervious coverage.

HEARING EXAMINER STRAIN: Okay. So from the gentleman's -- to respond to the gentleman's question then, your elevation is not going to change from what it was originally permitted to be when you were going to have multifamily?

MR. CARR: Correct.

HEARING EXAMINER STRAIN: And that the impervious coverage is either equal to or less than what that previous plan was?

MR. CARR: Correct.

HEARING EXAMINER STRAIN: Okay. That -- I think that will -- that helps. I would also like, if Alison does -- is available, we'll get a confirmation on record as to the drainage process.

Usually what happens at this stage of zoning, permission is provided to make the zoning modifications, but the actual drawings that calculate the drainage don't come in until the SPD level. But with these statements on record, the drainage reviewers will know that they will be checking this information against what was told here today. So it will not be any different or greater than what was there before.

So, thank you, Jim.

Does any other member of the public wish to comment on this item?

Yes, sir, come on up, and then we'll go to -- the gentleman in the green will be second. And you'll have to be sworn in by the court reporter. In fact, sir with the green shirt on, if you could stand up to be sworn in, we'll do you both at the same time.

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

HEARING EXAMINER STRAIN: Yes, sir.

MR. SMITH: Good morning, Mr. Strain. My name is Fred Smith. I'm a resident of Egrets Walk

adjacent to this proposed plat.

The reason that I'm here -- and I think maybe a lot of people from Egrets Walk are here is we're not exactly sure what's going on; we don't know what's being planned there. There was a neighborhood information meeting that apparently was waived. I don't know if that would have helped us or not.

We would like an explanation, basically, of what's going to go in there and how it might impact our property. We don't necessarily have any objections because we're not really sure what's going on in there.

HEARING EXAMINER STRAIN: I don't blame you a bit. If I was living next door, I'd want to know, too.

MR. SMITH: That's what we're here for.

HEARING EXAMINER STRAIN: And I -- in the applicant's presentation -- the project was approved quite a few years ago. They had a right to put in a series of types of structures. They were planning to put in multifamily. They already had approval on multifamily. They went ahead and put the roads in for that and had a layout approved by the county that all they needed was a building permit, and they could have started construction.

They have since decided to look at the market, and I would assume that condominiums were not as sellable as single-family homes. Generally, when you go from a multifamily condominium process to a fee simple-single family, you're going to a lesser dense project, less intensity. And all that seems to be what they're describing today.

They simply wanted to go with a zero lot line product with a reduction to what -- most of the project that was being approved today is for setbacks. All that is internal to the site. There will be no external to you guys.

You are -- the setbacks to your development is still 50 feet for principal structures, and I think it's 25 or 35 feet for accessory structures, and there's a drainage easement and a berm -- or a landscape buffer as well.

So I don't -- from your perspective, I doubt if you'll see a difference other than you might feel a little bit less intensity next door because they are reducing the lot -- the number of units from in the 80s down to the 50s. So in the end, this -- that type of change is usually looked at as a positive.

So I hope that summarized a little bit of what you were looking to find out.

MR. SMITH: Well, I'd like to see what they look like. I'd like to see the sizes. I mean, we don't have any plans at all.

HEARING EXAMINER STRAIN: We -- at this stage they're not required to produce any. They basically have -- like any other project, they have parameters in which they can build within, and then they submit building permits for those.

So their building-permit process will actually reveal what the product will look like.

At the zoning stage, it's not required, and we rarely -- and I can -- very, very rarely do we ever see it at this stage, because it's too premature for a lot of developers to have gone that far.

So I -- you know, I would suggest maybe if, Wayne, you could provide this gentleman with your business card and -- or, Mike, whoever's going to be doing the site planning reviews for the county, as a courtesy, it would be nice if you contacted the neighborhood and filled them in on what you were doing.

I can't demand it. There's no code that requires it, but at least you can be informed when it happens.

Wayne, Mike? Will one of you guys be able to do that?

MR. ARNOLD: Absolutely.

HEARING EXAMINER STRAIN: Okay. If you'll get with them before you leave and get their information, at least they can forward you the information as it becomes available.

MR. SMITH: Thank you.

HEARING EXAMINER STRAIN: Okay. The gentleman -- sir, in the green shirt.

MR. GRAY: Good morning.

HEARING EXAMINER STRAIN: Good morning.

MR. GRAY: My name's Bob Gray, 1052 Grand Isle, neighborhood near this new development.

My question was, I thought I heard them saying that they were going to reduce the size of the road and the structure; is that true?

HEARING EXAMINER STRAIN: What they were doing is wanting to -- there's -- when you do a

condominium project, the road that's internal is common area. And they're like driveways. They can be of a narrower width. When you do a fee-simple product in Collier County, you usually do a right-of-way, and the width has to be larger to incorporate the utilities and various easements that have to go in it.

In this particular case, because they had a building permit or an SDP to already do multifamily, they put the road in, and they put the utilities in. Well, then they switched from multifamily to single-family, so they had to get a clarification that the road width that is already there would be acceptable for single-family, so that's what they're asking for.

They're already permitted for it under a different product style, but they wanted to keep a new -- they wanted to introduce a little bit newer product style and keep the same road width and, in return, they're taking all the liability and future costs to maintain that area inside. It's not going to be a county road. It won't be county utilities. It will be theirs. So from the taxpayers' perspective, that's a good thing. But that's the difference between the road explanation as best as I could describe it to you.

MR. GRAY: Up north -- I don't know if it's the rule down here, but do you drive a fire truck through that area so it can get through that area; in other words, the cul-de-sac, the truck can make it through?

HEARING EXAMINER STRAIN: Yes. The fire department will not approve the plans without access available to the fire trucks. And they look at the turn radiuses, any height issues, widths of the roadway, and things like that. This department -- in fact, the fire department has joined this developmental services division here at the county, and they review it along with us. So they will be reviewed for fire access.

MR. GRAY: And I just have one other question.

HEARING EXAMINER STRAIN: Sure.

MR. GRAY: When they were building Mercato, the original height of the building was a certain height, and then they came back to the -- whatever board that was, and the height increased. Can you guarantee that they will not come back to you and say to you, oh, can we come back with a higher height after you approve the plan and then say it's okay?

HEARING EXAMINER STRAIN: Well, I wish I could, because if I could, I'd make sure it was done around my house, too.

I cannot guarantee politics. I cannot guarantee what people can ask for. So it's -- you know, as you know, it's a free country. They can come in and ask for all kinds of things, but it's up to folks like you and the rest of the neighborhood to be aware of it and come to the public meetings and voice your concerns if you have them, and that's the only effective way to stop it if that were to happen.

MR. GRAY: Well, I'll be back if they decide to.

HEARING EXAMINER STRAIN: And I hope you would. Thank you.

MR. GRAY: Thank you.

MR. BELLOWS: Mr. Strain, we do have one registered speaker, Sue Levell.

HEARING EXAMINER STRAIN: Okay. Ms. Levell, would you come up next, and we'll have to -- I just note a couple other hands. If anybody else wants to speak here today, please rise all at once to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Thank you.

MS. LEVELL: Sue Levell. I'm president of the Pavilian Club Association. And several of my issues have already been answered except for one.

HEARING EXAMINER STRAIN: Okay.

MS. LEVELL: The one that I'm concerned about -- having been a former planning commissioner myself in Indiana, I understand that any PUD, because of state, local, federal, it's the best use of the land. And Mercato has interpreted that.

The one thing I'm concerned with with -- thankfully the density's lower, so the traffic should not be as much of an issue, but when you have dwellings, single dwellings and you have a narrow road, when people have guests -- even though you have a driveway and you have a garage which you can accommodate your own vehicles, when you have guests, where will these guests be? They'll be on that road.

And it's very difficult, in a condominium association -- because of the narrowness, you can't have vehicles on that road because it endangers the traffic, it endangers the safety of the people. So that would be

my concern.

And, apparently, you have no control over the traffic there because they're in charge of their own traffic and maintaining the roads and everything; however, safety should always be the interest of the staff here. And I admire how you've handled this meeting. And thank you very much.

HEARING EXAMINER STRAIN: Well, let me try to answer your question. First of all, it's a private road, and the widths of the lanes don't change. The widths of the lanes are what they're required to be as the minimum widths, so --

MS. LEVELL: For a condominium, but not for private dwellings.

HEARING EXAMINER STRAIN: No, no. The widths of the asphalt pavement is the same. Whether you go on a public road or a private road, you've still got to have a travel lane that will be able to take, for example, fire trucks, as the previous gentleman said, and those aren't changing.

The -- this road is narrower in its right-of-way because it's a private accessway similar to a driveway in regards to how it's operated. It's maintained privately.

So the other -- width of a right-of-way is for sidewalks and for utilities. They are providing separate easements for those -- for the sidewalk and the utilities.

So in the end, by the time you take in the total width of everything, you actually have a wider area similar to what some of our road systems are for neighborhood streets.

MS. LEVELL: So you will be having sidewalks?

HEARING EXAMINER STRAIN: Yes, there are -- there are sidewalks on one side of the street.

MS. LEVELL: Along with those roads?

HEARING EXAMINER STRAIN: Yes, ma'am.

MS. LEVELL: So that would not -- safety of individual transportation, you know, walking, bicycling, and all that wouldn't be affected?

HEARING EXAMINER STRAIN: They could not be approved in Collier County without that being addressed. And we also -- they also have some excess parking spaces scattered throughout the road for guest parking. There are some -- each of the garages are set back enough so they could park a car either in front of the garage or alongside the garage in the courtyard. There are other avenues for visitors to park. In addition, they have a parking garage and a lot of commercial parking space right adjacent to the project within easy walking distance, which is Mercato itself. So I think --

MS. LEVELL: Have you been there ever on a Thursday?

HEARING EXAMINER STRAIN: We go there -- my wife and I go there all the time.

MS. LEVELL: It's a good place to eat.

HEARING EXAMINER STRAIN: Wholefoods is fantastic.

MS. LEVELL: Yes, it is.

HEARING EXAMINER STRAIN: So we end up -- it's expensive, I wish it was cheaper, but we go there all the time to get as many groceries as we can get from that place.

MS. LEVELL: I also -- I found out -- and I understand a little bit more -- since Mercato has been built, our lake, Pavilian Club, gets lower and lower and lower. And I think they redirected the water drainage, and that's probably Collier County doing that. But after his explanation, I'm understanding it a little bit more because they're containing their own water system and their own electrical and their own utility.

HEARING EXAMINER STRAIN: Well, no. They're discharging, but they actually discharge at a rate, so everything is regulated. It's done -- it's not a part of this process, but it's done by South Florida and what's called a Site Development Plan review or a plat review.

So when they come in for additional working -- when they submit their working drawings and how they're going to build their site, all that information will be in there and be addressed and reviewed by every agency that's involved.

MS. LEVELL: Where can we find information as far as the drainage? Because -- and how it has changed? Because it has definitely changed.

HEARING EXAMINER STRAIN: Well, I think the best thing to do is have -- get together with staff. They can arrange to have you go over the plans with our drainage engineer, which is, I think, Jack McKenna.

MS. LEVELL: Will the engineer need to look at that rather than just a retired school teacher?

HEARING EXAMINER STRAIN: Well, he could walk you through it.

MS. LEVELL: Okay.

HEARING EXAMINER STRAIN: I mean, it always helps to have someone who's familiar with the plans to be able to explain them, and Jack is -- Jack, our county engineer, he's very capable of explaining how the drainage works and could show you -- walk you through the process.

MS. LEVELL: Thank you very much.

HEARING EXAMINER STRAIN: And, by the way, I went to Indiana once.

MS. LEVELL: Did you?

HEARING EXAMINER STRAIN: Once. And I didn't expect it. I went there thinking I was going to go to the Amish country and do some tourist stuff, and it started snowing. I haven't seen snow in 30 years. It was so cold.

MS. LEVELL: Was that last year?

HEARING EXAMINER STRAIN: No. It was a couple years ago. It was in a place called Elkhart, I think it was.

MS. LEVELL: Oh, yes.

HEARING EXAMINER STRAIN: Yeah. Nice towns. I'm mean, you've got a --

MS. LEVELL: It's cold in Elkhart.

HEARING EXAMINER STRAIN: Well, you've got a beautiful state, but it was real cold. So I'm glad to be back in Florida, as you probably are.

MS. LEVELL: The Amish community is beautiful in Indiana.

HEARING EXAMINER STRAIN: It certainly was. Thank you.

MS. LEVELL: Thank you.

HEARING EXAMINER STRAIN: I think some other people wanted to speak. Ma'am, would you come up.

MS. WILLIAMSON: Suzanne Williamson, Egrets Walk.

You have been referring to the road that's already in. With the 53 acres right now, to me, I have not seen a road in the middle of that. So are you talking about the road that's next to Wholefoods?

HEARING EXAMINER STRAIN: No, ma'am. Behind the wall in the back parking lot, there's a residential tract. It's separate from the commercial, and there's -- the infrastructure, some of that is already in.

Wayne, do you want to --

MS. WILLIAMSON: But the actual road is not in. It's all weeds.

HEARING EXAMINER STRAIN: It's -- yeah, I believe the base -- at least the utilities are in, so they're trying to utilize what the --

MS. WILLIAMSON: I know, but I don't see -- I don't see a paved road here. So when you say the road is already in, it is not, physically, already in.

HEARING EXAMINER STRAIN: Okay. It's designed.

And, Wayne, how much of the road infrastructure is in? Is the base in or the stabilized subgrade?

When I meant "in," ma'am, it's permitted, and they could have been in by now had they gone ahead and installed it.

MR. CARR: Correct. The -- all the utilities, all the drainage is installed. The road base is in. They just haven't put in the limerock and the asphalt -- or pavers.

HEARING EXAMINER STRAIN: Okay. And the limerock, if you put it in too early, will become mixed with other soils which, I guess, then you'd have a problem of maintaining it?

MR. CARR: Right.

HEARING EXAMINER STRAIN: And then your asphalt would have to be -- would start deteriorating from the day you put it in, so generally that's held off until -- as long as possible.

But I wanted to -- they have done a lot of infrastructure work there. They have placed the utilities underneath where the road is going to go, which is critical in how that road layout comes out.

MR. CARR: Correct. The entire site was cleared and filled to grade for the final grade, and 100 percent of the utilities were installed.

MS. WILLIAMSON: And they are only going to be two exits from there?

MR. CARR: Yes. The same as on the previous plan. One in the middle of the site --

MS. WILLIAMSON: Where, here?

MR. CARR: Yes, and then the entry down by the theater.

MS. WILLIAMSON: And what happens here?

MR. CARR: There's nothing there. There's no entrance. There's only two total entrances.

MS. WILLIAMSON: Are you going to put a wall here so they don't see Wholefoods, or what are you doing here?

HEARING EXAMINER STRAIN: Well, I mean, that's internal to their project. I'm not -- whatever the required codes are, they'll have to meet those internally. I don't -- are you -- do you live in -- within Mercato?

MS. WILLIAMSON: Yes. I live right in Egrets Walk.

HEARING EXAMINER STRAIN: Oh, so you live on the outside. You live in --

MS. WILLIAMSON: Yes.

HEARING EXAMINER STRAIN: -- Pelican Marsh. Okay. More to your point, the buffers and all their criteria that are required up against your project have not changed. They will stay as required previously.

MS. WILLIAMSON: But on the other side, will they be the same then?

HEARING EXAMINER STRAIN: I don't know what the developer plans to do internally, and that's really up to them. Internal to the project, they have lots more flexibility than they do external. We try to protect the neighbors, and you are one of the neighbors, and we want --

MS. WILLIAMSON: And they're allowed to work Monday through Friday only?

HEARING EXAMINER STRAIN: There are -- what are the time -- Ray? The time frames for construction on the site, Monday through Saturday or Monday through Friday?

MR. REISCHL: Saturday.

MR. BELLOWS: Saturday.

HEARING EXAMINER STRAIN: I think you can do six days a week, and generally six or seven in the morning till five or six at night. I'd have to look at the LDC to tell you.

MS. WILLIAMSON: Because there has been work on weekends, yeah.

HEARING EXAMINER STRAIN: Well -- and if there's work there that's out of the time frames that are allowed, a simple call to code enforcement will get -- they'll get out there and --

MS. WILLIAMSON: But you don't have the times today?

HEARING EXAMINER STRAIN: I don't know it offhand, no, ma'am.

MS. WILLIAMSON: Okay. Thank you.

HEARING EXAMINER STRAIN: Thank you.

Next speaker, please.

Ma'am? Ladies first.

MS. BONDON: Marberto Bondon (phonetic) from Egrets Walk.

I have a few doubts and, unfortunately, we don't have information about what was -- graphic information about what was accepted or approved before and what is now to compare, but I have a doubt about the famous road that is on the edge with Egrets Walk.

But I think -- or I understood until now that the 60 feet changed to 12; is that true?

HEARING EXAMINER STRAIN: The 60 feet changed -- I don't know of any change like that. You mean up against Egrets Walk?

MS. BONDON: Yes.

HEARING EXAMINER STRAIN: No. Everything that -- everything that goes against the properties in Pelican Marsh stays the same.

MS. BONDON: Oh, the same size.

HEARING EXAMINER STRAIN: So I don't remember what it is. There was a 50-foot principle setback, and that's always stayed the same, and there was a 35, I believe, accessory setback that stays the same. None of that's changed. The buffers have not changed. The easements have not changed. None of that's changing.

MS. BONDON: Okay. The other concern that I think is important is that we all know that we live in a paradise and part of that, very important, is the preserves that we have. So because this is, I guess, the last area to build in this development, I want to make sure or know if the preserves that right now are there they're going to keep as a preserve for the green areas.

HEARING EXAMINER STRAIN: Yes. There's no change to the preserve at all, ma'am. It will be the same.

MS. BONDON: Because there is one between Walgreens and Mercato that I hope they continue with that preserve and they don't develop later.

And the other that is on the side of Mercato close to the movie theaters, in that round point, they going to continue it as a preserve, or they will develop later?

HEARING EXAMINER STRAIN: This meeting cannot, does not, and will not change the preserves. So if they have a change to preserves, it's something they can't do here today, and they're not being approved or denied for that today. It's not even on -- it's not even being asked for.

So the preserves are basically off the table for this discussion. It's not part of today's meeting. If they want to change a preserve, they have a much higher level of process to go through than what you see here today.

It will be much more intense, there will be neighborhood information meetings, you-all will be more involved, because that's considered a zoning change. It's considered a piece of -- that changes the zoning on a piece of property from preserve to something else, and they can't do that easily, okay?

MS. BONDON: The last question is, we have been impacted from Mercato, obviously, from noise and activities, which is good impact in some sense, but in the noise point, we have a wall that is not high enough. And I know that is with the code, so it cannot be right.

And we have some green wall with some trees, but I don't know if it's possible to request that -- increase the density of those trees, like bamboo or something that grow fast and really make a dense green that isolate from the noise of the commercial area to our residential community.

HEARING EXAMINER STRAIN: Again, that's -- they're not changing the commercial here today, so we would have no avenue to enter into that discussion. But maybe, Nancy, since you're familiar with landscaping, is bamboo -- I mean, first of all, has anybody -- can anybody acknowledge that the buffers that are out there are -- meet the code as we have today? They were intended to, I would assume. Are you familiar with what's out there today? And I don't mean to pick on you. This isn't your project.

But Nancy is one of our landscape reviewers, so she's very knowledgeable in the type of landscaping that we can use in Collier County and what may or may be out there. I don't know if you were ever involved in this project before.

MS. GUNDLACH: I have been involved with this project, but I'm just not familiar with the buffer that's between -- your in -- Egrets Walk and Mercato. I wish I could answer that, but --

HEARING EXAMINER STRAIN: The buffers aren't changing here today, so there's not much -- I don't know how to -- I don't know how to do more for you in that regard at this meeting.

MS. BONDON: Well, it's a matter of repopulate and really make a dense isolation between both areas for -- because it's the limit.

HEARING EXAMINER STRAIN: I understand. I wish there was more we could do on that issue, but I don't know -- I don't know what -- I don't know how I could enter into that today, so -- thank you.

Sir?

MR. VANDERLINDEN: Thank you, Mark. My name is Mark Vanderlinden. I'm a resident of Egrets Walk.

And many of the questions and concerns that I had have already been addressed, but I would like to tag onto the landscaping, which -- the landscaping buffer.

We have two buildings that directly are most affected by what's going to be going on at Mercato. And, in addition to that, we have a common area swimming pool and gazebo that directly look over into the -- literally into the Wholefoods parking lot.

Our concern is that are we going to be -- being that these are two-story developments, if I'm at the -- at our pool and I'm sunning myself, am I going to be looking straight through the chain-link fence at somebody's

second story?

Is it possible -- and I realize that we can't address it right here and now, but currently there is just a site -- a chain-link fence and very little -- very little foliage, especially looking out over -- from the deck of our renovated pool.

And I have some concerns about the privacy. We've had instances of people coming through and over the fence and having parties, and so now we're concerned that through the course of construction -- and we realize that there are going to be -- there's going to be some racket and such, but we have a concern about the debris which could be a big issue because a lot of times it's thrown right against -- right against the fence, and there's various litter, beer cans and such, that we've had problems with in the past.

So mainly the concerns that I have that have not already been addressed would be ones of privacy. And are we going to be looking at air-conditioning units, hearing air-conditioning units in the rear of the buildings that are adjacent to Egrets Walk? I don't know the answer to that question, but --

HEARING EXAMINER STRAIN: Well -- and I'll try to answer your questions with the applicant in a few minutes and --

MR. VANDERLINDEN: Okay.

HEARING EXAMINER STRAIN: Thank you. And I'll get with staff on that.

Ray, for this gentleman's concern over the buffer in regards to the chain-link fence and foliage and -- would someone take a -- can you have someone in staff take a look at the buffers that are supposed to be at Mercato and make sure that the buffers are consistent with what they're supposed to have in that location?

MR. BELLOWS: Yeah, definitely. I was involved on the original rezone, and they do have code-required buffers along there.

Now, along the parking lot with Wholefoods, I'll have to -- I'm looking at the original approval, and there's supposed to be a buffer there, so we'll have it investigated.

HEARING EXAMINER STRAIN: And if you -- at the end of this meeting, at the end of this hearing, I'm going to take a break, so you'll have a chance to get with Ray and get your contact information swapped, and then he can get back with you on that issue.

MR. VANDERLINDEN: Okay. That would be great.

HEARING EXAMINER STRAIN: Thank you.

MR. VANDERLINDEN: I appreciate that. Thank you.

HEARING EXAMINER STRAIN: And this -- and in response to a couple of the other things, the A/C units, they're not regulated by code other than the fact that they have to be on the properties. The properties are set back much farther from Pelican Marsh than they would be from your neighbors, so I doubt that the air-conditioners on this project would be heard more than what you may already hear from any one of your neighbors, and that's just a standard.

You have a greater setback there than most projects. And with the buffer and other elements in the back, I'm not -- I don't know how you're -- how the air-conditioning would be a negative impact.

Now, to the people within these units it might, but that's something the developer has to deal with in his marketing.

And that brings us, I think, to the last one. Was anybody else sworn in to speak?

(No response.)

HEARING EXAMINER STRAIN: Okay. Wayne, do you want to offer any rebuttal or any final comments?

MR. ARNOLD: I guess my apologies to the public for not having the ability to visualize. There was an overall plan that was provided in your packets that showed the layout, and I'm confident that the changes that we're making are positive for the Egrets Walk residents of Pelican Marsh with regard to density and their noise issues.

HEARING EXAMINER STRAIN: Well, I think the reduction in the density itself is a positive. The fact you're going to a higher-end single-family product than a multifamily will mean you're going to have generally a better product, more buffered, more landscaping, more amenities. So I think in the -- overall, the value of the product will increase.

So I think from an overall perspective, this is a positive thing, not a negative, but I do appreciate

everyone's time and comments.

There will be a decision issued on this within 30 days. If you would like a copy of the decision -- and we're going to take a break here in a few minutes -- contact this gentleman with the gray shirt right here. He will make sure, when everybody gets done, the contact information is dispersed, and the applicant will also have a copy so he could be contacted as well.

And with that, we will close this particular hearing, and we will adjourn for 10 minutes.

MR. ARNOLD: Thank you.

(A brief recess was had.)

HEARING EXAMINER STRAIN: We're going to be starting the meeting up again in about a minute. If those of you that are going to be participating in the future issues want to start getting settled in.

Okay, everybody. We're finished with our break, and so let's move back in -- oh, Gail's got her hand up meaning the volume's got to be turned up. Thank you.

***The next item up on today's agenda is Petition Number PUD-CUD-PL20140001769, Mathworks Tutoring, LLC. It's a comparable/compatible use for affirmation request.

All those wishing to participate in this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Thank you.

As far as disclosures on my part, I have reviewed the county zoning files on the matter, and there is no -- there are no other issues that I was involved with.

Sir, just -- you'll have to sit for just a minute. We'll be right with you.

There are two exhibits I want to enter into the record. The first is Exhibit A. It will be staff report. The second will be Exhibit B. It will be the legal advertisement.

And with that, if you're the representative for Mathworks, I've read all the documentation. Unless there's -- is there any members of the public here for this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. So without -- since I am familiar with your application. It's optional -- if you want to make a presentation, you're more than welcome to, but I have read everything, so -- yeah, sometimes the less said is even better.

Is there a staff report?

MS. GUNDLACH: Good morning, Hearing Examiner. There is a staff report, and we are recommending approval.

HEARING EXAMINER STRAIN: Okay. Are there any -- I already asked, but I'll ask for the record. Are there any members of the public wishing to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: There are none.

With that, we will close the item, and a decision will be rendered within 30 days. Hopefully a lot less.

UNIDENTIFIED SPEAKER: Thank you very much.

HEARING EXAMINER STRAIN: Thank you, sir.

***The next item up is the Aster sign variance. It's Petition No. SV-PL20140001193, Aster at Lely Apartments, LLC. It's part of the Lely Resort PUD.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Okay. Are there members of the public here for this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Disclosures on my part is strictly staff and the various files that have been provided.

The -- Exhibit A will be the staff report, and Exhibit B will be the legal advertisement.

Now, I have read the entire document. And, for the record, if you could just identify yourself. Your -- you are more than welcome to make a presentation, but there's nobody here from the public who will need it, and staff has read it and so have I. So it's strictly up to you.

MR. NORTON: Michael Norton with DeNyse Companies on behalf of Aster Lely Apartments,

LLC. And like you said, sometimes less is better.

HEARING EXAMINER STRAIN: The ones that are complicated, we generally need a lot more information. And you've been in here before, and I hope this is the last time you have to come in.

MR. NORTON: Well, I had mentioned to Nancy, I do appreciate the responsiveness from Collier County. And I explained that it's refreshing to get the helpfulness and everything in meeting with you-all. It doesn't happen in all municipalities or jurisdictions, so thank you.

HEARING EXAMINER STRAIN: Well, in this county we're here to serve the people, so --

MR. NORTON: I appreciate it.

HEARING EXAMINER STRAIN: And that includes whether it's a property owner, members of the public, or a business. We will do everything we can to accommodate.

MR. NORTON: Absolutely.

HEARING EXAMINER STRAIN: So thank you, sir.

MR. NORTON: Okay. Thank you.

HEARING EXAMINER STRAIN: Is there a staff report?

MS. GUNDLACH: Yes. Staff is recommending approval.

HEARING EXAMINER STRAIN: Okay. For the record, are there any members of the public that wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we'll close the public hearing. There will be a decision rendered within 30 days. Hopefully it will be a lot less, but I do have 30 days to get to it eventually, so --

MR. NORTON: Understood.

HEARING EXAMINER STRAIN: Thank you.

MR. NORTON: Thank you all.

HEARING EXAMINER STRAIN: ***The next item up is Petition No. BD-PL20140000455, James and Rhonda Kabcenell at the Connors Vanderbilt Beach Estates, 290 Channel Drive.

It's a boat dock extension, actually, for a chickee hut -- tiki hut.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Are there any members of the public here to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Disclosures on my part are just staff -- discussions with staff and review of the files. Exhibit A will be the staff report. Exhibit B will be a legal advertisement.

And with that, is there -- is the applicant here?

MR. KABCENELL: I'm here.

HEARING EXAMINER STRAIN: Yes, sir. Please identify yourself for the record, and you'll need to be sworn in by the court reporter.

MR. KABCENELL: I just did that.

HEARING EXAMINER STRAIN: Okay. Thank you. That's right. I don't know why I missed that. Go ahead.

MR. KABCENELL: Good morning. Jim Kabcenell. My wife and I are the petitioners in this matter. And I don't have anything, necessarily, I have to say. I thought the staff did a good job of defining what was needed, and I appreciate you hearing the petition.

HEARING EXAMINER STRAIN: Thank you. And I did read the entire report. So, again, a presentation usually is needed if there's members of the public here who haven't seen the report.

I do notice you have an empty lot next door. You've met all the primary criteria, and you've met five out of the six of the secondary criteria with the exception that No. 6 was nonapplicable to your particular standard.

So without any public concern, it looks like it's a pretty good application. So thank you.

And is there a staff report on this?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl.

I just wanted to add that besides meeting the boat dock criteria, that the petition also met the boathouse criteria in addition to that, and we're recommending approval.

HEARING EXAMINER STRAIN: Okay. And there's no -- anybody from the public wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. No members of the public. Thank you, sir.

MR. KABCENELL: Thank you.

HEARING EXAMINER STRAIN: We'll close this particular case, and a decision will be rendered within 30 days.

HEARING EXAMINER STRAIN: Thank you, sir.

MR. KABCENELL: Thank you.

HEARING EXAMINER STRAIN: ***The last item up -- and I wish it could be as simple as the last three, but this one had some complexity to it. So we will hear this. The matter is Petition No. DRD-PL20130002373. It's for the 7-Eleven, Inc.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Disclosures on my part, I've had numerous conversations with staff, I've reviewed the files, and I actually went to the site and visited the site on this particular one.

There will be a series of exhibits similar to the first one. The first, Exhibit A, will be a staff report. Exhibit B will be the legal advertisement. And I think we need to -- we'll be walking through the various other exhibits.

The site plan that was included in the staff report did not graphically show the 25-foot mark, so I asked staff to obtain another site plan showing that dimension and showing what enhancements to the landscaping program were being added as a requirement of a site plan with deviations. Staff has provided that, and it's title the revised site plan -- I'm calling it the revised site plan showing the 25-foot dimension. We'll call that Exhibit C.

And, Fred, when this is all done, I need to make sure you get the exhibits to the court reporter.

MR. REISCHL: It's done.

HEARING EXAMINER STRAIN: Okay. Exhibit D will be the supplemental staff report -- and let me pull that one up. And this particular supplemental report meets the criteria of the site plan with deviations for changes that occurred over the passage of time. This particular project was built back in the early '80s. It was under Zoning Code 82-2.

At that time, that zoning code had a more flexible setback standard for canopies. The canopy could have gone 20 feet from the set -- from the property line. This particular applicant's asking for 25. The new code requires a more stringent setback, but because this property was built in the early '80s, it qualifies for a site plan with deviations in regards to the changes in the code from that time, and that's basically what the site plan with deviations addresses, the supplemental report.

Exhibit E will be the disclosure information, and I have that here. That was not included in the packet, so it was provided separately. It's for both Rock Oil Company and 7-Eleven.

And Exhibit F will be the landscape enhancement description. The -- one of the requirements for a site plan with deviations is to provide an enhancement to offset the requested -- the request for the deviation.

The applicant has agreed to the following: A proposed 5-foot hedge along the eastern property line adjacent to the residential will be added to improve the visual character of the site from the residences in Twin Lakes by buffering the line-of-sight impact to the canopy.

82-2 required a 3-foot hedge along that property line. The applicant is improving the visual character by installing the 5-foot hedge as required by 04-41. That will be a requirement of the decision as we finish up.

And with that, those are the exhibits, those are the changes to the documents.

And is the applicant here?

MR. GERENA: Joseph Gerena with 7-Eleven, Inc. I've got really nothing else left to add.

We've discussed everything and, with Fred's assistance, submitted everything. And I think we have everything in hand.

HEARING EXAMINER STRAIN: And do you agree with the enhanced landscaping element that was being proposed?

MR. GERENA: Absolutely.

HEARING EXAMINER STRAIN: Okay. Thank you.

With that, Fred, do you have any further comments from staff?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl.

Not to repeat things that you have already said, but the 82-2 landscaping at the site exceeds it right now except for that eastern property line, and that's where the new 5-foot landscaping will be placed, and staff recommends approval.

HEARING EXAMINER STRAIN: And the enhancement is that the 28-2 required a 3-foot hedge but the 04-41 requires a 4-foot -- a 5-foot hedge --

MR. REISCHL: Five-foot plant --

HEARING EXAMINER STRAIN: -- and the applicant's agreed to put the 5-foot hedge in, so that is the enhancement to the property.

MR. REISCHL: I believe it's a 5-foot hedge maintained at 6.

MR. GERENA: Maintained at 6, yes.

HEARING EXAMINER STRAIN: Okay. Excellent. Thank you.

Are there any members of the public that wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay.

Thank you, sir.

With that, we'll close this matter, and a decision will be rendered within 30 days.

I do like to make a note for the court reporter, there was a series of exhibits added to the first and last one. If you -- you need to include those as part of your record, so if you're missing any of them, please make sure we get with Ray or myself, and we'll make sure you have them. I don't want the record to be shy.

And with that, that's the last hearing for today. And we -- this meeting was -- is hereby adjourned.

Thank you all for coming.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:15 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 11-13-2014 as presented or as corrected .

October 23, 2014 HEX Meeting

TRANSCRIPT PREPARED ON BEHALF OF
GREGORY COURT REPORTING SERVICE, INC.
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.