

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 13, 2015

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: Raymond V. Bellows, Zoning Manager
Fred Reischl, Principal Planner
Eric Johnson, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

EXHIBITS

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PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, August 13th meeting of the Collier County Hearing Examiner's office. If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some housekeeping matters. Individual speakers will be limited to five minutes unless otherwise waived.

All decisions are final unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days.

The next item up is review of the agenda. Today's agenda we have three advertised public hearings. The first one for discussion will be Del Mar retail center; the second will be the Diocese of Venice, which is the Church of Guadalupe in Immokalee; and the third will be a petition by Paul Wassberg for a variance to a rear setback.

There are no changes to the agenda.

Approval of prior minute meetings. We don't have any for approval, so we'll dispense with that, and we'll move directly into our advised public hearings.

***The first one up is Petition No. ZVL-20150000829. It's the Del Mar Retail Center Condominium Association for some additional conditional -- comparable and compatible uses review for the commercial component of that particular 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: Now, this is for the Del Mar center right here. We'll go through the same request when we get to the other ones.

And, Bob -- did any members of the public stand for this -- are here for this particular one, the first one that's on the screen?

(No response.)

HEARING EXAMINER STRAIN: Okay. Bob, I won't need a formal presentation.

MR. MULHERE: Okay. Good.

HEARING EXAMINER STRAIN: But as I've -- and I'll go through my disclosures right now, as soon as I bring them up.

MR. JOHNSON: Mr. Strain?

HEARING EXAMINER STRAIN: Yes.

MR. JOHNSON: I did see some members of the public that may have stood up for this particular item.

HEARING EXAMINER STRAIN: I did, and that's why I mentioned this will be the only -- this is the one we'll be talking about now.

MR. JOHNSON: Very well.

HEARING EXAMINER STRAIN: I think they were standing up for the next one.

MR. JOHNSON: I think you're right.

HEARING EXAMINER STRAIN: Okay.

Disclosures: I've read all the files. I've also reviewed the history on the project. I've talked with staff, and I have met and talked with the applicant several times, including this morning.

As far as the exhibits go, Exhibit A will be the staff report. Exhibit B will be the legal advertisement.

This project is off Davis Boulevard just past Santa Barbara on the north side. It's a retail center that's existing, and there's the general location.

Currently the PUD allows a series of uses. They're listed here 1 through 18. Those uses are from an older -- they're an older PUD. Instead of using the references to code designations, they are just general statements.

As a result, the applicant wanted some clarification on what else would be covered by these statements. They asked for comparable use analysis. It came to the staff. Staff has approved it with some conditions. These are the comparable uses requested. I have reviewed it, and I have a few questions of Mr. Mulhere this morning, and then maybe some of staff.

Bob, did you have a -- I don't need -- since nobody from the public is here for this issue, you don't need to make a formal presentation. Is there anything you want to add to the record?

MR. MULHERE: The only thing I would add to the record -- for the record, Bob Mulhere -- is that we -- in some discussion with staff back and forth, we have drafted some language which would put some limitations on the total size of these uses, and I'm happy to hand that out.

HEARING EXAMINER STRAIN: If you want to hand it out; if you've got a copy for the court reporter, that will be fine, and especially the staff members and the County Attorney, then we'll have to read them for the record.

You're welcome to some. Terri was nice enough to bring those in.

MR. MULHERE: So what this does is, I think it does clarify SIC Code 0752 limited to pet daycare, boarding, and pet grooming, comma, indoor only. We had put a restriction on outdoor kenneling, but if we say indoor only, that covers everything, so I think that's more restrictive.

HEARING EXAMINER STRAIN: Okay.

MR. MULHERE: And then we put a notation that would relate to all of these uses that would limit all of the uses with the exception of the fitness facility and gym or the judo and karate. So all of the uses with the exception of SIC Code 7999 and 7991, as expressly identified, would be limited to 20 percent of the -- for each use it would be limited to a maximum of 20 percent of the gross square footage of the shopping center.

We went a little larger on the gym fitness facility indoor -- the other indoor recreation uses because we have experience with these fitness -- physical fitness facilities/gyms. There's one in another property that my client, Chris Shucart, owns that is 6,000 square feet. So we went a little larger with that one.

HEARING EXAMINER STRAIN: I did notice that you don't have a cap on the square footage for the commercial in this PUD, and so I guess it's limited based on the amount of parking --

MR. MULHERE: Physically.

HEARING EXAMINER STRAIN: -- and the setback standards?

MR. MULHERE: Yeah. It is physically limited.

HEARING EXAMINER STRAIN: That's rare. In the older PUDs it happened, but it doesn't happen any longer.

You may have resolved most of my questions that I have. Let me look through my list to make sure.

And I did notice in the staff ZVL zoning verification letter that was provided by Mr. Bellows he had referenced that your request states that these uses are limited in size and scale. That's why I had asked for the references to the percentages, because I didn't see it in the staff report. From now on, if those kind of comments are made in a narrative by the applicant or as a result of staff's response, I think they need to be clarified so that they're in the record.

MR. MULHERE: They're measurable.

HEARING EXAMINER STRAIN: Right. And they are today because of what you've done, so thank you.

Make sure I have all the reviews. That's all I have, Bob, and I think that gets us to most of the questions I had as to what you've just provided.

MR. MULHERE: Okay.

HEARING EXAMINER STRAIN: Thank you.

With that, I'll ask for staff report. Is there a staff report?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl with the zoning division.

Staff has talked to Mr. Mulhere, and we agree with the changes, and we recommend that the Hearing Examiner affirm the decision by the Planning Manager.

HEARING EXAMINER STRAIN: Thank you. And is there any members of the public wishing to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Ray, what I'll probably do -- you've already issued your zoning verification letter, and it's complete. When I write the decision up, I will include some of these particulars in that decision as a reference in addition to your zoning verification letter. That way you're not rewriting it or amending it.

MR. BELLOWS: No. I think that's the best way to approach it, because the HEX determination will be made part of the PUD document as well.

HEARING EXAMINER STRAIN: Okay. Thank you, all. And I'll render a report in this particular case, and all of them today, we're probably going to take about two weeks to get the decisions out. There's been a change in personnel, so it will take a couple weeks to get everything completed.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: So thank you for your attendance today, and I appreciate it.

The next item up is petition -- John? My microphone keeps going in and out, folks, so if you can't hear me, I apologize. We'll just keep moving forward.

***The next item up is Petition No. CU-PL20140000998, the Diocese of Venice in Florida, Inc., and it's for the Church of Guadalupe in Immokalee.

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

If you think you're going to want to talk to this, you don't necessarily have to, but if you think you might like to, just please stand up, and we'll swear you all in.

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

HEARING EXAMINER STRAIN: Okay. Let me get the right case brought up. We do have some clarifications on this particular case today.

First of all, my disclosures. I spoke with staff, I did speak with Commissioner Nance, I have spoke to some of the representatives of the applicant on this case, and I've reviewed all the files both in the packet and elsewhere that I could find.

There will be two exhibits for the record. One is Exhibit A; it will be the staff report. The second will be Exhibit B; it will be the legal ad.

And with that, if you want to introduce yourself, sir.

MR. WARD: My name is R.J. Ward. I'm with Spectrum Engineering, and I'm representing Diocese of Venice.

HEARING EXAMINER STRAIN: I will have some questions. Let me run through a little bit of a breakdown on this project so that everybody here can be orientated. And if you need me to refer to any of these slides -- because I'm going to ask that you make a brief presentation because so many of the members of the public are here to hear about this.

This is the general location of the conditional use. This is the new proposed plan. There's two buildings, and they're going to intermix them with the existing buildings, some parking areas onto the west side.

And one of the things I noticed is the plans that I got in my packet weren't reproducible too well, and I

know that staff had asked you for a cleaner plan. This one came in electronically. Before the decision's issued, I'll need a plan that can be copied and still be legible. So just keep that in mind as we go through and finish up here with this discussion today.

MR. WARD: I sent a plan to Eric Johnson yesterday.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: I was a little surprised, in fact, not to see it up on the screen there.

HEARING EXAMINER STRAIN: Well, I can only do so much so fast, so -- I put these together usually a week before the meeting, and then Eric sent me this one. That's the one that I received from Eric yesterday. And, again, I had suggested we possibly take the text and put it on a separate sheet.

MR. WARD: We did that.

HEARING EXAMINER STRAIN: To the extent it's needed, okay. And then I'll probably see that sooner or later.

And then there are a series of staff recommendations, and we'll move into the rest of the stuff in a minute when I get to Mr. Banks for some clarifications.

So with that, if you'd like to provide a presentation so that the audience and we can understand what you're doing, I'd appreciate it.

MR. WARD: Okay. Well, a little bit of history. Our Lady of Guadalupe has existed on this site since about 1961. The existing main church was built in about 1988.

The new church that's labeled the proposed sanctuary there is actually on the site of the original church, which is known as Sanders Hall, which is serving as a parish hall now, and it will be razed to make way for the new church.

The sanctuary and the pastoral center are being separated simply because there was not enough room to put it all in one building. The pastoral building is primarily classrooms.

And the new church will have 1,050 seats. The existing church has about 650 seats, so there's a lot of additional parking that's being requested.

We have also submitted a request for an administrative parking reduction, because the parking area in the rear is used for the annual festival, and the landscaping and curbing and that sort of thing would interfere with that. We're still pending anything on that. So we can -- we're hoping that we won't need to do as much parking, but we can get the basic required parking on the site if need be.

HEARING EXAMINER STRAIN: When you did your parking request, did you review or take into consideration that there's a series of interim deviations in effect for Immokalee, that some do affect parking? And I don't know if you were aware of that. It's not a widely know issue, and I've found that a lot of folks who come here don't even know that's available to them.

MR. WARD: Yes, we were aware of that.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: It provides for a 10 percent reduction.

HEARING EXAMINER STRAIN: Who's processing that?

MR. JOHNSON: (Raised hand.)

HEARING EXAMINER STRAIN: Eric? Okay.

Okay. I have a series of questions. Some may be of you, and then I do have some of staff, and certainly of Mr. Banks; I saw him somewhere in the crowd. Ah, okay.

So let me move through those. And first of all, since you're representing the applicant, have you reviewed the staff recommendations that are part of the report?

MR. WARD: Yes, I have.

HEARING EXAMINER STRAIN: Do you have any objections to them?

MR. WARD: I had some comments about the recommendations.

HEARING EXAMINER STRAIN: Okay. Now's a good time to bring them up, so --

MR. WARD: Okay. We had five conditions at the end of the staff report that were recommended. We had some comments to make on numbers 3, 4, and 5.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: Number 3, no buildings or structure associated with the church shall -- church use shall

be permitted within the area of the site zoned P, existing, and/or any proposed off-street parking and vehicular use areas are allowed.

HEARING EXAMINER STRAIN: That's that square down in the lower right-hand corner, and that's the only part of the project that refers to.

MR. WARD: Yes, that's correct.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: In the process of preparing for this conditional use petition, I asked the County Attorney where did that come from, and he sent me a copy of the resolution, and it's 2000-92, I believe. And it says this was one of 16 park sites that were zoned P, which I presume stands for public use/park. At the time this was just as you see it; it was a church parking lot.

As far as we've been able to determine, the church and/or the diocese was never notified of this zoning change. We think it's a mistake. We think some other site was intended to be rezoned, and it was put here by mistake.

We've managed to work around it. We're not changing anything in that area, but it was kind of a thorn in our side a little bit.

We request that somebody take a look at this and see what was actually intended in that resolution, because we suspect that there's a park site that size somewhere else that didn't get zoned P that should have been back in 2000.

HEARING EXAMINER STRAIN: Okay. Well, while we're on that particular item then, let me refer to staff as far as -- well, first of all, if it's zoned P and it was exempted from the conditional use application, as far as changing its zoning, we're not able to do that at today's meeting, but that doesn't preclude us from taking a closer look at it or finding out if staff has any familiarity with that particular action.

Eric?

MR. JOHNSON: Mr. Strain, Eric Johnson, principal planner with the zoning division.

I don't have any knowledge on the history of the P zoned parcel or P zoned portion of the property. That's something that I would have to get back to you on.

HEARING EXAMINER STRAIN: Ray, since -- Ray has been here since the beginning of time. So Eric, actually, has only been here, what, a few months or six months?

MR. JOHNSON: Three months.

HEARING EXAMINER STRAIN: Three months, okay. So maybe with some more history of Ray's, he might have some more knowledge of it?

MR. BELLOWS: Unfortunately, I have not worked on this particular project before, so I don't know how the P got there, so we'll have to do some research.

HEARING EXAMINER STRAIN: I'll tell you what, I will make a note right now, and I will make sure that that item is taken a look at, and I'll confer with staff after I've had time to look at its history as well. There might be a way to cure that that is simple. Hopefully that's the course. But in the meantime, Staff Recommendation No. 3 would have to remain until that's cleared up.

MR. WARD: We understand that.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: We just wanted to --

HEARING EXAMINER STRAIN: Heidi, did you have a comment?

MS. ASHTON-CICKO: Well, I just wanted to clarify from staff that they were requiring that condition solely because of the prior ordinance condition that they believe applies.

HEARING EXAMINER STRAIN: Right, and that's what I -- I think that's what the gentleman understands. And we're going to leave the condition in place. In the meantime, I'll do some background looking into it, I'll confer with staff, and we'll see if there's an easy solution to the problem overall in the future, so --

MR. WARD: And we managed to deal with it. It wasn't a major issue, but at some time in the future it might be.

HEARING EXAMINER STRAIN: And I might suggest to staff, Eric and Ray, if that turns out to be erroneous or if it turns out it wasn't properly applied and it shouldn't even be on that property, is there some way

we can look at changing your recommendation so that, should that be resolved in the future, that recommendation doesn't stick with the process for the property?

MR. BELLOWS: I don't have a problem taking out Condition 3 now. It's kind of redundant because the P zoning district wouldn't allow for a church use anyways.

HEARING EXAMINER STRAIN: Okay.

MR. BELLOWS: And if that was, in fact, issued in error, then we'll have a revised zoning map which would not show that this property has P zoning on it.

HEARING EXAMINER STRAIN: Okay. Well, that takes care of one of the five then. You've got two more, I understand.

Thank you, Ray.

MR. WARD: And if that P zoning was justified, I'm curious to know, you know, what the -- what the rationale was.

Number 4, for worship services and other events of significant traffic generation, as determined by Collier County staff, the property owner shall provide traffic control by law enforcement or a law enforcement approved service provider as directed by Collier County staff with staffing and at locations as directed by the Collier County transportation administrator or his designee.

The only request that we have here is that, if possible, volunteers be allowed to direct traffic, because the paying off-duty deputies or people like that is a significant expense for the church.

HEARING EXAMINER STRAIN: And I honestly don't know how that's arranged through our -- I've seen this clause periodically in church applications. Eric or Ray?

MR. JOHNSON: Mr. Strain, that comment originated with our transportation planning staff. I would actually have to defer to Mr. Sawyer on that one.

HEARING EXAMINER STRAIN: And Mike is here, good.

Mike, if you don't mind sharing the microphone.

MR. SAWYER: For the record, Mike Sawyer, transportation planning.

This is, in fact, language or very similar language that we have on most churches, and what -- the reason for that is just so that in case there are transportation conflicts, you know, getting people in and out of the site during services and other special events, that we actually do have law enforcement professionals or agencies such as that at those key locations. Internal to the site we don't have any problem, certainly, with, you know, church volunteers helping to direct traffic within the site. What we're primarily concerned about are those critical access points, especially on a local street such as this.

HEARING EXAMINER STRAIN: Well, if someone's on a public road being directed by a non-law enforcement personnel, there might be a contingent of liability there for the church that you may not want to take on. And I'm not sure the county would want to see that necessarily happen.

On site, I don't think there's a problem. That has been a standard.

And how often, Mike, do you know if it's been exercised or not?

MR. SAWYER: It really is dependent on the conflicts that we actually wind up finding at those churches. Honestly, it's something that most churches actually, you know, find that is necessary just for their parishioners, you know, attending the church, being able to get their people in and out.

HEARING EXAMINER STRAIN: Well, this is determined by county staff. How would you make that determination? Because Immokalee, predominantly people do a lot more walking there than they do along the urban area. I know churches like St. Peter's, who came in here a couple of weeks ago, had to use law enforcement personnel for their traffic control, but they were in a congested urban area where most of the attendees were driven.

In Immokalee we know it's different. There's a lot of people who use bicycles. They walk to church. And I'm just wondering if you ever have experienced or know how often anybody's ever been called out for this location, or maybe the applicant can tell us, because I doubt if they've had to be too concerned in the past.

MR. SAWYER: And, in fact, they may not be. Basically, it would basically be complaint driven, and at that point staff would go out, you know, take traffic counts and observe and then make recommendations.

HEARING EXAMINER STRAIN: Okay. I appreciate your comments, Mike. Thank you.

Do you know how often the church has needed to have traffic controls since -- I'm not talking to Mike.

I'm talking to you, sir. I'm sorry. Your name again?

MR. WARD: J.R. Ward.

HEARING EXAMINER STRAIN: Mr. Ward, do you know how often the church has had traffic control personnel from the law enforcement division out there to control traffic for their services?

MR. WARD: I don't know.

HEARING EXAMINER STRAIN: Okay. I'm suggesting it may not even be an issue that rises to a level of much of a need as time goes on, and I also would support the fact that if you're on -- if you're controlling traffic on public roads, from a liability perspective, it would be probably wiser to let experienced law enforcement personnel do it than church volunteers, but --

MR. WARD: Okay. Mr. Banks reminded me just to let you know that this is local, not a collector or an arterial. And he says in his experience often volunteers using high-visibility clothing direct traffic on local roads.

HEARING EXAMINER STRAIN: And based on the fact that it probably hasn't occurred yet, I would doubt if this is going to be exercised too much. It would be in those cases where the county found it absolutely necessary. So I think we ought to move on to the last one.

MR. WARD: And the last one, upon submittal of an SDP, include additional gore striping at the southerly driveway to better separate the inbound versus outbound lanes. And this was a comment on our initial -- on our initial review. And we added that gore striping to the conceptual site plan. And so it's kind of redundant to require still more. And so I'm presuming, since we got no further comments, that the striping that we added was adequate.

HEARING EXAMINER STRAIN: And I'll have to ask our traffic reviewer if they agree or if they've seen it, or what the intention was.

Mike, I guess that would fall on your lap again.

MR. SAWYER: Again, for the record, Mike Sawyer, transportation planning.

I believe that that was actually a condition that was initially put onto our review comments by the reviewer at that time. You know, the gore striping is definitely something that you need to have as far as directing traffic in and out.

What I'm looking at on the most recent master plan appears to be correct. The assurance with that particular condition would be just as a double-check for our site plan reviewer at the time of the SDP coming in.

At this point I do not see necessarily that it absolutely has to be a condition. It's basically at this point just a double-check.

HEARING EXAMINER STRAIN: Could you take a look at the most recent plan and then, over the next week, get back to me by email or some other written form whether or not the plan they submitted makes this a redundant request or one not needed any longer? Or if it is, we'll just include it based on whether or not they've addressed it adequately in what they've submitted. Will that work for you?

MR. SAWYER: Most definitely; be happy to do that.

HEARING EXAMINER STRAIN: Okay. Mr. Ward, that takes us to the end of your three issues. Do you have anything else you'd like to add to the record?

MR. WARD: No, sir.

HEARING EXAMINER STRAIN: Let me see if I have any questions of you before you leave the podium. When you do write up or provide the separation, if you have -- I know you've already submitted some additional exhibits to Eric.

The words that are struck out on the right side as stipulated by the County Attorney, that doesn't need to be on the text that you finally submit. That's used as an exhibit to this case.

MR. WARD: It's been removed.

HEARING EXAMINER STRAIN: Okay.

MR. WARD: I have copies of that if you'd like them.

HEARING EXAMINER STRAIN: No. I think if you've provided it to Eric -- we're going to need a clean copy for backup to the decision, and as long as it's provided, it will be part of the decision record when it's done.

And I think my next questions all involve your traffic engineer who has been anxiously waiting to have his turn.

MR. BANKS: Where is he? I don't think he showed up today.

HEARING EXAMINER STRAIN: Thank you, sir.

MR. BANKS: For the record, Jim Banks, JMB Transportation Engineering.

HEARING EXAMINER STRAIN: Jim, it's always a pleasure to see you and to talk about different hats you wear every time you come before one of the boards.

MR. BANKS: Yes.

HEARING EXAMINER STRAIN: And I did go through -- and just let the audience and the applicant know, it's very rare that Jim's paperwork is not perfect, and this time we found a flaw. It was an inadvertent error, and he's provided the corrected documentation. And for the record I'd just like to explain what those errors are and then, Jim, you can respond.

In the conclusion part of your TIS -- it was on the second page -- you made a statement that the church -- Our Lady of Guadalupe will not have a significant impact on the surrounding road network. When I went in and looked at the various pages that were provided as backup to that, I found that the significant impact column was marked "yes," as we see on the right side. And on the left side I discovered why. It was for Tamiami Trail North.

Now, I know you didn't do that intentionally. I know that was a mistake. We've talked about it. I do have to comment to staff, though. The next time packages come through in a completed format, I had been under the assumption that staff reviewed them before they were distributed to my office and made -- and distributed for public use.

It would be nice to catch these before the public process so we haven't got to correct them as we are today. There were two documents that had -- actually three, Table 2A, 2B, and 2C, but there was a correct Table 2A as well in the same packet.

And, Jim, if you just want to explain to us how that happened and that you've corrected it, I'd sure appreciate it.

MR. BANKS: I will. And just for the record, I corresponded with John Podczerwinsky on this. He's the one that actually did the review on this. He did receive the correct document, and there was a minor change at the last minute. And for whatever reason, when I was compiling this document and putting it back together, I inadvertently picked up tables from a different project. Sometimes I have three or four projects on a table at a time, and I just inadvertently grabbed the wrong tables and put them in the document, scanned it, sent it off to our site engineer, told him to make the copies to submit to county staff, and here's the PDF.

Everyone saw the correct document and everyone entrusted that I was going to recompile the document correctly and send it back in. So I submit to the Hearing Examiner it is not staff's fault. They saw the correct document. It was -- it's all on me, and so I just want to make that record clear.

Now, as of yesterday, with your sharp eye, you did flip through the document and see these errors, and I went ahead and transmitted a correct document to you.

And there is a correct document in that file that John Podczerwinsky did review, and the findings and conclusions of that report did not change other than, again, the last-minute collation of this report; my scanning it and sending it out, it was sent with those errors. So I apologize.

HEARING EXAMINER STRAIN: Thank you, Jim. You know you're never going to live this down.

MR. BANKS: When I do something right, I claim it, and when I do something wrong, I'm going to claim it, too.

HEARING EXAMINER STRAIN: Well, it's always a pleasure to work with you, Jim. So thank you for the clarification. And as far -- did you bring any copies of the corrected document with you?

MR. BANKS: I've got one if you want it.

HEARING EXAMINER STRAIN: Could you provide it to the court reporter so she can include it as part of the record.

MR. BANKS: I will.

HEARING EXAMINER STRAIN: Thank you, sir.

And that's the remaining questions I have at this time. So what I'll do is turn to the staff for a staff report.

MR. JOHNSON: Sure. Thank you, Mr. Strain. I'm Eric Johnson, principal planner.
Can you hear me? Yes.

Staff reviewed the subject petition. It was a collaborative effort between Michael Sawyer and myself, amongst others. As you had rightfully stated or referenced in the other exhibit, the petition was duly advertised in the Naples Daily News on July 24th.

Staff reviewed the subject petition in connection with the Land Development Code, the conditional use 10.08.00. Just for the record, the site has two zoning districts. It's RMF6 and P, and we're also going to take a closer look at the P zoned portion of the parcel.

So I provided responses to each of the questions or the statements in the staff report. You've read them. I would like to clarify that in the staff report, as shown on the master plan, there are five points of access along Ninth Street South, and the staff report indicates that two of these access points would be eliminated. That's actually one would be eliminated. The other access point would be narrowed.

And also there was, in the staff report, that the property was bounded by three roads. It's actually two roads, Ninth Street South being the only paved road. So I just wanted to clarify that, as long as we are clarifying things.

But for the record, staff is recommending approval of the petition, and I'll be happy to answer any questions that you may have.

One point that I'd like to make is that the petition is being reviewed with a -- I guess what we call a companion Site Development Plan application, and I also received an application for an administrative parking reduction. I expect that decision to be made either before your decision for this petition or shortly thereafter.

That's all I have. I'll be happy to answer any questions.

HEARING EXAMINER STRAIN: Thank you. And just to make it clear, I haven't reviewed any of the other submittals. I've only reviewed the submittals for the conditional use, so --

MR. JOHNSON: Noted.

HEARING EXAMINER STRAIN: Okay. You've heard the questions I asked of the applicant and the traffic engineer. I don't have anything beyond that for staff.

So with that, we'll go to any public speakers that wish to speak on this matter. If you previously raised your hand and were sworn in and would like to speak, please raise your hand now and now you can -- I'll be glad to hear what you've got to say.

Anybody? Yes, ma'am. Come on up. Please identify yourself for the record. Oh, I'm sorry, sir.

MS. BARNHART-SAUCEDA: Good morning. I'm Irene Barnhart-Sauceda. I live in a community of Immokalee. I am affected by the development. I have property within the deemed area that I received notice.

Just here -- I've attend -- I attend Our Lady of Guadalupe. I've lived there for over 40 years. We've never had an issue, even with traffic, even with our annual fundraiser that we do have for our church. We've also managed traffic very well.

We have outgrown the church we have now twice. We've outgrown it when we moved from the one we have, which became Sanders Hall, to our new parish, and now we've outgrown this one so much that it -- our community also deems that our schools have been amended. Our elementary schools had to be remodeled because our community is growing by leaps and bounds.

We put a Band-Aid on a severed artery by, what do you call it, remodeling our elementary schools, but now we've had to build a new wing to our middle school. That's just to show that our community is growing.

We have so many new people coming in. And that our new facility is needed; it is needed by our community, and it is welcomed by the people in the area. Like I said, I live in the area, so I know that it's welcomed, and it's not an issue for anyone there. So if that's on anyone's mind as a concern to the people in the community, no, it's a welcomed thing for us.

HEARING EXAMINER STRAIN: Appreciate your --

MS. BARNHART-SAUCEDA: We're really waiting for it.

HEARING EXAMINER STRAIN: Thank you. I appreciate your comments. And your last name

was?

MS. BARNHART-SAUCEDA: Barnhart-Sauceda.

HEARING EXAMINER STRAIN: Are you any relation to Bernardo Barnhart?

MS. BARNHART-SAUCEDA: Yes.

HEARING EXAMINER STRAIN: I'm meeting with him this afternoon, so, okay.

THE COURT REPORTER: Could you spell your name?

HEARING EXAMINER STRAIN: The name sounded familiar.

MS. BARNHART-SAUCEDA: Yes, it's B-a-r-n-h-a-r-t, hyphen, S-a-u-c-e-d-a.

THE COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Thank you for your comments, ma'am.

MS. BARNHART-SAUCEDA: Thank you for your time.

HEARING EXAMINER STRAIN: Appreciate it.

Yes, sir.

SPEAKER: Good morning.

HEARING EXAMINER STRAIN: Good morning.

FATHER REYES: My name is Father Carlos Reyes. I am the pastor in Our Lady of Guadalupe. And we are here to present this project because, like Irene say for us, it's necessary for our community. The community is growing. Like you know, Immokalee, in the last 10 years, increase the population. Also of our community increased the number of people to attend.

Our project not is only for the religious uses. The center is for religious, but the pastoral center also we use for many things for help the families and for help the community in many ways.

We have a big youth group, and we try to prevent the drugs and other things. And we have the projects with the families to help the integration to the families on how to help, that the family don't have more problems in our community.

Also in the center, we increase the faith of the people, but not only is it faith but is how can the -- how can -- the people can live better in our community.

We need this space because we have a lot of people to attend it but also we have a lot of projects to help the community. And I think that the problems is less that they -- the facts that we can help not only the Catholics but the community in Immokalee.

And I agree, I believe in this project because it is helping the community in Immokalee. Thank you so much.

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

Is there anybody else that would like to speak on this topic?

(No response.)

HEARING EXAMINER STRAIN: Okay. I've gotten all the information. We've heard all the testimony. A decision will be rendered within two weeks, and I appreciate your time and effort to come in and address this panel this morning, and so thank you for your time. And that will close this case, and we'll move onto the next one. Appreciate all your time. Thank you.

AUDIENCE MEMBERS: Thank you.

HEARING EXAMINER STRAIN: ***Okay. The next item up is Petition No. VA-PL20140002328. It's the Paul Wassberg variance request for Collee Court in Naples. And I'll show that. It's a pool setback variance.

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. Disclosures on my part, I've talked with staff, I've talked with the applicant this morning, and I know I was in the preapp when this previously came in. I've reviewed all the files not only supplied by the applicant but everything else that I could find and locate.

Exhibit A will be the staff report. Exhibit B will be the legal ad.

Are there any members of the public here wishing to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Michael, I don't need a formal presentation. I do have a

series of cleanup items to go over with you and questions, but let me walk through some of the graphics on this project.

It's located right here kind of across from the government center down off -- behind the shopping center that's there on Haldeman Creek. This is the particular layout. The pool is shown at a zero setback, or pool and the screen enclosure, and it will be up against a 35-foot easement area or some kind of area that is part of the drainage of Haldeman Creek.

These are questions I'm going to have, Michael, when we get into it, just cleanups. I know you've already addressed them.

So with that, did you want to add anything to the record?

MR. FERNANDEZ: No, sir. I'm happy to answer any questions you have.

HEARING EXAMINER STRAIN: Okay. Then I want to go over the items that staff or Eric had probably told you about from yesterday or maybe the day before. One of the statements, it says John Pulling confirmed that the design provided the 35 feet as the backyards to the lots and provided access to the edge of the water canal. And that's fine, I understand what it says, but did you ever find an access easement?

MR. FERNANDEZ: No, sir, we did not. And we did an extensive amount of research in that we went to a title company who then referred us to a title insurance expert and then who referred us to a specialist attorney that they use -- and this was Republic Title, Old Republic Title, so it's well known -- and then their attorney and another attorney.

And, basically, we could not find -- it appears that the land underneath the 150-foot easement was owned by family members years ago. The property was encumbered with an easement to FDOT that included a canal with upland areas for maintenance on either side.

Mr. Pulling's company is the one who developed the property on the north side. He also did it on the south side and two more subdivisions that are further downstream. The ones that were developed downstream were done a couple years after this one. In those they referenced access to the canal in the plats, and those plats were approved by the Board of County Commissioners.

This particular plat did not. It talks -- obviously in the name, the canal is listed. But it's our understanding from Alex that he didn't have any documentation, family documentation about it, but he does recall how it was marketed. In this particular lot, it was actually -- the original buyer turned it back for management to his organization, which managed a number of lots for a number of years as Winter Homes.

HEARING EXAMINER STRAIN: Okay, thank you. The only reason I'd asked, if there was that easement, it would have been good to have it on record, and we would have made sure it was, so --

MR. FERNANDEZ: Absolutely.

HEARING EXAMINER STRAIN: And the second point was the other highlighted parcel or piece of the text here talking about some of the other houses on the street that were likely permitted with consideration of the zero rear setback established by the original subdivision. And I did look at the aerials. There are other houses that are utilizing what looks to be a pretty close to zero setback.

Were you able to pull up any permits on those? I know they were older.

MR. FERNANDEZ: As I pulled them up, it seemed inevitable that they were all before 1990 except for one, and that was 1993, and the county did not have a copy of that permit. But there's even structures two homes to the east of us, if you were to go out to the site and look over two homes, you'll see that there's actually a 10-by-20 structure that's actually within the 30 feet, so it's beyond that.

And as you walk or you look in the backyards, including our client's, you'll see that they're mowed. They act as a rear yard, and obviously they use them for access to the canal.

HEARING EXAMINER STRAIN: Mike, the only purpose of the question was that if there was something there through a permit process that helped the record, it just would have made it easier, and that was the purpose.

Now, I don't have any concerns over what's there. I just wanted to make sure that if you had found something, we got it on record.

MR. FERNANDEZ: Yes, sir.

HEARING EXAMINER STRAIN: And then the last item I have is this reference to 175-foot easement on one of the last pages of the packet from the staff, and I believe that should have been 150. Is

that --

MR. FERNANDEZ: That's correct.

HEARING EXAMINER STRAIN: Okay. And, Michael, I don't have any other questions. Everything was pretty straightforward. You did some really good research, and I appreciate all that. It's normally what I do, so you saved me some time, and thank you.

MR. FERNANDEZ: Okay. Just one last comment. You know, as far as the 14-foot width for a pool, we did research and found that it had been approved as a nominal width in prior petitions, and that was one of the reasons that we utilized that number. So we felt comfortable that it would be considered a nominal width.

HEARING EXAMINER STRAIN: Okay. Thank you very much.

MR. FERNANDEZ: Thank you.

HEARING EXAMINER STRAIN: Is there a staff report?

MR. JOHNSON: Yes, sir, Mr. Strain. Eric Johnson, principal planner, zoning division.

The petition has been duly advertised in the Naples Daily News as of July 24, 2015. I would like to state for the record that the property is zoned residential single-family for Bayshore mixed use overlay residential subdistrict 1. The acronym for that is RSF4, B-M-U-D, BMUD, R1. It requires a 10-foot rear setback pursuant to Section 04.02.16.C.2.G of the Land Development Code.

Staff reviewed the subject petition in accordance with the criteria, 9.04.03, of the Land Development Code. It's itemized in the staff report.

Staff is recommending approval of the subject request.

We'd like to point out that we have received four returned letters; however, these -- it's not a requirement for staff to send out letters associated with variances. So it's likely that those four returned letters were staff's sending through our phase-five company. But for the record, staff is recommending approval of the variance.

HEARING EXAMINER STRAIN: Great. Thank you, Eric. I don't have any further questions of staff. Mine would have been the same as I asked the applicant, and I know you and I have talked about those, so I'm good with that.

Are there any members of the public who would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Well, with that, we will close this particular item.

And now that takes us to the end of our agenda today. There's no other business.

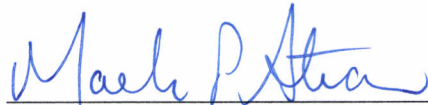
Are there any public comments?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, this meeting's adjourned. Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:48 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 9-10-15, as presented ✓
or as corrected _____.

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