

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 23, 2016

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 5:00 p.m., in SPECIAL SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

ALSO PRESENT: Fred Reischl, Principal Planner
Mike Bosi, Planning and Zoning Director
Jeffrey Klatzkow, County Attorney
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Ladies and gentlemen, can I have your attention, please. We're starting five minutes late. We've had a lot of people come in in the line downstairs. So welcome to the Thursday, June 23rd, meeting of the Collier County Hearing Examiner.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: I mentioned earlier there are some procedural handouts up front. If any of you intend to speak tonight, I need to have a speaker slip filled out and presented to Fred or Mike over here on my left.

We have some procedures that I wanted to inform you of before we got into this action tonight so you understand where we're -- how we're going to move through the evening.

First of all, I've gotten a lot of emails from maybe many of you. I think there's been 160 or 165 emails, a dozen or two phone calls. All the information on that has been supplied to Fred Reischl, who is the planner in charge of the RaceTrac project.

My name is Mark Strain. I am the Chief Hearing Examiner for Collier County. I'm also a member of the Collier County Planning Commission. I've been on the Planning Commission for 15 years.

The Hearing Examiner's Office hears a certain level of land use actions, and then as they rise and get more into a zoning action, they move to the Planning Commission. So between those two positions, I've been involved in most all the land use actions in Collier County.

I've also lived here for 40 years, so I've seen a lot of changes, as I understand many of you have, and are concerned about.

The basis for the hearing tonight: One of the land use actions that would have come to my office normally would have been this automobile station waiver. And the government's noted for its acronyms, and that's considered ASW in government speak.

When I had first gotten involved in this about two years ago, I'd met with a group of citizens from Mills Lane and other citizens in the neighborhood, and I realized that it was going to be a controversial issue. And for that reason, I moved it to the Board of County Commissioners, which used to be the Board that heard it before my office was created.

Well, as this has jelled up and as the years have gone by -- it's been a couple of years, I believe, and at least I've seen four different site plans on this project and different size stations.

The Board of County Commissioners finally got it, and with all the controversy and the amount of time it's going to take to get through the thickness of the documents involved, the Board asked to have it sent back to my office for an analyzation and the findings of fact to be sent to them after tonight's hearing and after this would be continued, possibly till next week.

So over the summer, I'll take the information that's gathered tonight -- and this is an information-gathering meeting. It's quasi-judicial. You will be sworn in. You will be under oath if you speak. That -- all the information gathered tonight will be researched, reviewed by me, and a report will be created over the next -- over the summer, and when the Board gets back from their vacation, hopefully the report will be ready for them to act upon.

But that's the tentative schedule. I won't know any better than that until I see how much information is available this evening or next week.

We are going to listen -- there are two actions tonight. One is the automobile station waiver and the other is the vacation of the roadways that are -- or the platted right-of-ways that are on this property.

Both of those will be discussed at the same time. They're a little bit redundant and overlapping, so we're going to hear any discussion you may have for both of those tonight when you get your allotted time to speak.

If we do need a second meeting, if we can't hear all of you tonight that want to speak, we'll cut this meeting off no later than 9 o'clock, and we'll continue it to next week. If we're close to finishing tonight, say 9:00 or 9:30, we'll try to finish up. But most likely, depending on how many of you want to speak, we may have overflow time. It may end up going to next week.

Next week's meeting is scheduled for the same time, five o'clock, in this room in this building. It's on next Thursday, if it is to happen.

The format of the meeting is going to be typical to a Planning Commission meeting, if you've ever seen one of those. And we start out with the applicant making a presentation. I will be asking questions from the material that was supplied to me by county staff which is considered a staff report that came to me before this meeting started. It was -- for those of you who have access to the website, it was on the website. It's a minimal amount of information, but that's how I'll start my questioning.

The applicant will most likely have new information or additional information to discuss tonight. After the applicant's done, we'll move to the staff report. Staff will provide information as to the particulars of their writeup, their executive summary.

There may be questions of various staff members. I know there's going to be some -- I have questions about some of the transportation issues, the landscaping issues, and other things.

Speakers will follow the staff report. All speakers will have a five-minute maximum unless some time is granted to them from somebody else who's a registered speaker and wants to give up their time to another primary speaker.

You will all be under oath if you do speak. You must fill out speaker slips. The speaker slips are critical because they're part of the record, and I will need to know who's speaking, and the only way we can keep track of that is with those speaker slips.

If you want to fill -- if you fill out a speaker slip and you don't get time to talk tonight, you will be able to talk at the next meeting. If you don't fill out a speaker slip tonight and you're at the next meeting, we need the speaker slips tonight so we can figure out how much time the next meeting's going to take. So please, if you intend to speak tonight or even if there's an overflow, fill out a speaker slip.

I'm going to ask that everybody speak once to avoid redundancy. We'll have the slips to acknowledge that you have spoken. You need to identify yourself for the record. And the court reporter is this young lady up here, and she is trying to type as fast as I talk. Now, she's a little bit used to me, and so she probably can recognize I stopped and had a cup of coffee before I got here tonight. I'm moving a little faster than I should, but somehow we need to keep the tempo of the discussion in line so that she can take every word down verbatim.

If at the same time you hear a speaker ahead of you that you agree with and you want to come up and just acknowledge that you agree with that speaker and you support what that speaker said or to whatever extent, that's as useful as speaking and would not need new information. If you don't have any new information and you just agree with the speaker, that's fine. Just get up and say that, I'll understand it, and we're good to go.

At the end of all the public speakers, there will be a rebuttal by the applicant if the applicant so chooses. Then, finally, after that rebuttal's done, this meeting -- the meeting will be adjourned, and I'll be moving into a period of time when the report's written.

This is a quasi-judicial hearing. A certain amount of decorum is needed by all of us attending, so please do not make any comments from the audience. You may hear things you dislike, you may hear things you like, but this is not the kind of hearing where you recognize that from the audience level.

I ask you not to applaud or make any recognition like that. We'll keep this meeting very cordial. Everybody will have their turn to talk. The intention is to have all the speakers between this meeting and next week and, if needed, we can go past that.

Another thing that's rather important is anything that you use in the meeting that you show on the overhead or that you display will have to be kept as part of public record or a copy of it as public record, and that's important because I'll need all that information to produce the report that the Board of County Commissioners has asked for.

And that takes us to the end of the elements I wanted to mention for the procedure.

Mr. Klatzkow is our county attorney. I don't know if you had anything you wanted to add, Jeff.

MR. KLATZKOW: No. But if you're planning to speak, I'd ask you to take one of these procedural handouts. I think it would help you formulate your presentation, and it would give you an expectation of what you can and cannot do.

HEARING EXAMINER STRAIN: Okay. There are two advertised public hearings. I'll announce

them both. They'll be discussed at the same time. The first one is Item 3A. It's Petition No. ASW-20150002369. It's known as the automobile station waiver for the RaceTrac Petroleum facility on the corner of Palm Street and -- between Palm and Frederick along 41, and the second petition is the vacation of easement, VAC-PL20150002788. That's for the vacation of the platted roadways that are shown within this particular section of land.

All those wishing to testify on this item, please rise to be sworn in by the court reporter. If you've made out a speaker slip, if you intend to make out a speaker slip, please stand to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part; this project has been going on for a very long time, and my first involvement was meeting with the neighborhood back, I believe, in 2014. I had at that point, as I said earlier, moved it to the higher level of review by the Board of County Commissioners.

Since that time, I've talked numerous times to residents in the area, including -- Vern was one of the key people I've talked to several times. I've also talked to the applicant and his various representatives. That has gone on through even tonight.

I've received approximately 165, maybe 170 emails; also, about 15, maybe 25 phone calls. All those have been documented and passed on to Fred Reischl. I received an Internet petition in the mail. That is in Fred's possession. I believe it said there was about 1,500 names there; I did not count them.

I also was provided an interesting flier. That was passed on. I made a video or a copy of it and sent that on to Fred as well.

So with that information, that's the result of my -- extent of my disclosures. And with that, we'll move straight into the applicant's presentation.

Mr. Yovanovich, it's all yours.

MR. YOVANOVICH: Thank you, Mr. Chairman, or Mr. Hearing Examiner; sorry.

For the record, Rich Yovanovich, on behalf of the applicant for both petitions.

With me today as part of the team and most of which will be speaking as part of this is Tom Hardy with RaceTrac; Brad Galland with RaceTrac. Tom is basically the development person for RaceTrac and will go through the operations, architecture, and how RaceTrac truly operates. Brad will go over the market analysis RaceTrac did to determine that this was an appropriate location for one of their convenience stores with fuel facilities.

Wayne Arnold, who you've -- he's been testified to (sic) many times and has been qualified as an expert as a professional planner. He will take both you and the public through both site plans that are being discussed today related to the distance waivers.

Scott Windham is a landscape architect who will take you through and the public through the proposed landscape buffers applicable to both site plans.

Ted Treesh, who's also testified and been qualified as a transportation consultant expert, will take you through, and the public through, the transportation and access improvements that will result from both site plans.

Carl Lloyd from Integra Realty, is an appraiser who will testify to property value issues related to RaceTrac. And, finally, Drew Fitzgerald is our civil engineer and will answer any civil engineering questions you may have.

Before I get into my formal presentation, I'd like to go through some of the documents that I've provided to you and to staff that will be part of the record. I can get for you, if you need other copies of, Mr. Arnold's and Mr. Treesh's resum@s. I didn't bring copies of those.

HEARING EXAMINER STRAIN: Any experts you wish to qualify, I need the resum@s on all of them. Electronically to myself or Fred, and then I'll be able to review those.

MR. YOVANOVICH: Okay. So I will provide you those for Mr. Arnold and Mr. Treesh. I didn't bring copies. I did bring copies of resum@s for Scott Windham, who I gave you a copy of his resum@.

HEARING EXAMINER STRAIN: Well, you gave me three documents before the meeting started. I don't -- wherever the resum@ is in these pile of documents, you'd have to describe it.

MR. YOVANOVICH: I just handed it to you. It's a separate sheet of paper. That's Mr. Windham's

resumⓄ. What I also handed to you was the appraisal report that Carl did for Integra Realty. His credentials are included in that report. He will testify to everything in this report. I just asked him to put it in written format for you to review later on as part of your analysis of the facts. So you have a copy of that.

HEARING EXAMINER STRAIN: Right.

MR. YOVANOVICH: We provided to you a set that looks like this, which are various exhibits related to each of the site plans, Site Plan A and Site Plan B. Site Plan A is the plan that includes three development parcels. Site Plan B is the plan that includes one development parcel. We'll be going through these as part of the presentation. So I wanted to make sure you had a complete set of that.

And, finally, this binder has several documents within it that we'll be going through as part of our presentation. They're all public records, and I think you're familiar with most or have access to them. And I'll go briefly through the table of contents in this so the public knows what we're introducing as part of the record.

I'll be going through prior distance waiver petitions that were reviewed and approved by the board. One deals with Bayshore and 41. It went through the process as a Texaco. I think it's now a Kangaroo.

There's a Sam's Club distance waiver, and a 7-Eleven distance waiver that was approved by 951 and U.S. 41. Those are in there.

I'm including in Tab 2 all zoning maps for this piece of property from 1969 forward to discuss the zoning history for this property.

Tab No. 3 is a set of deeds. The property was recently acquired by three entities on June 7th. One of those entities is -- I have to get my cheaters on. This will probably help.

As I know you're aware, and I'm sure the public's aware, one of the -- one of the applications results in three separate development parcels. This is the development parcel that is now owned by RaceTrac Petroleum, Inc.; this is another development parcel that is owned by Ginger Crest, Inc.; and then, finally, this development parcel is owned by Southern Cornerstone Properties, Inc. They were recently acquired, as I said, on June 7th. So the deeds for that are included.

We will modify the property ownership. The applicant still remains RaceTrac, but we will modify the applications to reflect the new ownership of the parcels of property.

In Tab 4 are property appraiser information relating to properties adjacent to or nearby the proposed project, namely along Mills Lane, and this parcel actually has a Palm Street address, not a Mills Lane address. So I'll take you through some of the history there and the recent transactions that have occurred on those properties.

Tab 5 are perspectives that Mr. Hardy will be testifying to regarding the architecture and the night skies provisions we've committed to.

Tab 6 is a summary of some other gas stations and hours of operation. Tab 7 -- and that will be addressed by Mr. Arnold.

Tab 7 are examples of other facilities with fuel pumps that have been built in Collier County and their proximity to other residences. Mr. Arnold will testify to that.

Tab 8 is a summary market analysis prepared by Brad with RaceTrac. He will take you through everything in this report. Again, I asked him to put it in writing so you would have what he says when you deliberate your facts.

And Tab 9 is the resumⓄ for Drew Fitzgerald. He's a professional engineer.

And then Tab 10 is Brad's resumⓄ regarding his market analysis and all of that. And for whichever experts I may have missed, I will get you their resumⓄs as well, as part of the process.

So I would ask that you accept these documents as part of the record tonight. And then with that I will go ahead and start the formal presentation.

HEARING EXAMINER STRAIN: You've supplied four documents, and all four will be accepted as evidence. The clarification I want to make is I have not had the opportunity to review any of these. They are for the record that I will review and weigh in on over the course of the summertime, so...

MR. YOVANOVICH: Right. And we will testify to all of this, but there will be hard copies, basically, of what we're testifying to.

HEARING EXAMINER STRAIN: As far as copies of, electronically, do you have all of these electronic -- assembled electronically?

MR. YOVANOVICH: If you would like me to send -- I don't have them with me, but I can get them to you electronically.

HEARING EXAMINER STRAIN: The hard copies will be sufficient for the record tonight, but it would be preferred -- everything is preferred to be electronic. If you could send all electronic copies to Fred Reischl, as we normally do with the planner in charge; then he can distribute them to me and everybody else that calls and wants copies of them.

MR. YOVANOVICH: That's not a problem. I have them all electronically, so I just printed them out for you for this evening.

HEARING EXAMINER STRAIN: Thank you.

MR. YOVANOVICH: Okay. I've put on the visualizer basically an aerial of where the property is located with the existing plat overlaid on it, and I think that -- that's for purposes of further explaining the two petitions.

The blue hashed area really pertains to the second petition, which is to vacate platted but unbuilt roadways. And that is really related to the petition that deals with -- it's the Option B option, which is the one that results in only one development parcel and also was requested of us by your transportation staff as part of their review of Site Plan A. And I'm for -- I hope this will show. It probably won't.

On the top, obviously, it says Site Plan A, and that is -- that was the original petition we submitted, but it's really based upon staff's recommendation that we vacate the platted but unbuilt roadways because, basically, staff didn't see a need for those public roadways. That site plan with very minor adjustments would still work if the Board of County Commissioners ultimately decides not to vacate those platted roadways.

So the second petition was to implement Option B, which you can see at the bottom would straddle over those platted but unbuilt roadways. And, again, if that doesn't happen, obviously, Option B is off the table and not developable. Option A would still be developable and meet your code requirements if the roads are not vacated.

So the two petitions you have in front of you, as you summarized, are a distance waiver requirement between the proposed RaceTrac convenience store with pumps and the 7-Eleven that is across U.S. 41, which is a six-lane highway, and at the corner of 41 and Commercial.

But for that 7-Eleven, we would already be probably constructed, opened, and operating for approximately a year at this point with the RaceTrac gas station under the Option A alternative.

I'm just going to say this for the record. I don't want to debate it. It's not the right forum. In reviewing the criteria set forth in 5.05.05 of the Collier County Land Development Code as to whether or not we even need to apply for a distance waiver, it's our belief that we do not need to apply for a distance waiver to implement Option A. We do need to apply for a distance waiver requirement to implement Option B.

I know this isn't the forum to debate that, and we will -- that's the only thing I'm going to say on that issue, and we'll move on from there.

HEARING EXAMINER STRAIN: Just, since you brought it up for the record, I want to make it clear both the staff and my review did not coincide with your interpretation.

MR. YOVANOVICH: And I understand that there's a difference of opinion, but we're moving forward with the hope that as we exhaust our administrative remedies in attempting to get this, we will be successful, and the debate over whether or not we needed to go through this process or not will be -- will be moot.

I want to briefly go over a history of how we got here and how the petitions have morphed over the years. In April of 2014, RaceTrac applied for a distance waiver for essentially Option B, as it's in front of you; however, under that option at the time this area that is now identified as green space was shown as a development parcel to allow other permitted uses on the property, that's C4 uses on the property.

We went through a rather -- we had -- actually had a neighborhood information meeting. It very quickly went public. A lot of people had concerns, wanted to know what was going on.

In May of that year we had an information meeting explaining to the public what we were proposing to do, took their input, and the public then, as is evidenced by the emails now, were not thrilled with the idea of a RaceTrac convenience store with fuel pumps being constructed on that property.

HEARING EXAMINER STRAIN: Richard, there was a difference, though, between your first

application and where you are today. You had 24 pumps on that first application.

MR. YOVANOVICH: Correct. It was much larger than I'm showing you today. You're right, it had 24 pumps. We're down to 16. And --

HEARING EXAMINER STRAIN: It wasn't this particular application you have in front of us today, is the point I was trying to make.

MR. YOVANOVICH: It was a bigger -- it was a bigger -- but let me -- hang on. Let me keep going. What ended up happening is as we got the public input, we then had another meeting, and we said we're going to reduce the number of pumps, and we would like you to tell us what uses you would like to see on the other development parcel.

I believe we -- how many did we go down to at that time when we were talking about that? Was it 18? Okay, 18.

We got the same response at that time from the public that -- basically as we have today, is no gas station whatsoever on this property.

We were scheduled to go to the Board of County Commissioners on our original petition. Staff had reviewed it. Staff had recommended approval of our distance waiver petition. We knew the public was still upset.

We then reached out to the county leadership and said, I'd like a two-week continuance to discuss the option of just the RaceTrac with fuel pumps and no development on the remainder of the property. We were told no to the continuance. We withdrew the request for mainly selfish reasons on my part. If we went and we lost, which I was fairly certain we were going to lose, I would have to write my petition for writ of certiorari within 30 days of the loss, and I was going to not have a Christmas vacation with my family. So we agreed to withdraw, and we said we would submit another application.

If you'll recall, at about the same time the county was looking at revision to Section 5.05.05, as a result of the RaceTrac application.

RaceTrac waited, participated in the process of the changes to 5.05.05, and actually recommended many of those changes and endorsed many of the changes that found their way into the code regarding increased setbacks, increased buffers when you're within 200 feet of a residential neighborhood.

Once that process went through, we resubmitted our new application, which is the one basically on the top, Option A. We did a Site Development Plan related to that. That went in through the process. And as a result you have Option A winding its way through the process.

We always had the old Option B, if you will, with the open space, tot lot configuration. It was decided that we should present both options to the Board of County Commissioners and now, ultimately, you. So there would be three options for the county: Option A, Option B, or none of the above.

So what you have before you today is Option A and Option B that we will be discussing in greater detail. But that's how we got there for purposes of this slightly different process than we normally go through with the distance waiver.

HEARING EXAMINER STRAIN: Do you remember the -- or do you recall that the meeting -- there was a meeting held over in 609/610 at Growth Management Division off Horseshoe Drive?

MR. YOVANOVICH: There were two there.

HEARING EXAMINER STRAIN: Okay. I was at one of those, maybe both, but I know I was at one of them.

MR. YOVANOVICH: The first one was in May, and the other one, I believe, was closer to the end of the year.

HEARING EXAMINER STRAIN: Do you remember what size station you showed at those -- you brought up at one of those meetings or both of them?

MR. YOVANOVICH: I don't remember. The first one was the larger station. The second one, I don't remember the size.

HEARING EXAMINER STRAIN: Based on the records I saw at the county, I believe it was a 12-pump station. I just wanted to make that comment, because you seemed to -- didn't mention that again, so...

MR. YOVANOVICH: And you're probably right. But that was summarily rejected by the

community.

We then came in and said, well, we're not going to get Option A. It's going to require vacation of the roads. We came in with Option B that we believe meets all of the requirements and have been processing that ever since.

Wayne's going to take you through in great detail each of those, and so is Scott and others, to make sure everybody understands how each of those options meet the limited criteria applicable to this petition.

As your -- the rules that were handed out today indicate, the property has been zoned -- is zoned C4, and under the zoning category of C4, a gas station is a permitted use provided you meet the 5.05.05 criteria applicable to a gas station.

The wrinkle here is that there's a gas station across caddy corner to this piece of property, the 7-Eleven, which says you can have a gas station if you meet the criteria of 5.05.05 for the distance waiver.

So we're here to focus on how do we meet the criteria to have a gas station located within 500 feet of an adjacent gas station, as is included in this summary document prepared by the county.

What I want the record to reflect and what is included in the information that I provided to your staff and you and others, is that the zoning on this property has been -- and this is in Tab 2 of your materials. The zoning on this property has basically been C4 since at least 1969. That's as far back as I can go to find zoning maps applicable to this piece of property.

So from 1969 to this date, the property is zoned C4, so at least since 1969 the property has a permitted use for a gas station.

Ironically, it wasn't until 1998 that the distance waiver requirements found their way into the Collier County Land Development Code. And that was -- that was in response to the number of gas stations that was being constructed or proposed at the I-75/Pine Ridge interchange. I recognize that those criteria apply throughout the county, but it was really in 1998 as a result of -- I think there was a proposal for five gas stations at that interchange that the County Commission said, you know, we need to be careful about what we're allowing to occur at these interstate interchanges. We don't want to be known as gas lane alley. So it wasn't until 1998 that these distance waiver requirements even found their way into the code.

We have met all of the requirements set forth in the code as evidenced by your staff's review of our documents and their recommendation of approval for both plans. Recognizing that this is a fact-finding exercise, we will go through those in greater detail to show why your staff was correct in their analysis.

I wanted to -- I received, since Tuesday, probably a hundred or so emails. I didn't get them before that. It's not Fred's fault. I think he was on vacation. So I've got them. I knew some of the issues already and was working on preparing responses to those issues for today's presentation.

What I want to -- what I wanted to -- so I'm going to take you through some information that respond to the concerns raised regarding property values. I now live adjacent to this piece of property. No one's ever going to want to buy this property. You know, 24-hour operation is going to be noisy. It's going to -- all kinds of light. We're going to go through a lot of those themes of what's this gas station going to do to my property, going to affect me and where I live.

But I wanted to point out that it wasn't until 1992, as part of the zoning reevaluation process that occurred -- and in Tab 2 you'll find the zoning map that I'm referring to.

Basically, the Comprehensive Plan was changed in 1989, and where commercial development was intended to occur changed. We went to the activity center concept. Properties that didn't fit within the intended location for commercial were then evaluated, and properties that were deemed to remain commercial remained commercial. Properties that were deemed not to be commercial were changed.

So it was at that time that this tier of lots, excluding this -- this remained C4 -- oh, am I off? Sorry. It was at that time that this tier of lots went from commercial C4 to RSF3.

So there was a reevaluation specifically as to this property and several other properties in Collier County that determined that the C4 zoning on our property was to remain C4 zoning as it has been in the past and carried on to the future.

Now, in Tab 4 of what I handed to you is a summary of not only the properties that are adjacent to the proposed RaceTrac property and then that other development, Parcel No. 3 that's recently changed hands, it will -- those are the -- I provided to you not only the properties adjacent but also the properties across on Mills

Lane. And you have property appraiser information in there.

And I want to take you through -- I was just curious as to -- since RaceTrac's been public knowledge since April of 2014, there's been numerous news articles, newspaper articles, TV reporters talking about this site, scheduled public hearings, so RaceTrac was a pretty well-known issue on these parcels since two thousand -- basically April 2014 to today, and on into the future.

I was curious as to, are we really impacting the ability for these people to sell these properties, and if they are selling them, are they taking a bath because they're just trying to get rid of them. And when you go to Tab 4, what you'll see is there are six parcels that are adjacent.

HEARING EXAMINER STRAIN: Richard, is what you're getting into going to be part of your -- you have an appraiser here who wrote a report. Is he going to be testifying to the same thing?

MR. YOVANOVICH: Are you going to get to all four of these?

MR. LLOYD: Not to all four.

MR. YOVANOVICH: There's some overlap, not a lot.

HEARING EXAMINER STRAIN: Okay. Because this meeting is -- we've got to get through your presentation. I want to make sure there's plenty of time for the public, so...

MR. YOVANOVICH: I understand.

HEARING EXAMINER STRAIN: I don't know how much your other people are going to get into, but I don't want redundancy in your testimony.

MR. YOVANOVICH: If you can give me five more minutes on this.

HEARING EXAMINER STRAIN: That's fine.

MR. YOVANOVICH: And probably two more minutes on something else, and I'll be done and turn it over to Wayne.

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: What I did is I pulled the property appraiser records for these parcels right here and the others, as I said. There are six parcels right here, okay.

Since RaceTrac has become public noticed in 2014, four of those six parcels have been sold. Of the four that were sold, every one of them was at a substantial number higher than the person who owned the property paid for that property.

There have been two parcels sold as recently as the last two months for substantial profits on those properties. So when you look at Tab 4, you'll clearly see that the public notice of RaceTrac coming has not impacted buyers from wanting to buy these parcels.

And they have sold, and they have sold for probably a higher number than what our appraiser will testify to than other similarly situated properties.

HEARING EXAMINER STRAIN: Have you any knowledge that the buyers knew about the RaceTrac? I know that it has been discussed, but have you any knowledge they knew about it?

MR. YOVANOVICH: Well, I can only tell you that there's been "No RaceTrac" signs around that neighborhood for many, many, many months, and the two that most recently sold. I don't know how they couldn't know because there's been the little anti-RaceTrac signs around the properties.

I don't know for a fact that they know, but I could tell you that one of the people who sold bought her property in March of 2014, sold it, I believe, in May of 2015, and she's a realtor. And I'm assuming she disclosed to her buyer who's building a house on there that RaceTrac was coming because she had the obligation to do that.

So I would like to assume that that one knows and at least the two that were sold in the last two months, based upon the public notice that's out there, they -- I would assume they know, but I don't know for sure.

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: I'm going to -- I'm going to jump ahead to allow -- I'm going to have Wayne come up and take you through each of the petitions, and then we'll follow the order I spoke to you earlier about. Scott will come up on landscaping, Ted will talk about transportation, Carl will talk about more detail about the appraisal issues, and then Brad will talk about market, and then finally Tom will talk about that.

But I wanted to briefly get on the record our history and what I personally found regarding sales in the

neighborhood. And with that, I will turn it over to Wayne to take you through the --

HEARING EXAMINER STRAIN: How much time do you believe your team's going to need to finish up their presentations?

MR. YOVANOVICH: Probably a total of 45 minutes.

HEARING EXAMINER STRAIN: Okay. So that's 6:30 -- ladies and gentlemen, please.

MR. YOVANOVICH: Well, with all due --

HEARING EXAMINER STRAIN: You don't have to explain. That's fine. 6:30 will work. I want a goal to reach, and we'll get there. The public will have the rest of the evening and next week if necessary. There will be plenty of time for everybody to talk.

This is a meeting to gather information. The information he's presenting tonight, a lot of it's new. There are going to be questions on it. I will need it all. I'll need your information, so you'll have time as well.

Richard, there's two points I want to mention to you. You had talked about an 18-pump station. I could not find a record of that in the county's submittal, so if you have that, could you supply it electronically to Fred Reischl?

MR. YOVANOVICH: Yes.

HEARING EXAMINER STRAIN: Okay. Secondly, you mentioned that the zoning was C4 back to '69.

MR. YOVANOVICH: At least.

HEARING EXAMINER STRAIN: When I reviewed this for the Planning Commission's review of 5.05.05 and the changes, I looked back at the old zoning codes, and I found it to be different. In '69 it was C2, but C2 still allowed gas stations. And then it was GRC, and then it was C4. I'll need staff -- and, Fred, I'll need someone on staff to take a look at the records and verify that actually it was C4 in '69, because I've got a different set of records.

I see the ones you've included. It's the first time I remember seeing those, so I would like to have that at least checked out and verified by staff.

MR. YOVANOVICH: That's fine. I think it's in your staff report as well, the prior zoning on the property.

Anything else you need from us?

HEARING EXAMINER STRAIN: No, that's it for now. Thank you.

I will have some issues of vacation, but I think most of those will be of staff.

MR. YOVANOVICH: Okay. Thank you.

HEARING EXAMINER STRAIN: Thanks.

MR. ARNOLD: Thank you. Good evening. For the record, I'm Wayne Arnold. I'm a professional planner. I hold AICP certification through the American Institute of Certified Planners.

Mr. Strain, I did have my resum^o available if you need it for the record. I have testified. I've been offered as an expert.

HEARING EXAMINER STRAIN: I think I've worked with you for I don't know how many years. I've known you since we started, Wayne, so...

MR. ARNOLD: More than we care to discuss.

HEARING EXAMINER STRAIN: Yes.

MR. ARNOLD: But if the record needs it, my credentials, I do hold a master's degree in urban planning from the University of Kansas, I hold an undergraduate degree from Missouri State University in urban planning, and I've been practicing in Collier County, Florida, since approximately 1990. I worked for Collier County Government for a number of years, and I'm currently a co-owner and -- at Q. Grady Minor & Associates.

HEARING EXAMINER STRAIN: And you have been accepted as an expert, I know, in front of the Planning Commission before, so I have no problem with your expert status here.

MR. ARNOLD: And the Hearing Examiner as well.

HEARING EXAMINER STRAIN: That's correct.

MR. ARNOLD: What I thought I would do to start my presentation, there are essentially, under Land Development Code Section 5.05.05, four primary criteria for consideration in granting the station waiver.

And I know that our application has included a written analysis of that, and I thought I would verbalize some of the key points for each of the plans.

I think for purposes of Plans A and B, the first criteria which really gets to the nature of are there manmade boundaries or structures or things of that nature that warrant there to be a consideration for the waiver because of some other separation beyond just the distance -- and in this case the visualizer shows it fairly well in that you've got a six-lane divided median road.

And we think that with the traffic flow patterns along U.S. 41 north and south, that this clearly allows for capture of southbound traffic movements, and that was part of our analysis for both Site Plans A and B, so I won't belabor by going -- each of those separately.

The one difference, I guess, would be that -- what I would also say is by allowing the access on U.S. 41 under both of our plans, I think that's an improved situation that takes some of the burden off of the current intersection that is -- that was one of the concerns I read from numerous people about congestion at the intersection.

The second criteria that's in your Land Development Code, it's whether or not the fueling facility is engaged in servicing automobiles during regular daytime hours, et cetera, or there are other services that are going to accompany the use of this service station.

And in this particular case, it is proposed to be a 24-hour store. That's been well documented. We've made that clear all along. But there is no auto servicing other than the outdoor fuel pumps and some incidental dining on some of the dining tables they have outside of their store. There are no auto services or repairs associated with this. So that's for both plans.

Except for Site Plan A, the entire site, as you're aware, was not -- I'll put back up Rich's side-by-side. I'll just speak from the side-by-side for this, Mr. Strain.

Under Plan A, which is at the top of that page, you can see there's a total of three development parcels. The two in yellow are future development parcels all zoned C4, of course, and could accommodate a future use. Don't know what those are, but as you're probably very aware, there are a lot of uses under C4 that, to me, may end up with a different effect on neighboring properties because they don't contain a lot of the same standards, and they don't allow you to condition it as your ASW permit application says that you and/or the Board and staff can offer appropriate conditions as may be necessary.

So in the Site Plan A, you actually have the scenario where it wouldn't just be the service station. You could have another use, and I think -- I'll go through those shortly, some of the other uses that you could have in a C4 that I think could have an adverse impact on the community.

HEARING EXAMINER STRAIN: On these two plans, did you happen to -- I mean, I read the staff report, and the staff report believes that Plan B, the buildings and the fuel facilities are further away from the residential. Just by looking at these, that didn't seem obvious. I scaled them, and actually in Plan B the fuel facilities is 100 feet closer to the residential than in Plan A, and the structure, the convenience store, is about 85 or 87 feet closer in Plan B than Plan A. Do you know why it has been stated that this is -- they're further apart?

Fred, when you reviewed this, what was your thoughts there? I don't know if Wayne can confirm that B is actually further from the residential than A. I couldn't get that by scale, so someone is not correct in that assumption.

MR. ARNOLD: Mr. Strain, it's a little bit straying from my presentation, but I do have some aerial photographs that have dimensions on it for each plan. I'd be happy to go over those with you if it would be appropriate.

HEARING EXAMINER STRAIN: I would like to see them, yes. It's going to be a question sooner or later. We might as well catch it now.

MR. ARNOLD: I don't know, Fred, if those read well. If you can zoom in maybe a little bit more.

But, Mr. Strain, that's Site Plan A in front of you. And I'm going to have to -- I apologize for not looking at you, but I'm going to have to read the numbers off my larger sheet.

The measurements I have are from the pump canopy under Site Plan A. And to the nearest structure on Frederick Street that's a residential structure, not the property line, it's approximately 245, and to the nearest resident -- not property line, but residential structure south of the property, it's about 336 feet. Okay.

HEARING EXAMINER STRAIN: Okay.

MR. ARNOLD: I'll put Site Plan B up there. In Site Plan B, the structure setback to the home on Frederick Street that's depicted is 293 feet to the canopy, and to the southern home south of the property, the canopy is 244 feet.

So it places the canopy in closer proximity to the homes to the south but further from the home on Frederick.

HEARING EXAMINER STRAIN: Okay. That's the clarification I was looking for. Thank you.

MR. ARNOLD: But as I said, too, the Site Plan A, if you keep in mind -- just so the public and other interested people are aware, the C4 zoning allows the gas station by right, and the reason that this criteria under No. 2 asks what other services may be allowed is because if you're a regular gas station, the code would allow you to do certain servicing. It allows you to do battery installation, tire installation, brake replacements, lubricating, washing, things of that nature. And this facility's not proposed to have a car wash or any other service besides auto fueling outside.

The third criteria is whether or not the fueling -- the facility with fuel pumps is located within a shopping center or primarily accessed by driveway or fronts an access directly from a platted road. And, of course, this property has three frontages, essentially, that are improved, and we have -- with the other alleys that are not constructed, you have a lot of frontages on the property.

But the primary access to the site has been Palm Street and/or Frederick because in its prior life there was a fast-food convenience store on the corner of Frederick and U.S. 41, as you well remember, and then, of course, the Little Italy restaurant that operated was accessed from Palm and its parking lot facilities were and are available from Palm.

The proposed plan in either case adds an access point on U.S. 41 for the proposed RaceTrac, whether it's the sole user for the site or, as in Site Plan A, one of the three potential uses on the site. So we do meet the criteria of having access to a road, and so both plans are consistent with that criteria.

The fourth criteria is whether or not the granting of the distance waiver will have an adverse impact on adjacent land uses, especially residential land uses.

And I would submit to you that under Site Plan A, which has three development parcels, the facility with fueling pumps would only be adjacent to -- by way of the Frederick right-of-way -- to one house on Frederick Street. It would not be adjacent to, under your definition, of any of the homes to the south because it's separated by the development tract.

And we think that is one of the advantages, obviously, of Site Plan A is that it allows there to be a development parcel between any of the homes to the south and the proposed RaceTrac gas station. But in the alternative, under the Site Plan B, there is no access proposed from Frederick Street.

And we would, obviously, continue to meet all the buffering requirements under -- that were recently adopted under Section 5.05.05 of your Land Development Code, which Mr. Windham will go through shortly and show you how we comply with that.

We haven't asked for any deviations from any parts of your Land Development Code. I don't think Rich mentioned it specifically, but there is a Site Development Plan under review by staff at the county which has a complete set of detailed landscape plans, engineering plans, drainage plans, utility plans, lighting plans, et cetera, and that's why Mr. Hardy with RaceTrac will be able to tell you emphatically how we're going to comply with every component of your Site Development Plan process.

HEARING EXAMINER STRAIN: The issue, though, is that you still -- regardless of your plan that's in the county now, you still need -- well, you believe you have an argument against the need for an ASW, but the county still takes the position you do need an ASW. Under the ASW criteria, you are subject to conditions. That's what we're here for tonight.

MR. ARNOLD: Correct.

HEARING EXAMINER STRAIN: I notice that your A plan, if it is to be considered, is lacking in some of the similar amenities or conditions that you show in the Site Plan B.

MR. ARNOLD: Part of the application explains that, that the application was pending at the time you adopted the more recent Section 5.05.05 landscape buffer standards, and that application, I think -- I think we can tell you tonight that we can comply with those buffer requirements.

HEARING EXAMINER STRAIN: Which application? Both of them?

MR. ARNOLD: Yes.

HEARING EXAMINER STRAIN: Okay. Because currently they're not spelled out that way in the buffer requirements that are in those plans.

MR. ARNOLD: I think Mr. Windham has an exhibit that will show you how that can occur.

HEARING EXAMINER STRAIN: Thank you.

MR. ARNOLD: All right. So, really, as Rich mentioned, I didn't see every email that you probably saw, but I saw several and, obviously, there are numerous issues that were discussed but, to me, they all come down to compatibility of having a gas station at this location for a variety of reasons, you know, whether it's adjacency to residential or other.

But, you know, the county does define that term, "compatibility," in your Land Development Code. And if I could read that into the record just so we all understand what it says. Your Land Development Code says, compatibility is a condition in which land uses or conditions can co-exist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

So that's the analysis we go through many, many times for zoning applications about what type of impact we may or may not have and whether or not there can be conditions offered that address any of those potential impacts.

And what I would submit to you is having been involved with our Land Development Code now for over 20 years, it is a very rigorous test what we've now established for gas stations. I can't think of another land use that has the same rigors of landscape and buffering treatments and setbacks that we've established for gas stations.

We have architectural standards now that are a component of this, so it's very comprehensive, and it's very rigorous. And I think that it's more so than -- and you probably can agree, than any other C4 use that's permitted on the site today.

So I looked at the list of uses, and there are hundreds of uses that are permitted under the C4 zoning district, Mr. Strain, as you well know, because when you look at the individual uses allowed under the SIC code that's listed for almost every use that's there, you can end up with, you know, two uses to dozens of uses that are permitted. So the list grows to hundreds of uses that are permitted by right.

And I looked at those, and I evaluated them thinking, what other use could be there that wouldn't have any restrictions that might have an issue of adverse impact to nearby residences, which was part of our criteria, and I kind of broke them out into amusement and recreation, for instance. You can have video arcades there, and you can have bowling alleys by right.

HEARING EXAMINER STRAIN: Well, let's be practical. With the amount of parking required, setbacks required, water management required, and other elements like that, you'd have a hard time fitting a bowling alley on those remaining parcels, if you were to go to Plan A.

MR. ARNOLD: Well, I would agree with you.

HEARING EXAMINER STRAIN: Okay. I mean --

MR. ARNOLD: I would agree.

HEARING EXAMINER STRAIN: So of the uses that are there, there are 142 or 143 uses, and they are broken down to separate SIC codes. Did you do a study to figure out how many of them could fit in the approximate 450 -- 400 square feet you were proposing for those two parcels?

MR. ARNOLD: No.

HEARING EXAMINER STRAIN: Because in your TIS, you allocated those parcels to about 5,400 square feet of specialty retail use.

MR. ARNOLD: Correct.

HEARING EXAMINER STRAIN: And if you did that, the traffic counts and other elements would have to all fit on those two small yellow squares.

MR. ARNOLD: Just to clarify, my comment really is in the context that we've got just under a 4-acre site that is zoned C4. And I can break these uses up into anything. And maybe you're right, maybe I can't "park" a bowling alley, but I know I can fit a video arcade. You know, there are other uses, too. A lot of auto related ones, lube and oil changes, car washes, boat yards, automobile dealerships.

HEARING EXAMINER STRAIN: Well, I think it's acknowledged that as a C4 zoning district you could fit other uses on there. What they are is a matter of how it's planned and what you plan to do with vacations of the easement and items like that.

MR. ARNOLD: Well, my point to that issue is that those other uses don't carry with them the buffering and setback standards that are applicable to a convenience store with gas pumps. So what you're looking at by right are a lot of other uses that can be back of house without a 50-foot setback and without a 30-wide landscape buffer and things of that nature. And I'm not sure I'd want an auto dealership if I were an immediate residential neighbor, but it is a use permitted by right. And an auto dealership would allow full use of the site for auto repair, just for instance.

HEARING EXAMINER STRAIN: Okay.

MR. ARNOLD: There are other uses, too, that maybe as a neighbor -- we get conditions many times through the zoning process that people don't want, like bail bondsmen, tattoo parlors, massage parlors, things of that nature. Those are also permitted by right, but we're told commonly that maybe you want to take another look at those and remove those from your zoning application because they're maybe not appropriate near a residential use. So that's to my point of other uses and the intensity that can be there.

And to look at your code, I think that you've done a very good job and you've determined, I think, that a car -- a fuel facility is a compatible land use because you've established buffering requirements that tell you what you need to do when you have a level of adjacency to a residential development. So I believe you are compatible.

The other thing that we did, we took a look at some other sites, and I found nine of them in the county quickly. These are other locations where there is proximity to residential development and there is a convenience store with gas pumps.

HEARING EXAMINER STRAIN: Now, these overheads you've been supplying, is this in the packet that was supplied to me?

MR. ARNOLD: Yes.

HEARING EXAMINER STRAIN: Okay.

MR. ARNOLD: So, for instance, I'm not going to go down through all of them, Mr. Strain, but, yeah, I took a 7-Eleven out on the East Trail at Rattlesnake Hammock. It's 37 feet from the nearest residential dwelling unit, for instance. You can go to the Shell station that we're familiar with up here on Airport Road near Hibiscus. It's immediately adjacent to residential development to the east.

You go to the 7-Eleven on Airport Road near the Golden Gate Canal; it happens to have an adjacent residential lot immediately behind it, so it also has zero-foot setback.

HEARING EXAMINER STRAIN: I notice you don't have the number of pumps that are found at these stations.

MR. ARNOLD: I don't, Mr. Strain.

HEARING EXAMINER STRAIN: Okay. That does make a difference as far as intensity goes, so --

MR. ARNOLD: It could, but I will --

HEARING EXAMINER STRAIN: It would have been nice to have that.

MR. ARNOLD: -- point out that Rich has --

MR. YOVANOVICH: We'll get it to you.

MR. ARNOLD: We'll get it to you.

HEARING EXAMINER STRAIN: Okay.

MR. ARNOLD: The other issue that Rich raised, and it's in your tab, were the hours of operation. Out of all those I listed, only one is not a 24-hour store, and it happens to be the Marathon gas station out on East Tamiami Trail.

HEARING EXAMINER STRAIN: Did you do any analysis to determine in the area that you're currently looking at on Palm for any other stores in that vicinity that are 24 hours?

MR. ARNOLD: Well, my next example to you -- and it's on the list -- was the reference that Rich made in his presentation, to one of the ASWs that was approved for the then Texaco now Kangaroo facility that's at the corner of U.S. 41 and Bayshore. And I blew up that site.

And you actually have the adjacent mobile home park within 30 feet of the property line of the now Kangaroo 24-hour store. The uniqueness of that facility happens to be that it also has full-service auto repair located closer to the residences than the gas canopies themselves, and that was approved by the Board of County Commissioners. And Rich mentioned that, and that information's in your packet as well.

Rich just reminded me that the 7-Eleven that created this situation for us to ask for the waiver is also a 24-hour store.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. ARNOLD: So as Rich said, you know, what is it about the proximity to be within 500 feet of the existing 7-Eleven store that operates for 24 hours that somehow makes this facility somehow incompatible or not appropriate for this location? Because if we can meet the criteria that's established in your code except for that separation and we're separated from it by a facility that's a six-lane highway -- and we're going to demonstrate to you that we have a market study that supports that there is more demand in the area for fuel -- then we believe we should move forward, because it doesn't make sense if I'm 501 feet away. If somehow that 7-Eleven goes away, then this store would be permitted by right without the opportunity to have conditions imposed upon it by you or the Board of County Commissioners.

HEARING EXAMINER STRAIN: And I understand you have an argument in that regard, I think Mr. Yovanovich has mentioned it a couple of times, but that's not what we're here for tonight, so we need to argue towards the ASW. So I need to stay on topic.

MR. ARNOLD: We are. Your code, also, in the standards talks about adverse impact to residential. You might be surprised to know that you have an adverse impact definition in your Land Development Code. It talks about that, and I can read it into the record if you like. It's not one that I commonly read through, but it's there.

And an adverse impact is defined as impacts generated by land alteration or land use whether permanent or temporary which, as a result of an environment or hydrological impact analyses, are likely to or have been shown to have a negative impact on any of the following: One, listed species and their habitat; two, natural reservations and other areas of protected native vegetation; wetlands, surface or groundwater; natural water bodies; air quality; and historic or archaeological resources identified by Collier County or the State of Florida.

So part of the test for this is to demonstrate that we don't have adverse impacts. By definition, I would tell you as a professional planner, this project couldn't have adverse impacts on any of those criteria by definition.

So you've done a really good job of going through the code and establishing new standards for facilities with fuel pumps. There are many other use that are permitted. We know RaceTrac's got a good proven track record now in Collier County with the stores that they've opened.

I've looked at the code, I've analyzed the C4 use, I'm familiar with their site plans, and in my professional opinion they've met the test to be granted the waiver, and I think that they would be deemed a compatible use, in my professional opinion.

I don't believe that you're going to find that there's competent, substantial evidence that will be put in the record to refute anything that we've offered.

You know, staff did a good job analyzing this over the last couple of years, and we certainly concur with not only the recommendation to support the waiver but their conditions they've offered for approving that as well. Thank you.

HEARING EXAMINER STRAIN: Did you review the narrative that was previously supplied by a DeLisi Fitzgerald.

MR. ARNOLD: Yes.

HEARING EXAMINER STRAIN: In your review of that narrative, it talked about Plan A and Plan B, and in the end it basically said that Plan B is sufficient to meet the new standards of 15-46. I didn't find that in there. Did you review that at all to see how that previous narrative that staff supplied to me as part of this waiver was applicable to the standards that you've talked about here tonight?

MR. ARNOLD: For which plan? I'm sorry, I missed that.

HEARING EXAMINER STRAIN: Plan B.

MR. ARNOLD: Plan B, okay.

Well, I think we're going to demonstrate through the other testimony from landscape standards, et cetera, that we meet all those site standards.

HEARING EXAMINER STRAIN: Okay. I'll wait till then. I'm not going to try to delay this if we don't have to.

MR. ARNOLD: If you had a specific question...

HEARING EXAMINER STRAIN: I'll wait till I hear -- if you're going to answer my questions without me having to answer them, that will save time, so...

MR. ARNOLD: Okay, sure. Rich, did I leave out anything?

Okay. Thank you.

HEARING EXAMINER STRAIN: Thank you.

MR. WINDHAM: Hello. For the record, I am Scott Windham with Windham Studio, landscape architect for the project. My offices are located in Bonita Springs, and I'm a licensed landscape architect. Bachelor of landscape architecture from the University of Florida, 1989. Registered since '94.

HEARING EXAMINER STRAIN: Thank you.

MR. WINDHAM: I'm going to speak today to the -- some of the landscape attributes of the RaceTrac project and kind of demonstrate how the Plan A that has gone in for SDP review is code compliant and speak to some of the attributes of Site Plan B in that regard as well.

So this is --

HEARING EXAMINER STRAIN: There's a walk-around mike if you're not going to be using the fixed one.

MR. WINDHAM: I wanted to speak just for a minute to the plant palette that we're proposing for the project because RaceTrac has a commitment to their properties and their facilities being at the highest standard of aesthetic value as far as the landscape character. We have a plant palette proposed that is native plants that incorporates distinctive palms that you, the public, and this community have come to know as identifiers of the Naples character.

The royal palm has been utilized for the feature palm for the entranceways for the fronts of the building. As far as the lower plant materials, we've incorporated mealy grass. It has a beautiful pink plume in season, which provides color. Fire bush has a yellow-red flower. We've also worked with the dwarf duranta, which is a beautiful bright yellow green in the landscape; it's quite distinctive when combined with some of the other tropical textures.

Seagrape, large leaf. You know, everyone sees it on the beach here. It is another benchmark plants.

These combination of plants together with high-rise live oaks, magnolia trees, green buttonwoods, and East Palatka Hollies in situations where we have overhead power conditions combine to really reflect the character of the area. And RaceTrac consistently goes above and beyond as far as the extent of planting, taking the code amendment requirements, kind of the foundation to work from. So that's --

HEARING EXAMINER STRAIN: Can you tell me how wide your landscape buffer is along the southern property line that is adjacent to the residential?

MR. WINDHAM: Yes. At the time of SDP submittal for this plan, it was -- well, it will comply with the 30-foot requirement.

HEARING EXAMINER STRAIN: Because at the time of the SDP plan, at least the narrative called it out at 20 feet. The code compliant is 30. How high is the wall?

MR. WINDHAM: The wall -- there will --

HEARING EXAMINER STRAIN: The proposed wall. You've got a wall on top of a berm.

MR. WINDHAM: Correct. Eight feet.

MR. YOVANOVICH: Are we on Plan A or Plan B, Mr. Strain?

HEARING EXAMINER STRAIN: Well, let's start with Plan B, because that's the one you believe is compliant with 15-46, the new code.

MR. YOVANOVICH: And Plan B is the single-use plan.

HEARING EXAMINER STRAIN: Right.

MR. WINDHAM: Yes. I've been speaking to Plan A. I apologize. That went in for SDP. But

the plant palette comments are --

MR. YOVANOVICH: Let's focus on -- let's just to the -- I keep wanting to call you chairman.

HEARING EXAMINER STRAIN: It's nice you're telling us about how flowery your plants are, but we need to get into the nuts and bolts of the details for the size of the buffer, the height of the wall -- ladies and gentlemen, please.

The size of the buffer, the height of the wall, the height of the plants that are going to go on both sides of the wall. If that is going to be something that's part of this application, I would rather get into those details than know what the flowers look like.

MR. WINDHAM: Understood. There's plenty of data on that.

So we'll just go straight into the buffers. The exhibit on the bottom right here that you see is the residential buffer. It will be a 30-foot required width. It contains a 10-foot privacy wall as proposed by RaceTrac on a berm and has the required plantings on the exterior of the wall as evidenced in the elevation sketch you see, bottom right. It has a series of green buttonwood and East Palatka Holly trees down the wall with the required 10-gallon plant hedge along the exterior of the wall to the residential with additional layering of shrubs and ground covers above and beyond what's required.

Behind the wall we're depicting cabbage palm clusters that would be specifically designed and placed height-wise to completely mitigate the building. If you look at the section here, this is an exhibit from an adjacent residential second-floor balcony view towards the building. And as you see the view line -- it's kind of difficult on the --

HEARING EXAMINER STRAIN: But just so we're understanding this, you believe this is a -- you're putting a 10-foot masonry wall on a 3-foot berm; is that correct?

MR. WINDHAM: Right.

HEARING EXAMINER STRAIN: Now, the narrative that you provided says you're going to have a total height of 15 feet, so something's remiss there. And that's on Page 8 -- top of Page 8 of the narrative. So you're not 15 feet. You're really going to be 13 feet?

MR. WINDHAM: Thirteen feet plus --

HEARING EXAMINER STRAIN: And the trees on the RaceTrac side would be how high?

MR. WINDHAM: They would be from the 10-foot span, top of the wall up to, approximately, you know, like 18-foot height.

HEARING EXAMINER STRAIN: Well, that's not what your submission says, so -- I mean, the narrative that I was referring to.

So I assume this information that you're now modifying is somewhere in the document you provided here today?

MR. YOVANOVICH: It is, Mr. Strain. The code, I believe, caps you at a 10-foot wall, so --

HEARING EXAMINER STRAIN: Right.

MR. YOVANOVICH: -- that's why --

HEARING EXAMINER STRAIN: And you've asked for a higher wall, but the trees that you put in the narrative were set at the prior wall standard, which means they were below the wall when they finally got laid out. So I'm trying to understand if the changes you're proposing are going to have the trees in ratio above the wall the way they started out to be.

MR. WINDHAM: Yes, they are, and as you can see in the exhibit.

HEARING EXAMINER STRAIN: Thank you.

MR. WINDHAM: As far as the U.S. 41 buffer and the Frederick's buffer, they would be the 30-foot new required width with the large 14-foot trees, the 3-foot berm, undulating berm, along its length, and have the additional enhanced ground cover and shrub required plantings. And the trees will be clustered as required and, again, palms be utilized at the entrance, and that's both of these sections here in the bottom left.

HEARING EXAMINER STRAIN: Okay. Is there anything else that you want to add, sir?

MR. WINDHAM: No, just that the plantings along that residential buffer to the south will -- in combination, the canopies that you see -- visually obscure the view to the back of the store as seen in this exhibit here in the bottom right.

HEARING EXAMINER STRAIN: And what's the maturity time of those canopies?

MR. WINDHAM: They'll be planted with regenerated trees that will be flushed in a very short time, like six months to have the foliage tree to tree as it grows in.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. YOVANOVICH: To move this along, Mr. Strain, we won't focus on Plan A unless you want us to. We'll just let the submittal documents address that; do you prefer that?

HEARING EXAMINER STRAIN: That's fine. The details that I have are all going to be modified by what you've resubmitted. So my questioning of some of the prior documents -- because I only received 15 pages from staff plus two site plans, and five pages an executive summary. There wasn't a lot of substance there. You've provided a lot more. I'll have to review all that before I could ask any questions on, so...

MR. YOVANOVICH: Okay. Mr. Strain, if I can, to move this along, Mr. Treesh, do you want him to testify to both plans from transportation access, or do you want him to talk about a particular option?

HEARING EXAMINER STRAIN: You submitted a TIS that goes along with --

MR. YOVANOVICH: Both.

HEARING EXAMINER STRAIN: -- the SDP for Plan A, I believe, it was, or at least the TIS that was submitted. That TIS was of particular interest in the way it treated, most intently, Palm Street. I'd like to get -- focus on Palm more than anything else, because that seems to be the most congested chokepoint that I could see based on the TIS.

And also, Mr. Treesh, I have -- you need to include in your discussion the reasoning that you've used certain traffic impact study, the calculations you used from the ITE manual. I think you used an 853 instead of 945. I understand why you did, but I'd like you to state it for the record.

MR. TREESH: Absolutely. Ted Treesh, president of TR Transportation Consultants.

We've been involved with this project since 2014, and we prepared -- I did prepare traffic studies for both A and B, but the SDP/TIS specifically is for Site Plan A.

So let me just briefly go through, just for the benefit of the members of the public. Before we conduct the traffic study, we have to prepare a methodology and submit it to county staff. That's reviewed and approved by them prior to us beginning the process of completing our analysis.

We then go out and do some data collection. We did traffic counts at the intersection. We did those during peak season, so they are peak-season conditions.

We then grow that traffic up to a projected buildout year, and then we develop trip generation for the project based on what's being anticipated.

And as you indicated, ITE has a couple different land use codes that are available to use. And what we do is a comparison of those land use codes, and we use the worst case in terms of what generates the greatest number of trips.

We do the trip generation based on the number of fueling positions that are available, and then we also do a trip generation based on the floor area of the convenience store. ITE has land use codes that look at both of those scenarios.

In this case, the floor area of the convenience store created the greater number of trip generation for this project, so that's what we used and consistent with county staff comments as well during our methodology.

HEARING EXAMINER STRAIN: And why didn't you use the modern large gas store and convenience store study done by the State of Florida in 2012?

MR. TREESH: We have not used that at all --

HEARING EXAMINER STRAIN: I know you haven't.

MR. TREESH: -- in the county.

HEARING EXAMINER STRAIN: Did you feel it's not an adequate study? Did you feel that it didn't adequately portray the changes between the ITE manual and the convenience stores that were in that study?

MR. TREESH: I believe it's an adequate study. I don't question the study, but we just have not had that study accepted in any -- I don't use it in Lee County, and I haven't used it in Collier County yet, so...

They still prefer us to use the ITE trip generation report.

HEARING EXAMINER STRAIN: The difference between the two trip generations is substantial, and that's why I was asking if that one is more of a realistic approach to convenience stores with large numbers

of gas pumps. Should it not be used just to understand the traffic impacts better?

MR. TREESH: The trip generation in the FDOT study is a little higher based on these larger stores; however, in Collier County they limit the amount of pass-by trips that I can take to 50 percent.

HEARING EXAMINER STRAIN: And the other one --

MR. TREESH: Also included in that FDOT study, they surveyed almost an 80 percent pass-by trip reduction. So I feel that we've analyzed the worst case by reducing that pass-by impact to the minimum -- or the maximum that's permitted by the county of 50 percent, so...

HEARING EXAMINER STRAIN: If you were to use that higher standard and the pass-by rate that they would allow, have you taken a look at that to see how it would come out?

MR. TREESH: No, I have not.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. TREESH: So what we did then was we combined the trip generation with the traffic counts, again, increased to the buildout year. We looked at the access in the SDP traffic study that you have. This shows the access onto -- we've got a right-in, right-out. Is this on? Okay. We've got a right-in, right-out proposed on U.S. 41 approximately midway between the Frederick Street and Palm Street intersection.

We have met with FDOT. We are in the permitting process for that access drive. You can see that we're showing a right-turn deceleration lane as part of the construction of that access drive. We're showing an access onto Palm Street just south of 41. You'll be able to turn left in and left out of the driveway to go either direction onto Palm, and then a full access onto Frederick to be able to access back up to U.S. 41.

The intersection of Frederick and 41 is a directional median opening meaning you can turn left into that driveway or to that street and right in and right out. That is not -- you're not able to turn left out onto 41 from Frederick. So that dictates how we assign the trips to the site access drives and then to the adjacent intersections.

HEARING EXAMINER STRAIN: On the Palm intersection -- and I'm going to try to move faster. I had a lot of questions. I'm going to probably refrain and hold those off until we give time for the public to speak.

MR. TREESH: That's fine.

HEARING EXAMINER STRAIN: But I did want a couple of things clarified. Your Palm access, your stacking on Palm is going to be approximately four or five cars in that left-turn lane, which will have to take into consideration the people coming from the south.

Your peak hour traffic generation off RaceTrac's site that was going to go to Palm wouldn't allow that much in the -- that many cars in the queue. You'd have about 7.7 or 8 cars stacked up in the queue during peak, but you only fit four, which means either you're going to be halfway into the intersection or you're going to be stacking up on your own property during those peak times. Have you looked at that and how that could be resolved?

MR. TREESH: Well, I think you said it right there; we'll be stacking on our property. I mean, so the idea is that if the queue is backed up to the access driveway, traffic will be stopped on the property waiting for that traffic to clear from the traffic signal to get out onto -- onto Palm.

Our level-of-service analysis for the intersection indicates -- obviously, if you've traveled through that intersection, you know that the timing of that light is such that U.S. 41 obviously is favored. It's going to continue to be favored even with this project.

And, again, because -- and I want to make this statement that this use does not generate a lot of new traffic to the area. We're attracting -- as we said, the FDOT study says 78 percent of the trips coming in and out of here are already traveling by this site. So it's not a new generator like a residential use.

So, therefore, our focus is accommodating the turn movements that we're adding to those intersections that aren't there today, specifically on Palm and at the access on 41 and the access onto Frederick.

HEARING EXAMINER STRAIN: Well, you're not generating new trips to that extent, I understand that, but --

MR. TREESH: We're generating additional.

HEARING EXAMINER STRAIN: -- you're generating additional trips to that particular site, that parcel, and the exiting of that parcel, I believe, is where most of the concern's going to be because of trying to

get in and out of Palm Street.

MR. TREESH: That's correct.

HEARING EXAMINER STRAIN: And that's been the focus of what I've seen most of the public's concerns as far as the traffic piece of this goes.

MR. TREESH: Right.

HEARING EXAMINER STRAIN: To the extent that we can concentrate on Palm Street, that was where my questioning was. You've answered some of it, and I will undoubtedly have more before these days are over with, but...

MR. TREESH: Well, again, our analysis -- again, this has also been reviewed by FDOT. Obviously, they have a concern that that intersection was also maintained by FDOT. U.S. 41's an FDOT road, so they've also looked at this.

The level-of-service analysis at buildout, the year of buildout, without our project is a Level of Service D on the Palm Street approach, and it will stay at a Level of Service D with the RaceTrac traffic added to those movements.

So we don't anticipate a significant increase in delay. The volume will increase, there's no doubt about it, but the improvements that we're doing, we feel the improvements to Palm, you can see on this drawing -- let me zoom in.

HEARING EXAMINER STRAIN: You're adding a right lane, you're extending the other right lane that's also a flow-through lane, but it will still be one lane for both right and straight through; is that correct?

MR. TREESH: Right. We're not adding any additional lanes. We're just creating additional length of those lanes to accommodate better stacking. Right now there is a two-lane approach at the light, but as you go away from that light, that two lanes tapers back quickly to one lane.

So what you can see on this sketch is -- we're extending the pavement width primarily on the north -- I'm sorry -- on the west side, and adding additional lanes --

HEARING EXAMINER STRAIN: That's actually -- that's the east side you just pointed to.

MR. TREESH: The east side, I'm sorry -- the east side of Palm to create additional pavement.

So if you've got one or two folks turning left, they're not blocking those folks that want to go right or straight through onto Palm from getting up to the light.

HEARING EXAMINER STRAIN: Would a better --

MR. TREESH: We're also adding a right turn lane into the project on Palm. Although it is a short lane, it is a free-flow movement, so it at least allows those trips coming into our site to get out of that through lane.

HEARING EXAMINER STRAIN: Would it be an improvement to double-stack on the left side, left turn, going north?

MR. TREESH: I possibly could, but that intersection is a skewed intersection, if you notice. And so providing dual lefts creates a whole other host of issues that -- because if you've got traffic coming out on the other side, on the north side of 41. So dual lefts might not be able to work because of the -- and, plus, when you put in dual lefts, you change the signal timing dynamics of the traffic signal.

Lefts can only occur on the left-turn arrow whereas if you've only got a single left, if there's not a lot of through traffic on Palm crossing 41 when that light turns green, the left turns can occur on a green bulb when there's nobody coming straight across. So dual lefts change the whole dynamic.

Typically FDOT, Lee County, Collier County, they don't look at dual left-turn lanes until your left-turn volume starts to reach about 300 vehicles in an hour, and we're nowhere near that even with the RaceTrac project.

HEARING EXAMINER STRAIN: And I have other details that I need -- that I need some answers to on the TIS, traffic issues. I'm going to refrain from spending a lot of time on my questions until the public has an opportunity to speak. And then either -- it probably won't be tonight, but it may be next week that I'll get into some additional questions. Are you going to be here next week?

MR. TREESH: I will not. I have a previous commitment, and I will not be able to be here next week.

HEARING EXAMINER STRAIN: Okay. Well then, we have a traffic engineer within Collier

County. I will probably ask him to explain some of the things I don't understand as well as you guys do.

MR. TREESH: Okay.

HEARING EXAMINER STRAIN: Thank you.

MR. TREESH: Thank you. If that's all you had, I --

HEARING EXAMINER STRAIN: That's all I have right now. I'm more anxious to get to the public comments.

MR. TREESH: Okay. Thank you.

HEARING EXAMINER STRAIN: Thank you.

Richard, did you have someone else you wanted to have for the record?

MR. YOVANOVICH: Yeah. And, Mr. Strain, I'll ask people to cut it short. I believed I was supposed to give the entire record for the public, and that's why we went a little longer. We'll -- if you have specific questions of the experts, it may move it quicker than have us repeat what's already in the record.

HEARING EXAMINER STRAIN: It's hard to have questions of information handed to me tonight. And the information that I received from staff was very limited.

I do have questions, but I'm more anxious to hear what the public's input is so I can understand those issues and then be able to adjust from that. So you -- it's important that whatever you need to have on the record is provided, either in written, electronic, or verbal form, tonight.

So if you're lacking something, by all means, put it on. I'm not trying to stop you or suggest you not do that. I'm just going to tell you I'm going to cut back on my discussions until we're done with public speakers. Then towards the end of this hearing, whether it's this week or next, I'll find time to ask the rest of my questions.

MR. YOVANOVICH: And if you -- we have -- I'll just have Carl briefly say his conclusions. You've got the details. If you want to review it and we can talk about it in greater detail next week -- because we're going to get to next week -- is that more efficient or gets us to the public quicker?

HEARING EXAMINER STRAIN: That's where I'm heading. Okay. So, basically, the stuff you gave me I cannot digest now. So I will have it read in between now and next week. When we finish with public speakers, I'll ask questions I haven't asked tonight, and then you'll have your rebuttal time.

Go ahead, sir.

MR. LLOYD: Okay. For the record, my name is Carl Lloyd. I'm the senior managing director of Integra Realty Sources located here in Naples, Florida. I am a state-certified general real estate appraiser and an MAI designated by the Appraisal Institute.

And my testimony here is going to be brief. My input here is going to be brief. I will let you know I was brought onto this case very recently, just this week, so my depth of research is not as deep as some of the others.

HEARING EXAMINER STRAIN: Can I get a depth of your understanding of Collier County? Is most of your business done in Collier County? How long have you operated in Collier County as an appraiser?

MR. LLOYD: I've been in Collier County as an appraiser since 1995.

HEARING EXAMINER STRAIN: Thank you.

MR. LLOYD: Again, I was brought in here to talk about value impact of this potential property. I do want to correct one thing that Mr. Yovanovich said earlier, that I did an appraisal. I have not done any appraisals. I have done some examination of sales trends, so there's no actual value conclusions for any particular property here. I just want to make that clear for the record.

What I've done is look at a series of different data points within several properties, several residential communities that are located adjacent to newly constructed fuel stations, convenience store gas stations.

There are two of note in Collier County that I was able to examine. That would be the RaceTrac at Airport Road which is -- which is, effectively, adjacent to the River Reach neighborhood, which is -- of the data that I've looked at, that's the better comparable of the two. And then there's the RaceTrac on Collier and Manatee in South Naples where that RaceTrac is adjacent to a mobile home park. Again, not a very good comparable, but it's the best data that I had available in the time frame that I had.

As a control set, I looked at the sales for Collier County as a whole, both as the average sale price per

year and the average sale price per square foot per year for Collier County as a whole, for the River Reach neighborhood, and the Riverwood neighborhood.

What I'm trying to show here is that as these fuel facilities were developed over time since 2012, has there been an impact on the values of the properties within that neighborhood? Just let me look up here. As you'll see on this one that I have up on the screen here, overall, the increase -- in Collier County on analyzing the sale price per square foot of single-family homes increased 59 percent overall between -- or, excuse me, 56 percent overall between 2012 and 2016.

HEARING EXAMINER STRAIN: What year did the RaceTrac go in in that River Reach area?

MR. LLOYD: I believe it was constructed in 2014.

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: In relationship to these numbers, it would be good to know that. So that's why I asked. If it was a 2014, but what you didn't -- I don't know if you've indicated or not is everything in Collier County continues to grow and go up in value, but the change in the increase in that value is something that would be interesting to know.

Did the RaceTrac or any other gasoline stations you looked at in position to residential have an impact on the rate of increase of value?

MR. LLOYD: That's the next increment that I'm actually looking at there. In Collier County, it increased 56 percent overall. Between 2014 and 2015 in Collier County, it increased 11 percent. From 2013 to 2014 it increased 17 percent.

Within the River Reach neighborhood, between 2013 and 2014, the rate of increase was 9 percent, somewhat lower than Collier County as a whole. But in 2015, the rate of growth was 26 percent per year, significantly higher than Collier County as a whole.

A lot of that has to do with probably some statistical analyses because of the sample size. We're looking at a sample of 40-some units within River Reach compared to 20,000 units in Collier County as a whole.

Riverwood, again, similar. It being a mobile home park, again, it's not the best comparable, but it shows pricing continuing to increase as time passes. 2016, there's only been a few sales, and the price actually did drop some.

HEARING EXAMINER STRAIN: Well, I mean, that "some" is pretty substantial. It went from 46 percent to a negative 7. That's a pretty good swing. Do you know what caused that?

MR. LLOYD: I can't say for sure exactly what caused that. I know that the RaceTrac there opened --

HEARING EXAMINER STRAIN: I believe that RaceTrac opened in 2015, but it can be verified, and by the next meeting, as we go into the end of our next meeting after public speakers, I would like to have that information a little further delineated.

MR. LLOYD: Okay. And, again, that's analyzing it on a price per square foot. And, again, part of that, I believe, does have to do with the fact that there was a 46 percent increase in 2015 compared to 2014.

HEARING EXAMINER STRAIN: Well, it would be interesting to see the dates of the facilities in those comparison years, so...

MR. LLOYD: The next analysis that I did was to look at just the sale price, which is -- in my opinion is not as good as looking at the price per square foot because differences in size will make a huge difference in the average sale price. If you have one or two very large sales or very small sales, it will skew the numbers.

Again, River Reach, on an average sale price, increased 46 percent. From 2013 to 2014 it increased 17 percent, and then another 10 percent, 2015 to 2016; whereas, Collier County increased 21 percent in -- or, excuse me -- yeah, 21 percent in 2014, 13 percent in 2015, and only 5 percent so far in 2016.

HEARING EXAMINER STRAIN: And I can -- is this all -- the information you've included in the packet that you've supplied?

MR. LLOYD: Yes, so...

HEARING EXAMINER STRAIN: I'll need time to digest this. I understand what you're saying. If you need to put more on the record besides the packet, I suggest we focus on that.

MR. YOVANOVICH: No, Mr. Strain. I'm fine with just the package. I just didn't know what you

wanted to include.

HEARING EXAMINER STRAIN: Well, you touched on it. I do think there's some questions about the numbers you supplied. Next time we meet I'll have specific questions relative to the packet you supplied, and then we'll see where it goes from there.

MR. LLOYD: Okay.

HEARING EXAMINER STRAIN: Okay. How many more people of yours are going to be speaking? Two more. Okay. Because you're running --

MR. GALLAND: Myself and one other, I believe.

HEARING EXAMINER STRAIN: Okay. Ladies and gentlemen, the applicant is the one applying for this tonight. I need to hear his statements. We're going to have the rest of this evening and next week to hear yours, so let them finish.

Go ahead, sir.

MR. GALLAND: Good evening. My name is Brad Galland. I represent RaceTrac Petroleum. I'm an 11-year veteran with the company. I've been in real estate since the beginning. I took a slight detour throughout the company to really solidify my analysis skills, but all along the way I've been associated with the real estate selection, the approval process, and the analysis of sites. So I'm here to talk a little bit about why this site, the supply and demand in this area.

With respect to, again, the fact that we're a little short on time, I'll be brief knowing that you have this material in your package.

The gist of it is for every site that we look at as a company -- we operate in 13 states. We operate RaceTrac facilities in five states. We do a very in-depth analysis.

On average we're building between 35 and 40 stores a year. That may seem like a lot; may not seem like a lot. At the end of the day, we spend an extraordinary amount of money on each location. We want to make sure we do it right at the beginning.

Our process involves evaluating a market at a macro level, driving that down into a micro level. Before we ever take a contract out on a piece of property to purchase it, myself, my vice president, generally speaking another vice president and our -- the president of the company, all lay eyes on the location, give a thumbs-up or thumbs-down before we -- again, before we ever take a contract out on the property. That's the reality of how serious we are about the sites that we pursue.

So in the case of Palm and Tamiami Trail, 41, again, we look at that macro levels, so Collier County, Naples, we look at our existing fleet, we look at the competition very in-depth, not only from a fuel standpoint but also inside competitors, and that's not just convenience stores. We're going to include grocery, pharmacy, beer and tobacco stores, things of that nature. We want to know where all the competitors are.

Some of this information is proprietary to RaceTrac; henceforth, I'm probably not going to discuss it. We can talk behind closed doors if that's what you'd like, but...

HEARING EXAMINER STRAIN: No, but what I would like is enough information to evaluate your market study that wasn't in the package that was sent to me.

MR. GALLAND: Sure.

HEARING EXAMINER STRAIN: And that means some hard statistics involving pump volumes, an analysis of what's in the area, what's needed in the area based on the transportation and the population. You provided a population summary. You provided a traffic flow for 41 and even for Davis, but I found no correlation to the volume of fuel that would be needed for the number of pumps you were going to be asking on site. I'd rather get to that point to understand how you calculated your need.

MR. GALLAND: Okay. Happy to get there right now.

For the purposes of looking at the six convenience stores that are within two miles of this particular location, we look at the National Association of Convenience Stores, NACS for short. They are our professional trade organization that we're involved in, that Speedway's involved in, that 7-Eleven's involved in, that Kush Tard's involved in that now owns Kangaroo.

We use their average fuel volumes as published in 2015, the most recent year. They assume that an average facility does between 30- and 35,000 gallons per week, so per store per week.

HEARING EXAMINER STRAIN: Per store. Oh, how much -- do you know is that broken down

per pump?

MR. GALLAND: Generally speaking, no.

HEARING EXAMINER STRAIN: So if you have 24 pumps, it's 35,000 a week? If you have six pumps, it's 35,000 a week?

MR. GALLAND: Well, again, for the purposes of an average convenience store, obviously there are numbers below the average, there are numbers above the average. I'll get there in just a second.

For the purposes of looking at these six convenience stores, in my opinion, having done this for the better part of a decade, I feel very confident in saying these stores are, in fact, producing average fuel volumes.

For the purposes of this analysis, we actually took an approach of being a little bit more conservative from our perspective and said, okay, well, if 35,000 is the average, let's assume 125 percent of that. So for the purposes of our analysis, we assumed that these stores were pumping 43,000 gallons per store per week.

Again, NACS, using their figures, NACS assumes the average customer is going to fill up one time a week at a fuel volume of 10.44 gallons on fill-up. Based on our own internal findings as it relates to the amount of gallons per fill-up, around nine to 10 gallons is pretty accurate, and that's exactly what we see.

So that being said, we have 43,000 gallons. We have 10 fill-ups -- excuse me, 10 gallons per fill-up, we have 35,000 cars in front of that store, or in front of that site, excuse me.

The assumption that we came to is right now there is a supply of 13.7 million gallons of gas along that 2-mile stretch in either direction of Palm, and the demand for that particular area based on the traffic count, based on, again, these NACS industry standards -- happy to provide citations if you'd like. The demand for that particular area is 19.3 million gallons.

So 19.3 million gallons demand, 13 million supply currently. That's a deficit of 5.6 million gallons.

I'd love to stand here and tell you that RaceTrac pumps 5.6 million gallons a year at all of our stores. That is absolutely not the case.

So what we did -- and, again, going back to your point, RaceTrac historically performs one-and-a-half to two times that of that industry average. So, again, if you take that 35,000 gallons, multiply that by two and, again, you come up with roughly 70,000 gallons.

For the purposes of this analysis and for the fact that we wanted to be conservative, we assumed that, okay, let's say this is an extraordinarily great location for RaceTrac which, in fact, we believe it is. We wouldn't be standing here and I wouldn't be talking to you if we didn't believe this was a great location. We assumed two-and-a-half times that of max.

So at those numbers, we would conservatively assume we're going to pump four-and-a-half million gallons of gas out of that location. Again, I'll stand here and say that would be great. I'd be thrilled if we did that. So, again, basic math, if we take our 19 million gallons of demand, we take our 13 million gallons of supply currently, we have, call it, four-and-a-half, four million gallons provided by RaceTrac, there's still a deficit, again, in my professional opinion at RaceTrac, of at least a million to a million and a half gallons of gas on that stretch of road.

HEARING EXAMINER STRAIN: In the package that was distributed and accepted as an exhibit, are all the statistics you just stated in there?

MR. GALLAND: Yes.

HEARING EXAMINER STRAIN: Okay. Because I will review, along with your narrative, everything that was said, and I'll probably have questions at the end of next meeting.

MR. GALLAND: Sure, by all means.

HEARING EXAMINER STRAIN: Thank you very much.

MR. GALLAND: Yes, sir.

MR. YOVANOVICH: Before Tom comes up, I would like to make one other quick point.

HEARING EXAMINER STRAIN: Sure.

MR. YOVANOVICH: When we were doing the 5.05.05 review, there was a lot of discussion about environmental impacts, and there were studies that were presented regarding fueling related to those impacts, and I believe in that study there was an assumption for an eight MPD -- eight pumps or eight fueling opportunities. There was a four million gallon annual number that went along with those.

So even if you -- there's 32 pumps in this area, as you'll see in the report, I believe that would mean a

16-million-gallon supply based upon that other study that the county looked at, you're still going to see a deficit even using that study as the basis for the gallons per year.

HEARING EXAMINER STRAIN: That's the information that was not supplied in the market study that I've seen from staff.

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: So if that's there, then I will focus on that, and I'll definitely -- if I have any issues, I'll bring them up next meeting.

MR. HARDY: Good evening, sir.

HEARING EXAMINER STRAIN: Mr. Hardy.

MR. HARDY: Tom Hardy, RaceTrac Petroleum. I've been working with RaceTrac and in Collier County for going on three -- over three years now.

We've been wrapping up our efforts here in Collier County over the last few years. This is actually our eighth store open or under development. We really like Collier County and like doing business in Collier County.

As we've mentioned earlier, we've played a part in making suggestions to the code, you know, during last summer's efforts of rewriting Section 5.05.05, and have worked with staff to come up with a unique Collier -- what we call Collier-fied efforts for all of our locations all throughout the county.

This particular location, we are wrapping up our efforts above and beyond anything else we've done in Collier County so far.

I'll briefly just walk you through a couple renderings that is included in your packet. As you see on the green here, this is the new -- the Collier specific canopy. This is one that meets the new standards, the new massing requirements that we put forth. If you -- we are actually building a similar canopy to this out there at Radio and Davis, so this is very similar to that as far as massing and colors and things of that nature.

However, the store is going to be a new store, and every rendering I'll show you is in reference to Site Plan B which provides the bigger buffers, the better -- the better separation that meets those -- that comes closer to meeting the 5.05 standards that we talked about last summer.

This particular store is actually a smaller store than we've built so far in Collier County. It actually -- through feedback and all that that we've got, through our guest experiences and all that, we've actually added an enclosed and covered outdoor dining area off the side of the -- and I say "enclosed." It's an outdoor ventilated. It has opening windows. It's really just a covered patio. That's what we're doing here.

HEARING EXAMINER STRAIN: You said "smaller." I don't mean to interrupt, but your standard template seems to be around 5,900 square feet.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: What is the size of this one?

MR. HARDY: This one's 10 percent smaller. We're about --

HEARING EXAMINER STRAIN: Ten percent?

MR. HARDY: Yeah, 5,498 feet, I think. We'll call it 5,500 for this.

This is also -- I mean, that same building is, you know, like I said, it's one of the first two that we're going to build here in Collier County. We're -- that's also the same architecture and pattern that we're pursuing out at the Heritage Bay PUD called our Bellaire efforts that we're working with staff on currently right now.

HEARING EXAMINER STRAIN: How high is the canopy?

MR. HARDY: Sixteen feet. That meets county code. And like I said, the massing elements that are both -- both site plans will introduce the massing elements on the canopy, as we work through those new canopy design standards that was set forth last -- like I said, last year in the new 5.05 standards.

The more specific things -- Fred, if you can throw up the next one -- is we've talked about the height of the wall. This shot right here is from across Palm. It's an architectural rendering that shows you what's going on there.

For demonstrative purposes, we have not included the cabbage palms that Mr. Windham talked about on our side of the wall, so please imagine implementing a row of cabbage palms on this side of the wall that will help shield a higher height for our neighbors here.

But I wanted to show you in this location that we do have the wall planned in that rear property line.

You can also see the elements in this one of the outdoor dining area. They're on the -- facing Palm and the new architectural efforts.

The next one, please. Thank you.

This one, it's a little dark, but that's intended; that's what it's intended to do. Working throughout these efforts over the last two years, we have committed to implement Dark Sky requirements. That's an industry standard in lighting designing and lighting elements.

As you can see, they're recessed lights and very focused LED beams so that you have lighting directly below the light, but it quickly bleeds out and quickly dissipates as you move away from the light.

As you can see there -- Fred, if you can zoom in just right here. As you can see right there, you've got some focus beams down on the cars that we're talking about; however, you can see the landscaping in between us and there. It bleeds out very quickly, and that's depicted to reflect Dark Sky's initiatives.

All lights are focused on site for safety reasons, and all that for our guests and our customers, all of our design, both inside and outside, from experiencing the crazy good coffee and the good yogurt and the ice cream to flexibility around the canopies. As you've always known, our mission statement is to make our guests' lives simpler and more enjoyable. So if we can get you to the pumps, you know, fewest turns as possible, and back on your merry way, we've done our job there.

And then also, making your -- if you come inside, we've implemented a lot of input from our guests to improve the guest experience. And you can see elements of that outdoor covered area there in that rendering there. And these will be the efforts that, either site plan we go with, we'll -- I'll commit to pursuing that building.

HEARING EXAMINER STRAIN: Either site plan you're committing to going with the standards you just articulated.

MR. HARDY: Yes, sir. The current SDP that is under review is actually -- was submitted and implemented, the larger building that we've been doing, but I'll tell you that we'll implement and pursue if -- whatever plan we pursue -- eventually pursue a full SDP on, if we're successful, we'll implement and take through the 5.5 (sic).

On Site Plan A, implementing the 5.5 actually will help us implement the 30-foot buffers and the standards that Mr. Windham discussed earlier in reference to Site Plan A.

HEARING EXAMINER STRAIN: Okay. I will have questions. I'm going to hold off my questions until we hear the public.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: Richard, is there anything else that you or your people need to get on the record at this time? Now, you're going to have an opportunity for rebuttal and for my discussion prior to rebuttal at the end of our -- whatever this meeting winds up.

MR. YOVANOVICH: I understand, and I believe under the rules that were handed out tonight, I think you were scheduled to take a break at seven.

HEARING EXAMINER STRAIN: We are.

MR. YOVANOVICH: So we'll let you review the materials, hear from the public, and prepare to address questions probably next week.

HEARING EXAMINER STRAIN: Okay. With that, ladies and gentlemen, our court reporter is typing as fast as everybody here talked tonight, so she needs a break. We will break until 10 after seven and resume with the public speakers starting at that time, so thank you.

(A brief recess was had.)

HEARING EXAMINER STRAIN: Ladies and gentlemen, if you'll please take your seats.

Okay. Normally how these meetings transpire is during the presentation by the applicant, it follows with a detailed paragraph-by-paragraph question-and-answer with me, and I do have those kind of questions. There will be more with the packages that were submitted tonight, but I also want to hear you and I don't want to keep you waiting any longer than we have to.

So with that in mind, we'll move right into registered public speakers. If you have not filled out a speaker slip and you would like to speak, please make sure you fill one out and get it to either of the parties on both sides, preferably Fred over here on the left.

In the meantime, Mike will be calling out the speakers that he's got slips for. Come up and use either microphone, and we will listen to what you have to say. I may have questions or there may be some questions of you, but we'll go from there.

Mike?

MR. BOSI: And, Mr. Strain, as I had noted, when we get down to the two speakers slips left, I'll let you notify the members of the public on the fifth floor.

HEARING EXAMINER STRAIN: Good point. There are people on the fifth floor who want to speak. They'll be -- as we get closer to wrapping up the people that are in this room, we'll make an announcement and they can come down and be walked right into this microphone, so...

MR. BOSI: And I will apologize for any incorrect mispronouncements. And I'll name -- the first speaker is Kathy Volland, and the second speaker, just to know, will be Maarten Heybroek. Kathy Volland.

HEARING EXAMINER STRAIN: Ms. Volland, are you here? How do you know -- the slips you got, are any from upstairs, Mike?

MR. BOSI: There were none that I know of that I received from upstairs. I had indicated to the people upstairs to bring those slips down when you would call for the speaker slips.

HEARING EXAMINER STRAIN: Put hers to the back. We'll call her back later and see if she does get here.

MR. BOSI: Maarten Heybroek?

HEARING EXAMINER STRAIN: Mr. Heybroek, are you here?

(No response.)

HEARING EXAMINER STRAIN: Do the same thing with that request. All of them that aren't here for now, let's put them to the back, and we'll try to get them before the evening's over.

MR. BOSI: Joanne Orrino.

HEARING EXAMINER STRAIN: Ms. Orrino, you'll need to identify yourself for the record and your address, if you don't mind.

MS. ORRINO: Okay. Hello, everyone. My name is Joanne Orrino. My home is in Royal Arms Villas, which is off of Palm Street.

HEARING EXAMINER STRAIN: Would you mind spelling your last name for the court reporter.

MS. ORRINO: It's O-r-r-i-n-o.

HEARING EXAMINER STRAIN: And that mike will need to be pulled a little bit closer. You can just pull the mike. There you go. It will make sure it picks you up.

MS. ORRINO: How's that?

HEARING EXAMINER STRAIN: Thank you.

MS. ORRINO: The granting of the distance waiver would have an adverse impact on adjacent land use, especially residential land use.

Crime is an adverse impact, and convenience stores are crime magnets. Why the term "crime magnet"? Well, when people go to the local convenience store every day, as millions of people do, they don't realize that they're entering a store that is one of the most challenging businesses.

From the perspective of safety and security for workplace homicides, taxi drivers are number one, convenience store clerks are number two, not to mention the injuries to clerks, other employees and customers that are in the stores when these crimes occur, mainly because convenience stores are a popular target for shoplifting and burglary.

Why are convenience stores targeted? Because they're easily accessible, they're open 24 hours a day, they've got small floor plans, the cash registers are near the doors, there's cash on hand, and there's a small number of employees.

Since 1975, there's been numerous studies to determine what can make a convenience store safe or unsafe. And they studied things like the lighting, the cash register location, and the size of the parking lot, along with dozens of other environmental factors.

The results varied widely from study to study, but the findings were only that they -- that only a presence of a police officer or an armed security guard would have a significant effect to deter a robbery.

Statistics also show that one in three robbers of convenience stores are on foot and nine out of 10 carry

a gun. In our situation, with this proposed RaceTrac, the armed criminals could likely run into the surrounding neighborhoods, threatening the safety of our area.

The RaceTrac corporation has presented slides showing how attractive the store will be, colors to match Florida decor, canopies, beautiful wall with bushes, nice lighting, but nothing about a security guard.

Having a pretty gas station does not address the concerns of the neighborhood about crime prevention. What will deter loiterers? What about late-night disturbances? The local bars might close at 2 a.m., so what will deter the RaceTrac from being the next stop as what occurred in Winter Haven, Florida, when the bars closed, they all went to the RaceTrac and caused so much disturbance to the neighborhood and even a near riot, that the town had to close the RaceTrac from 2 to 3 o'clock in the morning every night.

Naples is a beautiful town, but it's not immune to convenience store crime. Golden Gate, December of 2015, the Circle K, the man accused the clerk of drugging his juice and then demanded drug money from him. On the -- in Naples in 2015, Anchor Rode and 41, burglarized the store with \$150,000 fire damage.

And this year in Naples on Santa Barbara, an armed robbery at the 7-Eleven, and last year four men were arrested for armed robbery at the Circle K in North Naples.

Events such as these pose a threat to the immediate adjacent homes and can filter through to the surrounding neighborhood. This is not the appropriate location for a RaceTrac gas station with a playground. The entire proposal, including the playground, does not satisfy the Land Development Code in the request for RaceTrac by a waiver -- for a waiver.

Thank you.

HEARING EXAMINER STRAIN: Thank you, ma'am.

Next speaker. Ladies and gentlemen, I'm sorry, but this is not the appropriate time or the meeting that applauding is necessary, so I'd ask you to refrain from it from now on.

MR. BOSI: Bill Burns is the next speaker.

MR. KLATZKOW: Who will he be followed by, Mike?

MR. BOSI: Oh, Vern Hammett, who's also been ceded time by Sascha Heligers.

HEARING EXAMINER STRAIN: Thank you.

MR. BURNS: My name is Bill Burns. I live at 2036 Mills Lane. I'll try to condense this.

We're all here because RaceTrac wants to build -- to make a station on a piece of commercial property that requires a waiver from the county due to the nature of their business. The waiver clearly outlines additional concerns that must be addressed.

RaceTrac is, in fact, filing under protest because their lawyers, Mr. Yovanovich, don't believe our founding commissioner mandates apply to them.

They recently purchased the property which will give them greater leverage for upcoming lawsuits they probably have planned regarding the waiver. But for now, thank heaven for our founding commissioners and 7-Eleven.

I would like to address the summary submitted by growth management. It begins with a mission statement to ensure that the community interests are maintained. I applaud that objective. And while I believe they were thorough and transparent in their findings, I respectfully have issues with some of their conclusions.

To begin with, they state the subject parcel is zoned commercial, and there are many uses which would have similar impact on the intersection. I don't believe that. I don't believe there's anything like a gas station for traffic. They're in and out. It's quick, in a short period of time. I would like to hear of one that's similar.

They cite a convenience store without fueling. I don't know one of those exists. I haven't seen one since 1968. I'd like to hear about it.

I don't know why they put in a driveway of Naples Bay Resort as across from one of the entrances. That's a gated entrance and seldom used.

And then further down they -- regarding the zoning that's been in effect, please note, subject site was zoned general commercial before the property on the north side of Mills Lane was zoned residential. My answer to that would be please note 5.05.05 was on the books long before RaceTrac was here.

And down to conceptual site plans, RaceTrac says this plan does not require distance waiver because the existing facility with fuel pumps and proposed facility with fuel pumps are not adjacent but are separated by

Future Development 1.

"Adjacent" is a word that's probably going to get thrown around a lot. RaceTrac's looking for the word "adjoining." "Adjacent" means close to. It can mean adjoining, but mostly it means close to. So you don't have to be touching borders to be adjacent or affected by adjacent.

They say a higher degree of compatibility with existing neighborhoods beyond what Land Development Code would require from any other CD4 (sic). That's why the fathers put in 5.05.05, just to address that. It's not mysterious that they have higher standards. That's done on purpose.

And then they recommend that it be approved because the current zoning has been in place since at least 1969, is one reason. The current zoning also includes 5.05.05.

They recommend approval with the option to meet the distance waiver. What am I missing here? It doesn't meet the distance waiver. That's what you're trying to get around, but you haven't been able to.

Like has been mentioned, over 1,600 signatures.

The distance waiver includes neighborhood impact. It's not just a six-lane highway.

And then there's RaceTrac own analysis summary. They've decided, and we are not aware of yet, but there's a gas shortage here in East Naples. We don't know it, but there is one. RaceTrac says so.

According to RaceTrac, in their in-house equation of what determines a gas shortage, we have six gas stations in the vicinity and, to my knowledge, and I believe I'm stating this honestly, none of those stations are using over 50 percent of their capacity. You can argue that if you can find it, but I believe I'm correct. But I do appreciate you looking out for us citizens here, taking care of our gas shortage.

It would be wrong to stifle free enterprise. RaceTrac is a commendable business model, and their founders have my respect for that. But when they insert themselves to a community that doesn't want them --

HEARING EXAMINER STRAIN: You'll need to wrap it up. You'll need to wrap it up, sir, please.

MR. BURNS: -- and the commissioners have the ability under law to deny them, I would hope the right choice for our town will be made.

HEARING EXAMINER STRAIN: Thank you very much.

Mike will announce the next speaker, and then the one after that, please.

MR. BOSI: The next speaker is Vern Hammett. He's been ceded three additional minutes from Sascha --

HEARING EXAMINER STRAIN: Actually, it would be five.

MR. BOSI: Five additional minutes, and after Vern is Masha (sic) Elliott.

HEARING EXAMINER STRAIN: Thank you.

Ms. Elliott or Mr. Elliott, if you heard your name called, just be ready to come up after Vern finishes. And you're not going to be able to get that on the overhead, are you, Vern?

MR. HAMMETT: No. The most important thing is that you see it.

HEARING EXAMINER STRAIN: I can see it, yes, sir. There's a walk-around mike. And Mike is getting the mike ready, so...

MR. HAMMETT: No. The problem is I'm not that good. I can't extemporaneously speak.

MR. KLATZKOW: Are you going to be giving that to the hearing examiner afterwards?

HEARING EXAMINER STRAIN: Well, actually, they took a picture of it and it's been PDF'd, and it's supposedly being sent -- Fred, are you receiving that picture?

MR. REISCHL: On my monitor, no.

HEARING EXAMINER STRAIN: Okay. Someone --

MR. BROOKES: Patricia Morgan.

HEARING EXAMINER STRAIN: Trish is receiving it. Then you need to make a note from Trish -- get a copy of this from Trish Morgan, if you wouldn't mind, Fred.

MR. REISCHL: Okay. Will do.

HEARING EXAMINER STRAIN: And, Jeff, he's got 10 minutes.

MR. KLATZKOW: I got him. If I could figure this thing out.

HEARING EXAMINER STRAIN: Well, you might have to hit it twice.

MR. HAMMETT: Well, the good news is that I'm not going to use 10 minutes. Not even close.

HEARING EXAMINER STRAIN: Okay. You're more than welcome to, Vern.

MR. HAMMETT: More than five, that's for sure.

MR. KLATZKOW: You'll get 10, sir.

MR. HAMMETT: All right. Good evening, Mr. Strain. As you know, my name is Vern Hammett, for the record, V-e-r-n, H-a-m-m-e-t-t. Myself and my wife, we live on Frederick Street three lots south of the proposed site, so right there. I'll be addressing --

UNIDENTIFIED SPEAKER: Why don't you show it to us?

MR. HAMMETT: I'll be addressing No. 4 of the waiver criteria, whether the granting of a distance waiver will have an adverse impact on adjacent land uses, especially residential uses.

HEARING EXAMINER STRAIN: You need to slow down a little bit, and we'll make sure you have enough time to go slower.

MR. HAMMETT: Sure. Absolutely.

All right. I don't think anybody can deny that this proposed mega station is designed to increase foot traffic, bicycle, and particularly truck and automobile traffic.

With regard to this, in our acute familiarity with the existing traffic patterns in our residential areas, the proposed development will have a profound and lasting adverse impact on all of us.

If you look at both site plan options, you will notice the three exits from the proposed RaceTrac sites. And I'm referencing what was in the package, and I did see an exit here on Frederick Street for the Plan B proposal with the road that went through the --

HEARING EXAMINER STRAIN: Right. But that -- and by the way, my interruptions aren't going to count against you.

MR. HAMMETT: Right. No worries.

HEARING EXAMINER STRAIN: The Plan B Frederick Street entrance is only for the park. It doesn't interconnect completely with the facility, from what I could tell on the site plan that I saw.

MR. HAMMETT: Okay, all right. Well, it's really neither here nor there because the problem is, is if you take Frederick Street, the Frederick Street exit away, it just further stresses the Palm Street exit anyway. So we'll just go with Plan A and with what I -- the --

HEARING EXAMINER STRAIN: That's fine. I just --

MR. HAMMETT: -- remark. Okay, great.

So we've got the one exit on Frederick Street, we've got the one exit on U.S. 41, and then you have the exit on Palm Street.

Each of these exits have their own unique issues which will have a significant impact on the traffic flow in the surrounding area.

I'd like to begin with the analysis with the U.S. 41 exit. So one would expect this to be the primary exit out of the facility; however, in season and any time during rush hour, traffic on U.S. 41 backs up well past Frederick Street, so right past -- about here.

This will most certainly inhibit the normal flow of traffic out of site's U.S. 41 exit but, regardless, there will be drivers that will elect to exit here but, as you can imagine, this will create a queue of idling vehicles.

Recognizing this lineup, many drivers will then elect to use either the Frederick Street exit or the Palm Street exit. Those using the Frederick Street exit have -- basically have three options. They can make a right turn on Frederick Street, however, anticipating the backup that I mentioned on U.S. 41 or the requirement to cross three lanes of traffic here to get in the left lane, they'll probably just make a left turn.

So if they make a left turn onto Frederick Street, they're going to continue south and, most likely, they're just going to continue straight south on Frederick Street, join Monroe, and then make a left turn on Palm Street.

This funnels commercial traffic through a residential area, my neighborhood, with infrastructure that is not designed for nor can be improved to accommodate it. Our roads are extremely narrow, have no sidewalks, and can barely accommodate two passing medium-size vehicles, much less the landscaping trucks and trailers prevalent at a mega station during the morning rush.

In fact, we consistently see off-road damage in the corner right here on Monroe due to vehicles that are unable to adequately make the turn.

The other option following a left turn on Frederick Street is to make a right turn here at Curtis. Follow

Curtis all the way down, make a right turn at Carlton, and then a right turn at Sandpiper up to the intersection of U.S. 41 and Sandpiper.

Again, this is taking traffic, commercial traffic, exclusively through residential areas.

HEARING EXAMINER STRAIN: And, Vern, and I don't -- like I said, my questions aren't going to hurt your time, so you'll have plenty of time to talk.

MR. HAMMETT: Okay.

HEARING EXAMINER STRAIN: You're explaining how people would -- to make -- to get up to Tamiami Trail and make, eventually, a left to go west on Tamiami Trail --

MR. HAMMETT: Right.

HEARING EXAMINER STRAIN: -- would have to go through a series of maneuvers down Frederick to get there. Why wouldn't they just connect over and go to Palm? I mean, the plans that they showed showed internal roadways from the gas pumps to Palm. Did you look at that as a --

MR. HAMMETT: Well, and I'm getting to that.

HEARING EXAMINER STRAIN: Okay.

MR. HAMMETT: I'll get there.

HEARING EXAMINER STRAIN: I just wanted to make sure you understand the plan --

MR. HAMMETT: Oh, absolutely.

HEARING EXAMINER STRAIN: -- showed that.

MR. HAMMETT: Because there is the utilization of Palm exit, and I will absolutely get to that point.

HEARING EXAMINER STRAIN: Thank you.

MR. HAMMETT: So now I have to find my spot. That's great, so...

So even if you make -- so let's say, for example, even if you were to make Frederick Street right turn over so that we could avoid this traversing through residential, you know, initially that might make a lot of sense, but I can guarantee you, unless you have some sort of geometry that forces you to right, people are going to disregard that because knowing how challenging Tamiami Trail is depending on the time of the day and the season, they're going to disregard it and then still continue to make the left turn.

Now, there will be some people that, knowing and being familiar with the traffic patterns, will say, okay, I know I can only make a right turn here at Frederick, so now I'm going to go and I'm going to use Palm Street as the exit.

Now, the Palm Street exit has its own set of issues, and to explore them thoroughly, you must analyze the precarious Palm/U.S. 41 intersection where numerous accidents have occurred.

This location has two major issues, and it's hard to depict here, but there's a curvature here, and it's very, very confusing for drivers on both -- on the south side of Palm and on the north side of Commercial.

The other problem is is that these are both two-lane roads. And when you combine the issue with confusion and the two lanes, these roads, particularly Palm, are at capacity during high traffic times. And what ends up happening is is Palm ends up backing way up past Washington Avenue.

And this is -- what will happen is is that because of the backup, it will render the left turn at the Palm Street exit virtually useless, because you're not going to be able to make the left turn because of all the backup. So what this forces drivers to do is, is then make a right turn on Palm Street.

And then what they're going to do is they'll make a right turn on Palm Street, and they basically have two choices. But the first choice is probably going to be to hit Monroe, up Frederick, and then, as I described, you know, they're going to take Curtis all the way down to Carlton, Sandpiper, and then up to U.S. 41.

They do have one other option here, and it's not really depicted, that could continue southbound on Palm Street all the way down to Marlin, which is off the map here, make a right turn, and then that connects with Sandpiper and then go north on Sandpiper. But, again, this is all residential area.

You know, I think it's something that's important to emphasize is that these traffic patterns that I'm describing, they already exist, and this is without any commercial activity in this lot.

HEARING EXAMINER STRAIN: Vern, do you feel a RaceTrac at that location will create more of this traffic pattern that currently exists but increase it more whether it's a RaceTrac or one of the other uses? Does RaceTrac cause you to have a bigger concern?

MR. HAMMETT: You know what? And I'm actually getting to that. I mean, this is --

HEARING EXAMINER STRAIN: Okay.

MR. HAMMETT: I mean, this is -- with regard to everything that's available in terms of, you know, what opportunities to development, this is, from an intensity-of-use standpoint, is as high as it gets from both the convenience store standpoint and then the fueling standpoint.

So, you know, with that in mind, you know, based on all this, it's obvious that either one of these site options will increase commercial traffic to an unacceptable level through residential infrastructure that isn't designed for it and, as I said before, can't be upgraded to accommodate it.

So next I'd like to conclude with some general comments about the road vacation. When my wife and I were looking to buy approximately 15 years ago, there was a small Checker's franchise on the corner of Frederick Street. Little Italy was in operation, and there was a commercial building here that architecturally was inconsistent with the rest of the neighborhood and, of course, it still exists.

This, along with the review of the plat showing roads consistent with the layout and character of the neighborhood, provided us with the confidence that this area was the correct choice for us. We knew it was zoned commercially but felt protected from large-scale commercial development due to these circumstances, so naturally I'm very opposed to the vacation of the platted roads.

Mr. Strain, when you're making your recommendation for this waiver and road vacation, please keep our concerns in mind.

We'd be adversely impacted by either proposed option. These are our homes and our daily lives. I've only covered the traffic effects. There are speakers that have already -- or will already -- will cover the damaging effects of noise, crime, and lighting in the high intensity of use. It hardly seems appropriate to degrade our quality of life in the name of commercial development when this waiver application can be denied to protect us.

HEARING EXAMINER STRAIN: Thank you, Vern. There are going to be some questions I had that will maybe -- hopefully provide some answers to the traffic. Not necessarily solutions, but answers. I'm going to be asking those, but I'm going to wait till all the public has to speak so that everybody that wants to talk has plenty of time.

MR. HAMMETT: Yeah. And I hope that I've articulated what I'm talking about, I mean, because like I said, these traffic patterns already exist.

HEARING EXAMINER STRAIN: Well, the Palm Street intersection is a concern, and that's one of the items that I focused on in looking at their traffic impact statement. It's one that will have to be addressed before this meeting's over with.

MR. HAMMETT: And just one other thing to mention, you think, if -- out of Frederick Street, whenever the traffic backs up, you really -- the only opportunity you have off of Frederick Street or even U.S. 41 is to just continue southeast bound. You can't traverse over and get into the left lane and either make a U-turn onto U.S. 41 or make the left turn onto Commercial. It's virtually impossible.

So this Palm Street exit is going to be extremely stressed or, like I said, all the traffic's going to funnel through the neighborhood. And I think that's a really important detail to understand.

HEARING EXAMINER STRAIN: Well, the only concern I had and the reason I asked you the questions to begin with, if I filled up at a station at that location or even a 7-Eleven across the street -- and I'm not in that neck of the woods a lot -- I wouldn't know how to maneuver those roads south of this location to get to the two points that you had talked about. I wouldn't know to be able to get over to Palm or even especially to Sandpiper.

And I'm wondering how many people fill up there would actually know that --

MR. HAMMETT: Well, I think ideally what RaceTrac would like is to have repeat customers who are very familiar with the area.

HEARING EXAMINER STRAIN: They just drive around in circles and use the gas up; is that right?

MR. HAMMETT: Right, right, exactly, exactly. So...

HEARING EXAMINER STRAIN: Okay. I understand what you're saying, and I appreciate that. And if you are able to attend the next hearing on this, the second -- the continuation, I have a lot of questions on the TIS that may help answer some of your questions or least provide some more insight.

MR. HAMMETT: Okay. Sounds good.

HEARING EXAMINER STRAIN: Thank you, sir.

MR. BOSI: Next speaker is Masha (sic) Elliott, followed by Gale Burton.

MS. ELLIOTT: Hi, Mr. Strand.

HEARING EXAMINER STRAIN: Hi, Ms. Elliott.

MS. ELLIOTT: It's Marsha Elliott, and I live on Mills Lane, 2035 Mills Lane. My house -- my husband and our home is on the back south side of this proposed gas station that's going to go in.

We've lived there for 15 -- we've had the property about 15 years, lived there 13 years. We've seen lots of noise coming from the nightclub which is adjacent across 41 on the north side. We've had noise issues, which has proceeded to go to 7-Eleven to continue their night of nightclubbing, to party, and it's been a real issue for us for eight years during the different nightclubs that's come into this area.

One of the main things that we've been real concerned with is the noise, which gives us no opportunity to turn off or to leave.

And two weeks ago we had an incident that happened at 7-Eleven. After the nightclub had closed at a quarter till three, everybody proceeded to go to 7-Eleven and to continue their partying to the point where law enforcement had to be called to dispage (sic) -- to make everybody leave. It took them 30 minutes to empty 7-Eleven with six police officers, and cars on 41, Commercial, trying to get the traffic out.

And these are a lot of things that really concerns me. My home definitely is more than 15 feet. It's on the second level. And I do face the back of this location.

And I would just love to have some input or trying to control what we have to deal with every year and every night on a weekend or weekday.

HEARING EXAMINER STRAIN: So your backyard backs up to the southern property line of this property?

MS. ELLIOTT: Exactly.

HEARING EXAMINER STRAIN: Okay. That's been zoned commercial for a long time, so the zoning isn't really something in question. It's the use.

MS. ELLIOTT: Correct.

HEARING EXAMINER STRAIN: What kind of uses and buffers from the uses that you -- what did you expect to go there? Just in your mind, what was going -- what was that going to be some day? Did you have any idea?

MS. ELLIOTT: At one time we received notification of asking, what would we love to see on this development? And that's when little Italy was still existing. I was wanting to see something that would be more to our professional buildings, medical maybe, small medical, doctors, dentist, anything that would close at a normal hour and not be open 24/7 that would keep us up as neighbors at night.

HEARING EXAMINER STRAIN: Okay. Thank you. I was just --

MS. ELLIOTT: Thank you.

HEARING EXAMINER STRAIN: Thank you very much.

Next speaker?

MR. BOSI: Next speaker is Gale Burton, followed by Barbara Moscardelli.

MS. BURTON: Hi, Mr. Strain. My name is Gale Burton, and I've lived at 2124 Frederick Street since 1981. My property -- and I own two lots there -- is less than 500 feet from the proposed RaceTrac development.

You're hearing numerous concerns whether the granting of the distance waiver will have an adverse impact on adjacent land uses, especially residential, and whether the automobile service station is only engaged in the service of automobiles, blah, blah, or sells food, gasoline, and other convenience items during daytime, nighttime, or on a 24-hour basis.

I understand that you have to abide by the Land Development Code and Section 5.05.05.B.2 regarding the waiver. Well, one, the RaceTrac would be selling food, beer, wine, and lottery tickets 24 hours a day, seven days a week, 365 days a year.

Despite RaceTrac's new outparcels and enhanced landscape buffers, there will still be a tremendous increase of traffic 24/7 on Palm but also on Frederick Street. Even if you're not familiar with the area, people are going to be turning left just to get away from the traffic that's on 41.

The loud noises 24/7 and bright lights and probable crime will negatively affect homes across Frederick especially -- and especially the homes, the stilt homes on Mills Lane.

There will be stormwater runoff problems because there are now. Ever since the county reengineered the stormwater drains, when there's a wind from the west, water pours out of the drains into our ditches, and ends up -- mosquitoes are horrible. There's got to be some runoff from gas station that will affect that as well.

There's also potential vagrants in the landscape buffers. It sounds silly, but that whole area used to attract vagrants and homeless. Still did up until when Little Italy closed. And the dis -- but the most important is the decline in property values. I know Mr. Yovanovich claimed that everyone probably knew of the RaceTrac plans because there were "No RaceTrac" signs up in the neighborhood, he said, for months. There have been no signs up until 10 days ago. People would only know about this problem if they had read the paper or happened to live in our neighborhood.

And I don't believe there are any comparable situations to our residences and the proximity of RaceTrac.

Recently I spoke with two MAI appraisers in Naples. Both of them said they could not offer any opinions without proper research that would take more than a week.

You'll hear many concerns, they're all valid, I believe, and all of them will have adverse impact on adjacent residences, and they do meet the criteria to deny the waiver.

There are 142 permitted uses for C4 zoned property, as was mentioned before. I have gone through that list, and every single one of those -- out of those none of the 141 other uses are as long-lasting and damaging as a mega gas station is to a residential area. There's not one thing. Even a strip club would be better than a RaceTrac.

Preferable would be a professional building for legal/medical uses, as Marsha said, landscaping nursery, retail store, bank, a bowling center, pest control services, restaurant and bar, which would at least have restricted hours of operation. A library, movie theater, art galleries, car rental, and so many more.

If public concern -- and you can see there is a lot. If public concern is of any importance in this matter and you agree with the above adverse effects, there's no other result than for you to recommend no to the Board of County Commissioners.

HEARING EXAMINER STRAIN: Thank you, ma'am.

MS. BURTON: Thank you.

MR. BOSI: The next speaker is Barbara Moscardelli followed by Bob Conroy.

MS. MOSCARDELLI: Good evening, Mr. Strand (sic), and the people that are all here.

I own a building on Monroe Avenue, which is on that listing which is -- sort of backs up to Mills Lane, and it is somewhat of a cut-through street, okay.

Now, there are 12 families that live there and have lived there for long times, okay. And I have hedges that grow across the front. And I've owned this property for over 20 years, and I have prided myself on the property and tried to keep it as nice as possible.

I have cocoplums that grow all the way across to give my tenants, my families, privacy from any traffic that goes down. Now, several of the speakers that have just been here have described exactly what will happen if that gas station goes in, okay. It will increase traffic. It will increase it, and it will tear -- and I'm also a real estate agent, and it's not going to happen. It's not going to help the property values of Mills Lane or any of us, okay.

And we have all invested in our homes, and there are so many people here. It is such a total residential neighborhood that you're dragging this thing through. And I always thought that variances were variances, okay, and you can't go and get them to go backwards, and apparently --

HEARING EXAMINER STRAIN: This isn't a variance. There is a difference between a variance and a waiver, so...

MS. MOSCARDELLI: Okay. Well, a waiver then. We'll call it a waiver, okay.

They're asking to just mow right over it and forgot about it. The 500 feet does matter, okay.

And they're putting in a huge gas station, and they're blowing it off like it's nothing to them. And, of course, it isn't. They all work for RaceTrac. But we all live there, and I've lived at that building on and off, too, periodically, okay.

And no one -- and I'm representing 12 people that live on that parcel, okay. Individual families that drive home that want to have peace and quiet and don't want to think of burglaries or anything else going on in that area, and they don't want to look forward to extra traffic coming down that street.

And I'm hoping very, very much what the people in all of that neighborhood feel -- and it is our neighborhood, from Royal Arms Villa down Frederick Street down Carlton and Curtis, all of it. It's our neighborhood. It's not theirs. It's ours.

And we don't want to see this happen, and I hope that our sentiments and our feelings mean something to the county. We wouldn't all be here. We wouldn't have to have filled another room with all of the people that don't want this thing here and don't want to be pushed down by big business. And so I hope very much that you consider this.

Thank you.

HEARING EXAMINER STRAIN: I can assure you, ma'am, it's being considered, and the Board of County Commissioners has only done something like this once before in Collier County, for the same reasons; they wanted to hear -- they wanted to have the public have an opportunity to express themselves, have it be analyzed, and then that information provided to them.

So everybody is watching this and everybody is taking a very good -- very serious concern in it, so thank you.

MS. MOSCARDELLI: Thank you very much.

HEARING EXAMINER STRAIN: Thank you.

Yes, sir.

MR. BOSI: Bob Conroy, followed by Charlie Thomas.

MR. CONROY: Good afternoon. My name is Bob Conroy. I'm a resident of Beach Avenue in the neighborhood that will be directly affected by this decision on whether or not to let RaceTrac proceed with their station.

Let me preface my comments by saying that all the statements I'm about to make and the facts I am about to present are all taken from the following cites: U.S. Census Bureau, U.S. Department of Transportation, CollierCounty.gov, LeeCounty.gov, State of Florida, Florida Department of Revenue, and the United States Department of the EPA.

Anyone who is a full-time resident of this neighborhood, a seasonal resident, or a visitor knows full well the congestion and traffic on this stretch of U.S. 41 during the tourist season.

Frederick Street, Sandpiper Street, Palm Street, sometimes it takes three changes of a traffic light to make it across the street. The light changes at Davis and 41, but you can't move. The traffic has no place to go.

There is also heavy pedestrian traffic and bicycle traffic as well, not only from tourism, but also from residents going to and from work in the morning and evening.

The U.S. Department of Transportation performed a survey over a period of 2009 to 2013 of 5,500 gas stations nationwide and found the following: That each and every gas pump in a typical 10-pump gas station generates 100 to 160 vehicle trips per day to that pump in a 24-hour period. Multiply that by 10 and you have 1,000 to 1,600 vehicles per day pulling in and out of that area.

They also found that for every 1,000 square foot of retail or store space on these properties, an additional 800 to 1,100 cars per day was added to that total.

Using the example of a 10-pump station with only 1,000 square feet of retail, that equates to an average of 2,700 additional vehicles per day using that area, 2,700 vehicles.

Now, extrapolate this up to a 4,000-square-foot facility, or whatever the figure will be, and 16 stations (sic), and you can do the math. Not only will it be a burden to everyone who uses and lives in the area, but it will also be a burden on our road system for which it was not originally designed, traffic nightmare, and a serious hazard to the many pedestrians and bicyclists who frequent this area.

The traffic is at a stand-still. How is another 3,000 cars a day going to help this problem?

The United States Department of Transportation did a study of 290 gas stations nationwide. They found that the average 10-pump station, excuse me, pumps as much as 16,560 gallons per gas -- of gas per day and requires deliveries of three to four tanker trucks daily to replenish their fuel.

They also found in their study that a decibel level of 45 decibels should be maintained to within 500

feet of any residential area.

Keep in mind, an average diesel tanker fuel delivery truck, while idling, has a decibel level of 110 decibels. That's 70 decibels higher than the recommended levels. What time will these refills be made: In the middle of the night?

Also, there is a subject of cost of supplies and deliveries, trash pickup. We have all heard the trash trucks early in the morning. Stations of this size have multiple pickups and deliveries per day. Will they be done in the afternoon, or will it be done at 4 o'clock in the morning?

Then there is the environmental impact of the area. We are well aware that this area is designated commercial; however, there are residential communities running parallel to it.

While there is no state or federal rule or mandate stating how far or how close a fueling station can be to a residential neighborhood, there have been numerous studies and recommendations.

The United States Department of Transportation study, along with the Scientific American, and the Environmental Protection Agency, performed a five-year study on the impact of 5,500 gas stations nationwide in or near residential neighborhoods. They found the following: There are 150 chemicals in gasoline. Out of these, the most toxic and cancer causing are benzene, ozone, hydrocarbon, and carbon monoxide. A sampling of ground contamination up to 500 feet from the stations found ground contamination levels 15 to 30 times higher with these contaminants than non-station areas.

Also found were contamination of groundwater sources for the residential area of three to five times higher with these chemicals.

For residents who had their own wells rather than municipal water supply, the contamination level was found to be almost -- oh, done already?

HEARING EXAMINER STRAIN: Nope. You've got about a minute left, so you need to start winding up.

MR. CONROY: I'm going, man.

HEARING EXAMINER STRAIN: Thank you.

MR. CONROY: Others adverse effects -- okay. Let me skip over real quick here. Bapa, bapa, bapa.

Okay. Also stated as a concern with the underground tanks, the EPA states that regardless of tanking or installation -- why can't I get somebody else's time -- there was a 3 to 5 percent leakage factor in these underground storage tanks.

MR. KLATZKOW: She can only type so fast, sir.

HEARING EXAMINER STRAIN: Just slow down a little bit. We'll let you get to your end.

MR. CONROY: All right.

In a typical 10-pump station, they found that an average of 40 gallons of gasoline spilled per year from typical activity, such as refilling tankers and spills at the pumps by consumers. This number is based on an average fueling total of 1.6 million gallons of gasoline per year for a 10-pump station. Keep in mind, your average RaceTrac, 16-pump station from their own -- from their own stats, 16-pump station pumps an average of 2.8 million gallons of gasoline every year. Those numbers in the spill numbers will obviously be higher than the 10-pump.

The reason that I cite 10-pump fueling station data is because as of the time there was no current data of the new mega stations, as the studies are still ongoing. These studies were verified and monitored by Johns Hopkins Medical University.

One of the other things that RaceTrac touts as a big selling point to the county is the job creation that will take place. It's true, on average, a RaceTrac station employs approximately 20 people. What they fail to mention is that the pay for each employee, according to their own website, is at or below the existing poverty level for both the U.S. government and Collier County.

The U.S. government's own site states that an income level of \$13,420 is poverty level in the United States. RaceTrac pays its employees \$58 a week above that. Collier County Government website states that for a family of two --

HEARING EXAMINER STRAIN: You know, you're getting a little off target here in their pay scales.

MR. CONROY: Okay, okay. Well, you know, these are the things they put out in their talking

points and on their website.

HEARING EXAMINER STRAIN: No. Your points about the vapor and -- that's fine --

MR. CONROY: Okay. Crime -- all right.

HEARING EXAMINER STRAIN: -- but let's stick to something like that.

MR. CONROY: All right. Crime. Crime is another problem that will be created and added to.

According to the Collier County Sheriff's Office own website, the average amount of total crimes per three-block area in Naples is 1.6. Along this section of the East Trail, of 41, the area in discussion, the same three-block area currently has 6.3 crimes per three-block area; almost five times as high as the City of Naples.

According to FBI crime statistics published in 2014, 24-hour gas stations account for 16 percent of all robberies in the United States; 16 percent. The same statistics also state that surrounding businesses and residential areas show an increase of 11 percent in robberies and burglaries because of the element brought into these areas.

Crime statistics also further state by the FBI that the 24-hour gas station employees are second only to taxicab drivers when it comes to armed robberies.

HEARING EXAMINER STRAIN: You'll need to start wrapping up, sir. We need to get to the end. It wouldn't be fair to let you have a lot of extra time without others, so...

MR. CONROY: No. The only thing I will say -- the only other thing I would like to say is consider the impact of the same business in your neighborhood and the impact it would have, really think about it. And we all know that if some oversight had designated a section of Port Royal as commercially zoned, that this gas station wouldn't even be considered. It would never have seen the light of day. When is enough enough?

Thank you.

HEARING EXAMINER STRAIN: Thank you, sir. Appreciate it.

Next speaker, Mike?

MR. BOSI: Next speaker is Charlie Thomas, followed by Karen Caudillo.

MR. THOMAS: Hello.

HEARING EXAMINER STRAIN: Hi, Charlie.

MR. THOMAS: Hey, how are you?

HEARING EXAMINER STRAIN: Okay.

MR. THOMAS: Charlie Thomas. I'm here representing Knightsbridge Partners of Naples, LLC, the owner of property which is directly across Frederick Street from the subject property.

I'm a professional planner in practice for more than 45 years. I have my resum^o here if anybody would like to see it.

HEARING EXAMINER STRAIN: I'm quite familiar with your resum^o.

MR. THOMAS: Thank you. I'm going to be -- take a little bit different tact, I think, and not talk about specific technical aspects or dimensional, other concerns with regard to the proposal, more a broader look at the approval process and considerations that should be given to this project in reaching a decision as to whether to recommend it or not, and what scope of conditions might be applied.

And in saying that, much of the discussion is focused on meeting the technical requirements of 5.05.05 and the suggestion that compliance with the technical standards that are set forth in that section of the code is sufficient to justify the granting of a waiver or approval of a fuel facility, facility with fuel, in proximity to a residential neighborhood.

And I just want to suggest that the considerations that can be given are broader than that. And I'll just cite a few things from the code to that effect.

And I think you can start with the purposes of the code. And I won't read these things specifically, but I will point out that the -- in 1.05.01.B, the purpose of the code is in order to foster and preserve public health, safety, comfort, welfare, aid in the harmonious, orderly, aggressive development of unincorporated areas of Collier County, and then it goes on to speak of natural resources and consideration of interests of the citizens of the county, et cetera.

But I think more to the point, in 5.05.05 it states, the purpose of the section is to ensure that facilities with fuel pumps do not adversely impact adjacent land uses, especially residential uses, residential land use.

Then B.2.A starts by saying, the BZA may, by resolution, grant a waiver of part or all of the minimum

separation requirements. I think the keyword there is "may." Doesn't say it must. Doesn't say it has to. It says it may. It's a judgment on the part of the BZA and, similarly, I think there is a judgment on the part of the Hearing Examiner as to what to recommend. It's not if it meets the technical requirements, then I recommend. It's "may" recommend.

It goes on in B.2.A.4 whether the granting of the distance waiver will have an adverse impact on residential -- on adjacent land uses, especially residential use.

B.2.C, additional conditions, the BZA shall have the right to add additional conditions or requirements to its approval of a distance waiver request in order to ensure compatibility of the facility with fuel pumps with the surrounding area and the goals and objectives of the Growth Management Plan.

And I think those things are basically referred to in the staff report and recognized by the staff that those broader considerations can be brought to bear on the approval.

I think one additional area that there's reference in the staff report but there's not -- it's not really addressed in that report, is the fact that this property is within the Gateway Triangle mixed-use overlay district, and that district says some interesting things.

It says, for example, that you can elect, as a developer, to either develop under the underlying C4 district or under the provisions of the overlay district. But it also says, in either instance, the GT/MUD, which is the Bayshore Triangle mixed-use development, site development standards, as provided for in Section 4.02.16 shall apply.

So those standards, the standards of the overlay district, are brought to bear and are a consideration of any approval that's granted within the overlay district. That brings in a number of standards and objectives in the overlay district which includes human-scale pedestrian-oriented interconnective projects that are urban in nature and include a mix of residential types and commercial uses.

Development in this district should encourage pedestrian activity through the construction of mixed-use buildings, an interconnected street system, and connections to adjacent neighborhoods.

When possible, buildings are located near the street with on-street parking and off-street parking on the side or in the rear of the parcel.

Now, I'm not advocating a particular solution there. I am suggesting that the LDC requires that those considerations be brought to bear in reviewing this petition.

Thank you.

HEARING EXAMINER STRAIN: Much appreciated. Thank you, Charlie.

MR. YOYANOVICH: Mr. Strain, may I ask, since he's a professional planner?

HEARING EXAMINER STRAIN: Yes.

MR. YOYANOVICH: I'm not going to bother with general public.

HEARING EXAMINER STRAIN: Charlie, the applicant does have a right to question, so go ahead.

MR. YOYANOVICH: I just want to understand a little bit of your testimony.

Is a convenience store with fuel pumps a permitted use in C4 zoning?

MR. THOMAS: Yes.

MR. YOYANOVICH: Is a gasoline -- I'm sorry -- a convenience store with fuel pumps a permitted use within the overlay?

MR. THOMAS: Yes.

MR. YOYANOVICH: Is it your testimony that a permitted -- the Board of County Commissioners can deny a Site Development Plan for a permitted use?

MR. THOMAS: I think my testimony is that the provision of -- I'll cite it correctly -- 5.05.05.B.2.A states that the BZA, Board of County Commissioners sitting as the BZA, may, by resolution, grant a waiver.

MR. YOYANOVICH: I didn't ask the question in this particular situation. You testified earlier that -- I think it was under Section 1.05.

MR. THOMAS: 1.05 is general purposes and intent.

MR. YOYANOVICH: Right. I'm just asking you, can the Board of County Commissioners use that general purpose and intent section to deny the approval of a permitted use in the C4 zoning district?

MR. THOMAS: No.

MR. YOYANOVICH: So how would you use that section to bootstrap another section of the code?

MR. THOMAS: I'm not.

MR. YOVANOVICH: You're not. I just want to make sure we clarify --

MR. THOMAS: No. I said very clearly, that's sort of the construct within which the provisions of the Land Development Code exist. So when you are looking at a decision that you're making under 5.05.05 or elsewhere where a judgment's being made under the Land Development Code, you do have a purpose and intent section that you have to respect. I don't think that authorizes. I didn't say that.

MR. YOVANOVICH: Okay. I just wanted to make sure we're clarifying for the record the testimony, because I understood you saying it a different way.

MR. THOMAS: No.

MR. YOVANOVICH: And I just wanted to clarify that.

HEARING EXAMINER STRAIN: Section 5.05.05 is separately referenced in the Bayshore/Gateway overlay --

MR. YOVANOVICH: Yes.

HEARING EXAMINER STRAIN: -- under the portion of the use table that designates the automobile service stations as an allowed use.

MR. YOVANOVICH: Yes.

HEARING EXAMINER STRAIN: And if you'll look at the right side of the table, you'll see a reference.

MR. YOVANOVICH: It's clearly an allowed use. I know that.

Now -- you know, Mr. Thomas, it's hard for me. I mean, you and I have known each other for a long time, so can I call you Charlie, because it's going to come out of my mouth anyway.

MR. THOMAS: That's fine.

MR. YOVANOVICH: Charlie, but for the 7-Eleven, would this gas station, as proposed in either scenario, be permitted on this piece of property?

MR. THOMAS: I don't think I've really looked at that question in sufficient detail to answer it. If it is not within the distance separation requirement from the 7-Eleven, there are still other standards that apply, and what standards apply depends on distances from residential properties and things of that nature. And I, frankly, have not done that analysis.

MR. YOVANOVICH: You've not analyzed this petition at all for compliance with 5.05.05?

MR. THOMAS: No.

MR. YOVANOVICH: Thank you.

HEARING EXAMINER STRAIN: Thank you.

And, Fred, would you or Mike mind taking that map down.

MR. YOVANOVICH: Yeah. It's hard. If you don't mind, too.

HEARING EXAMINER STRAIN: No, I don't need to see it. I think it was left there for other people, and we'll just have to put it back up if needed. Thank you.

MR. BOSI: The next speaker is Karen Caudillo followed by Chandler (sic) Whittington.

HEARING EXAMINER STRAIN: You can use either mike, yes, ma'am.

MR. BOSI: Chandler Whittington.

MS. CAUDILLO: Hi, my name is Karen. I live on --

HEARING EXAMINER STRAIN: I'll need your last name, and please spell it.

MS. CAUDILLO: Karen Caudillo, C-a-u-d-i-l-l-o.

HEARING EXAMINER STRAIN: Thank you.

MS. CAUDILLO: And I live at 2030 Monroe Avenue. I live where the traffic is actually going to go through.

I came over here because I wanted to show you a better map. We couldn't see that map.

HEARING EXAMINER STRAIN: Fred, yeah, do 180 on that. Thank you.

MS. CAUDILLO: All right. Okay. Hello? All right. Okay.

So this is where the gas station's going to be built. This is where I live. As you can see, people are going to turn left on Frederickson (sic). I live right here. There are no sidewalks. When I mean none, I mean none.

I see kids playing there all day, especially on the weekends. That's when the gas station's going to be at its busiest point.

Right here on Monroe is where I live. Okay. Now that we're past that.

Just so you know, you know, that street is really important because they haven't shown it, barely, on any of their plans, and it's essential.

All right. Okay. I've noticed that on the RaceTrac on Airport Road, I've seen increased traffic on Horseshoe Drive North where the River Reach community begins. They stated that the properties haven't decreased in value, but they also don't point out that they're actually a few blocks where those -- that community, you can't even see the RaceTrac. It's hidden behind.

I'm concerned that it's going to be a 24-hour property, 24-hour store. I don't think that's very needed here. You know, usually younger people say that they want things open later. I don't. I don't agree with that.

Everything around our neighborhood closes max 8 p.m. We don't need anything where stragglers are going to come by and are going to influence more crime. You know, just a few days ago someone broke into the Sandpiper community, and it wasn't good. That scares me. And bringing more people to our side of -- like, our community for a 24-hour store isn't necessary.

Okay. Where I live, there's a turn from Frederickson (sic) to Monroe where the traffic would flow through. It's a 10-mile-per-hour zone area. I can't even count to you how many times I've turned left to go to Palm and almost been hit by a car. These people aren't considerate of our speed limits. There have been cars, I mean, going 50 that -- I look left, look right, look left again, and make my left -- my right, sorry.

And if this is a problem now when there's no store at that corner, it's going to be a big issue later on, not just for me, but for the pedestrians walking where there's no sidewalk, where the kids are playing, where there's bicyclists, where there's all kind of interaction going on, because our part of town is very busy.

As the past person was talking about -- let's see -- this is what I found in an article under Scientific American, and it says, National Institution of Health and the U.S. Environmental -- oh, sorry. It's by the National Institution of Health, and it's also written by the U.S. Environmental Protection Agency, and it states that when -- when thousands of -- and I'm not sure if this contains this, but guessing there's going to be tanks of fuel underground to store all the fuel.

When thousands of gallons of gasoline enter the soil, chemicals travel to groundwater where the EPA says the source of drinking water for nearly half of the U.S. is stored there.

HEARING EXAMINER STRAIN: You'll need to start wrapping it up, Miss.

MS. CAUDILLO: Yeah, I'm sorry. Basically, I'm just saying that there's -- that my -- you know, my sister has asthma, and all these extra things that she's going to be breathing in are not healthy for her. She already -- sorry. She already has to carry an inhaler to school, and I don't think it's reasonable for her to be -- to have -- you know, to be breathing all this stuff when it could easily not be here, because we don't need it. Thank you.

HEARING EXAMINER STRAIN: Thank you, Miss.

Next speaker, Mike?

MR. BOSI: Next speaker is Chandler Whittington followed by Chuck Gunther.

HEARING EXAMINER STRAIN: Now, that's a different set of names I've heard there. I've heard you called a lot of things, but --

MR. WHITTINGTON: Good evening, Mr. Strain.

HEARING EXAMINER STRAIN: Good evening.

MR. WHITTINGTON: For the record, Charles Whittington. Last name is W-h-i-t-t-i-n-g-t-o-n. I'm here on behalf of the Naples Bay Properties, LLC, that is the owner of the commercial component of the Naples Bay Resort.

HEARING EXAMINER STRAIN: Is that the place across Frederick Street?

MR. WHITTINGTON: Yes.

HEARING EXAMINER STRAIN: Thank you.

MR. WHITTINGTON: Further down, more towards the main body, the west parcel of the resort. I'll keep this short and sweet, not to rehash what's already been said and most likely will be said after

me.

The LDC does not permit two service stations with fuel pumps to be within 500 feet of each other. I know the applicant disagrees, but I believe that is what the plain language of the LDC says.

The LDC also establishes a procedure and a process to be relieved of this prohibition. During that process, the burden is on the applicant to prove and satisfy the requirements by substantial competent evidence to obtain the waiver.

The county doesn't need to establish the justification for the waiver, and the waiver is -- the granting the waiver is discretionary. As I said, the burden's on the applicant and the burden -- or excuse me. The applicant in this process has not established and not met their burden by the substantial competent evidence that this use will not have any adverse impact on the surrounding land uses.

With that, I'll just conclude.

MR. YOVANOVICH: I've got a couple questions.

HEARING EXAMINER STRAIN: And so do I.

MR. WHITTINGTON: Okay.

HEARING EXAMINER STRAIN: Charles, the only thing I'd like to suggest, I have not had time to read this documentation. Have you seen it?

MR. WHITTINGTON: No, sir.

HEARING EXAMINER STRAIN: Okay. Go ahead, Richard.

MR. YOVANOVICH: Whittington?

MR. WHITTINGTON: Yes, sir.

MR. YOVANOVICH: Mr. Whittington, what exactly did you review for preparing your remarks today?

MR. WHITTINGTON: Listened to the presentation and reviewed the site development plans.

MR. YOVANOVICH: Did you review the county code, Section 5.05.05?

MR. WHITTINGTON: Yes, sir.

MR. YOVANOVICH: Did you review the county's LDC definition of adjacent?

MR. WHITTINGTON: No, sir.

MR. YOVANOVICH: Do you know what the county definition of adjacent is?

MR. WHITTINGTON: No, sir.

MR. YOVANOVICH: Do you agree, as an attorney, that the county is bound by the definition set forth in this Land Development Code?

MR. WHITTINGTON: To a point, unless the construction would be unreasonable.

MR. YOVANOVICH: Okay. Do you agree -- okay, that's fine. Do you agree that that's a decision that the Court will make?

MR. WHITTINGTON: I would, yes.

MR. YOVANOVICH: Okay. So are you a professional planner?

MR. WHITTINGTON: No, sir.

MR. YOVANOVICH: Are you a professional engineer?

MR. WHITTINGTON: No, sir.

MR. YOVANOVICH: Do you have any professional credentials other than being an attorney?

MR. WHITTINGTON: No, sir.

MR. YOVANOVICH: You are -- would you agree you're not qualified to give any opinions as to whether or not we have met the criteria set forth in 5.05.05?

MR. WHITTINGTON: I believe that's for the trier of fact.

MR. YOVANOVICH: I'm asking you, do you have the professional qualifications to review the documents necessary to determine whether or not the criteria have been met under Section 5.05.05?

MR. WHITTINGTON: Besides my education and training as an attorney, I would say no.

MR. YOVANOVICH: Thank you.

HEARING EXAMINER STRAIN: Okay. Charles, thank you.

MR. WHITTINGTON: Uh-huh.

HEARING EXAMINER STRAIN: Next speaker, Mike?

MR. BOSI: Chuck Gunther followed by Gloria Katz.

HEARING EXAMINER STRAIN: And do you have a Mr. and Mrs. Esch, E-s-c-h (sic), I think the last name's spelled, listed on your --

MS. EASH: I still have the paper.

HEARING EXAMINER STRAIN: Oh, Ms. Each, you're here. Okay. The reason I asked, Mike, is she flew down from up north specifically to be here for this meeting. If we can, I'd like to fit her in this evening before we finish. So at some point as we get towards the end of the stack you have, if it's close to 9 o'clock, I'd like to get the lady in, so -- they flew down. They called me earlier today and wanted to make sure they could be heard, so I would like to accommodate them if we can.

And sorry for the interruption, sir. Please go ahead.

MR. GUNTHER: All right. Name is Chuck Gunther; it's G-u-n-t-h-e-r. I've been in the neighborhood here for about 43, 44 years now. I live over on Bayside Street, which is just about three quarters of a mile from the site you're talking about.

I've been on the CRA board here for about 15 years. When we started that board -- and I can only speak as a member, not for the board, but I can tell you that my way of looking at this is we're trying to make the neighborhood better, make whatever is better for the neighborhood, better for the county.

In the 43 years I've been here, I've seen gas station up and down 41 go out of business. Almost all of them on the south side of 41, the southbound side of 41 go out of business. There was a Fina on four corners. There was a Gulf that was actually on four corners on the north side, but basic -- same basic area.

There was another one about two blocks up on 41 in Naples. There was also Mason's gas station on the corner of -- yeah, one of the corners here. I forgot the name of the corner, but it's right off the -- right across from 7-Eleven on 41.

And they've all gone out of business because there wasn't that much business for a gas station going south. Going north, they seem to do well. 7-Eleven was across. They didn't have the gas station after Mason's, but when they moved across the street, they did great with gas. It did well.

The problem I see is traffic. You're going to have traffic on 41 even without even talking about the side streets. Frederick Street will have a problem. Both of these streets will have problems. But 41 gets backed up during -- not even during the season. Off season it gets backed up.

I see it backed up all the way down to Shadowlawn sometimes. It's going to happen going both directions. During the season, if you have a gas station there, it will be overwhelming.

The one big thing I see with the neighborhood right there, this -- it's a beautiful neighborhood right behind that, just south of that site. The problem I see there that I don't -- really, really don't like that's bad for the neighborhood is most people who get gas as -- it's something you put in your car. It's a liquid. What they don't really understand is gas is also a vapor, a gas.

I come in here today with a gas mask. It was taken from me downstairs at security. When you go to a good gas station, they have signs that say there's carcinogens in that gas, in those vapors. And we know every gas station has spills. Those spills give off vapors. The liquid isn't as bad, actually, as the vapors are.

I have cancer. A lot of people have cancer. One girl mentioned she has allergies. These vapors are not good for your body. They do hurt you, and it's not good. They build up over time. When you live as close as these houses are to this station, even with a buffer, that -- those odors and in the vapors will migrate into that area, and I think that's a danger, and it's something we should have to look at.

And I think that's one of the main reasons these people are here without even thinking about it. They don't want the smells. They don't want the problems that come with it. The traffic -- the traffic, not only cars, but of people, and the type of people it can draw is not what we want in that neighborhood.

I would like to see something go in there like a business development, something like that. That would be fine. Restaurants, stuff like that is good. But when you put a gas station there that's 24 hours, it's not going to help the neighborhood. And that's really all I can say.

HEARING EXAMINER STRAIN: I have a question. Since you're on the CRA board, did the CRA ever take this project up under review?

MR. GUNTHER: Definitely.

HEARING EXAMINER STRAIN: What was the outcome of that review?

MR. GUNTHER: Thumbs down. We don't want it.

HEARING EXAMINER STRAIN: So you said there was -- you believe there was a formal vote of the CRA as a board against --

MR. GUNTHER: No, CRA Advisory Board.

HEARING EXAMINER STRAIN: CRA Advisory Board as a recommendation to the Board of County Commissioners to --

MR. GUNTHER: Yes, to turn this down.

HEARING EXAMINER STRAIN: And what was your reasoning for denial?

MR. GUNTHER: We just didn't feel it was appropriate for the area.

HEARING EXAMINER STRAIN: Okay. But was there a reason why you didn't think it was appropriate? I mean, there's got to be --

MR. GUNTHER: Yeah.

HEARING EXAMINER STRAIN: There's got to be reasons. Just to say it's not appropriate doesn't really explain it.

MR. GUNTHER: Right. In the beginning when we started the CRA, we come up with certain things we wanted to see in the area. At that time we hadn't anticipated a large gas station. We figured maybe one or two little gas stations. We figured certain things we did want, certain things we didn't want. We didn't want, like, tattoo parlors or strip clubs, things like that.

But as a board, I think the board come up with a determination; we just -- it was just something we hadn't anticipated, but we just felt it wasn't the appropriate use for that property.

HEARING EXAMINER STRAIN: Okay. I didn't know the board had even reviewed it.

MR. YOVANOVICH: Yeah, Mr. Chairman.

HEARING EXAMINER STRAIN: Go ahead.

MR. YOVANOVICH: Sir, and I'm pretty sure --

MR. GUNTHER: I can't represent the board, really.

MR. YOVANOVICH: I'm pretty sure we didn't make a presentation to the board.

HEARING EXAMINER STRAIN: Well, that was my next question.

MR. YOVANOVICH: And can you tell me when it was that the board considered this without our making a presentation so I can go review your minutes?

MR. GUNTHER: It was -- whoa, it was about maybe five, six months ago. It was quite a while ago. I think it was the first -- just after the first time you'd come to the -- where it come out in the open.

MR. YOVANOVICH: So that would have been in 2014?

MR. GUNTHER: Could have been, yeah.

MR. YOVANOVICH: And you guys took a formal position on that without our team being there to present?

MR. GUNTHER: Yep.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Mike?

MR. BOSI: Next speaker is Gloria Katz followed by Molly Whalen.

HEARING EXAMINER STRAIN: Ms. Katz? Ms. Whalen?

(No response.)

HEARING EXAMINER STRAIN: Put them on the -- well, try to keep track, if you don't mind, Mike, if -- when we're getting close to having the people upstairs come down and talk, about two or three before the end of the group that we have here.

MR. BOSI: We still have about 13 before we get to the four who weren't here, and then we have -- so we're still a ways away.

HEARING EXAMINER STRAIN: Good. Thank you.

THE SHERIFF: There are no people left upstairs.

HEARING EXAMINER STRAIN: You ran them all off, huh?

MR. YOVANOVICH: Mr. Chairman, have any of those people been ceded more time, or is it just 13 times five?

MR. BOSI: There are no other ones that have been ceded extra time.

MR. YOVANOVICH: Okay. I'm trying to do the math.

HEARING EXAMINER STRAIN: Okay. No. Thank you.

MR. MISENER: Excuse me. My wife --

HEARING EXAMINER STRAIN: No, sir, you can't -- you'll need to -- if you want to have conversation, you can go walk around the podium and ask him something, but you can't do that from the audience, please.

Mike, want to call the next speaker?

MR. BOSI: The next is Lee Flandreau, followed by Gary Kluckhuhn.

HEARING EXAMINER STRAIN: Okay. He's here.

MR. KLUCKHUHN: I'm Gary Kluckhuhn. I live at 2180 Sandpiper Street. Do you need the spelling of that?

HEARING EXAMINER STRAIN: Yes, your last name, please.

MR. KLUCKHUHN: K-l-u-c-k-h-u-h-n.

I've lived there about -- going on 30 years, and the quality of the creek water -- of course, as you might know, Haldeman Creek has the most pollutants of any of the tributaries in the Gordon River system. I'll -- Rich, I can send you the reports from the City on that.

I know the water quality -- and the stormwater manages to part (sic) of the issue, but I guess my first question would be, Rich, is this thing already decided? I mean, is there any --

HEARING EXAMINER STRAIN: Sir, you might need to direct your questions up here to me.

MR. KLUCKHUHN: Is this already decided, or is the county --

HEARING EXAMINER STRAIN: No, it's not. The whole process we're going through tonight is to help understand parts that will make some kind of decision come forth in the end.

MR. KLUCKHUHN: You know, I could get off on the water-quality issue and stormwater management and a lot of the other issues that other people have presented, but I think that if -- are the owners of the property now -- is the title transferred? Is RaceTrac now the owner?

HEARING EXAMINER STRAIN: Well, RaceTrac has it under contract. I don't know for sure if they've closed or not, but they're the entity that applied for the automobile station waiver that's for discussion.

MR. KLUCKHUHN: You know, there's many uses --

MR. YOVANOVICH: I'm willing to answer the question.

HEARING EXAMINER STRAIN: I think it's answered sufficiently.

MR. KLUCKHUHN: There are many uses that I know the community would find more acceptable, and I would propose that we form a consortium of the community -- there's a lot of support here -- and negotiate with the petitioner or the owner of the property. I'm sure we can come up with a higher and better use that will give the return to the property owner, whatever money's involved.

But a spill there, that water goes right into the creek, and the pollutants in that creek are already -- it's an issue. We're trying to get some sort of a stormwater management committee group to do something to start creating a more efficient estuary. But to continue to exacerbate the problem -- if you look at the Google maps -- there's no place. If you have a spill, it's going right in the creek. There's simply no retention. There's some small ponds. There's some pumping stations. But if you look at the Google map, it's a ditch. It goes right from the gas station to the creek.

And the other issues have been mentioned. If this can continue in some negotiation, I know that we could come up with something that would be acceptable to the community; many, many options besides a fuel station, but I don't see compromising and bringing that in. If our county commissioners have the authority not to allow it, I think the government -- the responsible thing for government to do is that. I think to put that in that location, the ramifications are, I wouldn't say criminal, but clearly there's got to be a better location for a gas station than that.

Thank you.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Mike?

MR. BOSI: The next speaker is Sterlin Misener, and he's been ceded his five minutes from Erica

Misener.

MR. MISENER: Hello.

HEARING EXAMINER STRAIN: Hello, sir.

MR. MISENER: Hello. Sterlin Misener, M-i-s-e-n-e-r. And I would like to finish someone's -- you asked him a question on the traffic, is there already traffic that loops around through the neighborhood over to Piper. I'm the new house on the corner, and I like to sit on my balcony, and it's very true. If I could show you.

It's not so much --

HEARING EXAMINER STRAIN: No, sir -- yeah, just set it up there, then you'll have to go back to the mike to speak, so -- you don't get picked up unless you're on the mike. I'm sorry.

MR. MISENER: It may not be commercial traffic that gets pushed over to Piper. It's a lot of the people down to your lower right that come from that neighborhood because they can't get out Palm, and they go Monroe, Frederick. But it's not too bad. But I'm afraid that if Palm gets more blocked up, those people will quickly learn to go through there, and they do.

I'm a commercial property manager, and it's amazing. I have a property, Heritage Court Plaza, where people have actually learned to go to Goodlette through a residential neighborhood, through the Jewish Federation, and they cut just to get to 41. They learn the little ins and outs. I try to stop them. I put up chains, but they do it. But -- so I would concur with that.

Also, there's only about three car spots from the driveway to the stop because it's set back because of the way the --

HEARING EXAMINER STRAIN: Now, is this on Palm Avenue you're talking about for that particular --

MR. MISENER: Because it's a weird intersection, they have our outgoing stop line way back so that people can make a left turn onto Palm from 41.

HEARING EXAMINER STRAIN: Okay.

MR. MISENER: Okay. Well, you know, I own the house -- the new one. And to talk about what the lawyer was talking about, no, I did not know. It wasn't disclosed to me that they were proposing a giant RaceTrac.

HEARING EXAMINER STRAIN: How long ago did you buy the house, sir, or build it?

MR. MISENER: I bought it May 15th, and I worked through the nights, and we got our CO in February.

HEARING EXAMINER STRAIN: Of what year?

MR. MISENER: This year.

HEARING EXAMINER STRAIN: Thank you.

MR. MISENER: And also I would like to rebut the appraisal. I don't think the mobile home park a good choice even if it was in our favor as far as values of the property.

HEARING EXAMINER STRAIN: Now, that -- just for the record, that wasn't -- they made a statement clearly it wasn't an appraisal. It was just a study, a comparison study, so it was not an appraisal.

MR. MISENER: Sorry. I'm hard of hearing.

HEARING EXAMINER STRAIN: I'm sorry? You don't mind if we put that poster back down, do you?

MR. MISENER: No, go right ahead.

MR. YOVANOVICH: Thank you.

MR. MISENER: I'm a real estate agent the last 18 years in Naples. My specialty is commercial property management.

And I live right behind this place, and I would have to -- I want to first talk about RaceTrac's market analysis. It says we need more pumps in the area. People have already gone over that. I'll make it fast. Mr. Raquell (phonetic) in his report says one of the greatest impacts is going to be economical against 7-Eleven. I've never had to wait for gas in this area. I really don't think we need more pumps. I think their sole motivation for putting it right there is to maybe put 7-Eleven out of business. We don't need more pumps.

They're doing it with no regard to the neighbors, whether residential or commercial. One big thing,

they're also touting that we are underserved by quality gas pumps and quality stations. You know, they've taken pictures of their brand new station on Airport Road and then taken pictures of other existing older stations that might have a little wear and tear saying they're superior for our neighborhood. Well, I went and took pictures -- and I'll give them to you for the record.

HEARING EXAMINER STRAIN: Sir, just -- you can give them to me, but you don't have to -- you need to stay at the mike to talk.

MR. MISENER: All right.

HEARING EXAMINER STRAIN: You can still give them to me. We can still put them on the overhead, and as long as they stay for the record, we're fine. But you can talk on --

MR. MISENER: Okay. On Pine Ridge Road -- and it's in big disrepair. You know, there was graffiti on the back of the buildings. There was motor homes. It appeared that people were even sleeping there. Dangerous rebars. I've got pictures of stucco falling down by the front door. It's very, very dirty. So for them to say that they're going to put -- give us a more quality station in our neighborhood, I think, is wrong.

And I just drove to Chicago Tuesday, flew back to be here. I even stopped in one in Georgia; took one picture of how dirty it is. So they aren't managing them according to how they're telling you what they want to give us in our neighborhood. My owners of my building wouldn't go for that.

Let's see here. Sorry, I lost my spot.

So I'm thinking that these new fancy ones that they're talking about are going to start looking like the one on Pine Ridge. I really don't think this is what we want in Naples in this area.

You know, not all commercial buildings are the same to fit in certain areas or next to residential. I agree with the new development, how the county held out for the Triangle, what they're going to put there, the hotels, the restaurants. This place is just going to cause 24-hour noise, 24-hour lights, crime. It's going to mess up the traffic. There are other uses. One example is the one right next door to me. There's a commercial building there. They fit in architecturally. Everybody thinks it's a house.

HEARING EXAMINER STRAIN: Talk into -- you're getting too far from the mike. It's not picking you up.

MR. MISENER: Oh. A good example is the property just north of mine that borders my property. They come to work in the morning. They go home in the evening. It looks like a nice building. It looks like a home. I have to tell all my friends, oh, no, that's a business.

So there are other uses, just because it's commercial, and we can live next to commercial. I see it done all the time, but it's just this is not fitting at all for reasons of noise. Traffic is going to be the huge thing. It's just going to ruin my little retirement home.

You know, I got my first grandkid coming in two months. I made a nice lawn and picket fence, and I'm going to have a gas station with noise and gas fumes right next door.

Another big concern about grandkids and even our environment is I've been talking with the county, and I have pictures. The proposed site where they want to put their station floods out heavily when it rains. Down our alleyway are a series of drains, and in front of my house, that all lead to the bay. They're marked with fish and that sort of thing. When it rains and we get a high tide, as someone was saying, the water comes from the bay and fills up our, you know, ditches very heavily.

And I've talked with the county. They're very good about coming out. And they basically told me that their backflows aren't very good, and it's a tidal influenced area, and there's nothing they could do about it. That's what their engineers have concluded. I do have an email from them.

And so, with all that gas and pollutants there, you know, how's it going to keep it from getting in my yard? Because it all comes on the back side of my property, these drains into the front, and then right out to the bay. So I think it's something nobody's looked into about the drainage that's out there.

We've talked about there can be good commercial buildings next to us. There's one next to us now.

Vern covered the traffic.

I think I'm good.

HEARING EXAMINER STRAIN: Okay. Thank you, sir.

MR. YOVANOVICH: Mr. Strain?

HEARING EXAMINER STRAIN: Yes. Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: I have a couple questions, sir. It's Misener; did I get that right?

MR. MISENER: Uh-huh.

MR. YOVANOVICH: Misener, okay. I thought I heard you testify that you're a realtor --

MR. MISENER: Yes, sir.

MR. YOVANOVICH: -- is that correct? And you specialize in commercial properties?

MR. MISENER: I'm a real estate agent.

MR. YOVANOVICH: Real estate agent.

MR. MISENER: I no longer belong to the realtor. People get that wrong all the time.

MR. YOVANOVICH: I understand. Well, I --

MR. MISENER: Association.

MR. YOVANOVICH: Were you ever a realtor?

MR. MISENER: Yes, I was.

MR. YOVANOVICH: How many years were you a realtor?

MR. MISENER: Oh, about 15 years, but we got out of that because we mostly do commercial.

MR. YOVANOVICH: Okay. So you mostly do commercial?

MR. MISENER: Uh-huh.

MR. YOVANOVICH: Sir, when -- did you -- what type of due diligence did you do when you decided to purchase this residence or this piece of property that you're now building your residence?

MR. MISENER: Right. Well, I looked next door, and there were a lot of commercial properties. There was an existing commercial property. And with what the county was trying to redevelop the Triangle with, I wasn't too worried because I didn't think you would be able to take away the roads and put in a truck stop there.

Now, that -- I do want to say something after you're done questioning me.

MR. YOVANOVICH: I'll let you finish. I don't know what you meant by take away the roads.

MR. MISENER: There are platted roads through those --

HEARING EXAMINER STRAIN: The vacation.

MR. YOVANOVICH: Okay. I understand.

MR. MISENER: The vacation of the roads.

MR. YOVANOVICH: And are you aware that one of the site plans does not require the vacation of the roads?

MR. MISENER: Yes. And that site, with full access onto Frederick Street, would demolish the neighborhood and traffic, even worse than Site B.

MR. YOVANOVICH: When -- are you a transportation engineer?

MR. MISENER: No, sir, but I work at commercial buildings all day, and I deal with traffic, parking. I deal with the county about what businesses can go into places. You know, you can't just put a school unless you have enough parking. There's different regulations.

MR. YOVANOVICH: Did you ever investigate the zoning on the property adjacent to the parcel you were buying?

MR. MISENER: Next to, yes, sure.

MR. YOVANOVICH: What's the zoning on the property that's next to the property you purchased?

MR. MISENER: C4. We've all been talking about it. What do you want to be, redundant?

MR. YOVANOVICH: Well, I just want to understand. You said you had no notice of the uses that were on the piece -- that can go on that piece of property so -- when you bought it. So I just want to understand. You seem to have some special expertise in commercial zoning, correct?

MR. MISENER: Listen, you don't need to be insulting.

MR. YOVANOVICH: I'm not.

MR. MISENER: Ask simple questions.

HEARING EXAMINER STRAIN: Richard, I think you've made your point.

MR. YOVANOVICH: Thank you.

UNIDENTIFIED SPEAKER: Professional asshole.

HEARING EXAMINER STRAIN: Ladies and gentlemen, that's not needed, sir.

Thank you.

MR. MISENER: Okay. I would like to say one more thing. I still have some time.

HEARING EXAMINER STRAIN: Yes, you do.

MR. MISENER: You know, when I built my house, yes, I knew that was commercial there, but as far as vacating roads, I had to follow every rule about the alleyway behind my house. I couldn't even put a concrete drive across the ROW. I had to be, like, 50 feet away from that because they didn't want to interfere with the alley, but they could put a whole -- take -- vacate the roads and put a whole gas station right up next to the alley?

HEARING EXAMINER STRAIN: Well, just so you know, you and your neighborhood could probably ask to vacate the road north of your homes, so it applies the same way.

MR. MISENER: No. They told me I couldn't use that.

HEARING EXAMINER STRAIN: That's right. You can't until it's vacated. So it's just something you might want to consider.

MR. MISENER: Okay. Well, thanks for the knowledge. Can I approach you now and give you my --

HEARING EXAMINER STRAIN: Yes. In fact, if you've got -- whatever they are, this young lady right here is the court reporter, and she can take care of the exhibits. So if you would leave them with her, that will make sure it gets into the record.

MR. MISENER: Email from the county, pictures.

MR. BOSI: Mr. Strain?

HEARING EXAMINER STRAIN: Yes.

MR. BOSI: Question of procedure. There's still seven slips plus the individual you said who traveled down here from Indiana. I'm not sure how you want to -- would you --

HEARING EXAMINER STRAIN: About ten minutes of nine, let's take the lady from Indiana, and then we'll get as many done between now and then as we can. I believe you have already reserved for next week?

MR. BOSI: Yes, sir.

HEARING EXAMINER STRAIN: And next week we will have to go through a lot of review of the documents that were provided tonight so that the public is aware of what these documents contain.

Richard?

MR. YOVANOVICH: Can I ask just a process question?

HEARING EXAMINER STRAIN: Certainly.

MR. YOVANOVICH: Are we going to allow people to come next week and get in the queue for public speaking, or are we cutting the queue off?

HEARING EXAMINER STRAIN: No. If they haven't spoken already, they'll be allowed to speak next week.

MR. YOVANOVICH: So more people can show up and get on the list? I'm just asking.

HEARING EXAMINER STRAIN: We will -- but next week my questions will be -- after the current registered speakers, I will be going forward with my questioning like we are -- like we normally do, and then staff report and then staff questioning.

MR. YOVANOVICH: Thank you.

HEARING EXAMINER STRAIN: Okay.

MR. BOSI: Next speaker is Eric Donihoo, followed by David Dyson.

MR. DONIHOO: Good evening, Mr. Strain.

HEARING EXAMINER STRAIN: Good morning -- or evening, yeah.

MR. DONIHOO: And I believe there was some time ceded to me from Lisa Donihoo. I wanted to speak real quick --

HEARING EXAMINER STRAIN: Well, let's verify that first if --

MR. DONIHOO: Sure.

MR. BOSI: There's a speaker slip for Lisa Donihoo, yep.

HEARING EXAMINER STRAIN: Okay. She will be -- Ms. Donihoo, just nod your head. Are

you ceding your time?

MS. DONIHOO: I am, thank you.

HEARING EXAMINER STRAIN: Thank you. Okay.

MR. DONIHOO: Okay. Thank you. Again, good evening, sir.

I wanted to speak to a couple things here real quick. You know, one of the conditions that I believe I heard earlier from the RaceTrac side -- by the way, my name is Eric Donihoo, D-o-n-i-h-o-o. I am the franchisee owner of the 7-Eleven in question, okay.

I've also been asked to give input to the homeowners that live across the street and are my customers. From my knowledge of the industry, as I served many, many years, over 30 years in retail management, everything from manager to district managers to regionals, site controls, store planning, also spent many years with 7-Eleven as a regional in Florida.

HEARING EXAMINER STRAIN: You might want to slow down your speech a little bit. I want to make sure she catches everything you say.

MR. DONIHOO: No problem. So they've asked me a few times to give them some input and answer some questions when asked, and so I've done that.

But speaking from the standpoint of my own store, when my wife and I -- which we have several locations. We have five currently, a couple of them in Naples. When we look to invest our life savings into a site, we try to do some due diligence. We looked at everything around us. We tried to look at sites that had the potential for large mega-stations to come in, such as right off an interstate ramp, and I do have one of those, and my neighbor is RaceTrac in that one, and I have no problem with them as a neighbor there, okay.

When I looked at this one, however, I took a hard look at the site. I didn't feel it could support both a mega station plus myself. I knew it was C4, yes, across the street, but I also knew there was a distant waiver. I also saw that there were future roads that could come into there.

I knew full well I could easily take on a competitor of small nature, most likely, across the street, two, four, you know, gas pumps, something of that nature. In no way, shape, or form did I think there would be a case of someone coming in and wanting to combine many, many lots together, look for waiving of future roads, and try to put in a mega station right there across the street. But I did try to do my due diligence the best I could at the time.

There was some speaking about one of the exceptions is do we have a barrier, and somebody mentioned, well, you've got a six-lane roadway and a median and all that good things. But I would like to point out, we have a controlled intersection there with a light. That pretty much nullifies the barrier.

If we didn't have that intersection and there was a median all the way across, I could easily say southbound is yours -- or eastbound is yours, westbound is mine. Everybody have a good time and move down the road.

But we've got a controlled intersection right there. It's very easy to come across back and forth. If it wasn't, we wouldn't be talking about the potential of backed up traffic wanting to turn left at Palm. You know, why are they wanting to turn left? They're wanting to turn left to go westbound, which would be the side of the road for the people on my side of the street.

So if we're so concerned that we're going to have all this increased traffic that's going to turn left there, obviously a lot of people don't feel as though there's a barrier because they can turn and they can come across.

Moving on there, there was some talk about need, need for gas stations and we need more pumps and we need this. There's many studies out there. They're not hard to find.

In my industry knowledge, it is reasonable when we were looking at expanding a location or when we were looking at site preparations, you could estimate one MPD, which can service gas on two sides, okay, had

waiting in lines at my station.

Now, you know, it was hinted at a meeting off of Horseshoe that a RaceTrac coning in would bring better prices; hence, maybe that's why I don't do that much, right? If you pull up GasBuddy.com today, you'll see my prices are \$2.22 cents per gallon. My nearest RaceTrac is 9 cents higher. So I'd kind of want to challenge that bit about they're going to bring better prices to the area, okay.

And if I'm operating at 25 percent of capacity 9 cents cheaper than the lowest RaceTrac, I'd kind of question that need for another station, okay.

Moving on down through there, yes, there are opportunities with convenience stores. I think we all recognize that, whether it be Circle K, RaceTrac, or 7-Eleven, and we all do our best to minimize what can take place, by all means.

State of Florida goes by a strict mandate. If you've had an act of violence on your property, you must maintain double coverage from 11 p.m. till 5 a.m. as a result for two years. I have always maintained double coverage or triple coverage in my stores 24 hours a day trying to keep a safe neighborhood store. Regardless of any requirements that have been placed upon me by the state, I've exceeded them.

Do you have issues with a convenience store? Yes. You have the bars that close down, you have people that are out and about carousing, doing things they shouldn't do.

What are some of the examples that I have witnessed and seen happen, you know, right at our own station? Earlier this week we had sheriff deputies on site for a customer alleging he was stabbed out on the side of the property, and the assailant supposedly fled into the surrounding neighborhoods.

Am I close to these neighbors? I'm across the street, that big six-lane road with the light, but I have no residential adjacent or adjoining to me in any way, shape, or form. But there are still opportunities.

We've had police out there from a pregnant woman being punched and robbed at 3 a.m. in the morning. We do everything in our power to minimize it.

I encourage sheriff deputies, state troopers, Naples Police, any law enforcement to stay on our properties as long as they want, you know, sit there, listen out for calls, do everything they can. And those officers bust their butt to do a great job of trying to protect that community, but they can't be everywhere at all times. And when these incidents happen, in both cases that I mentioned they were homeless. One was on a bicycle that hit the pregnant woman and took off. He was caught by Naples PD within a few hours riding his bike through the residential neighborhoods of the area, okay.

These issues do exist. Would I want one right up against my backyard? No, I wouldn't, okay, I'll be the first to say that. And I understand where my customers that frequent my store very regularly are coming from, no doubt.

That being said, I don't have a problem with a gas station across the street that would be comparable in size or something of that nature. I don't believe our county commissioners or our planners or any of our people that were experts that passes some of the rules and regulations they passed, I don't think they had the foresight to think of a mega gas station in that type of an environment, in that type of a residential setting.

You know, when they sat there and said, hey, let it be C4, let it be for all these things, they were thinking of stations like mine. And if one like mine was to open up across the street, I'd welcome them as a neighbor, and let the best man win.

Taking on a mega station 5,500 square feet with a lot more pumps, that could be difficult to stay in business, no doubt. But we would -- you know, we would still -- if that's the county's decision, we would do our best to compete with them and provide great customer service for our guests.

We ask that you not grant the exception or waiver that they're seeking. We did pour our life savings into our business venture. We thought we did good due diligence. We knew competition could come but not to the degree that is being requested at this time.

That's all I've got for you. If there's any questions, I'd be more than happy to try to answer them to the best of my ability.

HEARING EXAMINER STRAIN: Thank you for your time. I have heard your discussions before, so I appreciate you restating them tonight, so...

MR. DONIHOO: Thank you.

HEARING EXAMINER STRAIN: Richard?

MR. YOVANOVICH: Yeah. How long have you worked for 7-Eleven?

MR. DONIHOO: I left 7-Eleven in October of 2013. I spent three years with them as what they call a market manager or a regional. I had a hundred sites from Jupiter, Stuart, West Palm Beach, Boynton Beach, Lake Worth, going down to the Fort Lauderdale area, and I was ranked as the market manager of the year for my last full year in place for North America.

MR. YOVANOVICH: Did you work for 7-Eleven in the year 2000?

MR. DONIHOO: In the year 2000? No, sir, I did not.

MR. YOVANOVICH: When -- are you aware that 7-Eleven has, in fact, been granted a distance waiver approval for one of its own stations at the corner of basically 951 and U.S. 41?

MR. DONIHOO: At 951 and where?

MR. YOVANOVICH: Well, it's Collier Boulevard you may know it as.

MR. DONIHOO: Okay. I know where you're referring to. That's a franchisee by name of Kayla.

MR. YOVANOVICH: Okay. You're a franchisee as well, right?

MR. DONIHOO: Yes, I'm a franchisee at this time after I left the company. I did so to franchise with my wife.

I do know the location you're referring to. I was not aware that she had a waiver in place at that time. That would have been long before my time.

MR. YOVANOVICH: Now, if 7-Eleven puts their -- if there's a -- if there's a market analysis prepared by 7-Eleven with 7-Eleven's cover letter on it for that distance waiver requirement, would you agree that we should be -- we should have to meet the same standards of the market study prepared by 7-Eleven when it submitted its request for a distance waiver?

MR. DONIHOO: I wasn't present in 2000 to have seen or read what was presented at that time. I don't know the surrounding factors of that particular location. I don't believe she has residential anywhere close to her for -- to have any type of a negative impact on them. So not knowing the facts of that particular situation, I couldn't properly speak to it.

MR. YOVANOVICH: No, sir. My question wasn't about that. My question was about the market analysis prepared by 7-Eleven to justify the need for another gas station within 500 feet.

Would you agree that we should be -- the same standard applied to 7-Eleven to show the need regarding gallons of fuel should be applied to us that was also applied to 7-Eleven?

MR. DONIHOO: You should always be given the same considerations of any other business, and you should be treated fairly and equitably.

MR. YOVANOVICH: So if a market study prepared by 7-Eleven analyzed certain factors, we should be also required to analyze those same factors?

MR. DONIHOO: You should obviously be able to analyze the same factors, but I think we're kind of mixing apples with oranges when we look at something done 16 years ago.

MR. YOVANOVICH: Sixteen years ago?

MR. DONIHOO: Well, I think you asked me if -- this was in Year 2000, is that what you not said, on Collier?

MR. YOVANOVICH: What I'm asking you is about the need and the --

HEARING EXAMINER STRAIN: I think that's been asked and answered, Richard. I think he's made it clear that you would come under the same standards as anybody else to be fair.

MR. YOVANOVICH: Okay. That's all I wanted to hear.

HEARING EXAMINER STRAIN: If I'm mistaken on that, Mr. Donihoo, correct me.

MR. DONIHOO: You are accurate from what you're saying there, Mr. Strain. The only thing I'd like to add, if I have any time whatsoever, is I've been asked many times by these residents if what I'm hearing sounds plausible and accurate. I would tell you, as I sat at the meeting over at Horseshoe, and when someone sits there and says in respect to the answer on how frequently should we see gas trucks trying to fill up at this location and at what time of night, the response from RaceTrac at that meeting was it would not occur more than once per day.

But when you sit there and say that you expect a weekly volume of approximately 70,000 gallons, which is 10,000 gallons per day and a tanker only holds 8,000 gallons, I'd like to know how you plan on getting

8,000 once a day but do 70,000 a week minimum.

MR. YOVANOVICH: I don't know that that accurately reflects --

HEARING EXAMINER STRAIN: Well, you have submitted a market study that's going to have those numbers in it. A copy of that's going to be available from staff. So I would suggest you take a look at that, and maybe that will answer the question.

MR. DONIHOO: So the only thing I'd leave with you, Mr. Strain, is understanding a tanker is about 8,000 gallons. So when you hear how frequently you're going to have tankers on site to fill up, take that into account.

HEARING EXAMINER STRAIN: It will be an easy calculation.

MR. DONIHOO: Thank you. You have a great night.

HEARING EXAMINER STRAIN: Thank you.

Mike, would you call Mrs. Eash at this point.

MR. BOSI: Vanessa Eash.

MS. EASH: All my concerns --

HEARING EXAMINER STRAIN: No. You'll have to use the microphone, Ms. Eash.

MS. EASH: I was just going to say that all of my concerns have been presented tonight, so go ahead and get your next person. Everything that I've said -- I would just be reiterating everything I've heard tonight.

HEARING EXAMINER STRAIN: I was talking to your husband. He told me you made a special flight down here to catch this meeting. I wanted to make --

MS. EASH: I did, yes, and I wrote up a speech, but it's what I've heard from all of these people all night long, so...

HEARING EXAMINER STRAIN: Are you saying you're in agreement with most of the things you heard?

MS. EASH: Hundred percent, yes.

HEARING EXAMINER STRAIN: Is your position for or against the RaceTrac? I know that seems silly, but I need to get it for the record.

MS. EASH: Yes, I am against the RaceTrac.

HEARING EXAMINER STRAIN: Thank you. Go ahead. Next speaker, Mike.

We'll have one more speaker before we'll end the evening, so...

MR. BOSI: David Dyson.

MR. DYSON: Hi, David Dyson, Curlew Avenue.

I'm just a short distance off Sandpiper. And according to Mr. Hammett, if he's still here, I would be impacted by the additional traffic of people trying to get out to 41 through the backdoor.

And, honestly, you know, traffic is so bad, it doesn't even matter at this point. I support the project. I say build it. It can't -- this nonsense about your property values going down is preposterous. It can only go up.

HEARING EXAMINER STRAIN: You need to stay close to the mike. Because not everything you're saying --

MR. DYSON: Yeah, understood. Anyway, I'll ask -- I asked the county to please grant the waiver; let this project go through.

HEARING EXAMINER STRAIN: Okay. Thank you, sir.

And, Mike, I didn't know that speaker would be short. We've got time for one more.

MR. BOSI: Blanche Carad (phonetic).

HEARING EXAMINER STRAIN: Ms. Carad, are you here?

(No response.)

HEARING EXAMINER STRAIN: Nope.

MR. BOSI: We have the ones that have -- weren't in attendance and the ones who have asked to speak at the next meeting left.

HEARING EXAMINER STRAIN: Okay. What we will do is we'll continue this meeting next Thursday evening in this room at five o'clock. Those people that have not spoken will have an opportunity to speak then. And then we will go through the same answers and discussion that we started on.

Richard?

MR. YOVANOVICH: Mr. Chairman, I saw this gentleman turn in his slip. Is it possible for him to speak?

MR. FOGG: Stanley Fogg.

MR. BOSI: Yes, I'm sorry. Stanley Fogg.

HEARING EXAMINER STRAIN: Okay. Mr. Fogg, if you need to speak tonight -- would you be here next week and wait instead, or do you need to speak tonight?

MR. FOGG: I could, but it will only take me a minute.

HEARING EXAMINER STRAIN: Okay. Go right ahead, sir.

MR. FOGG: Yes, sir, I live at 2147 Palm Street. I'm very close to this property, maybe a hundred yards. I've lived there for 20 years, and there are lots of problems in Naples for traffic, but I don't think there's any more at Palm Street than there is anywhere else.

The light timing at 41 works very well, and you can get in and out of Palm Street without any trouble at all now.

And I notice on the new plan, they're going to widen the area coming up to 41. That's going to make a big difference there also.

I can see no reason at all for -- a piece of property that has met all of the requirements should not be built, and I'm definitely for the construction of this property.

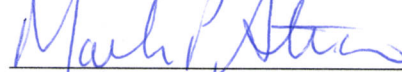
HEARING EXAMINER STRAIN: Thank you very much, sir.

And, ladies and gentlemen, I want to thank all of you for your patience and expressing your decisions tonight -- I mean your comments. They will be all listened to. Again, I'll be listening to the tape before any kind of recommendation is written.

Next week we will continue this meeting to five o'clock in this room, next Thursday night. Thank you, all.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 8:57 p.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 7-19-16, as presented ✓
or as corrected _____.

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