

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 30, 2016 (Continued from 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
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Ladies and gentlemen, good evening. Welcome to the Thursday, June 30th meeting of the Collier County Hearing Examiner's Office. This is the continuation of the June 23rd meeting.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Review of the agenda: We have two items that we started last week that are continued tonight. The first one is Petition No. ASW-PL20150002369, also known as the automobile station waiver for the Racetrac Petroleum facility proposed for U.S. 41 between Frederick and Palm.

The second item is Petition No. VAC-PL2015002788 (sic). It's the Racetrac Petroleum, Inc., same location, for a vacation of right-of-ways.

There are no minutes from our last meeting available yet, so there's none of those to be reviewed.

And with that, I need to follow up on some cleanup items from last meeting. At the last meeting I had asked several questions of the applicant and one of a member of the public. Since that time I've received answers. Wayne Arnold, who is the planner for the applicant, provided an answer to a question concerning the number of fuel pumps and their adjacency to the residential product that he showed on his planning -- or on his maps last time.

Ted Treesh is the gentleman who did the traffic study. He provided some additional information based on the questions I asked about the FDOT study.

Mr. Yovanovich, who's the attorney for the applicant, provided some new information that is relevant to the questions I asked concerning things I found on the appraisal that was briefly talked about. I guess it's not an appraisal; it's a comparable analysis.

And then Vern Hammett provided to me his speech in text in response to my question of getting the map that he had put up there.

Now, those four items I've provided to the court reporter for part of the record. And I did check; everything that's been added to the record is on the Clerk of Court's website.

I've given extra copies to Fred Reischl. Fred Reischl also has all of these already in electronic format as they came in. So if anybody needs any of these records, if you contact Fred at any time, he can email them to you. There are a couple hard copies available if someone needs those.

I'm going to bring up some reminders from our last meeting. First of all, this is a case that was remanded back to my office from the Board of County Commissioners for analysis and findings of fact. This is an evidentiary hearing. I'm trying to get information. That information will be used to create a document to go forward to the Board of County Commissioners in which they will make a final decision sometime in the fall when this is done.

We're going to be hearing both the automobile station waiver and the vacation application simultaneously tonight. So if you have issues with either one when you come up for your time to speak, you can talk about both of them or just one of them.

The format of the meeting -- first of all, it's televised and transcribed. So if you want to see this meeting again and you feel like you want entertainment, I guess you could pull it up at home and watch it.

The young lady up front is our court reporter. Every hour and a half or two hours we'll break to give her fingers a rest. But she is transcribing the meeting. And as soon as she finishes moving it into written format, it will be available to the public.

Last time we heard from the applicant, and then we went directly into public speakers. We got two hours of public speakers heard last week. We're going to start with the public speakers tonight. If there is time after the public speakers, I'll ask for some comments from staff, I may have some questions, and then there will be a rebuttal period for the applicant.

If you're a public speaker, you need to register with a speaker slip, and they're on the table out front. Please provide them to the gentleman to my left. There are two staff members. It's Fred and Mike.

Also out front is the agenda for tonight's meeting giving you an indication of the numbers of the cases

being heard, and there's a handout that we had last week that described the process in a little more detail.

All speakers will be under oath. You must fill out the speaker slip to speak. You can only speak once. We need to please avoid redundancy. If you spoke last week, this is a continuation of that meeting, so that was your speaking opportunity.

Please identify yourself when you come to the speaker. Speaker clearly; not too fast so she can type as fast as you talk. And I'm probably the one that is the most violator of that.

If you agree with the speaker and you want to just come up and say you agree with the previous speaker, that's fine, too.

After all the speakers, then we'll get into the other issues of rebuttal and any questions of staff if we have time.

This is a quasi-judicial hearing. A certain amount of decorum is needed. Please do not shout or make comments from the audience. Please do not applaud or otherwise react to specific speakers. And all materials that are used that are put on the screen or brought forward during the meeting and as part of the public speaking must be supplied, a copy, for the record.

And with that, we will move directly into public speakers, and we'll start off where we left off last week. Some of the speakers towards the end of last week had already left. We're going to start by calling them first, and then we'll move through any other speakers that have been registered by the speaker slips that Mike has.

So as you're called, please go up to either one of the mikes. Mike Bosi will call two names so that the second person is ready to come up right after the first person finishes.

Mike?

MR. BOSI: Thank you, Mr. Strain.

The first speaker would be Kathy Volland. Kathy Volland?

(No response.)

MR. BOSI: The speaker after that would be Maarten Heybroek.

HEARING EXAMINER STRAIN: Mr. Heybroek's here.

THE COURT REPORTER: Do you want me to swear them all in at once?

HEARING EXAMINER STRAIN: I'm sorry. That's -- thank you. All those wishing to testify on behalf this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: And disclosures on my part, since last meeting I've provided the documentation I've received as -- to be admitted to the record.

I have talked to the applicant; I have had correspondence, I think a conversation with a member of the public, Vern Hammett; and I've certainly talked to staff and others involved in the county system to get some clarification on issues.

And with that i mind, we'll move right to our speaker. Mr. Heybroek?

MR. HEYBROEK: Okay. I'd like to thank you for allowing me to address this forum. I do not have the gift of the gab, as the opponents have, as I'm constrained by an artificially imposed five-minute limit.

We're here to talk about a variance to a restriction that we have in our law. This is not, for me, a case of whether we want a Walmart or a Saks Fifth Avenue on a commercially-zoned property.

I think these restrictions that we have have been imposed by the county with good cause. And as I understand it, what's being proposed by Racetrac is to be within a 50 feet distance of another station that's across the road on 41. I don't think that this should move forward, and I have certain concerns about it.

The area in question is a natural floodplain. I've seen many times after a storm how that area gets flooded, and I'm wondering what's going to happen if that area's paved over and we have a significant storm that hits the area. Are we going to see that water cascade onto the roads?

Building another gas station, okay, does not to me appear to be consistent with the restoration of the area, the new nine-story building that's supposed to be erected at Davis Boulevard and 41.

Facilities like Racetrac, okay, can become loitering areas for drug and other illegal activities. Our area has enough issues with illegal drugs on Bayshore, which is very, very close to the area where a Racetrac wants to build. I don't want to see it get worse.

Lastly, there's an important aquifer supposedly underneath the property. It used to be a canal, as I understand it. And I'd like to know if an environmental study has taken place to determine if spilled gas is going to make its way into the aquifer and eventually into the Gordon River. Those are my major comments about the Racetrac thing.

I'd just like to talk a little bit about the proponent's presentation, if I'm allowed to. I found last week when I was sitting here that it lacked cohesive and coordinated understanding of the plan. I didn't know if we were looking at Plan A, Plan B, Plan C, Plan D, or whatever it was. It didn't make sense.

The time limit for other than the attorney was scheduled for 45 minutes. It went on for two-and-a-half hours. I think it should have been stopped at 45 minutes.

Architectural renderings that were provided to this forum did not include any signage that I saw other than a Racetrac symbol on top of the structure itself. I notice from Racetrac gas stations in our area that they have what I would call a neon sign -- it might be an LED sign -- that sits prominently out on the street and shows the price of the gas. Where is that on the renderings that were shown last week?

The property appraisal is, in my book, unprofessional. It could have been done on the back of an envelope. River Reach is not the same as Royal Harbor.

Architectural review on plantings were irrelevant to the variance. We should have seen berms, what the height was, and what the foliage would do to block the area.

I think that in some cases the attorney argued with respect to Collier County regulations. I think this is inappropriate; any such argument should take place in a court of law.

And I think that the variance should not be given to Racetrac. Thank you very much.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Mike?

MR. BOSI: Next speaker is Gloria Katz. Gloria Katz?

(No response.)

MR. BOSI: Followed by Molly Whalen. Molly Whalen?

(No response.)

MR. BOSI: Lee Flandreau? Lee Flandreau?

(No response.)

MR. BOSI: Karen Beatty. Karen Beatty?

MS. BEATTY: Hello. Thank you for this opportunity to speak today. I'm weighing in today -- I'm Karen Beatty. I'm weighing in on this proposed Racetrac on East 41 as a citizen, a realtor, and a 12-year board member of the Bayshore/Gateway Triangle.

As a citizen, I've lived in Naples since 1977 within a mile of this proposed Racetrac, since 1986, off Bayshore. I frequently, throughout the years, have cut through the various roads from Bayshore to Palm Street in a car and bicycle to circumvent the light at Bayshore and U.S. 41. I've seen many others do the same.

I have always loved Palm Drive and the lovely well-maintained villa homes there. I also think the charming Frederick Street is one of a kind in Naples and one of East Naples' cherished scenic views. It is truly a slice of Olde Florida and something we need.

As a citizen, I have purchased my gas and convenience store items on U.S. 41 at Voigt's Texaco at Bayshore or the convenience store there, and the 7-Eleven at Commercial and Palm, both within a mile and the other across the street from this proposed location.

I don't need another gas station, and I'm very concerned about the severe congestion that a proposed Racetrac would cause not only on Palm Drive and Frederick Streets but on all the little streets nearby that are connected. And I have a map here.

Most importantly, it will affect all citizens driving east and west on U.S. 41 South. As you are probably aware, the southwest quarter of Naples is one of the fastest growing areas right now and very hot with development.

Bayshore Drive alone will have multiple developments happening simultaneously in the next few years, creating a tremendous increase in traffic going west into downtown Naples on U.S. 41.

Over the last two years, a steady increase of traffic has been noted, and that congestion heading towards downtown and the Gulf of Mexico starts near Commerce, Palm, and U.S. 41.

My office is two miles from my home, which is on Bayshore in this direction; however, in the season it can take me 20 to 25 minutes to get there.

Racetrac, with its reputation for less expensive gas, will attract many trucks with boat trailers on their way to Bayview Park or the City of Naples boat launch. The congestion in and out of narrow Frederick Street and Palm Drive near the proposed Racetrac will be ridiculously unsafe for bicyclists, pedestrians, and pets.

Neither of these streets have sidewalks. It's a natural that trucks will quickly figure out other options of using some of the nearby side roads to circumvent that congestion.

If traffic is too busy at the intersection of Palm and U.S. 41, or Frederick and U.S. 41, it won't take long for drivers to figure out they can turn from Palm onto Monroe, Monroe or Frederick to Clark, to Curtis, to Sandpiper.

Trust me, the locals already know these routes. These are tiny streets that look a lot larger on the map. I concur 100 percent with the testimony of Vern Hamlet (sic) and Gale Burden (sic) last week with all they said.

I'm also weighing in today as a realtor. I've been a full-time realtor in Naples since 1995 representing buyers, sellers, and investors as well as being an investor of real estate myself.

As a realtor, I see this proposed Racetrac ruining one of the few remaining precious neighborhoods that currently enjoys a great location, lifestyle, ambiance, and a slice of real old-Florida charm.

In my opinion, the area between Bayshore and Royal Harbor has been somewhat suppressed and is now in a perfect position to be discovered, to grow in value, as well as improve in all ways. It's time for those owners to benefit from being in the middle between the hot, booming Bayshore and Royal Harbor. It's time for them to enjoy the benefits of some of the current and upcoming changes in the Gateway Triangle. This area is very unique and close to downtown Naples.

The Villas on Palm Drive are so well kept, beautifully landscaped, and the Frederick Street owners have worked hard to improve their properties and create an amazing one-of-a-kind street. I wish we had more of these types of streets and homes in the Bayshore/Gateway Triangle. They are very desirable and lend the essence of ambiance many buyers desire.

There is even a brand new planned unit development on Curtis Street, a narrow street which runs parallel with Frederick, called Kono (phonetic) Cove.

My opinion is that the proposed Racetrac in this area would ruin much of the lifestyle benefits of living in the area. It will be polluted with 24-hour noise, traffic, foul air, potential crime, and harmful bright LED lighting.

If a -- the view shed from the stilt homes on Mills will be ruined.

If a Racetrac is approved for this area, I would personally not invest there and would not advise my clients to do so.

Today I'm also weighing in as a 12-year board member on the Bayshore/Gateway Triangle Community Redevelopment Board -- Advisory Board. Oh, I forget to add, not about -- as far as being a realtor. Not all realtors are duteous in keeping up with current changes in any given area of Naples, and/or a particular realtor may have been out of town when the news of the Racetrac was announced.

A possible scenario would be a realtor representing a buyer who usually works in another area of town. It has this one buyer requesting to see a property in the area of the proposed Racetrac. If that realtor hasn't focused on this area, they may or may not be aware of the proposed Racetrac.

Many buyers, local or from out of town, may buy directly from an owner without being represented by a buyer's broker. They may not be informed about the proposed Racetrac development and, perhaps, are not inclined to speak to the various neighbors on this street to ask questions during their due diligence period. Not all buyers do this. Without posted signs or -- regarding the proposed Racetrac, it could be overlooked.

Going back to the CRA and my viewpoint there: The CRA overlay was created to remove blights in all areas of the Bayshore/Gateway Triangle and to beautify and create safer areas to live and work in all ways. Much work has been done, and more is in the works.

Blight is defined as a thing that spoils or damages something. First of all, I want to state that I concur with most of the testimony of Chuck Gunther last week, another long-time advisory board member; however, I did check with the project manager who did look up the minutes, and we didn't do an official vote to make a

recommendation to the BCC; however, we all did agree that we didn't want the Racetrac in the Gateway Triangle, and we agreed to write the BCC individually.

Although a presentation was not made to our board, there was no -- really no need for it. Some of us who attended past Racetrac meetings reported back to other board members.

The bottom line is, regardless of any amendments to the proposed plans of Racetrac, I don't want a mega gas station of any kind in this location. There's nothing that could be presented to ever change my mind. And mega gas station in the Gateway Triangle has never been in my vision for the area, period.

I think someone's ceded me --

HEARING EXAMINER STRAIN: That's okay. Just continue here.

MS. BEATTY: A mega gas station would ruin the abutting area of town and some of the very charm and ambiance we love and want for the area. It would bring in a different kind of blight, one that is initially shiny and new, however, one that creates the very things we have worked hard to eliminate: Crime, noise, bright lights, health pollution, and the creation of an unsafe area.

Another definition of blight is excessive and unfair competition, which this proposed Racetrac would create for the 7-Eleven and the convenience store at Voigt's Texaco; long-time businesses within a mile from this location.

We want the neighborhoods in this area to flourish and increase in value, not be thwarted by a mega station that is completely out of context for this quiet neighborhood.

And another note, comparing the location of this proposed Racetrac to the one on Airport Road by River Reach is like comparing apples to oranges. The Racetrac -- that Racetrac is 3.5 miles from downtown. It has already created increased traffic congestion with bright lights shining 24 hours a day, it does not share property lines with the residential homes, and it is an established industrial area, unlike the one proposed for Palm Drive and Frederick Street and U.S. 41, which is only one mile from downtown Naples and backs up to charming homes with a cobblestone street.

A well-known fact is how important it is for the human body to have good sleep at night. It is one of the basic keys to good health and antiaging. It may be virtually impossible for some of these residents in neighboring homes of this proposed Racetrac to ever enjoy a full night's sleep from the 24/7 activities that will echo noise into the open, quiet spaces of the night as well as the objectionable LED lighting.

The additional ongoing noise during the day from increased traffic would rob this neighborhood of the peace they currently enjoy.

In addition, the stress created by all the variables created by having a mega station nearby, the intensely increased traffic, the worry, the fear of all the possibilities, increased crime -- of increased crime will add to a less-than-healthy environment for the citizens and neighbors to endure.

Naples is a designated blue zone. With this in mind, why would Collier County allow for a mega gas station to be built next to a residential neighborhood, an area where many bicyclists, walkers, and others travel daily doing the very activities the blue zone advocates promote? It just doesn't make sense to me.

In my opinion, this is ludicrous. Putting a Racetrac in this location would be a travesty in so many ways. We already have a traffic problem, and it's going to increase naturally and rapidly with all the new development in the Bayshore/Gateway Triangle as well as the continued building in Treviso Bay and Isles of Colliers Preserve, Lely, et cetera. All those folks have one way to get downtown.

We don't need to create a reason for more traffic, particularly with delivery trucks and boat trailers. We don't need to create or add to the health issues of the local citizens who are living in that area.

Let's do blue zone proud and align this decision with what is best for the local citizens.

I urge you, Mark, to please take time and drive the little streets of this quaint neighborhood and imagine the impact a mega gas station like this; the harmful impact it will have.

Thank you.

HEARING EXAMINER STRAIN: Thank you. And just so you do know, I have been through your neighborhood. In fact, this whole thing started because I went down and met with your neighbors right on Mills Street.

I do have one question. You said that you checked the records and you did not find where your CRA board had taken a formal position on this, but you said they agreed that it wasn't what they wanted?

MS. BEATTY: We did talk amongst ourselves at the board meeting, and we all said we don't want it.

HEARING EXAMINER STRAIN: Is that on the record somewhere? I mean --

MS. BEATTY: Well, I does have Elly McKuen to look up all the minutes, and she did, and she didn't see that we took a vote. That's what she was looking for.

HEARING EXAMINER STRAIN: Okay.

MS. BEATTY: But I can ask her to look for that, too.

HEARING EXAMINER STRAIN: Did the applicant ever contact you-all to ask you to hear his presentation?

MS. BEATTY: No, not that I'm aware.

HEARING EXAMINER STRAIN: Thank you very much.

Next speaker, Mike.

MR. BOSI: Next speaker is Carter Elbon. Carter Elbon?

(No response.)

MR. BOSI: Blanche Caron? Blanche Caron?

(No response.)

HEARING EXAMINER STRAIN: By the way, these names are left over from last week, so we're going to go through those folks first before we go on to others, so...

MR. BOSI: And we have two left from last week.

HEARING EXAMINER STRAIN: Okay.

MR. BOSI: Max Forgey.

MR. BROOKES: Carter is donating time to you?

MR. FORGEY: Yes. Carter Elbon is donating time to me.

HEARING EXAMINER STRAIN: Okay. Is that -- do you have a slip for that? Thank you. He's here.

MR. FORGEY: Good evening. My name is Max Forgey. I am a member of the American Institute of Certified Planners in good standing for more than 20 years. I will be providing you with a copy of my analysis of this case as well as my resum^o and other information.

HEARING EXAMINER STRAIN: Could you spell your last name for the record.

MR. FORGEY: F-o-r-g-e-y, doing business as Forgey Planning Services, 4637 Vincennes Boulevard, Cape Coral, Florida, 33904.

I'm here on behalf of the Stop Racetrac Committee; Vern Hammett, president; and respectfully offering my expert opinion as competent and substantial evidence in opposition to this petition for waiver of the minimum 500-foot separation requirement per Section 5.05.05.B of the Collier County Land Development Code.

It is my expert opinion that the proposed development on the south side of U.S. 41 between Frederick Street and Palm Street, 143 feet from an existing facility with fuel pumps or automotive -- automobile service station, as the Collier County Land Development Code previously called them, in unincorporated Collier County is inconsistent with that section and should not be approved by the Board of Zoning Appeals in their capacity -- or Board of County Commissioners.

Over the past two years, I visited the site, consulted with Mr. Hammett and other neighboring property owners, have conferred with their attorney, and have spoken frequently with county staff and have carefully studied the statute and other documents associated with this application.

I've also attended the presentation hosted by the applicant on December 1st, 2014. My conclusions are summarized in the proposed findings of fact below. I'll also be providing you with a -- an electronic version.

I have a master of public affairs degree from the Indiana University School of Public and Environmental Affairs with a concentration in urban and regional planning, have been a member in good standing of the American Institute of Certified Planners since 1993, and that is a professional organization that is maintained by the American Planning Association.

I have more than 25 years of local government planning experience, including experience as planning and community development directors in Charlotte County and planning director in Lee County.

I've presented hundreds of land use cases before planning boards and elected bodies. My articles have appeared in Planning Magazines and other publications.

The waiver of separation, Section 5.05.05.B, establishes site design requirements for facilities with fuel pumps including a separation from adjacent facilities with fuel pumps based on distance between nearest points, 500 feet. That section allows a waiver of the separation requirement based on findings by the Board of the Zoning Appeals that the proposed station is separated by another station, presumably the one within 500 feet by boundaries, structures, or features which offset or limit the necessity for such minimum distance requirements.

The four factors which are stated in that section for approving can be converted to the form of questions. And I'll go straight to those. Factor 1: Are there natural or man-made features located between the existing and proposed facilities, that is the 7-Eleven and the Racetrac, which would lessen the impact of the proposed station?

The response is that there are not. There are no lakes, marshes, non-developable wetlands, designated preserve areas, or canals between the existing and proposed station.

While there is an existing highway situated between the two, it in no way lessens impacts of the proposed development on the adjacent residential neighborhood.

Factor 2: Will the facility with fuel pumps be engaged only in the servicing of automobiles during regular daytime business hours or, if in addition to or in lieu of servicing, the station sells food, gasoline, and other convenience items during daytime, nighttime, or on a 24-hour basis.

Response: The proposed use utterly fails to meet this test for the following reasons: A, there is not a service -- this is not a service station in the classical sense. It will sell motor fuels but does not offer service, lube and oil, tire rotation, et cetera; B, it will be open 24 hours a days, seven days a week, and its impact will be felt by neighbors without relief; C, the station will sell a wide range of products, including prepared foods and beverage/alcoholic beverages from a large walk-in cooler, cigarettes and tobacco products, and gambling paraphernalia at all hours.

Three: Is the proposed facility located within a shopping center primarily accessed by a driveway, or does it front on and is accessible -- accessed directly from a platted road right-of-way?

Response: The proposed use fails to meet this test because it is not located within a shopping center primarily accessed by a driveway. It is accessed directly from a platted road right-of-way.

Factor 4: Will granting of the distance waiver have an adverse impact on adjacent land uses, especially residential land uses?

Response: The proposed use will have a profound adverse impact on adjacent land uses but particularly on the neighboring residential uses which will be directly impacted by automobile and delivery truck traffic, glare, intensity of use, potential antisocial behavior, noise and vibration without remission every hour of the day, every day of the year.

You have had -- you have heard testimony already from neighbors regarding their experience with traffic as it exists now.

I want to skip now to Section 2.03.07, the Gateway Triangle mixed-use overlay district. The purpose and intent -- at 2.03.07.M.1, the purpose and intent of this district is to encourage revitalization of the Gateway Triangle portion of the Bayshore/Gateway Triangle redevelopment area with human-scale, pedestrian-oriented interconnected 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 and 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.

What the applicant is seeking to do is to vacate right-of-way and to make this less the neighborhood residential -- the neighborhood residential development that it already is. This is inconsistent with the section that I've just mentioned.

Regarding the discretion of the Board of County Commissioners, the Board of Zoning Appeals, I want to go back to Section 5.05.05.2.A, which imposes a high burden of proof upon applicants for waiver separation in cases such as this one. It says, the BZA may grant a waiver of part or all of the minimum separation

requirements said herein if it is demonstrated by the applicant and determined by the BZA that the site proposed for development of a facility with fuel pumps is separated from another facility with fuel pumps by natural or manmade boundaries.

HEARING EXAMINER STRAIN: Heidi, would you mind turning that off? Thank you.

MR. FORGEY: The important words here are "may." This is a discretionary decision. "If" it is determined by the applicant and determined by the BZA that the site proposed for development is separated from another facility by natural or manmade boundaries, et cetera. That is not the case here.

I am asking that the Board of Zoning Appeals deny this based upon four findings of fact:

Finding of Fact No. 1: The proposed use does not satisfy the Sections 5.05.05.2.A.i of the Collier County Land Development Code because there are no lakes, marshes, non-developable wetlands, designated preserve areas, or canals between the existing and proposed service stations. While there is an existing highway, that is U.S. 41, situated between the two, it does not lessen the impacts of the proposed development on the adjacent residential neighborhood.

Finding No. 2: The proposed use does not satisfy Section 5.05.05.2.A.ii of the Collier County Land Development Code because, A, the principal use is not that of facilities with fuel pumps or its regulatory processor automobile service stations as these terms have been historically applied. It is a convenience store which dispenses motor fuels from 16 pumps; B, it will be open 24 hours a day, seven days a week, and its impacts will be felt by neighbors without relief; C, the station will sell a wide variety of products including prepared and packaged foods and beverages/alcoholic beverages, cigarettes and tobacco products, and gambling paraphernalia at all hours.

Finding No. 3: The proposed use does not satisfy Section 5.05.05.2.A.iii of the Collier County Land Development Code because it would not be located within a shopping center primarily accessed by a driveway and would not be accessed directly from a platted road right-of-way.

Finding No. 4: The proposed use does not satisfy Section 5.05.05.2.A.iv of the Collier County Land Development Code because proposed use will have a profound adverse effect on adjacent land uses but particularly on the neighboring residential uses which will be directly impacted by automobile and delivery truck traffic, glare, intensity of use, antisocial behavior, noise and vibration without remission throughout the year.

It is my expert opinion that this application is inconsistent with the statute -- with the ordinance as I have cited it. The first rule of planning is the same as the first rule of medicine. It is primum non nocere; first do no harm.

I am asking the BZA to deny this application.

HEARING EXAMINER STRAIN: Sir, I've got a couple questions. First of all, you indicated you had some paperwork that you were going to supply as evidence. I'd like to see that provided to -- at least several copies of it at this time. One for the court reporter, myself, and the applicant.

MR. FORGEY: We can make more, and we will give you an electronic version.

HEARING EXAMINER STRAIN: During the break I'll make a copy for you, if I can find someplace where there's a copier open tonight.

Mr. Forgey, you mentioned the historical application of service stations. What information have you found indicating this is not a typical -- I'm not saying it is or not. I need to know what information you've found to describe what the historical application is.

MR. FORGEY: I know that there have been past hearings of this kind regarding the separation. There was one regarding a 7-Eleven back in 2000. I've looked at the -- at a map of the area. This does not appear to have involved any automobile service stations that were in residential neighborhoods.

HEARING EXAMINER STRAIN: There were four actually previous ASWs. Three of them were brought forward by the applicant. One had never got approved, so it was not mentioned.

One of those, at least, was pretty -- about in the same distance or even closer to residential than this one is. It's the one on Bayshore and 41. That isn't really where my question's coming from.

You said this isn't -- this is not a typical -- I can't remember all your words, but historical application of a service station. On what basis do you believe that to be true? Anything documented?

MR. FORGEY: I'm looking at the history of service stations in general, and I have maybe a 1950s

and 1960s notion of the trusting your car to the man who wears the Texaco Star and the small station with four pumps and the guys in the little bow-ties.

This is -- this is a 16 -- this is a 16-pump operation. The pumps are right out front. There's a lot of light. It's open 24 hours a day. That's very different from our historical understanding of what these facilities are.

HEARING EXAMINER STRAIN: Okay. And you also indicated that this is different because it's a convenience store with the gas pumps. When looking at the code in Collier County, you do realize that convenience store is an allowed stand-alone principal use by right?

MR. FORGEY: Yes, sir.

HEARING EXAMINER STRAIN: Okay. If this was just a convenience store, a Racetrac convenience store without the pumps, would your testimony be the same today, or is it the pumps that drive your testimony?

MR. FORGEY: I think that the pumps are, indeed, driving the testimony, and I don't think we would be having this hearing if the pumps were not involved.

HEARING EXAMINER STRAIN: Okay. The distance -- the separation of the -- and it says the four-lane arterial collector right-of-way. We actually have a six-lane out there.

The 7-Eleven is on the opposite side of that. So you don't believe that that highway offers a boundary from that 7-Eleven that adds -- provides added protection to the neighborhood?

MR. FORGEY: I don't see how it does.

MR. BOSI: Okay. Thank you.

HEARING EXAMINER STRAIN: Do you have any questions?

MR. YOVANOVICH: I have a few, Mr. Strain.

Mr. Forgey?

MR. FORGEY: Sure.

MR. YOVANOVICH: Are you familiar with the concept of Dark Sky's?

MR. FORGEY: I am.

MR. YOVANOVICH: Would you describe for me in your words what Dark Sky's means?

MR. FORGEY: The prevention of light pollution that allows people to enjoy a view of the night sky, to view constellations and heavenly bodies.

MR. YOVANOVICH: Are you aware that this project proposed that it would meet the Dark Sky's standards for the lighting on this project?

MR. FORGEY: I am not aware of that and have not considered it.

MR. YOVANOVICH: Okay. Mr. Forgey, I'd like you to go back and look at 5.05.B.2.A.ii. You know what, I think Mr. Strain asked the questions I was going to ask about.

So are you saying that in order for us to be entitled to a waiver, we need to go back to providing automobile repair services in order to be able to get a waiver from the distance waiver requirements?

MR. FORGEY: I'm saying that you're not doing that, and I've also said that the waiver is not an entitlement. It is discretionary.

MR. YOVANOVICH: That wasn't my question. I'm just asking you, on No. 2, is it your testimony that in order to ask for this waiver request I have to provide automobile repair services that -- you and I grew up probably about the same time -- that used to be at gas stations in the '50s and '60s?

MR. FORGEY: I am not.

MR. YOVANOVICH: You're not saying that.

What does the word "or" mean in that section where it says, "or" in addition if you provide convenience items? Doesn't that allow for the distance waiver or request?

MR. FORGEY: It could.

MR. YOVANOVICH: Doesn't it, in fact -- in Item No. 2, don't we provide convenience items in this Racetrac that we're proposing?

MR. FORGEY: Yes.

MR. YOVANOVICH: Isn't it true that we're proposing to operate for 24 hours?

MR. FORGEY: Yes.

MR. YOVANOVICH: So if you read that provision, it says, if you're providing convenience items and you're operating for 24 hours, you meet the requirements of ii, correct?

MR. FORGEY: Yes.

MR. YOVANOVICH: Okay. Now, let's go to No. iii, if you will and it says, whether the facility with fuel pumps -- I'm sorry -- whether the facility with fuel pumps is located within a shopping center -- I'll grant you we're not within a shopping center -- primarily accessed by a driveway, or -- there's another option there, correct -- or if it fronts on and is accessed directly from a platted road right-of-way. Isn't this property accessed from a platted road right-of-way?

MR. FORGEY: It is accessed from a platted road right-of-way, and it would, in my opinion, be detrimental to the people who reside there.

MR. YOVANOVICH: But that's not the question, because you opened your testimony with it. Each of these four things can be posed in the form of a question, and the question only asks is it accessed from a platted road right-of-way, correct?

MR. FORGEY: Correct.

MR. YOVANOVICH: And do we not have access from a platted road right-of-way?

MR. FORGEY: You do.

MR. YOVANOVICH: So don't we meet iii?

MS. MISENER: No. It screws up the traffic.

MR. FORGEY: Let me take a look at this again.

Under those circumstances, yes.

MR. YOVANOVICH: Okay. Now, have you ever been qualified as an expert to testify in Collier County land use matters?

MR. FORGEY: This is my first time.

MR. YOVANOVICH: Have you -- are you familiar with the Collier County Land Development Code?

MR. FORGEY: Yes.

MR. YOVANOVICH: How much time have you spent studying the Collier County Land Development Code?

MR. FORGEY: Maybe 10 hours.

MR. YOVANOVICH: Have you analyzed the application for consistency with the Collier County Comprehensive Plan.

MR. FORGEY: I have -- no.

MR. YOVANOVICH: So you're not providing any expert opinion as to whether or not --

MR. FORGEY: I'm not providing an expert opinion.

MR. YOVANOVICH: Let me --

MR. FORGEY: I have read the Collier County Comprehensive Plan.

MR. YOVANOVICH: But you're not offering any extra opinion today, as we stand here today, as to whether or not our request is consistent with the Collier County Comprehensive Plan?

MR. FORGEY: Neither consistent nor inconsistent.

MR. YOVANOVICH: No opinion?

MR. FORGEY: No opinion.

MR. YOVANOVICH: Okay. Tell me the definition in the Collier County Land Development Code of "adjacent."

MS. ASHTON-CICKO: That's not relevant to the issues that we're here about tonight.

MR. YOVANOVICH: It is. It is. Item No. I.4 says, adverse impact on adjacent land uses.

HEARING EXAMINER STRAIN: Richard, you had previously indicated that the issue of the bolding of "adjacent" was an issue that you were concerned with because of the change in the code from the previous version to the new version. The bolding is only present in the new version. Your project falls under the old version.

MR. YOVANOVICH: Mr. Strain, I don't believe that's true for I.4 or --

HEARING EXAMINER STRAIN: Well, for -- let me -- hang on a second; I'll check.

Go ahead with your next question, and I'll move back to that.

MR. YOVANOVICH: Well, I can't go to the next one till the first one is resolved.

MR. FORGEY: I can volunteer that I went through the definitions section of the Collier County Land Development Code today, and I did not find "adjacent," but I found the term "abut" or "abutting."

HEARING EXAMINER STRAIN: It's bolded in the 2.A.iv.I like you indicated. It's not bolded in the table.

MR. YOVANOVICH: Correct. But the one I'm talking about right today, it's always been bolded.

HEARING EXAMINER STRAIN: It's bolded there. Yes, you're right.

MR. YOVANOVICH: All right so you don't know what the definition of iv for "adjacent" is?

MR. FORGEY: I do not specifically know, but there's a pretty standard definition.

MR. YOVANOVICH: No. I'm just asking you, do you know whether or not Collier County has its own specific --

MR. FORGEY: I do not know that.

MR. YOVANOVICH: You don't know. So you cannot give an opinion as to whether or not our petition meets the definitions within the Collier County Land Development Code?

MR. FORGEY: Yes.

MR. YOVANOVICH: Yes, you can or yes, you can't?

MR. FORGEY: As I said, I went through it this afternoon and did not find the word "adjacent" in the definitions section of the Collier County Land Development Code. That was only a few hours ago.

MR. YOVANOVICH: Do you have a copy of the petition you actually reviewed in formulating your opinion with you today?

Mr. Strain, do you mind if I walk over there?

HEARING EXAMINER STRAIN: No, go ahead and get it.

Mr. Forgey, just so you do know, we have -- the words "adjacent" and "abutting" are defined in the code, so...

MR. YOVANOVICH: May I see the petition that you looked at?

Sir, is this the entirety of the document that you reviewed in the forming of your opinion?

HEARING EXAMINER STRAIN: Well, Richard, I don't think he's going to be able to supply you with all the documents he reviewed.

MR. YOVANOVICH: I don't know. I'm asking.

HEARING EXAMINER STRAIN: We haven't got time for that.

MR. YOVANOVICH: I don't know. I'm just asking. I asked him, show me what you reviewed, and he showed me a four-page document.

MR. FORGEY: Attachments; attachments; market analysis; maps; Mr. Fitzgerald's narrative. I have a lot of things in here.

MR. YOVANOVICH: All right. I'm just going to ask, Mr. Strain, if I can just have a copy of it, and I'll provide responses to his other comments.

HEARING EXAMINER STRAIN: Do you want a copy, of what, everything he has?

MR. YOVANOVICH: Yes, sir. He made a comment early on that I want to address in my rebuttal that is not consistent with any of the applications I've submitted.

HEARING EXAMINER STRAIN: Okay. How do you expect to obtain a copy here tonight?

MR. YOVANOVICH: I don't need it tonight. I'll just -- I'll provide additional documentation to you at a later point.

HEARING EXAMINER STRAIN: Well, we don't know if we're going to be --

MR. YOVANOVICH: Or I'll deal with it at the Board of County Commissioners level at that point.

HEARING EXAMINER STRAIN: Okay.

MS. ASHTON-CICKO: Mr. Chair, have you established a policy of how long cross-examination will take of each witness?

MR. YOVANOVICH: Where was it?

HEARING EXAMINER STRAIN: Pardon me?

MR. YOVANOVICH: Was there -- is there a policy?

MS. ASHTON-CICKO: No. I'm just asking. It's his discretion.

HEARING EXAMINER STRAIN: No, there's not a policy. I was -- at 10 minutes I was going to ask you to wrap it up. You've got two minutes left of the 10.

MR. YOVANOVICH: Thank you. And you know, I'm going to actually give you two minutes back because I'm done with my questions.

HEARING EXAMINER STRAIN: Thank you.

Before the meeting's over tonight, we will be talking about the possibility of a written rebuttal to any new evidence submitted tonight. Out of that you'll have an opportunity to further explore Mr. Forgey's information.

Mike, next speaker.

MR. BOSI: Next speaker is the last from the previous meeting. It's Ralf Brookes to be followed by Kate Riley, who has ceding her time to Jean (sic) Van Arsdale.

MR. BROOKES: Good afternoon, or evening. My name is Ralf Brookes. I'm board certified in city, county, and local government law. The Florida Bar said that that allows me to hold myself as an expert in city, county, and local government law.

I've served as an assistant county attorney for Sarasota County; I was also a land use litigation attorney for Monroe County, which is the Florida Keys; I've been city attorney of St. Pete Beach within Pinellas County; and city attorney of Bradenton Beach within Manatee County. I'm currently town attorney as outside counsel for the Town of Yankee Town.

Today I represent Vern Hammett and many of the neighbors who have appeared already in front of you.

It's important to note that citizen testimony, even layperson testimony, can be competent, substantial evidence. In the case, Metro Dade versus Blumenthal, the Third District Court of Appeal held that lay testimony that went to the incompatibility of the proposed development with surrounding uses was found to be sufficient based on undisputed facts in the record about the adjacent existing development and the existing zoning, as is followed up by other cases:

Walberg, which found that neighbors' testimony and a site map was competent substantial evidence; Section 11, Property Corporation, the lay testimony about incompatibility and documentary evidence of a proposed site plan, elevation, drawings, aerials, and photographs could establish that the use was incompatible; and that lay testimony in Sportacres Development Group case, that was bolstered by maps and photographs and other zoning records, upheld a finding of incompatibility.

And I'll provide these citations to the Court. And that's important because that's what you've heard here today and what you heard the previous time.

Now, Racetrac gas stations were found to be incompatible with surrounding residential uses in both Cocoa Beach and in Cape Canaveral where the Racetrac was denied and these denials were taken to Circuit Court and the denials were upheld in Circuit Court.

It's also interesting to note that in the Cape Canaveral case, the City of Cape Canaveral has a 1,500-foot separation requirement between gas stations. That was not the basis of the finding in that case because the other gas station was located across the municipal boundary from the City of Cape Canaveral. That finding was that it was incompatible with surrounding residences and platted streets.

Now, you heard some cross-examination about the section of the code, 5.05.05.2. It's important to understand the intent and purpose of this separation requirement, and it's found here in the 5.05.05.2.A where if there's situations that offset or limit the necessity for a minimum distance it can be waived. Okay.

If -- for example, the gas station is located and surrounded by all commercial as in the case of the 7-Eleven, that was referenced last time and was the subject of cross-examination, at U.S. 41 and Collier Boulevard, that was located within a shopping center, the Capri Commercial Center that's at 951 and 41. And, in fact, I have here the executive summary of the petition from the agenda item that has all the maps and the surrounding zoning surrounded by commercial on all sides; C4, C4, C4, C3ST, and it's located within an out-parcel of a shopping center. I'd like to submit this to the record, too.

Well, why it's interesting and why it's important is because there is a 500-foot separation from gas station to gas station in Collier County but the County Commission, when adopting the Land Development

Code, realized there may be unforeseen circumstances where it might be appropriate to have a gas station caddy corner from another gas station across this six-lane road.

But they did write in there, No. 4, it will have -- only if it will not have impacts on surrounding adjacent land uses, particularly residential uses. So in the prior 7-Eleven case, there was no adjacent residential uses. In this case there is.

The criteria, i, ii, iii, iv, they're written not as standards that you meet any one of these, you're okay. It's actually a balancing test. You're supposed to look at i, ii, iii, and iv because they literally encompass everything. They're saying you're supposed to consider and your decision to waive shall be based on these factors whether it's this or that, whether it's this or that, whether it's primarily just a mom-and-pop gas station or if it also includes sales of convenience store things and then whether it's just during the daytime or the nighttime or whether it's on a 24-hour basis.

So it's not a list of the criteria in the normal sense of the Land Development Code standards and criteria to be met. It's not like do you meet these things in here. It puts the burden on you to make a recommendation of findings of fact, and on the BZA, to weigh these in their decision to consider these factors. They're not standards or criterias; they're factors.

If you actually look at these, you're going to -- every station, every location is going to meet one or the other. It's not a list that is meant to be applied in that manner.

I think you'll see it. I noticed it when I first read these waiver requirements. I go, well, that's strange. It tells you to consider these factors, but it doesn't tell you whether it's pro or con. In fact, it put both pro and con both in the same number.

So it's a very difficult standard to apply, but it's meant to be, I believe, so it allows flexibility. It allows you to consider when the 500-foot requirement doesn't make any sense. In this case it does make sense. There's an existing gas station on the other side surrounded by commercial.

Now, I'd also like to point out -- and you've heard from other speakers -- there are 16 gas stations within close proximity to the proposed Racetrac. One of the speakers has an aerial map that she's going to introduce later. She's speaking actually after me. She's one of tonight's cards.

There's also an LDC amendment request. This is dated back from 3/10 of '15. It was one of the staff reports that talked about the changes to LDC 5.05. That happened, and it's -- it's relevant in here because it has some factual background. It has some factual background on compatibility with sensitive land uses, including neighborhood impacts and health effects, and these were all put in the staff report for the Section 5.05.05 as recently as last year.

Now, the other thing we're here for is a vacation of a road. This is important because we are talking about the Gateway Triangle. The Gateway Triangle mixed-use overlay district's purpose and intent, as you heard before from Max Forgey, the AICP, was to promote pedestrian-oriented, interconnected projects through an interconnected street systems in connections to adjacent neighborhoods. And what they're trying to promote is traditional urban design.

I think the planner had said Traditional Residential Neighborhood, but that was -- he misspoke. It really says traditional urban design; Traditional Neighborhood Development, or TND, such like Andreas Duany promotes or New Urbanism. These involve grid street patterns, and the patterns of the streets and the roads are very important to mixed-use overlay districts that are trying to promote traditional urban design and pedestrian connectivity.

And it says in the mixed-use subdistrict, which this is -- not just C4. It's actually GTMUD-MXD, as it's shown in the staff report. 2.03.07, Gateway, developments will reflect traditional neighborhood design building palettes. Individual buildings are encouraged to be multistory with mixed uses vertically with street-level commercial and upper-level office and residential.

This is contrary to the idea of a mixed-use development, Traditional Neighborhood Development that utilizes grid street patterns for pedestrian connectivity and New Urbanism, and instead it is promoting the aggregation of lots on both sides of this mixed street. They're asking to vacate the street so they can put in a mega gas station that is bigger than the platting and parceling of lots currently allows. And it doesn't promote the purpose and intent of this Gateway Triangle mixed-use overlay district to be doing that in this location.

By keeping this street, because of current need and because also of future need, is we are going to

redevelop the Gateway commercial -- or CRA, not commercial, CRA, community redevelopment area -- as we redevelop into this Traditional Neighborhood Development and New Urbanism of mixed use, residential, and office-over-commercial activities.

All these commercials in C4 are allowed, but we're supposed to be doing them with pedestrian connectivity and interconnected streets. It defeats the purpose then to vacate the streets for assemblage of larger parcels to build mega stores that are one-story that don't have the parking on the street, that have the parking in a traditional sense, and there's nothing really New Urbanism about this Racetrac gas station.

We have heard that there will be 24-hour operations. There will be some noise. There will be some lighting. The lighting will be at least visible from U.S. 41, if not visible up above the lamps under the Dark Sky's. We're -- this project has to vacate roads to assemble the land that's needed for this mega station, which is contrary to the overlay. They have not shown Monroe Street on their site plans.

The neighborhood will be affected by additional traffic within a pedestrian community. You heard before that it is a big issue for pedestrians in this residential community, and we're supposed to be promoting pedestrian connectivity.

The burden is on the applicant to show that there are facts and circumstances that would waive this 500 -- or make the 500-foot requirement no longer needed, no longer necessary, and no longer with any rational basis. There is still a rational basis for application of 500 feet in this circumstance because this parcel is surrounded at least on two sides, if not three, by residential development.

You will also get, later today, photographs of the traffic patterns, photographs of the offset intersection and how the left-turn lane that would be utilized by this project is actually offset back from the interchange even further because of the angles that the cars are turning into from U.S. 41.

Compatibility is defined not only in the Collier County code but also in Florida Statute 163. And to paraphrase and quote sections of it, it's where two uses can coexist in a stable fashion over time where no use would unduly negatively impact another use.

In this case, as you've heard the planners testify, both Mr. Forgey and a prior planner, that this use would have undue negative impacts and be injurious to the residential neighborhood.

We urge you to find that this project should be denied. Thank you.

HEARING EXAMINER STRAIN: Mr. Brookes, I have a few questions.

MR. BROOKES: Sure.

HEARING EXAMINER STRAIN: Well, first of all, if you have any documents you want to add to the record, you need to give me copies of those.

MR. BROOKES: Oh, I do. I almost forgot. Thank you.

HEARING EXAMINER STRAIN: And on your -- when we finish up, you can give me those.

You had talked about purpose and intent of the automobile station waiver. What did you read to understand the purpose and intent? The purpose, obviously, is stated, partially in the LDC. But did you go back and look at any historical documents to find out how the Board of County Commissioners handled that piece of the Land Development Code when they initiated it?

MR. BROOKES: I believe there is a little bit in the staff report when they went to amend the LDC in 2015.

HEARING EXAMINER STRAIN: Well, the automobile station waiver originated in approximately 1998.

MR. BROOKES: 1995, I thought.

HEARING EXAMINER STRAIN: Well, 1998; the automobile station section of the code even went back further than that. And if you read the -- I don't know if you've read the minutes from the Board of County Commissioners meetings in 1998 as to the intent of what they were trying to do when they instituted the automobile station waiver, and that was my question.

MR. BROOKES: Well, from my understanding -- and I couldn't quote you them, but I have looked back at some historical documents -- there was some controversy, and I believe the applicant's attorney, who was, perhaps, one of the county attorneys that was around at the time that this was drafted. Where it originally started, I think, is there was a -- too many gas stations all on one corner all together. There was also concern about the impacts that these gas stations would have on traffic flow, on compatibility with surrounding uses.

Those all made their way into the four factors.

I think the big factor is No. iv, which is, will this gas station waiver -- if you waive this requirement, will it have an impact on the surrounding uses, and it uses the words, particularly, residential uses.

And so while it doesn't say it's -- you should -- it's a yes or no. It's a balancing, and it's a balancing of all those factors. And I don't think any one factor should have more weight than the other.

But this particular case, there's still a valid reason for the 500 feet, and it is -- in this case it does protect a residential neighborhood, and that would survive any kind of arbitrary and capricious or substantive due process claim that this had no rational basis as applied. As applied in this case, there is a rational basis for a 500-foot separation, so that we don't have gas stations on all four corners particularly where this one corner here is surrounded, at least in the back, by residential neighborhood on a -- pre-platted lots.

HEARING EXAMINER STRAIN: The four criteria that are here, as you said, are like a balancing act.

MR. BROOKES: I believe so.

HEARING EXAMINER STRAIN: You have to look at them as a balance. Well, isn't that balance somewhat offset or determined by Item 2C? And I'll read that in case you haven't got it. It says, 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 GMP.

If the intention was that it was a balancing act between the first four criteria, or the middle -- A.i through little -- A through -- i-iv, why, then, did the code include an ability to enhance that balancing through additional conditions if it wasn't intended?

MR. BROOKES: Right. Typically you'll find this condition thing in almost every approval of government agencies. They have a right to condition a DEP permit, a wetland permit, anything. But in the local government text -- context, you'll conditional-use something, something will be a conditional use, and it will say, you have a right to this use, but the County Commission can condition it.

If you show you meet these criteria, you have a right to that use for a special exception, but the County Commission could condition your special exception if it's written into the code that way. Typically it's about conditional uses.

This is different, okay. This is more like a variance. This is a waiver. It's not a conditional use. You're not entitled to it. It says, the Board may give you a waiver if you meet all four criteria and, also, we can also condition this.

It's not saying, like a conditional use, you have a right to it so we're going to find conditions so that it can be approved. First you've got to make it through the four. If you can make it through -- can't make it through the four and there's some condition, perhaps, that would allow you to go through there, maybe.

But remember, this waiver waives a code requirement that would otherwise apply; 500 feet. They're asking for something very similar to a variance, although it's called a waiver, and they do allow you to recommend conditions. So --

HEARING EXAMINER STRAIN: But the conditions would enhance that balancing one way or the other, presumably.

MR. BROOKES: I don't think that --

HEARING EXAMINER STRAIN: Otherwise, I don't know why the Board would even consider it.

MR. BROOKES: Well, I think because of -- this geographical is surrounded by these residences, the conditions here do not, in the opinion of the expert planners that have testified -- may render these uses compatible in that they would -- they would cause injury to the surrounding uses over time. They cannot co-exist in perpetuity without being injurious to one another.

HEARING EXAMINER STRAIN: You have talked a little bit about the vacation. You suggested that -- or stated that the vacation is something that was more conducive to the neighborhood concept that the Bayshore standards seem to apply.

Do you know that -- have you seen Plan A, or have you just -- are you commenting on just Plan B?

MR. BROOKES: Well, the one plan doesn't require a vacation. So my comment there is related only to the site plan that involves the vacation. The vacation of the roadway is very dangerous because it upsets

the ability to establish this Traditional Neighborhood Development in this Gateway Triangle mixed-use overlay. It really does upset the possibility -- once this is converted to a Racetrac, once the road is vacated, in order to get that road back, the county would have to take the road again by eminent domain.

Many times you don't need to worry about a road. There's no public purpose that could be in the future for it, but here the CRA, here in the Land Development Code, in the Gateway Triangle, they're expressing a need to have interconnected street systems, connections to adjacent neighborhoods, and promote traditional urban design.

A project, not this project, not A, not B, could go in there. They would have any number of the C4 uses on the first floor. It could have residential and office uses on the second floor. It could be connected to the neighborhood. It could utilize that street that's on the plats that's there that's publicly owned and satisfy the purpose and intent of this overlay district much better than this one.

Remember that this area is intended to serve as an entry statement for the Bayshore Gateway Triangle CRA and a gateway to the City of Naples. It's very important how we develop this because of its proximity to Naples, which truly is a pedestrian-oriented Traditional Neighborhood Development that's held up around the state and, in fact, around the country, especially this corridor and this Fifth Avenue area as an exemplar of Traditional Neighborhood Development.

HEARING EXAMINER STRAIN: There are more streets on this plat -- right-of-ways on the plat than they're asking to be vacated. If they weren't vacated, I believe your suggestion is they should be created as right-of-ways. Is that what you're suggesting? Because --

MR. BROOKES: Well, I'm saying they should be -- they should remain.

HEARING EXAMINER STRAIN: Well, there's one directly behind the row of houses on Mills Lanes, and it separates this property from the residences on Mills, and I didn't think it was something positive to see that developed as a roadway of any kind, and I was wondering if that's what you're suggesting these should be used for. In addition, do you --

MR. BROOKES: It might be actually beneficial. If it was a true mixed-use traditional New Urbanism development, you would want that roadway there.

HEARING EXAMINER STRAIN: Do you know the minimum cross-section of a county road?

MR. BROOKES: Well --

HEARING EXAMINER STRAIN: Width?

MR. BROOKES: -- typically in New Urbanism and Traditional Neighborhood Development, they don't have the roads that are designed for cars. They have roadways of sizes that are designed for people.

So you will see in a mixed-use development that they may ask for variances or waivers of roadway separation -- roadway width requirements. You know, sometimes they're 12 feet. I don't know that 12 feet would be appropriate in this area. I'm not --

HEARING EXAMINER STRAIN: Twelve-foot two-lane road?

MR. BROOKES: Well, it all depends which one you're looking at. I know -- I had a case in front of the Third District Court of Appeal, and it was -- it was U.S. 1; it was 12 feet.

HEARING EXAMINER STRAIN: Okay. Thank you. I'll -- Mr. Yovanovich, you seem like you've got something.

MR. BROOKES: Of pavement. It was of pavement.

MS. ASHTON-CICKO: Mr. Chair?

HEARING EXAMINER STRAIN: Yes.

MS. ASHTON-CICKO: So this witness has presented himself as an expert in planning as well as legal counsel to --

MR. BROOKES: No, I have not.

MS. ASHTON-CICKO: -- some of the members of the --

MR. BROOKES: Only as an expert in city, county, and local government law. I need to be careful you understand that. The Florida Bar allows me to do that only as an expert in city, county, and local government law not in expert and urban planning or AICP. I am not either one of those.

MS. ASHTON-CICKO: Okay. Because he's made legal arguments which generally would be more appropriate in his rebuttal memo than to be cross-examined on a legal argument. But to the extent he's a fact

witness, it would be appropriate to cross-examine him.

MR. YOVANOVICH: I want -- I was a little confused as to what Mr. Brookes was actually testifying to, because I do think he crossed the line and started getting into a whole lot of planning testimony. And I was -- my first question was going to be to Mr. Brookes -- and I already know the answer; he's already answered it -- is are you a professional planner?

MR. BROOKES: No, I'm not.

MR. YOVANOVICH: Are you a professional transportation engineer?

MR. BROOKES: No.

MR. YOVANOVICH: Are you a professional transportation planner?

MR. BROOKES: No.

MR. YOVANOVICH: So you -- Mr. Brookes, you're --

MR. BROOKES: Those questions about how wide, those aren't for me. Those are for transportation planners.

MR. YOVANOVICH: Now, you did make some -- you did look at the Collier County Land Development Code, correct?

MR. BROOKES: Yes.

MR. YOVANOVICH: And you made some statements about what was the intent and what was permitted under the Gateway Triangle provisions, correct?

MR. BROOKES: By reading the words in the code only.

MR. YOVANOVICH: Did you read the words in the code where it says that gas stations are permitted as stand-alone uses in the Gateway Triangle?

MR. BROOKES: Yes, they are.

MR. YOVANOVICH: They are permitted uses in the Gateway Triangle?

MR. BROOKES: And the 500 feet separation applies in the Gateway Triangle also.

MR. YOVANOVICH: Okay. Now, you're not offering any opinions as to either Plan A or Plan B meeting the specific site design standards in the Collier County Land Development Code?

MR. BROOKES: In my opinion, neither plan meets the 500-foot separation requirement. I consider that a site design standard.

MR. YOVANOVICH: Is that the only --

HEARING EXAMINER STRAIN: That's acknowledged. That's why we're here today. Both plans require it.

MR. YOVANOVICH: That's an issue of dispute, but I just -- I understand. But for the 500-foot requirement, do we not -- is that the only site-related criteria that, in your legal opinion, we don't meet? Because we know you can't talk about planning.

MR. BROOKES: My legal opinion, you don't meet the Gateway Triangle mixed-use district requirements; purpose or intent.

MR. YOVANOVICH: So is it your opinion, under the Land Development Code, I cannot build a stand-alone gas station on that property assuming I meet the 500-foot requirement?

MR. BROOKES: Not the way you're doing it, no. You need to do a pedestrian-oriented interconnected project with an interconnected street system. You need to promote traditional urban design. You need to follow the criteria that are in here for this overlay district.

MR. YOVANOVICH: And have we left --

MR. BROOKES: No, I have not seen that you have met that.

MR. YOVANOVICH: Are you capable of doing that as a lawyer or -- is that something a lawyer can testify to, or is that a planner's responsibility?

MR. BROOKES: Well, I think that I can read the words in the code and I can --

MR. YOVANOVICH: But you can't apply them because you're not a professional planner, correct?

MR. BROOKES: One, I don't see that your application made any proof that you had met the burden of the Gateway overlay district. Perhaps you don't think you do. Two, I haven't seen anything in the staff report that it -- said that you meet the purpose of the Gateway Triangle mixed-use overlay district.

MR. YOVANOVICH: Have you --

MR. BROOKES: I think that you -- while a gas station is one of many hundred, perhaps, uses allowed in C4. The zoning on this property is not -- really not C4. It's GTMUD-MXD, which is the Gateway Triangle mixed-use district, mixed-use subdistrict.

MR. YOVANOVICH: Did you review either of the Site Development Plan applications being reviewed by Collier County staff?

MR. BROOKES: I reviewed everything that was in the application files by staff, the staff reports, for two years now.

MR. YOVANOVICH: Do you recall reviewing the Site Development Plan application for Plan A?

MR. BROOKES: Yes.

MR. YOVANOVICH: Did staff in any way find that that Site Development Plan was inconsistent with the Collier County Land Development Code?

MR. BROOKES: Did they? No. Did they address 2.03.07.N? I don't believe they did.

MR. YOVANOVICH: How do you know that?

MR. BROOKES: Well, I'm -- just from recollection.

MR. YOVANOVICH: Okay. I have nothing further.

HEARING EXAMINER STRAIN: Thank you, Mr. Brookes. Please make sure you provide me with a copy of what you'd like to enter into the record.

MR. BROOKES: Okay.

HEARING EXAMINER STRAIN: Mike, you want to --

MR. BOSI: Next speaker is Jeanie Van Arsdale who has been ceded additional time from Kate Riley.

HEARING EXAMINER STRAIN: Make sure you use the mike, please. Thank you, Ms. Van Arsdale.

MS. VAN ARSDALE: My name's Jeanie --

HEARING EXAMINER STRAIN: That one -- yeah, that doesn't pick up very well. He has another one behind you there.

MS. VAN ARSDALE: My name is Jeanie Van Arsdale.

And first thing I wanted to show you was, in relationship to our last speaker, where there are the 16 gas stations within close proximity of the planned Racetrac, which is in this location.

This brings you up to Golden Gate Boulevard, and so we're not talking -- this is where the zoo is, so we're really not talking a very large area. And there are 16 gas stations with one more being planned. And I will include the list of these.

HEARING EXAMINER STRAIN: I'll need -- you'll be providing that aerial as well; thank you.

MS. VAN ARSDALE: I'll provide -- every photo I'll bring in.

HEARING EXAMINER STRAIN: Thank you.

MS. VAN ARSDALE: First thing I want to look at is this area that we've been talking about. And, visually, we have the Racetrac proposed development excluding this commercial building, which I'll come back to, with Mills Lane here, Frederick, Palm, Naples Bay Resort, Mullins Lane, Curtis; all of this residential area.

Now, I'm going to zoom into this area. This was taken off of Google Maps, and the date is February 17th, 2016. Here we have the property. If you look, there's a darkened shadowed area right here in February. On January, I -- one month before to the day, I took some pictures of this property. Here's Mills Lane, over here is the commercial property, this is the developed -- proposed developed area, and this is the amount of water that had filled into the back of their property.

Another photo shows you the amount of water and the depth of it, meaning the width of it.

Here we have the commercial property backed up to water flowing up, flowing into this property.

This is the Collier County major surface water canal system facilities map. If you look at this map, I've highlighted the yellow and made a few marks. But this tells you where all the drainage of water's supposed to go during heavy rainfalls.

This is U.S. 41. All of these have arrows in which direction it flows. The water comes from Shadowlawn all the way down to U.S. 41 and dumps eventually into Curlew, and there's enormous pipes or culverts that take it there.

It was interesting that last week one of the people that spoke said I live on Curlew, and I don't mind that there's a gas station here. What they don't understand is that the runoff will be coming from this area.

Here is the area that was flooded, and right now the way these arrows are, the water is supposed to flow here, down Palm, through the back, between Mills Lane and the Racetrac up Frederick Street, meander behind Naples Bay Resort into the water. Obviously, that's not working.

If you look at it from the land -- from putting it on a projected, you can see all of this is supposed to flow this way. Right here at this area we've had flooding where you can be shin deep in water because it doesn't have an ability to drain.

All of this water eventually ends up going into canals that go out to Naples Bay, whether it's Curlew or whether it's coming through Naples Bay Resort. But here is the area that has been collecting a lot of rain.

If we look at this picture of 1952, we can see Curlew and we can see this drainage area. This has been a problem. If you look at this survey or photo of 1952, you can see the low areas where Naples is. Those are the areas that are still problems with water and draining.

That's '52. This is today. This is a very small canal and amount of -- you know, to be able to accommodate the amount of water that has to come off the streets of East Naples.

The reason that the water was running upstream was because of storm surge. Storm surge is water being blown over the land, water being blown through the pipes, water bubbling out of the drains. Here is a map that's provided that shows you the high-risk areas. And, certainly, you know, Frederick Street is part of it.

There is a very large report that talks about the water in this area, and particularly the Gateway Triangle where it said that the ground elevations were at or below three feet above sea level, and it continues with issues of drainage. And I am not an engineer, but I was the one that took those photos, and I've seen it.

Next thing I wanted to show you was this property that we've talked about where there's a gas station and an automotive repair garage next to a residential area.

This is U.S. 41. This is Bayshore. That's one of the comparisons. I want you just to visually look at this picture.

This is where Racetrac's proposed. This is what surrounds it. This is what we're talking about. Here's 7-Eleven; here's where they want to put the pumps.

It has been the desire of the residents of Bayshore and East Naples that we would like to create Bayshore as an art community, a place with theater, arts. We already have the Botanical Gardens. We have, you know, boat launches, and there's been a lot of energy put into it. And we know the beauty of Naples.

What we're talking about here is connecting where the Racetrac starts to Bayshore Drive. That is not a big distance. We already have the Gateway Triangle that's going to be beautified. This is what's left. You turn onto Bayshore right now, it's charming. They have streetlights. It's a very, very attractive area. But this is what we're talking about. And putting a Racetrac here will be setting a precedence.

The county owned the land which was sold within the Gateway Triangle, and we encouraged development, and people paid millions of dollars for it. What we're asking is why would we encourage development within this triangle and to build a Racetrac here? It doesn't make sense.

We're selling this idea across from a Racetrac.

Frederick Street is small. This is Frederick Street looking towards U.S. 41. There aren't other roads where the landscape trucks can park or the UPS trucks or FedEx or Home Depot deliveries. This is the way it looks, and that's with a mini Cooper. So when you talk about narrow roads, how narrow could they be? They're the width of two large vehicles.

This is Frederick Street. It's very narrow.

Another point that was mentioned was this intersection. This is the current 7-Eleven. This is the proposed Racetrac land. This is Palm. Palm -- Palm is set back because we have an odd-angle turn here. All you have to do is have two cars, two cars if you're lucky, before you've backed up in a queue, and this is where the Racetrac would like the cars to exit.

I could have cut out these cars and stuck them here to prove my point, but I don't think I needed to. That is not an appropriate road for exiting a very large gas station.

And this is just a blown-up view which shows you it a little bit better, that this is the problem.

Right now -- I took this this morning. Right now this is how traffic deals with it. They cut through

the retail cellular store. They go through the parking lot. That's how they -- that's how they're dealing with it now, and we haven't even had the Racetrac built.

This is the type of traffic that you see. I took this today, too, coming out of Palm. It's not just little mini Coopers.

Taste is precisely the subject which needs discussion. Right now I want to show you the neighborhood. They're visions of Olde Florida. Some day I believe this area could go into historic preservation.

This is a house on Frederick Street behind vegetation. This is a house on Frederick Street tucked behind trees. This, charming Key West style on Frederick Street, on little, tiny, narrow Frederick Street. This, Olde Florida charm.

Hidden houses, hidden gardens. Some of the houses are hard to see.

HEARING EXAMINER STRAIN: Are you about finished with your photographs, ma'am?

MS. VAN ARSDALE: Okay. I'm just --

HEARING EXAMINER STRAIN: Most of the -- I mean, I've driven through the neighborhood. I will be writing up a report on this. I am very familiar with some of the photos you showed.

MS. VAN ARSDALE: Okay.

HEARING EXAMINER STRAIN: So I'm -- not necessary to show me the whole neighborhood.

MS. VAN ARSDALE: Okay. I'm just going to show you one more -- two more.

HEARING EXAMINER STRAIN: Thank you.

MS. VAN ARSDALE: This is Mills Lane. It's cobbled. It's a hand-made cobble-street lane. This is -- this is the street that you want to back up the Racetrac gas station to.

Mrs. Frederick moved this house in the '20s to Frederick Street. It's a charming old house. If I zoom back from it, this land here is owned by Racetrac. This house is going to be looking at Racetrac, this 1927 home. This is Racetrac land. This is on Frederick Street. It's the first house.

This is the best of what Racetrac really looks like. I wanted to see what they did with -- how they handled landscaping and foliage, so I Googled them, and page after page I couldn't find any trees or any landscaping except maybe the most recent projects.

HEARING EXAMINER STRAIN: Ma'am?

MS. VAN ARSDALE: Instead, what you see and what the neighbors will be looking at will be the sign.

HEARING EXAMINER STRAIN: There are Racetracs in the county you could have used for photos if you wanted to to see what their landscaping's like. I'm not suggesting that's acceptable; I'm just saying they have locations in Collier County that are built out.

MS. VAN ARSDALE: I --

HEARING EXAMINER STRAIN: And they're not built out to the styles you're portraying here, so...

MS. VAN ARSDALE: Correct. This -- you know, this is what happens with gas stations and convenience stores.

HEARING EXAMINER STRAIN: Okay.

MS. VAN ARSDALE: It's not always pretty.

HEARING EXAMINER STRAIN: I need you to start wrapping up here; get to your conclusion, please.

MS. VAN ARSDALE: I have three more pictures.

HEARING EXAMINER STRAIN: Thank you.

MS. VAN ARSDALE: Here's Racetrac with landscaping. Last time they mentioned they would do royal palms. Royal palms are -- grow to be above everything else, and they end up being beautiful from a distance, but they do not shelter.

And that little cottage, even with night lighting, it will be looking up into -- up into this canopy. And it's 24 hours a day. Many times the neighbors turn off their night -- lights somewhere around 10:30 or 11:00, but with this they would be on all the time.

Thank you.

HEARING EXAMINER STRAIN: Okay. I'll need you -- those photographs and elements that you

showed, I'm going to need copies of these.

MS. VAN ARSDALE: You can have these.

HEARING EXAMINER STRAIN: Okay. Would you leave them with that young lady right there, and we'll be fine. Thank you.

Next speaker, Mike.

MR. BOSI: Next speaker is Richard Noonud (sic), followed by Lindsey Thomas.

MR. NOONAN: Good evening. My name is Dick Noonan. I'm a neighbor on Frederick and Monroe.

They showed some of what I wanted to talk about. The topography of the site: When they're showing the presentation of the eyesight coming from the porch over the berm to the site with -- as the one picture showed, the average ground there is about three feet. Land Development Code's going to require them to be minimum of equal to the crown of the road or base flood elevation, which is going to be eight foot.

So all of the people on Mills, all the people in Frederick, are going to be looking up at that canopy. That's the one thing I wanted to get across.

The other one was I saw and heard testimony that they did traffic studies on Palm and traffic studies on 41. Did they do traffic studies on Frederick and Monroe?

If traffic does increase there, are there remedies to fix it? Once it's done, I don't know how we could fix it. Those are what I wanted to know, if the roads on Frederick and Monroe are designed for the traffic they have now and, if they are not, how are they going to be fixed?

Thank you.

HEARING EXAMINER STRAIN: Thank you.

Next speaker, Mike?

MR. BOSI: Lindsey Thomas, followed by Gelpi. Lindsey Thomas?

(No response.)

MR. BOSI: Kathy Gelpi?

(No response.)

MR. BOSI: Steve Main?

MR. MAIN: Hi, Mark. Steve Main. I am a local business owner on Bayshore Drive. I'm also a member of the Bayshore/Gateway Triangle Community Redevelopment Agency and Haldeman Creek MSTU.

Ever since the original designs for the -- or when the first talk about the Racetrac came out, we looked at it among ourselves as being inconsistent with how we saw the Bayshore/Gateway Triangle redevelopment actually happening.

Some of the previous speakers have alluded to the words that are in there in the Land Development Code and all those kind of things. And I'm not going to -- they're nice, but we were looking at it from the standpoint of how we want our community to be developed.

And Racetracs are great gas stations. I mean, you can drive right up Airport Road. I'm sure on the drawing that we saw before, that was probably the one -- the one there, and I have nothing against Racetracs in particular, but in this location, it just doesn't work.

I sent -- I did send you an email. I don't know if you got it.

HEARING EXAMINER STRAIN: Oh, I have, right now, probably a hundred and --

MR. MAIN: Probably didn't get to you.

HEARING EXAMINER STRAIN: -- ninety-seven emails, something like that. So, yes, I'm sure yours is in there.

MR. MAIN: But what I was going to say is, you know, there is no shortage of gas stations around. I understand, you know, you've got a 500-foot waiver.

I've got to tell you, I've worked on Bayshore Drive for 18 years. I've never run out of gas. Whenever I have needed gas, I pulled into the gas stations. I've never had to wait in line. So, you know, I looked at their market study that said that, you know, we really need it. I -- maybe by their numbers we need it, but I can tell you from somebody who's in the community, we have plenty of gas stations.

The second thing is, there used to be -- there was a Mobil on the corner of Bayshore and 41. It left. Well, we still don't wait in line.

There was one also on Bayshore Drive next to the business that I work in. It closed, and we didn't miss it. So I really don't think that, you know, they're really a big problem from that standpoint.

I noticed some of the other things in the marketing study they talked about; we're going to, you know, have Wi-Fi and places to go sit and drink coffee outside. Well, I've got to tell you, as nice as Racetracs may be, I really don't personally think there's going to be a lot of people that want to go sit around and drink coffee out in front of a gas station with the traffic on 41 going by. But -- so in terms of a need for this, I really -- I really don't see that.

There are roads platted in the area that would have to be vacated. The 500-foot waiver, again, as one of the other speakers alluded to, it's discretionary. They -- it doesn't have to be granted. It may be granted based on needs for the area.

There are two big developments that are planned for across the way. Mrs. Van Arsdale showed you pictures of both of those. Again, it is not -- those are not going to be consistent with what we see from this Racetrac.

And the last thing is, you know, for the neighbors that live in that area, the residents, many of those houses, as you saw in the pictures, those are stilt houses. So they spend their time on the second floor. Well, on the second floor, you're looking out, and you're going to be looking at a gas station.

Now, granted, they are -- have said in their proposal they'll be using the Dark Sky criteria and all that, and that's great. That will help keep the illumination from going up, but still, if you're sitting on your back deck that happens to be on the second floor, the primary floor you live on in those houses, and you look out, that's what you're going to see is a gas station.

Ten thousand gallon tankers, I believe, is what they'll probably be using to refuel that place. I don't know when they're going to come, but it's a 24-hour gas station. If they need it, you could end up with the noise associated with that as well as traffic and all the other things with a 24-hour operation in that area.

So I, again, want to tell you, if you ever do get the chance to see my email, that I am greatly opposed to putting this Racetrac in this particular spot. I think it's a bad thing for the community, bad thing for the area, and I see no reason to grant waivers that would allow it to go forward as it is.

Thank you.

HEARING EXAMINER STRAIN: One question. How long have you been on the CRA?

MR. MAIN: Since 2002, I think.

HEARING EXAMINER STRAIN: About the time it was initiated?

MR. MAIN: I think I was up -- not originally. Two or three years later.

HEARING EXAMINER STRAIN: Okay.

MR. MAIN: I wasn't one of the original members. I think, actually, Chuck Gunther, I believe, who spoke at the last --

HEARING EXAMINER STRAIN: Yes, he did.

MR. MAIN: -- meeting -- I would have been there if I wasn't attending a wonderful destination wedding in Lincoln, Nebraska. But, in fact, Chuck was an original member. He is the only remaining original member of the CRA.

HEARING EXAMINER STRAIN: Has there ever been a project that has come into the CRA area that you have not been presented with, or is that -- does that typically -- isn't that typically done? I know other projects have come to the CRA board first to be discussed. But you-all have basically taken a position on this without a review or a presentation by the applicant; is that true?

MR. MAIN: I don't believe there has been a presentation by the applicant.

HEARING EXAMINER STRAIN: Okay.

MR. MAIN: If there is -- if there was, I don't recall it. And I think I've only missed one meeting in the whole time I've been on. I just don't remember that.

We had -- well, let me give you an example. There was a proposal, you may remember, for -- I think it was a Wawa or some other convenience-like place similar to Racetrac on the other side where the old Coyote Grill -- or Coyote Lounge and old Burger King, that area, which is now this other development, and I do remember they brought that to us, and I remember we just -- we felt about -- the same way about that as about the Racetrac.

And we have had discussions during the meetings where it's come up that we are not in favor of this, but I don't recall a formal presentation from them.

HEARING EXAMINER STRAIN: Thank you.

Next speaker, Mike?

MR. BOSI: Next speaker is Jeff Moscardelli. And Mr. Moscardelli will be followed by Robert St.

Cyr.

HEARING EXAMINER STRAIN: You'll need to spell your name for the record, sir.

MR. MOSCARDELLI: My name's Jeff Moscardelli. It's spelled M-o-s-c-a-r-d-e-l-l-i.

I am the co-owner and operator of -- or operations manager of the apartment building at 2030 Monroe Avenue. You've probably seen the building. You can't really miss it. It's two stories.

My family bought that building in 1992 on a foreclosure. It was in despair. I mean, three days later the Collier County Sheriff's Department called us up, told us they were about to do a raid. We didn't even have all the ink dry.

Now, we gave them the keys, let them do bust. We told everybody that got arrested, rent was \$1,000 month. You can get the hell out. We knew they weren't going to come up with it because they just got bailed out.

Then my father put me to work. And he's old school so, of course, that meant coming in at 6 a.m. on a Saturday, kicking the bottom of the bed telling me to get up. Paid me \$20 for the day and maybe lunch from Checkers. And some way I also ended up hating Checkers; not from eating it, but because every damn week I had to go there, out in the front of the building, even after school -- and I was 14 at the time -- and would have to pick up beer bottles, trash from Checkers.

So at this point, if this does go through and gets built, I can gladly let Mr. Yovanovich know that I have three years experience as a bouncer or, as I like to say, a teacher in manners. I'll gladly take you and your little posey there down to come pick up some of that stuff.

HEARING EXAMINER STRAIN: Sir, this is not the forum for threats. You'll have to -- that's not the appropriate manner to operate here. So I need you to knock it off. Stick to the facts. Tell me what you like or dislike about Racetrac, and we'll go on with the meeting.

MR. MOSCARDELLI: It's going to bring back more of the trash to the community.

Everybody there -- my neighbor, who was just up there, lives across the street from me; beautiful stilt house. He bought that; it was just overgrown with just overgrown vegetation. They took it out. They put in nice houses there.

We have kids that live across the street from us. There's -- somebody rents from me who has two young kids, okay. If one of their kids -- because they don't want anybody to know that you kind of have to loop down and around Monroe Avenue to avoid traffic -- gets hit, I'd probably tell somebody, you know what you should do? I'd either sue the hell out of the county or sue the hell out of Racetrac, maybe even, oh, I don't know, the CEO who lives down in Port Royal. I think he can pick up the tab on that.

You see, last week he also was asked, you know, maybe if we come to a little bit of a -- somewhere of a standing here to Penny Taylor. Well, apparently, his saying was, I'll take this to the Supreme Court.

If he's that disrespectful to the locals here, I think there's a reason why the locals have already shown up here to stand up for their neighborhood, okay.

We're a little bit tired of being pushed around to have more crap being thrown in the backyards.

One of the neighbors, they've got a giant sign over the back of their fence saying no Racetrac here. I couldn't help but think, man, that must be awesome having a stilt house like that when you could probably light up the grill, cook some steaks. But it's now going to suck for them because imagine having to try to light up the grill and wondering, there's a 50/50 chance I'll blow the hell out of myself.

HEARING EXAMINER STRAIN: You've got to --

MS. ASHTON-CICKO: Sir, stick to the issues that we're here about.

HEARING EXAMINER STRAIN: We've got to get back onto the benefits or non-benefits or your beliefs in Racetrac. All the other stuff you're talking about isn't going to carry a lot of weight. So let's get back to the facts of the case.

MR. MOSCARDELLI: The reason why they had to apply for this waiver is because they know

they're not within the certain amount of feet.

HEARING EXAMINER STRAIN: Correct.

MR. MOSCARDELLI: And some of us are tired of it. And they need to quit acting like a spoiled child saying, but we still want it. We still want it. We still want it. Last time I saw anybody act like that, it was some bratty celebrity Kardashian-type that probably couldn't get into a club.

I'm asking you to just let the neighborhood be. It's nice and quiet there, but when the kids get -- end up getting run over, that blood is on their hands.

HEARING EXAMINER STRAIN: Okay.

Next speaker, Mike?

MR. BOSI: Next speaker is Robert St. Crier (sic), followed by Maurice Gutierrez.

HEARING EXAMINER STRAIN: Bob, it's been a while since I've seen you.

MR. ST. CYR: Hello, Mark.

HEARING EXAMINER STRAIN: How are you?

MR. ST. CYR: I'm doing fine.

And, for the record, it's Bob St. Cyr.

HEARING EXAMINER STRAIN: You might have to spell that to make sure we get it right.

MR. ST. CYR: 13 Rivard Road. S-t, period, C-y-r. And I apologize for my handwriting.

I'm here tonight to speak against granting a waiver for the Racetrac mega gas station and convenience store because, if granted, it would have an adverse and irreversible impact on the roadways, neighborhoods, and families in the greater Royal Harbor area.

The area we're talking about is generally referred to as Royal Harbor, and there are two main roadways which provide access to that area. To the west we have Sandpiper Street, which resides within the City of Naples; on the other, Palm Street is located in Collier County.

These two parallel roadways are joined east/west by Marlin to the south. Together, these three roads create a U-shaped roadway which serves as the main roads for residents and guests to move around in this exclusively residential area.

And the other night Vern Hammett already discussed the impact this project would have on the traffic patterns in this exclusively residential area.

A few years ago the City of Naples approved a building of the building of the Naples Bay Resort on the corner of Sandpiper and U.S. 41. During that time, road improvements were made to ensure reasonable and safe traffic flow to and from U.S. 41.

Let's take a look at what they did. As you travel east from the City of Naples on U.S. 41 and take a right onto Sandpiper Street at the Naples Bay Resort, you encounter a park on the west side of Sandpiper Street along with a sidewalk and a green space between the sidewalk and the roadway which is dedicated to the southerly flow of traffic.

That single road heading south on Sandpiper is separated from a multilane roadway to the east of it by a landscaped medium (sic) which enhances the beauty and the safety of the street.

The three lanes just to the east of the landscaped medium control the northerly traffic flow to U.S. 41. It also provides significant stacking capability, approximately 10 cars per lane, to accommodate vehicles in the roadway and is regulated by multiple traffic-control devices. Four to be exact: Two left-hand lane turn arrows for traffic turning onto U.S. 41 going west to the City of Naples; one for traveling straight ahead for vehicles crossing U.S. 41 onto Davis Boulevard; and one lane for vehicles making a right-hand turn onto U.S. 41 going east toward 951.

On the east of Sandpiper, there's also another sidewalk, again, separated by a green space and set off with another public park. There's a crosswalk at U.S. 41 and Sandpiper intersection so that the pedestrian and/or bicycle traffic is accommodated in a safe and -- controlled and safe manner.

This roadway was well thought out, and it's designed to accommodate existing volumes of traffic flow.

Now, let's travel down -- east down U.S. 41 to the site of the proposed mega gas station and convenience store. It's obvious that the entry and exit points onto and off of U.S. 41 that are being proposed would cut across an existing sidewalk and a bicycle path in such a manner as to create a dangerous hazard for pedestrians and bicyclists.

Now, in the artist's drawing of the front elevation of the mega gas station and the convenience store that was presented on June 23rd, I cannot recall either a sidewalk or a bicycle path being depicted in the picture of the flood elevation, as if it wasn't even there.

The sidewalks and bike trails are heavily used day and night by residents going to and from work from their homes in East Naples to the City of Naples. As cars enter or exit the mega gas station and convenience store, all while attempting to get into the line of traffic heading east on U.S. 41, they will no doubt block both the sidewalk and the bicycle pathways creating a dangerous situation that could very well result in automobile, pedestrian and/or bicycle accidents, or even worse.

It is important that the potentially dangerous situation be documented as part of these deliberations because when accidents -- when an accident does occur -- and I'm saying "when," not "if" -- victims will be able to reference these traffic concerns that are being raised here by the public.

If we continue down U.S. 41 and take a right-hand turn onto Palm Street, the adjacent property of where the Racetrac is proposed, there are no parks bordering either side of the intersection. There are no sidewalks. There are no bicycle trails -- paths or medians to separate lanes of traffic, just a narrow two-lane roadway with a dangerous curve right where the Racetrac mega gas station and convenience store wants to dump more car and truck traffic without consideration for the impact on the traffic flow or the quality of the life of nearby residents.

There is a single lane of traffic heading south on Palm Street but no road medium separating one lane from the other. This is currently a very dangerous situation that will only get worse if a waiver is granted. That, by definition, is adverse impact.

The widest part of Palm Street on 41 is also significantly less than the Sandpiper intersection, and the narrowest part of the road is where Racetrac mega station has proposed an entry and exit point on Palm Street.

Now, consider adding additional cars from U.S. 41 onto Palm Street via the Racetrac mega gas station and convenience store. The proposed entry and exit point on Palm Street to access U.S. 41 will create backups from cars heading both north and south and will spill over onto U.S. 41 causing further backups, delays, and accidents.

Why would anyone consider adding more cars to an already failed roadway?

HEARING EXAMINER STRAIN: And, Bob, you need to start wrapping up, okay?

MR. ST. CYR: I will. I'm wrapping up.

So Palm Street and Sandpiper really accommodate the exact same traffic flow and, therefore, should be required to have the same design and functionality.

Both Palm and Sandpiper Streets serve essentially the same number of residents and guests, and I believe that both intersections should function in essentially the same manner; however, let's face facts. There is not the land or space available at the intersection of Palm and 41 to create a safe and attractive roadway given existing constraints.

With increased traffic volume, however, there will be a great adverse impact on the residents and guests of the residential neighborhoods.

In conclusion, I would offer the following: Simply stated, this is the wrong location for this project, and it is incompatible with the greater good of the residents of the greater Royal Harbor area. The adverse impact of this proposed project on existing traffic patterns, roadways, pedestrian walkways, bike paths, as well as the quality of life in Collier County would be irreversible if the waiver were to be approved and the mega gas station were to be built on that site.

If you haven't already done so, which I know you have because you indicated, take a visit down there. Take a look and see what the City of Naples did with Sandpiper Street, and you will realize that Palm Street won't work.

The traffic volumes for this mega station and convenience store would further destroy the Palm Street intersection and surrounding neighborhoods forever --

HEARING EXAMINER STRAIN: I get -- Bob, I get that point.

MR. ST. CYR: -- if the waiver to be recommended and approved by the Board of County Commissioners. Thank you.

HEARING EXAMINER STRAIN: I understand your point. Thank you very much.

And with that, we're going to take a break for the court reporter. Before we do, Terri, did you get the photographs and information?

MS. VAN ARSDALE: I've got them here.

HEARING EXAMINER STRAIN: Okay. Please, during break, would you make sure the court reporter gets those. Thank you.

And we'll take a break to 7:15 so she can rest her fingers. Thank you.

(A brief recess was had.)

HEARING EXAMINER STRAIN: Ladies and gentlemen, if you'll please take your seats. We'd like to resume the meeting. Thank you.

We left off with public speakers. We have at least one or -- one public speaker left.

MR. BOSI: We have one public speaker and one speaker who has submitted a slip, but that person had spoken at the last hearing.

HEARING EXAMINER STRAIN: Okay. Well, this is still the last hearing, so we'll go only to the one speaker that has not spoken.

MR. BOSI: Maurice Gutierrez.

MR. GUTIERREZ: Good evening.

HEARING EXAMINER STRAIN: Maurice, hi.

MR. GUTIERREZ: Good evening, Mr. Strain.

For the record, Maurice Gutierrez. I am a home owner at 2736 Shoreview Drive. My spelling of my last name, sorry, G-u-t-i-e-r-r-e-z, because my handwriting is also very bad. So thank you.

You know, East Naples, I think, is a poster child of bad zoning decisions. Thirty-five years I've been here. I can only look around and say, I can't believe this was approved.

And when I hear statements like Mr. Yovanovich say, oh, but staff has approved this project, yeah, and so did every other mistake that has been made. Good or bad, we're all living through it. And I think because this is our neighborhood, we've had really such a great turnout of homeowners that have presented more information than I ever thought I'd hear of, particularly from non-lay people.

But having said that, I think the BCC amended the LDC, Land Development Code, because their intent is what was so important. An army of attorneys and litigators and professionals can never write anything in language that cannot be manipulated, and that manipulation can really result in staff recommending things that we will have to live with forever. Take the fact out of all the uses that could occur on this site; I think someone mentioned 121 or so --

HEARING EXAMINER STRAIN: 142.

MR. GUTIERREZ: -- 142. It was testimony last Thursday that this is the only one that's a 24-hour operation. So, coincidentally, the neighborhood's impact versus any other use is multiplied times two because no other use is a 24-hour operation. That and consistent with the traffic that will occur, as we have heard, is not intended for a residential area.

All of the other Racetracs that have been built in Collier County are surrounded by, in, or have commercial environment warehouse-type infrastructure surrounding it. So this is almost setting a precedent.

And may I add, I don't believe that there's been any other Racetracs built in a redevelopment area. And, you know, I use the word "redevelopment" because the word "re" means it didn't work very well last time.

So when the commissioners had the vision and the intent of having language that will create a mechanism where a waiver may be given, it has allowed the residences to come out and really have a method of expressing their concerns where other staff issues would not allow that.

And I'm just going to give you a very quick example of one. I live on a residential street, approximately 20 homes. It's a dead-end street. It's waterfront. So, needless to say, my taxes are high. But lo and behold, staff decided it was okay to allow a 16-unit efficiency apartment to go motel and licensed it.

Now, there was no mechanism like this to say, are you guys crazy? But, in turn, everybody on my street for the rest of our lives, foreseeable, we're going to have a motel, which the Sheriff's Department knows it's a crackhead haven as well as a prostitution place.

Now, that is a personal experience that I have no control over, unlike this, which the homeowners have come out and said best use, staff recommended it. I think those are like flags in the air to say, you know, we

better get down here and hopefully make those that see and read the information not manipulate it to the point that we have to suffer. Because once this is built, this is 24 hours a day forever. You take that into a redevelopment area, and what are we actually redeveloping? Not much. We're getting the same old, same old that we have had in East Naples from all the years of being neglected.

I will point out that the CRA and the MSTU did a collaborative effort, and we aerial surveyed and provided topographical maps to the county which they never had. The word "never had" means they made zoning decisions based on lack of information. That's the kind of problem that East Naples is facing, and I really hope this entire scenario can open up the eyes to see that this is really not what we are wanting in our CRA.

Now, that is me as an individual homeowner and a taxpayer in Collier County. I'm also the CRA chairman, and I'd like to clarify now just a few points for the Board in reference to some things that were mentioned here earlier last week as well as today.

I contacted the office today to assert and assure that the CRA in our meetings had had records of any information associated with this Racetrac information. We, in our meetings, get visited by all developers by anybody wanting to build anything, homeowners wanting to build, by people trying to develop. So it's a mechanism that gets your information out to all the people. The only entity that came before for this Racetrac was the homeowners.

Today when I called, I was assured that -- the written record does not reflect this, but the voice recordings are there, and the owners who petitioned us -- we did not vote because there was no necessary (sic) for vote; there was no action taken. But the consensus of the board on the record indicates the CRA board was in favor of the residential's position, and we had no other position to be against. But the CRA's board as a whole knew that this was not what our vision was.

That, along with, we have had Wawa present to us in this vicinity in the Triangle; we turned them down. We had a major supermarket try to come in there; we turned them down. We had a large residential rental unit with low-income housing come in; we turned them down.

I feel the fact that the CRA's involved in this is the commissioner's way, and the intent of the Land Development Code is -- again, the word "intent" -- to help us have some mechanism to deny or request other venues of use of property in our CRA.

Thank you.

HEARING EXAMINER STRAIN: Maurice, when you turned down these other people looking to use the property, like Wawa and others, did they come and make a presentation before your group and --

MR. GUTIERREZ: Oh, yes, sir.

HEARING EXAMINER STRAIN: Okay. So you turned Racetrac down without allowing them to make a presentation or without asking them to make --

MR. GUTIERREZ: They never came to us. They never came to us.

HEARING EXAMINER STRAIN: Okay. And I'm just curious how you came to a conclusion without hearing both sides of the story.

MR. GUTIERREZ: We saw the project the way the residents presented it to us with the drawings and, as a board as a whole, we felt this was just incompatible with the vision of a redevelopment area at that location and acknowledged the 500-foot Land Development Code insertion that they would have to have a waiver.

And we felt comfortable that we really didn't have to do anything, and we would then support the homeowners' position of fighting this. When I say "support," I don't mean any other way other than say, yes, we agree with your position.

HEARING EXAMINER STRAIN: Thank you.

MR. GUTIERREZ: Thank you.

HEARING EXAMINER STRAIN: Mike, do we have any other registered public speakers who have not spoken?

MR. BOSI: No, just the one speaker who had spoke at the meeting last Thursday.

HEARING EXAMINER STRAIN: We're not going --

MS. MISENER: I didn't actually speak.

MR. BOSI: She had ceded her time to her husband at the last meeting.

MS. MISENER: But he didn't use it all.

HEARING EXAMINER STRAIN: Ma'am, I'm sorry. If you've ceded your time and your husband did speak -- I remember his -- I remember him very clearly, so we're moving forward.

MS. MISENER: Okay.

HEARING EXAMINER STRAIN: Okay. If there are no other public speakers, we're going to move into staff discussion and then a rebuttal by the applicant.

Okay. And in the staff discussion, I would like Mr. Reischl -- Fred Reischl was our -- was the planner in charge of the project.

Fred, would you tell us what you -- what you produced in regards to a staff report and any recommendations that you have evaluated and put in that report. And also, I'd like for you to put on record your credentials and your experience in the Land Development Code in Collier County years-wise.

MR. REISCHL: Thank you, Mr. Strain.

My credentials: I'm a certified planner since 2000. I've worked in Collier County, one stint, for 15 years, and this stint for five years, so 20 years, plus private-sector work, and another county in Florida.

And you asked me about the staff report; technically, it's not a staff report. It's an executive summary, which is called that because we usually -- an executive summary goes to the Board of County Commissioners, the Board of Zoning Appeals, and we usually make that as a true summary and have lots of references to the staff report that goes to the Planning Commission.

Since this was going to go directly to the Board of Zoning Appeals, this was -- this executive summary was not a summary. It was -- I thought it was pretty thorough given the history of zoning and an analysis and not just references to a previous staff report.

But that was produced by the county team. And we -- based on the following four considerations, we recommend to the Board approval with conditions:

Because the current zoning has been in place since at least 1969 that we could confirm;

The Board of County Commissioners found the zoning consistent with the Growth Management Plan through the Zoning Reevaluation Ordinance;

The separation of the site from the closest gas station is separated by a six-lane divided highway;

And with regard to the adverse impacts, there is an adverse impact to the commercial, which would be the 7-Eleven across the street which we believe is not land related. That would be economic.

The major impact would be to the residences. And we believe that between what staff has recommended as conditions and what the applicant has proposed as conditions mitigates that to the greatest extent possible.

HEARING EXAMINER STRAIN: When you said "adverse impacts," were you using that as defined in the code?

MR. REISCHL: Not the environmental definition, no.

HEARING EXAMINER STRAIN: Okay. Is there a definition?

MR. REISCHL: Not that I could find, no.

HEARING EXAMINER STRAIN: Okay. I may have a couple -- some questions.

MS. ASHTON-CICKO: Mr. Chair?

HEARING EXAMINER STRAIN: Yes, ma'am.

MS. ASHTON-CICKO: Can you ask Mr. Reischl to clarify for the record what site plan he's approving or recommending approval on?

HEARING EXAMINER STRAIN: Your report, I believe, addressed both site plans.

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: So why don't we separate out which ones you're considering for approval or both or how you've looked at those.

MR. REISCHL: It would be both. We believe that both would move the facility with fuel pumps more towards the north side or the U.S. 41 side of the property away from the residences.

Site Plan A would put other future development parcels that would be closer to the residences but would not be a facility with fuel pumps, so those would not be subject to 500 feet. So we're

recommending -- either site plan, we believe, meets the -- with the conditions, meets the test.

HEARING EXAMINER STRAIN: The history that you included in this executive summary, I mentioned it last time. Did you get time to take a second look at that?

MR. REISCHL: Yes. And I double-checked with graphics, and as far back as we could go, 1969. I know you had found some other different zonings, but on the zoning atlas, all that I could find was the C4.

HEARING EXAMINER STRAIN: Okay. When you looked at the convenience store with fueling category that this is qualified under, does it make any difference from staff's perspective whether the primary business is fueling or the primary business is convenience store?

MR. REISCHL: No.

HEARING EXAMINER STRAIN: And is that because they are both allowed as principal uses on that site?

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: You had talked about Option B as being the greater distance from the existing residential property. Isn't it Option A the greater distance, in reality?

MR. REISCHL: That's correct. And you had pointed that out to me in the office, and that was my error. I was looking at a commercial use blocking the gas station, which is not the intent of what I wrote in there, so...

HEARING EXAMINER STRAIN: During the discussions or presentation by the applicant, they had modified some of the commitments I believe they made in regards to the buffer, that they intended to meet the intent of the new standards. Does that change your report any?

MR. REISCHL: No. I think that they added additional conditions to what we had in the executive summary.

HEARING EXAMINER STRAIN: I want to make sure I've picked up the few things I had left that hadn't been answered.

Your executive summary was about five pages, the narrative that was attached from the applicant was about 15, and I believe there were two pages of site plans. That was the package that was provided to my office; is that correct?

MR. REISCHL: Correct. And those were conceptual site plans, not the Site Development Plan.

HEARING EXAMINER STRAIN: From the CRA; did you have any communication with the CRA regarding their position on this project?

MR. REISCHL: Not regarding their position. I had talked back and forth with Jean Jourdan and Elly McKuen giving them the information as I received it. But I was unaware that there was a discussion about it at the CRA Advisory Board.

HEARING EXAMINER STRAIN: Okay. The rest of it is going to be substantially changed by the testimony we've heard the last two days, so I'm not going to waste time talking about those items.

We'll move right into the staff report on the vacation. Thank you, Fred.

MR. McLEAN: For the record, Matt McLean. I'm a professional engineer. I'm the manager of the development review division which did the review and put together the executive summary affiliated with the vacation application.

HEARING EXAMINER STRAIN: And what was the result of your executive summary on the vacation, Matt?

MR. McLEAN: It's recommend approval of the vacation.

HEARING EXAMINER STRAIN: There are some platted right-of-ways in that -- well, in that area that have been asked for one plan to be vacated. Was that the request of staff to have that vacation or the applicant? I mean, I know the applicant submitted the request, but I believe at one point the applicant indicated he was asked to do that by staff. Is that a true statement; do you know?

MR. McLEAN: There was a Site Development Plan companion application that has been submitted, and pursuant to that Site Development Plan application, it was identified that the applicant may need to do a vacation. The applicant chose to file for the vacation of the right-of-ways.

HEARING EXAMINER STRAIN: The right-of-ways that are there at 30 feet, how would the county handle those?

MR. McLEAN: As far as?

HEARING EXAMINER STRAIN: We don't have a cross-section that dictates a 30-foot, that I'm aware of. I think the minimum is 60.

MR. McLEAN: That's correct.

HEARING EXAMINER STRAIN: So is -- 30-foot, then, isn't a standard. We don't have a standard format to create a road in that right-of-way, do we?

MR. McLEAN: We do not. Like you indicated, typically it's a 60-foot right-of-way. We do have cases in the county where right-of-ways are less than 60 feet. Oftentimes when those occur, we have additional easements on the outside of those right-of-way sections that could handle things such as water mains, sidewalks, those sorts of things.

HEARING EXAMINER STRAIN: Are you aware of any at 30 feet?

MR. McLEAN: I am not. I am aware of several that are less than 60 feet, though.

HEARING EXAMINER STRAIN: Then, as you and I both experience in deviations or planned unit developments, there are, but 30 feet was a surprise as far as size goes. I wanted to -- and has the -- has an application for a vacation such is asked here been submitted before in any other lands in Collier County that you're aware of?

MR. McLEAN: Yes, there have been several vacations submitted in Collier County before of this nature.

HEARING EXAMINER STRAIN: Have they been approved or denied?

MR. McLEAN: Several have been approved. I'm not aware of any that have been denied.

HEARING EXAMINER STRAIN: Any in this particular -- any in the Bayshore area?

MR. McLEAN: Not that I'm aware of.

HEARING EXAMINER STRAIN: Okay. That's all I've got. Thank you very much, Matt. And that's the last question I have of staff at this time.

And, Richard, you've had a lot of testimony in the last -- I don't know. We've been at it for four, five -- four-and-a-half hours of public testimony. You certainly have the right to a rebuttal to discuss this. And I'm allocating up to 30 minutes for your time. Take as long -- you can take up to that amount of time to have a rebuttal if you'd like.

MR. YOVANOVICH: Mr. Strain, I don't need that. What I would like to do is bring Brad back up. You had had some questions about the needs analysis, market study, whatever you want to call it, for purposes of the code.

You had asked some questions about what was the size of the stations that comprise the study and things like that. He's done some additional work that we'll hand in. And if you have additional questions, that will be great. And then I'll just do a brief couple-minute summary, and we'll be done.

HEARING EXAMINER STRAIN: Okay. Sounds good. Thank you.

MR. GALLAND: Good evening. Again, my name is Brad Galland. I'm director of real estate for Racetrac Petroleum.

I'm specifically here speaking in light of comments by Mr. Donihoo of 7-Eleven, the franchisee that spoke last week, in light of his comment of a traditional convenience store pumping one million gallons per dispenser per year. That was not a figure I was aware of, so I decided to do some additional research, do a little more homework.

I reached back out to the National Association of Convenience Stores which, again, is the professional organization that really governs our industry. We are a member, 7-Eleven's a member, Speedway, and so on.

So what you see in front of you here, the column labeled "by outlet" is what was originally submitted in the market analysis. I don't know that I need to go through that again, but I will very briefly.

In a two-mile, I'll call it, radius from this particular location on Highway 41 going north or south or east or west, depending on how you look at it, there are six convenience stores. The NACS average weekly fuel gallons in the southeast region, of which Florida is situated, is 35,000 gallons per week per outlet.

So, again, for the purposes of doing my job and making sure that I am leaning on the side of, really, just trying to be careful with the numbers internally and be ultra conservative, we came up with, again, multiplying that weekly figure out by 125 percent, so adding additional premium on top of what we think is

there. The total trade area supply on an annual basis along this four-mile corridor of Tamiami Trail is 13.6 million gallons.

In light of, again, the feedback from Mr. Donihoo of dispenser production or gallon production by dispenser, again, I yet again reached out to the NACS research folks. They provided me the 385,000 figure that you see, and that is the NACS annual average gallons per dispenser.

So, again, just a reminder. The dispenser is the actual structure in the ground; fueling positions. There's two at every dispenser. So along this corridor of road, there are 32 dispensers, again, as outlined, as you can see on the screen; 64 fueling positions.

Based on the math, again, provided by our research folks over at NACS, that 385,000 gallons per dispenser on an annual basis, multiplied that out, again, by -- really trying to be very conservative -- by 125 percent; came up with a figure of 15.4 million gallons of supply along this stretch of road on Tamiami Trail.

HEARING EXAMINER STRAIN: Your limitation of that stretch of road, what made you decide to go the distance you did and not further and not another direction?

MR. GALLAND: Sure. Two miles is our, I'll call it, quote-unquote, internal standard. That's what we've used for the duration of my time at Racetrac. I've been at the company for 11 years.

Under my foresight, that's been deemed a very reliable trade area. For the purposes of demographics, we look at a five-mile drive time. Again, taking that into consideration, five miles along this stretch of road is roughly two miles or, excuse me, five minutes.

HEARING EXAMINER STRAIN: But you've done that linear, not radial.

MR. GALLAND: Yes.

HEARING EXAMINER STRAIN: Okay. Is there any -- any theory that a radial situation is better to capture those in a distance that could be traveled easily on the back roads to get to where they want to go? For example, the 7-Eleven across the street from you;

MR. GALLAND: Sure.

HEARING EXAMINER STRAIN: If I wanted to go to 7-Eleven versus the intersection of, say, Airport and -- well, there used to be a gas station at Airport and Davis. There isn't -- I don't think there's one today. Well, yeah, there's -- they've converted them both -- I would go down Commercial and come off Davis that way instead of driving up 41.

How did your numbers take into consideration any offshoots for that accessibility?

MR. GALLAND: Sure. For the purposes of, again, what we look at in terms of trade-area definition, it's primarily looking at that main road; so Tamiami Trail in this case where, again, there's 35,000 cars. I'll weigh on my experience in having done this for quite a period of time with Racetrac.

Yes, obviously, I want to be mindful of where the other roads are, where the other convenience stores were. And, again, for us it's not just about convenience stores. We want to know where fast food is. We want to know where grocery is. Without question it's something that we're going to take into consideration.

But in terms of defining a trade area, it's primarily looking at that Highway 41 stretch.

HEARING EXAMINER STRAIN: The performance standards of your facilities, I think you said that you do one-and-a-half to two times -- you outperform NACS' fuel gallons average by one-and-a-half to two times; is that correct?

MR. GALLAND: That's accurate, yes.

HEARING EXAMINER STRAIN: Now, why did you use 125 percent above demand on this?

MR. GALLAND: Again, for the purposes of being ultra conservative and the fact that I would be standing here tonight, I wanted to make sure that I was very precise.

HEARING EXAMINER STRAIN: Okay. Which one did you use in your TIS?

MR. GALLAND: I'm not --

HEARING EXAMINER STRAIN: I mean, your Traffic Impact Statement is a volume -- a derivative in the sense that it's a -- it equates to how much traffic you're going to generate to that store. I think you're saying that you generate one-and-a-half to two times a normal convenience store. If that's true, I was wondering how you took that into consideration in your traffic analysis.

MR. GALLAND: I'm going to have to defer to these folks.

MR. YOVANOVICH: Mr. Strain, I'll have to get Mr. Treesh to answer that question.

HEARING EXAMINER STRAIN: Respond.

MR. YOVANOVICH: He's --

HEARING EXAMINER STRAIN: That's fine. You can do that. Obviously, you can't do that tonight. I know he's not here. After this meeting, there's not going to be any new evidence submitted or accepted, so stick to that issue when you respond. And that way when it's distributed to Mr. Reischl's office and people who need a copy of it have it available to them, it's strictly that issue. But I would like to know an answer to that question.

MR. YOVANOVICH: Okay.

HEARING EXAMINER STRAIN: Okay.

MR. GALLAND: So I'll move along with the demand side of things.

Again, with regards to the traffic along Highway 41 in front of this site, the Florida DOT annual count on this stretch of road in front of this site is 35,000 cars per day.

Again, going back to industry standards and industry averages, the average vehicle is filling up with 10.44 gallons upon fill-up. The average fill-up happens roughly one time a week.

So for the purpose of math, multiplying all that out, the annual fuel demand on this stretch or road, two miles both directions on the U.S. 41, the annual demand is 19.2 million gallons.

If we move down to the summary table, I wanted, again, to make sure that I took into consideration the information based on both convenience store count and dispenser count, so I put those numbers together and averaged. So for the purposes of market demand based on convenience store count from our previous slide there, 13.6 million gallons, market demand based on dispenser count with that 125 percent premium of 15.4 million gallons. Again, averaging the two, which, again, in my experience is going to be very conservative. The average demand is 14.5 million gallons along that stretch of road, again, creating a deficit and, using the average math again, the market deficit of 4.7 million gallons.

As you noted, we -- I guess for the purposes of this market study, generally speaking our stores outperform the NACS weekly average by one-and-a-half to two times on an annual basis, so for the purposes of, yet again, being conservative, I took the approach of let's assume that this store is fantastic, it pumps two-and-a-half times the industry average, again, we come up with a figure of four-and-a-half million gallons expected out of this particular location.

When we look at that against the 4.7 million gallons demand, there's still a deficit of 177,000 gallons on an annual basis.

HEARING EXAMINER STRAIN: On the previous table that you had up here, you've got the 125 percent premium. I think it showed 43,000 somewhere, number of gallons -- 43,817 gallons.

MR. GALLAND: Yes.

HEARING EXAMINER STRAIN: That's per week. What number of tanker trucks will it take to re -- I guess recharge your tanks on a weekly basis then?

MR. GALLAND: Sir, I honestly can't speak to that. I'm not on the fuel side of the business, so I don't know.

HEARING EXAMINER STRAIN: Okay. I mean if it's 8,000 per truck, it's, what, five trucks; five, six trucks?

MR. GALLAND: That's probably a fair statement.

HEARING EXAMINER STRAIN: So over a week's time, that's the amount of trucks that you expect to flow through there. Then this number, this 43,817 is probably deficient in the sense that you do better than that; you do better than the 125 based on your performance standard.

MR. GALLAND: That's correct.

HEARING EXAMINER STRAIN: Okay. In your market study, you talked about the traffic count increasing past Davis Boulevard to 52,000. What relevance did that have to you, to your station?

MR. GALLAND: Sure. For me, it's -- again, in our experience, we're not only going to play to the traffic that's immediately in front of the site. That's, obviously, where we want the majority of the traffic to come from for the purposes of, again, outlining what we see in the area. Again, there's another 20,000 cars a mile, half mile up the road from this location. So, again, it's information that we want to be aware of internally and, again, I thought it was relevant to add in here.

HEARING EXAMINER STRAIN: Most of that traffic that increases that dramatically is coming off Davis Boulevard, going onto Davis and shorting out the traffic going south on 41.

MR. GALLAND: That's correct. So we don't necessarily expect any percentage of that 52,000 cars to make a jog south down 41, cut through our lot and cut back through Commercial but, again, I've made that turn many times. Contrary to popular belief, I've been in Naples for 10 or 11 years, so I'm familiar with the area.

HEARING EXAMINER STRAIN: The pump dispensers you have here, did you -- how did you determine that's how many pumps were at those sites? Did you physically go to each one of these sites?

MR. GALLAND: Yes, sir.

HEARING EXAMINER STRAIN: Okay. Because I'll be doing the same thing. I'll want to make sure that the numbers are accurate, so...

MR. GALLAND: Yes.

HEARING EXAMINER STRAIN: Okay. That's all the questions I had in addition to that. And there was one remaining question. That more is a traffic question, and I understand that that will be forthcoming, so...

MR. GALLAND: Thank you, sir.

HEARING EXAMINER STRAIN: Thank you. And those -- that new information, if you could give her copies of it right here, then we'll make sure we -- and, by the way, for everybody's benefit, this information will be turned into the Clerk's Office tomorrow, and usually they scan it and have it on record in the public record within a day or two. So by Monday we expect this to be there.

MR. YOVANOVICH: Electronically instead of a hard copy?

HEARING EXAMINER STRAIN: Yes, please.

UNIDENTIFIED SPEAKER: Mr. Strain?

HEARING EXAMINER STRAIN: No, sir. That's -- nothing from the audience at this point.

Thank you.

Richard, that winds up the questions I had at this time, so if you want to have any time for rebuttal, now's the time to --

MR. YOVANOVICH: Mr. Strain --

HEARING EXAMINER STRAIN: -- exercise it.

MR. YOVANOVICH: -- it's going to be short and sweet.

We believe that the competent, substantial evidence that's been presented during this hearing process supports the approval of the distance waiver request, supports staff finding that we met all of the criteria. We truly believe that when you look at the landscaping that we're proposing along the -- and I get directionally challenged. I think this is the southern portion of the property along Mills Lane. That buffer will shield the view from the second story of those residents to the canopy, and we think that we've been responsible in the layout of the site, we've been respectful for our neighborhoods while, at the same time, exercising our legal rights under the code.

So we request that at the end of the day, if you consider all of the information, that you make a recommendation to the Board of County Commission a finding that we meet both -- both site plans meet the criteria outlined in the Land Development Code.

Again, one of them requires the vacation of roads; the other one does not. We can live with either plan, and we'll allow it to continue through the process as we go forward.

That's all I have to say.

HEARING EXAMINER STRAIN: One thing you just said -- I'm trying to understand if we've gotten any documentation on it. The buffer that you proposed between your property and the Mills houses -- and I know that we -- I don't remember seeing a visual in reference to the height of the decks of those homes behind there.

MR. YOVANOVICH: We did.

HEARING EXAMINER STRAIN: Did you produce anything like that?

MR. YOVANOVICH: We did, Mr. Strain. We got a little caught up in the weeds, but we did provide an exhibit and a cross-section and a sight line.

HEARING EXAMINER STRAIN: But does it show the corresponding heights of the houses behind so that there's an understanding of the orientation to those decks in the back?

MR. YOVANOVICH: Yes.

HEARING EXAMINER STRAIN: Okay. I will be looking for it.

MR. YOVANOVICH: I'm sure you will, and I believe that was part of the landscaping exhibits we submitted as part of the hearing last week.

HEARING EXAMINER STRAIN: Okay. Then if you're done with your rebuttal, I have no further questions.

MR. YOVANOVICH: Thank you for your time. We thank the public for their time as well.

HEARING EXAMINER STRAIN: The remaining item is you're going to get me a response to that traffic issue, and that response will be copied to me and Mr. Reischl, and Mr. Reischl -- that will get posted to anybody that has requested it.

MR. YOVANOVICH: Mr. Treesh gets back, I think, July 5th or 6th, so if we can give him a couple days to dig out from him vacation, we'll get you the information.

HEARING EXAMINER STRAIN: Okay. Thank you. There is no other business scheduled for tonight, and that ends this meeting that has lasted two times.

I want to thank all the participants, everybody from the public that has shown up. Your information has been helpful. It will all be reviewed and look at.

I especially want to thank staff and the County Attorney's Office for their participation. This is an evening meeting, and staff is mostly during the day, so I appreciate all the time everybody has put into this.

Thank you all very much, and this meeting's adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 7:52 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
U.S. LEGAL SUPPORT,
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.