

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
August 25, 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 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

ALSO PRESENT: Raymond V. Bellows, Zoning Manager  
Daniel Smith, Principal Planner  
Rachel Beasley, Planner  
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone.

Sorry for the electronic delays this morning. We've had some problems with our equipment. Looks like it's working now.

Welcome to the Thursday, August 25th meeting of the Collier County Hearing Examiner's.

Please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some housekeeping matters: Speakers will be limited to five minutes unless otherwise waived.

Ladies and gentlemen, if you could refrain from talking while we're conducting the meeting.

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

With that, we have -- the agenda has four items on it. Of the four, three will be heard today. One is Item A, 4A, Petition BD-PL20150002584. It's for the Kellam boat dock extension. That's going to be continued to the September 8th meeting. The others are still going to be heard today.

Approval of the minutes from the prior meeting of July 28th. Those are approved as submitted for recordation.

\*\*\*And that takes us to our first advertised public hearing, which is 4B. It's Petition No. ZLTR-PL20160000899, Johnson Development Associates. It's for a confirmation of a comparable/compatible use analysis for an indoor mini-storage area in the Angileri PUD in North Naples.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part: I've spoke to the applicant's representatives; I've reviewed all the files on the project; and I also had discussions with staff.

And this is a confirmation of a staff report for a comparable analysis for a commercial PUD. I've read the application.

Are there any members of the public here for this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. I won't need a presentation by the applicant. I do need a confirmation from the applicant of a couple issues, so will their representative please come up.

MR. YOVANOVICH: Good morning.

HEARING EXAMINER STRAIN: Good morning. You need to identify yourself, Rich.

MR. YOVANOVICH: Rich Yovanovich on behalf of the applicant.

HEARING EXAMINER STRAIN: Thank you. Obviously, I don't need a presentation. I do have a couple of questions; just confirmations.

The staff didn't indicate that this is to be air conditioned, but that is the way we've discussed others. My intention is it will be an indoor air-conditioned mini-self storage. Do you have any objection to that?

MR. YOVANOVICH: No. All the units will be air conditioned. But, Mr. Strain, I want to confirm, because there's been some questions about this. As you're aware, there are units that are accessed from the outside. Those units will be air conditioned as well, you know, the roll-ups. So I just wanted to make sure we're on the same page, and I believe you and I are.

HEARING EXAMINER STRAIN: Well, the issue for today is strictly whether or not this is -- an intensity of this use is comparable/compatible to others.

MR. YOVANOVICH: Right.

HEARING EXAMINER STRAIN: It has nothing to do with architecture; has nothing to do with the doors.

From a staff's perspective, does the architectural features or how they arrange their enclosures have any impact on the intensity for the comparable/compatible use?

MR. BELLOWS: For the record, Ray Bellows.

In my opinion, we have a difference between, say, the Sierra Meadows PUD that had a list of

permitted uses that include the uses in the C4 and C5 zoning district. In those cases, the more traditional self-storage uses with the doors as currently proposed for that project would normally be allowed.

This particular PUD is very limited in number of uses, and the only C4 use is a hotel type of use.

So the analysis was more for something that's more compatible with office-type uses, so you wouldn't have the doors, necessarily. And, in any event, there's no deviation, so they have to comply with the architectural provisions.

HEARING EXAMINER STRAIN: Okay. But this meeting is focused strictly on the intensity of a comparable/compatible use to another. Do the doors or accesses to this building change your staff recommendations in regard to the comparable/compatible analysis for this PUD?

MR. BELLOWS: Well, in my opinion, the intent was for an office-looking building, which would not have the doors on the primary architectural facades.

HEARING EXAMINER STRAIN: So you're saying if a building is not office-looking under whatever standards you would use to measure that, it does not meet -- it does not become a comparable/compatible use? How do you -- what criteria are you using to judge that by?

MR. BELLOWS: Well, I tried to make that case in the zoning confirmation letter that this is a limited-use PUD. It doesn't have the full range of C5 uses where you normally might see something like this. And there's some expectation of the community that you would have a structure that looks like the other buildings in there in that -- office-like in appearance.

And that is part of the comparable analysis, the way the buildings look.

MR. YOVANOVICH: If I may --

HEARING EXAMINER STRAIN: Go ahead.

MR. YOVANOVICH: -- Mr. Bellows, I believe the Angileri PUD is the same PUD in which the Racetrac gas station is located; is that correct?

MR. BELLOWS: Correct.

MR. YOVANOVICH: So are you saying to me that somehow an indoor self-storage, totally air-conditioned indoor self-storage, with access to some of the units from the exterior is inconsistent with a Racetrac gas station? That's up --

MR. BELLOWS: I'm talking about the garage roll-up doors on the primary facade, as you proposed on Sierra Meadows, would not be consistent with this location.

MR. YOVANOVICH: And that's an important question, because it will determine whether or not the client goes forward with the actual acquisition of the property.

So is it your opinion, for purposes of the determination, that you cannot have roll-up doors because there are four facades because we're in a PUD?

MR. BELLOWS: Yes.

MR. YOVANOVICH: So you're saying no roll-up doors, similar to the Lock Up --

MR. BELLOWS: I'm not sure how the --

MR. YOVANOVICH: I'm sorry.

HEARING EXAMINER STRAIN: A question that I have to get clarification on before you answer, Ray. You're in a PUD, but the only access is from a road across the front of the building from what I can tell on the plan that's presented.

MR. YOVANOVICH: That's correct.

HEARING EXAMINER STRAIN: So wouldn't that be the only primary facade?

MR. YOVANOVICH: They consider all four sides.

MR. BELLOWS: The LDC language considers structures within a PUD to have -- to be considered primary, but there may be some exemptions that could apply, and maybe defer to our architectural review staff.

HEARING EXAMINER STRAIN: From the road that's furnished -- that services this building, I think it's a road that goes east and west across the front of the building, was your intention to put roll-up doors across that road -- that side of the building facing that road?

MR. YOVANOVICH: No, sir.

HEARING EXAMINER STRAIN: Okay. So you don't mind stipulating to that?

MR. YOVANOVICH: That's correct. I mean, we'll have access, but we have -- if I can -- I hate to

reference competitors, but if you look at the Lock Up facilities, which are indoor self-storage facilities that are in office-type PUDs like the one up on Immokalee Road, you have an office building right next door to indoor self-storage, the primary facade that faces Immokalee Road does not have roll-up doors, but the three other sides all have roll-up doors, and they're immediately adjacent to residential uses and other office uses.

So we thought the determination that we were getting is that type of facility is what is being determined to be comparable and compatible, and if there are any limitations on that, we need to know that for purposes of my client deciding whether or not to go forward with the acquisition of the property.

HEARING EXAMINER STRAIN: I understand.

And, Kristina, did you have something you wanted to add? Oh, you're just standing there for moral support, huh?

MR. YOVANOVICH: To correct me if I misspeak.

HEARING EXAMINER STRAIN: Okay. Ray, I'm still trying to understand why the positioning of roll-up doors around the non-access -- the non-road frontage is a problem. Is staff thinking that's changed in your recommendations?

MR. BELLOWS: Well, the -- my opinion was based on the fact that the only comparable use in the PUD is a hotel.

HEARING EXAMINER STRAIN: Right.

MR. BELLOWS: So I wanted a structure that did not look like warehouse. I wanted a structure that was more office-like to be comparable with the other designs for other structures within this particular PUD. There are other PUDs that allow for more full range of C4/C5 uses where the more traditional storage units would normally be found anyways, such as Sierra Meadows.

So I think we draw a distinction on a case-by-case basis that this particular PUD has less intense C4 or C5 uses, so we wanted to limit it. That was my opinion anyways.

HEARING EXAMINER STRAIN: Okay. Mr. Yovanovich, you may want to consider continuing until the next meeting to resolve the issues to the best you can with additional stipulations to staff, unless you have some suggestions today that you feel more comfortable with.

I can write a decision up based on today's testimony or not, but it might be to your benefit to have staff and you get together to come up with a solution.

MR. YOVANOVICH: Well, I think the answer is if Mr. Bellows' position is that he'd rather have the other uses in the PUD that are more intense than the indoor self-storage that are -- which already allows a gas station, I'm fairly confident that -- write it up the way you've got to write it up.

I don't know if you were going to include a prohibition on roll-up doors around the other facades or if staff is now changing their letter to require that, but I will -- I will take that information -- my understanding is the Land Development Code allows roll-up doors around the facade. We'll take that information to my client, because they are under a time frame that they've got to make a decision, and I don't have the luxury to delay to address that issue.

HEARING EXAMINER STRAIN: Okay. I understand.

Does the staff have any other comments?

MR. SHAWINSKY: For the record, Peter Shawinsky, county architect. In the LDC language, 5.05.08, Section E.2 for self-storage buildings, Item A, overhead doors, overhead doors cannot be located on the primary facade of self-storage buildings. Any building in a PUD is considered to have four primary facades. One facade is allowed to be a secondary.

So in that case, this particular building would have three primary facades where overhead doors are not allowed.

MR. YOVANOVICH: And I can tell you that every one of these self-storages that I've done is in a PUD, and every one of them have roll-up doors on three sides of the buildings. So that's going to be a new interpretation for Collier County regarding facades, which I think Kristina can address Sierra Meadows, because that's not how we're doing it.

HEARING EXAMINER STRAIN: Go ahead.

MS. JOHNSON: For the record, Kristina Johnson.

This question -- I had raised this question to county staff for another self-storage facility in Collier

County that's located in a PUD that is not adjacent to any other rights-of-way. It's actually accessed by an access easement. And although that was not a specific question for this, the Angileri PUD self-storage, the determination that I received from staff was that the section of code that you read that stated overhead doors cannot be placed on primary facades I had questioned. When you're in a PUD and the PUD states that all four facades are primary, was that the intent of the code, understanding that if there is a road frontage by definition of primary facade, is a facade that's (sic) adjacent to a street or a road?

And the determination I was given by staff via email was that it was -- as long as those overhead doors provided the screening requirements from code, then I would not be -- then I would be able to put overhead doors on those facades without going through any sort of PUD amendment process.

MR. YOVANOVICH: Or deviation.

MS. JOHNSON: Or deviation.

HEARING EXAMINER STRAIN: Would the staff comment on that, please?

MR. SHAWINSKY: To the best of my knowledge -- to the best of my knowledge, from what I remember from Sierra Meadows, a deviation request was submitted for that particular project for overhead doors. From what I remember, that property's surrounded by three rights-of-way -- three roadways around the building. And it was determined with the additional screening of the overhead doors, and those particular doors were on the back side. And I don't remember whether that's north or south. It wasn't along the major arterial road. And that was the reasoning for allowing that deviation for that particular project.

MS. JOHNSON: I should have specified that the project I was referring to was located in the Gaspar PUD and not the Sierra Meadows PUD.

HEARING EXAMINER STRAIN: And that's the next one coming up for today's meeting.

MR. YOVANOVICH: The next one.

MS. JOHNSON: Correct. So what you stated is -- I completely agree with. The self-storage facility located in the Sierra Meadows PUD has -- being in a PUD, all four facades are considered primary, and we were allowed to have one as a secondary facade, but also the unique situation with Sierra Meadows is that it truly had roadway frontage on three sides.

So there was a platted road on three of our four property lines, which in that case the course of action that we took to have overhead doors is we have applied for an insubstantial change to the PUD to allow that.

So I agree with you on Sierra Meadows. I was referring to the conversation that -- or the email correspondence I had with staff on Gaspar. And Gaspar, when we get to that location, it does not have frontage on any platted right-of-way.

HEARING EXAMINER STRAIN: Okay. So what this involves, you've got a building with four sides. The south side faces the access, the main road, the one that currently is shown. That particular facade faced on that main road on the south side, there are going to be no overhead doors; is that a confirmation?

MS. JOHNSON: Yes.

HEARING EXAMINER STRAIN: Okay. The other three sides, regardless of what you do there, if you put overhead doors, if that is something that occurs through a review by staff or doesn't occur, that interpretation is outside the elements of today's meeting.

But I do want to understand something you said earlier, that those three sides, if they were to have overhead doors, would be screened?

MS. JOHNSON: That's correct.

HEARING EXAMINER STRAIN: Okay. Is that confirmation from staff?

MR. SHAWINSKY: Yes.

MR. BELLOWS: Yes, sir.

MR. YOVANOVICH: Confirmation for what, that I can do that?

HEARING EXAMINER STRAIN: Pardon me?

MR. YOVANOVICH: That I can do that?

HEARING EXAMINER STRAIN: No, that's a confirmation that they would be screened if they were -- if overhead doors were used on those other three sides.

MR. YOVANOVICH: And I'm just asking, does that mean confirmation that it's consistent with the Land Development Code?

HEARING EXAMINER STRAIN: It's not a -- that's outside this meeting.

MR. YOYANOVICH: I appreciate that, but can they just tell me so I can save my client the agony of having to call for another meeting to tell him not to buy the property?

HEARING EXAMINER STRAIN: If staff feels comfortable, they can make that interpretation today.

MR. BELLOWS: For the record, Ray Bellows. That is my understanding of the code, so I would concur that it would be.

HEARING EXAMINER STRAIN: Okay. At this point I don't have any more questions of the applicant. I don't know if there's any -- if there's a staff report any further than what we've heard.

Rachel, this is yours?

MS. BEASLEY: Rachel Beasley, for the record.

Yes, it's kind of a hybrid of Ray and mine. But a staff report was submitted and is recommending approval based on the written zoning verification letter.

MR. BELLOWS: And we also concur with the -- that we add "air-conditioned" to the list of staff recommendations.

HEARING EXAMINER STRAIN: Okay. Thank you.

Is there any members of the public here to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this item is -- we'll finish -- we'll close the hearing on this item, and we'll move on to our next agenda item. A decision on this one will be rendered within 30 days.

\*\*\*The next item up is Petition No. ZLTR-PL20160001193, Johnson Development Associates, Inc., and this is a similar request for a air-conditioned mini self-storage for the Gaspar Station CPUD.

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

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

HEARING EXAMINER STRAIN: Okay. Similar to the last one, I did not see any members of the public stand up to be sworn in for this. So unless a member of the public is standing up right now, we'll assume no one's here for this particular one.

(No response.)

HEARING EXAMINER STRAIN: Okay. Similar to the last, I have reviewed the entire package. A decision -- a presentation will not be needed.

I have -- for disclosures, I've talked with staff, reviewed the files, and I've talked with the applicant.

This is similar to the one previously discussed. I will need the applicant to come forward to acknowledge a couple items.

MR. YOYANOVICH: For the record, Rich Yovanovich.

HEARING EXAMINER STRAIN: Same question as before. The intention here is for an indoor air-conditioned mini self-storage even though the "air-conditioned" isn't mentioned in the staff report?

MR. YOYANOVICH: Correct.

HEARING EXAMINER STRAIN: Okay. I have no other comments or needs on this one; I know based on the discussion from the last one.

Is there any particulars from the staff's perspective that are changing the staff's recommendation based on anything that you've heard today or from previously?

MR. KELLY: For the record, John Kelly, planning services.

I just don't recall seeing an email pertaining to architecture, but this PUD includes a broader range of uses, so I don't have an issue.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. Thank you.

Is there a staff report beyond the comment you just made, John?

MR. KELLY: No.

HEARING EXAMINER STRAIN: Okay. Any members of the public here that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing on this matter, and a decision will be rendered within 30 days.

\*\*\*That takes us to our last item on today's agenda. It's one that has been continued a couple of times beginning in July 28th. This is Petition No. PL20130002268. It's for the Walmart Store East on the East Tamiami Trail.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. (The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: My disclosures: I have talked with staff; I've reviewed all the files; I've also talked with the applicant; I had a meeting arranged with members of the Sunrise Community to the north and representatives from that group. I did a presentation with them and the commissioner who was present; I talked to those folks a couple of different times; I received emails from those -- some of those people. All the emails have gone through staff, so they're part of the package; and I talked to a couple people here in the public this morning who I have not talked to before, and they're, I believe, from Sunrise as well.

So with that -- and I didn't look at everybody standing up. There are members of the public here interested in this one, so we will need a presentation by the applicant.

The applicant has provided a PowerPoint as part of their presentation, and I'll pull that up right now.

Jeff, the only way this will work is for me to push buttons when you tell me, so we'll go through your presentation in that manner.

MR. SATFIELD: So this is my first opportunity to testify here, so just indulge me a little bit of background.

HEARING EXAMINER STRAIN: Well, give us your last name.

MR. SATFIELD: Yes, sir. Jeffrey Satfield. I'm the senior vice president of CPH. I'm a Florida registered engineer. License No. 61905. I've got over 15 years experience in land development in the state of Florida with the majority of that being in Southwest Florida.

We brought some copies of the presentation just in case the electronics didn't work. So I know some of the community has asked for them. We've got extra ones over there on the table.

HEARING EXAMINER STRAIN: It's important that you provide a copy to each -- one or both of -- at least this court reporter here, the young lady there. If she wants a copy, she's more than welcome to it.

MR. SATFIELD: We've got two now there, so we're good.

HEARING EXAMINER STRAIN: Thank you.

MR. SATFIELD: And whenever you're ready, sir.

HEARING EXAMINER STRAIN: I'm ready now. You want to go to the next slide?

MR. SATFIELD: Yes, sir.

So this is just a quick slide show. The location, generally, it's south and east of Naples, the existing Walmart location; very close to the county facilities there.

And this is a little bit of introduction here. The original site was constructed in 1994 using the standards of the time. General merchandise was being sold, the garden center, and then what's called tire/lube center. Basically tires and general lubrication services at that location.

HEARING EXAMINER STRAIN: You'll need to talk a little slower. She has to type -- both of them have to type as fast as you talk, so...

MR. SATFIELD: Thank you, Mark. I tend to talk too fast. Thank you.

The deviations that are being requested are generally to support approximately a 34,000-square-foot expansion, and this is to accommodate grocery being located into this facility and expanding it to what is some of the traditional uses of a Walmart supercenter.

So this is about a 17-acre parcel. Some unique things about this parcel: It's bound on three sides by public right-of-ways, roadways, and to the rear by a county maintained drainage facility. It is uniquely shaped, and throughout the center of the project and on the sides it's encumbered by drainage and maintenance easements primarily to facilitate the drainage and maintenance of the canal system that I mentioned earlier that also bisects the property through the middle.

The parcel is zoned C5. And if you look at the aerial and you're familiar with the site, there's actually a grass area to the back of the building. This was very common of Walmart developments of the time to buy

some extra property and reserve it for future expansion in later days once they kind of knew what they were doing.

This is the existing facility here. The grass to the rear is what I mentioned around the site there. Again, a Walmart store, general merchandise, about 127,000.

The loading dock right now is towards the north and west of the property -- excuse me -- about the north corner of the building; the tire/lube center along that same wall to the north side; the garden center as well; primary entrance is towards the southern side on the front of the building.

The canal system I mentioned bisecting the property is shown there.

This is the proposed expansion area with the loading dock being shifted towards the south along the rear side of the building as well as compactor trash facilities on the back side of that. This locates it further away from the residential community to the northeast of us.

There are going to be two primary entrances, both indicated by the arrows there. The garden center is also relocated towards the more intensive side of the building along US 41; again, away from the residential community.

And, generally, the parking lot in the front is planned to stay the same. The canal, obviously, still there, and then we have plans for a fuel in the corner.

HEARING EXAMINER STRAIN: Just so the record's clear, today's meeting has nothing to do with the fuel center or its application. That's a separate process through staff. We're focusing mainly on -- only on the main building.

MR. SATFIELD: Yes. And if I may also be clear, there's no deviations related to the architecture of the fuel center.

So this is the building that is being proposed labeled "front," "rear," "right," and "left." And front -- excuse me -- right sides and left sides are looking from the front of the building. So the front of the building is obvious there with the entrances shown, with the vestibules covered in -- I always want to say canopies.

MS. MURPHY: Yes.

MR. SATFIELD: Right? Yeah, there you go. Teresa Murphy's with me with BRR, the architect of record. And I'm stepping on her toes right now, I just realized. I told her she was going to do this part, so...

HEARING EXAMINER STRAIN: Slow down. Slow down a little in your discussions, folks, if you don't mind.

MR. SATFIELD: Let me pass the architecture side along to the architect, Teresa Murphy.

MS. MURPHY: For the record, Teresa Murphy, BRR Architecture.

Jeffrey's correct, there are two primary entrances on the front side now and a smaller one to the left there for the liquor tenant. They are covered with canopies, 8-foot-deep canopies.

We've concentrated some -- our enhancements along the front of the store that's existing and also along the Tamiami Trail side, as those are the most visible sides of the building. That's where we've placed the towers, the brand wall elements, the Bahamas shutters, FO (sic) windows to enhance the view along those two sides of the building.

The rear side is more functional for us, as you can see, and then the other side, we have a few enhancements, but that side is heavily landscaped and not really visible except from the parking lot on that side.

HEARING EXAMINER STRAIN: You want the next slide? Okay.

MS. MURPHY: Yeah. This shows the existing and proposed landscaping in front of our facades, just to give you an idea, and these are just some perspective shots of the same; how you'd see in real life.

HEARING EXAMINER STRAIN: You've got to tell me when to -- I'm trying to keep up with what you're saying.

MR. SATFIELD: You're good.

HEARING EXAMINER STRAIN: Okay.

MR. SATFIELD: This is just a brief summary of some of the project enhancements that are being proposed along with this expansion.

Obviously, Teresa just went through the upgrades and appearance of the existing structure.

All of the site lighting, all of the site lighting heads will be changed out to LED fixtures. Any new



lights will be lowered to 25-foot max height. The LED fixtures, as was documented in the information provided to the county, a significant enhancement to minimize light spillage offsite, benefit Dark Skys, and also reduce the carbon footprint of the store.

Enhancement of site landscaping: The tire/tube center, that use, which is a very intensive use, is being eliminated altogether.

The garden center, again, being located away from the adjacent community.

The truck dock and the truck trash compactor, again, being put to the rear of the building, increasing the distance from the adjacent community.

This is just going through each deviation that we have requested. And this one -- these will actually go fairly quick because I think 11 out of 12 we are basically agreeing with staff recommendations. And, again, thank them so much for all of their hard work to develop this staff report.

I think, Mr. Strain, the last slide, I think, is the one that we're requesting a minor modification to. Let's hit that next one. There we go.

Deviation No. 11 relating to the rooftop screen equipment is the only deviation we're asking for consideration that the recommendation be modified. Currently, the recommendation is that new or replacement equipment shall be screened. We're asking that consideration be made that new or replacement rooftop equipment that exceeds the height of the existing equipment be screened such that the -- if it's the same height, that it could be replaced.

HEARING EXAMINER STRAIN: Okay. Well, it's -- I'm glad to see that you and staff have gotten to this situation with the deviations that have been able to be approved based on the recommendations that you worked out with -- that staff has worked out.

I did get to No. 11, and I had a concern about that. Your language doesn't address the full concern. I do want to mention that besides the height of the existing equipment, if any new equipment is closer to the building's rooftop edge than the current equipment, it would also trigger that, because part of the screening of those facilities are the fact they're set back into the rooftop of the building.

And I've reviewed that roof area, and I don't know why you couldn't do what I've just suggested to avoid that additional screening. From a number of reasons, additional screening up there poses a lot of problems for roof membranes and everything else.

So I think if you were to keep it within that outer limit, and as well as any height changes, I think that would get us to where we need to go on that particular one. And I'll kind of get a confirmation from staff in just a minute on that.

Okay. Is there anything else on your --

MR. SATFIELD: I think that was it. We're available for questions as needed.

HEARING EXAMINER STRAIN: And you may have cleared all the ones that I had up. Yes, you have. Thank you.

We'll be entertaining discussions from staff as well as the members of the public. At the end of both of those, at the very end of the meeting, you'll be able to have any time for rebuttal or comments, if you'd like.

MR. SATFIELD: Thank you.

HEARING EXAMINER STRAIN: Thank you.

That takes me to the staff report, and we'll start with Dan.

MR. SMITH: Daniel Smith, principal planner.

Again, I've been working with Jeff for almost two years on this project either in zoning or in building review, and I'm glad to see this finally come to conclusion.

A couple questions that I have is -- one of them is I talked to Peter regarding the changes, and I'll let Peter answer that question regarding the architectural changes with the rooftop screening.

MR. SHAWINSKY: Peter Shawinsky, county architect.

I'm in agreement with Mark's statement on the rooftop equipment. The LDC requires any rooftop equipment that can be screened by a building's primary facade is acceptable. If that's not the case, then mechanical screening is required.

Any rooftop -- proposed rooftop equipment, I would agree that if that's set back in from the perimeter of the building and doesn't pose view to the public rights-of-way, we're in agreement with that.

If -- I would suggest that in submitting the plans, if there are any concerns, we do accept site line drawings, and that's typically from a right-of-way, a public road, a sidewalk, demonstrating that that unit, you cannot see.

HEARING EXAMINER STRAIN: Okay. So from that perspective, in regards to the staff recommendations and analysis, staff and the applicant now are in agreement on all languages and conditions of the deviation request; is that correct from Peter -- from an architectural viewpoint?

MR. SHAWINSKY: That is correct.

HEARING EXAMINER STRAIN: Okay. Dan, did you have something you wanted to add?

MR. SMITH: Yeah. One of the reasons why this was postponed was there was issues with lighting. I talked to the homeowners; I got some emails. I just wanted to make sure those are resolved. And also the concrete wall, I talked to Jeff Satfield, and he --

HEARING EXAMINER STRAIN: That wall has nothing to do with today's meeting, so I don't need to hear testimony on that.

MR. SMITH: That was a -- one of the reasons why this was postponed is they were having discussions with the homeowners regarding the concrete wall.

HEARING EXAMINER STRAIN: That had nothing -- that has nothing to do with the architectural criteria being reviewed today. If it does, tell me how.

MR. SMITH: It's part of the record of -- that was some of the reasons why some of the homeowners weren't going to show up is if the wall was going to be part of this project.

HEARING EXAMINER STRAIN: The wall is not part of the application from staff in front of me today. If it is, can you show me in the staff report where you discussed the wall?

MR. SMITH: No, but I talked about -- we talked about it on the phone. We --

HEARING EXAMINER STRAIN: You and I have talked about it?

MR. SMITH: No. I talked to the applicant.

HEARING EXAMINER STRAIN: Okay. That's fine, Dan. You and the applicant can work out your differences with that wall to whatever extent you want. It is not an item in today's discussion.

MR. SMITH: Okay. Well, for the record -- I just want to make that for the record; that was discussion of putting a concrete wall in. And the issue was going from 10 to 12 feet. And we had talked about even coming back to the hearing examiner for an additional size of walls. So I just want to put that as part of the record.

HEARING EXAMINER STRAIN: Okay. Since you have to make it part of the record, then I have to ask you, why do you think the wall's required?

MR. SMITH: I'm just saying that was part of the discussion with the applicant.

HEARING EXAMINER STRAIN: So the applicant has come to you and said they want to put a concrete wall in?

MR. SMITH: They said they're looking at budgeting for a new wall, concrete wall.

HEARING EXAMINER STRAIN: Jeff, would you mind coming to the mike for a minute.

Dan, I really wish you hadn't gone into this direction today on an item that's outside the hearing, but since you wanted and insisted on putting it on the record, we will pursue it.

Jeff, were you -- did you call and voluntarily request this wall to be added to your project?

MR. SATFIELD: We did not voluntarily request it, no.

HEARING EXAMINER STRAIN: Okay. So how did you get the -- get to a point where Dan thinks you voluntarily requested to put a wall on this project?

MR. SATFIELD: The community has coordinated with the applicants on the potential to put a wall up between the two properties. And Dan and I have coordinated on that potential, but we did not request it be connected with this hearing. We're not asking for a deviation from that code section, and we feel like it should be addressed outside of this hearing.

HEARING EXAMINER STRAIN: And I absolutely agree with you.

Sir, you want to identify yourself?

MR. PORTER: Yeah. My name is Jim Porter. I'm with the law firm of Adams and Reese, 101 East Kennedy Boulevard, Tampa, Florida. I'm the land use attorney for Walmart.

Mr. Hearing Officer, I just want to say that from a legal perspective I concur with your analysis of this. We're happy to continue discussions, but for purposes of today's hearings, we need to object to any discussion about a wall. That's not part of our application. So I concur with your conclusion. Thank you.

HEARING EXAMINER STRAIN: Thank you.

And that -- I do have a final question.

Dan, when you determined this wall issue, did you do any research on that?

MR. SMITH: Yes, I did.

HEARING EXAMINER STRAIN: What kind of research did you do?

MR. SMITH: I looked to see if a wall was required. I did find out that they -- a deviation for a wall was approved back in 2006/2007.

So when it was getting tabled to this meeting, Mr. Satfield said they had talked to the homeowners association, or to the representative, and they had talked about possibly doing a 12-foot concrete wall.

I said, is it something you're going to be putting on this -- for this application? He said, no, it's probably going to be under site plan with deviations at a later dates. So that's what our conversation was.

HEARING EXAMINER STRAIN: Okay. Ray, one last question: Does a variance for the wall that's there today go with the land? Is it still in effect?

MR. BELLOWS: For the record, Ray Bellows. I have the copy of that administrative fence waiver, and generally they run with the land and the use; however, if there is major redevelopment, then we could revisit that previous exemption, such as an expansion to the site.

HEARING EXAMINER STRAIN: Thank you.

With that, is that the end of the staff report?

MR. SMITH: Yes, that's the end of the staff report.

HEARING EXAMINER STRAIN: Okay.

MR. SMITH: We concur with the comments of the applicant and the staff report given.

HEARING EXAMINER STRAIN: Okay. Are there -- any members of the public wish to speak on this item?

Okay. If you'll, one at a time, come up to this microphone over here and identify yourself for the record. You may have to spell your last name if it's complicated, please.

MR. BEVAN: I filled out a sheet. My name is Larry Bevan. I'm a resident of Sunrise III.

Thanks for the opportunity to say a few words. I'm not connected to the organization, the condo association; just a homeowner there, condo owner.

I had a couple things I just wanted to talk about in terms of -- or issues I wanted to put on the table having to do with, you know, the deviations; basically 1 and 2.

On No. 2, the lighting, having to do with the lighting, I read the report and seen the treatment and the response. I appreciate that. For me -- and the LED down lights seem to be, you know, a treatment that looked to be focused and would work, but the proof is, of course, after it's put up, and I just want to express a continuing concern that implementation and tuning and focus and directions of the light in terms of how that is put forward is -- you know, will be a concern going forward to make sure that its implemented correctly from a homeowner's standpoint, because there is light leakage onto the Sunrise III property currently from the high hat lights being 42 feet high, and that is -- it is a concern.

Again, I'm speaking for myself, not for the association at all. So that's one concern I want to point out. That continues until implementation, making sure that the LEDs are focused and directed in the correct way, as they are -- as is evidently possible for them to be, and making sure they don't leak onto the other property.

Number two, having to do with Deviation 1, the landscaping. It really got to what you were all just talking about. It was landscaping with regard -- there was a discussion on Page 54 of the report with an exchange having to do with the wall, landscaping with the wall, with the research that I suppose the staff did on that, and it talked about landscaping with regard to the wall and the border, the perimeter of it.

That back wall, the rear of the building, having that, from what I can see from the code that's cited here, the LDC, that there needs to be, you know, 50 percent coverage on that type of exposure with some sort of vegetation.

And so it was brought up in the report, so I mention it here. That back wall, in terms of separating it,

sound attenuation of the traffic that would be increased because of the expansion of the building; even though the loading dock has been moved to the rear, traffic around the building with trucks and whatnot, increased operation, increased traffic -- that's the reason for the expansion on Walmart's part, hopefully to get more clientele in -- there will be more activity. Having a sound attenuating wall or a higher wall --

HEARING EXAMINER STRAIN: Sir --

MR. BEVAN: -- in conjunction with the --

HEARING EXAMINER STRAIN: -- I have -- I'm sorry, but I have to remind you the wall is not part of today's discussion.

MR. BEVAN: I know. I mentioned it only because people -- other people did.

HEARING EXAMINER STRAIN: I know --

MR. BEVAN: And so landscaping --

HEARING EXAMINER STRAIN: -- and I'm trying to keep us focused, but thank you.

MR. BEVAN: Okay. And so that was the only other concern I have. I'd be interested in finding out at some point -- this is a question to the professionals here about when and where that would be addressed. But I bring it up because it was brought up in the report.

HEARING EXAMINER STRAIN: I can answer your question. There is an SDP in process right now, Site Development Plan.

MR. BEVAN: Okay.

HEARING EXAMINER STRAIN: After today's meeting, it will continue on with its process of review and approvals. It's that document that would be partially involved in defining whether or not a wall goes there and how it's presumed to go forward after that.

So that would be -- not Stan's -- not Dan's department. Who is in -- who would be --

MR. SMITH: Chris Scott.

HEARING EXAMINER STRAIN: Chris Scott. There's a fellow named Chris Scott here, and he's in charge of the Site Development Plan section of our county. He'd be the guy to talk to and see where it's going and how you could possibly have an impact on it.

MR. BEVAN: There is an existing wall there. It just needs to be buttressed in.

But those are my two comments. Thanks for your time.

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

Next speaker, please.

DR. BEVAN: Dr. Cassie Bevan.

HEARING EXAMINER STRAIN: Could you spell your last name, and did you --

DR. BEVAN: B-e-v-a-n.

HEARING EXAMINER STRAIN: And did you fill out a speaker slip?

DR. BEVAN: Actually, my full -- yes, I did. My full name is Cassie Statuto, S-t-a-t-u-t-o, Bevan.

I have two questions, areas. One is that the 19 existing lights are 42 feet. The code now is saying 25 feet. There's variation. This deviation that's being requested is double what the existing -- what the existing code is. Forty-two feet versus 25 feet. I wish you would consider that because that really does impact the association.

I also want to make the second point that most of the members of the Sunrise III are not here. They're not here in the summer. They are probably not aware of this meeting. Even if it does go out in notes (sic), they're not aware of it, so they're not here to voice their concerns, but they do have concerns.

And my fourth point is that I would like to reserve for your next site development meeting for Mr. Scott that the wall issue be revisited as part of an impact of Walmart and the redevelopment plan.

HEARING EXAMINER STRAIN: Okay. Now, let me take your points one at a time, if you don't mind. And from what I remember the most is the last one you said.

The Site Development Plan process is not a publicly noticed process. If you want to know about a Site Development Plan and its movement through the system, you need to email ChrisScott@Colliergov.net -- C-h-r-i-s, S-c-o-t-t -- and let him know your interests, and they'll have a mechanism to keep you up to date.

DR. BEVAN: Thank you.

HEARING EXAMINER STRAIN: Your second item was on the lighting, or was that your first?

DR. BEVAN: Uh-huh.

HEARING EXAMINER STRAIN: Well, regardless. The lighting is being changed. And I don't know if you've seen the staff report within which were all the little parameters on how the lighting is going to be changed. Instead of a broadcast lighting like it is today, it's going to be focused LEDs.

Now, I saw that and was prepared at the last meeting to look into it. I asked their lighting expert to send me their spreads. The reason I wanted to see those -- and staff has got a copy of them. They were included in the report -- was to make sure those spreads were reduced from what was there before and did not go beyond the -- necessarily beyond the property lines.

Because it's LED, they can be directed; they can be focused, and that's why they moved to LEDs. They will be less obtrusive to your neighborhood because you won't get the glare from the surrounding light. You'll get a focused light straight down on the parking lot or as close, so they can keep it to the parking lot.

That will be an improvement over what's there. It may still not be perfect, but it will be an improvement. And your other point was? And I'm sorry.

DR. BEVAN: That most of the -- that most of the Sunrise residents are not here, so this is not a --

HEARING EXAMINER STRAIN: Yes. And the commissioner was --

DR. BEVAN: -- show.

HEARING EXAMINER STRAIN: Commissioner Fiala was very concerned and asked for a meeting to be held about a month ago. I brought to that meeting slides similar to what you -- this slide and others like it and went over with the residents all of the issues involving today's meeting.

Then at that meeting they talked about other issues, some of the issues like you've raised and the gentleman ahead of you raised. And I had explained to them that that is not part of today's request, but those are processes that are going through the county within different departments, and whatever came out of that was not something I'm involved with.

So I don't -- that basically -- at that point we had, four -- I think three or four residents from Sunrise at that meeting. So they were aware of it, and they were going to, I believe, communicate it to other members there. I hope that happened.

DR. BEVAN: Okay. Well, my concern -- my final concern is that -- thank you for your responses, but since this is a non-appealable situation, if the LED lights, given that they're 42 feet high, if they don't have the desired effect, what recourse do we have?

HEARING EXAMINER STRAIN: Well, two things: First of all, it is -- this is appealable. You can appeal decisions made here today to the Board of County Commissioners. That's one step.

As far as the lights go, if they don't react the way the information is in the staff report, it's a matter of calling Code Enforcement. And Code Enforcement then will have to verify that the lights are, in effect, working as they should or not working as they should and force the applicant or property owner to make a correction.

DR. BEVAN: All right. Thank you very much.

HEARING EXAMINER STRAIN: You're welcome.

Go ahead, Heidi.

MS. ASHTON-CICKO: Mrs. Bevan, would you like to give us your email address, and we'll include you in the distribution list when the decision is made?

DR. BEVAN: Yes, please.

HEARING EXAMINER STRAIN: After the meeting, if you'd like to catch up with Heidi, she'll be glad to take that. Thank you.

Any other members of the public who'd like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, Jeff, I didn't know if you wanted to have any comments before we close the meeting.

MR. SATFIELD: Just a brief one to hopefully educate a little bit on the lighting as well. As far as installation of them and how they work, Walmart actually charges us post-installation, prior to the store opening, to go out and review the lighting, including taking a lighting meter to the property line to ensure that

the readings we're getting are accurate to the readings of the photometric plan, and that is done at nighttime as well. So just a little bit of extra information regarding the lighting and our attempts to make sure that they are installed correctly.

HEARING EXAMINER STRAIN: Well, as a note, since you do do that, if it's something that your client doesn't mind making a public record after it's done, it might be helpful to have that on hand here at this building, but that's up to you guys. It's just a suggestion. And you don't have to make a commitment to that now. It's just a suggestion.

MR. SATFIELD: Thank you.

HEARING EXAMINER STRAIN: Thank you.

Okay. With that, we will --

MR. SMITH: Mr. Chair?

HEARING EXAMINER STRAIN: Yes.

MR. SMITH: I just want to add to that, as part of the staff report on the lighting with the height of the light poles, from talking to the engineer, he actually said you get less light impasse with taller poles than shorter poles because of the reflectivity off the pavement. So in some cases taller poles are better than the shorter poles, but that's something to be seen.

And part of the staff recommendation is as these light poles need replaced, they're going to be replaced at the shorter poles. So eventually those poles will be gone. I just wanted to put that for the record.

HEARING EXAMINER STRAIN: Okay. Thank you very much.

And that is the last testimony we have today, so this hearing -- this item will be -- yeah, this hearing is closed.

That will take us back to our agenda. That is the last item on today's agenda.

Are there -- any other business? Any other -- any other public comments?

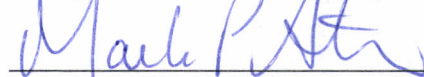
(No response.)

HEARING EXAMINER STRAIN: Hearing none, this meeting's adjourned. Thank you all.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:51 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

ATTEST  
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 9-22-16, as presented ✓  
or as corrected \_\_\_\_\_.

TRANSCRIPT PREPARED ON BEHALF OF  
U.S. LEGAL SUPPORT, INC.,  
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.