

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
July 27, 2017

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 610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

ALSO PRESENT: Raymond V. Bellows, Zoning Manager
Fred Reischl, Principal Planner
Nancy Gundlach, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, July 27th meeting of the Collier County Hearing Examiner's Office.

For those of you who are standing, they're looking for more chairs to have brought in now. So hopefully that will be remedied. In the meantime, since you're standing, could everybody else stand for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you. A few housekeeping announcements.

Speakers will be limited to five minutes, unless otherwise waived. Decisions are final, unless appealed to the Board of County Commissioners. And a decision will be rendered within 30 days.

With that, we'll look at our agenda. Review of the agenda, we have six items on today's agenda. There are no other changes. There are no additions.

So we'll start with the first advertised public hearing. It's Petition No. CUE PL20170000680. It's the North Naples Fire Control and Rescue District.

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: Thank you. And as soon as I -- for my disclosures today, I have talked with staff. I've reviewed the files and I have had a couple conversations with the applicant mostly about some missing paperwork that I've discovered last night. I believe that's going to be addressed today.

I think that will take us right into the presentation. Is there anybody here from the public for this item?

Okay. One gentleman is here.

Bob, I'll need you to walk through your presentation for the member of the public that's here to hear this.

MR. MULHERE: Okay. For the record, Bob Mulhere with Hole Montes. Here with me this morning, Eloy Ricardo, who is the Assistant Chief of the North Naples Fire Control and Rescue District. And Terry Cole also with Hole Montes, who is a civil engineer.

The extension is -- the extension has been necessitated because the fire district was not able to go forward with the improvement that they had budgeted because of the economic downturn. And they did receive a number of extensions, both from Collier County and several by executive order of the governor. And ultimately, as the staff report indicates, the two-year extension would extend out to December 19th, 2021.

Mr. Strain, you asked me a question this morning regarding the Zika extension that was provided for by executive order. And I did talk to Nancy prior to this meeting and I also talked to my assistant Stephanie.

We did request that extension and it is part of the timeline that extends the conditional use out to December 19th, 2019. And then with the two-year extension, if this is granted this morning, we would be extended out to December 19th, 2021. But perhaps staff could also verify that.

HEARING EXAMINER STRAIN: Yes. I will get to staff on that for verification. I just couldn't find it in the packet. I did find some of the others.

I found where you and the staff had advised that you might qualify for it, but I didn't see the actual request, so...

MR. MULHERE: I think the request is not in there, but the request was made and the staff did grant it. Or acknowledge it, I guess, would be a better word since it's not really up to staff.

HEARING EXAMINER STRAIN: Okay. I just looked at what the County Attorney's Office has. They do have a copy of it. So we're good. That's what I needed to find out.

MR. MULHERE: That concludes it. I mean --

HEARING EXAMINER STRAIN: Well, do you have a change to your master plan?

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: You mentioned the extension, but not the master plan change.

MR. MULHERE: There was a slight change because the original survey was in error. The

survey -- the original survey was taken from the east edge of the right-of-way. And, as you know, in the Estates the property lines extend to the center line of the right-of-way.

So the survey was corrected. We actually met with Heidi Ashton, Assistant County Attorney, and with Ray Bellows. We brought the survey error to their attention. And the staff opined that that should be and could be corrected through this extension process. And so now the new survey does reflect an accurate property boundary.

HEARING EXAMINER STRAIN: The result of that map change is to reduce the dried retention area and a couple other areas that were on the eastern side of the site.

MR. MULHERE: Minimal, yes.

HEARING EXAMINER STRAIN: Right. It just shrinks them down a little bit.

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: But you did compensate for those reductions in water management on the western side of the site in a couple different locations, if I'm not mistaken.

MR. MULHERE: Yes, sir.

HEARING EXAMINER STRAIN: Okay. Let me see if I have any other questions.

Staff does have a recommendation that we -- that the previously approved conditions will be retained. Do you have any objection to that?

MR. MULHERE: No. That's fine.

HEARING EXAMINER STRAIN: I'm just checking to make sure I have all my issues discussed.

Okay. I don't have any questions right now. But we have someone from the public that may be a public speaker and I've got to hear from staff, as well.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: Thank you, Bob.

Nancy, do you have a staff report?

MS. GUNDLACH: Good morning, Mr. Hearing Examiner. Staff recommends approval.

HEARING EXAMINER STRAIN: Thank you, Nancy.

MR. MULHERE: That is important.

HEARING EXAMINER STRAIN: Can you confirm that the Zika Virus extension was actually issued?

MS. GUNDLACH: Yes, it was issued. And it is the last attachment to the staff report.

HEARING EXAMINER STRAIN: Okay. With that, I don't have any other questions.

Is there any member of the public here who would like to comment on this application?

Sir, if you would like to come up and address the -- come to the microphone and we'll be glad to hear from you. You will need to be sworn in when you come up.

Now, I don't believe you -- did you stand to be sworn in when we first started this morning?

MR. KUCHAR: I was here at the time, but I -- I did not -- I did not stand.

HEARING EXAMINER STRAIN: So the court reporter will have to swear you in.

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

HEARING EXAMINER STRAIN: Okay. Could you state your name for the record, sir.

MR. KUCHAR: My name is James Kuchar.

HEARING EXAMINER STRAIN: Okay. Could you spell that last name.

MR. KUCHAR: K-u-c-h-a-r.

HEARING EXAMINER STRAIN: Thank you. Go ahead.

MR. KUCHAR: Good morning.

HEARING EXAMINER STRAIN: Good morning.

MR. KUCHAR: I just want to preface my remarks. I can understand your situation, sir. I did serve on a planning committee for 15 years in my prior life up north. And I appreciate the opportunity to speak before you this morning.

I want to just give -- and I'm speaking as a -- in favor of this project. And I want to give you a little bit of a history. I'm the president of the Pepperwood Condominium.

MR. BELLOWS: Sir, excuse me.

I think he's on the wrong project.

MR. KUCHAR: Am I on the wrong one?

HEARING EXAMINER STRAIN: This is for the extension of a fire station in Golden Gate Estates.

MR. KUCHAR: Well, we got a good start, didn't we? I will go through that later on.

HEARING EXAMINER STRAIN: Thank you. Actually you're coming up next. So we'll be in good shape.

Okay. Is there any other member of the public that may want to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we will close the public hearing. And I will have a decision issued within 30 days, but likely by the end of next week, Bob.

MR. MULHERE: Thank you. We appreciate staff's professional work on this and yours, as well. Thank you, Mr. Hearing Examiner.

HEARING EXAMINER STRAIN: You guys can -- I mean, you can make that short. Mr. Strain is fine for the record.

The next two items up will be heard -- will be discussed together, but the decisions will be issued separately on them. One is 3-B, it's Petition DR-PL20160001991. The Petitioner is Naples South Realty Associates, LLC.

And the second item up is Petition No. ASW-PL2017000082. Again, the Naples South Realty Associates, LLC. It is for the proposed Wawa convenience store with fuel pumps at the corner of Rattlesnake Hammock and U.S. 41.

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

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part. I have talked with staff. I've reviewed the files for this application, as well as others of similar nature. I've talked to the applicant's engineers, the applicant's attorney, and I have talked to their marketing professional.

By the way, is Russ Wyer here?

MR. WEYER: Yes.

HEARING EXAMINER STRAIN: Good.

These items, like I said, will be companion items. One is a site plan with deviations for the Wawa Station as proposed. The shopping center that it's going in is a shopping center that existed for quite some time. So it's an older station -- an older shopping center and they're trying to fit a new facility in there.

And the second one is for the automobile station waiver because we measure the waiver distances from site to site. This one is within 500 feet by its site to a gas station to the north. So that's why we're here today.

So, with that, we'll move right into the -- is there members of the public here wishing to speak on this item? I think the gentleman that was just up.

Anybody else?

(No response.)

HEARING EXAMINER STRAIN: Okay. Then someone from the applicant's side will have to make a presentation.

MR. PRITT: Good morning, Mr. Hearing Examiner. My name is Robert Pritt with the law firm of Roetzel and Andress. And I'll try not to violate the rule where a lawyer says, "I'll be brief," and then is not.

I'm appearing here on behalf of Petitioner Naples South Realty Associates, LLC. My client is proposing redevelopment of a portion of the Naples South Plaza to allow the construction of the convenience store and the modern convenience store facility with six fueling stations, which is 12 pumps. And this is at the north side of U.S. 41, just east of Rattlesnake Hammock Road, as indicated.

And as you have indicated, the proposed facility needs three deviations primarily dealing with

buffering and one distance waiver in order to be fitting for the purposes of the proposed tenant. I won't get into the details of these, but I do want to indicate that we do have Patrick Vanasse here, who is the planner, and been working with the staff on this.

And we also have Russ Weyer. I think you already asked, but Russ is here. He's the economist. I think both of them have appeared many times in front of Collier County Boards and commissions and committees as experts in their particular field.

Also, we have the principals; Rick Baer, who is right here in the front row, and George Kleier in the back row. They are here. They have been dealing with the County on these matters during the moratorium discussions, et cetera, and they're very familiar with it.

We'll be very happy to answer any questions that you may have. I assume you might have some. But I am authorized to indicate to you that we are in accord with and agree with the staff report and the staff analysis that has been put forward. And we look forward to having it approved -- having both of these approved today.

HEARING EXAMINER STRAIN: It's short and to the point. Thank you, Bob.

MR. PRITT: Thank you.

HEARING EXAMINER STRAIN: I do have some questions and I will need to talk with Patrick Vanasse first on the DR application.

And one other item of disclosure I need to add. A gentleman contacted me who lives on Rattlesnake Road. He came in actually to the office trying to find information about this site. I heard him talking to my assistant and I then intervened.

And we went to the conference room and I explained to him everything that was going on. He wasn't there to object. He was just trying find out if he needed to object and he left. I think he's satisfied of what he saw on the site plan.

So I don't see him here today. So I'm assuming he's okay with everything.

Patrick, last I know, you and I met and it was just you. Afterwards, Russ called and I went over a couple things with him. And then last night I read everything again after having met with you and staff and everybody else and there is some things I wanted to understand better.

Under your deviation number one you said that the purpose is to -- part of it is to -- you're going to add an architecturally-designed masonry wall and you're going to allow a two-tier -- you're going to have a two-tiered buffer with masonry wall and enhanced plantings.

And then you go on to say: The proposed site will instead allow for a 25-foot buffer in a portion of this location, including enhanced plantings, as well as an 8-foot high masonry wall with a 3-foot berm within the buffer. The north portion of the existing buffer abutting residential narrows to 7 feet due to the existing drive aisle and loading dock.

My question is: If you're going to have a buffer, you're going to need a slope of 3 to 1 or 4 to 1. You can't put a berm with that slope and the narrow part of this buffer.

And I was just wondering what your intention was for that berm and buffer -- berm and wall combination. Were you still going to have a berm or how would you put a berm in there at 3-foot high in a 7-foot area?

MR. VANASSE: I've got someone even better suited to answer this question. Our engineer is here. We're currently going through the design process and we've actually submitted on that.

But my understanding is that we are going with the berm/buffer combination, or at least a portion. But Keisha can clarify, yeah.

MS. WESTBROOK: Do you want me to go up there?

HEARING EXAMINER STRAIN: Ma'am, come to the microphone and identify yourself for the record.

MS. WESTBROOK: Yep. Keisha Westbrook, RWA. I'm the engineer for the project.

HEARING EXAMINER STRAIN: Okay.

MS. WESTBROOK: And what -- the 3-foot berm is from the adjacent property. So the adjacent property is 2 to 3 foot lower. If you go out there and look, there's quite a fall between the Pepperwood Condos and our site.

So there would be probably -- I'm almost positive there is like a 3-foot berm. Not berm. It is just a 3-foot grade difference between the condos and the plaza. So that's kind of what we were --

HEARING EXAMINER STRAIN: And then -- I know that this is an existing site. And I know you've got to deal with the issues that you're dealt with in regards to the constraints. I'm not objecting to this. I'm more concerned that what you're saying can't be done versus what you intend to do.

I think on your property you're looking at a 7-foot width. You can't have a 3 or 4 to 1 berm in a 7-foot width at 3 feet high. It's just not going to work.

MS. WESTBROOK: Right.

HEARING EXAMINER STRAIN: You don't have enough room. And you can't rely on other people's properties.

So, in essence, the elevation of the 7-foot area of your property is what I'm concerned about. And then the 8-foot wall is going to go on top of that; is that correct?

MR. VANASSE: Patrick Vanasse, for the record. My understanding is in our portion where we have 25 feet we would have that existing --

HEARING EXAMINER STRAIN: I understand. 25 feet is fine. You can do that at a 3 to 1. You have got, what, 9 feet, 18 feet, plus a flat top for the wall.

MR. VANASSE: And we narrow down to 7. There's a small existing berm there. I think the intent is to put the wall directly on that existing berm and not to modify that.

HEARING EXAMINER STRAIN: Okay. Because the way the section of the code reads for gas stations, you will be on top of a 3-foot berm. And since you can't put the 3-foot berm on your property in that location, I just want to make sure that staff doesn't have an objection to it now that that's spelled out.

And I don't know -- was it Fred or Nancy that did this one? Fred?

MR. REISCHL: That's me.

HEARING EXAMINER STRAIN: Okay. Does this change anything that you reviewed? They're not going to be able to have a 3-foot high berm in a 7-foot area.

I didn't expect them to. But I want to make sure that it doesn't have any conflict with you.

MR. REISCHL: None with planning and zoning. I did talk with Mark Templeton last week. And I'm not sure if he knew about this issue specifically, but he will get to review this again during SDP.

HEARING EXAMINER STRAIN: I will probably clarify this in any kind of write-up that's a decision.

Heidi?

MS. ASHTON: It might require an additional deviation. So you might need to write it up that way it's sounding, from what you're saying.

HEARING EXAMINER STRAIN: I think the problem is the reference to the 3-foot berm doesn't -- doesn't make the point that it's not going to be a continuous 3-foot berm. It can't be. You don't have enough room for it.

That's almost a given. I have no problem writing it up to address that issue, as long as there's no objection as we go through any further discussion today.

MR. VANASSE: No objection from us. My understanding also is that we've had Mark review -- at least do one review at this point and he hasn't brought that up as a comment.

HEARING EXAMINER STRAIN: And I've reviewed the plans that you sent me afterwards that weren't in the package regarding the enhancements. And I don't have issues with the amount of enhancements you're doing, and especially the addition of the wall. The primary concern is getting the wall in.

The fact you're not going to be able to fit the berm in everywhere wasn't as much of a deal breaker. It was just something I want to clarify.

But that brings us to another clarification. Under Petitioner's rationale of the same deviation, the proposed Wawa is part of a larger commercial development, Naples South Plaza, which abuts a residential development, Pepperwood Condominium. If the proposed Wawa were not part of Naples South Plaza it would be outside of the requirements of 5.05.05.D.2.

I tried to figure out how you came to that conclusion. Can you tell me how you did that?

MR. VANASSE: Yes. We started on this application prior to the moratorium with regards to gas

stations. And then these new regulations came forward.

We had been in discussion with staff and we had talked about that 250-foot separation. So when we started our design, we actually designed our facility to be 250 feet away from that boundary.

Unfortunately, the way the regulations came forward, it was going to be boundary to boundary. So we're still subject to the heightened regulations, but our building itself to the boundary is 250 feet and to the closest condominiums we're over 300 feet away.

HEARING EXAMINER STRAIN: Okay. First of all, if you started this application before the moratorium, are you then saying you come under the previous standards?

Do you have a --

MR. VANASSE: No.

HEARING EXAMINER STRAIN: Okay. So you didn't submit anything. You started internally working on it?

MR. VANASSE: Yes. Just internally.

HEARING EXAMINER STRAIN: Okay. The previous standards do apply still to some stations that have been controversial in Collier County. And it was during that review of those that it was determined that the measurement has always been, and is, site to site.

So your statement here is questionable in the fact that you don't believe you come under those requirements because you started with a previous code. The previous code didn't allow you to go from fuel pump to fuel pump. It required site to site, as well as the current code.

So I'm not sure that statement is accurate. I don't think it has any necessary bearing on the outcome of today's meeting, but I wanted to make that clarification. Because I don't understand us ever having applied it the way you've said it here, unless staff has something different they want to tell me.

Did the RaceTrac go pump to pump or site to site?

MR. BELLOWS: Property line to property line.

HEARING EXAMINER STRAIN: Right. That's the -- they were the project that was under the previous standards, as well. So we had -- and they made the similar comment that you did, but it was determined at that time it was site to site, so...

The letter from the Pepperwood Condominium Association -- I mentioned in our meeting the discrepancy about the 30 foot. In that letter they say they are relying -- the buffer will start at 30 feet and taper down to a smaller size.

It's actually starting at 25 foot. And I know the gentleman now is here so I will get his confirmation on that today.

In deviation two you're asking for a relief from LDC Section 5.05.05.E.1.A, which is part of the ASW automobile station of the code. But, yet, in the narrative that you supplied, I think it's on Page 17, you say: With the exceptions of the 30-foot buffer requirements, all other supplemental standards aimed at addressing potential areas of concern in ensuring compatibility are being met.

Well, that other deviation is one that is not being met because you're asking for a deviation. So am I correct in that assumption?

MR. VANASSE: Yes. Just a little clarification. What was meant was the Wawa in itself as a gas station, not the overall commercial center. We -- that one deviation would have been the only one required if not for the requirement to buffer the entire shopping center to these enhanced standards.

HEARING EXAMINER STRAIN: Well, it requires landscaping adjacent to rights-of-way external to development. So you wouldn't have been -- if it wasn't for you being within the entire shopping center, you wouldn't have been adjacent to a right-of-way?

MR. VANASSE: We would have met that requirement.

HEARING EXAMINER STRAIN: You could have done a 30-foot buffer if you weren't part of the overall --

MR. VANASSE: So the portion where we abut 41, the portion where the Wawa is, we meet the requirement. And then our buffer -- there is another existing building there. And that's where we don't meet that buffer requirement. And we've got mitigation for that.

HEARING EXAMINER STRAIN: In front of the Wawa; in front of the frontage that you would

be -- in front of you for U.S. 41?

MR. VANASSE: Uh-huh.

HEARING EXAMINER STRAIN: Do you meet the qualification there?

MR. VANASSE: Yes.

HEARING EXAMINER STRAIN: Okay. So it's just further to the north that you don't meet the qualifications?

MR. VANASSE: Correct.

HEARING EXAMINER STRAIN: Okay.

I did check the distance from the residential. The point that you used to set the back door or back standard of the facility to the residential seems to be not the closest point of the structure to the residential. It actually is the southeast corner, not the northeast corner of the canopy area or the entry area in the rear, just for point of clarification.

So I'm not even sure that the building itself meets the distance from the residential so that you would still come under those all those guidelines.

That's all I've got on this one, Patrick.

Let me see if I have anything left on the -- by the way, I didn't bring this up to you when we met a couple of days ago because I read everything the night before the second time. After I meet with everybody just for any further clarifications.

And on the next one all my questions appear to be related to the marketing part of it. So I'm -- I appreciate your time. Thank you.

MR. VANASSE: Thank you.

HEARING EXAMINER STRAIN: Russ Weyer, if we can talk, that would be great.

MR. WEYER: Good morning, Mr. Hearing Examiner. For the record, Russ Weyer, real estate econometrics.

HEARING EXAMINER STRAIN: Russ, I appreciate your sending me the documents that were not clear in the staff report. I would hope that in the future I get a color version and I get a full-size mapping so I can read what the map says.

In the review of that information that you sent what was beneficial was that you had utilized a five-minute drive time for your market area designation. And, in addition to that, the impacts from the other fuel facilities in your area were calculated within that 5-mile drive time, as well. And those that you located were on U.S. 41.

I did check against the records I have and I found no other fuel stations. So it looks like, which was nice to see, you had captured all of the fuel facilities that were in your demographic that you defined as your area -- your market area.

(An electronic interruption was had.)

HEARING EXAMINER STRAIN: Some others have used different types of -- different demographics, but yours was -- worked out well.

The other piece that I happened to check is that in calculating the consumption when you divide a number by month by four weeks, you don't always get the same numbers. If you multiply it times 12, divide by 52, and then use -- then look at it that way, the numbers are slightly different. Not enough to make any -- to change anything that we're discussing today, but I did want to make a note for the record I did verify that.

MR. WEYER: Yes.

HEARING EXAMINER STRAIN: And you and I had talked about it.

MR. WEYER: Yes.

HEARING EXAMINER STRAIN: The other piece I want to mention, and I think it's a very practical application, you had two planning communities in your demographic, East Naples and South Naples. Each planning community had a different rate of growth. Substantially different.

You used the South Naples rate of growth because that was definitely a higher rate of growth than the East Naples rate. One has got less open space and more available for development than the other.

And you, as I asked, checked to see where you would stand if you were to take ratios of the two compared to the demographic. And while it didn't come out as beneficial as a shortage shown, even with your

facility, I believe it clearly showed that your facility would still be needed to some extent to meet a deficit that would still be produced in the area.

Is that a true statement?

MR. WEYER: That is a true statement. Mr. Strain, we did -- I did go back and check the numbers as we had talked about. I did take it from the positive side to a little bit on the negative side.

However, again, it was negligible from that point. There is a gap there that needs to be filled. And this station will do that, of course.

And I did take into consideration your different planning areas. And thank you for pointing that out. I think it made the study even more solid at that point, so...

HEARING EXAMINER STRAIN: Well, one interesting thing is you were not -- you wouldn't be building a facility to meet the exact deficiency. You would build a facility to which you customarily build and it's filling some portion of a deficiency that's known to exist.

And I think your documentation showed there would be a potential deficiency based on the demographics and the rate of growth and the number of fuel facilities. I'm comfortable with that. Either way it comes out.

So I appreciate your efforts to align your market study the way you did. It made it much easier to understand than others that I have seen.

MR. WEYER: I appreciate that.

HEARING EXAMINER STRAIN: You also had included Section 3.0 in your market study. And, of course, then you get 4.0, your conclusions. I did not consider 3.0 as part of this analysis.

It's not required by the code and has really no bearing on a fuel facility's location versus another fuel facility.

But the next time, if you include it, I would have to do the same thing. The code is pretty specific. It's only the impact based on the fuel facility, not necessarily the economics of the area.

MR. WEYER: So noted.

HEARING EXAMINER STRAIN: And I just want to make sure I got everything. I did note that you had used the same current values for gallons of gas per year that are on record. And I've used the same internet sources you did. So I'm in alignment with that, as well.

MR. WEYER: Okay. Thank you.

HEARING EXAMINER STRAIN: Thank you. That's all I had, Russ. Just one of those clarifications.

Okay. Patrick.

MR. VANASSE: Patrick Vanasse, RWA. Just for the record, we have provided two sets of color copies of the full application packets to Fred Reischl. That was requested when we met over a week ago.

HEARING EXAMINER STRAIN: I appreciate that. Thank you.

I'm going ask staff to make sure that when you send something over it's in color. And if there's maps that are shrunk down that can't be read -- the reason it's important is all the road systems in this demographic that was used have to be checked out to verify there are no other fuel facilities on those road systems.

And if you can't tell by the map what road systems we're looking at because they're so blacked out and shrunk down to a PDF, it doesn't come across well. So in the future when we have these, it would be better to have a clarification on those maps.

And those are the only questions I have of the applicant.

And I'll turn to staff. Fred, do you have any staff report on both of these?

MR. REISCHL: Thank you, Mr. Strain. Just for the record, I would like to thank Dan Smith and Rachel Beasley, who did the majority of the work on this and I'm basically presenting the staff report.

And staff recommends that the SDP with deviations and the distance waiver be approved by the Hearing Examiner.

HEARING EXAMINER STRAIN: Okay. And I noticed there were no staff recommendations added to the DR and no staff recommendation added to the ASW.

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: Okay. Staff conditions. It's listed under the title

recommendations. That's why I used that. But, anyway, we can -- as far as staff conditions go.

Okay. Is there any members of the public here wishing to address this issue?

MR. KUCHAR: Yes.

HEARING EXAMINER STRAIN: Sir, come on up. You were already sworn in. We are in good shape.

MR. KUCHAR: Twice, sir. Excuse me.

Again, good morning.

HEARING EXAMINER STRAIN: Good morning. State your name for the record again.

MR. KUCHAR: My name is Jim Kuchar, K-u-c-h-a-r. I'm the president of the Pepperwood Condominium Association, which is located adjacent to the property that we're discussing this morning.

I'm just going to take a few minutes this morning to cover some of the background and the history that we have had with the proponents having to do with this project.

About the middle part of 2016, they asked us to meet with them and we did. A couple of our Board members. And they went over the whole project with us at that time.

And then on November 9th of 2016, they hosted a meeting of the unit owners on their property and explained the process or their request as a whole. There were about 25 members present. All the members left that meeting in support of the project.

And then again on November 21st, Mr. Kleier did appear before our Board -- at our Board meeting with all of the drawings and again submitted the proposal to the Board members and the unit members that were at that meeting with full approval of all those present.

On November 21st, I forwarded the letter to the Collier County Commission in support of the Wawa coming to us or next-door to us. And you have a copy of that letter.

On January 6th, Mr. Kleier, on behalf of the -- of his group, he submitted a letter to our association which read in part, and I quote: During construction and improvements of the Naples South Property, the owners of Naples South have volunteered to make certain improvements to the landscaped area on the Pepperwood Association property along with the property line that we share. We will consult with a landscape architect and coordinate with your Board on the final improvements to the Pepperwood property. The scope of the improvements shall be located in the area addition [sic] to the Naples South Property and shall not exceed \$15,000 for the planting. And they'll also support us with design fees.

And this is a voluntary commitment on their part. We never, as a Board, asked them to help us with all of the plantings and everything that will take place on our site. Obviously as an association we are pretty close in our budgets and we're a little bit concerned about where we would come up with the money to enhance our site.

When I look at -- when we look at the economics of the project in itself and the convenience store that will be located there, it's going to be a tremendous improvement to what we have now. First of all, we're going to have the wall and the plantings and the esthetics between their property and our property.

In addition to that, approximately about half of the existing buildings or businesses that are now vacant, which is probably the result of the downturn that we had about 10 years ago, that is going to be tore down. The Wawa building will take -- will be constructed there.

But, in addition to that, the grounds are going to be -- are going to be improved with -- in terms of the landscaping. So, I guess, in terms of the -- our position as a neighbor, we certainly appreciate the fact that we've been able to cooperate.

They've been cooperating with us. They have been totally open. And we will continue to work with them in the event that this is approved.

I want to thank you this morning for allowing me to speak. And if you have any questions, I'll address them now.

HEARING EXAMINER STRAIN: I do have a couple questions about what you brought up. It will probably have to refer to staff, as well.

You had mentioned an agreement to provide some additional landscaping up to a value of \$15,000. Now, do you guys have a written agreement or is that a verbal?

How is that worked out?

MR. KUCHAR: We have a letter to that effect. And that was an offer that they made to us. And technically it isn't an agreement by party, so to speak. That was an offer they made to us and we feel that they will stick with that agreement.

HEARING EXAMINER STRAIN: Now, was that additional plantings on your side of the property line or was it supposed to be on their side of the property line?

MR. KUCHAR: That would be -- as I understand it, and I can get clarification, it would be on our side of the property line.

HEARING EXAMINER STRAIN: Okay. That's the point I needed to understand.

MR. KUCHAR: Okay. Thank you.

HEARING EXAMINER STRAIN: Okay. And the other question is the 30-foot reference in your letter really is 25 feet. Does that have any bearing on your --

MR. KUCHAR: That was a typographical error on my part. That would be a mistake on my part.

HEARING EXAMINER STRAIN: So your intention was 25 feet?

MR. KUCHAR: Yes.

HEARING EXAMINER STRAIN: Excellent. Thank you very much.

MR. KUCHAR: Thank you.

HEARING EXAMINER STRAIN: That's all I've got.

Ray, do you have something?

MR. BELLOWS: Yes. We have one other registered speaker, Pedro Cruz.

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

(No response.)

HEARING EXAMINER STRAIN: He must have left.

Oh, he is here.

MR. CRUZ: I thought -- we don't speak English, you know.

UNKNOWN PERSON: I think he's indicating he doesn't want to speak.

HEARING EXAMINER STRAIN: Okay. I understand. Thank you.

Are there any other registered speakers, Ray?

MR. BELLOWS: No others.

HEARING EXAMINER STRAIN: Is there anybody here who has not spoken that would like to address this issue?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, I would like to ask one question of Patrick, if that is okay.

MR. VANASSE: Yes.

HEARING EXAMINER STRAIN: On the improvements that you have a private agreement with the Pepperwood Condominium, is part of that to utilize some of that area for a berm?

MR. VANASSE: My understanding is -- our plan shows all our plantings on our side. The berm is to remain the way it is. And the additional enhancements on their side will be plantings.

HEARING EXAMINER STRAIN: Okay. The reason I was asking is if you're going to continue a berm, their property onto yours, and you're basically going to be meeting at the property line, I just want to make sure I understand that so whatever is written affords that opportunity, not take it away. That's what I was wondering.

So the berm -- there is a berm out there in a 7-foot area now?

MR. VANASSE: There's a small existing berm.

HEARING EXAMINER STRAIN: Okay. So to the extent that that berm is there is what you're going to continue?

MR. VANASSE: Yes.

HEARING EXAMINER STRAIN: Okay. That helps. Thank you.

MR. VANASSE: Thank you.

HEARING EXAMINER STRAIN: That's all I have.

Okay. With that, there's no other -- no other items on this particular -- these two items. And we'll

close the public hearing for both of them and a decision will be rendered within 30 days, most likely within a week or two.

Thank you all for coming. We appreciate it. And a decision will be rendered.

Next item up, Petition No. ZLTR(CUD) PL20170000993. It's for the Frangie, LLC affirmation of a zoning verification letter concerning a private investigator's office in the Founders Plaza.

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: Thank you. Let me get to my disclosures.

Disclosures on my part. I've talked with staff and reviewed the files. And I believe that's the extent of it. I don't remember talking to anybody else.

With that, is there any member of the public here for this particular item, other than the applicant?

(No response.)

HEARING EXAMINER STRAIN: Okay. A presentation will not be made.

Is there a representative of the applicant here?

If so, sir, would you come up and identify yourself for the record.

Good morning.

MR. FRANGIE: Good morning. My name is Gus Frangie. I'm the owner of the building.

HEARING EXAMINER STRAIN: Okay. Could you just bring the mike a little closer when you talk again. Can you spell your last name?

MR. FRANGIE: F-r-a-n-g-i-e.

HEARING EXAMINER STRAIN: Thank you. You had said in your application that you're purely going to be functioning as an office. Is that still your intention?

MR. FRANGIE: Yes.

HEARING EXAMINER STRAIN: Okay. There is a recommendation noted by staff concerning your use there, but it's based on the fact that you will be functioning as an office. So we would condition it that that's how you'll be operating. I think even your letter said that, as well.

MR. FRANGIE: Yes.

HEARING EXAMINER STRAIN: Do you have any objection?

MR. FRANGIE: No other reason for anything else.

HEARING EXAMINER STRAIN: Okay. I'm just checking real quick to make sure I've asked you everything I need to. I don't think there is much more.

No, there isn't. Thank you very much, sir.

Is there a staff report?

MR. BELLOWS: Yes. For the record, Ray Bellows, zoning services manager. The staff report and zoning verification letter indicates the staff has found -- finds this use comparable in nature to the uses in the Founders Plaza PUD. We're recommending approval.

And I do have a revised Page 4 of the staff report that clearly makes it more clear that we are proposing that the use be consistent with the professional office work.

HEARING EXAMINER STRAIN: Would you put it on the overhead, Ray, if you don't mind? And actually it's working.

It took about five years to get an overhead. So we ought to take advantage of it once in awhile.

MR. BELLOWS: Oh, my gosh.

HEARING EXAMINER STRAIN: Well, it was working. I don't know how to explain why it's not now. Maybe the tilting of the lense on the top.

See the lens on the top. Guys, the lens up on top, see if that has to be squared away.

MR. BELLOWS: Yeah. I think the back light is washing it out.

HEARING EXAMINER STRAIN: Okay. Well, so much for that idea.

MR. BELLOWS: I think we need a course in --

HEARING EXAMINER STRAIN: It's okay. You've read it. You just read it into the record. We're fine. We'll live with it that way.

The gentleman says he has no objection to adding the reference that it shall be a professional office use. So we are good to go.

Any members of the public here wish to address this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing. And a decision will be rendered within 30 days, most likely by the end of next week.

That takes us to the next item up, which is the Lords Way. It's Petition No. PDI-PL20170000444, Lords Way 30, LLC. It's for some insubstantial changes to the original PUD.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part. I've talked with staff. I've talked with representatives of the applicant and I reviewed all files.

With that, are there any members of the public here for this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, Lindsay, you're going to have a very easy day because you don't need to make a presentation. Hopefully that will help.

I have a few questions. And I know we talked on the phone. Let me start in the order that I have them so I don't get mixed up.

You're asking to put a 16-foot high wall on the eastern side of the site. I understand what that means. You've got a north/south section on the far east, but you also have a southern section along the preserve that I don't want misconstrued as being intended.

So you would limit the wall to the residential portion of the eastern side of the site or do you intend to take it down through the preserve area?

MS. ROBIN: Yes. I think the way we wrote the deviation was to allow us to have the flexibility to be able to do that, but we wouldn't want to impact the preserve.

HEARING EXAMINER STRAIN: So you're -- the preserve that's along the south side where you've got an angled property line, you have no intention of putting the wall there, do you?

MS. CRESPO: We don't have the intention, but we probably want the flexibility there.

HEARING EXAMINER STRAIN: You would? Well, then you would --

MS. ROBIN: We don't have the intention to though.

HEARING EXAMINER STRAIN: That's a little different than what I read this as. And that's why I needed some clarification when you said it's on the east side of the site.

Because the southern property line is skewed at an angle someone could say there's an eastern exposure there, but there really isn't. I just wanted to make sure you weren't intending to use that for a wall as well.

MS. ROBIN: We are not. And that is not the intent of the deviation.

HEARING EXAMINER STRAIN: Okay.

MS. ROBIN: It wouldn't apply there.

HEARING EXAMINER STRAIN: I had also talked with you and Alexis and, I believe, Jeremy concerning some language changes to require a minimum height for the berm because you did say it would be a fence or a wall and berm combination.

MS. ROBIN: Yes.

HEARING EXAMINER STRAIN: Did you come back with some suggested language on that? You'll have to read it because our machine is not functioning right.

MS. ROBIN: Yes, we did. We are going to unstrike the existing language to allow a minimum 2- to 5-foot berm.

HEARING EXAMINER STRAIN: The existing language included -- it says including an 8-foot fence or wall installed on a perimeter berm, which will be between 2 and 5 feet in height. You don't want to unstrike all of that.

MS. ROBIN: No. I can read it, if you want.

HEARING EXAMINER STRAIN: Just the piece you're considering on striking, yes.

MS. ROBIN: Yes. We'll say: After 13 feet in height, underlined, and where adjacent to Swamp Buggy on the eastern property line, allow a perimeter wall or fence and berm in combination up to 16 feet in height, with the berm being between 2 and 5 feet in height.

HEARING EXAMINER STRAIN: That will work.

MS. ROBIN: Great.

HEARING EXAMINER STRAIN: Thank you.

On the footnotes to development standards table -- and I don't think this is -- just so you all know, I reread everything after I talk with everybody. I read it first in the week prior to the meeting and then the night before the meeting I read it all again.

So after I have had your input, I go back and read everything and make sure I understand it like you're saying and that sometimes generates other questions. So one of the questions I had was under the additional underlining for footnote number one.

I'll read the sentence. It says: At time of platting, intersections subject to the secondary front yard setback shall demonstrate compliance with the sight distance triangles set forth in LDC Section 6.06.05.

I have got two questions about that. First of all, I don't find a reference to what a secondary front yard setback is. I think your intention is a reduced front yard setback. And "reduced" would be a better word than "secondary," I would assume there.

Do you have any objection to that?

MS. CRESPO: Alexis Crespo with Waldrop Engineering. Staff had asked that we add that relating to the very first sentence of Note One, which is: Lots fronting on two streets shall provide a full front yard setback along the street with the shorter frontage and a minimum 10 feet along any other street frontage.

HEARING EXAMINER STRAIN: My problem is you've got nothing identified as a secondary front yard setback. So I would suggest then if you want to -- you have a shorter frontage is the reduced frontage you're talking about. So something tying it back to that would be better.

I'm not sure what a secondary refers to. That's why I'm just trying to clear it up.

MS. CRESPO: The intent was secondary. To your point, we can modify --

HEARING EXAMINER STRAIN: To reduced?

MS. CRESPO: -- to make it more clear.

HEARING EXAMINER STRAIN: Yeah.

But -- then that brings the question for staff. And, Nancy, is this one yours?

MS. GUNDLACH: Actually, it's one that I inherited.

HEARING EXAMINER STRAIN: Lucky you.

MS. GUNDLACH: Yeah.

HEARING EXAMINER STRAIN: Why do we need that sentence at all?

If that sentence wasn't there, would they still have to abide by LDC Section 6.06.05?

MR. BELLOWS: For the record, Ray Bellows. Yes, they would.

HEARING EXAMINER STRAIN: Okay. I know it wasn't yours, Nancy.

As the current planner in charge, do you have any problem just striking that sentence altogether since it's required by code to meet that section anyway?

MS. GUNDLACH: I do not have a problem with striking that sentence.

HEARING EXAMINER STRAIN: Okay. Does the applicant have any problem with striking that sentence?

MS. ROBIN: No.

HEARING EXAMINER STRAIN: Okay. Then I would consider that. In a clean-up revision you'll have to send back to me any of the changes we're talking about today so we can include them as part of the decision.

MS. ROBIN: Yes.

HEARING EXAMINER STRAIN: So you'll need to take that sentence out in the revised language.

MS. ROBIN: Sure. We can do that.

HEARING EXAMINER STRAIN: Okay. I'm making sure that all the remaining issues -- oh, on

your original NIM you had added to your presentation to the community or to the -- nobody showed up at the NIM. I remember now. That you were going to ask for a signage area of 80 square feet. I didn't see that anywhere.

You didn't ask for that, did you?

MS. ROBIN: No. We ended up dropping that deviation.

HEARING EXAMINER STRAIN: Okay.

MS. ROBIN: Yes.

HEARING EXAMINER STRAIN: That's all the questions I have.

So at some point, as soon as you get me those -- that language cleaned up and the proper exhibits, that will help expedite the decision.

MS. CRESPO: We will do that.

MS. ROBIN: Can I just clarify something, please?

HEARING EXAMINER STRAIN: Sure.

MS. ROBIN: The deviation relating to the wall and berm, we don't want to lose the ability to do the 13 feet around the entire property line, which is what it's allowed to do today.

HEARING EXAMINER STRAIN: I have no problem with that. I think your 16 feet was the maximum it could go on the eastern side of the property.

MS. ROBIN: Okay. Yes.

HEARING EXAMINER STRAIN: So if you write it up as a maximum, then anything different than that would fit below it.

MS. ROBIN: Okay.

HEARING EXAMINER STRAIN: I would be happy with that.

MS. ROBIN: Thank you.

HEARING EXAMINER STRAIN: Thank you.

Is there any staff comments or report, Nancy?

MS. GUNDLACH: Just that staff is recommending approval.

HEARING EXAMINER STRAIN: You know, it's refreshing to work with you. You do the same thing at the Planning Commission level and it's perfect. So thank you.

MS. GUNDLACH: Thank you.

HEARING EXAMINER STRAIN: Are there any members of the public here that wish to address this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we'll close the public hearing and a decision will be rendered within 30 days, most likely by the end of next week.

One item I should note to you. Because of a change required by the Clerk of Court's Office, we now have to send a PDI on a consent agenda to the Board for affirmation. And, as you know, that's a time delay.

So it's nothing we wanted to do. It was something that was forced upon us, so...

MS. ROBIN: Thank you.

HEARING EXAMINER STRAIN: Okay. Thank you.

Next item up is Petition No. ZLTR(CUD) PL20170000096, Angel's Medical Company for an affirmation of verification -- zoning verification letter for an adult care facility. Adult daycare facility SIC 8322 in the Founders Plaza.

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 talked with staff. I reviewed the files. I have no others than that.

Are there any members of the public here who are not part of the applicant's team that wish to speak on this item?

MR. VALDES: Yes.

HEARING EXAMINER STRAIN: Sir, okay.

Then I'll need the -- whoever represents the applicant to come forward and provide a presentation, as to what they're asking for.

Yes, ma'am. Come on up. You will need to identify yourself for the record.

And were you sworn in when we started today?

DR. IGLESIAS: Yes. My name is Evelia Iglesias. I am the psychiatrist at the clinic, Angel's Medical Center.

HEARING EXAMINER STRAIN: And were you sworn in earlier when I had asked everybody to rise?

DR. IGLESIAS: Yes.

HEARING EXAMINER STRAIN: Perfect.

Okay. Because we have someone from the public here who is interested in this application, you will -- and I have read everything. So I understand what you're asking for.

Can you just explain so they understand what you're asking for?

DR. IGLESIAS: The property was acquired by Angel's Medical Company with the objective of developing an adult daycare. The clinic opened, Angel's Medical Center, in 2011. We have seen about 13,000 patients.

We have five doctors. I am the psychiatrist there. And I have found that in this population we have a lot of Hispanic population that -- elderly population that are isolated that don't speak the language. And they come to the clinic basically to talk, drink coffee, communicate. So it's a need of our population. This was the idea.

HEARING EXAMINER STRAIN: I wish I had known you were in the audience earlier because I would imagine you speak Spanish.

DR. IGLESIAS: I speak Spanish.

HEARING EXAMINER STRAIN: And that gentleman that was here who couldn't speak English very well, maybe you could --

DR. IGLESIAS: I could have -- I could have done it.

HEARING EXAMINER STRAIN: I would have tapped your resources. Mi espanol muy poquito. Very little.

DR. IGLESIAS: Okay.

HEARING EXAMINER STRAIN: But I appreciate your comments. Thank you.

And I don't know if there is anything else. I don't have any questions, other than the stipulation that staff has added to their recommendation that your parking not exceed 16 spaces.

Do you have any objection to that?

DR. IGLESIAS: Not at all. And one of the ideas is that the people that are going to work there, if this is approved, will drive the bus, like the workers. There will be like one or two, or whatever is needed, will also serve as the drivers that will come in and out. Even the workers could ride the bus that come into the --

HEARING EXAMINER STRAIN: Okay. So 16 spaces is the maximum you'll need?

DR. IGLESIAS: It's going to -- it's going to be plenty.

HEARING EXAMINER STRAIN: We're fine. Thank you very much.

DR. IGLESIAS: Thank you.

HEARING EXAMINER STRAIN: Is there a staff report?

MR. BELLOWS: Yes. For the record, Ray Bellows. And I'll take a cue from Nancy and say we're recommending approval.

HEARING EXAMINER STRAIN: Okay. Thank you.

Sir, if you would like to come up to the microphone and identify yourself for the record. And I'll have to verify that you were sworn in.

MR. VALDES: Good morning. Good morning to the members of the Board.

HEARING EXAMINER STRAIN: Tell us your name -- your name for the record.

MR. VALDES: Yes. For the record, my name is Victor Valdes. President of the Victor Valdes Civil and Human Rights Foundation.

HEARING EXAMINER STRAIN: Were you sworn in when I asked everybody to rise earlier

today?

MR. VALDES: Yes.

HEARING EXAMINER STRAIN: She will have to swear you in again.
(The speaker was duly sworn and indicated in the affirmative.)

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

MR. VALDES: You're welcome.

For the record, I am the Chairman of the Valdes Civil and Human Rights Foundation and as the Chairman of the Multicultural Alliance. It's a no-profit organization that is in with the minorities and the Collier County government.

But I am here as a person with 80 years old. And so I am neighbors in the District No. 3, Golden Gate City. I live Collier County 44 years.

I am approaching to my old -- my gold years where I will maybe tomorrow, maybe two years, maybe two years, I will need a -- a place where my family can put me for daytime and spending like a family place. Because I know the Clinic Los Angeles for several years. I am a patient. I am healthy because I'm patient of Los Angeles.

And I recommend we approve it -- this because we, the Hispanic people, that live in the area need a place where the family can rest in mind that we will be okay with this family business, okay?

Thank you very much.

HEARING EXAMINER STRAIN: Thank you. And you and I have met several times in the past.

MR. VALDES: Yes, yes.

HEARING EXAMINER STRAIN: I think I've even viewed your studio.

MR. VALDES: Yes.

HEARING EXAMINER STRAIN: And in those days, like me, you didn't have as much gray hair.

MR. VALDES: Yes. I am -- I still have in the business of TV show called in Spanish Agarrando El Toro Por El Cuernos. In English it's Grabbing the Bull By the Horn.

For the past, you know, I was a critic of some people in the government. Today we have a good relation.

HEARING EXAMINER STRAIN: Good.

MR. VALDES: You know. And I feel happy in Collier County. This is my -- this is my -- my place.

HEARING EXAMINER STRAIN: That is good to hear.

MR. VALDES: Thank you very much.

HEARING EXAMINER STRAIN: Thank you, sir.

Are there any other members of the public that would like to speak?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we will close the public hearing and a decision will be rendered within 30 days, most likely by the end of next week.

And that takes us to the end of that case. Thank you all.

The other items on today's agenda, there is no other business.

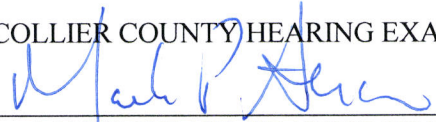
We have an item called public comments. Does anybody in the public wish to comment?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this meeting is adjourned. Thank you all for attending.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:57 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 8-9-17, as presented
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
U.S. LEGAL SUPPORT INC.
BY KELLEY MARIE NADOTTI, RPR, FPR, COURT REPORTER AND NOTARY PUBLIC.