

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
November 30, 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 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

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

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, November 30th meeting of the Collier County Hearing Examiner's Office.

If everyone will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Housekeeping matters: The individual speakers will be limited to five minutes, unless otherwise waived.

The Hearing Examiner's decision is final unless appealed to the Board of County Commissioners.

And a decision will be rendered within 30 days, usually -- hopefully a lot less than that.

And my computer was updated last night, so I'm having trouble following what I had previously highlighted. So we have to work our way through this a little slower than normal.

Review of the agenda: We have one continued item, it's the Item 3.B. This item has been continued from November 9th and further continued to December 14th. It's Petition No. BD-PL20170000541, the David Bausch boat dock extension. And so that will be heard on December 14th.

Today that leaves us one advertised public hearing remaining. It's Item 3.A. It's Petition No. PDI-PL20170001859, Cameron Partners II, LLC. It's to -- for a deviation to the Heritage Bay PUD for an internal buffer between lots two and three along Immokalee Road.

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

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Disclosures on my part. I've talked to staff, I have talked and had emails with the applicant over a period of time, I've talked with the County Attorney's Office on some issues, and I have read a lot of information regarding the Heritage Bay staff report and the PUD documents.

So with that, I'll also let everybody know, there's any members -- there's no members of the public here, so it's just staff and the applicant. I'm going to ask that we have a little different process here, a little more informal discussion. You'll need to use the mics when we talk, and I'm going to ask staff to interact as we go along instead of separately addressing it by staff report.

This particular application started out originally with discussions that I had a little differently than it's ending up, but I want to make sure we understand what you're trying to do versus what I thought was the application at the beginning.

So with that, if the applicant wouldn't mind coming up to the microphone. That microphone right there. We won't need a formal presentation because there is no member of the public here, but we'll just work off the documents in the staff report. If you could identify yourself for the record.

MR. MOYER: Dan Moyer with CPH.

HEARING EXAMINER STRAIN: Okay, the owner/applicant was noted as Cameron Partners II, LLC, but there's apparently a new owner, that's 2017 Goodland LLC; is that correct?

MR. MOYER: That's correct. The property changed hands about a month or two ago.

HEARING EXAMINER STRAIN: Okay, and you're still the representative of that owner?

MR. MOYER: Correct. We have an affidavit for both parties.

HEARING EXAMINER STRAIN: Okay. What has occurred, and I'm going to provide some information to staff to put on the overhead for me, whichever one of you -- first one, put that one on top on first, I want to use that as a talking point.

I'm trying to understand exactly what you're trying to do, because the staff report and your request and some of the discussions I've heard are not consistent.

Now, originally, and this is what's in the staff report with the exception of that highlighted line in the middle. Staff report just shows parcels two and three. There is no further subdivision of those parcels in the staff report. It's just that.

So my assumption all along has been that you're trying to -- there's a process requirement to undo those internal -- that internal highlighted landscape buffer that's common between the two properties.

The process is simply you have to submit simultaneous SDPs or SIPs at the same time to have that done.

Your request that I've originally seen, you simply want to amend the process. You want the process

to allow you to still remove that buffer but do it by non-simultaneous SDPs and SIPs.

MR. MOYER: That is correct. The request was to basically allow us to eliminate those common buffers that you would be able to do with both SDPs going through at the same time, to allow them to be staggered due to the way the deal was set up.

HEARING EXAMINER STRAIN: And that seemed simple enough. And I -- we waived the NIM, we did everything based on that.

In reading the staff report there is a considerable amount of more change. In fact, if you could put the second -- go to the second plan.

One of the things I noticed was that your potential of looking at subdividing the two parcels further and those blue lines with the red outlines are where the new locations of the buffers and the property lines might be if you did it equally. I just took a stab at it thinking that might be what -- is that what you're intending to do?

MR. MOYER: That's correct. The plat and the PDI have been proceeding simultaneously. Both submittals were made within a couple weeks of each other. And as we work through the process on both, obviously there's interaction on both because the plat has the landscape easement shown as well. Those were left into the plat because we didn't know the timing between this hearing, as well as the plat. The plat was approved and recorded. The plat was recorded last week. So now we do -- the two parcels are now three.

HEARING EXAMINER STRAIN: Okay.

MR. MOYER: I have a copy of that plat if you'd like --

HEARING EXAMINER STRAIN: Well, you may have it. I don't know why I wasn't given a copy. I'm kind of shocked that all that was going on. I thought the basis of moving this through was that was going to come as a result of whatever discussions we had today. So okay, let's try working with that.

Does anybody have a copy of the -- you have a copy of the plat? Can you put it on the overhead?

And Mark, this is Mark Templeton, he's our landscape reviewer.

You know, this is all going to have to be looked at for relocation on site for square footage and the other elements that are involved here.

Did you look at it as two buffers -- actually four buffers being removed or just the original buffer between lots two and three?

MR. TEMPLETON: The original buffer between two and three.

HEARING EXAMINER STRAIN: Okay. You have that plat?

MR. MOYER: I'm working on it. I do have it.

HEARING EXAMINER STRAIN: Was staff aware that this was going through platting at the same time?

MR. TEMPLETON: No.

MR. MOYER: The -- one small point. When we made the request at the neighborhood meeting, we provided exhibits that were based on the three parcels. As we worked through staff we've also provided copies. The -- two of the SDPs are already in process. The westernmost lot, which is Culver's, that's going through an SDP right now. It's gone through two rounds of comments.

The middle parcel, Taco Bell, that's gone through SDP and has received one round of comments.

Both of those reference the upcoming PDI and have the impacts, the buffers and how they're mitigating those based on the current PDI.

We also have negotiating language --

MS. ASHTON-CICKO: If I could just interject. None of this was submitted as part of the CityView review. Because I looked at all the documents that were under your petition for CityView, and this was not there, nor was there any reference to a pending replat.

MR. MOYER: We actually had language in the plat at one point that said plat lots two or three or as further subdivided. Because we were going through the plat.

MS. ASHTON-CICKO: I understand there was a request, but there was nothing that indicated that there was any, at least for me, maybe you did to Mr. Reishl, but there was nothing that indicated that you had any pending plats.

HEARING EXAMINER STRAIN: Well, let me ask a couple of questions about the plat. Because

this is -- I would have liked to have reviewed what you're actually doing so this could have come out more definitive so we're addressing the right issues that you had wanted. This is somewhat of a surprise in regards to being done.

On the left -- the far right side up against RaceTrac, you have some dotted lines. I can't read the width of those dotted lines. What is all that text in that area referring to?

MR. MOYER: To the east side of the RaceTrac --

HEARING EXAMINER STRAIN: East side. Well, the west side of the RaceTrac but the east side of lot three. Well, what used to be lot three.

MR. MOYER: So on the east side there's an existing -- the roadway, there's an existing driveway.

HEARING EXAMINER STRAIN: Right.

MR. MOYER: That's along the east.

HEARING EXAMINER STRAIN: Right.

MR. MOYER: So we had to provide for that. There's an existing easement.

There's also an additional easement, a landscape buffer that RaceTrac put onto that lot three when they went through PDI. So instead of having it require a seven and a half foot buffer on the east, we're required to have a 10-foot based on that previous PDI.

HEARING EXAMINER STRAIN: Okay. But does that -- I can't read that overhead. Does that plan reflect a 10-foot on that location or does it say seven and a half?

MR. MOYER: That shows -- it says seven and a half.

HEARING EXAMINER STRAIN: So the plan's wrong. The plan's wrong?

MR. MOYER: Well, the plan was based on the code requirements. So -- but there's an additional PDI that was recorded that required us to provide 10 feet.

HEARING EXAMINER STRAIN: Right, so why would you replat it at seven and a half if the PDI was issued on April of 2016 and you replatted this after that date. And the Planning Commission specifically approved that for a 10-foot wide buffer? And it's already -- according to the Planning Commission's language, and I have it right here: Prior to the issuance of the Site Development Plan on lot floor, Heritage Bay Commons, tract D replat, the owner shall install the required 10-foot Type A landscape buffer over the eastern 10 feet of the abutting portion of lot three.

Then, the owner of lot three Heritage Bay Commons Tract D replat shall advise any purchaser of the landscape requirements in sections 111.A.3 below, which is what I just read.

So again, why does the plat not reflect what you're required to do by the Planning Commission? And I wasn't on the Planning Commission for this, so I just had to pull up their records.

MR. MOYER: You know, I'm not exactly sure, Mark, to be honest with you. I mean, I know when we went through the plat we showed what the normal -- from the original plat I think they just copied what we had on the original plat, that showed the seven and a half feet. Obviously we're still required to provide the 10-foot buffer based on the --

HEARING EXAMINER STRAIN: Did that lot on the east side up against RaceTrac change hands before today? I mean, I think I read there's a different applicant now.

MR. MOYER: No, the ownership right now, all three parcels are owned by one owner.

HEARING EXAMINER STRAIN: Has that one owner owned it since 2016?

MR. MOYER: No, they just purchased it last month.

HEARING EXAMINER STRAIN: Did you inform them on the joint access agreement and the --

MR. MOYER: Yes.

HEARING EXAMINER STRAIN: -- 10-foot buffer, even though the plat says seven and a half on --

MR. MOYER: Yes, they're --

HEARING EXAMINER STRAIN: -- east side of former lot three?

MR. MOYER: Correct. And the person that's working on the permitting design on that is aware of that and they show the required 10 feet.

HEARING EXAMINER STRAIN: So your request today, I mean, we're going to have to get into some of the -- I'm a little disappointed I haven't got the most recent information. I'm not sure how that's going

to work out by the end of today, but we'll get in --

MR. REISCHL: Mr. Strain, you said just to jump in.

HEARING EXAMINER STRAIN: Yeah, go ahead.

MR. REISCHL: I believe what happened was that the department who was working on the replat could only replat it using current regulations, and this PDI had not occurred yet. Therefore --

HEARING EXAMINER STRAIN: What PDI had not occurred yet? Today?

MR. REISCHL: The one we're working on today.

HEARING EXAMINER STRAIN: But what does that got to do with the platting of --

MR. REISCHL: Because they couldn't fit the buffers in there with the replat, therefore -- and Dan, correct me if I'm wrong, but did -- the replat wouldn't have worked without this PDI; therefore, in order to go forward with the replat, they used current LDC standards, not --

HEARING EXAMINER STRAIN: Fred, I'm not talking about the common property lines in the center, I'm talking about the one against RaceTrac that already has an ordinance requiring it to be 10 feet. So why would we allow a plat to show it at seven and a half?

MR. REISCHL: No, you're correct.

HEARING EXAMINER STRAIN: Okay. Well, I guess that's one question that's going to have to be answered. And I don't know why we would have a seven and a half buffer finalized and approved on a plat when an ordinance from a year prior -- about a year prior to this required 10 foot. So that's probably a question I might have to ask the County Attorney's Office as to how that could have happened and if it's acceptable. First time I've seen this happen, so...

MS. ASHTON-CICKO: I'm not familiar with the document that you're looking at, but if you're saying that the ordinance required -- or resolution required a 10-foot buffer and they only provided seven and a half, then no, that should not have happened.

HEARING EXAMINER STRAIN: Here's the ordinance. It was done by the Planning Commission on April of 2016. And you'll see the 10-foot reference on the next page, Item 3. And that was the reference that should have been noticed to the property owners before the sale. And they've acknowledged they were aware of it, so that at least covers that point.

But it's the second page, on the top of the second is where the reference to the 10-foot is.

All that should have been done, installed, in agreements, which means they all were done well prior to replat, and I don't understand how that was missed by county staff. And I'm not sure who on county staff would have missed it, but I would like to understand that better.

And I did find out that apparently the language that the Planning Commission had added which says: Prior to the issuance of the site development plan for lot four that 10-foot landscape buffer will be installed.

It's required to be. So I don't understand why it isn't. Because I just found out it wasn't looked at that way. So again, it's another question as to -- if that was what the resolution said, that's what staff is supposed to review to. And it doesn't look like it was.

And Fred, I know you didn't do the plat, so I'm not saying this is your fault, I'm just trying to figure out how someone got there to approve the SDP without the buffer installed, and then for the platting department to approve the plat without the 10-foot that's required by the previous action that was approved and recorded.

So those are two questions that we're going to have to follow up with before we go too far.

Also, according to the joint project plan, you were supposed to -- this is supposed to benefit you. I'll read the language: Abutting platted parcels may submit a joint project plan to remove one side or rear landscape buffer along a shared property line in order to share parking or other infrastructure facilities.

Has staff received anything showing that the shared parking that they're sharing the parking or infrastructure facilities has a reason for this joint plan, the buffers being needed to be removed, consistent with that language?

MR. REISCHL: I believe that would be through a different department.

HEARING EXAMINER STRAIN: Okay. Mark, you're the different department.

And I think you previously told me you review these for both SDP and this level. So would that shared parking and infrastructure facilities acknowledgment be needed at the time of SDP?

MR. TEMPLETON: I believe that's how the code reads, yes.

HEARING EXAMINER STRAIN: Okay. So I will be stipulating a condition that would lock that in so you have -- the buffer that you're asking to be removed would be removed so long as that it's to benefit as a result of shared parking or other infrastructure facilities. Is that something you were planning on?

MR. MOYER: The three -- so the PUD has shared parking as far as the PUD. I know all three users are going through their SDPs now and I know they're submitting for their administrative parking reductions. I know two of the users are a little bit short on parking.

I think that's -- you know, all the other use- -- the PUD allows everything in this activity center to basically allow for shared parking. From my understanding there's not much excess as of right now for what's been built.

HEARING EXAMINER STRAIN: So this entire activity center allows shared parking. I believe you're right, I remember some language about that.

Then if you -- if that was one of the requirements already acknowledged, then how can that be a basis for a joint project plan? It's already built into the PUD is what you're saying.

MR. MOYER: From a parking standpoint, correct. The PDR (sic) allows for --

HEARING EXAMINER STRAIN: You say these three parcels are in for --

MR. MOYER: Two of the three are in. The two westernmost parcels are in for SDP right now.

HEARING EXAMINER STRAIN: Has anybody checked the SDPs to see how consistent they are in regards to the other requirements for the joint project plan, such as shared parking and other infrastructure facilities?

MR. TEMPLETON: Like the Culver's and Taco Bell and --

HEARING EXAMINER STRAIN: I don't know which ones they are.

MR. TEMPLETON: Yeah. I have looked at the landscaping. I would have to check with Chris Scott on the shared maintenance and access easement requirement of it.

MR. REISCHL: I looked at the Culver's, which is the westernmost, just in conjunction with parking. And I believe that that's due on Friday, I believe. So that's not completed yet. I think on the second review.

HEARING EXAMINER STRAIN: Okay. This is getting more confusing by the minute.

Look at what you just put on the board. Thank you for putting it up here.

Notice on the track to the former track three to the right, you have three lanes, drive-thru lanes of some kind, going through that facility.

Then to the left, the center parcel, it looks like you've got a drive lane on the east -- the western side up against that property.

And did staff take a look at this to see: The buffers to be eliminated shall not be a perimeter buffer or adjacent to any internal main access drive. So are those main access drives? And if they are, how are we -- now, I'm not saying what you're asking for is impossible, I'm saying I don't see where it's been addressed in the staff report or staff review. And all this information is on record. So I don't know why we wouldn't have taken a look at it.

So Mark, if you were to apply section 4.06.02(C)(7), number D. And if staff could put this on the overhead it might make it easier to follow.

You might want to slide that down a little bit, Fred. Okay. That's good.

The last one, item D, says that: The buffer to be eliminated shall not be a perimeter buffer or adjacent to any internal main access drives.

Based on the site plan that they showed with those drives, would they have needed that issue to be deviated from as well?

MR. TEMPLETON: No. The buffers on the side are not adjacent to what would be considered an internal main access drive.

HEARING EXAMINER STRAIN: Okay. Then the other question is, as far as the joint -- you can pull that off for just a minute, if you don't mind.

The reasoning for this joint project plan being allowed is for shared maintenance -- I just read it earlier, hang on a second, I'm trying to find it on this one.

In order to share parking or other infrastructure facilities.

So is there any shared parking on these plans? It doesn't look like it.

Is there any shared infrastructure facilities on these plans? For example, the RaceTrac had shared infrastructure, they had a common -- they had a driveway. How are these similar to that?

Look it, I'm trying to understand what you're doing, because if you don't get the right deviations you won't get out of here with a buildable plan. So I've got to ask these questions to understand where we differ from what was originally applied for and what the code says to make sure we've asked for all the right things so that when this is issued it covers everything. I'm not saying what you're asking for is necessarily unapprovable, I just want to make sure it was addressed, and I haven't seen evidence to that effect. In fact, you've showed me more evidence today than I've seen since I started reading on this, this small what I thought was a rather insignificant request.

MR. MOYER: As far as the shared common -- obviously there is the cross-connection access along the south of the property which connects the dental -- from the dentist office to the west through the RaceTrac. So that's that main access road on the south.

There will be shared parking as part of the development. All three users will be signing an REA that will dictate cross access, cross parking allowances.

HEARING EXAMINER STRAIN: REA stands for?

MR. LIPOFSKY: Reciprocal easements and access agreement.

HEARING EXAMINER STRAIN: You'll have to repeat that for him since he's not on the record.

MR. MOYER: Reciprocal easements and access agreement.

HEARING EXAMINER STRAIN: Okay. So part of the conditions are you're going to have all three of these parcels sign that agreement to allow shared parking amongst them.

MR. LIPOFSKY: It's already been recorded.

HEARING EXAMINER STRAIN: Well, sir, you'll have to identify yourself for the record.

MR. LIPOFSKY: Steve Lipofsky with the Ferber Company.

HEARING EXAMINER STRAIN: Okay.

MR. LIPOFSKY: The REA has already been recorded.

HEARING EXAMINER STRAIN: Good enough.

Heidi, before we started today, you had indicated that you had had a conversation with Mike Bosi about this application be applying to more than just the two lots that were original plat.

And Mike, you want to elaborate that? So Mike's here, I'd like to get his testimony in that regard.

MS. ASHTON-CICKO: When we had met with Mike, we were not aware of the replat that was pending, so it was a -- they had asked for another split beyond the two lots. But since that was not solidified we were told that we were just going with the one split between lots two and three and not a further split. That was dropped from staff's review.

HEARING EXAMINER STRAIN: Okay. But then as far as a review of the reduction in the internal buffers, you've actually doubled the amount of relocation needed. And I don't know if when Mike made that comment -- Mike, would you come up and provide us with any input you had in that regard?

MR. BOSI: Mike Bosi, Planning and Zoning Director.

Yeah, within our conversation I said we're going to read the plain reading of the request. And the plain reading of the request was between the two parcels for the -- the relocation of the buffer. And we were in that -- we're reviewing it under that understanding.

HEARING EXAMINER STRAIN: Okay. So you don't believe the review was done based on this new plan that's up there?

MR. BOSI: Oh, I don't believe it was at all. I think it was -- it was based upon the request as stated within the application.

Now, I'm not saying that there can't be justification, as long as the material is provided within the appropriate locations. The way that these parcels are sharing facilities makes -- there's merit to approving that request. But it would have been beneficial if the end product would have been designed within the application so we could have reviewed it based upon what they were ultimately asking for.

HEARING EXAMINER STRAIN: And right now it appears that the end product documents are submitted, so the SDPs are in process. And our SDP landscape reviewer happens to be here. So thank you, Mike.

Mark, when you looked at these SDPs, at least the two of them, did they show the relocations of the landscape buffers on the sites?

MR. TEMPLETON: They did. And I believe I had some rejection comments on those.

HEARING EXAMINER STRAIN: Okay.

MR. TEMPLETON: It wasn't clear to me that all of the requirements were met.

HEARING EXAMINER STRAIN: Okay. Do you see any problems in them being able to meet them? I mean, they're asking for a very limited amount of issues here today. And if they come in and keep getting rejected, I don't want them back in here again for another PDI, I'd rather see it cleaned up today to the extent it can be.

MR. TEMPLETON: I think it's possible for them to get cleaned up to where they need to be.

MR. MOYER: All right, I'd like to point out, I mean from the very first pre-application meeting we've had on this project we have always had three parcels. We have not provided any plan showing two.

The issue with the request saying lots two and three, because all along, based on our expected timing of the PDI, it was going to happen before the plat. So when we go through and reference lots two and three, we had to reference lots two and three because that's what existed within the PDI, with the location map and other documents, there's two lots. We couldn't reference a proposed split that was going to happen after the PDI.

Even the original request talks about three users. Every plan we've ever done on this project from the get-go has always had three developments. From the SDP pre-apps, the pre-app -- we did a pre-app for a plat. All these have always showed three documents.

We had language in the PDI that referenced further subdivision that was changed to say "or other internal buffers" to be more vague because of the timing of the PDI. So I would disagree that having three users is anything new. This is -- we have not done a plan with two.

HEARING EXAMINER STRAIN: From your perspective, I don't disagree with you. It isn't anything new. But it is to my office, because it wasn't in this packet. I have one reference in a letter from you to the staff saying you were proposing to do this. And I read that, but there was nothing in the documents even suggesting that staff considered that as part of the analysis. Because it doubles the amount of on-site relocation or trellis that you've asked for as an option that would apply to this project.

MR. MOYER: Correct.

HEARING EXAMINER STRAIN: And that's a different scenario than what I had been given to review. That's the piece that bothers me.

And again, I'm trying to tell you, it's not something I'm suggesting says no, you can't do this. I just need the right documents to understand it. That's where it's coming from.

Heidi?

MS. ASHTON-CICKO: Yeah, and the language of -- the proposed language would have to be changed to reflect the new plat and the new lots.

HEARING EXAMINER STRAIN: And honestly, that's the next piece I was going to look at. Because the deviation language is actually at the end of the staff report where it's not supposed to be, but still I found it.

And you're asking for specific deviations that don't seem to apply here. For example, from Section 4.06.02.(C)(7)(a), which allows abutting platted parcels to submit a joint project plan to remove one side or rear landscape buffer along a shared property line. As long as the joint project plan is submitted either as a single SDP or SIP consisting of both parcels or separate SDPs or SIPs for each parcel submitted concurrently to instead allow the owner of lots two and three to eliminate the required internal landscape buffers for lots two and three or any internal buffer, subject to the following conditions.

Then we get into the conditions.

But first of all, the only part of that entire paragraph you're asking for a release from is the

simultaneous submittal of the SDPs, and then you wanted to have any internal buffer apply.

I would rather have it specific to the replat, now that we know the replat's done and recorded. It sure makes it a lot cleaner than trying to guess what you're meaning by internal buffers. So that is one cleanup I think that's needed.

We get into number one, it says: There will be no net loss of landscape material or area of the buffer. And that's paraphrasing.

Number two: The eliminated buffer areas shall be provided else in lots two and three in areas not used to meet other landscape requirements.

Number three: Relocated buffer plantings in areas should be labeled as such on the delineated landscape plan of the SDP, which Mark as acknowledged he's reviewing.

But number four is a little -- I'm not clear on that. In the event that there is not adequate pervious area, and it said, to satisfy number two above -- which I really think the issue is number one and two for this -- a planted trellis may be provided to make up for the deficient area.

I have since talked to staff, because they have a minimum trellis of five feet high, or no less of five feet by one-third the height of the structure.

But the way this is written, if it substitutes for the square footage that's horizontal on the ground to go vertical, we would need a one-to-one ratio. So if you take out 100 square feet of ground, you have to put 100 square feet vertical in the trellis. That was what staff was working on, some language to produce to get that to happen.

They did that. They provided some draft language today. I had tried to write something last night, thinking this was the only issue we had today, until I found out all about this other stuff.

But my suggestion was after the first line: In the event that there is not adequate pervious area to fully relocate the landscape material or square footage on site, the owner shall meet as much as can be obtained and relocation of buffers on site. If adequate area is not found, a trellis on a one-to-one ratio may be used for every -- (for every square foot of buffer that is unable to be relocated, a square foot of trellis will be added).

With this ratio met, the area of the trellis may be counted against the needed ground area and not relocated.

I wanted something to that effect. Staff submitted something this morning to me that I know they gave you a copy of. That may get there. I'm not sure if it's as tight as I'd like to see it.

That's -- you know, that's my issues with that. I don't know at this point why we need to be vague in our references to what you're -- what buffers you're trying to remove. If you looked at the colored one that I put on, you basically could give me an exhibit just showing those -- these two internal buffers specifically highlighted so I know and it's clear for an attachment to the decision what it is you're trying to do.

And then as far as the 10-foot on the western -- or eastern side, I don't know if it needs to be cleaned up by plat or just acknowledged in the SDP or an exhibit to my decision would be adequate. But I'd like -- well, it's up to legal to determine if it should have been on the plat. You may end up having to modify your plat. Whatever legal decides on that is fine with me. But I would like the right distance in my decision so it's covered that way.

So an exhibit would have to reflect the 10 foot on the east, the clear delineation of where the internal buffers are that you want removed.

And then the language to what you're requesting needs to be cleaned up to be consistent with the plan that you've now got approved as a plat and the plans that you have in for SDP. And all that should be coordinated so the decision is one that they -- is complete enough that they're not going to have any problems going down the road when they finish their SDPs and through that process.

Do you have any problems with that?

MR. MOYER: No, sir. No. I mean, the request was for external buffers. See, we're providing all the external buffers on the four sides of the development, so what those require will be provided. There's no issue there.

HEARING EXAMINER STRAIN: I have -- we have another hearing in two weeks. We could finalize this at that hearing instead of this one with proper documentation and staff reviewing all of the

documents involved to make sure that everything that they're needing to do this has been incorporated into the language they're asking for for the PDI.

Do you have any problem with that time-wise?

MR. LIPOFSKY: Will we still need --

HEARING EXAMINER STRAIN: You'll need to come to the microphone and identify yourself for the record.

MR. LIPOFSKY: Steve Lipofsky with Ferber.

Will that still put us on the track for BCC in January? January 9th.

HEARING EXAMINER STRAIN: January 9th? If you came in -- well, what's the deadline, Ray or Mike? Do you guys know? You'll have to use the mic to answer.

MR. BOSI: The posting deadline normally for the Board of County Commissioners at the staff level is about 35 days before. So that would put us December, you know, 2nd or 3rd for a first level of SL review.

HEARING EXAMINER STRAIN: Okay. Well, I'm concerned about how to make -- have this come out correctly. That's where I'm coming from. And if I have to write this up based on discussions today and where things have not been finalized -- because the documents that are on record have not all been provided to me, unfortunately. Some of the language that I use to write up the conditions for the decision may not be as tailored to what you're doing as they could be if we had a bit more time to understand it.

How critical is your January -- first meeting in January date?

MR. LIPOFSKY: Well, as you know, Culver's and Taco Bell, the two westernmost parcels, are in for their site development plan review. So we're obviously not trying to hold them up from being able to get their permit.

Everyone here is aware of the requirements, specifically the eastern parcel, that 10-foot buffer. It's reflected on all their plans and it's in their title work. So everyone knows about it. I don't know if it can be handled as a condition of approval or --

HEARING EXAMINER STRAIN: That's what I'm trying to figure out. I'm just worried -- I write -- I try to write these decisions with very tight conditions so that when staff reviews everything they haven't got to guess what was intended. Unfortunately over the years sometimes that still happens. And if I write this real tight and something that we didn't discuss comes through in a review that doesn't fit what I write, you're going to be back in to start the process over again. That's what I'm worried about.

And I don't know, Mark, can you -- how comfortable are you with what you've got as far as SDP submittals to understand how much of what was supposed to be in this PDI fits what they're applying for?

MR. TEMPLETON: I'm pretty comfortable with it.

HEARING EXAMINER STRAIN: Okay. As far as the plat goes and from the County Attorney's Office, is there anything that would prohibit me from using the decision to delineate the eastern 10-foot buffer where the plat failed to do it, or does that have to be done on some kind of replat?

MS. ASHTON-CICKO: Without having the documents in front of me it is difficult to advise you. From what I'm hearing is you're saying it was platted at seven feet but the ordinance requires 10.

HEARING EXAMINER STRAIN: Correct. It was seven and a half. The ordinance re- -- the LDC requires seven and a half. The ordinance was modified by a PDI over a year ago to require 10.

MS. ASHTON-CICKO: That's not the issue before you today, so I don't think you can fix or do anything with that buffer. That's going to be a separate issue that they're going to have to resolve.

HEARING EXAMINER STRAIN: Okay. That's fair enough. I have no problem. If I haven't got to deal with it, then I don't need to.

The other issue is from a perspective of staff's review, they're going from one internal buffer removal to doubling it to two. And this is more for Fred's review or Ray's from a planning and zoning perspective.

You guys didn't evaluate this project based on that. Do you have any issues that you see that you will need some time on before you can affirm everything that you've supplied in the staff report is still consistent?

Mike?

MR. BOSI: Mike Bosi again.

Absolutely not. These are the type of -- this is the type of interconnection within individual parcels

within a shopping complex that I think we want to see more promotion of. We want to see a better interconnection. And because the displacement of the buffers related to the interconnections of the shared parking, I think these are things, the type of design functions that we would like to promote.

So as long as the displacement of the landscape buffers are provided for, as required by code, we have no problem with the request being expanded to an additional buffer.

HEARING EXAMINER STRAIN: Okay. That's what I was looking for.

Let me make sure I've got all my questions answered.

Again, you know, they send you these updates to do to your computer, and as soon as you do them everything is supposed to work. Well, guess what I found out this morning? It doesn't. It requires me to scroll through the pages to look at my notes instead of just clicking on them. So it will take just a second.

We resolved the issue of the trellis through the language; we know it's a one-to-one. We'll clean up the language on that and get something -- between what I have written and what you have written, something will come out along that nature. I don't think it's going to differ from any of that.

And I believe that's all I have on those issues. And I'll scroll through the rest of this.

And while I'm at it, does staff have any written objections to this project, either by email or -- there was nothing in the staff report.

MR. REISCHL: No, I received a phone call, I believe I brought it to your attention, of a woman who lives in Heritage said she doesn't think Collier County buffers are adequate. That was a general comment.

HEARING EXAMINER STRAIN: Understand. And I had a lady show up, when this was previously scheduled, believing it had impacts on the traffic. She thought it was more than it was. And I explained to her it was only the internal buffers, and she had no questions at that point.

So with that, I've -- that's -- everything I needed to request and discuss has been done, so I'm finished with my questions of you. Thank you.

And we'll have to go double check with staff and we'll go from there.

Yes?

MR. MOYER: If the only issue holding up would be the exhibit, we did prepare an exhibit when we sent the request for the waiver, waiving the neighborhood meeting which show the three parcels with the internal ones highlighted. We could re-provide that.

HEARING EXAMINER STRAIN: When this was -- yes, before I can issue a decision -- I was going to, after I got staff's report -- I will need something visual, a graphic I can attach to a decision that indicates exactly what buffers you're talking about.

And my understanding is it's only those two buffers in the center parcel on each side of the center parcel and on each side of those two parcels adjoining it. So seven and a half on each side. And it's only up to where the south and north buffer hits. So you're not taking any of the external buffers out, just those two internal buffers.

So the language in the deviation will change differently because it won't be referring to any internal buffer, it will be referring to the internal buffers that's shown on the exhibit, okay? And that will clean that up and we don't have that ambiguity going down the road.

Also, I'll work with staff between their proposed language and what I read in the record that I was thinking of. They say the same thing. Mine's a little more detailed into exactly what I would understand it to mean. I'll work with staff to make sure it comes out along the same lines that was similar to the lines read in the record. It shouldn't be substantially changed.

With that, I don't have any other questions.

Do you have anything else you want to add?

MR. MOYER: I do not.

HEARING EXAMINER STRAIN: Okay, thank you.

We will probably keep this on line then. A decision will generally come less than 30 days, probably within a week or two. But that will keep you on track for your January hearing.

MR. LIPOFSKY: Thank you.

MR. MOYER: Thank you, sir.

HEARING EXAMINER STRAIN: And with that, I'll turn to staff. Does staff have anything besides the interaction we've currently had they want to add to the record or for discussion?

MR. REISCHL: I just have the modified version of number four that was provided to you and to the court reporter and the applicant. I didn't know if you wanted me to read that into the record or --

HEARING EXAMINER STRAIN: You can read it into the record, Fred, because I read mine in. And what I'm going to do is bring them both together to mean the same thing but provide a little more detail than just what yours has provided.

I don't want there to be a mixup in some -- staff's interpretation as we go down the road. Not necessarily in your department but in one of the other departments. They don't read it the same way. So I'll just elaborate a little bit more on what we mean by replacement with the trellis. It will simply be a one-to-one ratio and it will be for the square footage that can't be relocated horizontally, it will be done vertically. And it will be only for those two internal buffers.

MR. REISCHL: Other than that, no other comments.

HEARING EXAMINER STRAIN: Okay. Do you want to read yours into the record just --

MR. REISCHL: Sure.

HEARING EXAMINER STRAIN: -- for cleaning it up?

MR. REISCHL: Number four: The owner shall relocate as much landscaping and square footage as they can fit on site. However, in the event that there is not adequate pervious area to fully relocate the landscaping material and square footage on site, a planted trellis may be provided to make up for the deficient area.

The trellis shall be a minimum of one-third the structure height and have a length of no less than five feet. The trellis shall not be used to satisfy facade standards.

The trellis shall be shown on the architecture elevations at the time of SDP.

The area of the trellis can be counted towards the ground area of the buffer.

End of modification.

HEARING EXAMINER STRAIN: Okay, and what I'll do is mix the two together to take the additional detail talking about how that square footage is acknowledged and stuff like that.

The other issue I want to ask Mark Templeton of is, Mark, it says the trellis shall be a minimum of one-third the height of the structure. We always have a question about height in Collier County lately because we have two heights. What height were you --

MR. TEMPLETON: Zoned height or actual height, right?

HEARING EXAMINER STRAIN: Right. So which one were you referring to there?

MR. TEMPLETON: I actually did not come up with that language.

HEARING EXAMINER STRAIN: Okay, what was your language?

MR. TEMPLETON: My language was just to make sure that the trellis, whatever deficiency that there was, that there's language in there that said the trellis was going to make up for that deficiency. Whatever that was. I didn't have any specific height or width requirements in it. So I'm not sure if Mr. Moyer came up with that or who it was that came up with that one-third and five feet.

HEARING EXAMINER STRAIN: The only reason for this is strictly as a minimum. So for example, if you need two feet to be made up, the minimum you're going to build a trellis to is five feet by one-third of the height of the structure. I'm not too concerned if it's zoned or actual. I think zoned is more favorable to the applicant. There's no reason why it shouldn't be. They still got to meet that square footage, but as a minimum zone would be a good one to substitute there.

So unless there's no objec- -- unless there's an objection, that's what we'll go with.

MR. BELLOWS: We are fine with that.

HEARING EXAMINER STRAIN: Okay. That takes me to the end of -- you had nothing else to add, Fred?

MR. REISCHL: No.

HEARING EXAMINER STRAIN: I think that's been good enough.

Okay, and there's no members of the public here. So with that, we will close this hearing and a

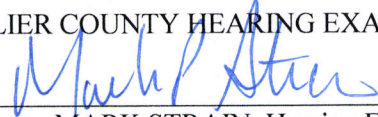
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decision will be rendered within 30 days but hopefully a lot less. I'll work on it as soon as I can get this language reworked. And it should be fairly quickly.

With that, takes us to the end of our agenda. That was the only item on today's agenda. There is no other business, there's no members of the public here for public comment. And with that, the meeting is adjourned. Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:45 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, Hearing Examiner

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 12-15-17 as presented ✓
or as corrected _____.

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CHERIE' R. NOTTINGHAM