

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
February 22, 2018

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
Nancy Gundlach, Principal Planner
James Sabo, Principal Planner
Scott Stone, Assistant County Attorney

HEARING EXAMINER STRAIN: Okay, everybody, good morning. Good morning, everyone. We'll try to get these mics to work.

There we go. Good morning. Welcome to the Thursday, February 22nd meeting of the Collier County Hearing Examiner's Office. If everybody will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some announcements. Individual 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.

In review of the agenda, we have four advertised public hearings today. One is a continuation, which is the first one. The other three are new to this meeting today.

And with that we'll move right into our advertised public hearings. The first item up is Petition No. PDI-PL20160003482. It's Distinctive Residential Development of Livingston, LLC. It's up around the Mediterra project on Livingston Road.

This item has been continued from the January 11th meeting and again from the January 25th meeting.

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: Thank you.

Disclosures. On my part, I have talked to staff. I have also talked with the applicant numerous times over the past month or two. That's the extent of the disclosures. There was one member of the public here, one of the meetings, I spoke briefly to her. And that's all the disclosures I have.

With that, before we go any further, the reason this has been continued is issues with the review for legal sufficiency. So I'll turn to the County Attorney's Office first, and ask him if this has county attorney's legal sufficient sign-off.

MR. STONE: Scott Stone for the record.

As of now we do not have the requisite written consent from the owner of the 30-foot strip on the northern portion of the PUD property, and therefore the petition may not move forward until we receive such.

HEARING EXAMINER STRAIN: Well, that's -- in that case the petition will need to be continued indefinitely.

Mr. Yovanovich, did you have something you wanted to add to the record?

MR. YOVANOVICH: Yes. Good morning. For the record, I have quite a bit to add to the record. Is it on now?

HEARING EXAMINER STRAIN: There's a green -- there should be a green triple bar on your -- that eventually lights up. These have been problematic. We can't seem to get new ones.

MR. YOVANOVICH: It looks like a -- there we go. It just came on. It kind of looks like a wi-fi signal?

HEARING EXAMINER STRAIN: That's it.

MR. YOVANOVICH: All righty.

Yes, for the record again, Rich Yovanovich, on behalf of the petitioner.

I want to address the County Attorney's Office determination that the requisite consents do not exist. And I think that they have reached the wrong conclusion as to the necessary consents.

And by way of doing so, I need to give a little bit of a history of how we got here originally with the original application and then with this PDI. I'll move this along quickly, but it's important that I be allowed to put this in the record.

The original rezone request was filed on behalf of basically the Hardestys and Long Bay Partners back in 2005, I believe it was. At that time my client had a contract to purchase the property that was the subject of the PUD.

My client ultimately, prior to the end of -- prior to 2008 when the PUD was approved, acquired all of the property that is the subject of the PUD, or believe they acquired all the property that was the subject of the PUD.

At no time did Long Bay Partners object to what they're now objecting to, which is the inclusion of their, quote, 30-foot strip of land in the PUD document.

And in fact, in the county's records, at the time that the PUD was originally approved and ultimately approved, references -- and this is the one time I make the exhibit too large. But unless the public needs to see it -- I didn't see anybody from the public here, so if you don't mind I'll just give it to you, Mr. Strain and Mr. Stone.

HEARING EXAMINER STRAIN: Is there any member from Long Bay represented here today?
(No response.)

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: What I --

HEARING EXAMINER STRAIN: We don't have a walk-around mic.

MR. YOVANOVICH: I'm sorry.

What I presented to you is the survey that was part of the original application when the property was rezoned back in 2008. And you'll see on this survey it refers to, at the very north, I think I got it right, an ingress/egress easement recorded in OR Book 3103, Page 2950.

And as you'll see, that's the entire strip of land along the northern piece of property.

Also in your record is the actual easement recorded in that OR book and page, which I'd like to make a part of this record. It's already in -- it should already be in your files.

HEARING EXAMINER STRAIN: Wayne, I've seen this, so if you could add these to the -- I've seen that as well. Could you provide this to the court reporter so she has a copy for the record. Thank you.

MR. YOVANOVICH: This ingress/egress easement is from Long Bay Partners to the Hardestys, their successors and assigns, which there's no question that Distinctive Realty is a successor and assigns to the Hardestys, authorizes and allows the construction of a road to serve the Hardesty's property.

So Long Bay Partners has in fact consented to the uses we want to put on their property today as part of the PUD.

Now, you all have -- and I didn't make any copies of this -- the existing PUD on the property today.

HEARING EXAMINER STRAIN: That's part of the package.

MR. YOVANOVICH: Right, the existing PUD that is part of the packet today clearly provides that infrastructure can be constructed anywhere in the PUD. And that's what we're proposing to do is make some changes on the master plan to where infrastructure can go.

Now, to my knowledge, and I have not done every zoning petition in Collier County. I've done quite a few zoning petitions in Collier County. But to my knowledge no master plan has an exhaustive depiction of where infrastructure, in particular roads, can and are authorized to be constructed in a zoning district. And in fact our zoning district allows it to be anywhere. Doesn't have to be only where it's shown on the master plan and the Collier County Land Development Code in every zoning district. Maybe not conservation, but every other zoning district that you can actually build something, infrastructure is a general permitted use.

This is the very first petition that I've ever been involved in, and I'm pretty sure Mr. Arnold has ever been involved in, where we're being applied a standard where the master plan is it. If the master plan doesn't show where the road is, you can't now show it on the master plan. And worse is thou shalt not be allowed to construct it if it's not shown on the master plan; that's the first time I've ever been faced with that interpretation.

It's also the very first time I've ever been faced with the interpretation that an easement document that specifically authorizes a use is not sufficient consent to move forward with a depiction of a road on a piece of property that is subject to a zoning petition.

Now, I reviewed very carefully how we got here. And it's been represented to you by the

representative of Long Bay Partners that this property should have never been in the PUD in the first place, yet they've done nothing to try to take the property out of the PUD. And in fact, when the PUD was originally put together -- and I want to put this in the record, I know you all don't have it. Okay, Wayne.

HEARING EXAMINER STRAIN: Do you have a copy for the court reporter?

MR. YOVANOVICH: Yes. You both should have two documents in front of you. The first one is the letter of intent that my client submitted to Long Bay Partners to purchase a portion of the property that's not in dispute. Actually, when you review the letter of intent you'll see that my client intended to purchase the entirety of Long Bay Partners' holdings, including Hardesty Road, at the time the rezone petition was in the process.

And if you'll look at the response letter from the Bonita Bay group dated the 11th, February 11th, 2005, it's circled, you'll see that Long Bay Partners intended to sell all of their holdings to us, but they made it very clear that they didn't own all of Hardesty Road. So as a good company they said we can't sell you something we don't own so we can't sell you that. Even though I know you want to buy it from us, guess what, the Hardestys own it. If you read what's circled, you'll see that.

To follow up on that -- sorry, Wayne -- there's an email from David Cook, who was representing Long Bay Partners, to Will Dempsey, who was representing Distinctive Realty, saying they revised the legal description attached to the sales contract, which I believe you have a copy of the sales contract as well in your files, to eliminate the road they don't own, specifically referencing Hardesty Drive.

Now -- so back in 2005 they say they don't own it. Today they now say they do own it and they're objecting to a change to a zoning document that in my opinion already authorizes the uses we're asking for and we're just depicting it.

So I would like to go through the objections that Neale Montgomery has raised. And I think you have that, because that's what we're here on, correct? So I want to make sure we're only dealing with her objections and we're not being held up on other issues that are not related to the objections.

The first question -- the first note is: The client's property included in the application without authorization.

I can't do anything about the original approval. They had knowledge it's been zoned, it's part of the PUD. If the county wants to take it out, I'm happy to take it out. Let's just modify the legal description to the PUD, take out that 30-foot strip, that 1,100 feet, or however long it is, we'll take it out.

The next one talks about that the property is not currently under contract. Well, it's true, that was a holdover from when the PUD was first submitted, because it was under contract at that time. If you feel like you need to strike through that in the PUD, I don't care.

Long Bay objects to shifting the location of the internal road. Well, they've already given us the permission to put the road on their property through the ingress/egress easement, and I don't know why the county is injecting its own thought process into whether an ingress/egress easement allows the construction of the road.

I know Collier County has acquired a tremendous amount of road right-of-way and built a whole lot of roads in ingress/egress easements, so it defies logic to me that putting a road in a piece of property where somebody gave me permission to build a road is somehow without permission.

The seven and a half foot setback to its property instead of 10-foot setback. I don't see him here to continue with that.

They say we can't use their property for purposes of density calculation. Fine. We don't -- if you look at the PUD, I don't need their acreage to achieve the density that's already allowed in the PUD. So I've addressed that concern.

And then deviation 5.1 allows for a narrower road than the code currently allows. Well, that deviation's been there forever. It's a standard deviation. And I'm sure if Ms. Montgomery were here, she'd tell you that in Lee County where she primarily practices land use, she can build a road at 35 feet. We're not going down to

35 feet, we're building a road that the county has determined is appropriate and safe.

So I believe we have addressed all of her concerns in her letter.

And I'm happy again to take their 30-foot strip out and move forward and make the modifications to the master plan accordingly. And they can go back to ag., if that's what they were, and that's what they were, they can go back to ag. and then we'll go forward and we'll build our project and I'll build my road and the ingress/egress easement.

But I don't understand how the county can take the position that we don't have the consent. We have the consent. We have the ingress/egress easement. We have the survey that the county's had since 2005, depicting that the rezone property has an easement on it.

The rezone is subject to the existing easements. You don't rezone away easement rights. Never have. It's never been that interpretation.

And we think we've met the requirements to move forward. And any -- the county's action in doing -- not allowing us to go forward with no objections from your planning staff as to what our proposed changes are is hurting my client. We have the authorization we need. Long Bay Partners has never said to the county that's an invalid ingress/egress easement. All they've said is they don't want a road in that ingress/egress easement that is not county approved. And we are asking for a county approved ingress/egress easement that they acknowledge is valid, have never contended that it's not valid.

Their objections are not that we're overburdening the easement with the number of units that's been approved in the PUD. To the contrary, they just want to make sure we didn't use their land to come up with the density.

And we think that the county's interpretation is unique in this project. It has never been applied on any other project that I've been involved in where ingress or access is by an easement, nor have I ever been involved in a project where the master plan is the definitive definition of where all infrastructure can go, and we see no reason for a continuance today.

And I appreciate your patience in allowing us to make our record, and thank you.

HEARING EXAMINER STRAIN: Okay, thank you.

Is there anyone from Long Bay Partners that would like to add anything to the record?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, I listened to your clarifications, Richard, and some of your alternative solutions. I would suggest that before we hear this case you re-approach staff or the County Attorney's Office to find if those solutions are viable. I'm not going to do that today and I'm certainly not going to override the County Attorney's Office at this point.

So this meeting will be continued, or this item -- go ahead, I'm sorry, Scott?

MR. STONE: Just for the record, I wanted to clarify that the -- one of the purposes for which we require consent is that when you compare the two master plans, the existing versus the proposed, there's certain land use classifications which are being changed within that 30-foot strip. For example, residential is being converted into road, lake is being changed to road and residential.

And I'm not looking for back and forth, I just wanted to reiterate what we've already discussed.

MR. YOVANOVICH: I'd like to respond, if it's okay.

MR. STONE: That's okay, we don't need a response, we've already gotten everything on the record that we need.

HEARING EXAMINER STRAIN: Actually, I think there could be responses to yours as well. He's just clarifying why we're going to leave it that way.

This meeting will be continued indefinitely, pending final review by the County Attorney's Office to make sure it's legally sufficient to be heard.

So with that, that particular item is closed, and we move on to the next advertised public hearing.

There's two public hearings involved in this next one. It's for the RaceTrac Petroleum facility

proposed for Shadowlawn and U.S. 41. The first one is a site plan with deviations; it's Petition DR-PL20170002552, and it's accompanied -- companion petition is Petition No. ASW-PL20170003579. The ASW is an automobile station waiver. Both are for RaceTrac Petroleum. They'll be discussed concurrently, and they'll be -- the decisions will be written separately.

All those wishing to testify on the RaceTrac issue, please rise to be sworn in by the court reporter.
(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Disclosures. On my part, I have spoke to the applicant a couple of different times. I talked to Commissioner Fiala, Commissioner Taylor. I've also talked to the County Attorney's Office and I've also had conversations numerous times with staff.

And that's -- and I did receive one email of objection from a gentleman that lives down on Bayshore. Further down on Bayshore.

So with that, we'll move forward with the presentation. There is no -- is there any member of the public wishing to speak on this item? Not staff, any member of the public. And not the applicant's team.

(No response.)

HEARING EXAMINER STRAIN: Is there any member of the public here just to hear about this item? Okay, that's the difference.

So with that, I'll need the RaceTrac people to make a presentation on what they're proposing to do at this location, and so at least -- and there's an overhead available to you for renderings and other things you may want to show the public in how you're approaching the project.

Both of these will be concurrent, so we're going to intermix and go back and forth between them both. You'll need to introduce yourself for the record.

MS. MCGOWAN: Hello, I'm Sarah McGowan with RaceTrac Petroleum. I'm the engineering project manager for our Southwest Florida region.

Thank you for hearing us today, appreciate it. Staff's been great to work with going through all of this.

We have a list of deviations. Mark, do you need me to go -- or Mr. Strain, do you need me to go through those?

HEARING EXAMINER STRAIN: I think what you should do for the public's benefit, because they haven't seen the intro, and I've read everything you've provided and I will have questions specific to some of those points. Some of them are pretty clear.

MS. MCGOWAN: Okay.

HEARING EXAMINER STRAIN: But I think for the benefit of the public that's here to see what's going on, if you have an overhead like this that you can talk off and any other renderings like that, that will at least give everybody a perspective of what you're trying to do at the site and we can go from there.

MS. MCGOWAN: Sounds good. Thank you.

So this is our proposed site plan and landscape plan for -- as you can see, we're going to be facing U.S. 41 and our Becca House will be facing Shadowlawn Drive. We're proposing to have nine fueling pumps.

HEARING EXAMINER STRAIN: Sarah, do you have the aerial photography that's included in the packet? Do you have one of those available?

MS. MCGOWAN: I do not.

HEARING EXAMINER STRAIN: Does staff have one in a hard copy that you could loan her? I think that would be a good starting point for the public to see how this fits into that neighborhood.

MS. MCGOWAN: I can use this and explain what's around.

HEARING EXAMINER STRAIN: Well, let's start with -- I don't mean to undo your presentation. I know we don't normally have to have presentations, but I think it's important for the public to see what you're trying to do.

I think if you start out explaining what buildings you're modifying, changing, taking down, what

properties you're involved with, that would give an idea of the magnitude of what you're doing here today.

MS. MCGOWAN: So this one is a redevelopment. It's unique with its configuration, that we are taking different parcels and combining them into one to allow us to fit. We have this muffler shop, another car shop and then we have this business right here. We are also under contract to purchase this little triangle area from ABC to allow us to completely face U.S. 41.

With that, it's interesting because right now there are currently three driveways, and then on our updated plan there will be just one driveway off U.S. 41, and we'll be closing some of the driveways off Shadowlawn and replacing it.

So seeing the over- -- what it was there. So this is what is there right now currently. We're proposing to remove all these buildings and just replace it with our one building. It's very similar to our Immokalee store that we just opened off Bellaire Bay, if you've all been there, to help with the reference.

This is our -- so this is our Collier County standard that we have now that you're all familiar with. We have the green awnings. This is the new prototype, just like Bellaire Bay. It has -- in the back it has a tower treatment to help make it look primary facade. And then you have the side with the glazing requirements.

This side will be facing Shadowlawn Drive; this will be facing the ABC property; this will be facing Shadowlawn; and then this will be facing U.S. 41.

And then our canopy that we are proposing will be similar to this. It will have just your tan with our parallelograms shown as well.

And then we are -- with the plantings it's going to be very similar to what you see out front on this building off Airport Pulling. So it's what we're going forth, the site.

HEARING EXAMINER STRAIN: On the north end of the site, Sarah, up against the -- I think it's a kayak --

MS. MCGOWAN: Yes.

HEARING EXAMINER STRAIN: -- retail store? Their current building is pretty tight on the property line on the north side. Now, you're putting in a hedge row up there, is that what --

MS. MCGOWAN: Yes.

HEARING EXAMINER STRAIN: Okay.

MS. MCGOWAN: So this is what you're referencing, I believe.

HEARING EXAMINER STRAIN: Right.

MS. MCGOWAN: And these are the plantings that we will be putting in back there.

HEARING EXAMINER STRAIN: The reason I asked is I bought my kayak there and the gentleman that owns the facility is here today. So I want to make sure he sees what's going on next door to him. Chris.

MR. BOLAND: Thank you, Mark.

HEARING EXAMINER STRAIN: By the way, if anybody needs a kayak, he does a great job.

Okay, you have some deviations. You want to just generally run through those? For example, I know in the front we have generally a different kind of canopy tree. You're asking for royal palms as a substitute. Just some statements -- some issues like that that affect the site.

MS. MCGOWAN: So for the first one, and it's just for the setback from Shadowlawn. We are just a little short here so we're requesting this deviation.

And then I have a highlighted one that will be easier for everybody to see.

HEARING EXAMINER STRAIN: Okay. The setback is actually from the Shadowlawn right-of-way to the building edge up on top.

MS. MCGOWAN: Yes, right here. It's barely -- there we go. Figure this out.

So yes, the deviation will be for the side setback off Shadowlawn. I've highlighted the two locations. It's just with the configuration and the triangle design it is hard to fit everything in.

And then the second deviation we're requesting is to have canopy -- our parallelograms that you saw, we're requesting 50 square feet up front and 30 square feet for both sides.

HEARING EXAMINER STRAIN: You have seven or eight other stations already approved in Collier County. I believe that standard is consistent with the same thing that's on those?

MS. MCGOWAN: Yes, correct.

HEARING EXAMINER STRAIN: Okay.

MS. MCGOWAN: And then we're asking for deviation to allow canopy signage off a non-frontage side, which is consistent with the other stations that we have in Collier County.

So we're asking for a deviation to allow us to put our detention ponds into the landscape area. So this one with it being a tight site, we had to be creative on where we could put the detention. So I have it at the corner and all in here.

HEARING EXAMINER STRAIN: On that site, where does the current detention go; do you know?

MS. MCGOWAN: There is none.

HEARING EXAMINER STRAIN: Right. So you're improving the detention at least by placing -- first treatment's going to be on-site before it discharges.

MS. MCGOWAN: Yes.

HEARING EXAMINER STRAIN: Okay.

MS. MCGOWAN: And then we're asking for a deviation for the distance from the adjacent property. Again, this is our interesting configuration.

Then this one goes with the architecture. It is to make it -- sorry, all these papers. I want to make sure I say this one correctly. The primary facades to allow it. So by doing this we are putting, as I showed earlier, the glazing requirement off Shadowlawn and then we're also doing the back with the faux tower.

HEARING EXAMINER STRAIN: So you're meeting the secondary criteria in lieu of primary.

MS. MCGOWAN: Secondary, yes.

HEARING EXAMINER STRAIN: Okay.

MS. MCGOWAN: Then this one is just asking for the removal of the berm. On here, this one justified by other properties along here do not have a berm for what we offer inside to be competitive.

HEARING EXAMINER STRAIN: Is there a berm along the one out in front here on North Horseshoe and Airport?

MS. MCGOWAN: There's not a berm.

HEARING EXAMINER STRAIN: Thank you.

MR. REISCHL: I believe there is one at the Davis/Radio store.

MS. MCGOWAN: Yes, there is one at Davis, but there's not --

HEARING EXAMINER STRAIN: I know where they -- yeah, I know. But Fred, they're asking for a deviation because of redevelopment in this location. Davis/Radio wasn't redeveloped.

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: Okay.

MR. REISCHL: But just to give you an idea of what it looks like, or could look like.

HEARING EXAMINER STRAIN: I'm not sure I understand, but okay. What do you mean?

MR. REISCHL: With the berm. There's an undulating berm at the store at Radio and Davis.

HEARING EXAMINER STRAIN: There's -- yes, there is. Okay.

MS. MCGOWAN: And then this deviation we're requesting, it's for our side buffers. With this connecting into the ABC parking lot and ABC's building, we are not able to do the plantings right here. We're distributing it throughout the rest of the plan.

HEARING EXAMINER STRAIN: You also have a cross-easement between ABC and you so that they can -- you guys can move back and forth across the parking lots and not have to go out on 41 or Shadowlawn?

MS. MCGOWAN: Correct.

HEARING EXAMINER STRAIN: Okay.

MS. MCGOWAN: This one we're asking -- I'm sorry, there's just a lot of them, namar- -- areca palms so we could have palms in the parking islands instead of putting the other canopy trees.

And then this one is our VUA for the requirement. It's one per 500. And we're requesting for one for 250.

And then this one, we are asking for the removal of the -- not removal but reduction of the hedge row to be 36 inches.

And this one -- sorry.

HEARING EXAMINER STRAIN: Actually, that hedge row is 36 in lieu of the berm.

MS. MCGOWAN: Yes, thank you. Thank you for the clarification.

And this one is to allow for the palm trees -- you can't really see that color; let me just look back at this one -- to allow royal palms here in this area.

And then we also, after a review that we did just recently, we'd respectfully ask for another deviation from the Code 505.D.2. It is pertaining to the wall that is required to be with -- abutting a residential.

As you can see, the residential for this area is about right here. We had no intention -- when we designed it, we did not put a wall in that. Our justification is due to the geometry of our site and for public safety. We have our associates come out through the back door all the time and for law enforcement to see what's going on in the back of our house, we'd like to remove the potential risk of anything going on behind there.

Our enhancement for this area, we're already doing the whole 505 buffer along Shadowlawn, but we are proposing to plant oak trees that are 16 feet high, which is higher than the code requires.

HEARING EXAMINER STRAIN: Yeah, the code I believe is 10 or 12 feet, something like that, so -- okay.

MS. MCGOWAN: I think it's 10.

HEARING EXAMINER STRAIN: Okay.

Okay, is that all you've got at this point? That sounds fine.

MS. MCGOWAN: Yes, it's good.

HEARING EXAMINER STRAIN: It's a good summary. Basically you're taking out four existing buildings: Two are offices, two are actually put in as gas stations. Both Cookie's and the repair shop to the north are currently approved for five pumps each. They're not operating that way today, they're basically repair shops. The bays open to 41.

Now those are all going away as well, so you're going to be taking out all those buildings. I'm assuming you're going to have to amend the site to cut out the drainage and fill the pad and things like that.

MS. MCGOWAN: We'll have to do that and --

HEARING EXAMINER STRAIN: Then you'll be coming in with just one building replacement, which is just under 6,000 square feet for the RaceTrac, with a canopy up front which is a smaller canopy than I think the ones out -- I think you've got 20 pumps out front, don't you?

MS. MCGOWAN: Correct. Yes, it's smaller than Airport Pulling.

And then as I mentioned earlier, we'll be taking the drives. There's all the drives around here. We're going as far as we can on our property line to help with intersection. And then we're proposing a right in/right out with a raised median here so we do not interfere and people aren't going to try to take a left coming through the intersection and the furthest from our property line as well.

HEARING EXAMINER STRAIN: The one to the north, there was a full median opening. So if people --

MS. MCGOWAN: Yes.

HEARING EXAMINER STRAIN: -- want a left in to your facility, they would go up there and you're going to add a stacking lane --

MS. MCGOWAN: We are.

HEARING EXAMINER STRAIN: -- to turn into that fac- --

MS. MCGOWAN: We're adding a turn lane right here. So that way it doesn't back up through the intersection as well.

HEARING EXAMINER STRAIN: And the 41 entrance is moved, where currently there's two driveways entering the businesses that are there now closer to the intersection.

MS. MCGOWAN: Yes. And they'll be removed.

HEARING EXAMINER STRAIN: Okay. Let me go what questions I would still have, or clarifications.

First of all, you're on Shadowlawn and 41. 41 is an arterial road. Shadowlawn is not. It's not four-lane as the staff report indicated, but it is a two-lane collector road.

I'm just making that clarification for the record because the staff report didn't note that.

Also it says in the staff report that you're replacing the foreign muffler shop. You're actually replacing four buildings, a series of buildings that I just mentioned.

The residences that are across Shadowlawn Drive do not abut this site. They are adjacent to it but they do not abut it. Which is one of the issues that we have involving the need for the wall. But that's for the new code. The code that was in place at the time this property was platted and these other buildings were built would be '82 or earlier. The '82 code does not require a wall unless you're abutting residential, so I believe that's part of the basis for your justification for the site plan with deviations.

MS. MCGOWAN: Correct.

HEARING EXAMINER STRAIN: I'm going to move through the pages. It will take me a minute to get past them. I've tried to reduce this to the issues that I've clarified by my second reading of this, so give me a few minutes to get through these and then we'll move in -- right now we're talking about just the issues that are in the ASW.

The fuel canopy height will be 16 feet. The one out front I believe is higher than that? Tom?

MS. MCGOWAN: How tall is the canopy?

HEARING EXAMINER STRAIN: You'll have to come up and use the mic, if you don't mind.

The canopy for the --

MS. MCGOWAN: All the rest of them in the county I know are 16.

HEARING EXAMINER STRAIN: Right.

MS. MCGOWAN: The Collier County --

HEARING EXAMINER STRAIN: But the one in front is with the City of Naples. Do you know the height of the canopy out there?

MR. HARDY: The City of Naples out here is 18.

THE COURT REPORTER: Tom, your last name, please?

MR. HARDY: Tom Hardy, with RaceTrac Petroleum.

Airport Pulling, the one out here, is 18 foot to the other side of the canopy. And that is the City of Naples. Every other store we've built in Collier County has been to the 16 foot, county standard.

HEARING EXAMINER STRAIN: And this one will be the same.

You also in your summary, one of the sheets -- you're going to meet all the lighting requirements which reduce lighting and candle power issues that are reduced. But in addition you're going to meet the International Dark Sky Association's statement for outdoor lighting?

MS. MCGOWAN: Yes.

HEARING EXAMINER STRAIN: Okay. In your -- just to clean up the record, in your -- I've reviewed your market study. You had to make some changes to it. I got those changes. It's still consistent with what's needed for the code. In fact, you -- actually one of the issues that aren't necessarily needed by the code but that's fine, it added volume to read, and it's always fun to do.

Some of the formula references in your market study don't match up with the right columns and lines.

But if you read it you'll know which ones are intended. I did do that, I recalibrated everything to understand it, and the numbers do work.

I clarified an issue with you earlier on your impact fees. The impact fee credits are not right in this. You'll need to contact Paula Fleishman to get those credits and find out what they really are.

And the traffic statement, I went through that pretty carefully. I think I briefed you on some of the questions or concerns I had about it. It is a -- in regards to some of the things you could have used to show a more reduced traffic impact, you didn't use them. That's to your benefit. This is probably a more conservative approach.

For example, your pass-by traffic is about 63 to 66 percent capture, and you used the county standard of 50 percent. You also did not take a credit for the traffic generated from the multiple businesses that are in there now because those office buildings have a series of businesses in them besides just one in each.

The current configuration for the accesses to Shadowlawn, there are three accesses, you're reducing it to two. The one that's going closest to the intersection is only going to be a right in/right out.

I'm making sure everything is as we've discussed. And for the benefit of the public, bringing things up just in case it might help with some questions that might be out there.

And that's the questions for me. Let me move to the site plan with deviations.

Site plans with deviations is a process designed specifically for redevelopment projects, which this one certainly qualifies for. It is not necessarily a variance, it's a change in the code as a result over time. This project being originally platted and built back prior to the Eighties certainly qualifies for that, and that's how we're approaching that.

So the changes you're asking for are simply elements that could have been reduced because of prior codes, but you're actually going above those prior codes in what you're providing today. Maybe not as much as the current code requires, but at least quite a ways along.

In your request for a right-of-way buffer, deviation request number seven, you said that you want to maintain the height of the hedge that's going to go in in lieu of the berm, an average height of three feet. I would like you to consider agreeing to add the language, "but in no case will any portion of that berm be less than 30 inches." So your average can't go from one foot to five foot, it's got to be 30 inches up and down, but that's where it would limit it.

Do you have any problem with that?

Your head can't be heard. If you could just say --

MS. MCGOWAN: I do not. We do not have any problems.

HEARING EXAMINER STRAIN: Thank you.

Let me run through the rest of these and make sure we've answered everything, or at least addressed everything.

Okay, that takes care of most of it through that. And I appreciate it, and we're going to go to a staff report, then I'll go to any comments the public may have, and then if there's any comments you want to have an opportunity to rebut, you're more than welcome to, I'll call you back up. Thank you.

With that, is there a staff report?

MR. REISCHL: Thank you, Mr. Strain.

Both the SDP with deviations and the distance waiver are not specifically listed in the Growth Management Plan, therefore it's consistent. Both are consistent with the GMP.

And with the rearranged landscaping, staff found that the site is consistent with the neighboring residential as well as commercial sites, including the new deviation that was requested this morning, so staff recommends approval.

HEARING EXAMINER STRAIN: Okay, besides consistent, do you find it compatible?

MR. REISCHL: Yes.

HEARING EXAMINER STRAIN: Okay. And my questions were -- I just ran through the

questions I had both of staff and of the applicant with what I just did with the applicant. Is there anything there, Fred, that was inconsistent that you heard with your staff report?

MR. REISCHL: No. You and I had discussed a couple of my recommendations to not approve, and I think with the past approvals on these, we have no objection to either one.

HEARING EXAMINER STRAIN: Okay. Thank you.

And with that, I'll move to the public. Does any member of the public wish to speak on this item?

Ma'am, if you'd like to come up and identify yourself. You have to come up to the microphone and identify yourself by name and then you're -- certainly be welcome to hear from you.

(Speaker was duly sworn.)

HEARING EXAMINER STRAIN: You'll have to get a little close to the microphone.

MS. REGAN: I just have a few questions.

HEARING EXAMINER STRAIN: Sure.

THE COURT REPORTER: May I have your name, please?

MS. REGAN: Carolyn A. Regan. R-E-G-A-N.

Could we have less pumps there? Would that be an option? I just think it's so --

HEARING EXAMINER STRAIN: When you get done I'll have the applicant address that.

MS. REGAN: Okay. But --

HEARING EXAMINER STRAIN: But, ma'am, just so you know, there are less pumps than the one out front.

MS. REGAN: There are?

HEARING EXAMINER STRAIN: Yeah, there are less pumps than what's out front.

MR. REAGAN: Okay. So each pump is going to be two or four?

HEARING EXAMINER STRAIN: It will be -- and you should direct your questions to me. You don't interact with them.

MS. REGAN: Okay, each pump, is it going to be like --

HEARING EXAMINER STRAIN: There will be two fueling positions, one on each side.

MS. REGAN: Two on one side and two on the other?

HEARING EXAMINER STRAIN: No, one on each side.

MS. REGAN: Oh, one on each side. Okay, so they're just spread out, okay.

And we're going to go into Shadowlawn and come out on 41?

HEARING EXAMINER STRAIN: Either way. You could come in on 41, but there's going to be a left turn lane with enough backups so people can actually use that one to come in without interrupting traffic.

MR. REAGAN: Okay.

HEARING EXAMINER STRAIN: So there's two entrances on Shadowlawn, one is a right in, and another one -- and that same one is only a right out. So you're not making left turns to back up traffic.

Then the one that's a left in is further to the north on Shadowlawn, all the way to the back of the property. And there's what's called a stacking lane there so the cars can just sit in that lane until there's an opening in traffic and make a left into it.

Then the other access is on 41. And the one on 41 is further from the intersection so you don't stop traffic in the intersection.

MR. REAGAN: Yes, yes. Right, right.

HEARING EXAMINER STRAIN: Okay?

MS. REGAN: Fine, yeah. Looking forward to the yogurt.

HEARING EXAMINER STRAIN: Thank you.

Anybody else in the public have any questions?

(No response.)

HEARING EXAMINER STRAIN: With that, Sarah, I don't believe there's anything unless you

wanted -- I think I've explained the pumps that you've got, so we're in pretty good shape.

So with that we'll close the public hearing on the two RaceTrac items. A decision is going to take a while to write up on this so it will be a little while. But you will get a decision within two or three weeks, most likely, but no longer than 30 days.

So with that we'll close the public hearing on the RaceTrac items and thank you all for your attendance today in that matter.

Okay, and that takes us to the last item on today's agenda, it's 3.D. It's Petition No. VA-PL20170003718. It's Jordan T. Donini and Jacquelyn Coppard for a request for a variance on I think it's Frankland Ave -- Frank Whiteman Boulevard, I'm sorry.

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: Okay, disclosures. On my part I have talked to the applicant's representative; I've talked with staff a few times. That's the extent of it.

So is any member of the public here to address this item? I can obviously see there isn't.

So Francesca, there's no need for a formal presentation. I have a couple cleanup items, if you could approach and identify yourself for the record.

MS. PASSIDOMO: Francesca Passidomo for the applicants Jordan Donini and Jacquelyn Coppard, attendees on Frank Whiteman Boulevard.

HEARING EXAMINER STRAIN: Thank you.

When I met with you, I suggested -- well, I asked you to bring in some legible copies of four pages. The staff report included pages that had been either faxed or photocopied so many times they weren't readable. I did find legible copies for my own use, but I would like some clean for the record from your office, if that's okay.

Is there two copies there?

MS. PASSIDOMO: I can distribute them too.

HEARING EXAMINER STRAIN: And Cherie', you have copies?

THE COURT REPORTER: Yes, I do. Thank you.

HEARING EXAMINER STRAIN: Okay, couple of clarifications. In the staff report, on Page 3 there was a note that the 1998 carport addition complies with all setback standards.

In talking with you, it really complies with the setback standards as amended by the AVA that was applied to the west side of the property. Because the carport's in line with the wall on the west side; is that correct?

MS. PASSIDOMO: That's correct.

HEARING EXAMINER STRAIN: Okay. On Page 4, top of the staff report, there was a notation that the setback variance would be 1.8 feet to get to the 4.7 foot side yard. But it was dependent on another variance from 7.5 to 6.5. So really this variance, because I generally heard from Mr. Bellows, we don't stack variances, so this would be a 2.8 foot variance for the whole thing.

MS. PASSIDOMO: That's correct.

HEARING EXAMINER STRAIN: Property was built in 1954. So that's basically some of the research you did. I saw it as part of the interpretation requested on Page 6. So I just wanted to verify '54 was the year.

MS. PASSIDOMO: That's correct.

HEARING EXAMINER STRAIN: And I went ahead and I also totaled up the square footage on the inside portions of the house to make sure the width was right. It looks like there was a one-foot error between an early survey and the most recent one. On top of the issue, they didn't catch all the setback?

MS. PASSIDOMO: That's right.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. I didn't mean to make

your presentation so easy. But it happens to be -- it's a pretty clean situation, an existing facility.

James, you're the planner, do you have any -- is there a staff report?

MR. SABO: There is, Mr. Strain. The proposed variance is consistent with Section 9.04.03 of the Land Development Code of Collier County, it's consistent with the Growth Management Plan, and zoning division recommends approval.

HEARING EXAMINER STRAIN: Thank you. I like the way that Ray and Mike are keeping you new guys up on how to answer that question, so I appreciate that.

There are no members --

MR. BELLOWS: This is James' first public presentation with Collier County.

HEARING EXAMINER STRAIN: Well, like Francesca --

MS. PASSIDOMO: It's mine.

HEARING EXAMINER STRAIN: -- this is going to be easy. It's initiation for both of you.

MR. STONE: You'll never forget this.

HEARING EXAMINER STRAIN: Anyway, thank you, James.

There's no members of the public here to address this issue, so I have no other questions, Francesca.

We'll close the public hearing, and you will have a decision, probably very shortly, within a week to 10 days.

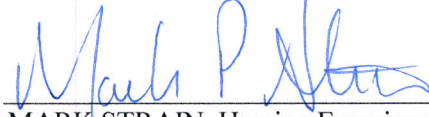
Thank you very much for your time today and I appreciate it.

That takes us to the end of our agenda. And Cherie', I was wrong. I was wrong. The RaceTrac was a complicated case but it didn't take quite as long as we thought. Some of that's because the applicant was able to provide a lot of answers that I had told them I would be looking for, and so I'm glad they came with those, it did help a lot.

There is no other business, there are no public comments at this point, and nobody's in the room to comment. So with that, this meeting is adjourned. Thank you all.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:50 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, Hearing Examiner

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 3-9-18 as presented ✓
or as corrected _____.

Transcript prepared on behalf of
U.S. Legal Support, Inc.,
by Cherie' R. Nottingham, Court Reporter and Notary Public.