

December 13, 2018 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
December 13, 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  
James Sabo, Principal Planner  
John Kelly, Senior Planner  
Gilbert Martinez, Principal Planner  
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, December 13th, meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.  
(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Housekeeping announcements: Decisions are final unless appealed to the Board of County Commissioners. A decision will be rendered within 30 days, and speakers are limited to five minutes unless otherwise waived.

The agenda today has three -- four items on it, and we're going to move them through. The first one is Maplewood Homeowners, the second one is Brentwood Land Partners, and the third one, Florida Power & Light, and the last one is Rigby Enterprises, which is Naples Bath and Tennis.

Those of you that are here for any particular items, that's the order in which they'll be heard today.

\*\*\*The first item up is advertised hearing 3A, Petition No. PDI-PL20180001658. It's the Maplewood Homeowners' Association, Inc., requesting a wall replacement to go from six to eight feet.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part: I met with staff, I have talked with David Genson, representing the HOA in the past, and I've certainly gone through the files.

And with that, David, I have read, thoroughly, the documentation. And the only thing I'm going to do is -- I don't need a presentation.

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

Oh, okay. There are members. So if you don't mind explaining -- nobody stood, so I assumed there weren't any members here involved with it. But if you don't mind telling us what your project is about.

MR. GENSON: Thank you. For the record, my name is David Genson. I'm with Peninsula Engineering. I represent Maplewood Homeowners' Association.

In the audience today is Stacy Fults, who is the community's association manager, and June Courville, who is the president of the homeowners' association.

After Irma, the Maplewood Homeowners' Association had a wall or a fence located in what's drawn as red. That was destroyed. In part of a replacement, they pursued an 8-foot wall, concrete/masonry wall, which is contrary to what's allowed by the LDC.

So we are asking for a deviation from Section -- let's see -- 5.03.02.C to allow for an 8-foot wall.

Those areas, the north/south red line abuts 100-foot FP&L transmission line easement, and the south boundary abuts the Briarwood PUD, which the statement -- or the writeup from staff says it's for multifamily. I thought it was for commercial. So if it's commercial, it needs an 8-foot wall anyway if they develop it as that.

So they're asking this for sound attenuation and privacy issues. As you can see, there's a very dense mobile home park to the east of them.

So we are requesting approval so that they can move forward with their 8-foot wall in these areas.

HEARING EXAMINER STRAIN: Thank you.

And I just, from the past history, the area to the south, there was an application for an SDP, I believe, a long time ago. That was, I believe, for multifamily at that time. It could be something else, but that's what I recall from several years ago.

MR. GENSON: Mr. Strain, I'll also note that we did have a neighborhood information meeting. It was attended only by residents from the association. No one was in opposition of it. More so they attended just because they want to understand the process of why we're having to go through this hearing.

HEARING EXAMINER STRAIN: And it's a process to have -- it's a lengthy process for such a small item.

MR. GENSON: Yes.

HEARING EXAMINER STRAIN: I wish it wasn't sometimes. But in reading your documents, 128 pages --

MR. GENSON: Yes.

HEARING EXAMINER STRAIN: -- you had two pages that I have a question from, and it's just a clarification.

On one page you call it out as an 8-foot concrete fence, Page 56, and Page 72 it's called out as an 8-foot wall, masonry wall. So I'm just -- well, it says concrete/masonry wall.

I want to make sure that whatever it's designated as, you don't get stopped at another point in time --

MR. GENSON: Yes, sir.

HEARING EXAMINER STRAIN: -- because it said it was designated wrong. So do you have a preference in how we call it?

MR. GENSON: I would prefer we call it a concrete/masonry wall.

HEARING EXAMINER STRAIN: Now, the only reason I'm bringing it up is there's several kinds of concrete walls. Some are masonry, some are planks, like CedarCrete, and some are panels, and those are generally dropped-in panels. They're either light concrete or stucco. If you're fine with concrete/masonry wall, that's the language I'll use, if you're sure that will cover whatever you intend to do.

MR. GENSON: Yes, we're fine with that.

HEARING EXAMINER STRAIN: Okay. Then that will be -- that will work.

Other than that, I have no other questions. I have read everything, and my only two points were that clarification, so thank you.

MR. GENSON: Thank you.

HEARING EXAMINER STRAIN: And is there a staff report?

MR. KELLY: You have the staff report, yes, sir.

HEARING EXAMINER STRAIN: No. I know there is. Do you have any -- does staff have any comments they wish to add to the record?

MR. KELLY: No additional comments.

HEARING EXAMINER STRAIN: Staff recommended approval?

MR. KELLY: Yes.

HEARING EXAMINER STRAIN: Okay. With that, I'll ask for any members of the public that would like to speak on this item.

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, I guess, David, you don't need a rebuttal. I think we're good there. And I just want to make sure there's no other recommendations. And, with that, we'll close the public hearing on this matter, and a decision will be rendered, most likely, before Christmas. I have 30 days, but I'll try to get that before Christmas.

Thank you, all, for attending today.

\*\*\*The next item up is Petition No. CUD-PL20180002589, the Brentwood Land Partners, LLC. It's for a comparable/compatible use analysis up on the Malibu Lake MPUD location.

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

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

HEARING EXAMINER STRAIN: Okay. Disclosures on my part: I talked with the applicant just before the meeting and I think a time or two in the past. I did meet with staff. I really didn't have any questions of staff on this. And then I did some -- I checked my own paperwork and files as well.

So with that, Wayne, it's turned over to you.

And is anybody here from the public for this particular item?

(No response.)

HEARING EXAMINER STRAIN: Then I don't need a presentation, Wayne. Let me just make

sure I have no other questions, and it might be the shortest one today. I don't. We're good.

MR. ARNOLD: Okay.

HEARING EXAMINER STRAIN: So do you want to just identify yourself for the record so we know you're here.

MR. ARNOLD: Wayne Arnold representing Brentwood Partners.

HEARING EXAMINER STRAIN: Thank you. And I don't have any questions, Wayne. Is there any kind of comments -- anything from staff?

MR. MARTINEZ: Staff recommends approval; that the Hearing Examiner affirm the opinion of the Zoning Manager that the use of physical fitness facilities and used merchandise store with the exception of pawn shops are comparable and compatible to other permitted uses within the Malibu Lake MPUD.

HEARING EXAMINER STRAIN: Thank you.

MR. MARTINEZ: For the record, Gil Martinez, principal planner.

HEARING EXAMINER STRAIN: Is there any members of the public here that wish to comment on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, Wayne, we'll close the public hearing, and like I told the prior case, I'll try to get this to you before Christmas.

MR. ARNOLD: Thank you very much.

HEARING EXAMINER STRAIN: You're welcome.

\*\*\*That takes us to our next item up, which is Petition No. VA-PL20160002426, the Florida Power & Light Company's facility for adding a communications tower. It's down off -- it's off Davis Boulevard.

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

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

HEARING EXAMINER STRAIN: Okay. And I've had numerous discussions with staff. I don't think I've talked to the -- oh, I had one meeting a while back, when it was first scheduled, with the property owner, with a representative of the applicant. At that time they were in a different location. They moved that location to this new one. Since this new location, I haven't had any communications with the entities, and I have checked the files for this location.

And with that, before we go too far, is there any members of the public here for this one other than the applicant?

Okay. State your name for the record and who you represent.

MR. JACKSON: Sure. Thank you. Scott Jackson representing Boonetime Bay, LLC, and I wanted to let you know, Director Strain, that Heidi, our FP&L representative, has not made it in the building yet. So if you-all want to go on to the next one, I believe they are on their way. I'm just not sure how far.

HEARING EXAMINER STRAIN: We may not need them. So let's wait and see, and if we have questions from the public that can't be answered, then we'll have to wait till he gets back here, if you can't answer them.

MR. JACKSON: Okay. There is one more gentleman from Crown Castle, Tim Young, who's also here. I believe he's looking for the FP&L person, so he may have to be sworn in in case he gets up and speaks as well. He's in the hallway, I believe.

HEARING EXAMINER STRAIN: Did you bring a site plan with you?

MR. JACKSON: I did.

HEARING EXAMINER STRAIN: Would you mind putting it on the overhead. It's right there; Elmo right next to you.

MR. JACKSON: Right here. I'll grab one more.

HEARING EXAMINER STRAIN: I think that gets turned around another 90 degrees. Yep, that's good. That will work that way.

Previously this particular site was located over next to the residential in the lower right-hand side of the site.

MR. JACKSON: Exactly.

HEARING EXAMINER STRAIN: And that was the last time I saw it. And I notice you moved it up there, which -- that circle that's kind of semi shown around your site, that's the fall radius?

MR. JACKSON: That is correct.

HEARING EXAMINER STRAIN: Okay. So this puts you outside of the residential components now for the fall radius, which that was the problem before. And I'm --

MR. JACKSON: Right.

HEARING EXAMINER STRAIN: -- glad to see that you changed it.

MR. JACKSON: Right. We did it for that very reason.

HEARING EXAMINER STRAIN: Okay. The tower is 78 feet high with 22 feet of antennas all encapsulated in your -- the new outside aluminum or whatever --

MR. JACKSON: That's right. The canister that will enclose the antennas inside. So you'll have a 12-foot section, and then right on top of that you'll have a 10-foot section, so 22 total on top of 78 for 100. Depending on exactly how far it's placed in the ground, it may be slightly lower than 100, but it won't be above it.

HEARING EXAMINER STRAIN: Okay. The only -- I mean, you've got some variances requested. I have no questions on those specifically of you. I may ask staff to clarify some items. But on the east property line up against that large open space to the -- it will be toward the top of the page here, you have -- you're closer to that particular property line, which is that open space property line. So that's the only --

MR. JACKSON: Right.

HEARING EXAMINER STRAIN: -- site-related variance you need compared to the previous fall rated -- fall zone variance distances we've asked for.

MR. JACKSON: Right.

HEARING EXAMINER STRAIN: Okay. Let me go through my -- any other questions I may have. You've asked for a -- you said in your documents you're going to have a solid landscape buffer. I questioned staff on this. I don't -- the word "solid" isn't something we use. We usually look for an opacity. Staff was supposed to be able to respond to an opacity requirement today, so that will be incorporated into any kind of decision that is issued.

MR. JACKSON: Okay.

HEARING EXAMINER STRAIN: Let me make sure I've got everything I've got down answered. Yes, I do.

I have no other questions, and we'll have to wait and see if we have any questions from the community, and then we'll get back to you.

MR. JACKSON: Okay.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. JACKSON: Sounds good. Thank you, all.

HEARING EXAMINER STRAIN: Is there a staff report? Well, I know there's a staff report, as Mr. Kelly reminded me. Do you have any -- does staff have any comments they'd like to add to the record.

MR. SABO: Excuse me. Pardon the drama. James Sabo, principal planner.

The staff recommendation: Zoning recommends the Hearing Examiner approve the Petition VA-PL2016...2426 at 4995 Davis Boulevard.

HEARING EXAMINER STRAIN: You heard my question about the word "solid." Did you resolve that since we talked?

MR. SABO: We will clarify that with -- as the project moves forward. I wasn't able to get that information, but --

HEARING EXAMINER STRAIN: Okay. It will be a code-compliant landscape buffer.

MR. SABO: Right.

HEARING EXAMINER STRAIN: The word "solid," I wasn't sure how you were going to do that, so I just wanted to make sure we had a code provision that would fit that. We will have by the time you come in for a Site Development Plan, so we'll address it that way.

MR. JACKSON: Through Chris Scott's department, probably, yeah.

HEARING EXAMINER STRAIN: Yeah.

MR. SABO: Correct.

MR. JACKSON: Okay. Great.

HEARING EXAMINER STRAIN: Okay. Is there anybody here from the public that wishes to speak on this matter? Sir, were you -- could you come up to the microphone and identify yourself for the record, and we need to know if you were sworn in when you came in.

MR. COFFEE: Bill Coffee.

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

MR. COFFEE: I guess I'm just -- I've got a couple of questions, because the primary thing that came out to me, it looked like this thing is exactly in my backyard. So I'm just wondering -- I don't know what -- I don't recognize this schematic. Because what was said to me was that it was right in my backyard, and I don't -- my house is not up there, so I don't know.

HEARING EXAMINER STRAIN: Well, originally the location was different. So when it originally went out to the public and went out with notices, you may have seen a different plan. That plan did have that tower much closer to the residential units. In fact, that was the problem when we came in and started scheduling things, that it was too close.

MR. COFFEE: All right.

HEARING EXAMINER STRAIN: So they needed to get it moved to a point where, if it fell, it wouldn't have the distance -- it would be far enough away it couldn't fall on a home. Now, these are rated for high wind, so it's not likely it's going to fall, but that's a safety factor that, at that time, was a concern.

They relocated it to an area where no matter what way it falls, it's farther out -- the nearest home is farther away from the tower than where it would fall.

MR. COFFEE: May I ask where this is.

HEARING EXAMINER STRAIN: Well, that's Foxfire down to the south. This is east --

MR. COFFEE: Yeah, but which street in Foxfire is that? That's where I live is Foxfire.

HEARING EXAMINER STRAIN: Let me see if I can find it on the --

MR. COFFEE: FP&L's utility is right behind my home.

HEARING EXAMINER STRAIN: Okay. This is on Fox Hunt Way, the one to the south.

MR. COFFEE: That's where I live.

HEARING EXAMINER STRAIN: Okay. What's -- so you're on the cul-de-sac, or you're further back from the cul-de-sac?

MR. COFFEE: I'm right off of Kings Way.

HEARING EXAMINER STRAIN: Do you have a --

MR. COFFEE: I'm on the corner of Kings Way and Fox Hunt.

HEARING EXAMINER STRAIN: There's two houses there. There's one on the south side, and there's one to the north.

MR. COFFEE: I'm on the very corner.

MR. SABO: He's right there.

MR. COFFEE: Right there. That's me.

HEARING EXAMINER STRAIN: Okay. Then, yes, if you go back to that site plan, we'll show you where you're located then. You should be that house right there.

MR. COFFEE: Okay. And where is this thing going?

HEARING EXAMINER STRAIN: Way on the opposite side of the FP&L facility.

MR. COFFEE: Perfect.

HEARING EXAMINER STRAIN: Well, thank you. That solved that problem.

Does anybody else have any -- wish to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. I don't --

MS. ASHTON-CICKO: Mr. Chair, we just have a brief statement that one of the representatives from FP&L is going to make just for purposes of the record.

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

MR. ROOT: My name is Rhode Root. I'm from Florida Power & Light. I work in the Corporate Real Estate Department as a manager of asset management, and we have engaged Boonetime Bay and Fibernet Direct to -- or connect to attend this hearing and represent us.

MS. ASHTON-CICKO: Thank you.

HEARING EXAMINER STRAIN: Thank you very much.

Okay. With that, I have no other questions, and there's no members of the public to speak, so we will -- unless there's anything else the applicant would like to comment on. Are you complete?

MR. JACKSON: No comments.

HEARING EXAMINER STRAIN: Okay. With that, we'll close the public hearing, and we should have a decision to you before Christmas. I have 30 days to get them out. I'm going to try to get them all out before the holiday. Okay. Thank you very much.

MR. JACKSON: Thank you, all, for all your help.

HEARING EXAMINER STRAIN: Okay.

\*\*\*The next item up is Petition No. PDI-PL20160003246. It's for Rigby Enterprises, LLC. It's for sign changes/deviations for the Naples Bath and Tennis Club.

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

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

HEARING EXAMINER STRAIN: Okay. Disclosures on my part: I've talked with the applicant a couple of times, I've talked with staff as well a couple of times, I've gone through the record, and that's my full disclosure.

So with that, Karen, it's all yours.

MS. BISHOP: I actually printed these --

HEARING EXAMINER STRAIN: Well, first let me ask, there are members of the public here, I believe, who aren't part of the application. So I'll need a full presentation so everybody understands what's going on.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: We don't have -- I don't think there's a walk-around.

MS. BISHOP: I could plug in. These aren't the best, but --

HEARING EXAMINER STRAIN: Well, we've got --

MS. BISHOP: I know.

HEARING EXAMINER STRAIN: Well, you can plug your computer in.

MS. BISHOP: Well, that's true, but I did print them out. It's just that the printer didn't look as nice, so I figured I could do it that way, but we could do it this way, too.

HEARING EXAMINER STRAIN: Either way you like. Okay. Should we take a break while you connect up, if you want to do that? Whatever is most convenient.

MS. BISHOP: No. If they don't like my pictures, then I'll connect. But my printer got a little funky. You know, it's 3 o'clock in the morning, and it got a little funky.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: All right. This petition is an application to allow two things: Specifically, the sharing of the entrance signage with the commercial that's in the middle and to allow a boundary marker at the north end of the project.

The list of deviations. Yes, it didn't turn out as nice. The two deviations at the top were for -- specifically, to the sharing of the sign and the sign size at the entrance, and the four on the bottom are the ones that are specific to the boundary marker.

The existing entrance. This is the north side of the entrance. This is the south side of the entrance as it stands today.

This is looking from across the street at both sides, and I actually turned around and got a picture of Banyan Woods, which really doesn't show up very well, but they have signs on markers -- entry markers on both sides of their entrance. So it would be a similar type of effect, not that the signs are going to look the same.

Now, over the last four years the residents or the POA, as well as the Tract B, have been in negotiations on what these signs are going to look like. I don't think that they've finalized them. This was one of the last looks that we came up with. The POA's approved their name on the top, Naples Bath and Tennis on the bottom.

What we have done since this particular exhibit is we've agreed to make the Naples Bath and Tennis letters bigger, but that will be a part of the final approval with the POA.

HEARING EXAMINER STRAIN: Just so you know, the lettering on how you arrange that, that's an operation that's internal to you-all. The county basically looks at the outside limits of the lettering and calculates the size, and that's what we'll be looking at, not necessarily the order in which you render it.

MS. BISHOP: Well, that's true, and the only reason I bring it up is because during the NIM meeting it was brought up to me, so I wanted to make sure I let everyone know that we did listen to them, and we went -- and we're adjusting accordingly.

HEARING EXAMINER STRAIN: Okay. Thank you.

MS. BISHOP: I took some pictures up in that area. The north side, which is -- this is the south side. This is the north side here, and there are a couple of really nice cypress trees. We are not going to be taking down any major trees there. There's plenty of room for us to be able to stick that sign there even -- the worst case is utilizing a stem wall construction to allow for the continuity of the sign on both sides.

HEARING EXAMINER STRAIN: Just so you know, I have received a couple letters from the public; they're part of the record. And one of them, at least, there was some concern over the trees. So you said you're not going to be removing the major trees.

MS. BISHOP: Right.

HEARING EXAMINER STRAIN: "Major" means --

MS. BISHOP: Major --

HEARING EXAMINER STRAIN: It's varies what "major" is, so I'd like to define that.

MS. BISHOP: There's two huge cypress trees here, so those two cypress trees we are not taking down. There are smaller vegetation in front, and actually maybe this other picture's a little bit better.

Here we've got a couple of Robellinis and some hedges. What we were intending to do is shift those out of the way, move the ones that are on the south side so that they're kind of crossing each other to kind of create a more -- you know, more continuity between them. But those are the areas that we'll be utilizing.

This cypress tree that's here will stay. That cypress tree is going to stay and then, of course, we have these big power poles. We're not moving any of those either.

HEARING EXAMINER STRAIN: Now, that's on the right side. Is there anything on the left side?

MS. BISHOP: This is on the north side. On the south side there's nothing in the way. This is all -- this light already extends, so the worst that's going to happen to the sign, it's actually going to angle a little



farther to the back. The alignment will be just more 45 degrees there. But it doesn't remove any vegetation that would be considered wetland or --

HEARING EXAMINER STRAIN: I know this is ambiguous, but you're basically indicating you're not going to remove any of the larger cypress or major trees; is that -- fair to say that?

MS. BISHOP: That is a fair statement. It's not necessary to do that with this sign.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: All right. So now I'm moving to the north site, and at the north end, this right here is at the corner of the shopping centers here, and this is Airport Road. The property line aligns up with these power poles. Now, this vegetation here is exotic vegetation, which would be removed. It's not on our property but it is, in fact, Brazilian pepper. Our property starts right behind here.

So you get a little closer view of it here. The same is -- I'm going to cross the street. You'll see that there's a retaining wall that is actually set back five foot from the sidewalk, but the back of sidewalk in this area is, in fact, our property line.

So this retaining wall in this section is 5-foot, but up here it's actually right on the back of the sidewalk, so it kind of juts in mainly, I'm guessing, to accommodate these power poles, because it does it all the way down to the entrance. It kind of juts in and out to allow for the power poles.

HEARING EXAMINER STRAIN: What's on the backside of that retaining wall?

MS. BISHOP: Mounds of rocks and stuff.

HEARING EXAMINER STRAIN: Is the material on the backside of the retaining wall higher than the retaining wall?

MS. BISHOP: Yes.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: And in this case you can see these are -- I want to say they're like an earleaf, you know, one of those big rhododendrons, but I'm not sure exactly the plant name. So this is what they have at this date. Where we're looking to put the signage would be right behind this, which is a Sabal, which we'll probably end up replanting somewhere else or putting in another Sabal.

This view is from the back of the commercial area. That fence line extends -- if you were standing at that fence line, that is our property line. So this back here was just built a long time ago. There's a lot of mounding of rocks, and then they just kind of threw plants on top of it, essentially.

It got a little closer, so you can see that that retaining wall that's five foot off there is about 20 inches tall. And what happens is it disappears behind that Sabal palm. It -- as you can see, here's that Sabal palm. It disappears back here, 45's out, and then kind of dead ends back into this no man's land.

So where we're proposing with this application to put that signage is right about here. We're hoping that we don't have to take out this 45 and do much with it, but that would be, essentially, where this thing's going to sit is right here.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: And this is just more pictures of what's back behind, back in here, no man's land. Same thing here. From the shopping center looking back, that's what you see.

I have included a picture of the sign at Publix, or -- yeah, the Publix and Target center. This is someone holding a 12-foot -- at the 12-foot mark holding a tape so that we could compare it to the sign that's already there and show that, clearly, we're lower than that.

HEARING EXAMINER STRAIN: Now, that sign that's already there is actually about 30 feet from the right-of-way line that lines up with your property.

MS. BISHOP: It's actually 18 feet. I measured it from what appears to be the new right-of-way line. They gave 15 feet up of the original right-of-way, so maybe that's where the difference is. But we taped it off to what we think is the right-of-way line, which is like the back of the sidewalk, and that's 18 feet.

HEARING EXAMINER STRAIN: So the code requires your sign to be placed 10-foot off the

right-of-way line.

MS. BISHOP: Yes, sir.

HEARING EXAMINER STRAIN: The difference between that sign location and your sign is 30 feet, because the right-of-way where you're at will be 15 feet because of a segment of the right-of-way that was added to the property to the north that you don't have added to yours, and then the sign itself you're telling me now is 18 feet off that added piece. So you're actually 32, 33 feet from the right-of-way line that you will be aligned with, which is why I questioned, when I talked with you, the location or your need to be five foot off the right-of-way line. You were already 30 feet -- that would be 30 feet closer to the sign to the north.

And your view, as people approach that property in that corner, is wide open because there's a right lane there to turn into that service entrance to the back of the shopping center. That would leave a clearer view for any parties moving south on Airport Road to see your sign whether it was five feet off or the code-required 10 feet.

So I really didn't see the justification in the five feet. I just wanted to -- I mentioned that to you yesterday, and I thought I'd bring it up again today.

MS. BISHOP: Right. And one of the reasons why we are looking for that extra -- or the flexibility is because of what really exists back in here. I mean, it really is kind of a -- looks like in the past what they did is they piled a bunch of rocks in here and then put vegetation on it.

So the intent was to try to keep it in line with this wall. So this wall sits at five foot off the property line. So sinking it five foot back from this wall, we were trying to keep it aligned with that.

HEARING EXAMINER STRAIN: Right. If the wall's five feet off the property line and you're going to propose five feet back from that wall, you're 10 feet off the line.

MS. BISHOP: Well, I'm saying that that's what the normal code is, 10 foot. We're requesting a deviation to be in line with this wall; in line with this wall.

HEARING EXAMINER STRAIN: With the view corridor in front of you and the realignment of the right-of-way, I don't see how that necessarily fits, especially with the distance in that line to the north is, but that's --

MS. BISHOP: Well -- and I understand that. And the other thing, too, is, you know, when you look at this part right here, one -- you know, we have a lot of issues here with the power poles that we're going to have to deal with, and these lines here. So, you know, this -- there is a power pole that sits right here. That's a power pole. So this tree can be moved. This vegetation is off site, so that vegetation is exotic. That would be removed. So then that thing sits back here.

So we were just trying to -- because of what's back here, trying to have some flexibility so that we weren't having to tear down, you know, a lot of this area back in here. But I understand that it may not be to the best -- you know, that request may not be approved.

HEARING EXAMINER STRAIN: You also -- and you have told me for "flexibility," but deviations are based on justification. Flexibility isn't really a justification.

MS. BISHOP: I appreciate that.

HEARING EXAMINER STRAIN: If you had a survey showing restrictions and a topo showing things like that, it would help understand maybe what your argument is, but lacking that it's real hard to see that today.

MS. BISHOP: No, and I appreciate that. The difference is a lot of these -- you know, in the case of owners, you know, when they start spending all this money, they usually want to make sure that they have this ability to do it before they do that. So they haven't gone that far yet. They will prepare and provide all that at SDP.

So we understand that if it's not -- if we don't have the justification, then we'll have to build it within the 10 feet that already exists for the code.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: And this is, again -- when we first had the NIM, this was, you know, the type of signage that we have. This is how it's morphing to this particular one.

It's the same elements at Tract B -- inside Tract B they have a private school, which is an entity on its own. They have a restaurant. They have the fitness center. All of these entities are separate. They have their own web pages. They have their own LLCs. So having the ability to advertise those are important.

The one that's left blank here is similar -- would be -- because this one down here that says "Easter Bowl," this particular facility puts on I think it's like 25 -- it puts on 35 tournaments a year, and so being able to advertise those tournaments -- and they bring in, from what my client told me, visitors to Naples equating to more than 20,000 hotel stays.

So in 2019, they're going to have -- you know, I don't know if these acronyms -- or I could only assume that the American Tennis Professional events, one world, one USA sanction events, some international events, plus they have charity events all year, and they are home to the largest Special Olympics tennis program in Naples every week.

So having those -- the ability to advertise for those events is what that intent is for this last one here.

HEARING EXAMINER STRAIN: Okay. But let's back up, because your applicant said that the sign -- the boundary marker sign additions for the commercial would be for the commercial use within Tract B.

MS. BISHOP: It is, all within Tract B.

HEARING EXAMINER STRAIN: Now you're telling me that you want a changeable sign for events within Tract B.

So I'm not sure how staff perceived that. I'll certainly have to ask. And I'm not sure how that fits with the sign code, because until you said that now, I didn't understand that's what you wanted to do there.

MS. BISHOP: Right. Well, it will be like this. And what they do is -- it's a slide. So in the case -- I mean, each slide would fit as per the code, and each time, if they change the event -- like this says "Easter Bowl 2014." So instead of it saying "Easter Bowl 2014," it's probably just going to say "Easter Bowl!" so they can use it over and over again, but that would still fit within the requirements or the allowable sign face based on the code.

HEARING EXAMINER STRAIN: And I'm going to have to -- when we get to staff, to see if --

MS. BISHOP: Right.

HEARING EXAMINER STRAIN: See if there's any knowledge from staff on changeable signs as a boundary marker. I'm not familiar with that, so I'll have to see what they've got to say.

MS. BISHOP: Well, it would be similar to -- for instance, let's say that we also have a -- which I'll show you. Tract B, as it stands today, looks pretty much like this: Existing tennis courts, there's an existing school, existing club and pool.

We have recently submitted and gotten approval for a new school, which sits here, a dorm room, which sits here, and hotel suites, which sit here next to the pool. Those have all been approved through SDP and will be -- I'm not sure exactly when he's starting construction, but he is right now working on his funding to start that construction.

So the signage here, maybe it's -- instead of the four panels, it may end up being five just to add the suites, which is a hotel, which is an allowed use within that zoning, so -- which I think --

HEARING EXAMINER STRAIN: So you're looking at a residential boundary marker --

MS. BISHOP: Uh-huh.

HEARING EXAMINER STRAIN: -- that you want to establish the ability to put commercial entities on the residential boundaries marker?

MS. BISHOP: Right.

HEARING EXAMINER STRAIN: Both of them together, which I understand.

MS. BISHOP: Correct, right.

HEARING EXAMINER STRAIN: Okay. But it's looking more like it's a directory sign.

Just out of curiosity, who steered you in the direction of a boundary marker for this analysis?

MS. BISHOP: That would be staff. We actually had it on there before as a directory; we had them both, but then it was decided that this was the way that they wanted us to approach the deviations.

HEARING EXAMINER STRAIN: Okay. If you were an off-site -- I mean, the site that the boundary markers would normally go on in commercial sites, or you're -- in this case it's not a commercial site; it's a recreational site. So if you had the boundary markers on an off-site location for a boundary marker, it might be another way to approach it.

And not -- I'm uncomfortable with using a boundary monument sign for a directory sign, basically, with the larger number of commercial uses that are interior -- I understand the reasoning, but I'm trying to figure out how to get there.

Is there a sidebar we need to break for?

MS. BISHOP: I think that's what they're doing.

HEARING EXAMINER STRAIN: You guys are talking over me. We can either -- we can break for a few minutes, if it would help.

MS. ASHTON-CICKO: I'm sorry. I didn't realize the microphone was picking it up.

HEARING EXAMINER STRAIN: No. I was just -- my ears were; if you don't mind.

Anyway, this particular issue is a boundary marker, which is something we have in a lot of projects throughout Collier County. I'm concerned that this process would be expanded based on what you're asking for, and that's another reason I'm wondering why it wasn't approached as a directory sign. But I'll ask staff when we get to them. I thought you might know.

MS. BISHOP: Well, it was at one point. We did, in fact, have that. I mean, the difference here is this particular parcel. When this was built in the mid '70s, it started -- it was -- originally the developer wanted to build a, what they called a world-class sports club, a commercial facility, a pure commercial facility, and then as a separate project, the residential that surrounds it, which is part of the record, you know, in the mid to late '70s when they did the PUD and made changes to their PUD.

So this is a very unusual project because over the years we have changed the way that we do designing, and we have put commercial facilities on the outside. If you look at -- like, Pelican Bay is the one that comes to mind immediately, all of their commercial is right along U.S. 41.

Well, this was built way before those changes to how we -- where we put these things. This is the only one that I'm aware of that sits smack in the middle of a -- surrounded by residential. Even though, if you look, the residential is -- first, of all, it's a lovely project, but there is a buffer -- when the developer designed this, he specifically designed it to have the massive buffer to buffer the residential.

So this here is a massive buffer that goes around in a common area. So they have one big common area --

HEARING EXAMINER STRAIN: You're going off on a tangent that's outside what we're discussing today.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: Let's stick to the sign deviations, okay. So I understand the boundary-marker concept. I'll get to staff about that. But can you put that sign back up you're talking about --

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: -- the one for the boundary marker.

So let's start with the one on top. Sanchez-Casal Academy. I'm assuming that's the recreational club or the sports instructional school. Is that --

MS. BISHOP: Yes.

HEARING EXAMINER STRAIN: Because you're not in a -- your writeup in your justification keeps referring to commercial uses. They're really underneath the recreational club development tract of this planned unit development.

MS. BISHOP: Correct.

HEARING EXAMINER STRAIN: So we'll keep referring to that tract's --

MS. BISHOP: Tract B.

HEARING EXAMINER STRAIN: -- permitted uses to try to align this to what it is.

MS. BISHOP: Correct.

HEARING EXAMINER STRAIN: Okay. So the Sanchez-Casal Club is the recreational club, or is it the sports instruction school? Which one of the permitted uses does that apply to?

MS. BISHOP: This particular one is for the tennis school specifically. This is the school where they actually get education. So you can come there -- and because it allows many uses, you can come and get specific tennis instructions, but you also go to -- some of these kids are from Europe, so they come and they live on site, and so they get private school, and then they go to the tennis part of the school, tennis school. So it's almost like two schools in one here: One for grades, and then one for -- to teach them how to play tennis.

HEARING EXAMINER STRAIN: Okay. What is the Verdura (phonetic) Restaurant?

MS. BISHOP: That is the restaurant. So the restaurant, their intent -- they haven't got it up and running the way that they want yet. They use it now for lunch and, obviously, to feed the kids that live there. But the intent was to have a world-class chef, and since they're allowed outside -- you know, the club and its members and its guests, so the intent was to have something that they can utilize so people can come in and have dinner.

HEARING EXAMINER STRAIN: So by putting that sign up there, it functions to tell people, if they're approaching that location, where they would turn in, especially with the location on the bottom.

MS. BISHOP: Yes, it does.

HEARING EXAMINER STRAIN: But at the same time, I had tried to go into Naples Bath and Tennis once, and I was told by the gate I couldn't come in. So this isn't open to the public, or it is open to the public?

MS. BISHOP: It is open the public. So what you have to have is you have to be a member of the club to be able to go, or a member of the guests, so --

HEARING EXAMINER STRAIN: So it's not open to the public.

MS. BISHOP: Well, it is open to the public as far as -- when they have events it's open to the public, and there's 35 of those a year. So there are many times where you don't -- if you're a guest of someone there or a guest of a member -- but then the events they have, you don't have to be a guest. They have these public events, and that's when you're able to go.

HEARING EXAMINER STRAIN: Okay. What is the last one, performance?

MS. BISHOP: That is a facility for endurance and -- let's see. I actually have that. That is on the web page. They teach. It is fitness coaching and training so that what they have is a whole facility there that is for -- you know, you become a member of this particular fitness club, then you have coaches, you set up times; you have trainers. They work with your nutrition, and this one is already existing also in there.

HEARING EXAMINER STRAIN: Okay. That helps at least understand what the signs are for.

MS. BISHOP: Great. And the school, I have one for the school, too. Oh, and here is the international private school. That's also allowed. That exists today. And when they get their funding, that is a part of what's going to be razed, and a new building is going to be built for the classrooms.

HEARING EXAMINER STRAIN: Okay. Let me run through the deviations so those members of the public, if they want to speak, can follow all the deviations that you're asking for.

Deviation No. 1 is basically to allow the ground signs out front, the two main ones. Well, there's only one there now, but to allow you to have two, which the code does allow two for the residential entry, but you want them to be combined with a message for these recreational uses on the inside.

MS. BISHOP: The boundary marker on the north has all --

HEARING EXAMINER STRAIN: No. Let's not -- let's talk about the two deviations.

MS. BISHOP: The one at the entrance?

HEARING EXAMINER STRAIN: Your Deviation No. 1, can you tell us specifically what that's for so there's no doubt about it?

MS. BISHOP: Specifically, that allows the academy to be on the same sign as the residential part of the project.

HEARING EXAMINER STRAIN: Right. And the fact you're putting two there, you had a right to put two there if they were just residential.

MS. BISHOP: Correct.

HEARING EXAMINER STRAIN: So you're really just asking for that one to be combined with a nonresidential use, and the language for that use and how those letters work out and all the names, that's really going to be subject to your HOA or whoever you're working with on the property, because our code looks at just the area of the letters, not the letters themselves.

MS. BISHOP: That's correct.

HEARING EXAMINER STRAIN: Okay. The second part of that one that you're asking for is an increase in size from 32 square feet to 45 square feet so you can fit the additional lettering on there.

MS. BISHOP: Right, and so they have flexibility. As time goes on, people like to change their entrances, and if they come up with different designs, then they won't have to come back in front of this body to be able to have that flexibility. So this particular sign, I believe, is not going to be a final sign, but it's the square footage that we're looking to get approved so that they have that flexibility when they come to a final sign decision.

HEARING EXAMINER STRAIN: Okay. And Deviation No. 3 gets us into the boundary marker.

MS. BISHOP: Correct.

HEARING EXAMINER STRAIN: And the boundary sign on this -- in that deviation is requesting the same ability to mix commercial with residential.

MS. BISHOP: Yes, sir.

HEARING EXAMINER STRAIN: I'm getting my mike switched out. Thank you.

Okay. And then we get to -- that's No. 3. No. 4 you're asking for a change in the height, and so I'm going to go to staff here for a minute so I understand where the height is measured from for Deviation 4. Can staff answer that question?

MS. BISHOP: I can.

HEARING EXAMINER STRAIN: I'd rather staff answer it. I'll come back to that then. If the staff could take a look and locate that location, I'd appreciate it.

Deviation 5 increases the copy on the sign. It does not stipulate the lettering but simply says you can go from 24 to 48 feet.

And Deviation No. 6 moves the sign, instead of 10 feet off the right-of-way line, to five feet.

Did you have something, Heidi?

MS. ASHTON-CICKO: Mr. Chairman, as you know, I didn't review this petition, but I had an issue with Deviation No. 6.

Sorry, Karen.

MS. BISHOP: That's okay.

MS. ASHTON-CICKO: I worked years and years on eminent domain, and we fight hard to maintain our 10-foot setback from our arterial roadways. So I don't know if Mr. Sawyer wants to provide any further comment, but I just need to note that for the record.

HEARING EXAMINER STRAIN: Thank you. I appreciate that.

It's one I've been certainly concerned about, as we know, from the prior discussion. So thank you.

Back to staff on that deviation for the height. Where is -- has staff figured out where the height would be measured from?

MR. BELLOWS: For the record, Ray Bellows, zoning manager. The deviation discusses the boundary marker sign which requires a maximum of eight feet to the uppermost portion of the boundary marker, and that is measured from the grade -- or inclusive of berm.

MS. BISHOP: Well, the way I understood, it's from the adjacent roadway. The crown of road from Airport Road is what I understood it to be.

MR. BELLOWS: Yes.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: Well, okay. That's different than the adjacent berm. That's what I was getting at.

MS. BISHOP: Right.

HEARING EXAMINER STRAIN: I know Karen had expressed to me she thought it was measured from the roadway. That does have an impact if you've got a retaining wall with fill behind it and you put a sign on top of it. If the sign on top of that fill is not artificially raised and we don't have a point that's fixed, then whatever the berm height is, the sign keeps going up, and I'm trying to understand that. So you're saying that the 12 feet would be measured from the crown of the road of Airport Road?

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: Okay. That's what I needed to know. Thank you.

Karen, let me move through the rest of my questions before we go to public speakers, or before we go to staff report.

It will take me a minute to scroll through them. I think you've answered most of them. I've got a couple for staff.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: I think we're good with those questions.

So what we'll do is I'll move to the staff report. Is there anything more you wanted to add for the record?

MS. BISHOP: No, sir.

HEARING EXAMINER STRAIN: Your diagrams, your pictures, and all that stuff, you have to leave them with the court reporter.

MS. BISHOP: Yes. I'd like to put them in an order for her.

HEARING EXAMINER STRAIN: That's fine.

MS. BISHOP: I messed them up. I'll leave them for you.

HEARING EXAMINER STRAIN: Just make sure she has them before you leave you today.

MS. BISHOP: Yes, sir.

HEARING EXAMINER STRAIN: Thank you.

Okay. John is there -- I know there's a staff report, John. Do you want to add anything to the staff report?

MR. KELLY: John Kelly, senior planner, for the record.

The staff recommends -- well, let me first state that we received two email letters from one individual and a mailed letter from another that I will be providing to the court reporter.

Then as to respect for (sic) the project, staff recommends approval for Deviations 1, 2, 3, and 6 and denial of 4 and 5 for PDI-PL20160003246.

MR. BELLOWS: Also, for the record, I'd like to note that based on the testimony by the County Attorney's Office, that we are no longer in support of Deviation 6, which is the reduction of the 10 feet.

HEARING EXAMINER STRAIN: That's a reduction from 10 feet to five along the right-of-way. Okay.

John, there's two pages in the staff report. I couldn't figure out why they're there. They may be there in error. If they are, just say so. One is Page 13 and the other is Page 14. Page 13 is a conceptual master

plan for the Carillon Commercial Plaza, which is across the street and up on the corner, and other one is the Meadowbrook master plan. Do you know why those were in the staff report?

MR. KELLY: Those pages are there as we identified land uses that were adjacent to this property, and they're just to show the designated land use.

HEARING EXAMINER STRAIN: Okay. I'm going to go through and make sure I don't have anything else, John, of yours. I noticed there wasn't a survey in the staff report. Is that -- did you get one and just not put it in the staff report?

MR. KELLY: We do not have a survey.

HEARING EXAMINER STRAIN: Okay, okay. That's all the questions I have of staff.

We'll turn to public speakers. Anybody in the public wishing to speak? Ma'am, if you'll come up, identify yourself for the record, and then we'll move through.

You'll need to tell us if you were sworn in. I believe you stood up.

MR. KITTLE: No, I wasn't.

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

HEARING EXAMINER STRAIN: Thank you.

MR. KITTLE: Good morning. I'm Rob Kittle from 770 Bald Eagle Drive in Naples Bath and Tennis. My wife Nancy and I have been there for 10 years, and her family has had a property in Spoonbill for 30 years.

My main concern today is with Deviation, I think it's No. 2, which relate to the entryway signage, first of all, because Rigby Enterprises has been allowed to make this application. I think it should more properly have been made by the owners of the land, which is Naples Bath and Tennis, the residential community here for several hundred homes within which Sanchez-Casal tennis facility is located, and it's that way around, to the owners of the properties.

The road leading to the tennis facility off Airport and through the entrance, which is Clubhouse Way, is owned by Naples Bath and Tennis.

Our objection to Deviation 2 is that the addition of a second sign at the entrance is unnecessary and would spoil the ambiance and the view of the quite exceptional Florida wetlands and vegetation on either side of Clubhouse Way.

The existing sign on the south side is double-sided instead of right angles to Airport and, therefore, can be seen quite clearly from both the north and south approaches on Airport, placed there 20 years ago -- sorry -- many years ago 20 feet back from the curb so as to maintain the ambiance of the entryway. The uniqueness of this entryway is appreciated and often commented upon by the homeowners at our meetings.

We, therefore, strongly protest any proposal to add another sign or to change the siting and dimensions of the existing sign, including its height.

There are many new street signs displaying the Sanchez-Casal name which have appeared on both the north and south approaches along Airport. So, really, there is no directional need for a second sign at the entrance, particularly if that business name is to be shared on our existing sign and a new sign is to be erected on the northeast corner. That's, obviously, Deviations 3 and 4.

I have submitted two papers to the Examiner, including some photographs which describe this in more detail and why it is so important to keep the entrance signage as it is.

With regard to Deviations 3 and 4, we do agree with Growth Management's view that this should not be oversized. And that's my presentation.

HEARING EXAMINER STRAIN: I have a question for you.

MR. KITTLE: Sure.

HEARING EXAMINER STRAIN: If your HOA wanted to put a second sign out front, would you have objected to that?

MR. KITTLE: Absolutely.



HEARING EXAMINER STRAIN: A sign for themselves?

MR. KITTLE: Absolutely.

HEARING EXAMINER STRAIN: You know they would have a right to do that without a public hearing? That's allowed by code right now, and that's the point I wanted to make is that the two signs that could go out there only require a building permit submittal or a site plan as well, but that's it. They don't need a public process, because those are already allowed.

The difference here is they're asking to mix the residential language with a nonresidential language, which is the recreational facilities, so...

MR. KITTLE: Yes. I have -- we have no particular objection to that. It's a pity because, I mean, Airport is now festooned with all these signs saying "Sanchez-Casal." It used to be Clubhouse Way, and there were half as many signs. So there is very good direction into the entrance.

The entrance itself is very special to us all and has been, you know, since inception. That's why the sign was put like that in the first place so that that lovely entrance with the natural Florida plantings -- well, they're not plantings there. It's wetlands and lovely trees, and it's been bashed a bit by the hurricane, sadly, but it's recovering, and we don't want it messed up, basically, and there's no need for it.

When you drive south into the entrance, you know, from the north, you turn into the entrance. The sign that's the existing sign is on the left. There is nothing in front of you on the right. I mean, you can tell I'm English. Even I drive on the right of the road. I go in there, and we can see all the lovely plantings before we get to the gate, which themselves are very nicely placed.

So to put two big signs in your face as you come into that entrance, I think, would be a travesty, you know.

And I'm sure if we'd only been asked by our HOA what our views were, they'd been very strongly placed, because in the past we've been to many homeowners' association meetings, and people are always eulogizing over how nice our entrance is and how lovely and soft and, you know -- and the ambiance of it is so nice.

HEARING EXAMINER STRAIN: Okay. Thank you very much.

MR. KITTLE: Thank you.

HEARING EXAMINER STRAIN: Next speaker, please. Ma'am, come on up.

MS. EILERS: Hi. I'm Tammy Eilers, and I'm a resident out at Naples Bath and Tennis.

And I have some questions. I've only lived there two years, but I've been interested in this whole signage thing that's going on. A few things I wanted to point out first of all is I believe that earlier during the presentation it was stated that the restaurant was for members. My understanding is the restaurant is open to the public.

HEARING EXAMINER STRAIN: Okay. We'll clarify that with staff.

MS. EILERS: All right. As far as the signage, another question, is that Cypress Ball -- I believe they are Cypress Balls on either side of our entrance. Are they federally protected, meaning would the sign put up to right of it violate any federal laws, and would our HOA, in any way, be liable if that were the case?

HEARING EXAMINER STRAIN: I can't talk to you about the liability side of it. I know that if they are doing anything that needs federal or state permits, they'll have to get those in addition to the county. I just can't tell you without surveys and whatever other studies would be needed to tell you -- to let you know if that's going to happen here or not. That's outside our jurisdiction.

MS. EILERS: All right. When I look at what they're calling a marker, the large sign, I see a billboard. I don't really have a problem with it, because it feels like it's part of the shopping center, not part of our association, but what's to keep our new signs to becoming more than just Sanchez-Casal? I understand you're saying you don't really have say on what goes on the signs, I guess, as far as lettering, but my concern is, is that new larger sign being made larger to handle schools and restaurants and Naples Bath and Tennis down at the bottom? That's a concern that I have, and what is -- how can we protect that from happening?

HEARING EXAMINER STRAIN: Your HOA would probably be the entity that, I would imagine, have to work with the applicant today to get those signs -- how verbiage comes out. We only care about -- we only look at the size of the box it fits in. Even if it was a different-sized box and the HOA wanted to mix the signs between commercial and residential, which is being asked for today, our part is just to acknowledge yes or no on the mixing. But how that gets mixed is really going to be up to your HOA, so...

MS. EILERS: Okay. And so what was approved today was that the commercial can mix with the residential?

HEARING EXAMINER STRAIN: Well, nothing's been approved today. What they've asked for is to allow the front signs to have a reference to the recreational components, or the nonresidential components, as well as the community component, which is Naples Bath and Tennis.

MS. EILERS: Okay. Got you there.

All right. From what I understand, the club part, the recreational facility part and restaurant part, has gone under a couple of times since Naples Bath and Tennis was first created.

We put these signs out at the entrance. That name of the road entering in has already been changed to Sanchez-Casal where it used to be Clubhouse Way, as he pointed out. With allowing this commercial, or whatever you call it, entity to be on with the residential sign on, I believe, property owned by the residential area, if they go out of business, what happens? Who --

HEARING EXAMINER STRAIN: I don't have an answer for you offhand. I know that we have a Code Enforcement Department, and if we've got an advertiser advertising and there's no such entity, I'm sure that you could probably file a complaint and have that sign taken down.

MS. EILERS: Okay.

HEARING EXAMINER STRAIN: But I couldn't answer that for you today.

MS. EILERS: All right. Okay. So as far as objection to the wording on the signage, how would that be handled? That's purely handled through the HOA and nothing -- there's no other way to handle that?

HEARING EXAMINER STRAIN: And I asked that specific question of our sign professional yesterday, and she told me we don't get into the verbiage and language. That is -- that is the property owner.

MS. EILERS: Just the HOA?

HEARING EXAMINER STRAIN: Whoever's responsible, so...

MS. EILERS: Okay. All right. Thank you.

HEARING EXAMINER STRAIN: Thank you very much.

Next speaker, please. Ma'am, come on up.

MS. BERNARD: My name is Hazel Bernard, and I was sworn in earlier.

HEARING EXAMINER STRAIN: Thank you.

MS. BERNARD: I live in Naples Bath and Tennis. I'm a snowbird, and I own a single-family home there and also a condominium. And I wanted to speak to a couple of the items, and you can clarify for me if I'm speaking about the wrong variance that was requested.

As to the two signs out front, I share Mr. Kittle's view that it seems to me that one is more than sufficient now and that the second sign on the north side of the entrance, which is -- the land is lower there. It's more in a cypress swamp, if you will -- will, in addition to requiring the removal of several trees, admittedly smaller ones, and being somewhat obscured by the presence of those large power poles, may simply not be necessary.

It strikes me as a vanity for the owner of the club to have their name on both sides since the residents in the community, of which there are 550 units with -- I would estimate 150 of those are single-family homes, the remainder are condominiums in multi buildings with, I would estimate, a real estate value of approximately \$150 million all on the tax rolls of Collier County. Those residents have been satisfied with the presence of one large sign on the south side identifying the neighborhood.

The business, the academy of Sanchez-Casal, is a tennis club where young people are taught tennis at a

very high level. The students who enroll in the academy pay a substantial fee, in excess of \$50,000 a year, to be a student at the academy. And so I feel fairly certain that they're not getting a lot of drive-by business from people who are cruising down Airport Road looking for a tennis academy for their child.

In addition, the school that was mentioned on the boundary side, that school is there to provide an academic education to supplement the tennis education that these young people who are high school age and middle school age receive. I'm not aware of any students at that academy who are not also enrolled in the tennis program.

The sports program that was referred to, the performance sport, is sort of one of those intensive workout places that is located in the clubhouse. That is run by a separate business. They lease the space from the academy of Sanchez-Casal.

The restaurant does serve the students. It also serves lunch and occasional dinners to both members and the public, but as for the restaurant's ability to be a restaurant serving the public, this is a gated community. The gate is not locked during the day, but it is locked at approximately 6:30 at night, and a code is required to enter.

Now, I don't know very many public restaurants that will succeed in business if they are trying to do business at night and you need to know a code in order to get into the restaurant. And if you give out the code to any public person who is interested in having dinner, then there's really very little point in having a gate at the community.

So I would say that enterprise is at odds with the residential purpose of the 550 units in Naples Bath and Tennis community.

I feel to some degree -- I understand that the wording of the sign is something that has been discussed between the owner of the academy and the members of the master association board and that they have agreed upon the language. I do have concerns about the appearance of the sign in terms of color scheme.

It appeared from the drawing that was presented that it would be similar to what is there now, which is something of a tan background with a dark green lettering, and that is in keeping with the residential nature of the area, but I don't see that as a requirement at this point, and so it could very well be that a more garish color scheme is chosen, and I think that is something that many, many people in the community would be unhappy about. Again, I do not know whether you are allowed to set any restrictions on the appearance of the new signage, but I would ask, if you can, that you do so.

As for the boundary marker that was proposed for the inside -- and it looks like that is something that is not as clear-cut that you are -- that is going to be done, but that is an enormous commercial -- it appears to be an interiorly lit sign and so out of keeping with a residential community, again, where you have -- you have, you know, 550 homes. So you have between 500 and 1,000 people coming and going every day, and we already know what's in there.

The directional sign that exists now tells you that you can turn this way to reach Jacana Street and turn that way to reach Hummingbird. It does not direct you to these various businesses, most of which are really allied under the academy of Sanchez-Casal brand at this point anyway. I don't see the need for that sign. I don't think the students need an interiorly-lit 12-foot-tall sign to tell them where they're going to class or whether they're taking a tennis lesson that day, and I think that the people that belong to this ultra fitness club are members there. Again, they're not dropping in off the street. That pay a monthly membership fee, perhaps something additional for personal training, and come in during the day -- during the day. So it's not a concern about a gated community, and they know where they're going, too.

So I would contend that that sign is simply not necessary and that the design proposed for it is completely out of keeping with the residential nature of Naples Bath and Tennis.

And, finally, as to the corner sign that would be placed at the northeast corner of the property, I'd just like to state that the pile of rocks there, I don't know whether they were brought from elsewhere -- they may have been dug up from the ponds when they were building the community. But that is a berm that provides a sound barrier and a privacy barrier for the residents inside the community. That northeast -- the entire

community is reamed (sic) by a road called Bald Eagle Drive, and the condominiums that are located near that northeast corner have some sound and light protection because of that berm.

So I would just ask that any signage that is allowed to be built at that corner, that there be no harm done to the berm so that when the -- if that new sign is put in place, that it does not have an impact on our neighbors who live in that section of the community.

And one final point, the master association has retained a landscape architect to take a look at the design of the front entrance gate to the community, and I believe that a presentation is going to be made at their February board meeting. In the event that you do decide to allow two new signs to go forward at the front entrance, if there is a possibility of coordinating that effort with what is being done by the master association so that the signs, the landscaping around them, which trees are removed and which trees are retained -- it would seem to me to make great sense for the left hand and the right hand to work together on that.

So thank you very much for your time.

HEARING EXAMINER STRAIN: Thank you, ma'am. We're going to try to get some answers to your questions. Appreciate it.

Any other members of the public here who would like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Well, let me start with staff first. And then, Ray, the uses that are going on inside the project, we've had testimony about the accessibility and stuff. Do you see all these uses as open to the public, or how do they function from staff's perspective and permitting?

MR. BELLOWS: I've been reviewing the PUD document, and under "uses permitted," it talks about restaurant and cocktail lounge, a clubhouse, and then it has accessory uses: A pro shop, practice courts, gift shops. So I would think they would be open to the public.

HEARING EXAMINER STRAIN: In your typical PUDs, Planned Unit Developments, in Collier County, there's a lot of clubhouses. Are those clubhouse restaurants generally open to the public, or how are some of those handled? Or does staff even get into some of that?

MR. BELLOWS: There are --

HEARING EXAMINER STRAIN: Silence that phone.

MR. BELLOWS: -- clubhouses that aren't part of a gated community that are open to the public.

HEARING EXAMINER STRAIN: This one is a gated community, though, so...

The sign, we had a question about if the entities no longer existed, what would happen with the signs. I have expressed the thought that a code-enforcement complaint could be filed, that lettering removed. Is that factual?

MR. BELLOWS: That is correct. These businesses that go out of business, they're required to either reverse the panels or replace them with blank ones.

HEARING EXAMINER STRAIN: Okay. And I had been told by our sign professional that the lettering on the sign is really up to the entities. We don't get into the lettering. We look at the box. But what about the color schemes?

MR. BELLOWS: As long as they -- there isn't a code restriction or a PUD restriction on colors.

HEARING EXAMINER STRAIN: But they'd be picked by the entities involved, is that right, whether the HOA or whoever agrees to the sign copy? Those will be the people that would be submitting it and selecting the colors?

MR. BELLOWS: Correct.

HEARING EXAMINER STRAIN: Okay. And I guess, Karen, I have some questions of you. We've heard discussion about wetlands and other permitting. If you go into federal wetlands or state wetlands, you may need other permitting. Is your intention to go into any of the wetlands?

MS. BISHOP: It is not our intention to do that, but what they're talking about is it does drop off there about -- I want to say about three feet. The one that's -- which is really the more intense wetland is actually on the south side of the road, and farther north where we have, where we're proposing -- right here, as you can see

right now, that's all pine straw there. That's behind that cypress tree down in that three foot. It's really not wet. That tree still qualifies as a wetland, and maybe certain times of the year this area's wet, but right today it is dry.

HEARING EXAMINER STRAIN: You're not going to be taking down that tree?

MS. BISHOP: Nope, not at all.

HEARING EXAMINER STRAIN: So why would you be going past the tree?

MS. BISHOP: We're not. This is -- actually, this part of it is forward of that tree.

HEARING EXAMINER STRAIN: So your current plans don't move into the wetlands?

MS. BISHOP: No; it's forward. Well, the term "wetland" is based on the line of vegetation not just a tree, but vegetation and soils. So there's three things that would qualify as a wetland.

What we're intending to do is stay as close to the edge of the pavement as we can and use as -- use a retaining wall as not to impact any of the vegetation -- wetland vegetation or wetland trees. So it may -- because of -- the elevations change there. Like I said, it's, like, three-and-a-half feet. There may be some encroachment into the area but not to impact what you'd call wetland vegetation.

HEARING EXAMINER STRAIN: The sign on the boundary.

MS. BISHOP: Yes.

HEARING EXAMINER STRAIN: Are you intending to light that sign?

MS. BISHOP: On the boundary -- on the north end, yes.

HEARING EXAMINER STRAIN: Well, there's only one boundary sign.

MS. BISHOP: Correct, but I -- someone mentioned some internal sign.

HEARING EXAMINER STRAIN: I'm not -- I heard that.

MS. BISHOP: Yeah, there's nothing there.

HEARING EXAMINER STRAIN: There's nothing here applying for internal signs, so --

MS. BISHOP: No, there's nothing.

HEARING EXAMINER STRAIN: So let's just move to the boundary sign.

MS. BISHOP: Yes.

HEARING EXAMINER STRAIN: Are you intending to light that sign?

MS. BISHOP: Yes.

HEARING EXAMINER STRAIN: How?

MS. BISHOP: My guess is it's a lighted sign. The back is not lighted, or it has a solid back. It has a lighted interior, and then the signs on the front, you know, at night -- actually, I may have -- let's see if it shows the drawing. No.

So on the front -- you would see the lighting from the front, but you wouldn't see the lighting from the back. This is solid. And we can make sure that is -- so that there isn't any what you call light noise affecting

the residents. And you can do that in a lot of ways. One is vegetation, and the other one is making sure you have a solid back.

HEARING EXAMINER STRAIN: You were asked to coordinate the sign placement with the HOA, but I believe the HOA is really the entity responsible for allowing you to be there; is that a true statement?

MS. BISHOP: Well, this -- that is. This particular -- the way that the documents are written here, both the residential and the commercial entity are members of the POA. So this specific property, the buffers, are governed by the POA. And the POA has been in review with the signage for at least four years, and so the signs have morphed over the years.

So we wouldn't do anything or couldn't do anything without their blessing, whether it be size, colors, content, any of those things. And like, for instance, we could not put -- and they would not allow us to put anything but our entry signs; just the Sanchez-Casal Way. There's no way for us to put the other entities that would be here. Those would never be on the entry sign.

HEARING EXAMINER STRAIN: Is it safe to say that both the boundary sign and the front-entry

signs, there's nothing going to be used -- those signs will not be used without strict coordination or without approval of the HOA?

MS. BISHOP: Correct.

HEARING EXAMINER STRAIN: Okay. So you wouldn't mind that as a stipulation for whatever these deviations were to move forward?

MS. BISHOP: No, sir, I wouldn't.

HEARING EXAMINER STRAIN: Okay. I think that's -- that's all the questions I have from the discussion here. Do you have anything you want to add to the record?

MS. BISHOP: No, sir.

HEARING EXAMINER STRAIN: Okay.

MS. BISHOP: Thank you.

HEARING EXAMINER STRAIN: Staff have anything they want to add?

MR. BELLOWS: Yeah. I just would like a clarification what kind of changeable copy on the boundary marker. There's two types of changeable copy: One that uses a tract system with sliding text in and out or if you're going to swap panels.

MS. BISHOP: Swap panels.

MR. BELLOWS: The only caveat is you would have to get a permit for that.

MS. BISHOP: For each one of those; we're aware of that.

MR. BELLOWS: Okay.

HEARING EXAMINER STRAIN: I take it you must have contacted Diane?

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: Okay. Thank you. She does know that section of the code.

MS. BISHOP: Nobody knows it more than her.

HEARING EXAMINER STRAIN: Many years working on it, yes. She does a good job.

Okay. I have enough information to look at this from this point forward, so thank you, and appreciate staff. There's nothing else at this point.

And so, with that, we will close the public hearing, and a decision will be rendered -- on this one it's probably -- I may not get it out before Christmas.

MS. BISHOP: That's okay.

HEARING EXAMINER STRAIN: But it will be out within the 30-day requirement.

MS. BISHOP: Thank you, sir.

HEARING EXAMINER STRAIN: Thank you.

Thank you, ladies and gentlemen, for attending.

Mr. Sawyer, I know you attended. I got the answer yesterday. I was comfortable with it, so there's no sense of beating a dead horse today, so thank you.

Other business: There's none listed.

Is there any further public comments?

(No response.)

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

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December 13, 2018 HEX Meeting

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:21 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

ATTEST  
CRYSTAL K. KINZEL, CLERK

These minutes approved by the Hearing Examiner on 1-17-19, as presented ✓  
or as corrected \_\_\_\_\_.

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