

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
May 9, 2019

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
Gil Martinez, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, May 9th 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. Some housekeeping announcements: Speakers will be limited to five minutes unless otherwise waived, decisions are final unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days.

And a review of the agenda: We only have one item on today's agenda. It's Item No. 3A. We'll move right into that. It's Petition No. CU-PL20180000383, Certus PNR Owner, LLC.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part: I've had discussions with staff, I've had discussions with the applicant, I've had discussions with representatives of one of the neighbors, I've seen the various emails that have come in either through the Planning and Zoning Department or my own office, which I would have forwarded them anyway, and I have researched the files going back to the original approvals of documents in that area to understand some of the parameters of this project.

So with that, we'll move forward with the -- first of all, I have a procedural issue we want to talk to -- the County Attorney's Office wants to make a statement for the record.

Heidi?

MS. ASHTON-CICKO: I'm just going to put into the record Chapter 9 of the administrative code that deals with the Hearing Examiner, and -- can you hear me on this? Okay -- and it identifies the parties as the county and the applicant, so I'll put that in the record.

Gil, did you put in the additional emails that you received in the record, or you'll do that?

MR. MARTINEZ: I have already.

MS. ASHTON-CICKO: You did put a copy in the record?

MR. MARTINEZ: The court reporter has a copy.

MS. ASHTON-CICKO: Whatever was issued after the agenda was published.

And, lastly, today we're going to be dealing with and hearing testimony on the criteria of a conditional use. We're not hearing legal argument today on the bisecting easement that I saw as an issue in some of the emails.

HEARING EXAMINER STRAIN: Okay. Thank you.

With that, the applicant and his representative, want to please identify yourself for the record.

MR. HALE: Yeah. Good morning. My name is Mike Hale. I'm the civil engineer on behalf of DRP -- sorry -- Certus PNR, the contract purchaser for Tract 76.

And while I doubt that the use itself is going to be the largest topic of interest here today, I did kind of want to give everybody the advantage of hearing a little bit about what our client's trying to do.

Certus is a developer, but they're also the owner/operator of the assisted living facility. It is a memory-care facility. Their portfolio includes developing similar communities, over, you know, 5,000 units across 25 communities previously, and they're actively constructing several other sites in Florida at this time.

Their mission is -- you know, with Alzheimer's Association estimates half a million people

in Florida suffer from the disease, and it's expected only to grow into the future.

They've got a large investment here; well over \$15 million that -- and they're looking to build this facility, which is based on scientific research and a focus on whole-person wellness.

They strive to create a true sense of home for their residents and give them a dignified living environment.

Their building is not like a lot of assisted living facilities. It creates more of that residential feel. It's not a white clinical, you know, two-story square building. It almost nestles itself well into the other communities where we've built this.

You know, they do a lot of things for the residents to give them that sense of living place. You know, it's a -- they've got a patio, a town center, a movie theater, a dining area, a bistro, other things of the sort. So these people have a real place to live as well.

Every one of their associates receives dementia training and certification, and they're committed to catering to the social, physical, intellectual, and nutritional well-being of each and every one of their residents.

A little bit about their operation. They do operate 24/7 because it's a place where people live. They have three shifts with a maximum of 20 employees on the site at each time. Their shift changes occur at 7 a.m., 3 p.m., and 11 p.m.

The delivery hours, they typically get food delivery once a week usually in the early afternoon. The noise, you know, I can almost guarantee there will be more noise from the roadway that's in front of them than you will hear from this facility.

Their customer will be the typical -- what I would say the typical resident you might find in the Naples area.

Traffic-wise, most of the residents, they don't drive anymore. They don't have a car. So, really, it just -- it comes down to employees.

So with that said, just -- here is the site plan. It's about a 4.6-acre site. It's about 15 feet west of the interstate, I-75, and about 330 feet east of Whippoorwill Lane.

Access is not from west Pine Ridge Road or Livingston Woods Lane back here, both of which are public right-of-ways. But with the onset of the diverging diamond interchange coming, we've worked long and hard to get access from Kramer Drive here, which is a private right-of-way or, excuse me, private roadway.

Future land use, Golden Gate Area Master Plan interchange activity center, and the zoning is Estate district. Obviously, we're here today because the use requires a conditional-use approval.

So 64-memory-care bed. There's only one resident in each room and, like I said, the building's limited to a max height of 35 feet.

Rather low floor area ratio. Of course, no problem meeting any of the required buffers or setbacks.

In terms of traffic, you know, we've done an initial study. Pine Ridge Road is a designated hurricane evacuation route, and it's got some level-of-service issues now, but we're committed to a proportionate share congestion mitigation payment to the county for the future Pine Ridge Road intersection improvements.

In terms of our traffic generation, very low; arguably one of the lowest you could see anywhere in this type of property with a total of 19 trips in the p.m. peak hour. That's 10 entering and nine exiting. That's like one trip every six minutes.

So with that said, I think you've seen the plan; you know the file. I'm here for any questions.

HEARING EXAMINER STRAIN: Thank you. That plan does produce a question. Earlier this week I received, I think from Gil, our county planner, a set of three plans. That was

one of them. There was another plan that showed that road that loops around in the U form actually connecting down at the bottom.

MR. HALE: Right.

HEARING EXAMINER STRAIN: And there was a third plan that showed this but also a notation towards the bottom that said alternative access or potential future access point. Can you explain how those plans were generated and what we ended up with?

MR. HALE: Sure. Give me just a second here.

So to keep myself not confused on the matter, I'll show you the -- so this plan with a No. 1 up here in the corner, this was, as originally submitted, included with our Submittal 1 for the conditional-use application.

At the time we had gleaned -- we had looked at the adjacent PUD as well as the Clesen PUD, which sits immediately east of Tract -- you know, Tract 76 on 92 and 93. So this is what seemed logical to us at the time, okay.

As we -- as part of the review comments, Mike Sawyer in Transportation made the comment to show this access point consistent with the neighboring PUD.

So in our next submittal, this was the plan. And while this -- you know, the documents of record were not exceptionally clear, the ones that we had available at the time, in essence, this driveway was moved from here up to here to provide access. And, there again, that was more as a result of the staff comment that asked us to do exactly that.

We were, at the same time, also addressing an access to public roadway issue that took our team a long time to go secure from several private parties that had to be party to the first amendment to a roadway easement agreement for the use of this road. We secured that, and just prior to resubmitting we were approached by a developer of the properties to the east who, at the time, had this property as well as the two other properties to the east under contract. I believe you'll hear from that party today.

We started negotiations. Mike Sawyer's comment on our second re-submittal had mentioned -- you know, had mentioned the potential for the floor and decor to be developing --

THE COURT REPORTER: I'm sorry.

MR. HALE: Floor and decor. It's a large flooring facility.

We actually had a post review meeting as of January this year which is, you know, roughly 10 months after original submittal. And in that meeting we had discussed how do we -- you know, what we wanted to do is get through the conditional-use process. That's our goal here. It always has been and it still is. That's what we hope to accomplish.

We were -- we were agreeable to meeting and coordinating and trying to work out other arrangements between my client and the developer, and then we learned that that developer no longer had this property under contract at that January meeting.

At that meeting we did discuss the idea of putting a note down here that said "potential future access" that staff had indicated, well, this might let you continue with the conditional-use process and not force you to come back for any other changes; that that may happen as we work through the engineering process and that eventual additional coordination.

This is our last plan that we have filed, and since then we have spent efforts -- additional efforts with the team representing the adjacent property owner and are making a lot of headway towards some sort of agreement.

The process started later than I think any of us would have liked it to have happened, so we're not yet done. But, there again, our goal -- I think we can -- you know, I think we can work things out. I think our goal is to get through this process and not have to take steps back after spending, you know, a little over a year on this process already.

HEARING EXAMINER STRAIN: Some of the workouts that I believe you're heading towards is the -- I think it's the second plan you showed, the one with the alternative or the additional future access -- I can't read it -- for adjacent property.

MR. HALE: Right.

HEARING EXAMINER STRAIN: That can be from -- I spoke with Bob Mulhere yesterday, and he told me that was one of the issues that might help work the situation out. Now, if that is going to be a possible issue for the future, it needs to be the plan you're going to be using, because after you leave today, you're going to be limited to the plan you've got, what we include in any kind of decision that goes forward.

MR. HALE: Understood.

HEARING EXAMINER STRAIN: So at some point today I'm going to have to need a confirmation. After we hear public speakers, you'll have time for rebuttal, and I wanted to get a confirmation from you as to what plan you're intending to use, and then we'll make a decision based on that.

MR. HALE: Understood.

HEARING EXAMINER STRAIN: Also, in this overall picture of things, I've tried to understand why no one's using Livingston Woods Lane. I think it's the road to the north. Everybody's carefully avoided that, but I can't find out a specific reason why.

I asked Transportation, and they said it's a viable access public road as far as they're concerned, and why didn't you just go up and connect to that road? What was prohibiting you from doing that?

MR. HALE: Well, actually, in the pre-application meeting with the county, that was not a possible option.

HEARING EXAMINER STRAIN: Who in the meeting stated that?

MR. HALE: I did not attend that meeting on behalf. I'd have to go back and look at the notes, but there were detailed notes about that.

I believe it was explained to us that there's been some sensitivity with the residents that live off of Livingston Woods and, for that reason, that was not an option for connection of access.

HEARING EXAMINER STRAIN: Well, I'm going to -- I'll have to explore that closer with staff, because I couldn't find any documents or requirements for that road not to be used. Now, I certainly understand why people may not want to deal with opposition in a case like this, or any case, but I'm trying to understand why no one has even -- I haven't seen in recent times anybody even attempt it.

MR. HALE: I would definitely like to go back and research those details as well, because that may be a completely viable option for us who is not a generator.

HEARING EXAMINER STRAIN: Okay. And I do have other questions, so let's get into those. First of all, there's a series of staff recommendations. And there's, let's see, seven of them that I'm seeing here. Have you reviewed those?

MR. HALE: Yes, sir.

HEARING EXAMINER STRAIN: Do you have any objections to any of those?

MR. HALE: No.

HEARING EXAMINER STRAIN: Okay. And when we get to staff report, I want to see if staff will have anything they're going to add but, basically, they would be -- as long as you have no objections to them, they'd be part of any kind of action that might come out of here today.

Are you going to answer the traffic questions, or are you going to let Norm do that?

MR. HALE: I can try them, but we do have Norm here, so we might as well use him.

HEARING EXAMINER STRAIN: I'm not sure I need you. I think you answered part of

it. Your assisted living number is 254 on an ITE manual, and I know Norm used those numbers to utilize the traffic generation for the site. In the Edition 10 of the ITE manual, it calls out a 50 percent entering and 50 percent exiting volume. Your numbers don't match up with that, and I just would want to know why you didn't match that particular requirement or analysis from ITE. So maybe Norm can try that.

And, Norm, also it talks about a traffic impact, a rate of 4.14. I'd like to know if you utilized that in your calculations or not.

MR. TREBILCOCK: For the record, my name is Norm Trebilcock, professional engineer, certified planner. We prepared the Traffic Impact Statement for the project.

In terms of the split, since the volume is 19, you can't -- you know, to split 19, it's 10 and 9. So it's as close to 50 percent as you can get, so...

HEARING EXAMINER STRAIN: Okay. That's fine. I just wanted to make sure that you at least --

MR. TREBILCOCK: Yes, sir.

HEARING EXAMINER STRAIN: What about the traffic generation rate; 4.14?

MR. TREBILCOCK: 4.14.

HEARING EXAMINER STRAIN: That was the only sampling apparently it had under the ITE number 254, so at least I could pull down from their website, and I thought maybe you had any -- if you used that number, that's fine. If you didn't, I'd just like to know what -- that was the weekday trip generation.

MR. TREBILCOCK: Yes. So, what we use is the -- yes, 4.4 -- 4.14, I'm sorry. Thank you, yes, uh-huh.

HEARING EXAMINER STRAIN: Has the Transportation Department told you that we initiated about two -- or a month or two ago a request that from now when the TISs come through that you actually include a SIC code as a reference because that's what our zoning code matches up to? And we did run into problems where the ITE manual's codes do not match our SIC codes, and there's confusion between Zoning staff and Transportation.

MR. TREBILCOCK: Yeah.

HEARING EXAMINER STRAIN: And I haven't seen the -- you didn't include an SIC code.

MR. TREBILCOCK: Sure. That's a good point. This was done well before that. This was done last -- actually last May when this traffic study was done. So that would have been the reasoning for that. It just -- we hadn't caught up to that, but that is your standard, right.

HEARING EXAMINER STRAIN: Going forward --

MR. TREBILCOCK: Yes, sir; yes, sir.

HEARING EXAMINER STRAIN: -- you'll do it. Okay.

Maybe you can answer the question. Why wasn't Livingston Woods Road or Lane, whatever it is, used?

MR. TREBILCOCK: That's a good point. It's really because, even some of the prior PUDs to the west, sort of a lesson was learned that it's really considered more of a residential road, and there were specific prohibitions to connect to it in the past, and so with that understanding, we've just maintained connectivity to the sort of more mixed-use areas and not go tie into that strictly residential-type roadway. Because there has been concerns with that with any commercial-type traffic on that residential roadway.

HEARING EXAMINER STRAIN: Was any of the previous projects approaching the traffic on that roadway with a limitation to the extent that you have? I mean, you've got a very small number of trips.

MR. TREBILCOCK: That's a good point. The only thing though, realistically, would be is because we do have the interconnectivity. What I would see is you would probably have the potential of other commercial projects kind of interconnecting through us and maybe tying into that, and so there would be an unintended negative consequence of getting more commercial traffic in there.

But you're right, if it were just us, it would be great and it's actually, you know, a nice idea because we're so low volume and everything. But because of the interconnectivity, I think it could be a problem.

HEARING EXAMINER STRAIN: Okay. Thanks, Norm. I appreciate your time.

MR. TREBILCOCK: Yes, sir.

HEARING EXAMINER STRAIN: And that's the questions I have at this point. So if you've wrapped up your presentation, I'll move on to staff report.

MR. HALE: I have. Thanks.

HEARING EXAMINER STRAIN: Okay. Thank you. There will be an opportunity after we hear public speakers and final comments for you to have closing statements if you'd like.

MR. HALE: Thank you.

HEARING EXAMINER STRAIN: With that, Gil, as far as the staff report, it's your turn.

MR. MARTINEZ: Good morning, Mr. Chair. For the record, Gil Martinez, principal planner.

Staff recommends approval of this petition with the conditions that are listed in the staff report. We find it to be consistent with our Land Development Code as well as our Growth Management Plan; recommends approval, once again, and is willing to listen to any other conditions that may arise as we discuss.

HEARING EXAMINER STRAIN: From staff's perspective, how did it come into the pre-app that they were restricted from Livingston Woods Road? Is there a basis for that, Ray, other than the fact that some PUD in the past may have had some objections over that issue?

MR. BELLOWS: For the record, Ray Bellows.

I'm sure at the pre-application meeting we talked about past opposition from the residents of Livingston Woods Lane and some Board direction on a few of the other PUDs where there was a request to interconnect with Livingston Woods Lane, and the Board specifically prohibited it. And they wanted a full solid wall as a buffer between the commercial and the residential.

HEARING EXAMINER STRAIN: Okay. But we don't have any -- I went back and looked at some of the other areas, and it seemed like it was voluntary actions to avoid the opposition, which is fine.

MR. BELLOWS: Yeah.

HEARING EXAMINER STRAIN: But we've also run into a similar situation with Whippoorwill connecting to Marbella, which is on the south -- south of this property. And the need for these interconnections off main access points have been vital to hopefully see Pine Ridge flow a little bit easier. I just -- I didn't know if we had a specific policy not allowing Livingston Woods Lane or anything like that. It's just a matter of convenience in regards to public opposition; is that --

MR. BELLOWS: I wouldn't say convenience, but I would say that that's a response to the past actions that have occurred where there was a lot of opposition.

HEARING EXAMINER STRAIN: Okay. I couldn't find anything addressing it specifically. That's why I asked.

Gil, I don't know if you've got the same 342-page document that you sent me as your staff report. I'm assuming you do.

MR. MARTINEZ: I do.

HEARING EXAMINER STRAIN: Page 33, would you make a note that needs to be --

MR. MARTINEZ: Excuse me. I have to pull it up.

HEARING EXAMINER STRAIN: Okay. Page 33 is a NIM meeting for the Eagle Redi-Mix batch plant in East Naples, so you need to get that out -- that shouldn't be in the package, so at some point we'll clean that up.

MR. MARTINEZ: Understood.

HEARING EXAMINER STRAIN: Thank you.

And that's the only questions I have of staff.

And with that, we'll move into public speakers. Who's got the registered speaker list?

MR. MARTINEZ: The first person is Richard Clesen.

MR. CLESEN: Good morning. Richard Clesen.

HEARING EXAMINER STRAIN: Good morning.

MR. CLESEN: I'm passing my time to Doug Lewis.

HEARING EXAMINER STRAIN: Okay. Thank you.

Mr. Lewis.

MR. LEWIS: Thank you. For the record -- for the record, Doug Lewis with Thompson Lewis Law Firm. I'm here today representing the trustees of Land Trust No. 1 dated October 13th, 2000.

There are five other speakers who have ceded their time. Their names are Teryl Bryeski, Nora, Tom Barber, Mr. Clesen, and Fred Kermani, so that's a total of six. I think we're at 30 minutes.

HEARING EXAMINER STRAIN: Now, you intend to address your comments to the actions involving the conditional use?

MR. LEWIS: Correct.

HEARING EXAMINER STRAIN: We're not into the bisecting easement. And you're going to spend 30 minutes doing that?

MR. LEWIS: Yeah. I'm going to discuss, as the County Attorney mentioned, the -- I'm not sure I'll use all 30 minutes. I just want to make sure I have time. But, yeah, we'll address the Land Development Code requirements for the project per the code.

Let me go ahead and just start. I've got -- for the record, I've got a packet for you. They're tabbed Items 1 through 15. If I can approach so you can have that; it will help the presentation as we walk through the items.

HEARING EXAMINER STRAIN: I'm not going to read it here today, but the court reporter will need a copy. And I'll make sure I get a copy from her.

MR. LEWIS: That's fine.

HEARING EXAMINER STRAIN: Just as part of your comments, if the applicant provides an additional access point on the south side of the property, as we've discussed earlier, will that resolve most of your concerns, or your client's concerns?

MR. LEWIS: Yeah. I wanted to mention we've made a lot of progress. I was just recently retained. And this is where we were as of last night, or yesterday.

And in answer to your question, we could support this plan as it relates to the conditional use. We still need to work out the mechanics, as you can imagine. We need to get easements in place. I've been working with Zach, the counsel for Tract 76, and we've been working on a settlement agreement, some easements. But we could live with that.

Now, a couple highlights in the plan that you'll see here.

MS. ASHTON-CICKO: Can I ask a question; did you bring extra copies so staff and I

and the Hearing Examiner can see it?

MR. LEWIS: I do. So if you look at Tab No. 6, it's in Tab No. 6.

HEARING EXAMINER STRAIN: I wanted to make sure the court reporter had the packet.

MR. LEWIS: She has one. Tab 6. She's got it. I've got one for the County Attorney. I've given one to the applicant.

HEARING EXAMINER STRAIN: Now, the reason I asked the question about the access point is if you've got -- if your client is getting to a working position with this, and when I get the applicant back up here and I get their concurrence that they're in alignment with it as well, I'm not sure where your other objections are to the use itself, and that's why I was surprised when you said you had 30 minutes worth of discussion.

MR. LEWIS: Yeah. We're just reserving the time. We're just here to talk --

HEARING EXAMINER STRAIN: I'm not that strict with time. I generally like -- we're here to hear people. I wouldn't have cut -- if it's relevant information subject to the issue, I wouldn't have cut you off, so...

MR. LEWIS: Thank you.

So this is, I think, a major improvement. Right now before -- let me give you a little history, and then we'll walk into this plan.

So this first drawing, this is -- as you mentioned in April of 2016, the developer submitted the attached conditional plan. You can see the access point here, the frontage road access point.

My understanding was, you know, staff was concerned because we do have a Pine Ridge Corners PUD which shows a bisecting easement here.

So they like -- it's my understanding they like the frontage road, but they didn't see the interconnect in the midpoint here into the PUD to line up --

HEARING EXAMINER STRAIN: Before you go too far, Ray, it's hard to talk over you guys, if you don't mind. If you want -- do you need a break while we study this for a minute? Is that what you're trying to understand or trying to do?

MS. ASHTON-CICKO: Well, there's a lot of access information on that site plan, and it does show things on other properties. So usually, as you know, your site plan is limited to just the parcel in question, so there are some issues, yes.

HEARING EXAMINER STRAIN: I was waiting to get through this. What I was thinking is that if the parties have lined themselves up with that plan that was just up there, that would be the change that would be made on the master plan to the project, not necessarily the plan generated by someone else. We'd all be on the -- everybody'd be on the same page, but we'll get there.

I just wanted to clearly hear what Mr. Lewis has to say so I can understand his arguments. It was a little hard to --

MS. ASHTON-CICKO: Understood. I was just -- I didn't know that we were going to take a break.

HEARING EXAMINER STRAIN: No. I wasn't -- I was asking you if you would prefer to take a break to go over the issue you just were presented with. We can take five minutes and then come back for Mr. Lewis' remainder of his presentation if you'd like.

MS. ASHTON-CICKO: It's your pleasure.

HEARING EXAMINER STRAIN: I don't need -- I'm willing to listen to him go forward.

MS. ASHTON-CICKO: Okay.

HEARING EXAMINER STRAIN: Go ahead.

MR. LEWIS: Thank you.

As you can see with this initial plan that was submitted back in April, as you're coming along Kramer, we do have a fairly significant turn with that turn radius there. A little bit different than what was contemplated originally back at the time our client's PUD was approved where we had just a bisecting easement, a direct access, there is a little bit of an increased turn radius requirement to get the semis and other fire trucks and whatnot through there. So you have that -- but then you have this frontage road concept which, frankly, makes a lot of sense. I've got Tom here. He'll be able to talk about how that interplays.

Now, that was always an option if you look at our -- this is kind of a little bit better detail of the PUD master plan. And this dark line that you see coming down, that's actually the property line between -- the common property line between 76 and 77.

And you can see that -- on both the east side and the west side of that property line you can see this roadway that goes up through, up to the -- from kind of near Pine Ridge all the way up into the bisecting area.

That creates quite a bit of flexibility. There's no devil strip. There's no gap between this joint roadway and our client's property. So you could easily amend your PUD master plan. You could construct a frontage road. You have a lot of flexibility.

This Area C here, they would be able to have access out of that parcel. There's an internal access point here that would take them up to the frontage road. They could come out and go that way. Their patrons could also, in Area C, come up to the bisecting and come across. So a lot of flexibility, but certainly there would be flexibility to install a frontage road, which is all part of the impetus for this plan that we put together.

This lines up nicely with our rights under the existing approved PUD master plan. You have the common property boundary between Parcel 77 and 76, and you have a 12-foot roadway improvement on the east side and also on the west side. There would be a temporary drainage swale, as you can see here, until this site was developed, and they could make some improvements on the drainage.

But this gives you a nice -- from a traffic-flow perspective, you know, it gives us a nice frontage road. We've been also -- there's a lot of moving parts here, but we've been working -- in addition to working in good faith -- so I was working all day yesterday with Zach on putting the agreements together. We are working in good faith. I'm hopeful we're going to get an agreement with them.

We've been also working diligently with the owners of Tracts 92 and 93. Those tracts are directly adjacent to Tract 77. So you have our tract here. There's another tract that's to the east of that, which is on 92, and then you have 93, and then you have 108.

We've been in contact with 92 and 93 there, and they've sent letters to the county. They're very supportive of this frontage road. We think it makes a lot of sense on a lot of levels.

And I think -- you know, my read, in talking to Zach and the others, I think they like it as well. I mean, there's benefit because all the commercial traffic comes down the frontage road, and this would be a private road here, so we don't have all this traffic coming, you know, up.

Let's go back to this -- this is the current plan. This is Revision No. 3 that's currently before. But you see all this commercial traffic that's moving down, and then it's coming back up along the assisted living facility.

So we've been, you know, making some headway. We've been -- we think -- you know, we've got very cooperative 92 and 93 owners. I think it's in everyone's interest to get this resolved, as I can see it, as we've been retained. It makes sense.

The second plan was submitted -- this is a copy of the second iteration of their plan, and this one was submitted August of 2018. And you can see -- and you can see the interconnect, and

you are showing the off-site, you know, PUD master plan indicator for the PUD.

The problem that we had, you know, that we discovered as we met with Tom and the engineer is that they're actually showing -- you can see here they're actually showing this north/south roadway here. This is an odd design, because you actually have two parallel north/south roads, and it's actually fully incongruent with the approved master plan. The approved master plan had a single roadway north/south, which makes more sense. It was -- the reason why it was there, it was originally within -- it's located within this north/south perimeter easement that was created, I think it was in the '70s but, you know, these earlier easements that were there, so that was there. But that made a lot of sense.

So this plan here, when we looked at it, we're kind of scratching our heads. You've got two roads. You've got a very odd turn radius. I can have Tom talk a little bit more about some of the real traffic concerns if we were -- as we build that out to provide that additional access to our parcel here.

It did show -- the good thing it showed was future access for adjacent property, which is helpful. The problem with that, you know, it does give them flexibility with the county in their conditional use. The problem is that there's this devil strip here. There's this area that separates the actual built road, and we don't have any easement rights. So that's why, in talking to Zach, I mean, he understands we're trying to get it so we can actually use it, because the problem would be, if the county approved this plan, you could say, yeah, you have the right under your conditional use to do an additional access point here, but there's no commitment to do that. It may never happen. There's no easements that are in place, and you may end up -- the county may end up with this really horrific road system that will never be undone. I mean, this is kind of the last opportunity to get this area right and to do it well.

And I think that -- I feel very good. I think we'll have Tom come back, but -- so that was Revision 2. That happened in February of 2018. So that's not very long ago. That's February 28th of -- I'm sorry -- 2019; February of 2019.

HEARING EXAMINER STRAIN: I do have a question for you. On the plan that's flipped over, could you put it back on top, the one that you -- the one that's turned over. I can't see the one to the left.

MR. LEWIS: Oh, yeah, the first one.

HEARING EXAMINER STRAIN: There you go. Well, that's not the one either. Where's the one that your client is producing?

MR. LEWIS: Well, this is actually produced by the applicant.

HEARING EXAMINER STRAIN: Okay.

MR. LEWIS: This is not my plan.

HEARING EXAMINER STRAIN: Now, that plan takes off the connection to the midpoint of that where the other ones have two connections; one to the south and one to the midpoint.

MR. LEWIS: Well, actually it doesn't, though.

HEARING EXAMINER STRAIN: Oh, it doesn't? I don't see where it's showing --

MR. LEWIS: It really doesn't. I know it appears that way. I hear what you're saying. It doesn't because, Commissioner, as you see -- do you see here this area, this 12 foot area on the --

HEARING EXAMINER STRAIN: Crosshatched area, yes.

MR. LEWIS: Yes, sir. So if you look there, then the applicant, consistent with the existing PUD, could build out an internal road here if they desired.

HEARING EXAMINER STRAIN: Okay.

MR. LEWIS: No, it really doesn't. We think it's, you know, very consistent with

the -- and I think we're all pleased with it. I think, now, there are -- you know, there are a couple nits we have. This is in draft form. We asked them to take this reference out, because we're not sure. We've got a buffer here. We've just got to make sure we get the right location of this frontage road. It's got to be consistent with what staff would like, where they want it. We want to make sure we have the flexibility to get it where it needs to go.

But the idea would be somewhere along here. We know we'd have to have -- whether the buffer's in the right-of-way or whether it's in the property, there's going to be some buffer requirement somewhere.

And, Tom, if you can come up. I'm not sure what would need to be in that area. If you can come up just to kind of explain it. There's a hard stop here. We're not sure if that's where it necessarily would need to go.

But as far as the alignment, this is a very nice alignment. It will create for a really nice frontage road alignment.

Do you want to just comment on this plan, the advantage of this plan?

MR. BARBER: Good morning. Tom Barber from Agnoli, Barber & Brundage, for the record.

The plan that Mike and I have been going back and forth through over the past week, I think, is mutually beneficial to both parties.

One of their concerns is to buffer their property and their residents from potential traffic coming off from the east. So if we were to slide the access road to the middle of the property, then that would allow them to have a larger berm and more of a buffer and also allow us access from anywhere along that north/south road.

HEARING EXAMINER STRAIN: What is that dark line on the inside? I can't read the writing. It's too blurry.

MR. BARBER: That's a utility easement. That's a water main.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. BARBER: So, you know, if the applicant is agreeable to this plan, I think this is what would work best for both parties.

The original intent of Pine Ridge Corners PUD, which is Tract 77, is really to be kind of the service access from I-75, have a right-in, right-out from Pine Ridge Road. It was put together in 1998 and would have lent itself to having maybe two convenience stores, gas station or, you know, a fast-food store.

So at the time, with the access from Pine Ridge Road, it made more sense to have two parcels, two pods. Our client in the future would most likely want to put together a PUD amendment and allow for development of the entire tract. It just makes more sense given their restricted access now for, most likely, Whippoorwill Lane.

HEARING EXAMINER STRAIN: Well, the Board was rather concerned about that access off of Pine Ridge when Pine Ridge Corners was approved in, I think was, '97 or '98, the minutes that I read. And it was Commissioner Constantine that raised the issue multiple times, and he actually formulated it into a motion supported by the County Attorney's Office. It was County Attorney Weigel at the time where they stated if you did not get the access onto Pine Ridge Road, then you would have -- it would be not allowed to have the gas station convenience store operation going on.

And I also noticed at the time, Pine Ridge Corners has a couple other -- an environmental issue and a water management issue contingent on using the property on Lot 76. So it looks like -- I don't know how that could have happened since 76 wasn't part of the action back then, but there is language in the Pine Ridge Corners PUD that seems to indicate that is part of the case.

You're going to have to come in for a PUD change or amendment or something to that old PUD to fix all this, I would assume, at some point.

MR. BARBER: Yes.

HEARING EXAMINER STRAIN: And the rest of the alignment, then, can be brought into -- coincide with what you're proposing here, is what I'm assuming you're going to do.

MR. BARBER: Yeah. And we have had a pre-application meeting already to amend the PUD. Our concern is, you know, if the applicant doesn't allow us access along the frontage road, what is our mechanism at that time to ask for a frontage road access when right now we're afforded that right.

HEARING EXAMINER STRAIN: Did you check out the applicant's access to the west that they acquired from those properties to make sure that it wasn't limited to just their parcel and that your parcel can benefit to that? Is that --

MR. LEWIS: Commissioner, if I can just address that. I did look at -- there is an existing easement. I think there's five different parcels. One of them is Racetrac. There's a credit union. I think there are five different owners.

The first amendment only rolled in 76. It didn't allow 76 to grant any additional further easements, anything like that.

We will need to reach out to them. Our intent is to reach out to them. I know there's been some discussions, as I understand it, between 92 and 93 with respect to that the intent is to get access out through Pine Ridge, and we are evaluating that.

Frankly, today, you know, you made some comments about the -- we're here to talk about 76, so I haven't really, in fairness, prepared for the 77 piece. We'll have that conversation down the road. I appreciate your research on that.

Really, what we're limited to in terms of our discussion relative to 76 is in talking about Revision 3, which is the latest revision that was submitted, and that revision -- let me just get it up to the visualizer. You can see the difference here. Our objections squarely center on the fact that this lineup, this plan, does not comport with our existing PUD master plan, is the point.

I think we would certainly like to retain flexibility, you know, depending on the market, the buyer, whether or not it's developed as a single Parcel 77 in the future or, you know, whatnot, but those are discussions that we will, you know, have with staff and the county. We actually had a pre-app meeting -- it was very productive -- to explore, you know, the process of getting the PUD looked at to address the frontage concept.

So, you know, we're looking at those issues. Just for purposes of today, we're really -- our concern -- I did send in the packet, if you look at your Tab No. 1. I know it was sent back on May 1st, so I think you have it. But for purposes of that tab, you know, we -- in looking at this existing plan, we -- you know, we had some concerns. As you apply the current Land Development Code requirements for a conditional use, the requirements are, as I understand it, that the CU is consistent with the Land Development Code, so we'd have to be -- you know, there would have to be some finding that the Revision 3 complies with your existing Land Development Code. That would be under 10.08.00 D.1. Also a finding that it, you know, would comply and is consistent with the Growth Management Plan.

There would have to be a finding that the ingress and egress to the property and the proposed structures thereon, you know, that -- and with particular reference to automotive/pedestrian safety and convenience, traffic flow and control, and access in case of a fire or catastrophe.

So, you know, you're looking at ingress/egress, looking at public safety concerns; the effect of the conditional use that it would have on neighboring properties in relation to noise, glare,

economic, odor, or effects and compatibility with adjacent properties and their property in the district.

And so, you know, today as we're looking at Revision 3 -- and that's why I think in talking to Zach we really feel good about this makes a lot of sense for everybody. I think everybody's excited about this type of alignment. It really works well.

The Revision 3 --

MS. ASHTON-CICKO: So your client wants two access points so it can connect to the easement that bisects your client's property instead of removing that and going south?

MR. LEWIS: So when you look at the current Exhibit A master plan, you see here, as we talked about, this is that line here that separates 77 and 76; 77's to the east. 76 is to the west.

You see the road. There's no devil strip here. This would afford them the opportunity to do whatever they needed to do in terms of a frontage. For this parcel, Area C, they could get out here, and they could go up, and they could go out.

MS. ASHTON-CICKO: The reason why I'm bringing is up is that we require interconnection. So you may be getting two roads through your property if you move it to the south. So just as long as you are aware of what you're asking for.

MR. LEWIS: Yeah. We -- look, we --

MS. ASHTON-CICKO: Okay.

MR. LEWIS: -- think that this plan -- this is -- first of all, the proposal, as you mentioned earlier, really deals with 76, so...

HEARING EXAMINER STRAIN: When you come in -- if you're amending your PUD or you're going to anyway to the east, which you almost have to do to clear up some of the language in that old PUD, you could -- there's not going to be -- I can't imagine Transportation insisting on two access points to the west. So you could solve that problem there.

And I thought you had said the applicant's engineer or planner did this plan; is that right?

MR. LEWIS: Yes, sir. That's correct.

HEARING EXAMINER STRAIN: Okay. I mean, that's an indication that they're not too concerned about having one or two exits to your property, based on the way that plan's drawn up. So I think --

MR. LEWIS: Yeah, this is kind of a joint road.

HEARING EXAMINER STRAIN: -- that's a pretty comfortable position from my perspective.

MS. ASHTON-CICKO: Yeah. I'm just saying, if he's asking for two access points, one to the south and one bisecting his property, our code -- our Growth Management Plan requires interconnection. So if he's going to put those there and there's an easement currently recorded on their property that bisects their property, then they're going to get two roads going through their property --

HEARING EXAMINER STRAIN: Right.

MS. ASHTON-CICKO: -- as opposed to if they just relocate it to the south.

HEARING EXAMINER STRAIN: That's what I was understanding.

MR. LEWIS: Thank you, Heidi. I appreciate that.

Just to -- I think that's an excellent observation. Part of what -- in good faith, when we're talking with Zach, it's kind of a mutual thing. I mean, we have -- part of the documents that we negotiated -- spent a long time negotiating yesterday, we don't have them signed. We've been being going back and forth. We're getting there. But one of the documents covers that. The document actually is a -- he titled it, I think, a mutual release of easement kind of a thing. But the idea would be that we would give up any rights to easements on theirs. They would give up any

rights of easements on ours, and we would clean that up. And the idea is to create -- in 2019, where we are today, create a very functional alignment.

HEARING EXAMINER STRAIN: If you amend the PUD when you come through, the bisecting easement on 77, you might want to just note that as an alternative access point so it's not a required access point, and that would make sure that your one required access point that you're trying to line up, the one on the south, is actually going to be the one required to be there.

MR. LEWIS: Yeah. And the nice thing about this plan, Mark --

MS. ASHTON-CICKO: I'm just saying, if there's two, they're likely going to have two roads through their property --

HEARING EXAMINER STRAIN: Well, I know. That's why I suggest --

MS. ASHTON-CICKO: -- if they enforce the bisecting easement, because we'll probably require it because we require interconnection, and the easement's already there, so...

HEARING EXAMINER STRAIN: Okay.

MR. LEWIS: So the nice thing about this plan is that it doesn't show any -- we are asking -- one of the cleanups is to remove this crosshatching because it doesn't really involve -- as Heidi mentioned earlier, it's a 77 issue.

We're not sure exactly where this is going to go. We know we have to -- whatever staff and we work out with the county to make sure it's all done correctly and compliant with code. But the nice thing about this is because you have this 12-foot area that's on the 77 side, you can internally configure it however you want. You can -- you know, whatever works, whatever gets approved or however that's done.

So there's tons of flexibility, but we wouldn't show on there -- on the CU for 76 we wouldn't show anything for over here. It would just be consistent with what we're seeing on the PUD, which is this roadway here, and that allows you flexibility to do what you want here, do what you need to do here, and we would all clean that up with Zach internally. But as far as the county's concerned, this makes a lot of sense because it provides this nice joint access to the projects.

So today -- so that's where we're going. The reason why we were concerned about Revision 3 -- and I just need to get that in the record to protect the client. This is the plan that I think we're -- as I talked to their -- you know, Certus, I think they acknowledge this has some real issues.

You can see it's pretty apparent, you know, you've got these two north/south roads. This indicator here that they have, they are making notations -- off-site notations on their CU that really don't apply to their project. These are actually incorrect.

Tom, if you can come back up. I'm just going to have you come -- so part of the concerns that we had raised on that Revision 3 was that it doesn't pair our clients' rights under their approved master plan. That's under Ordinance 98-61. It also impairs their ability to move forward.

As I mentioned, we did meet with staff. We had a very productive pre-app meeting on a PUD to -- you know, on the PUD to try to look at reconfiguring the frontage road.

Obviously, if this got approved, you can see here there's no access point. That would impair that -- that would impair our ability to do that, and it would certainly negate our rights that we currently have, as you can see here, because that roadway is actually on our property. We could -- you know, we'd have the right currently under our current PUD to do a frontage road, so it would kind of take those rights out from under our legs if Revision 3 were approved.

It does create -- you know, if you look at this -- and, Mark, I know you've seen this. I mean, you can kind of intuitively look at this -- in fact, in the pre-app meeting, one of the staff members in Growth Management said, this is a really odd configuration. I mean, you've got two

parallel north/south roads. So you have this owner coming out here, traffic, and then making this turn.

I wanted to have -- if I could, have Tom just talk about automotive/pedestrian traffic flow issues on this lineup with Revision 3, and --

HEARING EXAMINER STRAIN: Before you go that far, Doug, let me take a moment and ask the applicant to come up and --

MR. LEWIS: Perfect.

HEARING EXAMINER STRAIN: -- acknowledge what plan they want to use, and then let's just focus on that plan, because then that will save everybody a lot of time.

MR. LEWIS: Perfect.

HEARING EXAMINER STRAIN: And would you mind coming back up, reidentifying yourself for the record, and then let's answer the questions of which plan we're actually going to use, which is kind of where I started when I told you I had three different plans. So now we have four.

MR. HALE: Right. In essence, we've -- you know, we've been trying to come up with a plan that works for both parties for quite a while now, namely, before the turn of the year when the new development party had come about.

And I want to make sure everybody understands the history here, because I think it's important. Unfortunately, I think all of us involved now really can't change the ways of the past.

HEARING EXAMINER STRAIN: I asked you to come back up for just one reason right now, because we've interrupted the other gentleman's presentation.

MR. HALE: Okay.

HEARING EXAMINER STRAIN: Which plan -- do you guys have a plan that you're willing to work with that can be the one that we talk about?

MR. REYNOLDS: Yeah. My name is Will Reynolds. I'm with Certus.

The answer is it's either the plan that's in the application right now that we want to get approved, if we can amend that or put language to that for a future connection, that's what we want to go with.

We provided this to them, okay. The issue that we have right now is we have been working with the client for probably the last eight or nine months. We gave a plan very similar to them like this five months ago in this county building, and they turned it down. They didn't even respond to us.

So -- and here's the thing that you don't understand. It's easy to get up here and talk about these plans, but the verbiage that goes behind it in the agreement, every time we send something, it's -- right now I have a 50/50 chance that the faith that we're going to do and the verbiage to get this done happens, because what -- the language they're putting in the agreement has -- it has to do with all these other parcels, and stretches beyond NBR.

So it's very difficult to answer your question. I think we're here right now to discuss the plan that we've been spending 15 months and a lot of money to get to this point. If we want to take that plan and modify that plan currently right now as it sits and put some future connection, you have my word that we're trying to work it out with them, but right now we don't have -- we don't have anything done. This is our plan, and we don't have a problem doing this, but I have a coin-toss chance that we're going to get something done at the moment.

HEARING EXAMINER STRAIN: But you've got to understand, I've been doing this for 18 years at the county --

MR. REYNOLDS: Yep.

HEARING EXAMINER STRAIN: -- and all different size projects. One thing that I

customarily look for is what's happening down the road. I've got to understand what plan's going to be used. I don't want to try to look at a plan, jerry-rig it during a session like this, and hope it comes out right.

I understand you said I've got your word, but that doesn't mean a lot right now. I'm going to have to get everything nailed down in order to proceed.

I don't know if we can finish that today, but it can be done shortly. So you guys may have a little more time. I want this done right. I don't want to find out later on that you didn't understand something on this plan or I didn't.

So, yes, we're going to have to probably take a look at these plans a little closer, but I want to get the basis under where we're going to head so we can get this worked out and finished instead of keep dragging it out.

I'm with you. I see no reason to keep it going further. Maybe now that they've hired a local counsel that's going to look at it, that will make it happen faster, but we will set a time frame, and that time frame will be met, or a decision will be made without further clarification; one or the other.

It's kind of mixed up today. I don't think we're going to get through with this today, but it would not be extended for that much additional time.

MR. REYNOLDS: Okay.

HEARING EXAMINER STRAIN: But that last time it comes back, it's going to be decided on at that point.

MR. REYNOLDS: That's my main concern is that we -- this seems like, to me, a stall tactic.

HEARING EXAMINER STRAIN: I'm not approaching --

MR. REYNOLDS: Every single time it comes down to my clients, that's what they want to do.

HEARING EXAMINER STRAIN: I'm not approaching it that way.

THE COURT REPORTER: One at a time, please.

HEARING EXAMINER STRAIN: I want to find a solution to this, and we'll spend a little bit of extra time if we have to. I've just seen this plan now. It's good to know that it was done by your team, so you're somewhat on board with it subject to getting the other documents needed to support this plan cleaned up, and that will be the effort we're going to have to figure out what it will take to get it there.

And that's why I wanted your concurrence. That way Mr. Lewis can concentrate his concerns on this plan instead of working on the other plans. But if you're not satisfied with this plan, you may go back to the other plan, then he can come back in during -- or whenever we continue it to and re-argue his points about the other plan.

So, thank you. You answered the question for now, and you'll still have a rebuttal opportunity.

And, Mr. Lewis, as you've heard me say, this is the plan that we want to work with today. If it comes back and you guys cannot resolve your concerns over the next extended period of time, then you'll have the opportunity to explore whatever plan comes forward at that time. And you might want to hold your objections to that plan until it actually comes back in for discussion.

MR. LEWIS: No. Thank you. I appreciate it. And I want to commit to Certus -- I spent all day yesterday working with Zach. I gave them all of my legal comments on the settlement agreement, the new cross-access easement agreement, and the mutual-release document. As far as I'm concerned, you know, the client has to approve the business terms. I'm okay with what was sent.

So I think we're ready to go. I think we're pretty close. Zach, you know, needs to look at it, give us his comments. But I commit to you we're going to do everything we can to get that deal done. I think it makes sense for everybody. Obviously, we have to -- we have to all put good faith into that effort, but that's good.

I did want to just make sure that -- for the record that it's clear this was the plan that my client received when they concluded their meeting. This was the February 28th, 2019, meeting with staff. Staff had looked at Revision 2. They liked it. And then after the meeting, staff left, and this is what they got.

This is very different than the plan you have now. They're asking our client to take drainage. They're asking the entire road to be shifted onto my client's property, impacting, and then take the buffer as well. So it didn't really line up with the PUD master plan. They had about nine days after that to make a decision. I've provided documents to that effect to staff earlier on. In particular, at the pre-app we discussed that on the PUD.

I want to just remove any element of doubt that we are committed to do everything we can to get this plan together to work in good faith. We just aren't going to give up any rights until we have an agreement, that we have a deal, because we want this thing to be built. We want this to come -- we want it to be done correctly and done right.

That's really where we are. If you think it's expedient, Commissioner, to -- you know, to not proceed with -- you know, with objections to Revision 3, I'm okay with that, and I'm happy to -- you know, to accommodate there.

HEARING EXAMINER STRAIN: You can hold those until we come back. And I can tell you this is not going to get resolved today. With this new plan, I need time myself to study it. I need staff to review it to make sure everybody's fine with it.

I need to talk to the planner who's worked in this county for a while so he can assure me that he understands the situation. I'm assuming he's the one involved with some of this, and that's Mr. Mulhere, who is sitting in the audience.

MR. MULHERE: Perfect.

HEARING EXAMINER STRAIN: And at that point we can come back and further discuss it. We still have other public speakers, but if you, at your point -- if you're done with all your points right now, I'll move to the other speakers.

MR. LEWIS: Based on that representation, yes, I conclude.

HEARING EXAMINER STRAIN: Okay. Thank you.

Bob?

MR. MULHERE: May I?

HEARING EXAMINER STRAIN: Yes, go ahead.

MR. MULHERE: Bob Mulhere, for the record.

I just -- based on some of the comments I heard from Heidi and also from you -- that won't stand up. I'll bend over.

I just wanted to be clear -- thank you.

I just wanted to be clear that we'll -- if we come to an agreement, what we bring back as a plan will be limited to the improvements and the conditional use as it affects Tract 76. There will be a private agreement as it relates to the -- you know, the shared access and the elements of that shared access, because we're not going to submit a reasonable conditional-use plan that shows a bunch of improvements on the adjacent property.

HEARING EXAMINER STRAIN: I understand. And I wanted to point out, when you do produce this final new plan, all the elements that pertain to actions or uses or pieces of the other properties shouldn't be on it. You need to stick to --

MR. MULHERE: Private agreement.

HEARING EXAMINER STRAIN: -- Tract 76.

MR. MULHERE: Yep.

HEARING EXAMINER STRAIN: With that, who's the next public speaker, Gil?

MR. MARTINEZ: Next speaker is James Quillen.

HEARING EXAMINER STRAIN: We've had six speakers defer their time to Mr. Lewis. How many speakers do we have left ask after?

MR. MARTINEZ: After Mr. Quillen, just one.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. QUILLEN: James Quillen. I'm the contract purchaser of Tracts 92 and 93.

We intend to develop a floor and decor. It's an 80,000-square-foot flooring store on there based on whatever today. We can support the plan that was referenced earlier. We're prepared to cooperate with everyone to get this frontage road along the southern boundary constructed. We're prepared to move this as expeditiously as possible and all that, and we're open to whatever we need to do.

And once we get this worked out, we're going to proceed with our amendment to Mr. Clesen's PUD and include Tract 93 into that and make some modifications to reflect the floor and decor project. But, otherwise, we certainly have no objection to anything else.

HEARING EXAMINER STRAIN: I'd like to ask that you work closely with the applicant's team so that we're all -- it would be nice if when this came back everybody's on the same page so we can open and close the hearing and be done with it.

MR. QUILLEN: Correct; yes, sir. I've spoken to them in the past, and I've spoken to their attorney, Zach, as well, and I was waiting to see how things worked out with Tract 76 or, excuse me, Tract 77 and them, and we can sort of piggyback on there. But we're prepared to do whatever we need to do.

HEARING EXAMINER STRAIN: Thank you.

MR. QUILLEN: Thank you.

HEARING EXAMINER STRAIN: Next speaker, Gil.

MR. MARTINEZ: Next speaker is Fred Kermani.

MR. MULHERE: He gave his time up, too.

MR. MARTINEZ: I apologize. There is no other speaker.

HEARING EXAMINER STRAIN: Is there any member of the public who wishes to speak on this item who has not spoken? Oh, Fred, you are here.

MR. KERMANI: For the record, my name is Fred Kermani with CRA Consultants.

I've been working on these five tracts, 76, 77, 92, 93, 108, for more than 16 years; try to sell these properties. And we had -- I had these things at one point on all five tracts, and every now and then three tracts, two tracts, and always the developer had issue with this access points.

And it seems that the PUD 92 and 77 was created in isolation without considering what happened to the other tracts. But now we have a developer who is working on Tract No. 92 and 93. They are proposing almost 80,000 square feet of retail space, and that requires that the access points should be to the south close to Pine Ridge Road.

So I support the idea of having the access point to the south close to Pine Ridge Road to facilitate the current developer, who has a contract on 92 and 93.

HEARING EXAMINER STRAIN: Thank you. Appreciate it.

Anybody else here who has not spoken that would like to speak?

(No response.)

HEARING EXAMINER STRAIN: Garrett? And you know the routine. Identify

yourself for the record, and we're good.

MR. BEYRENT: All right. For the record, I'm Garrett F.X. Beyrent, and I bought the property that you refer to as Pine Ridge Corners in 1987 for \$400,000 in cash, and here we are how many years later? 1987. Anyhow, I was proposing a gas station on the site.

HEARING EXAMINER STRAIN: Gary, I'm very familiar with the history of Pine Ridge Corners. I've probably read it with more fresh detail than you have.

So if you have issues regarding 76, that's what we're here to hear about.

MR. BEYRENT: Exactly. The issue is always access. It's been access since they asked me to give them -- I'm talking about the original property owner, and it's the same situation I was in back then.

Right now I'm in debt on this property to the tune of nearly \$3 million, my \$400,000, because of this property next door, and that's it. It's an -- you know what it is? It's a safety issue. Simple as that.

Right now everything has changed. Gas stations with Immobiliari. I don't know if you're familiar with the Italian. Anyhow, long story short. The bottom line is, all the uses that were designed for the properties -- my property and the properties to my east are obsolete. The only uses that would be logical out there are big furniture stores and hospitals for people with the disease my mommy died of, Alzheimer's.

And the bottom line is, the only road that's acceptable to me and to people that are adjacent to me that I'm aware of, okay, is a frontage road. And the success of the frontage road is -- actually, if they showed you the whole plan, which they didn't, it's already on the other side. The flip side of this property is the center to the west, and it's been successful. The frontage road has worked great.

What I'm concerned about right now is a safety issue. We only need a frontage road. We don't need all these nonsense easements. And people don't remember -- I've been around a long time. This is when the Hearing Examiner use came into effect because our county was so corrupt. I actually had to beg for my gas station.

HEARING EXAMINER STRAIN: Gary, you're going off on tangents here.

MR. BEYRENT: I always do.

HEARING EXAMINER STRAIN: I know that, but this is a different scenario. You're used to being on the political side with the Board of County Commissioners. This is not that.

MR. BEYRENT: Right, exactly.

HEARING EXAMINER STRAIN: I'm sticking to the Land Development Code and issues pertinent to Lot 76. And I understand the history. I've got a key question for you: Do you support the alternative plan that was shown here a little while ago as far as them moving forward with that?

MR. BEYRENT: I actually would support it if they only had the frontage road, because the tracts are so chopped up into little pieces. My gas station -- my BP gas station I originally proposed would never fit on this, and Dick Clesen's PUD adjacent to me, we had a 200-room hotel to go there. That's obsoleted by the fact that the Vocisanos got a 350-room hotel across the street, and I like those guys.

So the bottom line is I don't want to argue with anybody. I want a safety issue to be acknowledged at this point, because you need a frontage road in order to make the properties useful, everybody, not -- and these guys, too.

That clown design there, that doesn't work, and I don't want to pay a million dollars for access, because that's what Bill Bryant told me; I could buy access through this property. This is an access issue. I know -- I'm not going to argue that. I'm just arguing safety, because it is safety.

HEARING EXAMINER STRAIN: If this project gets approved, it would start the beginning of a frontage road. So you're going to get what you want. I just want to make sure -- I don't know what you're arguing about. I'm not sure what your point is.

MR. BEYRENT: I'll tell you what I'm arguing about. I used to be a developer, before I came down here, in Northern New Jersey, and the process was very simple. The process was -- we referred to it as predatory land banking. Now, boy, I'm looking at this saying these people -- this is the same crap I did in Northern New Jersey, but the only difference was I was not the same --

HEARING EXAMINER STRAIN: Gary --

MR. BEYRENT: Long story.

HEARING EXAMINER STRAIN: -- you're getting off on a tangent. Your time's almost up.

MR. BEYRENT: I know. That's why I'm talking fast.

HEARING EXAMINER STRAIN: Talk about something relative to --

MR. BEYRENT: Yeah, right. I would have no problem with it if it was just a frontage road, because you've got to get ambulances in and out of there, and that's really it. I mean, the uses that would be out there would be issues that would need ingress and egress fast. Not like it used to be. My design plan's obsolete, Dick Clesen's is, and everybody else to our east, and we're all going through the same thing.

So just -- we just can't ignore access because that's -- you look at that plan, man. I don't want my mommy in that hospital, you know, that's got to go through a maze to get out. That doesn't work.

HEARING EXAMINER STRAIN: And that's why we're going to -- this is going to be continued.

MR. BEYRENT: Good.

HEARING EXAMINER STRAIN: And we're going to come back with a final plan that hopefully will meet all conditions. And this is probably the first time you've ever been kept to five minutes, so thank you.

MR. BEYRENT: Thank you very much. Mark Strain, Hearing Examiner, the reason why there isn't as much corruption in this county as there used to be, because of that guy right there. Thank you.

HEARING EXAMINER STRAIN: Thank you. Anybody else who has not addressed or spoken on this item wish to speak?

(No response.)

HEARING EXAMINER STRAIN: With that, any rebuttal from the applicant? The only opportunity I wanted to address with you is time frame to come back with a final plan which hopefully is worked out with all the parties. If one is not worked out with everybody involved, bring one to the best conditions you can, and we'll move forward with something and finalize this next time.

But I want some opportunity to study what you guys have come up with before we actually decide on it.

MR. HALE: I think we're definitely committed to spending more effort to try and get there.

I want to make sure I understand the process to do that. Once we have a new plan that we feel is workable, we just submit it through county staff?

HEARING EXAMINER STRAIN: Absolutely, and then they will do an amended staff report. It will go on record for the date that this meeting is set up at whatever the next time it is. I

would suggest at least the -- this is a month, which means you've got two meetings away. We do two meetings a month, and they're the second and fourth Thursdays of every month, so this will be the fourth Thursday of June.

MR. HALE: That would be the quickest?

HEARING EXAMINER STRAIN: Or the second -- what is -- we've got one more in June.

MR. MULHERE: The second would be the 13th.

HEARING EXAMINER STRAIN: What's the date? Does anybody have the date?

MR. BELLOWS: June 13th.

HEARING EXAMINER STRAIN: June 13th, I'm sorry. Now, Bob -- or can you guys have your information and everything re-drawn, wrapped up, and concise by that date?

MR. HALE: I think --

HEARING EXAMINER STRAIN: You've got to have it to the staff at least two weeks before that, so...

MR. HALE: I understand. I think that that answer depends on the coordination and negotiations.

HEARING EXAMINER STRAIN: Well, I think they're motivated to coordinate because one way or another it will get decided next time, and the process to go from there might be more cumbersome than just working this out now.

MR. REYNOLDS: So just I understand, if we can't work something out similar to that plan, we revert back to the plan that we've submitted today; we bring that back.

HEARING EXAMINER STRAIN: You guys come back with your best opportunity the next time, and we will finish it up. What I'm saying is, if you can't come up with an opportunity and I see there is a better one, you still may end up with a different plan than what you come back with.

So I'd suggest you do your best effort to get this finalized. I don't need this to drag out through multiple meetings. So thank you.

And then --

MS. ASHTON-CICKO: Mr. Chair, should you approve this at the next hearing, I do have a condition of approval that I'm going to read into the record.

HEARING EXAMINER STRAIN: Sure.

MS. ASHTON-CICKO: This conditional use -- and this would be if you should decide to approve the conditional use. This conditional use is approved based on applicant's representation that the bisecting easement subject to Chapter 97-346, Laws of Florida, has been extinguished and applicant's statement that it has the right to use the property.

If this statement is not true, as determined by a court of law, then applicant or its successors and assigns will have a reasonable period of time to obtain an amendment to the conditional use for a new conceptual site plan.

HEARING EXAMINER STRAIN: Did you understand that condition?

MR. HALE: I do understand it, and I think we can commit to that on our part. Of course, the private agreements between it, that would be something we also expect from the neighbor, if you understand what I mean there.

So I just wanted to make a couple quick points, for the record. Just so everybody understands the history and how our plan came to be, as he mentioned, this plan was approved in, like, '98, this PUD, and it did show the roadway split on the property line. I don't know the full history. I'm not sure what permissions were obtained, okay.

And then there was the Clesen PUD which came three or four years after, early 2000s.

That plan was slightly different. That plan had the two-way roadway entirely on Tract 76, and it did make for connection here.

Okay. And, there again, I'm not sure all of them -- what all of the minutes say in between that '98 plan and the 2003 plan. We were simply anticipating that the latter PUD was what we needed to connect to. We agree to this -- you know, I don't want everybody to believe we wanted to create this silly access point, okay.

You know, we were, in some ways instructed by staff to accommodate the former PUD. We did misinterpret that it was the latter PUD that we should be connecting to.

I did hear Mr. Lewis say it's a very nice alignment, and I can tell you, in our negotiations, we're going to be looking to stick to that alignment with possibly a little bit of, you know, variation down there in the southeast corner; whatever suits them.

I heard Mr. Lewis talk about the position of the easement that we offered to Jim Quillen back in -- just before the turn of the year, and at the time Jim Quillen was totally acceptable to that as it relates to development he was trying to do.

So, you know, I want everybody to understand we've been trying to be reasonable and trying to make an offer that is mutually agreeable.

I think the only other point I wanted to make is, Ms. Ashton, you had mentioned a potential for two cross-accesses. Just so everyone's clear, in this plan that we're all negotiating and speaking about now, we anticipate the north/south component to be more of a private share thing, and only the public component would be the frontage road or the one across the south.

So I would like to work towards not having a second east/west component to public access, and I would assume that Mr. Barber and Mr. Lewis would also prefer their PUD amendment to go that way. I don't want to speak for them. But if we can work towards that -- I think one is sufficient, given the depths of the property. So it may take a creative interpretation, but that's what I think is most conducive and most fair to all parties.

MS. ASHTON-CICKO: I was just trying to get clarification as to whether just the frontage road was what was needed or whether you're going to do the frontage road plus another connection and that's --

MR. HALE: And that's why I thought you might have needed that clarification. I think we're all talking about just the bottom road across the bottom, because now that things have changed, now that the history has changed, as Mr. Barber had pointed out, it doesn't -- without the roadway in the middle, it doesn't make to (sic) develop two halves -- you know, make sense to develop two halves, so...

HEARING EXAMINER STRAIN: What I've seen, though, on the alternative plan, that your side basically developed. You're going to have a spur going up from that southern frontage road to the center of that parcel next door and yourself. You're saying that's going to serve nothing?

MR. HALE: No. What I'm saying is that would be a road that us and potentially the adjacent landowner share as opposed to the county's requirements for cross-access providing public access --

HEARING EXAMINER STRAIN: Okay. And that's where I was going. The county's requirement for access doesn't necessarily mean it has to have two points, and I think the -- I was going to ask Mr. Mulhere to make sure when he -- when this is drawn in on that southern point that there's enough flexibility in the movement of that southern point to align properly where the property next door needs it, assuming everybody ends up on the same page, so...

MR. HALE: Right. And so I guess now we're back at your original question in terms of timing.

HEARING EXAMINER STRAIN: Well, it looks like we can go with the --

MR. BELLOWS: Thirteenth.

HEARING EXAMINER STRAIN: Is the next -- the June 13th meeting. Now, you have to have your documents in to the county staff about, what is it, 10 days before the meeting? Gil, is that enough?

MR. MARTINEZ: Yes.

HEARING EXAMINER STRAIN: Okay. So that means by the first week in June, the 3rd of June, you'd have to have all your documents in, and then that would then have staff enough time to get it to this hearing on the 13th. The 13th we'll end up with a decision one way or the other. I hope that you work your circumstances out, because I'd rather see a compromise go forward that everybody's signing off on than one that doesn't. So is there -- and I don't --

MS. ASHTON-CICKO: And I think from what I've heard from staff, like I said, staff would be supportive of a frontage road. The north/south would no longer necessarily be needed unless, you know, you see another purpose for it.

MR. HALE: Right. I mean, as you can imagine, we're just a little bit sensitive to -- I'm sure everybody to our east would want a four-lane highway with 200 foot of right-of-way and a divided median, but we only have got so much room to give, and that's why we really want to stick to what we've got, and it was acceptable to staff. It was approved by staff.

We just don't -- we don't want to have to keep giving a thousand more inches until we're at a mile. You know what I'm saying?

HEARING EXAMINER STRAIN: I just think you need to start working off that the plan that was produced here for the first time I've seen it today, and that would probably be a good starting point for all of you, so...

MR. HALE: I agree.

HEARING EXAMINER STRAIN: With that, is there any other comments from staff? County Attorney's Office?

MS. ASHTON-CICKO: No, thank you.

HEARING EXAMINER STRAIN: Okay. Gil, you're all set?

MR. MARTINEZ: I'm all set, sir.

HEARING EXAMINER STRAIN: Then at this point I'm going to go ahead and move this meeting -- continue this meeting to the July -- let me read the official number of the meeting so I can get it right.

We're going to move Petition No. CU-PL20180000383, the Certus PNR Owner, LLC, to a continued meeting on June 13th. Now, we have a series -- I think we have six cases that day. You will be the first up. Continued items always start the day. So at 9 o'clock sharp we'll start hearing this case, and we'll finish with it that day.

MR. HALE: Very good.

HEARING EXAMINER STRAIN: And with that, I do thank all of you for your participation, and that's the only item we have on today's agenda.

There is no other business. Any further public comment?

(No response.)

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

May 9, 2019 HEX Meeting

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:07 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST
CRYSTAL K. KINZEL, CLERK

These minutes approved by the Hearing Examiner on 5-29-19, as presented ✓
or as corrected _____.

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