

June 13, 2019 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
June 13, 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: Everyone, good morning. Welcome to the Thursday, June 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: Some housekeeping matters: Speakers will be limited to five minutes unless otherwise waived, the decisions are final unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days.

On the agenda today, we have three items up. First one is for CERTUS, a project on Pine Ridge and I-75. The remaining two are for the Cooper dock. One is for a dock extension and one is for a variance or variances.

\*\*\*With that, we'll move immediately to the first advertised public hearing. It's Petition No. CU-PL20180000383, CERTUS PNR Owner, LLC. It's for a conditional use for an assisted living facility at the -- near the intersection of I-75 and Pine Ridge Road.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part: I have read, like last time, the staff report that was filed, the new one, the supplemental this time, I've also reviewed a lot of documents pertaining to the adjoining properties, I've met with the applicant and some of his representatives, I've met with people adjoining this property, I've received various emails, all of which have been passed on to staff, and I believe that's everything I can recall here today.

So with that, I'm assuming the applicant's here for a presentation. Sir, if you want to come up and identify yourself for the record, and I'll be glad to hear what you've got to say.

This item has been continued from the May 9th hearing where we had a lot of preliminary information supplied, and we continued to see if the parties could work out their differences. Okay.

MR. HALE: Good morning. My name's Mike Hale with TEDS. I'm a civil engineer for the project. 80 Spring Vista Drive, Debarry.

Real quickly, thanks. As you mentioned, this is a continuation from last month's meeting to give us time to go back and try and resolve a few things.

Since our meeting with you, Mark, we had submitted an additional revised plan. As you can see here, we are committed to building the access that was coordinated with staff as part of their approvals all the way through the site to the eastern property line.

CERTUS is an owner-operator. They've done this all over the state. They want to be a part of this community. And this is the use as you see it here. It's a simple conditional use, and we feel we meet all the requirements.

HEARING EXAMINER STRAIN: Okay. And when I met with you, you had originally started out with -- this mic's -- there we go -- two alternatives.

Based on the correspondence that I received from people to the east and then a discussion with the immediate adjacent property owner, everybody seemed to be in favor of the Alternative No. 1, and they'd rather not have taken a chance on having both of them on here, and I see you've agreed. And the frontage road will be what is actually going to be installed?

MR. HALE: That's correct. We heard loud and clear that frontage road was everybody's desire. It will be similar to that which is just west of Whippoorwill, virtually in the exact same configuration.

HEARING EXAMINER STRAIN: The intention is that people -- I think there's four lots: 77, 92, 93, and 103 or 108, something like that. Those four lots would have access through your property and eventually have access all the way over and connect up to the intersection of Whippoorwill and Pine Ridge Road.

MR. HALE: That's correct. We're committed to a public access entirely across the property with vehicle and pedestrian.

HEARING EXAMINER STRAIN: Okay. And that access, though, will -- you have -- you've got access all the way over to Whippoorwill at this point -- all the way over to Whippoorwill and Pine Ridge.

MR. HALE: That's correct.

HEARING EXAMINER STRAIN: And that's what the intent is for this property.

MR. HALE: That is correct.

HEARING EXAMINER STRAIN: Okay. Let me see if I have any remaining questions that weren't asked last time that need to be cleaned up. The staff had a series of recommendations. Did you have any -- I think last time you agreed to those. Is there any -- there's a few changes that we need to make as a result of what you've done now.

MR. HALE: No. I think we were agreeable to the recommendations previously as well as the notes in this current staff report.

HEARING EXAMINER STRAIN: Okay. The zoning -- under the zoning conditions, the plan that was referred to was a January 18th plan of 2019, and the plan that you have on here now, at least the date that I have on the one that you provided me, was 5/20/2019.

MR. HALE: That's correct. I wanted to mention that in this agenda packet it had showed the version that we had submitted initially after. And then after the discussion with you, we have submitted this plan, and this is the one we'd like entered in the record. The clerks have a copy.

HEARING EXAMINER STRAIN: Okay. And one other clarification. On the transportation conditions, the way staff had written this it reads the following: The developer shall provide a public access easement for public vehicular and pedestrian access with maintenance responsibility over the roadway depicted on the conditional-use site plan prior to the first development site plan approval.

The idea that the maintenance responsibility was dedicated to you is a little limiting, and there's probably a better way to say that, plus I think we want to make some statement about continuation to the west.

And so I'm suggesting the following change to that stipulation: The applicant shall provide a public access easement for public vehicular and pedestrian access over the roadway depicted on the conditional-use site plan prior to the first Site Development Plan approval. Collier County will have no maintenance responsibility on the public access easement. This easement is part of an access roadway from Kramer Road to the parcels to the east through connection to the intersection of Pine Ridge Road and Whippoorwill Lane, and applicant has agreed to support this connection.

Do you have any objection to that?

MR. HALE: No, not at all.

MS. ASHTON-CICKO: Do you want to put that on the visualizer?

HEARING EXAMINER STRAIN: Yeah.

Okay. You've got that, Terri, so I don't need to provide it to you in hard copy; what I just read into the record.

MR. MULHERE: Getting bigger.

HEARING EXAMINER STRAIN: I could have used larger type, couldn't I have?

Okay. Well, with that, I acknowledge that I don't really have any other questions at this point. I want to hear what the people have to say. We had some concerns last time around, so hopefully in my meetings with them and what we've had today this will clarify most of it.

MR. HALE: Very good.

HEARING EXAMINER STRAIN: Thank you.

Okay. Is there any public speakers, Ray, registered before we go to unregistered, or Gil?

MR. MARTINEZ: Yes, we do. For the record, Gil Martinez. For this item we have Teryl Bryeski.

HEARING EXAMINER STRAIN: Why don't we start with Doug Lewis. I know he's going to -- whether he's registered or not, I think he is representing --

MR. MARTINEZ: He is registered.

HEARING EXAMINER STRAIN: Let's start with Mr. Lewis.

MR. LEWIS: Good morning. For the record, Doug Lewis with Thompson Lewis Law Firm representing the owners of Tract 77. They're adjacent to Tract 76.

We are very supportive of the condition that, Commissioner Strain, you proposed.

This is kind of a pictorial look of what we would anticipate, and we would hope something along those lines we would end up with as part of this piece of the puzzle.

And as you can see, you've got Parcel 108, you've got Parcel 93, you've got Parcel 92, or Tract 29, Tract 77, 76, and then you have the roadway extending out through Kramer and Whippoorwill. So I think that's kind of a nice improvement. I think we're certainly in a better position from the traffic perspective than we were before.

So I think -- with that condition, I think we've really addressed our concern, which is really ensuring that the intent here is that access not extend just solely through 76, but the intent here would be that we continue that out through Kramer. And in that regard, I want to just kind of buttress what we're doing here with some of the provisions in the Comp Plan.

I've got Tom Barber, who's a civil planner who wanted just to kind of underpin some of the rationale and some of the reasoning that we would see that would support this type of language that you've added today.

So, Tom, if you can come forward and --

MR. BARBER: Good morning. Tom Barber from ABB, for the record.

I just wanted to go through a few different things. This is from the Future Land Use Element Policy 7.3. All new and existing development shall be encouraged to connect their local streets and/or connection points with adjoining neighborhoods --

THE COURT REPORTER: Can you slow down a little?

HEARING EXAMINER STRAIN: You're going to need to get closer to the mic and slow down a little bit, because she's got to type as fast as you talk, and you're as bad as I am at doing --

MS. ASHTON-CICKO: There's a taller mic. I mean, if you don't need the visualizer, you might want to move over.

HEARING EXAMINER STRAIN: That's for tall people. The other one's for short people. Get a little closer to the mic. The mics don't pick up well, unfortunately.

MR. BARBER: Testing, testing. Okay.

Policy 7.3 of the Future Land Use Element states, all new and existing developments shall be encouraged to connect through local streets and/or interconnection points with adjoining neighborhoods or other developments regardless of land use type.

So I think, you know, this proposed connection to the south and having a frontage road

here is consistent with that.

And then also in the Transportation Element, Policy 9.3, the county shall require, wherever feasible, the interconnection of local streets between developments to facilitate convenient movement throughout the road network.

The LDC shall identify the circumstances and conditions that would require the interconnection of neighboring developments and shall also develop standards and criteria for safe interconnection of such local streets.

So I think the proposal that we have here today is consistent with these two pieces, and we support it.

We did just want to speak to having that second access point that's in the middle of the property. The original PUD showed a shared access that runs north/south and would allow access all throughout that north/south road. So it is taking some of the developable area away by having just an access to the south. And we would prefer to have an access to the south and in the mid block of that parcel understanding that, you know, we would prefer to have the southern access if we were to only have one.

HEARING EXAMINER STRAIN: Just so you understand, I don't know of any requirement that they provide two. And if you had to choose between one or the other, I'm sure that, from what I've seen of the correspondence, everybody prefers that frontage road. For functionality, what you showed on your previous plan, I've got to say it's going to work out really well.

MR. BARBER: Absolutely.

HEARING EXAMINER STRAIN: So I'm not inclined to push the second entrance at this point, so...

MR. LEWIS: We understand that. Part of the rationale for the request -- and we concur that the code requires a single access point.

The basis for the client's request and the reason why the client's asked us to make that request is that if this property was adjacent to, for example, a vacant parcel, I think your analysis would be correct. The distinction here is that there's an existing PUD, a PUD that this applicant understood was there. It preexisted their contract with the property owner. The prior property owner didn't challenge the PUD. The PUD depicts a joint roadway, and they understood that.

That provided, you know, certainly, flexibility to allow traffic to flow up through their north road and then out up, you know, to get to the back of our property.

So, you know, that's the distinction here, and that's the reason for -- that's the rationale for the client request.

HEARING EXAMINER STRAIN: Well, didn't you come in for a pre-app meeting? You basically needed that frontage road?

MR. LEWIS: Correct, correct. Yeah, correct.

Yeah, and the pre-app, absolutely, but that doesn't eviscerate, you know, the north/south concept. That's certainly an enhancement.

HEARING EXAMINER STRAIN: But you do have to come in to amend your PUD, which should have probably been done by now from the point in which your PUD was -- you were notified or your client was notified they couldn't get the connection by the DOT to Pine Ridge Road. You had -- I think the paragraph in the PUD reads 30 days after that denial to at least apply for a PUDA. Did you do that?

MR. LEWIS: I don't know any of those details, Mark. Maybe --

HEARING EXAMINER STRAIN: I just read them, so I --

MR. LEWIS: What I do know is I had to go back and look. I didn't represent,

obviously, when the PUD was approved. I do understand from the record there were some questions about whether or not you could actually get down to Pine Ridge through -- because of an FDOT limited access line.

I think that that actually kind of enhances the language that you've provided here today because it certainly puts Agnoli -- the owners of the Agnoli parcel, the owners of CERTUS parcel, everybody to the west of us, that -- consistent with the Comp Plan, that we're not going to put traffic up in these residential streets. And if they were on notice that you couldn't get on through Pine Ridge Road or that PUD plan may not have been effectuated, I think it kind of buttresses the rationale that this is the only way out.

So, you know, I understand -- I understand that history. I just -- again, I don't have all the details about when they knew, what they didn't know.

What I do know is I do concur. I think that the PUD -- that's why we had the pre-app meeting. As soon as we reviewed it, we met with staff, and we do intend to come in and address that.

Part of it is getting the puzzle together to get the right alignment to make sure we know -- it's hard to put together a PUD master plan amendment if you don't know where traffic's going to flow. So we're trying to get that resolved. And I think we're going a long way today to make that happen.

The other part that kind of buttresses the language that I think is important -- I think this is why this is needed is, you know, I think the effort by the applicant to agree to a public access easement versus a private road that would only benefit Tract 77, those are very distinct, and I'm encouraged and pleased with the applicant's desire to acknowledge that the traffic that would be coming from the east, namely 77, 92, 93, 108, those tracts, that those uses, you know, would traverse that property, and then the intent would be to pull it out through Whippoorwill.

The reason why that language is important is because beyond whatever rights of access that they have on their property, that today they're acknowledging and agreeing is a condition of the approval that there would be a public access.

They also have rights into Kramer Drive. And so I think this is important is they're a party to that first amendment. This is important to establish that they're, you know, understanding consistent with the GMP requirement, and also consistent, frankly, when you look -- I looked at the Agnoli PUD. It was interesting. That was done -- that was the first PUD that came down the pipeline.

And at the time that PUD was approved, the bisecting easements were in place. I mean, those were there. Agnoli knew that. You know, all those property owners to the east had a right to traverse that. They chose to come in with a site plan. They actually put their roadway south of that easement area. And so -- but they understood that the county was going to give access.

At the time of that Agnoli PUD, the Clesen PUD had not been approved; the Pine Ridge Corners PUD had not been approved. And so they understood pretty clearly that there would be traffic moving -- moving potentially east into their property, certainly through those existing easements.

So I think this is the right maneuver. I think it is very consistent. I like the testimony we have from our land planner that -- you know, that the county, consistent with that, would be looking to try to create these interconnections and that they've done that here, and I think that's the right approach.

Certainly, under 9.5, we wouldn't want to be pushing projects -- traffic into residential neighborhoods. I think that that's pushing it away from that. Under 9.51 is the buttress for why all of these PUDs consistently had that language to, you know, ensure that we protect those

residential neighborhoods.

I think that's all good. And, frankly, I think that those conditions and subject to those objections, you know, we've -- really, all along we've maintained and, you know, I think we're trying to do what's right by both the client and I think the county and, frankly, the applicant.

You know, we've maintained that there is an easement. I understand the language, and I understand they're taking that risk. Frankly, if we get this figured out, all we're trying to do is get access. And I think the starting point I had is, you know, this is what we're trying to end up with. This is a reasonable request. I think there's a public purpose here. I'm glad that we're united with the applicant; that this is there.

And I think that given those stipulations and given those requests that we've made, and I think that Tom's made, you'll have to figure out what -- you know, where you come down on it, but I think those are the requests. I think they're reasonable requests. They're not unreasonable, and they serve as, certainly, a public purpose. They certainly benefit our client's parcel.

Those are requests that we listed in our letter. I did send a letter on June 11th, and I outlined, you know, the request and the reasons for that. But I think that, you know, the rationale is we're just trying to protect our access rights, and that's a proper -- that's a proper, reasonable thing to do.

And, you know, they've chosen, frankly, to come in, and they submitted a plan, which is fine. You know, they chose to move that north/south road over; that was their choice. We could have done it as our PUD master plan proposed; that's fine. And as I mentioned, that's why we have requested that second access point to kind of put us on the same footing that we have under the rights that we currently have under our current PUD master plan.

So that's our request, and those are the reasons. If you have any questions, let us know. And I think we're done with our presentation. Thank you.

HEARING EXAMINER STRAIN: I have no other questions of you. Thank you.

MR. BARBER: Thank you.

HEARING EXAMINER STRAIN: Next speaker, Gil?

MR. MARTINEZ: That would be Teryl Bryeski.

HEARING EXAMINER STRAIN: Are you waiving? You can waive if you'd like.

MS. BRYESKI: Yeah.

HEARING EXAMINER STRAIN: She waives.

MR. MARTINEZ: Mr. Dave Wallace?

MR. WALLACE: Waive.

MR. MARTINEZ: Mr. James Quillen?

MR. QUILLEN: James Quillen, the developer of the floor and decor property, the contract purchaser. We're Tracts 92 and 93.

I just wanted to say that we support the plan of the applicants showing the southern access road with that stipulation and the plan that was previously shown by Mr. Lewis showing that access road continuing across the property we're developing. We intend to follow through with that and continue that access road as a southern paralleling access road all the way to Tract 108, and we'll cooperate with Tract 108, and we look forward to working with the county to facilitate the access road all the way across all these tracts as soon as possible.

HEARING EXAMINER STRAIN: Well, I happen to sit on the Planning Commission as well. So when you come in with those, I'll be able to remember all that and hopefully help you get through the process.

MR. QUILLEN: All right. Excellent. Thank you.

HEARING EXAMINER STRAIN: Next speaker, Gil?

MR. MARTINEZ: Next speaker is Nora Sharpe Beyrent.

MS. BEYRENT: I concede (sic) to Doug Lewis.

MR. MARTINEZ: And last speaker is Garrett Beyrent; Mr. Garrett Beyrent.

HEARING EXAMINER STRAIN: Garrett, good morning. Stay on topic.

MR. BEYRENT: I will, okay.

Basically, the topic is I brought my lawsuit which I'm going to be filing against CERTUS. I'm objecting to this unless CERTUS agrees to pay whatever tribute is required or requested by the people that own the Reggae PUD, or whatever claims they own the road that will not allow all these previously approved PUDs, including Pine Ridge Corners and the Clesen PUD. Unless CERTUS is willing to pay tribute to these people for all of us, I'll be in court. This is nonsense.

And basically that's it. I'm not going to bring up Sal Angileri and Las Vegas and Chicago, and Livingston, New Jersey.

HEARING EXAMINER STRAIN: You're not going to bring them up?

MR. BEYRENT: I'm not going to bring them up.

HEARING EXAMINER STRAIN: That's good.

MR. BEYRENT: Thank you.

HEARING EXAMINER STRAIN: Thank you, Garrett.

Anybody else, Gilbert, that's registered?

MR. MARTINEZ: No, sir.

HEARING EXAMINER STRAIN: Are any members of the public here who have not spoken who would like to speak?

(No response.)

HEARING EXAMINER STRAIN: Okay. There's an opportunity, if the applicant would like, any time for rebuttal, comments.

MR. MULHERE: Thank you. For the record, Bob Mulhere.

I think I heard Mr. Lewis say that he supported the plan that we submitted. I think I also heard him reference some sort of a request for a second access point.

Obviously, the plan that we submitted that was on the visualizer is what we're proposing. That's what we'd like to get approved.

We're not responsible for negotiating nor do we have any control over these properties to the west. My client was required to negotiate an amendment to the access easement. He did it.

HEARING EXAMINER STRAIN: Are you responding to Mr. Beyrent's comment?

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: Honestly, that's way outside the purview of this office, so --

MR. MULHERE: People have the choice to make any kind of civil action they want to make.

HEARING EXAMINER STRAIN: I know. Just, I can't go there.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: With that, if there's no other registered speakers, do we have a staff report?

MR. MARTINEZ: Yes. For the record, Gil Martinez.

Staff recommends Conditional Use PL2018000383, CERTUS assisted living, be approved by the Hearing Examiner contingent on the site plan provided at the -- on May 20th, 2019.

And with that, there's some communications from public that I'd like to provide to the public record.

HEARING EXAMINER STRAIN: Okay.



MR. MARTINEZ: And recommend approval.

HEARING EXAMINER STRAIN: Okay. Gil, the language that's on the overhead, did you see any problems with that from staff's perspective?

MR. MARTINEZ: Not at all.

HEARING EXAMINER STRAIN: Okay. The other change you've already mentioned is the date. Other than that, that's the last questions I have.

Are there any more comments? Get to the mic first, please. And identify yourself for the record.

MR. HALE: Sure. Mike Hale with TEDS, a civil engineer for CERTUS.

Just in that condition, I just noticed one thing. In that last sentence it says, this easement is part of an access roadway from Kramer Road to the parcels to the east for through connection to the intersection of Pine Ridge Road.

I think it would be most correct if we inserted "this easement is part of a private access roadway for Kramer Road," because the piece on Angileri and Racetrac was clearly private.

HEARING EXAMINER STRAIN: Whether it says private -- neither private or public's addressed there. The reason it's neutral is because there's an opportunity in the future. The county may see this as a benefit to come in and take over that road system. That way it alleviates maintenance and everything else.

And that's something I would hope, as we get into the other PUDs and they come in for changes, those things can be explored with county transportation. That's why I tried to keep the --

MR. HALE: Understood.

HEARING EXAMINER STRAIN: That's why I tried to keep the reference to you specifically providing the maintenance for your piece so that doesn't have to come back and be addressed. I wanted to keep it more generic to your benefit, actually.

MR. HALE: Understood.

HEARING EXAMINER STRAIN: Okay. With that, as long as there's no other comments, we'll close the public hearing on the CERTUS item, and a decision will be rendered within 30 days. It won't be as quick as usual, but it will be within 30 days.

Thank you all very much for your cooperation, and I especially thank CERTUS for their cooperation in getting this access road in. Thank you.

MR. HALE: Thank you.

HEARING EXAMINER STRAIN: Okay. If everybody will please move outside to the hallway, we'll resume the meeting.

\*\*\*The next item -- there are two items that we will discuss concurrently, and there will be separate decisions written on each one. The ones that were -- the two that we're going to be discussing are 3B and 3C. 3B is Petition No. BDE-PL20180001018, Mitchel and Karyn Cooper requesting 235-foot boat-dock extension over the maximum 20-foot, and Petition No. VA-PL20180001748, same Mitchel and Karyn Cooper requesting a variance from the side setbacks on that same piece of property or same dock.

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

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

HEARING EXAMINER STRAIN: Disclosures on my part: I've talked to the applicants' representative, Jeff Rogers; I've received various correspondence from a number of people concerning -- in the neighborhood. I forwarded all that information to staff; I've thoroughly reviewed the staff report; I also have reviewed the actions on all of the properties in that cove to become more familiar with it, and we will move right into the presentation by the applicant.

And, Jeff, first of all, all those -- the number of speakers here from the public who are not part of the applicants' team, is anybody else here that is opposing this?

(Hands raised.)

HEARING EXAMINER STRAIN: Okay. We'll need a presentation explaining everything, and feel free to use the overhead, Jeff.

MR. ROGERS: For the record, Jeff Rogers with Turrell, Hall & Associates here today representing Mitch and Karyn Cooper who reside at 37 Pelican Street West.

They have lived there for the past 30 years and are fortunate enough to be moving forward with a boat dock -- the build of a boat dock for them behind their house.

The dock is proposed to be -- proposed to be extended out approximately 255 feet from the most restrictive point, which is the plotted property line as you can see on the visual here; this area.

So the dock is going through a mangrove shoreline. It's four-foot wide and extends out into the waterway from the mean high-water line approximately 137 feet. The dock has been designed to accommodate a 17 -- approximately 17-foot vessel that will be moored on the end of the dock, which is consistent with all three other docks in this general tight area of Pompano Bay on Isle of Capri.

This property is very unique in regards to its location and associated riparian lines from it, which has raised a lot of questions, and hopefully today we can help clarify those for those who still have questions.

The dock that's immediately to our north that is shown there with the boat basically right adjacent to ours is another one that we did approximately back in 2012, I want to say, that was Paul Schneller, and for them we got a boat-dock extension that was -- allowed for 228 feet, and approximately 142 feet from the mean high-water line, as shown here.

The difference in this one compared to what we did back then was where the point of protrusion was measured from. In this case the applicant is -- was required to show it from the most restrictive point, which is the property line, which is 255 feet.

So on paper it sounds like we are going out further than the other docks that are already existing in that area; however, we are not proposing that. We are being consistent with the other ones.

It's just the point of protrusion measurement. On paper it sounds like we're going further out into the waterway than what we -- than what's shown here. This is what it's going to end up being like.

HEARING EXAMINER STRAIN: Just out of curiosity, if Schneller's dock -- and I was sitting on the -- I was chairman of the Planning Commission when that one came through as well.

MR. ROGERS: Yep.

HEARING EXAMINER STRAIN: If that one had to measure from the same point you measure today, it would appear since you're further to the west on that property, it would actually have a longer measurement than the 255.

MR. ROGERS: Correct. You can see on the very top of the -- of this exhibit right here. I wanted to show this --

HEARING EXAMINER STRAIN: Okay.

MR. ROGERS: -- because there was some questions about it. If we took the protrusion measurements like we are with Coopers here today, it would be approximately 315 feet. So we would be asking for a 295-foot boat-dock extension from the allowed 20. So I hope that helps clarify what we're doing here.

We have gotten some numerous surveys done on this, because there's been a lot of questions on mean-high water location, riparian -- and associated riparian lines. The original

survey that we got was done by Court Gregory Surveying back in July 2017. We asked him to go back out and update that survey as of this past year. And -- well, July of 2018. It was approximately a year ago, a year in between each survey.

It's a natural shoreline, so the mean high-water line can meander and change. And, as we all know, we had a significant storm event, which did, you know, change the location of the mean high-water line slightly. But we did verify that the mean high-water line is accurate as depicted here on these exhibits and it is on a certified survey.

As you can tell, there are -- it's a tight little corner. There's numerous property lines and riparian lines in this area; however, we're fully avoiding anyone else's access to Pompano Bay. The Coopers are well within their rights, their riparian rights. And the variance that we're requesting for side yard setbacks from the allowed seven-and-a-half-foot setback is 1.3 feet on the north side and 2.1 feet on the south side.

We verified that up along the shoreline where -- the setbacks from the existing property lines there is greater than what we're asking the variance for for setbacks. So the most restricted points would be 1.3 feet on the north side and 2.1 feet on the south side.

Just for example, the Schneller dock that we did, we asked for zero setbacks when we did that back, I believe, again, 2012. In this case, the Coopers have accommodated a small setback as great as they possibly can based on the tight riparian lines.

The reason for this extension, Mark -- Mr. Strain, is due to water depths. The shoreline is natural. Pompano Bay was dredged back in the early 1960s. This back corner of Pompano Bay was never fully dredged and completed. The dredging project was shut down, and it was halted; therefore, this back corner was left in a very tight, you know, shallow, unique situation, which is what drives these docks to have to go out so far to accommodate usable water.

I do have some pictures showing the shoal there, but water depths shown. At the end of the dock we approximately have, I believe, about two-and-a-half feet of water, mean low water. So even at an average low tide, we are very restricted on depths in that area.

So we're consistent with all the criteria. We've gotten state and federal permits. We've followed up with numerous surveys. Had conversation with different surveyors to verify everything. We're confident that as proposed here in front of you today we're consistent with everything, and the Coopers have done absolutely everything they can to establish their rights to have a dock, which they have been waiting for for a long, long time.

So with that being said, happy to answer any questions and/or clarify anything you might need.

HEARING EXAMINER STRAIN: I took a look at the history of this particular cove, and it looks like in 1991, a surveyor Trigo & Associates, I believe their name were --

MR. ROGERS: Yes, sir.

HEARING EXAMINER STRAIN: -- they came and established the riparian lines. They did it, actually, it looks to be, from the best I could tell, correctly, it was based on the deepwater line, which the alternative that is provided when you don't have parallel -- perpendicular lines or parallel lines going out from the property lines.

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: Most of the owners, all of them except one, in fact, used that riparian line plan since 1991. And some of those owners acquired property further out than the platted lines, but all of them except for one stayed within the riparian lines shown on that '91 Trigo plan that I could see. And the one that didn't, that's an anomaly. I don't know the basis for that, but still yours -- your applicant is staying within the lines dictated in that '91 plan that had been accepted by the county for most all the other docks in the area, and that's --

MR. ROGERS: That is correct.

HEARING EXAMINER STRAIN: That's part of it, yeah.

MR. ROGERS: It's really confusing. As you can tell, there's a lot of lines, and it's a very long, long way for these docks to go.

But, yes, you are correct, Mark. It was our firm's position that the Trigo survey was the establishment of the riparian lines so we, obviously, avoided that.

There are three properties including ours right there that kind of meet in the same area with riparian lines and plotted property lines, so it is very tight. There's no doubting that. We have fully avoided it, and we've provided as much of a setback as we can for everyone to have their rights -- their shared rights to the waterfront.

HEARING EXAMINER STRAIN: The document -- in the backup documents, I notice you're going to be putting in a 3-foot-wide dock; is that correct?

MR. ROGERS: Right.

HEARING EXAMINER STRAIN: Okay. And you don't mind that as a stipulation?

MR. ROGERS: No.

HEARING EXAMINER STRAIN: Okay. I notice that you're going to limit your vessel up to 17 feet.

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: Okay. And those will all be stipulations as this goes forward.

The comparative distance between the Schneller dock and this one, other than the fact they're at a little different angle, they look to end about the same except for the angle part of it that, as the cove turns to the southeast, it lengthens a little bit to meet that water depth, or that 198-foot line.

MR. ROGERS: Correct. Yeah, Mark. I mean, honestly, we can't design any dock or have -- allow our vessel to extend out past this because it would restrict everybody's ingress/egress to their docks. It is tight as it is, so we have to be consistent with what's there so everyone has shared riparian rights to this area.

HEARING EXAMINER STRAIN: Now, you're showing this to fit within the -- when a dock is reviewed, it's a dock facility. The boat is included as part of that facility, and you're showing the boat at the end of the dock, nose to the end of the dock --

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: -- purposely to minimize the amount of side setback variance that you would need. Now, that means you can't put it on the side of the dock, and I hope the owner's aware of that going forward because it has to be utilized in the manner that's shown in this plan if it's approved.

MR. ROGERS: That's absolutely correct.

HEARING EXAMINER STRAIN: I don't have any other questions at this point. I have reviewed all the other variances in the area. 86 Dolphin, which is two, three docks up, had zero setbacks on both. 82 Dolphin had 2.5 setbacks on both, and you are correct, and I remember Schneller from 2011. It was -- I've read the -- I went back and pulled the staff report and read all the data on Schneller to make sure we're consistent with that, and it seemed to be.

And I'm moving through what -- you've answered some of the questions. There's some staff recommendations. Do you have any objections to any of those?

MR. ROGERS: No, sir.

HEARING EXAMINER STRAIN: Okay. And that goes for both the variance and the dock extension.

MR. ROGERS: Yes, sir. Yep, yep.

HEARING EXAMINER STRAIN: Right now that's all I have to ask Jeff --

MR. ROGERS: Thank you.

HEARING EXAMINER STRAIN: -- so thank you. And I'll move on to public -- or let's start with staff report first.

Gil, do you have anything to add for your staff report?

MR. MARTINEZ: Yes. Staff recommends Collier County Hearing Examiner approve both the petition for the variance and the boat-dock extension with the conditions in the staff report and the stipulations that have been stated today.

HEARING EXAMINER STRAIN: Thank you. I don't have any questions of staff. I'll move right into public speakers. Do we have any registered public speakers?

MR. MARTINEZ: Yes, we do. There is Dave Swinehart.

HEARING EXAMINER STRAIN: Mr. Swinehart, do you want to come up to the microphone, or do you want to waive?

MR. SWINEHART: Okay. Easier for --

HEARING EXAMINER STRAIN: You'll have to wait till you get to the mic, and please spell your name for the court reporter.

MR. SWINEHART: David Swinehart. That's S-w-i-n-e-h-a-r-t.

HEARING EXAMINER STRAIN: Okay.

MR. SWINEHART: Good morning.

HEARING EXAMINER STRAIN: Were you sworn in, sir, when we started out?

MR. SWINEHART: Yes, I was.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. SWINEHART: I live at 31 West Pelican. I recently purchased the property in August of 2018. At that time I was not aware of this pending issue. Primarily -- and I submitted an email to Gil November 2018. I assume that's been entered into the record.

MR. MARTINEZ: It is.

MR. SWINEHART: Yes, thanks.

In that email I outlined three bullet points/objections to this. The first being environmental impact. I don't believe the stated proposal is free of environmental impact. It's going to be a major disruption. It's a very quiet part of the bay. We don't get a good water exchange. Consistent north/northeast winds blow all the debris from the bay back into our corner.

In addition, I'm assuming that this construction, like any construction here in Florida, is going to be problematic: Debris, sawdust, mud kicked up, and it's all going to float back in our corner. This is going to cause months if not years worth of damage to the environment.

Like I said, it's quiet. We have birds, fish that live back there that will be completely disrupted.

So that's -- and, in addition, I don't know if I can enter an audio clip.

HEARING EXAMINER STRAIN: We'd have to -- I don't know of any way to do that.

Heidi, we've never had -- even at the other board, I don't think we have had an audio clip. Do you know a way to secure that for record?

MS. ASHTON-CICKO: I don't know how he's going to play it on the visualizer for you, but he can put it on a flash drive, I think, and give it to the Clerk.

MR. SWINEHART: This is some construction by Moore Docks that was done approximately 100 or more yards up the bay.

HEARING EXAMINER STRAIN: Do you think construction's going to occur without noise?

MR. SWINEHART: Well, no, but what it's going to do, it's going to focus 40 or 50 pile drivings right back into this corner. It's going to make a massive noise interruption to our living conditions.

I don't know when they propose to do this construction, but it's going to be -- in addition to the pollution, the noise, the vibration. It's going to be a problem.

My seawall is one of the original seawalls. I'm concerned that the vibration from the pile drivings could damage the seawall. So this is -- it's a major concern.

HEARING EXAMINER STRAIN: But you have a dock and a boathouse. They both have pilings. So yours went in silently? I mean, how do we get there? I don't understand why you could do it for yours but this fellow can't do it for his.

MR. SWINEHART: Well, mine is only, like, 12 pilings. He's going to be putting 40 or 50 pilings into --

HEARING EXAMINER STRAIN: I don't know how you could possibly put a dock in without some construction, or you could build a house on any of these lots. You have an empty lot next to you that could have a house built on it.

I'm assuming that noise from that building of that house would be just as dramatic as pile driving, but pile driving will take a very short period of time compared to the building of a house.

MR. SWINEHART: Well, of course, that's one opinion. I would disagree with that.

HEARING EXAMINER STRAIN: I'm a state-licensed general contractor in two states, and I can tell you it will be quicker to put in piling for a dock than it will be to build a house. That's a fact.

MR. SWINEHART: I don't disagree with that. But it's going to be a major disruption to the environment and the peace and quiet of our corner.

My second point was access. That is not correct how those boats are depicted there. The boat and the existing dock is more to the side. It's not on the end, so they're going to be pushing out further into the bay.

In order to access my dock, which is north/south, I have to cut right behind those docks to come in. And like I said, the persistent north/northeast winds pushes me into the corner so I have to be very careful on my access in addition to low tide conditions with the sandbar.

So having a boat proposed at least 17 feet, who's going to guarantee that they're not going to all of a sudden have a 20-foot boat that's going to stick way out into the bay in the way?

In addition, I'm no expert on docking, but I don't see how you can moor a boat from the bow with two lines in a high-wind condition. If that breaks loose, it's going to fly straight into my dock and my boat, so that's a hazard.

The third point was property values. Now, when I bought it -- and I submitted a list of closed sales in the area -- I probably paid one of the highest prices on that street at the time, unfortunately for me. So any impediment, diminishment of the view, which I paid for, as well as free and clear access is going to be decreased resulting in a decrease in my property value.

Had I known this procedure was in place, I would not have bid the price that I did for this property. So, I mean, this is being sprung on me as an unfortunate surprise.

In addition, the Coopers did not pay their property costs or property taxes for clear water access. They are basically trying to get around the system with a tiny little piece of land, which is in dispute as far as who actually owns it, and creating waterfront property.

Now, I'm all about free enterprise. I'm not trying to create a problem for somebody trying to improve themselves, but when that comes at a cost to the existing neighbors, that's when I object.

So that's my statement. Thanks.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Gil.

MR. MARTINEZ: The next speaker is Mr. Paul Schneller.

HEARING EXAMINER STRAIN: Would you mind, when you state your name, just spell it for the record.

MR. SCHNELLER: For the record, my name is Paul Schneller, S-c-h-n-e-l-l-e-r. I live at 39 West Pelican to the west of the Cooper residence. You guys have been pointing to my dock up here.

I have a couple concerns. As previously the neighbor pointed out, if you're familiar with this end, the history goes way back of a lot of problems in that area, and it wasn't dredged, but here we sit today.

Now, since the storm two years ago, I can guarantee there's a foot deeper water out there. The reason everybody had to go out that far was the mud flat. I did get very -- zero tolerance on my setbacks on the end, and it was four years of a process to permit that dock and over \$25,000 to permit that dock. Over 10 of it getting absorbed up from in Collier County.

Now, my concern is my investment, my property. And I boat more than anybody, not just in this bay, on this island. You can ask anybody on the island. All right. I know the bay better than anybody because I'm out there walking around in it and swimming in it. I boat in it every other day.

The winds and the tide in that area cause navigation towards port or towards my dock at times difficult. In the 20-foot stretch coming in last night, the boat blew six feet to the left, which would be the Coopers' property. Also on the north end in Jim's dock, he has four pilings out there, and the one on the near side to my dock on the outside is blown over from when his boat hit it during a hurricane, but it also causes me to have to turn around that point and come in at a very straight angle in order to get to that part of the dock.

My concern is the fact of my navigability to safely bring my vessel to port with a dock and a boat right next to me with basically no setbacks. It's going to crimp that end of my boat on the stern side or the motor side.

Also, I can assure you, there's a foot more water than there was when I put my dock in, especially after the hurricane a year and a half ago. I walk around that area all the time. I scrub the bottom of my boat. I changed my sparkplugs the other day standing in the water, and I can assure you there's a foot deeper water in that area.

Plus, as you come over to the Coopers' side of that dock, it gets deeper out in that area. It curves in where the mud flat is and stuff.

So I have two concerns. The reason going out that far is going to affect my safe navigability to get my boat back to port in and out and the fact that they're coming out next to mine when I don't understand -- everybody was brought out to that distance because they needed safe or a proper depth. I know there's a foot deeper of water. My boat's not 17 feet, but it was set up for a little 15-foot boat like theirs is, and you don't need that much water, all right. They can bring that dock in 20 feet, and they still have enough water, as much as I do, to put my boat in there.

So I'm concerned about my safety of my vessel, and I'm concerned about being able to have access to what I already have with safety to my family, my boat, and any persons on it, and that's all I have to say. Thank you.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Gil.

MR. MARTINEZ: The next speaker is Mr. David Mikula.

MR. MIKULA: Thank you, Gil.

HEARING EXAMINER STRAIN: Would you mind spelling your last name for the record, please.

MR. MIKULA: Sure. My name's Dave Mikula, M-i-k-u-l-a. Good morning.

HEARING EXAMINER STRAIN: Good morning.

MR. MIKULA: I am Dave Mikula, owner of Lot 78 east of Coopers' Lot 80 and the last waterfront house with Pompano Bay directly behind on West Pelican Street. So right down there on that line I would be -- just the subject here.

HEARING EXAMINER STRAIN: I'm very familiar with the property. You'll have to stay with the microphone. Thank you.

MR. MIKULA: Thank you.

Gil, you shall be in receipt of my prior letters regarding my opposition to this proposed dock in this overly crowded corner of the bay.

In them I expressed my concerns regarding the impact of this project on my value, my bay view, my waterfront property, and navigation on my boat on my dock and its direct infringement upon my property and my riparian rights.

I have also expressed my concern for privacy, security, seeing that this exceedingly long dock would protrude across the bay so close to my house. It is also my issue that the variance for this personal dock of this extreme length is way outside the reasonable bounds of the intended customary use of a variance.

And then now, recently, the issue of ownership of the land and the falsification of the applicant/application have also raised major concerns from our opposition.

You should also have in your packet a 2005 final judgment. I don't know, Gil; did you see the final judgment?

MR. MARTINEZ: Everything you have provided is part of the public record.

MR. MIKULA: Thank you.

This settled ownership of the uplands behind the lots within the proposed area of this variance -- that's this highlighted area right here in pink.

The Coopers were a party of this lawsuit in 2005, because I know we referenced 1991 and some surveys and Trigo whereby the owner of our lot, Mr. Hufnagel, was granted quiet title to the uplands northward of our Lot 78 to the mean high-water and all lands outside the boundary of the Lot 79 -- that's the neighbors between us and Schuits, see Page 2, No. 5, which includes the lands that Cooper has claimed for his dock. This ownership was conveyed to me when I purchased Hufnagel's property in 2015.

Although the Coopers were well aware of this outcome in the case and who owns what, they submitted old incorrect information that was prior to 2015 final judgment in their application. They claim their application was to have waterfront property; they do not.

Their Lot 80 is an inland lot without a direct view of the bay or legal access to it. They do not own any of the upland property that they are claiming. This is a blatant attempt to deceive the county. This reveals to the extent that the Coopers are attempting to unlawfully enrich themselves by improving their lot at my expense by petitioning to build a structure on my property which they may at some point try to legally claim.

Coincidentally or not, this is the same underhanded land-grab tactic that was used by my neighbor between us. And, Gil, you know the Schuits. We've had discussions on this; the owner of Lot 79. He recently attempted to improve his inland lot at my expense by obtaining a fraudulent quitclaim deed, then proceeded to hack back the mangroves, scrape/dredge the bay, and build upon upland property owned by me.

His actions resulted in various code violations that are still open in a DEP case, both



Cooper and Schuit. I had no choice but to file a still-pending civil lawsuit against the Schuits to uphold the quiet title and to have my land restored.

Because of this overlap, Coopers proposed dock onto my upward -- upland warranted property, I asked my attorney to look into this application. His letter and supporting documents are part of your packet. He discovered that the Coopers do not have warranty deeds, plural, as they stated in their application. Plus, the quitclaim deed to the uplands that they submitted is a fraud, seeing that Mrs. Cooper claimed property from a person who did not own it and then deeded it to herself.

Any survey they had done that sections off the upland and attaches to their property is based on old falsified documents prior to the 2005 final judgment. All of this was discovered in the 2005 lawsuit that resulted in the final judgment against them.

Our attorney has made the county's attorney's office aware of this intentional deception and application. Should this dock be approved, the Coopers and the neighbors to whom they collude, all of whose character are revealed by their actions and their visitors to and anyone to whom they may potentially sell or lease the dock would be directly behind my house.

This long dock -- directly behind my house. And on this long dock, any day, hour of day and night, my family and everything we do in the privacy of our backyard would be under continual scrutiny in the direct line to the back of my house for this entire length of this proposed dock. This is completely unacceptable, infringes upon my legal right for a quiet enjoyment of our warranted property and bay view.

For these reasons, I am requesting this project be denied. It is built on a foundation of intentional deceit, misinformation to the county, and on land they don't even own. The final judgment of 2005 put to rest this ownership issue and prevents any such schemes as this on the upland property.

I am opposed to anything being built on my property, and if this is approved and built, the Coopers and all associated property -- parties involved in this application and approval will be opening themselves up to further legal actions.

Thank you.

Any questions, Mark?

HEARING EXAMINER STRAIN: Thank you. No. Do you have a copy of that --

MR. MIKULA: Yes.

HEARING EXAMINER STRAIN: -- that you could leave with the court reporter?

MR. MIKULA: I can certainly do that.

HEARING EXAMINER STRAIN: That would be appreciated. Thank you.

MR. MIKULA: And everything was referenced, Gil, in the packet, the deeds.

MR. MARTINEZ: Yes, indeed.

MR. MIKULA: The County Attorney received the -- thank you.

And, Mark Strain, when you mentioned earlier, and I totally agree with you, we reference to 1991 and a different Trigo and how they appointed those riparian lines for the record, that was -- that was appointed then by Trigo in 1991, and this final lawsuit, the final judgment, they claimed all that and restored this ownership back here so there wouldn't be any issues such as what we're seeing. That was the whole purpose of the lawsuit.

HEARING EXAMINER STRAIN: I'll read it again. Thank you.

MR. MIKULA: Very good. Thank you, sir.

HEARING EXAMINER STRAIN: Appreciate it.

Any other speakers, Gil?

MR. MARTINEZ: The last speaker would be Mr. Jim Hughes.

HEARING EXAMINER STRAIN: Good morning, sir.

MR. HUGHES: Good morning. My name's Jim Hughes, H-u-g-h-e-s, and I live at 94 Dolphin Circle, Lot 84 and 85.

I've been sitting here listening to everyone, and there was a lot of spin in the words, but that's how things are done.

Some information as to some things I heard was Hufnagel dredged after Wilma, and he did it, I guess, with a permit. I'm sure it's part of the county records. But he had the bay dredged parallel to the seawall over and then up. So the navigation into the corner isn't down through that area where the boat docks are. It's more to the right down in the end. And they took a lot out, so it's good for a very deep boat to go in there.

Our lots, we have a deed to the back property all the way up to high tide. And there was a -- that was determined in court back in mid '90s. And when Hufnagel was trying to claim all of the property between our lots was his, and then in court it was established that he was misinterpreting his property rights, which gave him the part that had been filled in and where he built the seawall, but nothing beyond that was his. And so from that court decision, we actually got a deed entitled to that back property. I don't know about the others. I'm not familiar with anything else back there.

During that process -- I went back through records, and back in, I think it was the '80s, on the other side of the point there was a similar issue with two corner lots. One person trying to say that's mine and the other person saying, well, I need access, too.

And in a deposition that Doc Loach gave, who is the developer of this island, he stated that his intention, even though the dredging stopped down here -- because all these lots were sold, and they wanted to get the dredge over to do Marlin Bay, and they just never came back after that. But his intention was that everybody had equal rights to the water; that nobody should say that's all mine; that each lot should have equal access, because it was developed as a little fishing village.

And his statement was so powerful to us that I don't oppose anybody trying to get rights to the water or trying to get access to the water.

And this -- our dock was the first one to go in. It's the top dock that you see in the picture. And that was installed in, like, 1995, approximately. And I've never opposed anybody going in, the two docks north of us or Paul's dock south of us, and I do not oppose this dock.

I wish them well and hope that you see your way to -- are there any questions that I might answer?

HEARING EXAMINER STRAIN: No. Most of -- I understand most of what you've said, the history there. I looked closely at it as well, so I appreciate your comments today.

Thank you.

MR. HUGHES: Thank you.

HEARING EXAMINER STRAIN: Gil, do we have anybody else registered?

MR. MARTINEZ: No, sir.

HEARING EXAMINER STRAIN: Are there any members of the public who have not spoken that would like to speak?

(No response.)

HEARING EXAMINER STRAIN: Is there any opportunity -- there's opportunity for rebuttal by the applicant. Just before -- you're right. I forgot. Gil had brought some documents with him to put in the record. We did that the first time.

MR. MARTINEZ: Yes, indeed. I do have some documents for the public record, correspondence and backup information regarding other properties.

HEARING EXAMINER STRAIN: Please make sure the court reporter gets it before we

leave for the day.

Rich?

MR. YOVANOVICH: Good morning. For the record, Rich Yovanovich. I'm the attorney for Mr. and Mrs. Cooper.

I want to address some of the legal statements that were made on the record just to clarify the record, and then I'll let Jeff get into the more technical rebuttal.

But I'm going to assume that Mr. Mikula's language that he chose to describe my client and the consultants representing those was out of passion and frustration.

And with that, I'll -- I just want to make it clear on the record the language he used was inappropriate, not factually correct and, in fact, the letter his attorney wrote and the statements he made today are factually incorrect, and I just wanted to get them clear on the record.

He made reference to a lawsuit as the basis for his statements that somehow my clients and their consultants misled you and county staff in their application materials, and he made reference to a final judgment which is in your packet, but I wanted to put it on the visualizer a portion of it because that final judgment had absolutely nothing to do with the Coopers. So for him to get up here and tell you that the Coopers have a legal judgment against them is factually incorrect, it needs to be clarified on the record, and I don't think he understands what that final judgment actually says. So I'm going to tell him what it actually says.

When you look at Paragraph 1 under order and adjudged, it says, the Court finds against -- it finds for the plaintiff, Hufnagel, Mr. Mikula's predecessor in title, and against the Puentes. You don't see the words Cooper or names Cooper anywhere in here. This final judgment has nothing to do with the Coopers.

It then talks about in Paragraph 3 as to between the Coopers and -- I'm sorry -- the Puentes and the Hufnagels, what Mr. Hufnagel owns, and it talks about to the mean high-water line.

So as we all know, and Jeff testified, the mean high-water line moves, so there was a point in time where Mr. Hufnagel owned some land that impacted the Puentes.

The Coopers own -- you can't see that any more -- Lot 80. The Puentes own Lot 79, and Mr. Mikula, through Mr. Hufnagel, owns 78.

As you can see, this is from 2015. The mean high-water line -- this is what was the area in dispute. That little triangle piece is what Mr. Mikula owned. Now, you've seen in your record the mean high-water line has moved, and that piece is gone.

So the dispute over land that is being alleged is not supported by the record. And, in fact, there is no determination from a court as to what Mr. Mikula may or might not own and, in fact, my client does have waterfront property. My client does have riparian rights to use that water, and my client is simply following the process that's been in this code since I think I started practicing law in Collier County in 1990 initially with the Collier County Attorney's Office and reviewed a few on behalf of the government and did a few on behalf of private clients.

This boat-dock process, my client's entitled to use it. They're using it like other properties in the area. And to allege that they're somehow scamming or playing the system or trying to get rights that they don't have is inappropriate, and I want the record clarified. And I just -- at this point, as you can tell, I am a little elevated in my tone, because I'm not used to people talking to clients in a professional semi-quasi -- or this is a quasi-judicial procedure, the way my clients were spoken to, and I don't think that that was appropriate, and I want the record clarified.

I'll let Jeff answer some of the technical points that were raised.

But we've met the criteria. We ask that you follow your staff's recommendation, and when you issue your ruling we'll hope that you will grant both the dock extension and the variance. And with that, I'll let Jeff clarify a few things.

HEARING EXAMINER STRAIN: Before you leave.

MR. YOVANOVICH: Yes, sir.

HEARING EXAMINER STRAIN: The backup documents to the court case involving that particular Lot 78, I'm just curious, it extends across previously adopted lines for riparian rights, those in the Trigo survey from 1991 that most of the other cove residents had adhered to. Was that part of the discussion in the record with the judge; do you know?

MR. YOVANOVICH: I have not -- those records are not online --

HEARING EXAMINER STRAIN: I know. That's why I couldn't find them.

MR. YOVANOVICH: -- so I haven't been able to go review them all. But as you saw Mr. Hooley's letter, the only document he attached to support his position was the final judgment, and the final judgment doesn't say what was just represented to you; the Coopers' name is not in that final judgment. And to say that the Coopers knew and there's a judgment against the Coopers based upon this final judgment is inaccurate.

HEARING EXAMINER STRAIN: And your point was made. I understand that. I was just trying to understand that relationship of how that got there.

MR. YOVANOVICH: I don't know. I did try to pull them up online and, obviously, this case, I guess, is a little older and doesn't have everything that's easy to access.

HEARING EXAMINER STRAIN: Okay. Thank you.

Jeff?

MR. ROGERS: Real quick, Mr. Strain. I just want to touch on a few things that were brought up by the public speakers.

First and foremost, what the Coopers are proposing here is consistent with every other -- all four other existing docks in this back corner and cove. We're not proposing anything outside of the box and nor are we trying to -- we're being full transparent here and working with every neighbors (sic) in the area.

Regarding water depths real quick, I just wanted to touch on this. I've got a picture here taken at a low tide, just to show you guys what's driving this boat-dock extension. There was discussion brought up that the water depths have gotten deeper after Irma.

HEARING EXAMINER STRAIN: Did you superimpose your new dock on that?

MR. ROGERS: No, that is the --

HEARING EXAMINER STRAIN: Well, whose dock is that?

MR. ROGERS: That's existing conditions at the site, Mr. Strain, that shows --

HEARING EXAMINER STRAIN: Is that boat on the side of the dock?

MR. ROGERS: Yes, sir, it is.

HEARING EXAMINER STRAIN: Isn't that Schneller?

MR. ROGERS: That's Paul Schneller's dock, and then moving to the left north is Jim Hughes and so forth. So where that dock, that floating dock is located is within the Coopers' riparian access and where our dock will ultimately end up terminating upon approval.

HEARING EXAMINER STRAIN: You know that that's not what was approved when I sat as chair of the Planning Commission and we approved that particular dock. It was supposed to be at the end of the dock, not on the side.

MR. ROGERS: I do know that, and I'm aware of that.

HEARING EXAMINER STRAIN: Okay.

MR. ROGERS: I can't speak for the homeowner. He -- I work -- Turrell, Hall & Associates did his dock for him, the permitting for it --

HEARING EXAMINER STRAIN: That's why I'm bringing it up to you. I didn't know if you had recommended that to the owner or not, because if you had, I'd have been rather

disappointed.

MR. ROGERS: I haven't spoken to the Schnellers directly. I would love to, and speak to them. The Coopers have directly talked to them.

The Coopers have been neighborly, and it's kind of come back to haunt them, so to speak. They let things happen that shouldn't have happened out there, and people got used to utilizing things that weren't really their area to utilize.

And now that the Coopers are proposing to take their rights and construct a dock, just like everybody else in this corner has, it has become a major concern. And, you know, based on that, that dock, that floating structure will have to move in order to make room for our dock to go in, ultimately.

Just to touch on the survey and information real briefly, I did create an exhibit with that survey that Rich touched on in 2015 showing that triangle extension, and I just want to get on record that we are not crossing over that triangle. We are -- we actually have a three-foot setback from that triangle. So based on the variance request, we are greater -- that is a greater setback than what we're requesting.

So, you know, we are consistent with that and want to be full transparent and let everybody have access to the waterway.

I'll just show you real quick to get you a visual, Mark.

HEARING EXAMINER STRAIN: Mr. Mikula, there's not going to be any other further public testimony, so you can -- if you're thinking of coming up here, it's not going to happen, so.

Go ahead, Jeff.

MR. ROGERS: It's not very clear, Mark. If you zoom in. I apologize. But we're right here at this point; that is that surveyed triangle piece starting from here all the way up to that point. And, as you can see, the proposed dock is providing a setback greater than what we're requesting for the variance setback. I measured it. It's approximately 3.3 feet away from that property.

So we are not crossing over that property. There's a lot of lines in there. That blue line that's kind of snaking through the whole exhibit, that is the located mean high-water line as of 2018, July of 2018, when our surveyor went out and updated the survey, which is exactly the same line that he plotted in 2017. I asked him to go out and reverify that line due to all the heightened concerns, and questions came up, so the Coopers absorbed the costs to have the surveyor go back out and verify that line, and that's why the dock has not changed.

Our proposed dock has not been changed since day one. DEP, U.S. Army Corps of Engineers have both reviewed this and seen no -- permits have been issued.

Just touch on water quality; I know that was brought up, too. DEP's criteria includes water quality. That is their biggest point. So if there was going to be detrimental impacts to water quality, as previously mentioned on record, that would have been brought up there.

And also in regards to environmental impacts, we are required -- because this is aquatic preserve here, we are required to have the dock elevated up five feet above the mean high-water line elevation to allow light penetration underneath the dock. Here's a good example of why this -- you can see the elevation of this dock. That's extremely high compared to most, but at the end of it you slope down so that you can gain access on and off the dock to your vessel, but it lets light penetration around and underneath the piles to get light; seagrasses to grow, all kinds of marina resources.

So, you know, DEP has restrictions on this area to ensure that the environment is not directly impacted.

HEARING EXAMINER STRAIN: Okay, Jeff. Thank you.

Gilbert, anything else you have to add?

MR. MARTINEZ: No, sir.

HEARING EXAMINER STRAIN: Okay. We've heard everybody. With that, we're going to close the public hearing, and a decision will be rendered on this item within 30 days. Thank you all for your attendance today.

MR. ROGERS: Thank you, Mark.

HEARING EXAMINER STRAIN: There is no other business. Anybody else, member of the public who has not spoken for public comment?

(No response.)

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

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:15 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST  
CRYSTAL K. KINZEL, CLERK

These minutes approved by the Hearing Examiner on 6-26-19, as presented  or as corrected \_\_\_\_\_.

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