

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
June 27, 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 day 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  
Tim Finn, Principal Planner  
John Kelly, Senior Planner  
Gil Martinez, Principal Planner  
James Sabo, Principal Planner  
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, June 27th meeting of the Collier County Hearing Examiner's Office. If everybody will, please, rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you. Some housekeeping matters, speakers will be limited to five minutes, unless otherwise waived. Decisions are final unless appealed to the Board of County Commissioners, and decisions will be rendered within 30 days.

With that, we'll look at the review of the agenda. We have four items on today's agenda. The first item is a boat dock extension that has been continued from previous meetings, and there's no -- it will not be heard today.

It will be continued for a last and final time to July 11th, 2019. I believe that's the latest date we can continue without re-advertising; is that fair, Ms. Ashton?

MS. ASHTON-CICKO: Yes. I don't know if the planner has an update as to whether or not the applicant will be ready on that date. Jim?

MR. SABO: Morning. For the record, James Sabo, Principal Planner. The information from the applicant was received on Wednesday, this week, so I will work hard to get that together and to your agenda for the 11th.

HEARING EXAMINER STRAIN: Great. Thank you very much.

MR. SABO: Thank you.

HEARING EXAMINER STRAIN: So with that, we will continue Petition No. BD-PL20180001843, for the Godfrey and Patricia Turner boat dock extension to the July 11th, 2019 meeting.

For the benefit of the public, there are three remaining advertised public hearings. The first one we'll be hearing is called Keenan Development Group. It's for Keiser University.

The second one will be Toll Brothers Inc., for place -- the property called Hamilton Place; and the last discussion we'll be on for the Monterey Homeowners' Association for a request for a setback deviation on a accessory structure.

So with that, we'll move into the first advertised petitions. Petition No. CU-PL20180003543, Keenan Development Group, Inc., for the educational services commonly known as Keiser University on U.S. 41 and East Trail. All those that wish to testify on behalf of this item, please, rise to be sworn in by the court reporter.

COURT REPORTER: Raise your right hand, everyone.

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

COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Thank you. Disclosures on my part, I have read everything the staff provided. I also have reviewed other documents that I was able to locate. I met with the applicant, and I also met with staff.

And as a result of the staff meeting, there are some new stipulations that have been sent to the applicant for review, and we'll be discussing those today. I have talked subsequently to the applicant about those.

With that, whoever is presenting for Keiser University?

MR. YOVANOVICH: Mr. Strain, for the record, Rich Yovanovich on behalf of the -- the applicant, and I have Jerrod with me as well to answer any questions you have. I don't think there was anybody from the public, do you typically check that?

HEARING EXAMINER STRAIN: I was just going to double-check that. Is anybody

from the public here specifically, other than the applicants or the applicant's staff, specifically for this item? This is the Keiser University.

Okay. We have one member of the public here, so could you give us a brief --

MR. YOVANOVICH: Sure.

HEARING EXAMINER STRAIN: -- synopsis of what you're doing so the public is aware?

MR. YOVANOVICH: Sure. I will quickly put on the visualizer the location of the property. The property is -- is a --

HEARING EXAMINER STRAIN: That's upside down.

MR. YOVANOVICH: It is. It is.

HEARING EXAMINER STRAIN: There you go. Well, yeah, that's better. It's on the north side of the Trail by -- north of Lakewood Boulevard so...

MR. YOVANOVICH: Okay. This is an approximately 5.8 acre parcel that developers have acquired and anticipate building two buildings for -- what's the best way, Mr. Strain?

HEARING EXAMINER STRAIN: I think that's better.

MR. YOVANOVICH: This way?

HEARING EXAMINER STRAIN: Yes, that works better. That's kind of how it is in real life so...

MR. YOVANOVICH: All right. The developer anticipates building two buildings to serve Keiser University. Keiser University is currently in Collier County. They -- I have a hard time with this word. They provide a nurse anesthetist, or close to that word, program here in Collier County that they -- it's currently in the Arthrex complex on Creekside.

It's going to be relocated and we're going to this location to continue those operations, and expand operations for Keiser University. The structure -- the structure at the top is a 40,000 square-foot building, that's Phase I. We anticipate having 170 students and 65 staff in that first phase.

The second building is about 25,000 square feet, and that will either be Phase II of Keiser University, with another 105 students, or it will be a C-3 zoned piece of property. It's currently -- all this property is currently zoned C-3, so we're in for a conditional use to allow for Keiser University to relocate here. Keiser University is a -- it's a commuter campus. There are -- there's not going to be any residence halls. Everybody will be commuters.

They provide a lot of their classes online, but there are on-campus aspects of their operations. So that in a nutshell is what we're proposing to you to do.

I'll put up a -- and if you've driven I-75 going north, Keiser University already has a campus in Fort Myers. This is basically what that building looks like in Fort Myers, and it will be -- the same structure will be brought here.

When you look at it, you can see how the front and rear elevation -- when you look at that, that's the rear.

HEARING EXAMINER STRAIN: John, could you, since you're nearby, could you adjust the focus on that? I know that lens on the top is -- one of them will adjust focus.

MR. YOVANOVICH: I just thought it was my reading glasses.

HEARING EXAMINER STRAIN: No, I noticed it, too. That's the zoom in and out, but there is a focus on that machine.

MR. YOVANOVICH: And that's a -- that's going to be a view from the residences and the golf course.

HEARING EXAMINER STRAIN: Yes.

MR. YOVANOVICH: I guess that's the best we're going to go get.

HEARING EXAMINER STRAIN: Yep.

MR. YOVANOVICH: That's the view from the residences and the golf course that are to the east of this property. The building basically has two fronts, and that's the architecture you can expect to be put on this campus.

With that, that's kind of an overview of what we're proposing to do, and I can get far more detailed if you'd like, but available to answer any questions that you may have.

HEARING EXAMINER STRAIN: Just some clarifications more for the benefit of the member of the public that's here. The C-3 zoning, I noticed that the NIM you provided all the listed uses that were allowed currently in the C-3 zoning with the specific conditional uses that could be requested.

MR. YOVANOVICH: Right.

HEARING EXAMINER STRAIN: And one of those is the university --

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: -- that you're requesting. So my -- the 25,000 foot building is the one that would -- could be converted to commercial, if you're not going to use it for the university?

MR. YOVANOVICH: Correct, that's the anticipation, yes.

HEARING EXAMINER STRAIN: In your discussion just now you said that the students will be commuting, but one of the TDM strategies that you're apparently going to be using, you're going to be using telecommuting, but I'm assuming they are not all going to be commuting to the facility. They're available to do some online courses?

MR. YOVANOVICH: There will be -- there will be -- a lot of the classes are online courses, but there are labs and other courses that students actually have to come to the campus and work on that, I guess, robots, when they're learning how to provide the different techniques, medical techniques that they'll be learning. So a lot of the coursework will actually be online, which is one of the TDM strategies that we'll be implementing through this.

HEARING EXAMINER STRAIN: Right. In fact, you're implementing four of those strategies --

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: -- that's required? All four of them are intended to reduce traffic on U.S. 41 and other surrounding roadways?

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: I have some questions. Some of those I went over with you. In particular, on the master plan there is a current plan that's in the packet that I received. It has the conditional use site plan notes. Those aren't necessary to be on that plan. It just clutters it up. I notice they're not on this one -- oh, wait, it looks like they are on the top, kind of blurred out --

MR. YOVANOVICH: It's right there and then right here are the two that we talked about, Mr. Strain.

HEARING EXAMINER STRAIN: Yeah, the one on the bottom, the sentence on the bottom of that note doesn't need to be there, because it may at some point be in conflict with the Land Development Code, so it's better it's not there, but the clean version, those will come off.

As soon as we finish, I may have a few more questions of you, and when we finish that, I'm going to ask staff to comment. I specifically at that point, I want to go over staff's proposed stipulations, and some changes that were made.

MR. YOVANOVICH: Sure.

HEARING EXAMINER STRAIN: I've given you a copy. We can get into that more at

that point. Let me go through and get everything else out of the way, make sure there's nothing else. You're not going to have any resident students at this location?

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: We find that as a stipulation.

MR. YOVANOVICH: We do not object to that.

HEARING EXAMINER STRAIN: There are two recommendations by staff that were in the staff report. Did you have any objections to those?

MR. YOVANOVICH: No.

HEARING EXAMINER STRAIN: I notice that your applied SIC Code was 8221. I've asked staff to opine when they -- when it's their turn to talk, to correct the SIC Code that was based on the comprehensive planning review. It was a completely different SIC section, so they'll need to correct that.

MR. YOVANOVICH: Okay.

HEARING EXAMINER STRAIN: In the TIS that was provided by your folks you -- they indicated a northbound right turn lane will be warranted, and is recommended as a stipulation. Did you have any concerns over that?

MR. YOVANOVICH: No.

HEARING EXAMINER STRAIN: We're going to cap the traffic to what's in the TIS report; is that a problem?

MR. YOVANOVICH: No, sir.

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: Are we going to go over at some point the stipulations that are --

HEARING EXAMINER STRAIN: I want to get generalities right now.

MR. YOVANOVICH: Got it.

HEARING EXAMINER STRAIN: I think is Mike -- yeah, Mike's here, so in a few minutes we'll get him up. I'll ask -- we'll go back and forth with him a bit to see where we're going to go on this. I want to make sure I catch everything else first.

MR. YOVANOVICH: I just want to make sure my yes's were general yes's.

HEARING EXAMINER STRAIN: Yes. The buildings you've drawn up, the 40,000 square feet building would then be limited to 170 students and 65 faculty and staff?

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: The 25,000 square-foot building if it's used by the university will be limited to no more 105 students with the existing faculty and staff --

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: -- that were -- that was already provided for?

MR. YOVANOVICH: Yes, sir.

HEARING EXAMINER STRAIN: That's the pieces I need to finish up. And with that, Mike, if you've got a moment, I'd like to -- did you bring your information for the overhead?

The overhead is not working very well today, but if we can get it on there, maybe we can read it enough. I don't know what's -- I don't know why it's not working.

MR. SAWYER: Yes. For the record, Mike Sawyer, Transportation Planning. I do have the proposed stipulations, put that on the overhead.

HEARING EXAMINER STRAIN: Somewhere on there, John, there was a focus button that zoomed in and out and caught the focus. I'm not sure -- because it's almost useless the way it's coming off now. Is there anything that looks like a focus button?

You know, if you guys were 20 years younger, these kids today can do this kind of stuff hands down, but we'll just have to read into the record, because that's not -- that's not going to work

for anybody. I have a couple extra copies if -- if that helps for anybody.

MR. SAWYER: Chairman, I also have extra copies also that I can pass out.

HEARING EXAMINER STRAIN: Make sure the court reporter gets one at the end of the meeting, if you don't mind?

MR. SAWYER: Yes.

COURT REPORTER: Thank you.

MR. SAWYER: Okay. If I can read these in?

HEARING EXAMINER STRAIN: Let's read the first one, and then as you read it, I may have to -- just to save time, I'll ask Mr. Yovanovich if he can say if he's got a problem with it or not. If he has one, we'll entertain those discussions at that point.

MR. SAWYER: That would be fine. First off, I'd like to apologize. I should have made sure that these got incorporated first, before it even went forward, so that was totally on me so...

The first condition that we've got is basically following our normal trip cap language that we use. The maximum number -- I'm sorry. The maximum total daily trip generation for the conditional use shall not exceed 247 two-way PM peak hour net trips, based on the use codes in the ITE Manual on trip generation rates in effect at the time of application or SDP/SDPA for subdivision plat approval.

HEARING EXAMINER STRAIN: Okay. Now, my understanding is that the 40,000 square-foot building is generated -- trip generations are based on the student count. It's going to be occupied as a university, not anything else at this time?

MR. SAWYER: Correct.

HEARING EXAMINER STRAIN: And the second building, the 25,000, has the option of being used for the university, or the uses allowed in the C-3 district, which it already has?

MR. SAWYER: Correct. Yes.

HEARING EXAMINER STRAIN: Okay. If they were to use -- so when they did the 247, it was based on a volume looking at the worst case scenario, which was the university for 40,000 and C-3 uses for the 25,000.

The premise being that if they actually used the 25,000 for the university, the students' occupancy of that would still produce a lower traffic count than the one that's labeled here as the maximum allowed; is that your understanding, too?

MR. SAWYER: Correct. Yes.

HEARING EXAMINER STRAIN: Okay. Also, I looked at the TIS. I did not find within that document where any of the TDM strategies were incorporated into the calculations. Is that typical? Is that what you're used to seeing?

MR. SAWYER: Yes, that is typical. We do -- we do monitor these, and that is actually part of Condition 3 that we have, where we actually will get annual reports. The idea behind the TDM is just simply to, because they're impacting a heavily-impacted roadway, what we want to see is the overall number of allowed trips to actually come down under their trip count.

HEARING EXAMINER STRAIN: That's -- if they were to use both buildings for the university, that's an automatic, because the calculation on the 105 students in the second building, my understanding of the reading is less than the commercial aspects of it. So that 247 would be dropped just for that reason alone.

If -- how do you -- how do you generate -- how do you determine if the TDM strategies are effective so that that 247 number, since it doesn't reflect the strategies, what are we at? What's our expectation?

MR. SAWYER: Our expectation is basically to use the reporting that comes to us, review those. Generally, we will be using a consultant to help us look at those, see if they are, in fact,

effective, based on the information that we receive, and based on if those TDM's are actually working or not.

There's -- there's an initial three-year review. If at the end of that, we are finding -- or any time in that three-year period that we find that the TDM's, in fact, are not effective, then we have the ability to have them use one of the other TDM's, and, again, that opens it up to three year -- another three-year period.

Once we get to a point where we're all agreeing that the TDM's are actually being effective, then we basically go into the phase where we have three-year increment plan studies that are sent back in; the reports that are sent back in to the county, and we will be reviewing those.

HEARING EXAMINER STRAIN: Now, I want to discuss the criteria, the details of the TDM strategies and monitoring analysis when we get into No. 3. I want to understand how the 247 was expected to react to those, because it was brought up in No. 1.

So just for the stipulation No. 1 about the 247 two-way peak hour trip limitation, from the applicant's perspective, is there any objection to that particular line?

MR. YOVANOVICH: No, sir.

HEARING EXAMINER STRAIN: All right. The applicant noted no for the record. The next item up, Mike, can you read No. 2?

MR. SAWYER: Certainly.

HEARING EXAMINER STRAIN: Now, IT is here to fix this, so thankfully maybe we'll get it clarified here in a minute or two, but if you could read it, I'd appreciate that.

MR. SAWYER: That would be awesome. No problem. The owner, its successors or assigns shall construct at its sole expense and subject to FDOT permitting and construction standards, a dedicated northwest bound right turn lane into the project.

This improvement shall be constructed at time of SDP right-of-way permitting, and owner will be required to convey to the county or FDOT, at no cost to either, compensating right-of-way for the placement of right turn lane in the existing right-of-way, in accordance with county or FDOT policy.

HEARING EXAMINER STRAIN: Okay. Now, that's says an FDOT road. What policy does the county have on FDOT roads where we're compensating right-of-way for them? I mean, just how does that work?

MR. SAWYER: It really honestly is up to FDOT to make that call. It is our policy to require compensating right-of-way within the county overall, but, honestly, it is an FDOT policy and that's -- that's who we follow.

HEARING EXAMINER STRAIN: If the --

MR. SAWYER: The right-of-way permit will be with FDOT. We do have the ability to review it, however.

HEARING EXAMINER STRAIN: So really the compensating right-of-way would be in accordance with FDOT policy?

MR. SAWYER: Exactly. Yes.

HEARING EXAMINER STRAIN: Not in accordance with the county?

MR. SAWYER: Technically, yes, you're exactly correct.

HEARING EXAMINER STRAIN: Okay. Because, I mean, if FDOT requires it the applicant's gotta provide it. If they don't require it, the county, I can't see then would have a necessity to require it; is that fair?

MR. SAWYER: Absolutely.

HEARING EXAMINER STRAIN: Okay. I would suggest that change to that Paragraph No. 2 that the -- in accordance with the county, it actually be in accordance with FDOT policy, and

then drop the county's reference. Do you have a concern over that?

MR. SAWYER: No, I do not.

HEARING EXAMINER STRAIN: Okay. With those -- with that change and consideration, is there any concern on the applicant's part with No. 2?

MR. YOVANOVICH: No.

HEARING EXAMINER STRAIN: No -- the applicant noted no. Okay. The last one, the TDM strategies, Mike, and what I'd like you to do is read No. 3 in A through D. The bottom piece is the reference to the code. Now, you did reference the GMP policy here 5.5.IX, which is nine. Is it implemented in any other code? Meaning, the GMP sets policy, and implementation occurs in the LDC or other documents.

Did we implement that in formality to give you any additional language on how that would be enacted or implemented or operated by? What operational language do we have?

MR. SAWYER: I apologize. I would have to take a look at that. I would have to get back to you on that.

HEARING EXAMINER STRAIN: Okay. Why we don't we go ahead, and for the record, would you read in -- why don't we read in all three, if you don't mind. I know it's a bit, but we can't see it so just --

MR. SAWYER: It may take a while.

HEARING EXAMINER STRAIN: I know.

MR. SAWYER: I apologize if I don't state it correctly. As noted in the agent's letter dated 5/22/2019, the development anticipates using the following four transportation demand -- I'm sorry -- management TDM strategies:

A, preferential parking for carpooling and van pools that is expected to increase the average vehicle occupancy for work trips generated by the development.

B, flexible class schedules that are expected to reduce peak hour automobile work trips generated by the development. C, telecommuting, which would be expected to reduce the vehicle miles of travel and peak hour work trips generated by the development.

D, bicycle and pedestrian facilities that would be expected to reduce vehicle miles of travel and automobile work trips generated by the development.

HEARING EXAMINER STRAIN: Okay. Before we go too much further on that -- those -- what he's read so far, does the applicant have any objection to including those as stipulations?

MR. YOVANOVICH: No.

HEARING EXAMINATION STRAIN: Okay. Now, let's go to the paragraph that I would think is going to have a little more discussion.

MR. SAWYER: Consistent with GMP Policy 5.1.IX, monitoring and reporting on an annual basis shall be required for a three-year period following completion of the development. This report shall provide an assessment as to the use and effectiveness of selected strategies.

Modifications to the applied TDM's may be made within the three-year period -- I'm sorry -- first three years of development if deemed ineffective, including selection of other more effective TDM strategies.

Additional reporting shall also be provided by the owner in three-year increments until the TDM strategies are deemed effective by county -- I'm sorry -- Collier County staff.

HEARING EXAMINER STRAIN: Okay. Now, that particular paragraph -- and I know Mike Bosi did come in. Is he still here? Mike, are you still here? Okay.

Usually, the Growth Management Plan sets objectives and policies that we then implement in our codes. In that implementation, the measurement for effectiveness in all of the rest of the



applications for the three-year review would be there.

Without that what do you have -- what are you -- how would you determine its effectiveness? Is it 1 percent? Is it one trip? Is it ten trips? Is it 100 trips? Is it a percentage of total trips? What valuations are we using to get there?

And the reason -- the reason this is important is, I'm not certain this is a paragraph for a stipulation, as much as part of the reference in the analysis of the decision. And that being said, it would be up to staff at some point in the future to figure out how to implement it, if it's in the Growth Management Plan.

Do you know in your experience in the transportation department where and how this has been monitored so far?

MR. SAWYER: Quite honestly, I will tell you that the county has not, in fact, done a good job of tracking these. We have at times gotten reports back from developers when they have been using the TDM's, but, quite honestly, we have not had a large number of projects that have been using TDM's, because we have not experienced a lot of failed road segments.

We are -- I can tell you right now that Trinity Scott, our traffic manager, is working along with our staff to come up with a practice and a program where we are going to be tracking these TDM's as they come in.

HEARING EXAMINER STRAIN: Now, they've either fixed it or broken it. I think it's gotten actually a little bit better.

MR. BENOIT: It's better.

HEARING EXAMINER STRAIN: So maybe whatever that ratcheting noise was is the way to go, but it seems like they would've thought of a better way to do it than jamming it up and down, but with that being said, we'll let that continue.

Mike, you know that this is going to come up again. Okay. I can tell you this is going to come up again in a project that's working its way through the Planning Commission, and now that I'm aware of the lack of attention to this paragraph, I certainly at this time will be asking staff further about it there. Is it -- you don't know of any implementation code then offhand?

MR. SAWYER: Honestly, I would have to check that again. I do not have it.

HEARING EXAMINER STRAIN: Mike, I was just -- let me ask Mike, since he's head of comprehensive, well, zoning altogether, he's the director of our department, if he is familiar with any changes of any implementation in the code with this particular paragraph? And, Mike, I'm sorry to spring it on you. It all kind of happened this morning.

MR. BOSI: Mike Bosi, Planning and Zoning Director. I'm not aware of any implementing policy or implementing regulation within the LDC, or anywhere else within our -- within the administrative code or code of laws that provides for the calculations as to how you evaluate the effectiveness of these strategies.

HEARING EXAMINER STRAIN: With it just being a paragraph in the GMP, how would staff then effectively utilize that paragraph?

MR. BOSI: From an -- just from --

HEARING EXAMINER STRAIN: Say the staff and transportation wanted to initiate the three-year monitoring to make sure the TDM strategy -- you know this is going to come up again, because our roads are getting not better, but worse, and we other have projects now coming onboard.

There is one in North Naples that had a similar issue with TDM's -- they're not similar. They were looking at TDM's as another possibility. So from that perspective, and needing this in the future, is there some way that we can start seeing language to implement this, or can we work on that to get --

MR. BOSI: I think we can work on it. I think it would be -- you would have your baseline of your trips that were expected that were submitted by your TIS, and the evaluation of the year-to-year monitoring and seeing the evaluation of those numbers, to see if there's an increase or decrease, and then you can make some -- some deductive conclusions as to whether these strategies are working or not, and if there's -- if there's not an effectiveness maybe there would be a need to evaluate whether alternative approaches were to be sought, or if there was improvements that were going to be needed to the transportation system to accommodate the additional traffic that would be experienced.

HEARING EXAMINER STRAIN: I would hope that maybe over the summer, whatever it takes for staff to start looking at initial code changes to implement this language starts to happen. It needs to gel up.

I guess you -- you could wait until the other project comes through the process, and if we at that point request staff to initiate it from the Planning Commission level, I guess that could happen, too, but I would think that we should've done this a while back. I hadn't been aware that it wasn't done until now so...

MR. BOSI: Noted.

HEARING EXAMINER STRAIN: Okay. Thank you. Mr. Yovanovich, did you want to have any comments on No. 3? Oh, how did we do that?

MR. BENOIT: He's 25.

HEARING EXAMINER STRAIN: Well, that's better. Thank you, John. Okay.

MR. YOVANOVICH: I have a lot of problems with this language only because --

HEARING EXAMINER STRAIN: Which part of it now? Where are we starting from?

MR. YOVANOVICH: We're good. We're through D. You already asked me about that.

HEARING EXAMINER STRAIN: But the question I have before we go past D, in the first sentence it says the development anticipates using the following, I think you've committed to using the following?

MR. YOVANOVICH: Yeah, that was part of our -- our documentation. We said we're going to do these first four.

HEARING EXAMINER STRAIN: Okay. Then that word anticipation needs to be replaced, but that can be handled.

MR. SAWYER: Right.

HEARING EXAMINER STRAIN: Now, as far as the last paragraph, it's certainly relevant in the sense that it's in our Growth Management Plan. The fact that we haven't implemented it through another code is a little problematic.

I don't see it necessary as part of a stipulation, but I certainly think it will be discussed in an analysis of this project. Is that where you were heading?

MR. YOVANOVICH: Well, I do think that we -- we have had a history of not repeating code provisions in zoning approvals, so I'd like to continue that process, because we either need to put them all back in, like we used to do in the old days, or we need to just refer to code, because it is very confusing when we cherry-pick when we're --

MS. ASHTON-CICKO: We don't recite LDC requirements, but it's fair to recite Growth Management Plan.

HEARING EXAMINER STRAIN: Well, I'm -- I'm -- I'm going to refrain from putting it into a stipulation. I think that's going to be harder then for staff to analyze something and come back with a factual result.

If it's stipulated it's a little hard. If it's discussed, the analysis, it certainly makes

everybody aware it's there and the potential is there, and however staff concludes in the future, your client will have to address this. That'll be something they're going to have to justify based on the GMP language.

MR. YOVANOVICH: They being staff?

HEARING EXAMINER STRAIN: They being staff.

MR. YOVANOVICH: Because I'd have a hard time -- if you were to ask me today to advise my client what this language means, I will tell you I have no idea what this language means, because I don't know what to -- or how you define effective or ineffective, because in my simple mind, I'm putting less trips on the road than I could then under the base zoning district of C-3, so I think by the fact I'm putting less trips on the road is positive for the county, and if I'm given 247, and I do less than 247, have I met the requirements?

Similar questions that you raised, Mr. Strain, and then if it shows that I do one less trip than the 247, have I met the standard? I would argue I have, because it doesn't say how many trips less I need to do.

I'm just a little concerned that maybe this isn't the right place for your order, but we do need to have a discussion on how we're going to be measuring what's effective, because right now that language is at staff's discretion, and I think that that's probably an unreasonable condition.

So I would hope that the Planning Commission will -- or staff on their own will decide through a public hearing process how they want to come up with proper implementation strategies for that.

But to answer your question, I prefer it not to be a stipulation. It's code requirement. And that's fine, and, hopefully, we can come up with how they're going to measure effectiveness.

HEARING EXAMINER STRAIN: Putting something in a stipulation without measurable quantities is just waiting to be a problem. I'm not inclined to do that, but I certainly think it's part of an analysis that needs to be discussed, and at some point down the road, staff needs to initiate LDC amendments, and that some of those -- that direction can come from this office, as well as that of the Planning Commission, or the Board of County Commissioners.

I certainly think this will come back for discussion in another project that I know you're involved in.

MR. YOVANOVICH: You know, as much as I like being the first on any particular project, it's usually by my choosing that I've come in and asked to be the first on something. Now, I'm the first without even knowing I volunteered to be the first.

HEARING EXAMINER STRAIN: I don't know what time we'll take, but we'll get to it and see that that's corrected. In the meantime, I think I just outlined how this will be handled. I think that meets to your concerns as well.

MR. YOVANOVICH: Mr. Strain, I know we're talking about transportation right now, but Gary Muller, the planner for the project, pointed out to me that on one of the stipulations, staff stipulations, we referred to a March master plan. It's actually a May master plan. So can we just make that clarification for the record? And I didn't know if I should do it now or come back up later so I'm --

HEARING EXAMINER STRAIN: Actually, the Keiser University conditional use will be limited to that within which -- that which is depicted on the Keiser University Naples Campus, Collier County, Florida Conditional Use Site Plan, May 2019. Okay. So --

MR. YOVANOVICH: No, the staff referred --

HEARING EXAMINER STRAIN: -- prepared by Johnson & Johnson Engineering. The recommendation itself is 2019, that's what I was referring to.

MR. YOVANOVICH: 2019, are you going to eliminate the month or you're just going to

put May?

HEARING EXAMINER STRAIN: I'll just -- I'll leave it May, just like it's written by staff.

MR. YOVANOVICH: All right. We may be getting a different staff report. Thank you.

HEARING EXAMINER STRAIN: Okay. And after the staff discussions and public comment, you're more than welcome to have rebuttal time if you need. Mike, anything you want to add?

MR. SAWYER: No. In fact, I would agree if the last paragraph, as far as the reporting portion, since we do not have criteria, we'd agree that actually should be removed.

HEARING EXAMINER STRAIN: Excellent. And then the first sentence instead of the word anticipate, the development will be using or shall be using the following transportation TDM strategies, unless otherwise directed. Does that work for you?

MR. SAWYER: That would be -- that would be no problem.

HEARING EXAMINER STRAIN: Okay. With that, and at some point would you follow-up with code writing staff and see if there's any -- someone needs to take a look at this and see how it needs to be implemented. If it hasn't been, I'm glad you brought it to everybody's attention.

MR. SAWYER: So am I. I did not -- again, we have not seen projects using a lot of the TDM's. The way that we've previously been doing it is more at time of SDP. I think we can all agree right now that we have more and more potential roadways that are going to be failing us, and more potential projects coming in that will be needing to use these, and probably need to take a clearer look at this.

I'm assuming that it's just to this point been an oversight, because it just hasn't come up. I apologize that it hasn't happened. I will be talking to Trinity as soon as she gets in, I believe, around noon today.

HEARING EXAMINER STRAIN: Okay. I can tell you in the 18 years that I've been reviewing projects in the county, we have had this come up in at least on the East Trail before. We had TDM strategies come in, at least one or two other projects that I can recall seeing those at the Planning Commission level.

So if you could have that conversation, and, also, based on the discussion we had today, can you circulate a corrected listing that you have here?

MR. SAWYER: Absolutely, yes.

HEARING EXAMINER STRAIN: Okay. Thank you very much.

MR. SAWYER: Thank you.

HEARING EXAMINER STRAIN: Is there a staff report, Tim?

MR. FINN: Yes. For the record, I'm Tim Finn, Principal Planner. This project is compliant with the GMP and LDC, and, therefore, staff recommends approval.

HEARING EXAMINER STRAIN: Is there any information that you heard discussed today that changes your recommendation?

MR. FINN: No. No.

HEARING EXAMINER STRAIN: Okay. And I know we've talked about this, somehow in the future before Mr. Bosi and all the rest of them sign off on all the paperwork that funnels upward, the recommendations from staff members like transportation sometimes, as I've seen in the past environmental, they need to be incorporated into staff's recommendations in the staff report, so that they're known to all applicants before they walk into these hearings.

Having this sprung on us -- not sprung, but having this come up at the last minute, it's kind of hard for the applicant to react to it. So I'd rather you guys sort that out ahead of time and then

we know where everybody stands. Thank you.

Do we have any registered public speakers on this one, Ray?

MR. BELLOWS: The first registered is --

HEARING EXAMINER STRAIN: Is that for this case or the Monterey?

MR. BELLOWS: This one says CU-PL-2018 -- this one is for Garrett Beyrent.

HEARING EXAMINER STRAIN: Garrett Beyrent, is he here? Okay.

MR. BELLOWS: It was handed in.

HEARING OFFICER STRAIN: Well, if he's not here, he can't speak on it. Anybody else?

MR. BELLOWS: No one else is registered.

HEARING EXAMINER STRAIN: Is there any member of the public here who would like to talk about this particular item?

UNKNOWN AUDIENCE MEMBER: We're happy.

HEARING EXAMINER STRAIN: We're happy. That's good to hear in today's world. Thank you. Okay. There are no other public speakers.

Mr. Yovanovich, there isn't any need for rebuttal, but I would like to read to you what are some of the stipulations, because I want to make sure we're all on the same page.

One, you'll have no resident students. Two, you'll accept staff recommendations. Three would be transportation recommendations, but as modified, and I'll make sure you get a copy of the modifications.

Four, the main building will be limited to 170 students and up to 65 faculty and staff. Five, the second building will be limited to 105 students and existing faculty and staff. Is that all in line with what --

MR. YOVANOVICH: For -- can be developed to C-3 uses.

HEARING EXAMINER STRAIN: Yes, I understand.

MR. YOVANOVICH: Yeah, that's fine.

HEARING EXAMINER STRAIN: If used by the university.

MR. YOVANOVICH: Correct.

HEARING EXAMINER STRAIN: Okay. We're all on the same page, and thank you. With that we'll close the public hearing in this matter and a decision will be rendered within 30 days, but most likely a lot less.

MR. YOVANOVICH: Thank you.

HEARING EXAMINER STRAIN: Thank you. Next item up is Petition 3B. It's Petition No. CU -- I'm sorry -- 3C, Petition No. PL-20190000097, Toll Brothers, Inc., for insubstantial change to the Hamilton Place RPUD. All those who wish 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.)

COURT REPORTER: Thank you.

HEARING OFFICER STRAIN: For my part I have reviewed all the documents. I actually went back and looked at some historical documents from the records department, because the master plan that I had seen in the packet wasn't as clear as I needed it for legibility.

I've gotten that, and it didn't change anything, but it made me aware of the project's master plan. And I have talked with staff and that's the limit of my discussion -- oh, no, I did talk with the applicant.

Wayne, we had a conversation on the phone, or you came in with -- one morning, Tuesday morning, I believe, Monday morning, and with that, that's my disclosures.

MR. ARNOLD: I'll wait.

HEARING EXAMINER STRAIN: We're breaking everything here today. Thankfully John is here to help.

MR. ARNOLD: Hi. For the record, I'm Wayne Arnold, a certified planner with Q. Grady Minor & Associates representing Toll Brothers. With me from Toll Brothers is Jim Hepler, who you and I met with. Candy Corbett is Toll Brothers general counsel, and Mike Delate, a civil engineer from Q. Grady Minor & Associates is here if you have any specific questions. We have a concurrent plat that's going through the review process for this project.

HEARING EXAMINER STRAIN: Is there any members of the public here in regards to this, other than the applicant's team and staff? Okay. I will go straight to my questions. I don't need a presentation at this point. I have read everything.

In our discussions I had asked that the standards table include, as part of the exhibit, the footnotes. You have a whole series of footnotes that were missing. You are going to provide those, I take it? I've read them all, but I'd like to see it, for public record, included.

MR. ARNOLD: Mr. Strain, my office provided to you and the County Attorney's Office late yesterday afternoon a revised standards table that included all those. I can put them on the visualizer, if you wish. I have a hard copy, too.

HEARING EXAMINER STRAIN: No, I've seen them. I just want to make sure that for the record -- because right now the record doesn't reflect those. You've got a copy for the staff and the clerk?

MR. ARNOLD: Yes.

HEARING EXAMINER STRAIN: There was a discrepancy on the rec center. You're reducing the square footage on the table, but the -- and actually reducing the square footage on the plat. The master plan calls out .3 acres. You've changed that, at my request.

The master plan is now more consistent with what the plat says, and the table, and I believe you've gone from .3 to .1, and you've increased the residential from five to 5.2; is that accurate?

MR. ARNOLD: That is correct, and you should have received a revised master plan yesterday, and I also have those corrected and strike-through and underlined version for the clerk.

HEARING EXAMINER STRAIN: And I would like -- make sure you provide copies to the court reporter before you leave today. The other issue is this is the townhouse product being added onto the multifamily category.

Now, on the master plan there's two setback stipulations, one for multifamily, and one for single-family. They do differ. A townhouse being fee simple is more -- is sold by lot, which is more of a single-family nature, but I will ask staff. Ray Bellows is our designated interpreter of the code.

Ray, from staff's perspective, will you be using the single-family or the multifamily setback as noted on the master plan?

MR. BELLOWS: We are using the multifamily.

HEARING EXAMINER STRAIN: Okay. That's important, Wayne, because, as you know, multifamilies are now sold either way. So I want to make sure, staff, when you come in to review, the record is clear, and I'll have a stipulation to that effect to clarify further.

Those are the only notes I believe I've got that need to be discussed, and with that, I'll turn to staff, or staff meaning Heidi.

MS. ASHTON-CICKO: I believe you're going to put on the record staff's interpretation on the townhouse qualifying as multifamily as a permitted use?

HEARING EXAMINER STRAIN: They've already -- I certainly can ask staff to verify that. Ray, can you tell me how you came to the conclusion that a townhouse -- and I think I know what you're going to say, but how a townhouse is considered multifamily?

MR. BELLOWS: Yes, for the record, Ray Bellows. I'm the zoning manager for the zoning division. The definition in the Land Development Code pertaining to townhomes talks about how the building has three or more units qualifies for multifamily, so that's where staff has historically applied townhouses meet multifamily standards.

MS. ASHTON-CICKO: But as a permitted use?

MR. BELLOWS: And permitted uses.

HEARING EXAMINER STRAIN: Okay. That saves any further confusion. Thank you.

MR. ARNOLD: Yeah, thank you for the clarification. And I might say, Mr. Strain, I want to thank Matt McLean and his staff, because we have a current plat review, and we've made some adjustments to our development standards to make it more clear for their reviewers as this goes through the process, so that there are no hiccups with the proposed development standards for the townhome project.

HEARING EXAMINER STRAIN: Okay. We're all good with that then. Staff report, Tim?

MR. FINN: For the record, I'm Tim Finn, Principal Planner. The project is compliant with the GMP and LDC; therefore, staff recommends approval.

HEARING EXAMINER STRAIN: Thank you. Are there any members of the public here that would like to speak on this item? Hearing none, I don't think you have anything else. Anything else you want to say?

MR. ARNOLD: Thank you, Mr. Strain.

HEARING EXAMINER STRAIN: Okay. With that, the hearing on this matter is closed, and a decision will be rendered in 30 days. Thank you all for attending. Wayne, any of the copies, make sure before you leave you provide them to the clerk.

MR. ARNOLD: I did provide them to the clerk.

HEARING EXAMINER STRAIN: Good. Thank you. The last item up today is Petition 3D, Petition No. PDI-PL20180002894, the Monterey Master Owners' Association, Inc. It's for a setback deviation for an accessory structure and buffer area on the Villages of Monterey.

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

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

HEARING EXAMINER STRAIN: Thank you. Disclosures on my part, I have met with staff, gone through some records. This is the one I actually went through the records department looking at the historical master plan, that's the one the staff report wasn't as clear, and with that, that's all the disclosures I have at this time.

I notice there are members of the public here, so I'm asking that you'll have to provide a presentation to outline what you're proposing to do.

MR. BARBER: Good morning. I'm Tom Barber with Agnoli, Barber & Brundage, for the record, here representing Villages of Monterey. The Villages of Monterey is a PUD community located just north off of Orange Blossom Road between Livingston and Airport.

The original PUD was developed in the early 80's and then constructed in the 90's with an amendment, and as part of that PUD, there's set forth a parks tract, and within that parks tract, some of the allowed uses were a clubhouse. So there is a clubhouse developed on the parks tract.

Within the last few years they've made some improvements to the clubhouse, and with that, a playground. There were tennis courts that were constructed previously, and so they wish to add a shade structure to that playground.

Right now it's within the current setback. The tennis courts were also constructed within a

setback. There was never an accessory setback established for this tract, so we wish to come forward and clean up the PUD and establish that accessory setback, as well as to get an allowance to put a shade structure over the playground.

HEARING EXAMINER STRAIN: You said that the tennis courts were constructed within the required setback, or into the -- into the required setback?

MR. BARBER: Into the -- well, there was never an accessory setback set forth, so I guess they would be considered an accessory. It would have to possibly apply by the primary use.

HEARING EXAMINER STRAIN: Right, because currently if you don't have a reference to the separate setback for these facilities, it falls back to the base code. The base code requires same as principal structures, so I think it was a 25-foot setback you probably should have adhered to somehow.

MR. BARBER: Correct.

HEARING EXAMINER STRAIN: You were permitted and placed your tennis courts within ten feet of the property line, instead of 25 feet?

MR. BARBER: Correct.

HEARING EXAMINER STRAIN: Is that a fair statement?

MR. BARBER: Yes, that's fair.

HEARING EXAMINER STRAIN: Okay. I have a couple of clarifications. On your -- you have a plan called the Landscape Compensating Area Exhibit. That's it. The colored one, you see how that's all blacked-out over on the right? It doesn't work too well with the colorations you have there. Maybe you could crosshatch it or something? I need an -- this would have -- would have to have an exhibit that could be read that reproduces it. So those colors won't always reproduce, because a lot of times PDF's, they just don't want to record them in color.

So if you could at least take the dark blue and purple colors, show them as some crosshatch sections relevant as their color and eliminate the color there, and then take off the color of the green, because you don't need that, that's the excess that you say you're providing, that's just a calculation; that would clean this master plan up to make it more recordable.

MR. BARBER: Absolutely.

HEARING EXAMINER STRAIN: For the master plan at least for this area.

MR. BARBER: Okay.

HEARING EXAMINER STRAIN: And I notice that in -- on this particular plan, you were labeling the 15 Type B buffer modified. So Mark Templeton is here, and I'm going to ask him to verify a couple comments, but I believe that the modification is the reduction, because the accessory facility is into that, and to make up for that intrusion into the setback, you've relocated an equal amount of space in other areas along that northern -- along that piece of property line as close as possible, and those are the darker blue areas that wouldn't typically show up on this?

MR. BARBER: That's correct.

HEARING EXAMINER STRAIN: Is that correct?

MR. BARBER: Yes, sir. So we provided compensating landscape area for that area that was impacted in the Type B buffer.

HEARING EXAMINER STRAIN: In the neighborhood information meeting you referred to -- when you said the following, so we're showing landscaping behind the tennis courts between the court and shade structure in the area over by the lake.

Now, the area over by the lake by the plan you have there, if you were to slide that plan down enough, it's that dark piece up in the top; is that correct?

MR. BARBER: That's correct.

HEARING EXAMINER STRAIN: Okay. I wanted to make sure that you weren't



putting it into the LME. I couldn't find an LME in any recorded documents. It's an older lake, so I'm not sure what normally is 20 feet outside the control elevation, and I'm not sure where that is, but I'm certain that what you're proposing is probably well out of that.

MR. BARBER: It is. It is.

HEARING EXAMINER STRAIN: Okay. Also, there were some letters of no objection located by staff for this project. I didn't find them in the packet. Are you aware of those?

MR. BARBER: The letters of no objection, yes.

HEARING EXAMINER STRAIN: Okay. And it might be handy to have them, maybe you provided them, but we'll go ahead and put them on record today. I think staff's brought them with them to put on record. I think that will be helpful --

MR. BARBER: Okay.

HEARING EXAMINER STRAIN: -- to have the record reflect that. We've talked about the exhibit, the other piece is the addendum. You're going to enhance the modified buffer with additional landscaping, and that is the second plan, I believe, and it's 26 Pitch Apple Trees; is that what you're proposing?

MR. BARBER: It's, yeah, 26 Clusia plants.

HEARING EXAMINER STRAIN: All right. That's the strip on the top -- well, on the left-hand side on this particular plan, but it's all those trees shown right there along the shade structure; is that correct?

MR. BARBER: Correct, yes.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions, that's the extent of them today. Hopefully, it's a pretty benign application. We'll see if any members of the public have anything to say, and I'll get back to you if there's some time for rebuttal, if need be.

MR. BARBER: Thank you.

HEARING EXAMINER STRAIN: Thank you. Is there a staff report, John?

MR. KELLY: There is.

HEARING EXAMINER STRAIN: Well, I know there is, but do you have anything you want to add to it? I'm sorry.

MR. KELLY: Staff's recommendation -- for the record, John Kelly, Senior Planner. The staff is recommending approval of the PDI-PL20180002894.

HEARING EXAMINER STRAIN: Okay. Most of the discussion you just heard was similar to what you and I had yesterday. Is there anything there that changes your position?

MR. KELLY: No, there is not. I'm looking -- there was the single letter of no objection, and that actually came from the homeowners' association to the north. I believe it's in the packet, but I'm looking for that --

HEARING EXAMINER STRAIN: That's no problem. If it's there, that's fine. If it's not, I'll use those anyway as a reference, so that works.

MR. KELLY: Okay.

HEARING EXAMINER STRAIN: With that, I would like to ask Mark Templeton to come up to verify just a couple points.

MR. TEMPLETON: For the record, Mark Templeton, Development Review.

HEARING EXAMINER STRAIN: Thank you, Mark. As we discussed yesterday, you clarified most of it for me. The Pitch Apple replacement or the enhancement, is that what you're expecting to see for the added reduction in this buffer? Does that meet your criteria?

MR. TEMPLETON: It does meet the criteria. When it comes in for SDP, we'll be looking for that.

HEARING EXAMINER STRAIN: Okay. I know it's not by the tennis courts, but it is

by the shade structure. The tennis courts, how do you balance the fact that the tennis courts don't have any additional landscaping?

MR. TEMPLETON: Well, I was just looking at the focus area for this project, and it being a shade structure, not the tennis courts, I wasn't looking for anything enhanced there.

HEARING EXAMINER STRAIN: Are you aware of how the tennis courts may have gotten permitted into that location without, you know, meeting the code?

MR. TEMPLETON: I am not. I believe that predated me.

HEARING EXAMINER STRAIN: Your existence or your place here?

MR. TEMPLETON: Big question.

HEARING EXAMINER STRAIN: It's an older PUD, you know. Okay. And then one of the landscape review comments was that the -- it provides a 15-foot buffer, provided that the buffer is increased by the equivalent with elsewhere along that buffer.

So what that analysis is, is if you intrude ten feet into the buffer, that much at least has to be made up elsewhere. They've chosen an area in the -- most of it on the right-hand side.

MR. TEMPLETON: Yeah, to the east. Yeah.

HEARING EXAMINER STRAIN: Okay. I'm fine, Mark, that's all I needed. Thank you. Do you have anything you want to add?

MR. TEMPLETON: No.

HEARING EXAMINER STRAIN: Okay. Thank you very much. Any there members of the public here who wish to speak on this item?

MR. BELLOWS: Yes, we have one speaker, Ron Santangelo.

HEARING EXAMINER STRAIN: Come on up, sir, and use the microphone. I notice you brought an audience with you today, that's nice to see. You're getting them broken in early.

MR. SANTANGELO: Absolutely. Ron Santangelo. I'm the president of the Master HOA. And with us today we have Lindsay, who is on our shade structure committee and her children.

As we all know in Florida the sun is brutal, and when we originally put in the playground, we had a shade structure set, and it wasn't until, I guess, the vendor put it in in two different parts, and not one permit, and it wasn't until we put in the second permit for the shade that we realized that we were in an area that we shouldn't have been in.

The playground's already in. It's all set. From 11:00 until about five, 6:00 in the evening, we can't use the playground. The equipment is just way too hot. So what we're asking for is if we can get some shade structure put up, so that the children, such as Lindsay's, can enjoy the playground throughout the afternoon or late morning and afternoon area time frame.

HEARING EXAMINER STRAIN: Well, you're well on the way to having gotten to a point, you've probably struggled for months to get here, but hopefully it will be over soon, and one of the things we always like to see is the actual stakeholders involved, and I can see you've got two of them back there, who are probably very involved, and for their health, this is a good idea. So thank you and we will move forward with this as quickly as possible.

MR. SANTANGELO: Great. Thanks very much.

HEARING EXAMINER STRAIN: Appreciate it. Any other members of the public here wish to speak on this item? Okay. Hearing none, is there any further comment by the applicant? Indicates no, he's shaking his head no. And with that we'll close the public hearing on this item. A decision will be rendered within 30 days, most likely a lot less, but that's the maximum.

So thank you all for your attendance this morning. That is the last item for today. Is there any public comments? Hearing none, this meeting is adjourned. Thank you all. Thank you, Janice.

COURT REPORTER: 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 9:58 a.m.

COLLIER COUNTY HEARING EXAMINER.

Mark Strain  
MARK STRAIN, HEARING EXAMINER

ATTEST  
CRYSTAL K. KINZEL, CLERK

These minutes approved by the Hearing Examiner on 7-23-19, as presented  or as corrected \_\_\_\_\_.

TRANSCRIPT PREPARED ON BEHALF OF  
U.S. LEGAL SUPPORT, INC.,  
BY JANICE R. MALINE, COURT REPORTER AND NOTARY PUBLIC.