

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
July 25, 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  
Tim Finn, Principal Planner  
John Kelly, Senior Planner  
Gilbert 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, July 25th 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 announcements, speakers will be limited to five minutes, unless otherwise waived. Decisions are final, unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days.

And in review of the agenda, we have three cases for today, and I'm going to ask the members of the public, when I read each one, to, please, raise your hands if you're here for that particular one. We may move them around to convenience those of you who are here, for others, and where others aren't so concerning.

Item 3A is for the Grace Place for Children and Families. Is anybody here for that one? Okay. That's the first one up and it will remain so.

Item 3B is for Minto Sabal Bay. Is there anybody here for that one? Okay. And then Item C, 3C, is the -- this one's actually for a transportation change to the Wolf Creek Residential PUD, and the majority of you are here for that one.

Okay. We're going to move up Item 3C to the second one today. So we'll do them in this order: Grace Place, Wolf Creek, and then last will be Minto Sabal Bay.

So with that being said, the first petition up is Petition No. DR-PL20190000593. The Petitioner is Grace Place for Children and Families. All those wishing 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.)

COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Disclosures on my part, I have spoken to the applicant's engineering firm a couple of different times. I also talked with staff, and a gentleman came up with a speaker slip just before the meeting and I instructed him where to leave it.

The members of the public that are here, is anybody here that is not part of the applicant's team, members representing either the church -- this is the Grace Place, either you're representing the church or you're with the team for the church? The reason being is I don't -- if the applicant -- if everybody is familiar enough with it, I don't need a full presentation from the applicant and we can move right into the issues.

With that, Dominick, you want to tell us who you're here representing and we'll move on?

MR. AMICO: Hi. Dom Amico, Agnoli, Barber & Brundage, representing Grace Place.

HEARING EXAMINER STRAIN: Real briefly, can you just describe what the issue is?

MR. AMICO: The issue is we have a large dry retention area on the property. It's been there for some time, and -- and right now the children use the bottom of that area to play in.

The hydrology of the area is such that that area does not hold a lot of water. Obviously, when it does they don't allow the children to play in it. They have recently received funds to install artificial turf in the bottom of that retention area to make playing in it for the kids a little better. They don't have to deal with the sand spurs and whatnot that grow in the bottom of it. The code requires the bottom of retention/detention areas to be sodded, that's the exact code cite, artificial turf isn't sod.

HEARING EXAMINER STRAIN: Now, the change in the code, though, occurred after your project was originally approved?

MR. AMICO: That is correct.

HEARING EXAMINER STRAIN: Okay. So at the time of the project, you wouldn't -- you would have no reason to believe that you couldn't have used turf there --

MR. AMICO: That's correct.

HEARING EXAMINER STRAIN: -- artificial turf? Okay. Artificial turf, as far as percolation rates, is it equal to or better than grass? How does that work?

MR. AMICO: Our experience on recent county work that we've done on North Collier Regional Park, is that after installation, the percolation rate at the surface of that is far in excess of what exists today.

HEARING EXAMINER STRAIN: Far in excess mean it's a quicker percolation rate?

MR. AMICO: Correct.

HEARING EXAMINER STRAIN: Subject to whatever cells are below it?

MR. AMICO: Correct.

HEARING EXAMINER STRAIN: And, obviously, you don't fertilize it, you don't cut it, but you would probably have to clean it. Just out of curiosity, how is it maintained?

MR. AMICO: It's maintained basically by a machine that looks very much like a leaf picker-upper for lack of a better term.

HEARING EXAMINER STRAIN: Vacuum cleaner?

MR. AMICO: No, not a vacuum cleaner. It's a rotating device that picks the trash out of the turf and allows the infill to drop back down on to the turf.

HEARING EXAMINER STRAIN: Okay. Everything else seemed pretty straightforward in my reading of this, so I didn't have any other questions. I just needed those clarifications, and what I'll do is go to staff.

If there's any public speakers and you want to have any comments after the public speaker, you'll be allowed to, and then we'll conclude it at that point.

MR. AMICO: Thank you.

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

MR. FINN: For the record --

HEARING EXAMINER STRAIN: I mean, I know there's a staff report. I've heard that before. Is there anything staff wants to add in enhancing the report?

MR. FINN: No. No.

HEARING EXAMINER STRAIN: Okay. With that is there public speakers, Ray, that are registered? And then we'll go to the unregistered public speakers.

MR. BELLOWS: I have one registered, it's Mike Casady.

HEARING EXAMINER STRAIN: Mr. Casady, if you want to speak on this, you're more than welcome. Please, come up and identify yourself for the record, and we'll be glad to hear you.

MR. CASADY: My name is Mike Casady, and I live at 2174 42nd Street, within about 500 feet of the project, and I have no objections whatsoever towards the -- the -- the sod replacement with that information that was discussed previously with the AstroTurf and so forth, but since there's a deviation in the site plan, there is one unsafe area that I had discovered on the south end of the property on 42nd Street. I don't know if you have a site plan that we can pull up?

HEARING EXAMINER STRAIN: I'm looking at one now, yeah, so I -- we don't -- I don't believe, unless staff's got one in the -- in their packet with them, I -- I can't reproduce an electronic one for you on the screen.

MR. CASADY: I did have a few pictures that I could --

HEARING EXAMINER STRAIN: Well, it would be better if we use --

MR. CASADY: Yeah.

HEARING EXAMINER STRAIN: -- what staff has to start with. If you show any pictures of anything, I'm going to have to have copies of them for the record. So you may want

to --

MR. CASADY: Yeah, which I can do.

HEARING EXAMINER STRAIN: Now, John, out of concern over time, do we know how to -- do we know how to adjust the focus on that now? Last meeting we had quite an effort to that, so I think we've learned a lesson or two.

MR. CASADY: We are --

HEARING EXAMINER STRAIN: And you'll have to turn that mic towards you when you speak, sir.

MR. CASADY: Okay. Sure. Just trying to coordinate myself with this. All right. So this is the area right here that I'm concerned with (indicating). There's a sidewalk that ends right here, right there, and there's a sign that says sidewalk ends, and then there's a driveway.

There's a driveway right through here that the facility, the school has used, and there's some benches and stuff in here, and they park some cars in there, which is fine with me. I don't have no problem with that, but there's an existing sidewalk right here, and that adjoins the property here to the south of where the courtyards are, and so you have a sign right here that ends, a sidewalk, and then there's another sign right here of -- that ends the sidewalk.

So you have a driveway across here, which actually could be used as, you know, continuation of this sidewalk, because this sidewalk goes all the way down to the corner of 22nd Avenue and 42nd Street. So there's an area right here --

HEARING EXAMINER STRAIN: Where there's no -- no dedicated sidewalk? You have two signs that say -- and each one they end but then across the width of the driveway the sidewalk picks up again?

MR. CASADY: That's right.

HEARING EXAMINER STRAIN: Okay.

MR. CASADY: That's right.

HEARING EXAMINER STRAIN: I think we --

MR. CASADY: And this area right here is really overgrown with -- with brush. This is an unincorporated lot here; don't know if it belongs to the county or if it's a -- or if it's just a lot that hasn't been sold, but this overgrowth is really crazy.

You can't hardly even see the sidewalk. So if that was cleaned up, and we did something across here, put a driveway in, or continued that sidewalk, I think it would be great for --

HEARING EXAMINER STRAIN: Well, you -- you're fortunate to have brought this up, because we have two people here of staff, who both would probably have to look at that. One is Trinity Scott, she's the Director of our Transportation Planning. I saw her walk in. Trinity, are you still here?

MS. SCOTT: Yes.

HEARING EXAMINER STRAIN: Okay, and the other is Matt McLean, who does all of our site plan review, and between the two of them, I would expect now that they'll take a look at this, and what I'd like you to do is leave your information with Trinity on your way out and she'll --

MR. CASADY: Absolutely.

HEARING EXAMINER STRAIN: -- she'd be -- I'm sure her and Matt can contact you and tell you the follow-up information.

MR. CASADY: It's a very busy street. There's a lot of kids walking to school there. I've seen some older gentlemen with walkers, and when they get to that area, and they have to actually go out in the street and walk down the section of that street and then go back to the sidewalk.

HEARING EXAMINER STRAIN: Okay. And there's -- sometimes there's issues we can't resolve. This isn't really part of today's application.

MR. CASADY: Yeah.

HEARING EXAMINER STRAIN: But now that you've brought it up, it will be followed-up and we'll see if it's something that the county can --

MR. CASADY: Well, that's what I was thinking --

HEARING EXAMINER STRAIN: -- take a look at.

MR. CASADY: -- since there's going to be a deviation in the site plan, maybe that's maybe an upgrade. I don't know.

HEARING EXAMINER STRAIN: Well, see, that's technically outside the site.

MR. CASADY: Okay.

HEARING EXAMINER STRAIN: That's the problem. It's in the right-of-way and it's outside the property, so even if we wanted to, we couldn't force anything on that issue today.

MR. CASADY: Yeah.

HEARING EXAMINER STRAIN: But at least staff can take a closer look at it and see if there's a reasonable solution they can -- now that they've become aware of it.

MR. CASADY: I would appreciate that. Thank you.

HEARING EXAMINER STRAIN: Okay. Please, make sure you leave your contact information with Trinity on the way out. Thank you very much, sir.

MR. CASADY: Thank you.

HEARING EXAMINER STRAIN: Are there any other registered public speakers, Ray?

MR. BELLOWS: No one else has registered.

HEARING EXAMINER STRAIN: Is there any member of the public who is not registered and would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Dominick, you've heard the gentleman. I know that isn't anything your -- your property is necessarily involved with, but there will be some follow-up research by staff, so, hopefully, you can respond to that when it happens.

MR. AMICO: Our next step in this process is to file an SDPI to actually build -- get approval to build this, so we can deal with it then.

HEARING EXAMINER STRAIN: Okay. Appreciate it. Thank you. And hearing nothing else on this matter, we'll close the public hearing on this, and a decision will be rendered within 30 days, usually a lot less, but that's the time frame that's allowed. Thank you very much.

MR. AMICO: Thank you, Mark.

HEARING EXAMINER STRAIN: Thank you. The second item up has been moved up from the -- that's for Tim. No, that's just something Tim can handle.

We're going to go to Item 3C. It's the Petition No. PL20180002764, and it's for the Patrick Vanasse representing the Collier County Transportation Department for an insubstantial change to the Wolf Creek Residential Planned Unit Development. 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.)

COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Disclosures on my part, I've received an e-mail from a lady in Raffia, I believe the name of the project is. I've talked to staff. I talked to the applicant representative a couple of times on the phone, and I believe that's about all -- oh, we had a brief conversation with staff as well, and I talked to two ladies this morning who are from part of this Wolf Creek PUD.

So with that because there is members of the public here, I'll need a brief presentation on how we got here today, and we'll go from there.

MR. GALLANDER: Absolutely. Mr. Examiner, my name is Ken Gallander. I'm with

RWA Engineering. Unfortunately, Mr. Vanasse is not able to be here today, so I'm here in his stead. Briefly, as you requested, this is a request to seek an insubstantial change to the Wolf Creek PUD, and it's to specifically eliminate the traffic commitment 57G.

What has -- the request stems from Collier County Board of County Commissioners' directive given to the county staff back on March 27th, 2018 to remove this commitment associated with the Wolf Creek PUD, and, of course, the residential communities within that, which are Black Bear Ridge, the Falls of Portofino, Raffia Preserve, and Vanderbilt Reserve.

The directive was based on the BCC's determination that since a commitment specific to a fair share contribution for a traffic signal, if it was warranted at the Vanderbilt Beach Road, and Pristine Drive intersection was eliminated from the adjacent PUD, which that was at that time Carolina Village, but is also known as Vanderbilt Commons, it was appropriate to move the -- remove the fair share traffic commitment from the Wolf Creek PUD as well through this insubstantial change application.

So that's why we're here today, and what this does is basically removes the commitment for payment for those improvements, if warranted in the future, to the property owners within the Wolf Creek PUD.

HEARING EXAMINER STRAIN: So that means if the traffic signal becomes warranted and that's based on a series of elements that are tested, the communities involved won't have to, on their pro rata share, participate. It will be done through the transportation department's budget as many other signals in the county are, in fact, most of them.

MR. GALLANDER: That's correct.

HEARING EXAMINER STRAIN: Okay. When the board, are you -- were you there? Do you remember if -- what initiated this removal by the board? Was -- was the communities requesting it, or did the board just do it on their own; do you know?

MR. GALLANDER: Unfortunately, I wasn't at the hearing. The executive summary, as I understand it, was a result of there were improvements associated with the Vanderbilt Commons, and through those improvements that that would result in this commitment. I believe -- I don't know if staff --

HEARING EXAMINER STRAIN: Trinity most likely was there. She spends a lot of time at those meetings, so maybe she can enlighten us?

MS. SCOTT: And, I'm sorry, I was not sworn in because I was outside getting contact information from Mr. Casady, so if I could be sworn in?

HEARING EXAMINER STRAIN: Take care of that immediately.

TRINITY SCOTT, the Witness herein, having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

COURT REPORTER: Thank you.

MS. SCOTT: For the record, Trinity Scott, Transportation Planning Manager. Yes, this was initiated by the Board of County Commissioners through our public hearing process for the Carolina Village PUD and Growth Management Plan amendment.

Several residents within the Wolf Creek Planned Unit Development had expressed during their public testimony that this fair share commitment would be on them, and we were relieving Vanderbilt Commons. And so the Board of County Commissioners agreed and directed staff to move forward with removing this commitment. Now it's only a monetary commitment from the PUD, and you are correct that in the future should a signal be warranted, we would just not go back to the developer, the successors or assigns, which would be the homeowner associations, for a fair share payment.

HEARING EXAMINER STRAIN: And the reason the residents ended up with this, is the

developer -- the commitment hadn't rose to the need by the time the developer departed from the site, and the HOA's generally take the responsibility of those commitments over after the developer leaves; is that how it normally occurs?

MS. SCOTT: Yes. Yes, that is typically what occurs.

HEARING EXAMINER STRAIN: As far as the institution of any changes for a light, whether developer, whether the residents, or whether the county pays for it, would the ability for that light to go in change -- and maybe parameters for a light need there change?

Meaning, if a certain traffic count, or the last time I had to install one, it was because a number -- you guys kept count of how many accidents, and the more accidents you had, the sooner you got a light, that was warrants, I guess they're called. Does that -- any of that change depending on who's paying for the light, or is it the same for everybody?

MS. SCOTT: It does not change depending on who is paying for the light. Traffic signals are warranted by the manual uniform traffic control device. There are a series of warrants that must be met in order for a traffic signal to move forward, and it does not matter who is writing the check at the end of the day. The warrants are what the warrants are.

HEARING EXAMINER STRAIN: Okay. So some day a light could go in there, but it's still going to be dependent upon the warrants, and the warrants are just -- are happening -- they're ongoing and measured whenever -- whenever you guys see the activity increasing, I assume?

MS. SCOTT: Exactly.

HEARING EXAMINER STRAIN: Okay. I don't have any more questions, so, thank you.

MS. SCOTT: Thank you.

HEARING EXAMINER STRAIN: Do you have anything else you wanted to add to your --

MR. GALLANDER: No, Mr. Hearing Examiner.

HEARING EXAMINER STRAIN: Mr. Strain is fine.

MR. GALLANDER: Mr. Strain. Thank you.

HEARING EXAMINER STRAIN: And I'll go to staff report. If any members of the public wish to speak and have any issues, you may be able to rebut if you need to.

MR. GALLANDER: Yes.

HEARING EXAMINER STRAIN: Okay. Gilbert, do you have anything you want to add?

MR. MARTINEZ: Yeah, Gil Martinez, principal planner. Staff finds the petition to be consistent with both the Growth Management Plan and the Land Development Code and recommends approval.

HEARING EXAMINER STRAIN: Okay. Thank you. Now, we'll turn to -- do you have any registered public speakers, Ray?

MR. BELLOWS: One speaker, Terrie Abrams.

HEARING EXAMINER STRAIN: Ms. Abrams?

MS. ABRAMS: Hi, Terrie Abrams, 7213 Acorn Way, Black Bear Ridge. I'm just up here to say thank you to the county for all the work that they did to get us to this point. It was an unjust burden upon the residents of Black Bear Ridge, and I'm sure the other surrounding communities. I know it's been a long struggle to get there, and I know I'm usually not up here saying thank you, but I am up here today to say thank you, and a big shout out to Trinity, because she really led the charge and got it done. So once again thank you very much.

HEARING EXAMINER STRAIN: I appreciate your comment. Thank you. Are there any other registered public speakers, Ray?

MR. BELLOWS: No other speakers.

HEARING EXAMINER STRAIN: Is there any member of the public who has not spoken who would like to address this issue? Sir, if you -- okay. First of all, you both have to stand up and be sworn in. I didn't think I saw you stand up here previously. Would you mind swearing them in?

COURT REPORTER: Raise your right hand.

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

COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Thank you. If you'll come up one at a time and identify yourself for the record on one of the speakers. If your last name is complicated, just spell it so we get it right. Thank you.

MR. DESAUTELS: Good morning. For the record, Pierre Desautels, D-E-S-A-U-T-E-L-S.

HEARING EXAMINER STRAIN: That's one of those names. Thank you.

MR. DESAUTELS: So D-E-S-A-U-T-E-L-S, 4649 Abaca Circle in the -- we're actually in the Palermo PUD, which is right adjacent to Wolf, and we are a part of Raffia Preserve.

I'd like to read a letter that our president wrote on behalf of the board and submit it for evidence.

"We're writing on behalf of the Raffia Preserve Master Association through its resident board of directors alongside 363 homeowners. Please accept this formal request for this letter to become part of the record."

The notice that was mailed out was only mailed out to part of the homeowners at Raffia Preserve, even though all the homeowners of Raffia Preserve are impacted by this, because we can only exit through Wolf Creek PUD, so those of us on Palermo did not receive this.

And the intent, as we understand it, of the notice is to remove the developer's obligation to fund the future traffic improvements. Lennar provided -- the current developer provided approval of this change representing Raffia Preserve by submitting the signed affidavit.

We have an issue with this, and I'd like to -- a clarification was brought that the funding for future improvements would not be on each resident, and I thank you for that; that was one of our big concerns, but we have an issue with the petition, because Lennar acquired Raffia Preserve around May 2017 and Raffia represents, I think, the largest subdivision in the Wolf Creek PUD.

The basis of the changes, we understand it, was partly based on the traffic count that was done, I think, in 2017.

HEARING EXAMINER STRAIN: I think that was a study that was done, but the basis for this whole action is the action that the board took to remove the burden of the cost on the communities.

I don't -- I don't -- at the time I don't know that they really considered traffic counts. They just agreed with the community's position that they shouldn't be the ones paying for this traffic light so --

MR. DESAUTELS: Okay.

HEARING EXAMINER STRAIN: I mean, just to be clear.

MR. DESAUTELS: That's a valid clarification. Just continuing, at the time Raffia had about 150 homes closed out of the 363, so the traffic study didn't represent the full impact from the residents in the area.

It also didn't factor in future traffic from Vanderbilt Reserve, Vanderbilt Commons and future developments. Collier County had the developer sign an affidavit of authorization to waive their contribution. This should have included Raffia, the whole of Raffia Preserve associations.

One of the biggest issues that we have in removing the obligation of the developers is that most of the homeowners have, through the purchase of their homes, already paid for this. If



there's a burden on the developer, the developer will include it in its costs to develop, and will obviously charge the homeowners.

So we feel that Raffia, Bear Creek, et cetera, we've already paid for it once, and if it is simply removed, we would pay for it a second time, much less through taxes, and when an improvement is required in the future, since it's already been paid for by the purchasers, the home -- the developer ends up with funds that would not -- that the county couldn't rely on when the improvements are made, if you release them of their obligation, and that is one of the -- one of the biggest issues, I think -- I think that we have.

HEARING EXAMINER STRAIN: You represent that you're with the HOA?

MR. DESAUTELS: I'm -- I'm on the board. I'm the vice president. Pamela Peterson with whom you've corresponded with, I believe --

HEARING EXAMINER STRAIN: Have you gone through turnover?

MR. DESAUTELS: We are in the middle of going through turnover.

HEARING EXAMINER STRAIN: Okay.

MR. DESAUTELS: We've done the turnover. We're now --

HEARING EXAMINER STRAIN: That's an issue you may raise in another venue, but right here today, simply taking out this paragraph versus leaving it in, is the only issue that we have to discuss today, and I understand your concern --

MR. DESAUTELS: Uh-huh.

HEARING EXAMINER STRAIN: -- but that's something that you all paid that you may want to approach in a different manner if you feel that you've got the support to do so. I don't know here if today -- I would not want to see this paragraph left in, because we can't change it then, and it would put a burden on top of everybody through the -- if you are -- assume control of the developer's responsibilities, which changeover does, then we'd have to be -- we'd still be looking at you for any payment, and I don't think anybody wants that.

MR. DESAUTELS: Of course, no, we don't want that.

HEARING EXAMINER STRAIN: But I understand your concern. Your understanding -- your belief is that the developer has already collected pieces of it through the additional costs you may have paid for your lot or your home.

MR. DESAUTELS: That is one concern --

HEARING EXAMINER STRAIN: I understand.

MR. DESAUTELS: -- from our point of view. Now, if I put myself in your shoes, somebody's already paid for it. The developer has some money, and if you do an improvement, you're -- you're relinquishing completely the possibility of mitigating part, all, some of the costs of these improvements.

HEARING EXAMINER STRAIN: I -- I'm not sure how the county would approach that, only because how much of the sale price is incorporate -- incorporates a value on something that could or could not happen in the future?

I mean, I don't see that as a -- something that we could even ferret out and necessarily expect to win on. So for the benefit of the folks, yourself included, striking this paragraph is still the best outcome of today's meeting.

The other issues you have, if you bring them up during your turnover process or other civil avenues that you may have, might be a better way to approach it, but I'm not sure how the county could effectively approach that for you from this stage.

MR. DESAUTELS: Right.

HEARING EXAMINER STRAIN: So --

MR. DESAUTELS: Okay.

HEARING EXAMINER STRAIN: -- I do thank you for your input, and it is a

consideration I hadn't thought of, and I appreciate it, so thank you.

MR. DESAUTELS: Okay. Thank you.

HEARING EXAMINER STRAIN: Our next speaker?

MR. WHIPPLE: I guess he pretty much --

HEARING EXAMINER STRAIN: You'll have to come up and identify yourself for the record.

MR. WHIPPLE: I'm John Whipple, W-H-I-P-P-L-E, and I'm also on the board. The concern that brings us here is that traffic is nuts out there. There's -- we're land-locked in our little subdivision.

HEARING EXAMINER STRAIN: You're just around the corner from me, so I've -- I have experienced it just like you all do.

MR. WHIPPLE: When you try to get out, you can't get out one way, so you make a right turn on Collier, and you come down the other way and you block up the Vanderbilt Beach exit, so it's just a mess, and we were thinking that, you know, what Lennar has already made their money off of us, and taken off, and we said, wait a minute, if they still owe money for this to happen, we shouldn't just say, "Let them go," because we won't want this anymore.

Maybe we misunderstand, because it sounds like it's a good thing, rather than a bad thing, so maybe we gotta come back, go after Lennar or something, which is going to be nearly impossible.

HEARING EXAMINER STRAIN: Well, and that's the same -- the same situation the county's in on how to decipher how much of a cost like this that doesn't incur, goes on to your sale price for a potential future expenditure.

MR. WHIPPLE: Right.

HEARING EXAMINER STRAIN: It gets kind of difficult to -- to assess so --

MR. WHIPPLE: Yeah, you don't know how much to go after whom for so...

HEARING EXAMINER STRAIN: The way -- I don't know if you've noticed it, but the left turn onto Collier that used to back up on Vanderbilt Beach extension is now expanded into three lanes; that has cleared a lot of that intersection congestion that was occurring closer to Vanderbilt Commons. I don't know if you've seen that lately, but they changed the configuration of the road there.

MR. WHIPPLE: That's going east, turning on --

HEARING EXAMINER STRAIN: If you're going east, instead of having two lanes stacking to go left --

MR. WHIPPLE: Yeah.

HEARING EXAMINER STRAIN: -- and remember it was stacking up for a long distance from the intersection, it doesn't stack up nearly as much anymore, because they've opened up a third lane. That has been effective for at least that piece of it.

MR. WHIPPLE: They will change that intersection coming out of the shopping center, too, so you cannot turn left there. You go --

HEARING EXAMINER STRAIN: That's what I understand.

MR. WHIPPLE: -- down to Pristine and add to that or there's a U-turn that's going to be two blocks long. You gotta get over three lanes to make a U-turn, that whole -- that whole corner has been a nightmare, so it's going to cost somebody a lot of money to make that right and --

HEARING EXAMINER STRAIN: Like you I experience it multiple times every day so --

MR. WHIPPLE: Let's do something about it.

HEARING EXAMINER STRAIN: Hopefully -- well, I know, and hopefully our transportation department will, and your comments today, because they're on record, they've heard

them, and I'm sure they'll be more aware or be clicking -- taking a closer look at that area as well, so thank you.

MR. WHIPPLE: Well, thank you for your indulgence.

HEARING EXAMINER STRAIN: You bet. Thank you, sir. Any other member of the public like to speak on this matter today?

(No response.)

HEARING EXAMINER STRAIN: Okay. I don't believe there's any need for the applicant to have any further rebuttal? None. With that, we'll close the public hearing, and a decision will be rendered on this within 30 days, most likely a couple of weeks. Thank you all for your time today.

Next item and the last item up today is the petition that was moved to the third position. It's 3B, Petition No. PDI-PL20180003494, and it's Minto Sabal Bay, LLC for an insubstantial change to Tract F-1. All those who are 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.)

COURT REPORTER: Thank you.

HEARING EXAMINER STRAIN: Thank you. I have had discussions with the applicant's representative just before the meeting started today, and I believe that's the only one. I've talked with staff, reviewed all the files, and I think that's the extent of it.

So with that, we'll move right into the requested change, and who's representing the applicant today? While we're getting ready to have our presentation, is there any member of the public here for this item who is not affiliated with the applicant for this?

(No response.)

HEARING EXAMINER STRAIN: Well, that just shortened our time considerably. You won't need a presentation. I have read everything. Since there's -- everybody here's either associated or familiar with the project, let's just go right into the issues that we have to deal with today that I had questions on with staff, and I informed staff yesterday of some of those questions, and then last night I found a -- I found some more.

So let me -- let me pull up a couple pieces here. Okay. Now, it's my understanding this -- these three deviations are going to apply to the F-1 Tract, as far as the Deviation 16 -- or 17 -- you have 17, 18 and 19; 17 is to raise the wall height, and I noticed in the exhibit you say the affected areas for Deviations 17, 18 and 19. So this is the only piece of that project that was going to have this wall height of that nature?

MS. SAPEN: For the record, my name is Jennifer Sapen. I'm with Barraco and Associates, and that is correct. This parcel shown here in this slide in yellow, this is -- this tract will be the only area that these three deviations apply.

And, specifically, the deviations for the right-of-way width and the sidewalk on one side of the road, would only apply to approximately 1500 linear feet of roadway where the road is single-loaded, in that, there are residents only on one side of the road.

HEARING EXAMINER STRAIN: Good. You already answered the questions I was going to ask. Our microphone keeps cutting out.

The right-of-way width you're reducing, now, I notice the PUD already has a reduction down to 50. You're going down to 45?

MS. SAPEN: Yes.

HEARING EXAMINER STRAIN: You're taking the five-foot sidewalk out on the northeast side, and moving it to the side where the homes are on, and that will be six foot at that location; is that right?

MS. SAPEN: That's correct, yes.

HEARING EXAMINER STRAIN: Okay.

MS. SAPEN: We increased that to one foot.

HEARING EXAMINER STRAIN: And the 45 foot long -- or 45 foot width stops at the end of 1500 feet, and it goes back to 50 feet?

MS. SAPEN: That is correct, yes.

HEARING EXAMINER STRAIN: Okay.

MS. SAPEN: It will go back to a 50-foot right-of-way to two five-foot sidewalks on either side.

HEARING EXAMINER STRAIN: Correct, and you're going to have -- so what will happen is at the end of the 1500 feet, you'll probably have -- staff will probably ask you through a site plan review for a crosswalk or something to connect to the walkway across the street where the other homes pick up.

MS. SAPEN: Yeah, we would do that, right where you see here where it becomes a double-loaded road.

HEARING EXAMINER STRAIN: I -- I actually brought a pointer. How do you like that? Right there (indicating)?

MS. SAPEN: That's correct.

HEARING EXAMINER STRAIN: Okay. I noticed some plans in the staff report that called out a five-foot sidewalk. You're actually doing a six, and those plans were from the pre-app I'm told.

MS. SAPEN: Correct.

HEARING EXAMINER STRAIN: And they've changed to the six now.

MS. SAPEN: Correct, through staff review we increased that to six feet.

HEARING EXAMINER STRAIN: I also notice that two or three different times in your narrative that you presented to staff, it said these benefits would include an improved visual, which I guess that's the argument for the wall, as well as a sound barrier along U.S. 41 with enhanced landscaping features.

Now, generally, if someone says they have enhanced landscaping features, that means above and beyond what the code requires, and I asked staff if they've -- I didn't see anything in a report, and I just want to make sure, did you intend to add any landscaping material to the material that's required by code?

MS. SAPEN: No, there's no additional landscaping proposed. It remains as a Type D, as originally approved in the ordinance.

HEARING EXAMINER STRAIN: Okay. That's a clarification I'll make in the write-up on this, so -- now, as far as altering the master plan, I have some things that showed up in the master plan last night.

James, would you mind, or Ray, putting the first one on the overhead, then the second one? And the only reason I'm putting these on the overhead, I want clarification, 'cause I'll be putting a note that we're not amending the master plan, because you didn't request any clarification -- changes to the master plan, nor, did you request any change to the text of the PUD.

Now, this is an option that's in the PUD contingent on the FDOT's approval of a connection at St. Andrews Boulevard, and, you know, apparently, it's up to the FDOT if that happens or not, so that's on the outside of the property, basically that connection would occur where the light is on St. Andrews. Have you had any correspondence with them on this new plan that shows a cul-de-sac now on the F-1 Tract where it doesn't connect across 41 and up to that light?

MS. SAPEN: We have not, and it is not our intention to alter the master plan. It's -- for this request it's simply to get the three deviations approved for the -- for the wall.

HEARING EXAMINER STRAIN: Well, then let's put the next plan on, because that's the piece that I'm -- that plan shows an interconnection on 41. In fact, one of the others, three pages or four pages to the master plan, and the other one, the first page, actually shows an arrow making an interconnection there at St. Andrews, and if you scroll up. If you could push a little bit up, the other direction, there's your cross section A-A, so then on the PUD side of that property line, that's a cross section that's supposed to be there.

You guys are proposing a cul-de-sac, from what I can see, based on the plan that I just previously showed, the F-1 plan you had?

MS. SAPEN: That is our preliminary plan, and our original application actually did not have a site layout for this parcel, because it's still conceptual at this time. We just wanted to show cross sections and what the -- what the berm would look like, but staff thought it would be prudent to show some kind of a layout so you could see that.

We would be happy to eliminate the site plan layout that we're proposing, and just stick to the three deviation details.

HEARING EXAMINER STRAIN: Well, my concern's a little different. I wasn't concerned about your plan layout. I was concerned by the fact that it can't meet these conditions that are part of the PUD.

I don't have a problem with it, if the staff's going to come back with a conclusion that because the FDOT does or does not want to allow access on Andrews, they will not be enforcing this detail on the master plan that's in part of the PUD, it doesn't bother me any. I just thought it would be a cleanup item that could've occurred all at the same time you're in here today.

It isn't -- it wasn't advertised as such, so it can't, but I want to make sure it doesn't cause you any problems in the future. When we get to staff and transportation we'll get that clarification for you.

MS. SAPEN: And we appreciate your concern, but it was not our intention to -- to alter the master plan for access.

HEARING EXAMINER STRAIN: Okay. Thank you, Ray.

MR. BELLOWS: You're welcome.

HEARING EXAMINER STRAIN: I just want to make sure I've covered everything else that I had notes on. Well, we haven't. There's some language changes that I'm suggesting on Deviation 18 and 19. Ray, I hate to bother you again. In Deviation 18 it's written as though it's for single-loaded roads plural. There's only one.

MS. SAPEN: (Nodded head affirmatively.)

HEARING EXAMINER STRAIN: And so I would suggest a language change here, and then with a reference that we'll have a -- so it would be on a single-loaded road as described in Deviation 19 below, instead of single-loaded roads plural. I don't see that being a problem, as long as you don't?

MS. SAPEN: No, that's -- that's a good suggestion and more accurate description.

HEARING EXAMINER STRAIN: Could you push up to the one down below? It's a little bit different here. Now, this is 19. I know where you picked up the language on privately and CDD owned roads, you picked that up from the existing deviation for the 50-foot road.

It's not necessary here, because that opens it up, potentially, to more road systems than what you're intending. You only got one piece of one road --

MS. SAPEN: Correct.

HEARING EXAMINER STRAIN: -- that you're dealing with, and so I suggest the language in the bottom be subject to the Collier County Attorney's Office review to make sure it's legally sufficient, but, basically, you're going to allow a minimum of a six-foot sidewalk on one side of the street that has the dwelling units, and no sidewalk on that portion of this side of the

single-loaded street where there are no dwelling units, and limit it to the areas shown in the revised exhibit for this deviation.

And the revised exhibit is what I'm going to suggest here at least for -- I'm going to use your general comments, but this is -- I think we just need to focus on an F-1, and if you could just give me a revised exhibit on F-1 with some of the notes that we've got here, I don't need much more than that, unless -- Ms. Ashton's here, if she sees a need to have a bigger part of the plan shown, let me know.

MS. ASHTON-CICKO: I think that's fine.

HEARING EXAMINER STRAIN: Okay, and that'll help clarify exactly where this stands, so we're not -- I'm not reapproving the entire master plan. We're focussed just on this. And, Ray, could you push it up to the bottom piece there?

This plan here (indicating) is your cross section, which, again, for that segment I got no problem with, except for the last full line, and about two-thirds of the line before that. See where the cross-out is, that's referencing the other deviation and the other -- we don't need to have that on here. We only need the first few words representing the deviation you're asking for today.

MS. SAPEN: That -- that change is fine with us. It would just refer back to the ordinance, so -- so it's understood.

HEARING EXAMINER STRAIN: Okay. And then those -- that's -- that's the bulk of the rest of the questions that I have. I'll make sure, if you don't mind hanging around for just a minute while we finish the meeting, I'll get you copies of these, so you can have them.

I'll need to have you resubmit the graphics, so it's clear, and correct some of that language we just talked about, and correct the deviation language in -- in the format that you previously used for the others, but just change the language I've suggested.

MS. SAPEN: Okay. We -- and we apologize for this, it was a typo that we've realized kind of a late in the game, and it's on this cross section. You see the slopes are labeled on here?

HEARING EXAMINER STRAIN: Yes.

MS. SAPEN: As a forward one max, that is actually not consistent with the PUD and --

HEARING EXAMINER STRAIN: You -- but you're going to redo this, so correct the slopes on them.

MS. SAPEN: Right.

HEARING EXAMINER STRAIN: Just as long as it's consistent with the PUD, we don't need another deviation then so...

MS. SAPEN: Correct. We would -- we would just follow this and --

HEARING EXAMINER STRAIN: Well, just take the slopes off, don't reference it.

MS. SAPEN: Fabulous.

HEARING EXAMINER STRAIN: That way you're whatever the PUD falls to.

MS. SAPEN: Fabulous.

HEARING EXAMINER STRAIN: Okay. Let me just make sure -- I think we've gotten every question I had. Yes, we did. So that's everything I've got. After the meeting, if you'll wait a minute or two, we'll get you copies of those four things. You can use the copies to the extent you need to to create the new exhibits, and if you could send those to the planner, and then I'll be able to utilize them as I need them so --

MS. SAPEN: Okay.

HEARING EXAMINER STRAIN: And I'll ask for a staff report and make sure nobody from the public does or does not want to speak, and then if there's any comments you can have an opportunity --

MS. SAPEN: Okay. Thank you for your time.

HEARING EXAMINER STRAIN: James?

MR. SABO: For the record, James Sabo, principal planner. Staff recommends approval subject to the discussions, stipulations and changes discussed here today.

HEARING EXAMINER STRAIN: Then I'll need Trinity to come up for just a minute, if she could.

MS. SCOTT: Yes, sir.

HEARING EXAMINER STRAIN: Good morning.

MS. SCOTT: Good morning again.

HEARING EXAMINER STRAIN: And, again, I had sent you an e-mail this morning questioning the changes to the PUD, and if you -- if anybody -- you and Ms. Ashton to find out if they're necessary to be dealt with today, and I don't -- doesn't matter to me one way or another.

I just want to make sure that everything is done that necessarily needs to be done, so when they come in for applications they don't run into another postponement, another issue.

So based on the language that we had on the screen for the PUD and the cross sections and all that for the master plan that exists with Ordinance 2012-12, do you see any need for those to be changed now or how are you going to -- how will this be managed when it comes in for a review?

MS. SCOTT: So with regard to the access to -- that lines up with St. Andrews Boulevard, we did not review with removing that access or modifying the master plan in that way, so we would prefer that that stays in.

As part of the platting process for Phase III which does include this particular parcel, the applicant and -- and I can put it on the record, and I can -- I can also provide you a copy of it. I killed a lot of trees this morning. Let's see.

Just below that sticky tab it was -- we had requested an update on the -- the PUD commitments, and you'll note in this that the applicant had responded to staff that that particular section was not included as part of this phase of the development, but that it would be completed upon implementation of that appropriate phase.

So when they come in for their next phase, which will include this tract -- or the phase that includes this tract, we would anticipate that they have that dialogue with the Florida Department of Transportation to determine if they are able to gain access, and if they are able to gain access, then Matt McLean's shop will require Section A-A or A-1, and that connection would be made. However, if the Florida Department of Transportation denies that request to be able to have that connection, then that connection, obviously, would not be constructed.

HEARING EXAMINER STRAIN: Okay. So your interpretation of the cross section, I'm -- there's two levels here. You got one outside the PUD, which is FDOT's approval for a connection to use that intersection, and you got one inside the PUD, which is really basically Collier County's Ordinance 2012-12, 'cause that's the master -- that's where the master plan's attached.

So your interpretation of the cross section on the inside of the property as part of the PUD master plan is only necessary -- it's an option if the DOT goes forward with a need for the interchange -- or the intersection?

MS. SCOTT: That is my interpretation, and I would --

HEARING EXAMINER STRAIN: Well, I'm going to go to Ray next, don't worry.

MS. SCOTT: Well, I was actually going to say, Matt McLean, the Director of Development Review, whose staff would actually review this when it came in for site development plan or plat and plans, I would defer to him if he has anything contrary to that, but that's -- that cross section to me looks like it was put in place to be able to accommodate access and have a proper throat distance to be able to accommodate that access to the traffic signal.

HEARING EXAMINER STRAIN: And I will -- I'm glad Matt's coming up, because what I -- and I talked to Matt this morning. I just don't want this to get done today, have them come in

and hit a brick wall when they don't have that -- in the -- the part that's part of the inside of the PUD that's part of the ordinance. Matt?

MR. McLEAN: Matt McLean, Director of Development Review. When this plat does move forward, as part of the review of that particular application, we will require the applicant to have that correspondence with FDOT.

If they determine that they will not have an access at that location, Section A-A will effectively not apply internal to the development. It will go back to more like a local road configuration, which has some of the limitations already developed within the PUD, as well as the restrictions that perhaps may be approved with this particular application.

HEARING EXAMINER STRAIN: Okay. Thank you, Matt. And, Ray, from your perspective as the zoning manager, do you see any problems with that form of application?

MR. BELLOWS: For the record, Ray Bellows. No, all those are -- is in my understanding is what we've done in the past.

HEARING EXAMINER STRAIN: Okay. Well, that covers it all, and I think it -- the record's clear, so that when the applicant comes in, it should move smoothly without those questions coming up, so thank you. Are there any registered public speakers, Ray?

MR. BELLOWS: No speakers have registered.

HEARING EXAMINER STRAIN: Any members of the public here like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we'll close the public hearing. A decision will be rendered within 30 days, and I'm also going to request that the applicant, of course, get the information to me as soon as possible that we've asked for here today so we can move forward with the decision. Thank you all. That particular item hearing is closed. And with that we'll move to other business. There's none on the agenda. Anybody here have any public comments?


(No response.)

HEARING EXAMINER STRAIN: Hearing none, the 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 9:47 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 8-15-19, as presented  or as corrected \_\_\_\_\_.

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