

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
December 10, 2020

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 ANDREW DICKMAN

ALSO PRESENT:
Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning. It's nine a.m., December 10, 2020. This is the Hearing Examiner Meeting and my name is Andrew Dickman. I'm the Hearing Examiner. Why don't we get started with the Pledge of Allegiance first.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Just a real quick announcement for you. As I said, I'm the Hearing Examiner. I'm an attorney for 20 years with the Florida Bar in good standing. I've been practicing in land use and local government for 20 years. I've been appointed by the County Commission. I'm not a county employee. I am a neutral decision maker as Hearing Examiner. These hearings will be quasi-judicial hearings. I will ask you to, everyone will have to testify under oath. There will be disclosures if I have any. I will be focusing on due process, the law, the codes and any evidence and testimony that's provided.

The process that we're going to follow will be first the Applicant and this podium, which is on the audience's right, the brown one, will be for the Applicant and Applicant's representatives. And the podium with the microphone here will be for the County. It's right in the middle. County and any members of the public that wish to speak. I do ask that all of you observe and appreciate that. Observe the County's and all of our security measures for the COVID-19. Separating, wearing your mask, things of that nature. You can, when you come up if you like, you can remove your mask off if you feel like it's difficult for you to talk. Once you leave, put your mask back on. We have sanitizers over here. I think we also have hand sanitizers, so I really appreciate everyone's cooperation at keeping everybody safe.

After the hearings I will not be making a decision today, required by code. I will be making my decisions in writing as expeditiously as possible. We have a court reporter here, raise your hand. Right there. She's in control of everything. She's going to make us all go down in history. She is going to take down verbatim everything that is said, so I ask that everyone do whatever type of communication you're going to do verbally so that she can capture that. Head nodding and thumbs up and things like that she really can't transcribe. If she's going -- if you're talking too fast she's going to stop and yell at you and yell at me for -- if you talk too slow you can't be captured. So let's be mindful of that.

And with that, I would ask that the phones be turned off, at least silenced, vibrators. Also, this is a hybrid meeting so there are folks that are going to participate possibly via Zoom or whatever technology we're using. We have the master of all masters over here, Jeremy, who is really controlling all that. He will tell me when to go, when not to go. And who's participating and who is not participating. So that so far has worked out wonderfully.

Other than that, why don't we go ahead and review the Agenda and see if there are any continuances.

MR. BELLOWS: Yes, we have a requested continuance of Item 3-B.

HEARING EXAMINER DICKMAN: 3-B, okay.

MR. BELLOWS: Which is the communication tower variance.

HEARING EXAMINER DICKMAN: Okay. So these are two variances. I have it down as CitySwitch, LLC. Who's here for CitySwitch, LLC? Good morning.

MR. WRIGHT: Good morning. For the record, I'm Jeff Wright with the Henderson Franklin Law Firm here on behalf of the Applicant. We're here to request a continuance to the January 14th hearing date. The reasons -- this is a fairly complicated network of towers that was originally approved by Congress and just getting up and running. But there are a lot of entities and technical considerations that we have to address still and perhaps, more importantly, we want to work with the neighbors. They've raised some concerns and I haven't had a chance to have a meaningful discussion with their attorney, Mr. Lewis, who is here.

HEARING EXAMINER DICKMAN: Okay, great. I understand that. As a Hearing Examiner I have the discretion to issue those continuances. Most importantly that I heard was working with the neighbors. To me that's an extremely important factor. If there's anyone here that would like

to comment briefly, not to the merits of the application but only to the continuance. Come on up, gentlemen or we have an attorney here?

MR. FRANTZ: I do have two registered speakers as well.

HEARING EXAMINER DICKMAN: Registered speakers, all right. Once again, only to the matter of the continuance.

MR. LEWIS: Good morning, Mr. Dickman. For the record, Doug Lewis an attorney with the law firm Thompson Lewis. I represent Mr. Smith, Mr. Sherp. They're the owners at 380 Frangipani. They're adjacent to the project. Jeff and I just talked briefly in the hallway. We are ready to present today. We were ready back in November. My clients are paying Tom Barber and I to be here at the behalf. This was noticed, scheduled. We do object to the grant of the continuance. That being said, if you're inclined to grant that, we understand that. We would just ask, I think we heard a little bit in the record today about the rationale, and that was part of what I've been trying to get is why the delay. I will tell you that I've looked at the records filed and my client's been well on the record, even before he retained my services to assist in raising objections to the height of the tower and the size of the tower and whatnot. Those are all there. So we're always happy to talk. I think that's certainly welcome. Just a little bit late. Kind of fourth and goal. So I did receive a call -- I've been trading phone calls. I was out-of-town, so -- but at any rate, that's important. The application request said that there was some documents or things that were missing. That's -- I'm hearing something a little different today, but we would just request the documents would be put in. We'd like to know what documents specifically were missing, why they weren't there initially and maybe we can get those as soon as possible so we could be ready. But, that's really nothing I should -- but we are ready today.

HEARING EXAMINER DICKMAN: Okay. So that's noted. I definitely want you to have any and all documents. If you don't get them from Mr. Wright, the County -- I mean, obviously as attorneys, you're obligated to coordinate with each other ethically. So I would hope that you would do that. Is there any need for anyone else to speak or are you representing everyone?

MR. LEWIS: I'm representing Mr. Smith and Mr. Sherp. I'm not sure who else is here, but as to those we should be covered.

HEARING EXAMINER DICKMAN: Okay, great. So I'm inclined to grant that. I'm still also going to hear whoever's here that's not a member of your client base. And I do think that it's very important that, I'm sorry. Give me your name again.

MR. LEWIS: Last name's Lewis.

HEARING EXAMINER DICKMAN: Lewis. Make sure that he has every single document that's going to be part of the record and we're glad you're on board. I do think that it's in everyone's best interest that whatever documents are going to be presented here, that you're prepared for that so that we have a full and fair hearing on the matter. Thank you for being here.

Any additional comments here for that? Anybody online?

MR. FRANTZ: The two registrants are J. Richard Smith and Tom Barber.

HEARING EXAMINER DICKMAN: Okay, let's hear from them.

MR. SMITH: I don't want to encumber the proceeding. I know you're limited here for me to speak about the continuance. The continuance to me --

HEARING EXAMINER DICKMAN: One second. Are you able to hear him?

COURT REPORTER: I can hear him, but I need your name, please.

HEARING EXAMINER DICKMAN: Yeah, your name and address for the record.

MR. SMITH: Dick Smith is my name. Initial J Richard Smith. I've lived on that property for 35 years. I've owned it for 50 years along with Mr. Sherp. We bought that there. It's our home. I raised my children there. I look at nature there. I survive there. It's a place where, if I didn't have it, I couldn't be nearly as happy as I am now to be there. The -- our side was prepared and we've been prepared. We attended our -- we had neighbors, we had experts. We pay a lot of money for having an attorney here.

HEARING EXAMINER DICKMAN: You do have an attorney here.

MR. SMITH: Well, Mr. --

HEARING EXAMINER DICKMAN: Okay. So there's really no need for you to repeat. He's already --

MR. SMITH: Okay.

HEARING EXAMINER DICKMAN: He's already represented you.

MR. SMITH: All right. I understand. Thank you.

HEARING EXAMINER DICKMAN: Thank you for your comment. And one other thing. I've neglected to ask the court reporter to put anyone that's going to testify under oath. So why don't we do that, pause for a moment and have anyone who's going to testify that's here, and maybe even anyone in the room across the hall, let's go ahead and administer the oath for everyone.

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

HEARING EXAMINER DICKMAN: All right. Thank you very much. Okay. So I've heard testimony on the motion for continuance. It's going to -- I'm inclined to grant it. I am going to grant the continuance to the January 12th, January --

MR. BELLOWS: Fourteenth.

HEARING EXAMINER DICKMAN: January 14th and since we are continuing it to a date certain, it does not have to be readvertised; is that correct?

MR. BELLOWS: That is correct.

HEARING EXAMINER DICKMAN: That's correct. So hopefully, get on it, talk to their attorney. Let's see what we can work out and we'll have everything ready to go in January and we'll discuss this item if you still want to go forward.

MR. WRIGHT: Thank you.

MR. SMITH: Sir, I do have one question.

HEARING EXAMINER DICKMAN: No questions, sir. We've closed that item. It's going to be continued. Thank you. And I'm sure your attorney is going to represent you well, and we'll see you back in January. Thank you, Mr. Wright. Thank you, sir.

All righty. So why don't we go on to this is Item A. It's a insubstantial change to a PUD. This is the Santa Barbara Landing matter. Come on up. And I believe I did receive a letter from an attorney on this matter. Is that right, Ray?

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Okay. You sent me that letter. I asked my assistant to make sure that anyone on the other side had a copy of that letter.

MR. BELLOWS: And I gave a copy to the court reporter this morning.

HEARING EXAMINER DICKMAN: Okay, excellent. Great. How are you, sir?

MR. BROOKER: I'm doing well, you?

HEARING EXAMINER DICKMAN: Awesome.

MR. BROOKER: Good morning, Mr. Dickman. My name's Clay Brooker. Good to see you again.

HEARING EXAMINER DICKMAN: Good to see you.

MR. BROOKER: Hopefully you're enjoying your tenure so far.

HEARING EXAMINER DICKMAN: I am, thank you.

MR. BROOKER: Good, good. I am here on behalf of the Applicant. I'm a land use attorney with Cheffy Passidomo. Did I say my name's Clay Brooker? Okay.

HEARING EXAMINER DICKMAN: Wise. Go ahead and say it again. Good advertisement.

MR. BROOKER: And I just want to introduce myself very briefly. Laura DeJohn is here on behalf of the Applicant as well. She's a land planner with Johnson Engineering. She is going to give a short presentation to explain what the application's all about, and then I would simply request the opportunity to speak after Staff has its presentation and any public comment.

HEARING EXAMINER DICKMAN: Okay. And Mr. Clay Brooker, land use attorney -- give you all the advertisement we can -- I have read the Staff report. I got the letter, as I said. I have no ex parte communication other than that. That's where we are. So we'll have your representative present

the application, we'll hear from the County, anybody who else wants to speak and you reserve time for rebuttal, all right?

MR. BROOKER: Thank you.

HEARING EXAMINER DICKMAN: Good enough? All right, here we go. Ms. DeJohn, is that right?

MS. DEJOHN: That's correct.

HEARING EXAMINER DICKMAN: AICP, Johnson Engineering. Good advertisement for you.

MS. DEJOHN: Good morning. Laura DeJohn, principal planner with Johnson Engineering here today on behalf of the Applicant and Owner, St. George Group, Corp. If you can go to the next slide, I'll have an introductory slide.

Great. Okay, so we've moved on to the image here. I just want to point out, Armando Bucelo, Jr. is owner and president of St. George Group Corp., the entity that owns Tract B of the Santa Barbara Landings RPUD. If you go to the image that was just shown. You can see here the orientation of the residential planned unit development. This is about a 41 acre site. About 35 acres of the site is an established existing condo community called Granada Lakes Villas and that is declared as Tract A within the PUD. And the subject site that we're here to discuss today, and I'm here on behalf of the owner, is for Tract B. Tract B is an undeveloped site, a little over six acres at the southerly end of the PUD. This site is situated along Santa Barbara Boulevard and Radio Road. I do want to point out that the reason this petition has been filed, the Tract B parcel is for sale. There have been many interested parties who have come forward to look at development of the site. It is allowed to have 43 dwelling units on the site per the already approved PUD. And in the course of interested parties looking at the site, they have raised questions and concerns about some of the commitments that are built into the PUD that was established back in 2005. And the Owner/Applicant is trying to get ahead of satisfying some of those concerns that have been raised by interested parties. He does not intend to be the developer of the site. He intends to sell the site and we're here just for some insubstantial changes to the PUD to make it a more viable development. Next slide.

Just another orientation to the site. Again, Santa Barbara on the west side of the property, Radio Road to the north. The 35 or so acres of Granada Lakes Villas is in the light green, an already established community, condo community. And then the subject site is the darker green, Tract B, a little over six acres. To the east of the site is the built out Plantation community. A lot of the white area, there's no depiction of units. But the white area that's adjacent to the PUD is the parking complex adjacent to Granada Lakes Villas. And then immediately adjacent to the subject site are some, about three single family homes within the Plantation development.

So what you see here is the adopted RPUD Master Plan. The 248 units that had already been built at the time of the PUD approval are depicted on the PUD Master Plan. This is a lot more detail than you'd usually see in a PUD Master Plan. Because the small units already existed on Tract A, there's great detail shown on this PUD Master Plan. The subject site being the Tract B to the south where 43 units were also drawn in some detail to show the viability of developing 43 units on that Tract B parcel as approved in the 2005 ordinance. And I'll note here that no other changes have occurred to this PUD. This is the first petition that's coming forward to make any change to that 2005 ordinance. Next slide.

So what is being requested -- I'm going to enumerate them here and then show you the actual language that's proposed to change. There are four proposed changes. Again, these were derived from interested parties coming forward and saying there are some links and requirements within the PUD that do not necessarily make sense for Tract B development because they tie up Tract B development to Tract A, which is an established built out condo.

First, a wall requirement that's established in the PUD is requested to be along Tract B only at time of Tract B development. A sidewalk that was required to extend all the way from Tract B to the existing Tract A clubhouse is proposed to be removed so that the two independent projects could be independently satisfied and not connecting new development to the established clubhouse. There's no interest by either party to have a shared clubhouse.

The environmental conditions that are in the PUD were crafted in a way that PUD's used to enumerate and explain everything that's within the code and all permitting requirements in the PUD. And for purposes of resolving any questions, we are removing redundant and code required environmental conditions from the PUD. And similarly, the housing conditions that are at the end of the PUD document, some have been satisfied so those are proposed to be removed, and then just clarity is proposed. So that the Tract B development would be obligated to perform the housing conditions on Tract B without being tied in any way to obligations of housing commitments on Tract A.

So to explain those, I'll briefly point out. You'll see an acuity document highlighted text where changes are proposed. The reference to a wall being constructed along the eastern boundary of the PUD was written in the PUD a little nebulously to say there would be a wall along the eastern boundary constructed concurrent with the development of Tract B. Well, when a interested party is looking at developing Tract B, the extension of a wall along the entire 2200 foot long PUD boundary has never taken place. Since 2005 the proposed idea of having a wall along the boundary has not been constructed and at time of development of Tract B, it is proposed that a wall be constructed along Tract B only. Next slide.

To illustrate the conditions, you can see here what exists today along Tract A is a multi-family project, Granada Lakes Villas. Adjacent to it is a multi-family project similar in density and scale. The code does not require walls between such similar compatible projects. There's adequate distance buffering and separation between these two projects. In discussions with representatives of Tract A, the Granada Lakes Villas Homeowners Association Board, it seemed most appropriate to alleviate that requirement between these two adjoining properties where a wall would not typically be required by code. Next slide.

Where a wall typically is required by code, we still propose to provide one. So along Tract B's eastern boundary, there are single family homes of the Plantation subdivision and the wall requirement at the time of Tract B development would be, you know, maintained so that a wall would be placed along the edge of Tract B at it's time of development.

Similarly, the condition from the 2005 approval was that at time of Tract B development, a sidewalk would extend all the way from Tract B to the existing Granada Lakes Clubhouse. That doesn't seem to be in the interest of any parties to have that connectivity and that use of clubhouse being shared. So in correlation with County staff we met county code by providing for interconnection that should be provided for pedestrians to go between two tracts of a PUD but not a full obligation to link to the clubhouse. At the same time you'll see in this language that a connection at the request of the school district will also be provided to allow school children to walk to the adjoining Calusa Park Elementary from the subject site. Next slide.

This just illustrates on the Master Plan were those notations are being made, highlighted in yellow.

HEARING EXAMINER DICKMAN: Can we pause here for a second? Back up. So I just want to be clear. The first part about the wall -- I guess east is up here?

MS. DEJOHN: Correct.

HEARING EXAMINER DICKMAN: So east is up. So the wall will remain on the eastern side, right?

MS. DEJOHN: Of Tract B.

HEARING EXAMINER DICKMAN: Of Tract B, right. We're talking about Tract B which hasn't been developed.

MS. DEJOHN: Correct.

HEARING EXAMINER DICKMAN: Right, okay. And you want to change, regarding the wall, you want to change what, the other area?

MS. DEJOHN: Yeah. I mean, the idea is that a wall would be built along Tract B. A wall would not be built along Tract A.

HEARING EXAMINER DICKMAN: Got it.

MS. DEJOHN: That was a former --

HEARING EXAMINER DICKMAN: So there was never a wall built on Tract A. I got it. So now the sidewalk, if I hear you correctly, you don't want to connect Tract A and B with an interconnected sidewalk, however you want to change it to have an interconnected sidewalk to the roadway; is that correct?

MS. DEJOHN: Correct. It would be a simple code compliant connection at those red boxed locations. Where the driveways connect, sidewalks would connect. But as you see all the way on the left-hand side of the screen the word "clubhouse" is labeled there, and the old obligation of a sidewalk being constructed from Tract B to the clubhouse is being substituted with a basic code required interconnect.

HEARING EXAMINER DICKMAN: Okay.

MS. DEJOHN: Next slide. Environmental conditions have been highlighted within the document to show just where redundant or language in the PUD that's caused a little bit of confusion between the two parties. If the code is applied, we do not need all this language put in the PUD because the code requirements apply at time of any site development. The site that is to be developed is Tract B, so Tract B will be obligated to meet environmental conditions and requirements at time of this development.

HEARING EXAMINER DICKMAN: So are you saying that that's just redundant language.

MS. DEJOHN: Correct.

HEARING EXAMINER DICKMAN: All right.

MS. DEJOHN: Next slide. Housing conditions again, from 2005 some of these have already been satisfied, so we went through the exercise of identifying and clarifying that specific housing conditions included in this PUD -- I will note it was not a density bonus agreement PUD. It was simply a by right level of density that was allowed here. But in 2005 there were certain commitments that were being made at that time for housing affordability. And the simple changes here are to eliminate first the \$1000 per unit commitment that was kind of customary back in 2005 but no longer a customary commitment for any new development to commit \$1000 per unit to a trust fund within the county. That's allowed to be removed as a minor change, but because we're doing larger and substantial changes coming before you today, it's included in this request. The second housing condition is just clarified so that it's clear. The obligation will be for Tract B to meet the 50 percent requirement that initial sales must be for primary residences within Tract B. The third condition was satisfied by researching property appraiser records. The requirement that at least 50 percent of the units be sold at \$240,000 or less was satisfied because at the time Granada Lakes Villas became a condominium the property appraiser records indicate and we provided in our backup material and our submittal the evidence that that condition has been met. Over 50 percent of the total units allowed within the PUD did sell for less than \$240,00.

HEARING EXAMINER DICKMAN: Tract A?

MS. DEJOHN: Correct. Yeah, but the total, I mean, the whole PUD in its entirety is allowed to have 291 units. And that's 50 percent of the 291 units did get sold for less than \$240,000. And finally, the commitment on income level, ten percent of the units must be sold to people employed in Collier County and earning the gap income level. We updated the gap income level to be up to 140 percent of the county's median income. That was at the direction of county housing staff and the commitment is clarified to be for Tract B, because it's the only remaining part of the project that remains to be developed. So that will be a mechanism to track that this condition is satisfied is that it be applied to Tract B.

HEARING EXAMINER DICKMAN: What is that number now, the family income; do you know? Obviously it's changed since 2005.

MS. DEJOHN: Right. And they have a sliding scale based on the number of people in the household so it's not just one number. It depends on the size of the household.

HEARING EXAMINER DICKMAN: All right. Well, I'll ask County about that. They should -- since they required it to change.

MS. DEJOHN: Yes.

HEARING EXAMINER DICKMAN: Okay. All right. So just to recap, you want to strike the \$1000 contribution to the trust fund --

MS. DEJOHN: Correct.

HEARING EXAMINER DICKMAN: And you've complied with the 50 percent at 240,000 and you want to change the number regarding the -- I'm just going to summarize it as workforce housing.

MS. DEJOHN: Correct.

HEARING EXAMINER DICKMAN: I do remember that that was a big issue and has been and still is a big issue in the county. And I also recognize that the world was a lot different in 2005 than it is today.

MS. DEJOHN: So the commitment remains that ten percent of units would be sold to that -- what's considered now by code the gap income level under 140 percent of median income.

HEARING EXAMINER DICKMAN: All right. Anything else?

MS. DEJOHN: No. I'll just wrap up by explaining that that is the extent of all the changes proposed. We did make efforts on several levels to do community coordination. We've met with the neighboring Tract A Granada Lakes Villas Homeowners Association. We met in person. We spoke over phone calls. We've had correspondence, as you know, up until late yesterday. Additionally we had a required neighborhood information meeting on January 30th of 2020 and just highlighted here some of the questions that got raised at that neighborhood meeting. What's the building height? That is not changing. Two stories, 30 feet. How does access work and the driveways for this Tract B connect to the Santa Clara Drive? That is not changing. Drainage is always a question at neighborhood meetings and that was explained and is not changing. Amenities was a question and it was clarified Tract B will have its own amenities. That's why the reason for having less of the sidewalk connection. The income levels were questioned. There's people sensitive to having lower income levels in their community, but we explained the nature of those commitments.

And I would note that one of the requests that we did hear from the Homeowners Association of Tract A was to control impacts of construction traffic within the Santa Clara Drive that they use within their community so an addition of a temporary construction entrance has been added to the Master Plan so that Tract B construction traffic would not go through the existing Tract A community. And again, that request by the school district was honored by indicating a pedestrian connection to Calusa Park Elementary has also been added to the Master Plan.

That -- we do appreciate the analysis that was done in the Staff report. The recommendation of approval is based on the finding by Staff that all the criteria are met for an insubstantial change. We concur and agree with Staff's analysis and recommendation. We hope that you do as well, and we're here for any questions.

HEARING EXAMINER DICKMAN: All right. Sit tight. Let's have -- who's the County Planner on this. All right. Come on up. And if you could, real quickly before you get started, just summarize for the record the notice requirement, the neighborhood information meeting was already mentioned, but what other types of notice of this hearing took place.

MR. FINN: Yes. For the record I'm Tim Finn for the January 30th. That went correctly as well as all the other notices advertising the original October 22nd meeting and the continuance to this meeting.

HEARING EXAMINER DICKMAN: Okay. Mail outs, any mail outs?

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: Okay. Mail outs, sign on the property?

MR. FINN: Yes, yes.

HEARING EXAMINER DICKMAN: Okay, great. Thanks. Okay.

MR. FINN: For the record, I'm Tim Finn, Principal Planner. The project is compliant with the growth management plan and the land development code, therefore Staff recommends approval.

HEARING EXAMINER DICKMAN: Okay. I do have a question that I had asked Ms. DeJohn. There has been a change in the average family income. Do you know what that is, what the income change amount is?

MR. FINN: I will have to defer to Ray.

HEARING EXAMINER DICKMAN: Wow. Throw the football to Ray.

MR. FINN: Yeah, I don't know.

HEARING EXAMINER DICKMAN: I'm just curious how much has it changed since then?

MR. BELLOWS: We'd have to coordinate with the housing manager.

HEARING EXAMINER DICKMAN: Okay. No problem, okay.

MR. BELLOWS: We can get you that information.

HEARING EXAMINER DICKMAN: So that's really going to dictate the price point, I assume, on some of the housing and also I want to know a little bit about the \$1000 contribution. Has anything changed on that issue since 2005; was that a requirement? Typically I understand that you can either vacate a financial contribution to a trust fund that's set up for workforce housing or -- is it an either/or or both? How does that work the \$1,000 contribution. Is that no longer required or is that just a proffer?

MR. BELLOWS: For the record, Ray Bellows. At the time that the PUD was first created for the county commissioners were requiring PUD's to participate in a program for, to incentivize affordable housing. Unfortunately that program never really took off and subsequently to that there was direction from the Board to create a process where administratively that affordable language could be removed as Laura DeJohn had indicated since they were doing a PDI and they just included that with this request. But the Board is allowing those PUD's that have that commitment put in to take away since we never adopted that program.

HEARING EXAMINER DICKMAN: Okay, all right. Thank you for that explanation. I appreciate that. All right. And the other question I had was on -- so the requirement was for the wall on the east side and apparently it hasn't been built on Tract A; is that right?

MR. FINN: Yeah, that's correct.

HEARING EXAMINER DICKMAN: Why wasn't that built? Was it because the entire PUD it was required at build out for the entire PUD?

MR. FINN: Uh - I --

HEARING EXAMINER DICKMAN: Laura, do you have the answer? I probably should ask you anyway.

MS. DEJOHN: Yeah, the language is written in the PUD, that they, the wall shall be concurrent with Tract B development. So there's language indicating a wall must occur across, you know, multiple property owners properties concurrent with a single property owners development.

HEARING EXAMINER DICKMAN: Okay. So at the time the thought was that the entire eastern side of the PUD would be walled up, right, or is the language is just unclear and you're trying to clear it up?

MS. DEJOHN: No, the concept plan showed a wall running the entirety of the eastern property line. There's no explanation in any of the past Staff reports as to why that --

HEARING EXAMINER DICKMAN: Didn't take place?

MS. DEJOHN: Why it didn't take place and why it was imposed to begin with, because you've got two compatible properties adjacent to one another that would normally require a type A buffer, one tree every 30 feet. So that language was in the PUD. The wall to be constructed at time of Tract B development. Here we are 15 years later and proposing that a wall be constructed along Tract B at the time of Tract B development.

HEARING EXAMINER DICKMAN: Okay. All right. Thank you, that helps me quite a bit. All right. So thank you, County. Stick around, don't go back to work or stay here and work, whatever you want to do. Let's open up for public hearing. I do believe I have a letter from an attorney, Christopher Thornton. I don't know if he's here or not. Come on up, sir. Jeremy, do we have others?

MR. FRANTZ: One other.

HEARING EXAMINER DICKMAN: Okay. All right. Sir, how are you?

MR. THORNTON: Good morning, I'm fine. Thanks for having me. I'm Chris Thornton with Thornton Law Firm. I do real estate law and land use law, advertisement for me too. I'm here

representing Santa Barbara Landings Property Owners Association.

HEARING EXAMINER DICKMAN: Okay.

MR. THORNTON: It is a 248 unit entity that controls the northern part of this PUD.

HEARING EXAMINER DICKMAN: Tract A?

MR. THORNTON: Tract A.

HEARING EXAMINER DICKMAN: Got it.

MR. THORNTON: So just to simplify things, we oppose the petition. We're not necessarily opposed substantively to any of the individual changes. The problem is the shifting of the burden regarding these things to the Tract A. Especially with the push back to the environmental preserve requirement.

HEARING EXAMINER DICKMAN: Got you.

MR. THORNTON: So -- and the easiest way to look at this, I think, did you look at the wall? And our main position is you don't have a proper application here today. My client owns Tract A which is 84 percent of the PUD. The proposal today, if it was only to delete the wall from Tract A, I don't know how you can do that without my client being the Applicant. You're proposing to delete an obligation to have a wall on Tract A and you're having somebody other than my Applicant ask for that. So my client needs to be the Applicant if you're going to be doing things to Tract A, rezoning Tract A.

This PUD covers two tracts and the proposal is to delete some stuff, change some stuff on Tract A. I don't think you can do that under LDC Section 10.02.08. "No person shall propose an amendment for the rezoning of property which he does not own." Collier County LDC doesn't let me come in and apply to rezone your property. So sitting here today I don't think Tract B owner can do anything that rezones Tract A. The wall is the easiest example to look at. We don't necessarily want the wall. But there are other issues that are important to us that we're not able to -- we can't get -- they're not able to --

HEARING EXAMINER DICKMAN: Let me break this down. So we've got some procedural issues and.

MR. THORNTON: Procedural --

HEARING EXAMINER DICKMAN: You're stating some procedural issues with regard to the application and you have some substantive issues which has to do with the environmental monitoring, am I making that --

MR. THORNTON: With respect to the preserve it is the, who installs -- okay, the original PUD says -- and they're not proposing to change -- that this PUD, 41 acres has to have three acres of preserve. One and a half acres of existing preserve on their tract and one and a half acres of recreative preserve on our tract. At the time that was asked for and approved, all that was controlled and owned by this owner. My people came in later. Those preserves on our Tract A were never built. Just like the wall was never built. The developer never followed through with his commitments to do the stuff he promised on Tract A.

HEARING EXAMINER DICKMAN: Okay, let me -- I'm going to go one step at a time, if you don't mind, just for the record. I think it makes it a little clearer. So the preserve issue -- let me back up. So Tract A was developed. It was ultimately handed over from the developer to the Association, correct?

MR. THORNTON: Correct.

HEARING EXAMINER DICKMAN: And so the Association now is in control of Tract A, but for some reason did you have any -- when did that happen? Tell me approximate.

MR. THORNTON: The apartment complex of 248 units, Santa Barbara Landings Apartments was built in '86, I believe. It was a free-standing apartment complex, not condos. And the site plans for that, approved in '86, called for the entire southerly tract to be a preserve.

HEARING EXAMINER DICKMAN: Okay. When did it become a PUD?

MR. THORNTON: Okay. In 2005 the property owner of the whole 41 acres asked the County to approve PUD. In 2005. It was approved in 2005. But apartments were converted to condos in 2006. I've referenced all the recording information to all these documents in my letter.

HEARING EXAMINER DICKMAN: I've got it.

MR. THORNTON: So the condominium was created in 2006. So there was a day in 2006 when the Applicant or developer whose controlled entities owned all the property and 248 condominium units.

HEARING EXAMINER DICKMAN: So there was -- let me just -- condo conversion in 2006, right, went to the Association and that requirement for the preserve, I guess, half of it is on Tract A. Did you ever bring that up during condo conversion or anything like that?

MR. THORNTON: Well, the developer would have controlled the condo association until --

HEARING EXAMINER DICKMAN: Initially.

MR. THORNTON: Until the turnover thresholds under the Condo Act. So at some point, I don't know when, probably '08 the developer handed over the reigns to the condo association. And at that point, when he had sold so many of a percentage of the units and he owned this other tract, the wall had not been built and the 1.5 acre recreated preserve requirement and PUD had not been accomplished.

HEARING EXAMINER DICKMAN: So in the prospectus or anything like that during the conversion, did the Association ever bring that up?

MR. THORNTON: As far -- the condo documents don't reference the preserve. The condo documents reference that as an open area for the condo people to use as an open area, not as a preserve.

HEARING EXAMINER DICKMAN: But the PUD itself would have been an obvious document that would have been available to the Association, right?

MR. THORNTON: Yes, it would have.

HEARING EXAMINER DICKMAN: Okay. And they never brought -- to your knowledge, was that ever brought to the attention and said wait a minute. We're not going to do the conversion or you still have obligations on--

MR. THORNTON: Or I'm not going to buy a unit because you haven't finished the preserve on the PUD, correct.

HEARING EXAMINER DICKMAN: To your knowledge was that ever brought up at that time?

MR. THORNTON: To my knowledge, no.

HEARING EXAMINER DICKMAN: Were you there at that time?

MR. THORNTON: No.

HEARING EXAMINER DICKMAN: Are you a resident there, I'm just curious?

MR. THORNTON: No, I'm not. I'm just an attorney hired by the Santa Barbara Landings to be here today and say we own --

HEARING EXAMINER DICKMAN: With the Thornton Law Firm just for --

MR. THORNTON: Just for this PUD. We don't like the fact that the tail is wagging the dog and changing things on our property. If they want to do stuff, they could apply for their own freestanding PUD just for the southern tract and leave us out of it. Don't change us, just make your own PUD. But they don't want to because they're burdening us with the, with half of their preserve requirements. And it's not built. When's it going to be built and who's going to pay for it? That's the issue.

HEARING EXAMINER DICKMAN: So I have a question for you and you're a real estate lawyer and I'm sure Mr. Brooker is also going to address this. So when it went through the condo conversion it was handed over, the property is now owned, Tract A is now owned -- or at least the common areas -- are owned by the Association, not by the developer that currently owns -- or the property owner that currently owns Tract A. So how -- your argument, I guess, is that it's an, it's one entire PUD and that the Applicant would have had to be the Association and the owner of Tract B; is that right?

MR. THORNTON: Well, they set it up so that he had obligations on Tract A that he never did. And now by clarifying that each Tract has to meet their own obligations, it's just shoving the preserve obligation the condo.

HEARING EXAMINER DICKMAN: I get that point, but he doesn't, this individual doesn't own any longer Tract A, so why would he be the Applicant? Why would you all have to be the

Applicant?

MR. THORNTON: Well, the wall, you're deleting a wall that's supposed to be on our tract. The zoning for our property says there will be a wall on Tract A. And somebody's asking to delete that requirement out of our PUD. Not us. On the preserve area requirements, the preserve could be satisfied by having three acres of preserve on southerly tract. Or preserving that 1.5 acres recreate it offsite, somewhere else. But by saying now, you're saying that the 1.5 acres recreated does have to be on Tract A and that we have to do it. That's the change. You're not saying that there has to be 1.5 acres recreated. The clarification in here is that the owner of Tract A has to do it. And not the developer. Because he set it up in '05 when he owned it all and said I'm going to do it all.

HEARING EXAMINER DICKMAN: I understand that part. I'm not arguing with you, I'm just trying to walk through this process because I think Mr. -- the lawyer, we're going to have to work this part out. So is the current owner of Tract A, was that the developer and current owner of -- or I mean the owner now, Armando Bucelo of St. George, was that the same entity that did Tract A? No?

MR. THORNTON: The properties were under common ownership by various entities as in my letter until '05.

HEARING EXAMINER DICKMAN: No, I have your letter. I'm just trying to get this on the record.

MR. THORNTON: When the 41 was split to St. George Group Corp. to the southeast and Santa Barbara Garden Villas, LLC for the northeast, I believe that Mr. Developer controlled both entities.

HEARING EXAMINER DICKMAN: All right.

MR. THORNTON: So he split off and sold all his condo units.

HEARING EXAMINER DICKMAN: All right, so here's -- I'm going to be frank with you. I'm not an expert in condo law. I dabble in it from time to time, but I understand condo conversion, apartments to condos, and the developer initially is in control of the Association. But at some point, 2006 I believe you said, it was handed over to the Association who would have been folks that own units in the development. And so I'm just a little bit puzzled why, at that time, someone wouldn't have said well, wait a minute, developer. You still have some commitments under the PUD on this part of the property that you're handing over to us. We need to deal with that and address that now. I don't understand and you weren't involved in 2006, I presume. But I'm just curious why that wasn't taken care of at that time.

MR. THORNTON: I wasn't there but I have a rational explanation. If I was a condo buyer in that place and I raised that concern, I presume that everybody would have said well, it's not a problem and a violation because it's not going to have to happen until Tract B gets developed. So as long as we're all sitting here, we're all sitting here nothing has to happen. Code enforcement can't make us do the preserve. Code enforcement can't make us build the wall. The preserve doesn't have to be built and the wall doesn't have to be built until Tract B gets developed. So until that happens, it's not even triggered. All they're trying to do is take away the trigger.

HEARING EXAMINER DICKMAN: Okay. So I understand that part and I also understand you feel like the those burdens haven't been met. I'm going to ask County about that as well, to explain why that wasn't enforced at that time just so I have a full understanding of it. Because I'm still rather -- you know, if I were taking over an association from a developer, I would've had an attorney at that time to check all the boxes and read the PUD and make sure that everything was in place. I would have, but that's just me. So what else? And trust me, I have your letter. Opposing counsel has your letter. It's in the record. The only reason, part of the reason that I'm asking you these questions, I know you're referring to your letter, is that we have a court reporter here and I want to make sure that you're getting it all on the record and that I can ask you questions about that. So please don't take this to be argumentative in any way whatsoever.

MR. THORNTON: So just to wrap up, the main point is that we don't think you have a proper application before you today. It should not have processed, should not have been accepted. The Applicant is not proper, even if all they were doing was striking the wall from Tract A, my client owns Tract A.

Number two, we don't think this application qualifies for an insubstantial change because of the way that it is basically, if my client is going to get to skate on 1.5 acres of preserve which I think is the case, then you're technically just striking, you're taking the preserve requirement and making it 1.5. And to delete one and a half acres of preserve, makes this not an insubstantial change.

Third, I don't -- I read the Section 2-87 of the code about what types of matters are supposed to come to you. I'm not saying that I object to being in front of you as a Hearing Examiner, but I don't that this one, which is a controversial matter, which, in my mind involves and improper Applicant, changes to a PUD that shouldn't be approved. It's not proper for the Hearing Examiner.

HEARING EXAMINER DICKMAN: Let's examine that for a minute. So you're saying that because this is what, like of great public importance that it needs to be heard by what, the Planning Commission?

MR. THORNTON: Well, I read 2-87, Section 2-87, we're not an appeal under an administrative decision or interpretation. We're not a variance. We're not an conditional use, boat lift canopies or dock facility extension. We're not an item specifically remanded by the BCC for a nonbinding recommendation. So the only one would be is, I guess if the BCC has passed a resolution to send certain things here, otherwise it would've gone to the Planning Commission. Maybe that's where we are and maybe I just don't have that resolution.

MR. BELLOWS: That is the case.

MR. THORTON: Okay.

HEARING EXAMINER DICKMAN: Wait, wait, wat.

MR. BELLOWS: EDI can be heard by the Hearing Examiner and would've been heard by -- can be heard and approved by the Planning Commission.

HEARING EXAMINER DICKMAN: Right. So under 2-87 it does list out and enumerates one, two, three, four, five, six items that are in my jurisdiction. There's also an ordnance. I, there, I know under conditional uses that's the area where a -- I believe that's where a County Commissioner can, at their discretion can pull something away from me and have it heard. But I don't know that I have the discretion to just direct things from me to the Planning Commission. I think maybe that was done in the past and I don't know if that's codified anywhere. Is that, Ray, you want to speak to that?

MR. BELLOWS: We did look into that as part of the new Hearing Examiner process and the previous Hearing Examiner wanted to retain that right and work with the County Commission so if something the Commissioner wanted heard in a different venue then that could be done. But my understanding is, and I'd have to double check, I don't believe you just willy-nilly saying I don't feel I can hear this, unless you have a conflict of interest.

HEARING EXAMINER DICKMAN: So I don't have a conflict of interest. You haven't asked me to recuse myself or anything like that. I do -- and I've looked through this -- and I do think that past practice, it was a unique situation. The same Hearing Examiner was also the chair of the Planning Commission and I believe just as a matter of practice -- and I haven't found it in the code why -- but since the Hearing Examiner was both Hearing Examiner and Chair of the Planning Commission felt like if it needed to be heard in a larger arena -- let's put it that way -- that he at his own discretion decided to do that. I've looked at the code and I'm welcome for anybody to correct me if I'm wrong. I don't believe I have that discretion. I've nothing to do with it unless I have a conflict and recuse myself, then it has to go to the Planning Commission. So the reason the Hearing Examiner is set up in large part is because these things are more or less considered insubstantial and things that wouldn't be as costly and as expensive to have to go through a full Planning Commission BCC Hearing. So if you have a legal authority about why this should be at the Planning Commission and not in front of me, I would be happy to hear that.

MR. THORNTON: So all I'm pointing out is the scope of your authority is listed as six items under Section 2-87 Code of Ordinances. We're clearing not here under items one through five. If we're here under Item No. 6, I just personally haven't been able to find the resolution of the Board of County Commissioners that gives you this, that's all.

HEARING EXAMINER DICKMAN: So one thing that there is here is there's an

Administrative Code for Land Development. It's dated 2019 and I think it's important that you get a copy of this because it does address -- okay, so it references the sections that you reference, plus it references an ordinance 2013-25, okay? And then it lists out also these insubstantial changes that are here. So if you have -- Jeremy, it -- this is on the website, correct? I asked about this. This is the Administrative Code for Land Development, which is also governing what I do in addition to the Land Development Code and my authority.

MR. THORNTON: That's all I have. Thank you.

HEARING EXAMINER DICKMAN: All right. Don't go anywhere because --

MR. THORNTON: The president, Frank Cooper, was supposed to be registered doing this by Zoom. I don't know if he can hear us.

HEARING EXAMINER DICKMAN: All right.

MR. FRANTZ: If he's registered by Zoom, I can unmute.

HEARING EXAMINER DICKMAN: All right, let's go. How many people do we have on Zoom?

MR. FRANTZ: That's the only person.

HEARING EXAMINER DICKMAN: Okay, great. Thank you.

MR. FRANTZ: Frank, you may have to unmute on your end. Frank is calling by telephone so it may just take a moment to get that unmuted.

HEARING EXAMINER DICKMAN: No problem.

MR. FRANTZ: Frank, if you can hear us we need you to unmute on your end. We're not able to hear you now. If you'd like to continue with your hearing, we can come back to Frank and try to get him to unmute.

HEARING EXAMINER DICKMAN: Okay, no problem. I want County Staff if you can come on up. Mr. Finn, I just want to address or you can address some of these issues regarding, if you can, regarding the, I guess the monitoring of a PUD. So you heard what the attorney said, is that they feel now as if they, number one, that this is an incomplete application because they weren't included on the application. I don't know if you can address that issue. Maybe between you and everybody. Anybody that knows about this from County, talk to me about it.

MR. BELLOWS: For the record, Ray Bellows, Zoning Manager. The application, it's my understanding that the original application there was an agreement or permission or coordination with the HOA to Tract A that the wall could be removed. And that's why it was accepted. But if that's not the case, they have to revise the application to remove the request to remove the wall on the Tract A.

HEARING EXAMINER DICKMAN: Okay. And the preserve part?

MR. BELLOWS: Well, the insubstantial change criteria that's outlined in your staff report we addressed the environmental issues and the Master Plan that's currently approved has preserve areas on Tract A and the preserve area on Tract B. This petition isn't changing the requirement for Tract A. This only applies to Tract B. And that was the finding of our environmental staff.

HEARING EXAMINER DICKMAN: One last question. And this really has to do with the Administrative Code for Land Development because I do agree that one through six is listed in the Section 2-87, but there's also an ordinance and when you look at the, also the Administrative Code for Land Development, there's a listing of 18, 19 different things and one of them is No. 13, PUD Insubstantial Changes Including Minor Text Changes. So was that adopted under ordinance 2013-25? I just want to get that on the record that in addition to the code that it's my understanding that I'm also charged with whatever's listed under Administrative Code of Land Development 2019.

MR. BELLOWS: For the record, Ray Bellows again. I opened the Administrative Code for the PDI Application Process and clearly says the decision maker is the Hearing Examiner.

HEARING EXAMINER DICKMAN: Okay, great.

MR. BELLOWS: And the Land Development Code also makes that reference.

HEARING EXAMINER DICKMAN: All right, thank you. So I just want to clear that up as far as my jurisdiction here. I don't like having a lot of discretion. I like to follow the code and what's under my umbrella, that's what I deal with. What's under the Planning Commission's umbrella, I have

nothing to do with unless again, unless I have a conflict and that's something I would address right up front. And I don't have a conflict. So before Mr. Finn do you have anything else before that or that Attorney Thornton mentioned before we go back to -- wait. Do we have anybody else? Is he back on the line?

MR. FRANTZ: We can give it one more shot. Frank, if you're able to unmute. You have the ability to unmute on your end. We won't be able to hear you unless you do. I'm not seeing any change here so we may just --

HEARING EXAMINER DICKMAN: Okay.

MR. FRANTZ: Might be electing not to speak.

HEARING EXAMINER DICKMAN: Okay. Mr. Bellows, Mr. Finn any last comments? Okay. Stick around. Mr. Brooker, I'm sure you've got a lot to say. Maybe not. Want to say your law firm's name again?

MR. BROOKER: For the record, Clay Brooker. So I received a letter from Mr. Thornton literally last night. So forgive me if I'm not comprehensibly dealing with all the issues raised in it. With respect to your jurisdiction to hear this insubstantial change to a PUD, my understanding is that ordinance -- and don't take my word for this, it's just my understanding having worked in the County on the Development Services Advisory Committee for 17 years and so forth -- that 013-25 ordinance, I believe, was the ordinance that initially created the Hearing Examiner position. It's my understanding that it's the policy of the Board of County Commissioners that over time they can adopt resolutions to add to the juris -- add more matters to the scope of your jurisdiction. And that did, in fact, occur to my understanding with respect to insubstantial changes to planned unit developments. And as a matter of fact, you pointed out the very sheet -- I had it ready to go -- Chapter 9 of the Administrative Code includes many items, many items more than are listed in that 2-87 provision that Mr. Thornton referenced. So I believe that support that over time resolutions, additional resolutions that were adopted that added to the scope of your powers for the matters over which your jurisdiction extends. And again, as you pointed out, PDI insubstantial changes including minor text changes is expressly listed in the Administrative Code, Chapter 9 which was, in fact, adopted by the Board of County Commissioners.

HEARING EXAMINER DICKMAN: And once again, we've heard from Staff in addition to you all. You had a neighborhood information meeting, radius notices which would have included the folks in Tract A, lots of notice. I don't know if we've received anything objecting before the letter and I'm not going to hold anybody -- they may have just retained counsel. I don't think that that's any reason to be prejudicial that we only received the letter now. I don't think that's fair, but I just wanted to clear that up. I'm glad you mentioned that. I do know about this code and how they've added on to changes. Circumstances change, things come up, so they've added responsibilities to the Hearing Examiner as things have gone along.

The other arguments that they have as far as like burdens shifting, I think I would label it like that.

MR. BROOKER: Okay. So with respect to the preserves, it is indisputable that the application here today does not touch the preserves, the preserve requirement in any way. The preserve requirement for Tract A existed when the PUD was created in 2005. It exists today and this Application, should it be approved, will not change that requirement whatsoever. With respect to why the preserves weren't created, I believe that's outside the jurisdiction of this office. If the Association has an allegation that the developer at the time of turnover, as you mentioned condominium turnover, did not fulfill its duties on what it was supposed to do under Florida law. That was the time it should have been raised and if that could not have been resolved at that time you go down the street to the courts. Not to a zoning examination hearing. So in my opinion, that issue is not before you today. The preserves are there, we're not touching them and it's an insubstantial change. So --

HEARING EXAMINER DICKMAN: I understand that part. I just wanted to walk through in my mind why that wouldn't have been taken care of during the turnover. In terms of the Application itself, can you speak to the idea that they should have been somehow part of this Application?

MR. BROOKER: Yes, and that brings in the wall. So there are only two elements of the

Application before you today that even remotely touch or do touch Tract A. Number one is the interconnection of the sidewalks. We don't really trespass into Tract A, we're just interconnecting with existing infrastructure on Tract A. So we touched Tract A in that respect. The Application touches Tract A. The big one is the wall. The wall along the eastern boundary in Tract A is being proposed to be removed. That wall or that land is, in fact, owned by Tract A people, not the Applicant. It was included in this proposal to remove because it's not there and with the consent of Tract A. It wasn't until last night that I read his letter that I learned for the first time they apparently object to the wall requirement being removed.

HEARING EXAMINER DICKMAN: Hold on. Did you hear, did anybody hear about any of this at the one hour neighborhood information meeting or anything at all, these issues? I saw on the staff report it was an hour meeting. Did any of this stuff come up?

MS. DEJOHN: Laura DeJohn. The question of whether a wall should be built along the eastern boundary of Tract A has never been brought up in the sense that anyone is interested in seeing a wall constructed on the boundary of Tract A. The question that was raised at the neighborhood meeting was will any wall cause flooding issues? Because there was concern that construction of walls impedes drainage and could it cause a flooding issue was the question raised during the neighborhood meeting in relation to the question of the walls.

HEARING EXAMINER DICKMAN: Any of these procedural questions come up at all from the folks to the north?

MS. DEJOHN: So Mr. Cooper, who's been trying to join is the president of the HOA and Mr. Cooper has, at the neighborhood meeting and at other meetings with Mr. Cooper, has expressed this dismay that preserves are show on Tract A. And the, you know, the history is there and the backup material that Mr. Cooper has challenged and been dismayed that preserves are showing on Tract A, per the 2005 ordinance and approved Master Plan.

HEARING EXAMINER DICKMAN: Was there any assertion -- and maybe once we, if we get him on line -- was there any assertion that they should be part of this Application in your mind? She was the only one there. Mr. Brooker you --

MS. DEJOHN: Right, right. It was the County Attorney's office who commented during the --

HEARING EXAMINER DICKMAN: Oh, they were there, all right.

MS. DEJOHN: Well, they commented during review, during the review process that the concurrence of the Tract A representatives, you know, they asked us to get that documented. At that point, we said will you please document that you have said -- as Mr. Thornton said today -- there is not a problem with the substance of the request. There is not a problem, there's not objection to the substance.

HEARING EXAMINER DICKMAN: Got that. Mr. Bellows, is that -- has County Attorney's office reviewed this? Have they been involved in reviewing this?

MR. BELLOWS: Yes, they have.

HEARING EXAMINER DICKMAN: And their opinion and in your opinion is this a complete Application?

MR. BELLOWS: This is complete.

HEARING EXAMINER DICKMAN: I'll have another question for you, Mr. Brooker. So your client is trying to, for lack of a better word, position this property in a situa -- in a way in which it is more marketable. The past is the past, today's different. I get that, that's normal. Was -- is there any -- this is all one PUD. We know that the condo conversion took place, handed off to the Association. Is there any question in your client's mind in terms of what responsibility they have to the remaining PUD; can you address that or as far as like separation even though it's under one PUD. That's a legal question and I just want to hear your legal argument.

MR. BROOKER: Okay. So my understanding is that the only connection -- assuming this Application gets approved -- the only connection between the properties that will remain is to share Santa Clara Drive access through Tract A to get to Tract B once construction is complete. We have a temporary construction point. And the gateway, the gate access at the front of the community. We have agreed conceptionally to share proportionally pro rata the cost of refer -- relating to that

infrastructure and I also believe the storm water system is although I don't think there's any --

HEARING EXAMINER DICKMAN: That's in agreement with the Association?

MR. BROOKER: Correct. That would be a private deal that we reach with them.

HEARING EXAMINER DICKMAN: That's all I want to understand. It is under one PUD. I want to make sure that your client is aware and has assumed whatever responsibilities they need to. I don't want this coming back with, or over at the courthouse, where someone buys this property and they now realize, you know, years later that there were things that weren't done that maybe your client or a future subsequent buyer feels like they need to get done. I'm trying to separate this out and get it all on the record.

MR. BROOKER: May I make one more comment about the wall?

HEARING EXAMINER DICKMAN: Go ahead. I want to get all this done.

MR. BROOKER: As I mentioned, it wasn't until last night that we had any idea that there was an objection to removing the wall. Now there appears to be an objection to removing the wall, although it may be couched in a procedural objection.

HEARING EXAMINER DICKMAN: Removing the requirement for a wall.

MR. BROOKER: Removing the requirement for the wall from Tract A. If Tract A wants to keep the wall there, we're fine with this very important proviso. The development of Tract B is tied to the construction of that Tract A wall. So if they want the wall, they can have their wall, but we need to sever the tie. We need to allow Tract B to be developed and they can build the wall or they can't build the wall and whatever they choose to do in that regard they have our support.

HEARING EXAMINER DICKMAN: So is it your responsibility that they took on that part of it when they converted to a condominium?

MR. BROOKER: Correct.

HEARING EXAMINER DICKMAN: That they took on the responsibilities under the PUD that have to do with their, with Tract A. Okay.

MR. BROOKER: Either to take on responsibility or deal with the developer at that time with our justice system in place --

HEARING EXAMINER DICKMAN: Okay.

MR. BROOKER: -- to resolve that issue or dispute if there was a dispute. And I wasn't there, just like you nor was Mr. Thornton. So I will -- if we're going to leave the requirement for the Tract A wall intact, which is fine with us, then there will be an amendment, a change in language to Section 2-12B, as in boy, of the PUD. It was up on one of the slides, but it will simply read "the wall will be built around the entire eastern boundary of the PUD, both tracts."

HEARING EXAMINER DICKMAN: And each party is responsible for their own part of it.

MR. BROOKER: Right. And end it there, correct. We will always build our wall for Tract B. It's required by code. Their wall is not required by code. So if that's -- and I spoke to Staff before the beginning of the meeting this morning and they had no objection to amending the language the way I just described.

HEARING EXAMINER DICKMAN: Okay, stop. Stop.

MR. BELLOWS: For the record, Ray Bellows. The Applicant has an issue with the original Application request that had removed the wall completely from the eastern boundary that Mr. Thornton correctly indicated that affects Tract A ownership. If they changed the language to not impact that but to remove the wall requirement from Tract B only, then the northern portion of Tract A wall requirement will still be in place and that will make the Applicant consistent with our Application process that they're not making a change that impacts Tract A ownership.

HEARING EXAMINER DICKMAN: So it would be essentially separating the responsibilities for the wall?

MR. BROOKER: In that regard, again, in discussions with Staff, we are happy to today forward to Staff for ultimate forwarding to you, Mr. Dickman, for your consideration the revised language and then the Master Plan would have to be revised to show that the wall is going to be built at some point in time with separate responsibilities.

HEARING EXAMINER DICKMAN: Stay there. I just want to hear on that point and forgive me everyone. I tend to want to go through everything. I'm willing to stay here all day but I want to make sure that this hearing is full and fair. Counsel, Mr. Thornton, would you mind coming up? So you heard what Mr. Brooker said about changing the language so that each party is responsible for their own, the wall. Let's just talk about the wall. Any thoughts?

MR. THORNTON: A lot of thoughts.

HEARING EXAMINER DICKMAN: I bet.

MR. THORNTON: The Association doesn't want a wall. And I don't want to come in here today and mess that up. The wall is an expensive obligation. And it's expensive to maintain. And if the developer was going to meet his original obligations that he promised to do in 2005 and that had been done, that probably would be okay. The wall is illustrative of the procedural problem we have here today. And I wanted to point out to you, you mentioned is this all just -- I don't tend to do spring at the last minute. The Association -- I hope these are on the record and if they're not I have them here. Mr. Cooper submitted extensive written comments covering all these issues by letter to Mr. Finn, copied to Ms. DeJohn and his manager by letter dated March 17, 2020 and May 21, 2020.

HEARING EXAMINER DICKMAN: Is that true?

MR. BELLOWS: Yes, that is part of the record and back up.

HEARING EXAMINER DICKMAN: And Mr. Brooker had a copy of that?

MR. BELLOWS: I believe so.

HEARING EXAMINER DICKMAN: And you were retained when?

MR. THORNTON: I was retained immediately prior to the October 22nd, a couple weeks prior to the October 22nd hearing in which I was here that day personally.

HEARING EXAMINER DICKMAN: Right. Okay. Did you attend -- was the NIM meeting after that or --

MR. THORNTON: Way before that.

HEARING EXAMINER DICKMAN: So you went and articulated, this is your first correspondence, official correspondence to the County, the letter that's dated December 9th.

MR. THORNTON: Correct. And those issues, procedural issues were fairly well presented by a layman, Mr. Cooper by the Association in writing and --

HEARING EXAMINER DICKMAN: I understand. So I don't think there was an ambush here. I get it. The letter's here on December 9th. I'm not going to say that that was an ambush. I think there's been a lot of correspondence, enough to be able to -- with regard to the wall, you don't want a wall. Don't -- when I say "you" your client doesn't want a wall.

MR. THORNTON: Doesn't want a wall. Illustrates the procedural --

HEARING EXAMINER DICKMAN: Your client wants a wall or not a wall?

MR. BROOKER: We want to do what they want to do. We just want to make sure that we are the proper Applicant and the argument is that the wall is illustrative of a procedural problem that our application is deficient because we don't have the right Applicants, plural, before you. If they're going to contend that we can't touch Tract A because they're not an Applicant, then leave the wall. If they don't want the wall, then remove the wall but drop the procedural objection. They can't have it both ways.

MR. THORNTON: The same procedural objection extends to the preserve area requirements which we do object to substantively. We do not want to be burdened with the recreation of a preserve area with a Collier County Preserve Area requirements and maintain that in perpetuity when it was the developer that promised to do that in 2005 and he hasn't done it.

HEARING EXAMINER DICKMAN: I have to agree that that's a -- that's totally outside my jurisdiction. I mean, if the Association was my client in 2006 and I'm sure if they were your client in 2006, you probably would've checked that box before there was a hand over. I think that's a civil matter. That isn't my responsibility. I just, I'm just really curious why that didn't happen. So -- but I'll take into -- your procedural arguments are noted, sir. I do have that. You know, so I think this comes down to, you know, if they've got two tracts now, one got developed, one didn't. The undeveloped tract wants to make some insubstantial changes to the PUD in order to make that property to actually have it come to

fruition or to be able to sell it to somebody that's going to develop it in a manner in which it was intended to be developed. That's the way I see this. I'm not making a ruling here. I'm just listening to everything because that's my job. This is my chance to get as much information as possible before I render a decision. I have 30 days to render a decision on this. Thank you, sir. I appreciate that. Mr. Brooker, anything else?

MR. BROOKER: All done, thank you.

HEARING EXAMINER DICKMAN: I mean is there any chance that anybody here between the two parties wants to make any additional, any changes that would be agreeable to anybody in the language to this? That we've got the County, we've got Tract A representative, we've got Tract B. Are there any text changes that would be possible that might satisfy everybody? I guess not. Okay, all right. So with that, do we have anyone on the line yet?

MR. FRANTZ: I've noticed that Frank Cooper has been joining and rejoining. It might be some technical issues. He just rejoined. I'll try to unmute again and see if it works this time.

HEARING EXAMINER DICKMAN: Yeah, let's give that a shot.

MR. FRANTZ: Frank, I've allowed you to unmute on our end. If you're able to unmute yourself then you'll be able to speak. I believe the process is something like start six or pound six. Unfortunately I'm not seeing any change here.

HEARING EXAMINER DICKMAN: Any chatting going on, any text messages happening? Like problems on his end?

MR. FRANTZ: If there are any technical problems on Frank's end I haven't heard about it, and I'm not able to see anything on my end there. Calling in over the phone and they should have the ability to unmute by hitting star six, but for some reason it may not be working.

HEARING EXAMINER DICKMAN: All right. Mr. Thornton, is your client trying to call in or can I just assume that you've wrapped up the arguments for your client? Mr. Thornton? You'll note that we've tried several times to get your client on the --

MR. THORNTON: I'm going to have to assume that he either doesn't want to speak is just satisfied with what I've said. I don't know. I've texted him, but I know you're going to have to proceed. You have to do your hearings and you have your set times.

HEARING EXAMINER DICKMAN: And I'm assuming that you did a fantastic job at representing him.

MR. FRANTZ: Looks like they are unmuted now although we're not hearing anything from them.

MR. COOPER: This is Frank Cooper.

MR. FRANTZ: We can hear you. You can go ahead.

MR. COOPER: All right. This is Frank Cooper. I'm the president of the Santa Barbara Landings Condo. Just to clarify some questions from earlier, we have been conversing with the Applicant and the County since day one. The County has written correspondence from us as well as the Applicant. I will say that we've told the Applicant that we weren't necessarily opposed to the wall, but however, we need to talk about the wetland issues. They said no, they couldn't because of the insubstantial change. But to answer your other questions and statement earlier, the developer, when he sold the units and went to the condo convergence and recreated the wetlands and where they were going to be, it shows in this open space and recreation on the Master Plan for the condominium documents and HOA on the condo survey. The only reference in the condo documents is the project shows future development and in the legal description of the property says future access with the legal description will come from Santa Clara Drive. There's nothing in the condo documents that there was going to be a wetland created on that open space. That was recreated wetland Tract A. It does not require that any kind of wetland or preserve area whatsoever. It's recreation open space for builders or association to use.

So he did not tell them or tell the owners about the PUD that he did or, in fact, that they were going to build and force us as the Association to build improvements. We addressed that with Tract A and Tract B owners and representative DeJohn and said, you know, you need to look offsite for that, et

cetera. But we're not opposed to them developing the site. We're just opposed that we have to pay for improvements.

HEARING EXAMINER DICKMAN: Can he hear me or is it just one way communication?

MR. FRANTZ: Yeah, he can hear you.

HEARING EXAMINER DICKMAN: I just want to make sure that you're under oath. I didn't know -- we probably should have done that. So let's do that now, that we put you under oath so that everything that you said has been under oath.

(The speaker was duly sworn.)

HEARING EXAMINER DICKMAN: All right. The court reporter does not have a microphone to speak to. Thank you. We're going to ask the court reporter to administer the oath so that I can make sure you've said is recorded.

(The speaker was duly sworn.)

HEARING EXAMINER DICKMAN: You can affirm by saying yes. Okay. He's gone?

MR. FRANTZ: Looks like he's still muted. We're not hearing anything.

HEARING EXAMINER DICKMAN: All right.

MR. FRANTZ: Sorry, unmuted.

HEARING EXAMINER DICKMAN: Okay, well it's -- Counsel are you just, you'll take it --

MR. BROOKER: We'll waive any irregularity with respect to the swearing in.

HEARING EXAMINER DICKMAN: Yes. These are the nuances that are happening because of COVID-19. We're all trying to work together. Appreciate that. Based on -- did you have anything else to say based on what was just said? Okay, all right. So there are some things that I'm going to have to research on this, but I think I have all the information I need. Is there anything left to be said by Staff here on this? There's been a lot of discussion.

MR. BELLOWS: For the record, Ray Bellows. We do have all the facts on the table and if you have any other questions we'll be happy to --

HEARING EXAMINER DICKMAN: In the communication that the gentleman just mentioned, is that all in the record as well?

MR. BELLOWS: Yes. Everything's been --

HEARING EXAMINER DICKMAN: Can I get a copy of that or have you provided a copy of that to me? I'd just like to get a copy of it because I presume Mr. Brooker has it, but I'd like to see it as well. Thank you. No, I have that letter, but that's the December 9th letter. Apparently there's been communication between Mr. Thornton's client and the County prior to his representation. He said from day one. You have those? Okay, yeah. If I could -- maybe show it to Staff so he can make sure that -- either way. Otherwise, it's a public record. Staff can forward it to me. Mr. Brooker, would you object to that, me getting that communication?

MR. BROOKER: No objection. It's already in the packet. The letters he referenced are already in the packet. That's how I got copies.

HEARING EXAMINER DICKMAN: That's how you got copies of it. Okay, great. I'm going to want to take a look at everything. All right. Anything left? Anything left to say? I want to give everybody -- Ms. DeJohn, anything?

MS. DEJOHN: No.

HEARING EXAMINER DICKMAN: Johnson Engineering, Inc. Okay, all right, great. Thank you. Okay. All right. Great. Everybody thanks. If there's nobody else we're going to close this item and I will render a decision as expeditiously as possible. Thank you everyone for being cordial and presenting your arguments in a very professional manner. Take care. Let me get organized. That was interesting.

MR. FRANTZ: Sir, it's 10:30. Would you like to take a quick break for the court reporter? It might be a good time.

HEARING EXAMINER DICKMAN: You need a break?

COURT REPORTER: I'm good.

HEARING EXAMINER DICKMAN: She's saying no. Why don't we take a quick three

minute break, get some water or whatever. Three minutes.

(A short break was taken.)

HEARING EXAMINER DICKMAN: Okay. This is going to be item, we're on Item 3C of the Agenda. This is another insubstantial change to a PUD. I think it's called the Russell Square PUD. And let's get started.

MR. ARNOLD: For the record I'm Wayne Arnold with Grady Minor and Associates here representing Neal Communities. Dan Ciesielski with Neal Communities is in the audience if you have any specific questions. This is a pretty benign insubstantial change to the PUD. It involves the entrance sign for the project. We did not ask for a neighborhood information meeting waiver, but we did hold our neighborhood information meeting. We had one member of the public who did attend. A local realtor who lives on the opposite side of Santa Barbara Boulevard on Culp Lane. So it was a very short meeting as you can imagine, but there was also signage posted on the property announcing this meeting and I'm assuming the mail notice was noticed properly by Collier County.

HEARING EXAMINER DICKMAN: Thank you for addressing that.

MR. ARNOLD: So this particular issue, it's a nuance of the code. It's part of the original PUD for this property that's south of Davis on Santa Barbara Boulevard. Jeremy, if you can advance maybe to the aerial just so we have an image to look at there. The property is accessed now by what's known as Seychelles Avenue and it is -- we allowed for in the PUD the deviation for the wall height, for the wall to be placed on a berm at the entrance. And so, you know, communities come along to develop and they have a project name called Seychelles and they ask for and received a permit for a wall sign to be posted on the wall that was constructed. The nuance of the code is that wall signs are measured, signage is measured from a different benchmark than a wall. The wall is measured from the ground, you know, at the base of the wall. The sign is measured from the elevation of the road. There's a discrepancy here of a few inches. The sign was permitted. It was constructed by, you know, communities and upon final inspection the measurement goes up and whoopsie, it's just a little too tall. So we've added a new deviation to specify that this sign can be located on the wall that has been built at the height that has been constructed. So Jeremy, if you could advance that a couple of slides. There's an image that shows you, this is the location right at the entrance. So the exhibit on the lower left was part of the sign application that was submitted. The image on the upper part of that is the actual sign that's been constructed. So it is there. That's what will get a final inspection, assuming that you rule favorably on our request. Obviously Staff is supportive of it, and we're in support of their recommendation in hope that you can authorize us to have the sign remain.

HEARING EXAMINER DICKMAN: So did your sign contractor just misspell seashells or -- sorry, about that. Got to bring a little levity to the times.

MR. ARNOLD: Especially after the last item, I understand.

HEARING EXAMINER DICKMAN: All right. So it's a little bit of an after the fact situation. I understand what you're saying as far as measurement. If anybody's ever read a sign code, don't. It'll really give you a headache.

MR. ARNOLD: In this case I think it's very benign. Obviously it's an attractive sign. Staff doesn't have any objection to it, either. It was really just --

HEARING EXAMINER DICKMAN: Got it. County, come on up.

MR. KELLY: Good morning. I have not been sworn.

HEARING EXAMINER DICKMAN: Go ahead.

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

MR. KELLY: For the record John Kelly, Senior Planner for the County. The Applicant has represented the petition well. There was an advertised neighborhood information meeting held on October 5. The public hearing sign was posted by the applicant and the hearing was properly advertised by both means of mailing and the newspaper. Staff asks that you approve this petition having satisfied the Land Development Code Requirements, provided that Attachment A is attached to your decision.

HEARING EXAMINER DICKMAN: Just Attachment A?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay. That's it?

MR. KELLY: That's it.

HEARING EXAMINER DICKMAN: No comments about how he spelled sea? I think it's clever, honestly. I can't spell anyway, so that works for me. What else? Nothing else? Okay. Do we have anybody, anybody from --

MR. FRANTZ: No registered speakers for this item.

HEARING EXAMINER DICKMAN: No other speakers? Wow. All right.

MR. ARNOLD: Nothing further from me unless you have any questions.

HEARING EXAMINER DICKMAN: Mr. Arnold no, I do not. I understand this one clearly. Thank you.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: All right. Madam Clerk, you've got to remind me when to swear people in. That's the one thing I constantly forget. Thank you. I'll render a decision as quickly as I possibly can.

MR. ARNOLD: Thank you. Appreciate that.

HEARING EXAMINER DICKMAN: By the way everybody, Happy Holidays. I should have said that at the beginning. All right. So we've done A, B, so we're on D. A, B, C, D. All right. This is Item D on the Agenda. This is another insubstantial change to the PUD called Ragge. Almost Reggae.

MR. EBRITE: Yeah, I'm not exactly sure --

HEARING EXAMINER DICKMAN: Come on up, sir. Have you been sworn in?

MR. EBRITE: Yes, sir.

HEARING EXAMINER DICKMAN: All right, excellent.

MR. EBRITE: I'm Justin Ebrite from Phoenix Associates representing 99 Naples, LLC who owns Home2 Suites, Naples. We're requesting a PDI deviation to the code language. There's currently a sign in place that with an agreement with the bank, who is the other member of the PUD. The current sign is, won't allow for shared usage of the square footage but it's just a blank sign, it's there, it's built, it's waiting for a spot. And so we're just changing the PUD language to allow that within the LDC.

HEARING EXAMINER DICKMAN: Where is the sign on the property, just so I know.

MR. EBRITE: It's at the corner of Pine Ridge --

HEARING EXAMINER DICKMAN: If you take a left, like you're going --

MR. EBRITE: If you take a right --

HEARING EXAMINER DICKMAN: If you're going east you take a left onto whatever lane that is.

MR. EBRITE: Whippoorwill and --

HEARING EXAMINER DICKMAN: Whippoorwill, yeah. So you've got the credit union there and then the --

MR. EBRITE: Yeah, it's on the Suncoast property.

HEARING EXAMINER DICKMAN: Okay. Which corner?

MR. EBRITE: The northwest.

HEARING EXAMINER DICKMAN: Northwest corner?

MR. EBRITE: Yeah.

HEARING EXAMINER DICKMAN: Okay, all right.

MR. EBRITE: Could you put up Attachment A, please? I think Exhibit D22. Pretty much give you a good idea of what -- next page, yeah.

HEARING EXAMINER DICKMAN: There we go.

MR. EBRITE: That's pretty much what we're proposing versus -- that's the change. You've got a blank spot for a sign. The intention originally was that that sign be shared and an agreement in place when the bank was built with the PUD for the next parcel once it was built, which is the hotel, to place a sign there. It conflicts with the LDC because of square footage and off use, so we're just requesting a deviation from the LDC for that purpose.

HEARING EXAMINER DICKMAN: The Home Place is already built, right? Open and operating?

MR. EBRITE: Yeah, it's open and operating. So we're just trying to place a sign there.

HEARING EXAMINER DICKMAN: Okay. I understand that. Seems pretty straightforward. Let's -- County? All right.

MR. KELLY: Morning. Again, John Kelly, Senior Planner for the record. If I may ask, are there any registered speakers?

MR. FRANTZ: There is one registered speaker.

MR. KELLY: Okay. Just so I know where I'm going with this. There was a conditional waiver issued by the Hearing Examiner on 9/28, so a neighborhood information meeting was not held. Public hearing sign was posted by the Applicant and the hearing was advertised by mail and in the newspaper. The Applicant is seeking deviation to the sign code section as they stated, due to size. And I have received one verbal objection from the Hawthorne Suites. I believe that is the person behind me here. And so to that end, I would just state that the Applicant would be able, with Suncoast Bank's permission, to have erected their own sign up to eight feet high and 12 square feet in size. So what they are actually doing by co-locating is reducing sign clutter. And with that, we recommend approval.

HEARING EXAMINER DICKMAN: Okay. I have no questions. Sir, you raised your hand. Do you want to come on up and speak. Have you been sworn in?

MR. WHITE: Yes, I was here early.

HEARING EXAMINER DICKMAN: Okay. Do you want to take this one over here?

MR. WHITE: Sure.

HEARING EXAMINER DICKMAN: You're an objector, you're opposing this?

MR. WHITE: I am, yes.

HEARING EXAMINER DICKMAN: Okay. Name and address.

MR. WHITE: Yes, my name's Tom White. I'm the owner or managing partner, one of two owners of the Hawthorne Suites Hotel that's been here for 21 years. It's located roughly five businesses --

HEARING EXAMINER DICKMAN: Okay, one second. Can we bring up the map so I can get a idea -- I mean, I have it in my packet, but I just want to understand. Okay. So there's the bank, the empty motorcycle shop there, Hooter's is there. Where are you?

MR. WHITE: It's -- the motorcycle I believe is going to be for disadvantaged veterans, I believe.

HEARING EXAMINER DICKMAN: That is what it's going to be?

MR. WHITE: Right. Then there's the Hooter's, the Perkins, and -- there's Sophia's and then myself.

HEARING EXAMINER DICKMAN: So you're west. Several parcels west of --

MR. WHITE: Yeah, right next to the preserve. You can kind of see the swimming pool and the U-shaped building there.

HEARING EXAMINER DICKMAN: Got you. Okay, so you are a hotel as well?

MR. WHITE: Yes. And we've got an 84 room hotel that we built 21 years ago. When we built it, we were required to build 25 units per acre. And that's why we built almost three and a half acres. In order to have a sign on frontage road, Pine Ridge Road, we were required to buy the land that goes out to the road, the entrance road, or we couldn't put a sign on the road. For some reason, the Home2 Suites was allowed to build 100 and some rooms, roughly 100 room hotel on about two acres. They were granted a waiver to not do what we had to do, buy three and a half acres. I never received anything in the mail when that was done. I'm not sure why, but I didn't. I never received anything in the mail when this was done. I believe I would be in the circle of guidance where I should have received something in the mail, I didn't.

HEARING EXAMINER DICKMAN: Let me take one thing at a time. So what's the radius distance, Ray?

MR. BELLOWS: It's 500 feet for a public notice for any amendment to a PUD.

HEARING EXAMINER DICKMAN: Anybody have any idea how far away -- do you know how far away you --

MR. WHITE: It's probably like right -- I might be to the edge. I don't know. It could be close to that, yeah, to be honest with you.

HEARING EXAMINER DICKMAN: All right. Well, maybe not, who knows?

MR. WHITE: Yeah.

HEARING EXAMINER DICKMAN: It would not -- it would go to whoever the property appraiser lists as the property owner and that address.

MR. WHITE: Yeah and we -- I talked to my father and --

HEARING EXAMINER DICKMAN: And there would have been a sign on the property that says --

MR. WHITE: I saw the sign yesterday. I saw it for the first time yesterday. I drive up and down the road every day and I don't know how I missed it, but I did apparently. I assume it was up for a while.

HEARING EXAMINER DICKMAN: Let me take care of that. Mr. Bellows, the sign went up when?

MR. BELLOWS: It went up the day before Thanksgiving.

MR. WHITE: The day --

HEARING EXAMINER DICKMAN: Hold on. I want to get it from --

MR. BELLOWS: For the record Ray Bellows. I'll defer to John Kelly who was involved in the advertising.

MR. KELLY: I don't have my computer here.

HEARING EXAMINER DICKMAN: What's the requirement --

MR. KELLY: I need to defer to the Applicant. It's 15 days.

HEARING EXAMINER DICKMAN: Fifteen days prior to --

MR. KELLY: So if it was right at Thanksgiving, today's December 10th. So I trust that that was done. I did keep on the Applicant.

HEARING EXAMINER DICKMAN: Who's required to do that, the Applicant or --

MR. KELLY: The Applicant.

HEARING EXAMINER DICKMAN: Okay, so --

MR. KELLY: And I am sure that I receive their --

HEARING EXAMINER DICKMAN: They have to do an affidavit saying --

MR. KELLY: They do. I received their affidavit within the 15 days. I just can't tell you the precise date.

HEARING EXAMINER DICKMAN: That's fair. So Mr. Applicant --

MR. EBRITE: Yeah, I could go back and look at my e-mail as well, but I think it was a day or two before Thanksgiving which would put you --

MR. FRANTZ: We need you to speak into the mic.

MR. EBRITE: Oh, sorry. It was a day or two before Thanksgiving. I sent them an e-mail, picture, posted and the affidavit as well. So it was more than 15 days required.

HEARING EXAMINER DICKMAN: Okay. All right, great. And would you happen to know how far away this gentleman's property is?

MR. EBRITE: I don't know exactly.

HEARING EXAMINER DICKMAN: I know the burden should be on him, but anyway, I'm sort of guessing that these lots -- I'm kind of thinking -- I'm not going to look it up, but I'm kind of thinking you probably are outside the radius.

MR. KELLY: If you look across the street to the rear, there were estates lots and those lots are typically 330 by 660. Just looking at that visual estimation, I would say they're just over 500 feet.

MR. WHITE: I think they're --

HEARING EXAMINER DICKMAN: Once again, so that's that, right.

MR. KELLY: You'll see directly behind --

MR. WHITE: I'm looking at the neighborhood --

HEARING EXAMINER DICKMAN: Whoa, whoa. Time out. One at a time.

MR. KELLY: The lots are either two and a quarter acres or five acres. The two and a quarter acre lots are to 150 foot wide or 180 foot wide, unless they're five acre lots. So just giving a visual estimation, I would say it's a little over 500.

HEARING EXAMINER DICKMAN: Okay. A little close anyway. So gentleman, come on up, sir.

MR. WHITE: Thank you. Tom White, thank you. I actually live in the neighborhood behind and I believe the lots are 160 and one of those lots is a half a lot. So if that helps to figure out how far it is. So one, two, three, it looks like I'd be within 500 feet.

HEARING EXAMINER DICKMAN: Okay. So --

MR. WHITE: So I should receive notice and I didn't. I didn't receive notice when they built it and got the variance to build, less than 25 rooms per acre.

HEARING EXAMINER DICKMAN: And the sign, you feel like you haven't seen any and you drive by there all the time.

MR. WHITE: I did see it yesterday.

HEARING EXAMINER DICKMAN: Okay. But it's been up for 15 days.

MR. WHITE: It could have been. I'm not denying that, yeah.

HEARING EXAMINER DICKMAN: Yeah, all right. Okay, great. So I did consent to a neighborhood information meeting waiver. I don't see -- and I also retained jurisdiction to go back and have that done. I don't see any reason to do that. I recognize your objections to this. I do question -- so your issue seems to me to be an issue of what you were required to do back when you did your project, that you were required to do and now you want the Applicant to do the same.

MR. WHITE: I think it's fair. And all my customers that come off I-75 go past that building. And originally I looked at buying that site with other partners and we didn't like it because it didn't have road frontage. So now they're being granted to build a sign that all my customers are going to see before they get to me.

HEARING EXAMINER DICKMAN: So if you had to encapsulate why you're an interested party and how you're adversely affected, can you put that into a few sentences?

MR. WHITE: I'm an interested party because I'm a small business owner in a rough time right now. This is a large company that's built, that has multiple hotels that is building down the street from me. They've been stealing my business and undercutting me.

HEARING EXAMINER DICKMAN: Well, come on.

MR. WHITE: Well, no. I'm saying they are. And this is just another thing where they're going to be able to take more business away from me because --

HEARING EXAMINER DICKMAN: Okay, all right. Great, thank you.

MR. WHITE: Thank you.

HEARING EXAMINER DICKMAN: Jeremy, anybody else?

MR. FRANTZ: That's all.

HEARING EXAMINER DICKMAN: Okay. Any last rebuttal on that one?

MR. EBRITE: I mean, we're here for the sign and that can't change.

HEARING EXAMINER DICKMAN: Okay, I got you. Okay. Staff, anything else you want to say?

MR. KELLY: Just as I said, with Suncoast Bank's permission, the applicant would be allowed to do their own sign at a larger size.

HEARING EXAMINER DICKMAN: I understand that. Yeah, great. Okay, that's all.

MR. BELLOWS: In addition, for the record Ray Bellows. I did pull up the proof of notice requirements and it looks like the sign went up on November 24th.

HEARING EXAMINER DICKMAN: Okay. All right. Do you have, just so -- I don't know if you have the radius map on there? Do you guys take radius maps?

MR. BELLOWS: I haven't found the radius map.

HEARING EXAMINER DICKMAN: Do you have the mailing listing or anything like that?

MR. FRANTZ: I could pull the mail list if you'd like.

HEARING EXAMINER DICKMAN: Yeah, let's pull that up. What would it be under sir?

MR. WHITE: The company is owned by Bay Winds Lodging, LLC., so I think that's -- the d/b/a is Hawthorne Suites of Naples.

MR. FRANTZ: We'd be looking for the property owner rather than the company owner.

HEARING EXAMINER DICKMAN: Yeah, where would it --

MR. WHITE: I think it would be either myself or my father, Tom White or Ron White.

HEARING EXAMINER DICKMAN: Okay. Do you see them on the list at all.

MR. WHITE: I'm sorry. I can't see that.

HEARING EXAMINER DICKMAN: Jeremy, you're great.

MR. WHITE: Can you darken the lights?

HEARING EXAMINER DICKMAN: Which number are they going down? Okay. Number -- listed as 28 notices went out. Are you on that?

MR. WHITE: I don't see it, no. No.

HEARING EXAMINER DICKMAN: Okay. So then you must've been outside of the radius.

MR. WHITE: Is there a way to verify, validate that? Can I request to be validated?

HEARING EXAMINER DICKMAN: I mean, this is all generated by GIS Mapping, I would assume?

MR. FRANTZ: Correct.

HEARING EXAMINER DICKMAN: Okay. All right. And that's a computer system that stretches out the radius from the property lines and captures the property appraiser information and then generates mailing labels and does all that. I have to see that this is prima facie evidence that you were outside of the radius notice. That's why there are multiple types of notices that happen. Signs, newspaper, I think, publications. Which nobody reads the newspaper anyway, but Ray probably does.

MR. BELLOWS: Still. I'm old school.

HEARING EXAMINER DICKMAN: Yeah. And then the sign and so there's duplicative types of notices for that reason. But I just wanted to answer that question because I did grant the NIM waiver on this. Thank you for your comments and I'll take them under consideration.

MR. WHITE: Thank you.

HEARING EXAMINER DICKMAN: You're welcome, thank you. And I will render a decision as expeditiously as possible on that one. Thank you. Good to know somebody's going to do something with the Harley Davidson store. Is that it? Okay. All right. So let's talk about a couple of things here. We already know the next meeting is going to be on the 14th of January, so at this time I'm going to wish everyone Happy Holidays. Be safe, enjoy your New Year's Eve. And moving into 2020(sic) which is super hard to believe, but whatever. One of the things I would like for Staff to do in the future is, I'd like for you all to have a copy of this, the Administrative Code. That's also a part of my responsibilities. I know that it's referenced in the code of ordinances which sort of gives the ability to add on to other things as we go. But if you could have a copy of this, not for people to take, but if you can somehow put it outside on the table out there and put a note on it and just say if you would like a copy of this, it's filed at this place on the website or you can contact whomever and get -- you know, I just want to make sure everyone has the ability to see everything and be aware of everything. Can you do that?

MR. BELLOWS: That's a good idea to have a hard copy reference of the ordinance and the Administrative Code provision and then with a note saying copies can be provided by contact person.

HEARING EXAMINER DICKMAN: Okay, awesome. And if you could send me any references like resolutions or anything like that that brings that into the section to all that the Hearing Examiner Division 3. I'm almost certain that I read it. That's part of it, that's why it's in my booklet, because I asked about it. But you know, I just want to make sure that the public has the ability to get their hands on it and be aware of it and know about it. Because most people will go to Muni-Code and it's not in Muni-Code. They'd have to refer back to the County's -- I'm pretty sure there's a link on the

County's website for this. If there's not, let's get one. I guess you have a page for Hearing Examiner?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: Okay, that's good. I appreciate that. And other than that, is there any other new business, old business or anything you want to say? No? Nothing? All right. Well, you guys have been great. I've been really blessed to be here with you all and I'm really happy. Enjoying it. Hope you are too and I hope all of you all, your families and friends stay safe during the holidays. Try to enjoy yourself and we'll see you in 2021. All right. We're adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 11:04 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on _____, as presented _____ or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
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BY REBECCA GREEN, REPORTER AND NOTARY PUBLIC