

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER

Naples, Florida
September 24, 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 W.J. DICKMAN

ALSO PRESENT: Raymond V. Bellows, Zoning Manager
Tim Finn, Principal Planner
John Kelly, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

P R O C E E D I N G S

MR. FRANTZ: Mr. Dickman, you have a live mic.

HEARING EXAMINER DICKMAN: Thank you. One second while I log on here. All right. Good morning, everyone. I'm going to call the hearing examiner meeting to order.

It's September 24th, 2020, and it is a few minutes after 9:00, so with that, why don't we go ahead and do the Pledge of Allegiance. Let's stand for the flag.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Thank you very much. I appreciate that. I have the agenda in front of me. Are there any changes to the agenda, requests for continuances, or any other

suggestions? Please, come on up.

MR. YOVANOVICH: Okay. Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. YOVANOVICH: I'm here on behalf of -- to assist Mr. Arnold, if necessary, on behalf of Item E. I've been asked to cover a deposition for a colleague who is under the weather. If it's at all possible, so I can cover that deposition, I would appreciate it.

THE COURT: Okay. Staff.

MR. YOVANOVICH: I've talked to the petitioner of the boat dock and he has no objection.

HEARING EXAMINER DICKMAN: No objection to that. Staff, any objections to that?

MR. BELLOWS: No objection.

HEARING EXAMINER DICKMAN: Okay. So why don't we get started. We will move 3E up to the first item.

MR. YOVANOVICH: I appreciate that.

HEARING EXAMINER DICKMAN: Before you get started, I'm going to do a little -- the way this is going to work, is first of all, my name is Andrew Dickman. I'm a hearing examiner, not an employee of the county. I was selected and appointed by the Board of County Commissioners.

I've been a land use attorney going on 20 years. My law office is located here in Collier County. I am today going to be listening to the facts, to the analysis, to the criteria. I do not render a decision here today.

A decision will be made shortly after the hearing as soon as I can prepare it, and it will be distributed and rendered to all parties that are required to have it. As far as today, you can see we're in a different scenario under COVID-19. I ask everyone to be safe, observe all the social distancing.

As you can see we're all in a little plastic box up here, but I can see everyone. The applicants, applicant's representatives, will be over here at the brown podium. Staff and I think the public will use this one; is that right, sir?

MAINTENANCE STAFF: That's correct.

HEARING EXAMINER DICKMAN: Everyone is separated. If you feel you need to take your mask off to speak more clearly, that's fine.

We have a court reporter here who is taking a verbatim -- verbatim notes of the hearing. It's important to announce yourself, put your name on the record, speak clearly.

Nodding heads and things like that, I don't know how she's going to capture that kind of thing. It's better if you use verbal communication.

With that, we will go ahead and get started. Why don't we go ahead and take Mr. Yovanovich, your item first, that's 3E. Come on up. And while he's coming up, what I'd like to do, everyone who is going to testify needs to be sworn in. I'd like to go ahead and swear everyone in that's here today. And if you come up and haven't been sworn in, I'm going to have to swear you in then. That makes it easier so I don't have to swear everyone in as they come up.

If you're going to testify and are in the room, go ahead and stand up and the court reporter will go ahead and administer the oath.

(All parties were duly sworn and answered in the affirmative.)

HEARING EXAMINER DICKMAN: And also for anyone who hasn't been here, the process we're going to follow is first the applicant will come up. Secondly, will be the county staff will speak to the item, and we'll open it up to the public.

I'm specifically interested among the public those who are interested parties, meaning, that you perhaps live next door, some kind of special relationship to the item involved, and then the general public.

Then I will save some time for rebuttal for the applicant, and then we'll close the public hearing, and then we'll have discussions; that's the general process that we'll follow. So, all right, why don't we get started. This is Item 3E on the agenda. How are you, sir?

MR. ARNOLD: Good morning, Mr. Dickman. I'm Wayne Arnold, a certified planner for Q Grady Minor & Associates, in attendance with us on our team this morning is Austin Howell, with Baron

Collier Companies, owner of the parent tract, and Rich Yovanovich, Planned Use Counsel for the project. We're here representing the Baumgarten PUD.

We're in for an insubstantial change to make some modifications to deviations. As the project is under construction today, I don't know if you're familiar with the site. This is the old Pelican nursery that's located at the southeast corner of Collier Boulevard and Immokalee Road.

We were through the zoning process successfully in 2019. We're here to make some minor adjustments. I have a short presentation PowerPoint if Jeremy can bring that up, I'd appreciate it. There we go. Can you advance to the aerial, a couple slides in, Jeremy, that would be great.

HEARING EXAMINER DICKMAN: Before we get started on this, I want to disclose as the hearing examiner I have not visited the site, don't believe I had any communications, I don't recall, with anyone on this item, and have not had any extensive conversations with county staff about it.

I've read the staff report, read everything that's been published to the community and everything like that. So that's my disclosure as hearing examiner.

MR. ARNOLD: Thank you. On the visualizer we have a location exhibit. It is the former nursery, as I indicated, and this is an aerial photograph that's about a year old. The site is now actively under construction for the approved project.

I don't think I can advance from here, but, Jeremy, if I can advance to the next slide. This is a copy of the adopted master plan. It is a mixed use project, and the MU stands for mixed use, and the MU and the MU/R tract allows for commercial and residential, and the R designation is for residential development only.

So what's been approved here is truly a mixed use project, and under construction is a first phase of the commercial called Founders Square, which is going to be mixed retail development. There's an indoor self-storage facility that's also under construction, and the residential apartment complex that was approved is also under construction.

The county and the applicant worked to provide for additional right-of-way. Just by some of the background, along the Immokalee Road frontage, that this is going to be a separated intersection at Immokalee Road and Collier Boulevard in the future, and there is also a signal that's being installed across from the Pebblebrooke entrance on our access point at Collier Boulevard as part of the approval process for the project. If you can advance to the next slide, Jeremy.

The changes to the master plan are minimal. I've highlighted a yellow box on one of the mixed use tracts on Immokalee Road, that's where we're asking for a deviation that relate to a convenience store with fuel pumps.

The other changes to the master plan was to note the new deviation locations on that plan, but, in essence, no other parts of the master plan are changing. Jeremy, if you can advance to the next slide, please.

This is a little better idea of what the development is going to look like. Mr. Dickman, you can see what's being called Founders Square, the retail in the northwest corner of the site, right at the corner of Immokalee Road and Collier Boulevard.

There's a medical building proposed on Collier Boulevard just south of that. You see the residential building along the south and the east portion of the site, and the indoor self-storage; those are the committed uses that are under construction today.

Internally, there's a bypass road we call it, and it's Founders Preserve Drive, and it helps establish some of the deviations. So if you can move forward, Jeremy.

So we have deviations three and four; deviation three was originally approved as part of the project. Staff has asked us to refine that and add some limitations on square footage, so because our parcels front Immokalee Road and Collier Boulevard, we qualify for monument signage. Because we have a secondary road that bisects the site and will connect to the signal to Immokalee Road, we made provisions early on for them to have a secondary ground sign, if you will, for those outparcel-type uses.

Staff had no issue with it, but they did want us to clarify that it was only for the parcel dividing Collier Boulevard and Immokalee Road. So we clarified that language to establish the size limitations

that staff suggested.

And the deviation No. 4 pertains to the mixed use tract, because it technically doesn't qualify for any ground signage because it's not a road, if you will. We've added a deviation to allow that parcel and parcels like the indoor self-storage to have its own independent sign, which they -- which makes sense. Staff certainly supports that.

Move to the next slide for me, appreciate it. So deviations five, six, and seven relate to our proposed fuel facility. When you're located within 250 feet of a residential project, you're required to put in enhanced buffering. It requires a berm, a wall, and those things.

In our opinion, even though the use is currently permitted, I guess we didn't have the foresight to know exactly which parcel it was going to land on. Once we had our primary access at Immokalee Road, which makes sense, that does puts us 250 feet out from the proposed apartment complex, which is under construction.

We've worked with the apartment complex, and they've issued a letter of no objection, which allows for another landscape buffer, and, obviously, because we are within 250 feet, I think all parties acknowledge this was always going to be a mixed use project, and residential was going to be within close proximity to this convenience store with gas pumps, no matter which parcel it lands on.

In fact, there is an intervening parcel that does have self-storage. When you look at the other master plan with a little more detail, you see it across the intersection of Founders Drive, as well as the self-storage facility. If you can advance to the next one, I would appreciate it.

We have new deviations eight, nine, and ten. So No. 8 relates to a directory sign. Because the Founders Square retail component is being developed first, and it's not a typical shopping center, we really didn't really qualify for its own directory sign on Immokalee Road at our entrance. We do, however, qualify for a directory sign on Founders Square Drive, which is internal to the site, and I think we all agreed sitting down with all parties that it made sense to have our directory sign for that shopping retail venue on Immokalee Road at our entrance, rather than internally.

We can have low-level ground signing that indicates the entrance location, but we needed and wanted the access, primary access, to be on Immokalee Road. So this would allow a typical directory sign to be placed in that location.

The other two deviations, nine and ten, one is -- well, they're both related to a boundary marker sign, which, if we were a purely residential project and we're a planned development, we're allowed to have boundary marker identification at the project corners.

Because we're mixed use we don't qualify under the provisions for boundary marker signage, so we're asking for a deviation to allow one boundary marker sign located at the intersection of Collier Boulevard and Immokalee Road, and it's not fully designed yet, that's going to be some sort of marker identification, probably something looks a little more artistic that's part of a sign component for the project.

We do have the Immokalee Road canal, the Collier Boulevard canal, that separates us from the travel lane. We've indicated some height limitation and some square foot limitations that staff has concurred with that will ensure this is modest, and it's meant to be certainly a feature for the project; that's the summary of the proposed deviations. If you could advance, Jeremy.

This should, again, be the master plan. It's a little more detailed, if we want to land on this one to just speak from that. I don't know if you have any public speakers or not on this item?

We did have our neighborhood information meeting. We had attendance. None of the concerns expressed were for deviations we're seeking. We did have some discussions with the neighbors regarding an interconnection that's really not part of this proposal. The interconnections were already established as the original zoning approval.

HEARING EXAMINER DICKMAN: What was the date of the NIMS?

MR. ARNOLD: Let me go back and check on it.

HEARING EXAMINER DICKMAN: Unless Ray or somebody knows?

MR. ARNOLD: Got it right here. It was on July 30th, 2020.

HEARING EXAMINER DICKMAN: You said the attendance was?

MR. ARNOLD: There were several attendees. Obviously, we have neighbors to the south and to the east, and we cooperated with them during the zoning process, and I think they were tracking to make sure we weren't changing, primarily, the interconnection provision, that they were concerned about.

The access you can see to the south, that's an established location to Tuscany Cove that was stubbed out for their project. There is another one to the east. You can sort of see it in the aerial photograph as part of the Lennar Community to our east, and that was a conceptual exhibit for the residential in our Baumgarten PUD, but there will be an established interconnection between the two projects there as well.

HEARING EXAMINER DICKMAN: For my purposes, the notices, signage, things like that were put out and kept out; is that -- I guess, we can ask staff but --

MR. ARNOLD: Yes, the meeting was duly noticed, mail notices were sent out to the surrounding community. All those who cared to sign in, signed in, and I think the sign-in sheets are part of the backup material.

HEARING EXAMINER DICKMAN: Okay. I wanted to check that box, make sure due notices were put out to everyone. All right. We're going to go to county planning staff. How are you today?

MS. GUNDLACH: Good. Good morning, Mr. Hearing Examiner. Am I on?

HEARING EXAMINER: Traditionally you have to tap it three times.

MS. GUNDLACH: Okay. I thought the volume was off. Good morning, Mr. Hearing Examiner. I'm Nancy Gundlach for the record. I'm a principal planner with the zoning division. Staff is recommending approval of the Baumgarten petition, as it is consistent with the Growth Management Plan and Land Development Code. If you have any questions of us today, it would be our pleasure to answer them.

HEARING EXAMINER DICKMAN: I just want to confirm that you did -- I know Mr. Arnold, and I wouldn't question his statements, but I do from staff want to make sure this was duly noticed according to the code, and you have looked at the criteria for these types of deviations and insubstantial deviations, and you are recommending approval; is that right?

MS. GUNDLACH: That is correct.

HEARING EXAMINER DICKMAN: Great. Is there anything else county staff wants to add in?

MS. GUNDLACH: Nothing further.

HEARING EXAMINER DICKMAN: Why don't you stick around in case we do have something? Is there anyone -- Mr. Arnold, did you have something else before I ask the public to come up?

MR. ARNOLD: No, sir.

HEARING EXAMINER DICKMAN: Okay. Anyone from the public here to speak on this item? All right. Any rebuttal at all?

MR. ARNOLD: No, thank you.

HEARING EXAMINER DICKMAN: Your attorney is doing a fantastic job so far. He is very good at his job.

All right. I'm going to close the public hearing. I have read the staff report. I have all the information, all the slides you have put on there. Jeremy, do we have anybody online that wants to speak or any messages?

MR. FRANTZ: We don't have anyone registered for this item.

HEARING EXAMINER DICKMAN: Okay. All right. Fine. I've got all the information that I need. I will be rendering a decision on this item.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: You will get a copy of it, and I'll probably send one to your attorney as well.

MR. YOVANOVICH: Thank you.

HEARING EXAMINER DICKMAN: Good luck with your depositions, sir.

MR. YOVANOVICH: Thanks for moving me up.

HEARING EXAMINER DICKMAN: No problem. So we're going to jump back into -- we'll back up and go to 3A, Item 3A on the agenda.

As we get started with this, I have only reviewed all the documentation that's been provided to me by staff, any other information that's come in. I have not visited the site. I haven't done anything special, haven't had any communications with -- outside of that. So that's my ex parte disclosure. Why don't we start with the applicant. How are you, sir?

MR. ROGERS: Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. ROGERS: Jeff Rogers for the record with Turrell, Hall & Associates, representing the applicants, Gigi and Marc Sarazin located at 300 Oak Avenue in the Vanderbilt Lagoon area. Jeremy, I do have a PowerPoint presentation --

HEARING EXAMINER DICKMAN: Very good.

MR. ROGERS: -- for this. First and foremost I would like to run through basic criteria for the boat dock extension request. The primary and secondary is the criteria that we are supposed to follow for the application.

First on the primary the request in front of you today is for a boat dock extension for 44 feet into the subject waterway. 41 feet is basically from the mean high waterline. The most restrictive point in this case is the property line, which is on the landward side of the seawall, which is the discrepancy of the 44 versus 41 feet into the waterway.

Moving forward on the slide, Jeremy, bounce through the next couple. Keep going. This is where the subject property is. There is -- go to the next one, Jeremy. There is an existing dock facility on site. It is aging, as well as the existing seawall that is there.

Give you a full picture of the project real quick. The residents did a remodel of the existing home on site, and as of now they're looking to do a remodel of their shoreline. Included in that is putting in a new seawall, as well as a new docking facility.

Just to give you a quick overview, the seawall is existing, and as you can see the pool is there and the upland structure is there, and putting in a seawall is very destructive to the backyard.

So what the State of Florida will let you do is put a wall in front of the existing seawall, and give you approximately 18 inches to put the seawall in front of it, so that is also increasing our overall protrusion with the docking facility.

Basically No. 1 on the primary criteria, whether or not the number of the dock facilities and the boat slips proposed is appropriate in relationship to the waterfront length. This is a residential single-family lot, and as proposed, if, Jeremy, you could go to the next slide, please? As proposed we have two boat slips. As you can see one of the slips does have two jet skis on it. However, that is still considered one slip. So we have one boat and one slip with two jet skis on it.

As I stated before the most restrictive point is the property line which is the dashed red line, bold red line on the exhibit, and the red -- solid red line is the new seawall.

We did get state and federal permits for this, as the waterway is 750 feet wide, so per their rules, you're allowed to go out 25 percent width of the waterway, and part of that permit application we came across that this waterway is state lands, which basically requires additional side yard setback requirement.

The county requirement is 15 feet if you're greater than 60 feet in length of shoreline, which we are. The subject shoreline is 75 feet long. So, therefore, we have to have 15-foot setbacks in order to get a DEP permit from the state, both adjacent neighbors located on the east and west of the subject property were approached and asked to sign a setback waiver, and part of that setback waiver, they're included in this package, was an exhibit of the proposed docking facility, and they have signed off on that prior to us moving forward with the county boat dock extension process.

The reason I point that out is now one of the neighbors is objecting to the proposed docking

facility after signing a letter of no objection.

So No. 2 on the criteria is whether the depth is too shallow to moor the vessel on the shoreline. Now basically what's going on here is the setback requirement and the vessel length that the owners currently own and have purchased, and want to moor there is basically what's driving this petition.

If we were -- we ran through -- just to give you an overview, we ran through many concepts to reduce our protrusion as much as we can in order to -- you know, that's what we do. We try to reduce it as much as we can and not to interfere with any navigation or any things like that.

In this case the waterway, again, is 750 feet wide. There is no thread of navigation in this subject waterway, so that basically means the whole waterway is open for navigation. It's been brought up that there are some areas that are shallow. However, again, if there were issues there would be a thread of navigation established, either by the state or by the county. The only thread of navigation in this subject waterway is north of the Bluebill Bridge, basically along the dunes leading out to Wiggins pass.

So No. 3 on the criteria is dock facility is a consistent with others. It is. It has been brought up that we are going out a little bit further than all the others. What is the driving force here on this subject waterway is the owner's vessel.

If we were to do a parallel mooring docking facility, which we looked at, we would have to cross over the adjacent neighbor's riparian line, which is basically their subject property extending out into the waterway to allow homeowners to build a dock, and we tried to avoid doing any dock design that would cross over anyone's riparian lines, if at all possible.

Each property owner on the other side of us has the right to build a dock, and they currently do not have a dock to the west of us, and to the east of us they did have a dock, however, I believe since we have submitted this, the dock has been removed. So in order to avoid any navigational ingress/egress issues, a perpendicular slip was the ideal situation to avoid any potential future navigation issues.

38 feet, just so you know, we tried to design backing distance for vessels to be a length and a half of the overall vessel's length, so that would be 57 feet of backing distance, with 15 foot setbacks on either side, that's 30 feet.

There's no way that we could properly design a slip parallel to the shoreline without crossing over the riparian lines, which we tried to strongly avoid. The 25 percent width of the waterway is No. 4 on the criteria, and we are approximately 6 percent of that 25 percent.

If you move forward on the slide show, Jeremy, you can -- there is an overview cross section. Go one more, please. You can see -- one more if you would.

I believe I've got the width of waterway shown. Those are the existing docks along the shoreline. As you can see the subject waterway is wide open for navigation. Again, there's no thread of navigation anywhere established in this waterway. So the whole waterway is open. No. 5, whether or not the proposed location and design of the dock facility is such that the facility would not interfere with neighboring docks. Back to what I said before, perpendicular mooring was the way to go on this one due to crossing over adjacent neighbors' riparian lines, and any future docks that would be constructed would interfere with their approach to their slip.

The existing dock is parallel to the shoreline, but it's an aging docking facility and needs to be replaced and the vessel -- the slip side as its existing did not accommodate the owner's vessel that they own now.

Secondary criteria, if there is any special conditions here, there is a handful of them. A, one being the state lands issues and the 25-foot setbacks. We could not accommodate that so we did get, like I said before, setback waivers from each neighbor on either side of us. They signed off on the design and approved it. Otherwise, we would have never gotten the DEP permit for this.

No. 2 on the criteria, reasonable safe access to the vessels. As you saw on the other exhibit, there's plenty of deck space for access to the vessels on either side. So we do meet that criteria. No. 4 is whether or not the proposed facility would have a major impact on waterfront view. Again, right now there is an existing docking facility with an existing boathouse. I believe I have a picture on my slide

show as well, if we move forward, but it is -- you know, we're basically replacing the existing dock to construct a new docking facility.

There is the width of waterway to give you a better view of the whole subject waterway. Real quick No. 5 and No. 6, No. 5 pertains seagrasses. As a requirement for the state and the county project we're required to swim the facility extending 200 feet out from the subject property, which we did. No resources were observed in the area. So no impacts are going to be any environmental issues with that.

No. 6 is pertaining to the Manatee Protection Plan, and that is the single-family docks are not subject to the Manatee Protection Plan. It's all commercial and multi-family facilities.

So moving forward with the public advertising, we did receive some objections, which I've included here on the slide, and most of their concerns are pertaining to navigation, and the actual protrusion into the waterway. From just a quick overview on all of those, one of the neighbors that did sign off on the initial dock design is now objecting to it, which I'm a little confused about that, personally, but the dock design did not change. They've reviewed it.

Moving forward, I do have the setback waivers included that they did sign in this. Jeremy, if you would move forward, just to show you. There's one of them as -- there's the dock as proposed, and then also there's another one, there's two, one from each neighbor.

The only significant change we did here was the western finger on the bottom of our exhibit. Coordinating with county staff we trimmed that back, due to the excessive decking situation. So working with John Kelly we trimmed that back to be flush with the proposed jet ski boat lift so that, you know, we basically gave that up, because it was not necessary to have that.

So moving forward also, some of the letters stated they wanted to verify that the owners did have the vessel that we stated in our application, and if you would slide forward, Jeremy, as well, keep going, and then there I've got a letter from the actual -- one more I believe it is, Jeremy. These are all the objection letters. One more. There's the other neighbors signing off on that as well. One more. This is Marine Max's letter stating that the owners did purchase the vessel as advertised within the petition.

It's clearly stated here that the overall length is 37 feet 10 inches long, basically we rounded up to make it 38 feet in our application; that's with the engines, and it is a 24-inch draft vessel, which is great for this subject waterway.

Water in Turkey Bay is the choke point in regards to water depths in this area, as we're all familiar, as well as Wiggins Pass. The initial boat that the owners had was an inboard/outboard vessel, and it wasn't the ideal type of engine power for the waterway, so they decided to sell it and buy a boat.

As advertised on there it's a 35-foot boat, but the LOA with the engines is 37.10, so they were a little sticker shocked about that when they realized the LOA was longer than what our initial protrusion request was for, so we had to quickly revise the overall protrusion with staff and increase it to the 38. Part of this petition includes the vessel, not just the docking vessel, which is an important point as well. So, again, back to some of the objection letters. I believe I've addressed all the concerns.

The navigation, the waterway is 750 feet wide. It's all open to navigation. If there were issues, there would be markers basically outlining any dangerous high spots or thread of navigation for people to follow to avoid impact. So that in my opinion is addressed.

Just to get on record, I am a licensed captain, gone through the Coast Guard thing, and there are no -- there are no navigation issues here. I can testify to that. With all that being said, if you have any questions that I didn't address, I would be happy to answer them.

HEARING EXAMINER DICKMAN: Yeah, I do have a couple questions for you.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: I see the photograph of the public hearing notice that was done. What other types of notices were done?

MR. ROGERS: The owners met with both adjacent neighbors in order to get the DEP permits.

HEARING EXAMINER DICKMAN: Okay. So I wanted to ask you about that, because you said both signed waivers, and we'll find out later, but they are essentially withdrawing that waiver?

MR. ROGERS: I mean, that was with the State of Florida, and that permit has been issued, so

they would have to challenge that permit as well. I haven't spoken to them about it, and I don't know if they're withdrawing their initial sign-off.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: It's just confusing to me.

HEARING EXAMINER DICKMAN: So is that the west neighbor or east neighbor?

MR. ROGERS: To the west of us.

HEARING EXAMINER DICKMAN: And did you show the two neighbors diagrams of the dock and things we have here?

MR. ROGERS: Correct, yes, sir.

HEARING EXAMINER DICKMAN: They were aware of that?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And as far as the decking, do you know what the total square foot is of the decking?

MR. ROGERS: I do, 1,134 square feet.

HEARING EXAMINER DICKMAN: Is that -- do you consider that to be the minimum necessary decking to --

MR. ROGERS: Basically the State of Florida will allow you up to 1,000 feet for an exemption, and that's a typical dock design, I would say, about 1,000 square feet. We're slightly over that, so we had to get the general permit from the DEP for this, which just means it doesn't meet the exemption criteria, so, yes, dock facilities -- single-family dock facilities range from 500 square feet to approximately 2,000 square feet.

HEARING EXAMINER DICKMAN: And you said you were going to show me a picture of the existing dock? I didn't see it.

MR. ROGERS: I thought I had it on there. I did e-mail it to staff. I'm not sure I got it in in time. I sent it. I can get that to you.

HEARING EXAMINER DICKMAN: Thank you. Is it still there today?

MR. ROGERS: Yes, sir. Yes, sir.

HEARING EXAMINER DICKMAN: And you're testifying that it's unsafe to bring in this new vessel that they purchased parallel to the property line rather than perpendicular?

MR. ROGERS: Correct. Obviously, it would potentially interfere with the neighboring -- any future neighboring docking facilities they would construct, which they have a right to do, and follow the 15-foot setback requirement, and we just tried to avoid any future issues like that.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: You know a 38-foot boat, like I stated, we tried to design per industry standard to be 57 foot of backing distance or a length and a half of the vessel. Twenty feet would be 20 feet, 30 feet long, you know, is the backing distance type here.

HEARING EXAMINER DICKMAN: What was the date of that purchase letter? I'm sorry. I missed it.

MR. ROGERS: I believe they sent it to me yesterday, so probably the 22nd or 23rd of September Marine Max sent that letter us to.

HEARING EXAMINER DICKMAN: That's when they purchased the boat?

MR. ROGERS: No, they purchased it a couple months back. The letter was produced the other day.

HEARING EXAMINER DICKMAN: Okay. Did they know when they purchased the boat they would have to seek variances?

MR. ROGERS: We were already in the process of the submittal, yes, sir.

HEARING EXAMINER DICKMAN: They contacted you and you notified them for that size of boat they would have seek variances and the process, et cetera, et cetera?

MR. ROGERS: Yes. We had an application in originally for a variance for -- it was three foot less. It was a 41 feet protrusion overall. With the new vessel that they bought, which is more adequate

for the subject waterway, we basically worked with staff to try to get the updated information.

We had a hearing scheduled. We postponed that to get the additional new criteria in front of staff, and now we're in front of you today with that full picture.

HEARING EXAMINER DICKMAN: Very good. Is there anybody else, part of your team, the applicant, that wants to speak or just you?

MR. ROGERS: I believe it's just me.

HEARING EXAMINER DICKMAN: Just you. Great. I will let you come back after public hearing if you need to rebut anything.

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: John, are you the lucky planner on this one? John is with the county.

MR. KELLY: Good morning. John Kelly, Senior Planner. Everything the applicant has stated is correct. We do need to add an Attachment C to the staff report, that is all the public correspondence that was received which comprises four letters of objection from three addresses, and one letter of support that came at 4:58 p.m. yesterday.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: So I do have an exhibit, Attachment C, map only. If I could get that put on the screen, please. So, again, we are adding Attachment C, which comprises all of the public correspondence.

HEARING EXAMINER DICKMAN: Yes. I believe -- I mean, you have provided all that to me and I have read it. I've looked at multiple e-mails. I see you've got it now.

MR. KELLY: And --

HEARING EXAMINER DICKMAN: Is that the right one?

MR. KELLY: No, it's not.

HEARING EXAMINER DICKMAN: No, it's not. There we go.

MR. KELLY: Okay. Attachment C only, okay the letters of objection were received from the three addresses with the red border. The yellow border is the subject location, and that in green is the letter of support.

HEARING EXAMINER DICKMAN: So the one between the green and the yellow on the south side of the street, I presume, is that the one that signed the waiver?

MR. KELLY: They weren't for the county, so they weren't reviewed as part of this. They do have those documents from each of the neighbors both from the east and the west.

HEARING EXAMINER DICKMAN: For the record, I believe I have already read those objections, and they have been provided to me, so I appreciate that. Are there any -- are there any parts of this criteria that they have not met, the applicant has not met?

MR. KELLY: Staff found that they met and satisfied four of the five primary criteria. I believe that the one that was not satisfied is that of water depth, because that was not the driving force for this --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. KELLY: -- boat dock extension. Of these six secondary criteria, one of those is the Manatee Protection Plan, which is not applicable, and of the remaining five, they satisfied four of the five.

The one that was not met is in the size of the vessels in relation to the property shoreline, that would be No. 3. The size of the vessels and the personal watercraft proposed to the boat dock range in size from 12 feet to 38 feet in length. Based upon the vessel's length the applicant will exceed the allowed 50 percent of the linear shoreline.

HEARING EXAMINER DICKMAN: Are you satisfied that this has been adequately, properly noticed of the public hearing to the public?

MR. KELLY: It has been properly advertised. A sign was posted by me at the location within 15 days of this hearing.

HEARING EXAMINER DICKMAN: Okay. And I have a photograph of that. Thank you. Anything else?

MR. KELLY: Staff recommends approval.

HEARING EXAMINER DICKMAN: With that condition.

MR. KELLY: Staff recommends approval in accordance with the proposed site plan, which is identified as Sheet No. 3 of 7 provided as Attachment A to the staff report.

HEARING EXAMINER DICKMAN: Okay. Stick around, please. Finished?

MR. KELLY: Yes.

HEARING EXAMINER DICKMAN: All right. Great. Let's open it up for the public. Is someone -- is anyone here to speak on it live, or anyone?

MR. BELLOWS: No one has registered. She must have come in after.

HEARING EXAMINER DICKMAN: All right. Then we need to administer the oath. Come on up to the middle microphone. Which microphone would you like her to use?

MAINTENANCE STAFF: Doesn't matter.

HEARING EXAMINER DICKMAN: This guy is keeping us as safe as possible. I appreciate that.

MR. FRANTZ: While we're waiting, I'll just note we do have a couple people on Zoom who would also like to speak.

HEARING EXAMINER DICKMAN: Great. Pick a microphone. Take the brown one or the middle one. There you go. How are you today?

MS. KANAR: I'm doing well. How are you?

HEARING EXAMINER DICKMAN: I'm doing fine. Thank you for asking. Were you sworn in?

MS. KANAR: No.

MELANIE KANAR,

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

MS. KANAR: Yes I do. My name is Melanie Kanar, and I live two doors -- two houses down on 272 Oak Avenue.

HEARING EXAMINER DICKMAN: Is that east or west?

MS. KANAR: West. So first thing we have a boat dock on our property, and we also, you know, applied for variance, and we were only granted 20 feet. So we have a boat dock that's 20 feet out. I was kind of surprised about the 44 foot application. It's almost like 125 percent more than what should be over there.

The other thing, too, the neighbor, I know they said both neighbors from the east and west of the property signed off on it, and they met with them. Well, I know the neighbor right next to me, which would be the west of that house, just came down from Canada. They couldn't come down because of COVID. So I don't know when they actually met with them.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. KANAR: We know them personally, and I don't think they would have signed off on that.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. KANAR: That's -- maybe they did. I don't know. The other thing, too, is, like, what my neighbor across the street, Mr. Burkhard said. We have been in that neighborhood for over 20 years.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. KANAR: And he has, you know, navigated that area and boated, and it is just a lot of shallow area there, and a lot of -- we would see from our house, boats get, you know, stuck in the middle. So there is a danger of navigation there. Notice-wise, the notice was -- this house is more down towards the end of the cul-de-sac.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. KANAR: I think the neighbors that are going to be most affected is ones closest to the end of the street. It's a narrow canal and then it kind of opens up, and if you extend it all the way out, I mean, now the neighbors are going to have to go all the way out to be able to go out into the waterways.

The other thing you have to consider is Naples One. Naples One is going to be building on the

other side, and also applying for 195 foot out. So that whole canal would just be all -- if they -- if they approve this, it's going to set a dangerous precedent for all the boat dock sizes in that area, and I can see everybody, you know, could just apply for a variance and everybody would have boat docks extending all the way, and how much waterway would be left?

You know, we're trying to be good neighbors and stuff, and I think I know -- I know they already bought their boat, but, I mean, I have walked that area, you know, almost five days every week, and I know -- I don't think I've seen, you know, boats that big in that area.

It's a shallow area. It's not like the one downtown here where they have sailboats that has deeper water. So our neighbor on the west of us, they used to have a big boat. They sold it. And they were in the tip of the cul-de-sac. They sold it because they said it's too narrow for them to navigate.

And also a consideration also is for the bridge for you to go out to the ocean. So I think even applying for that is almost to me kind of offensive, because there's just so much, you know, more than the variance would say, you know, would allow. I mean 20 feet, maybe 23, 25, but my goodness more than 100 percent over? So I think it would set a bad precedence for -- if you -- if you allow that.

HEARING EXAMINER DICKMAN: Okay.

MS. KANAR: I know there is all this criteria that has to be met, but, you know, saying it's better there, and it's okay, doesn't mean that it's going to be good in the future. So I hope you consider that, too.

HEARING EXAMINER DICKMAN: Before you step away, just so everyone knows, if you see me looking at my iPad, I'm looking at the application. I'm not checking e-mails or -- I'm actually working here, trying to save paper. I'm looking at the map. You are west. How far west? Are you, as the cul-de-sac, just where the cul-de-sac starts?

MS. KANAR: Yeah, second to the last house.

HEARING EXAMINER DICKMAN: Okay. So there's a house between you and this --

MS. KANAR: Yes.

HEARING EXAMINER DICKMAN: All right.

MS. KANAR: That's the neighbor who's from Canada who just came down.

HEARING EXAMINER DICKMAN: So you have a dock there?

MS. KANAR: Yep. Uh-huh.

HEARING EXAMINER DICKMAN: It's showing that it's 21 feet?

MS. KANAR: Uh-huh. Yes, I think it's 20.

HEARING EXAMINER DICKMAN: I just wanted to make sure I knew where you are.

MS. KANAR: Yes. And I don't know, notice wise, I think our neighbors I can see, there is a lot of neighbors -- there is a lot of homes there that's not here, you know, for this, and also because of COVID.

HEARING EXAMINER DICKMAN: Yes.

MS. KANAR: They're not here. There is also neighbors there that are there year-round. The sign is all the way to the end of the street. Unless they walk all the way to the end, they really won't see the notice.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MS. KANAR: Thank you.

HEARING EXAMINER DICKMAN: And just so everyone knows, I failed to mention this. I would like everyone to keep your, you know, obviously, I want to hear from everyone, but five minutes would be a great time limit for everyone.

I want to address this sign real quick with John, if you could? I want to go ahead and clean this up. The sign is in front of the home, right; the notice of advertisement?

MR. KELLY: The sign is posted upon public right-of-way to the front, immediate front of the property.

HEARING EXAMINER DICKMAN: Where the property is, that's where it should be; right?

MR. KELLY: Yes.

MR. BELLOWS: There is also a newspaper ad posted in the paper and notice mailed to property

owners.

HEARING EXAMINER DICKMAN: What's the radius of that?

MR. BELLOWS: 500 feet.

HEARING EXAMINER DICKMAN: Okay, and that's to the address at the property appraiser site where they receive their tax bill?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: All right. Great. Anybody else live, otherwise, we're going to go virtual? All right. Thanks. Jeremy, you want to take it from here?

MR. FRANTZ: Yes. We have two speakers registered on Zoom for this item. I do have one phone number. I don't know who it is. So I'm going to try to reach out to them first. I have a phone number that ends in 0273, if would you like to speak to this item or another item, if you would identify themselves, make sure you're able to speak?

HEARING EXAMINER DICKMAN: I would like anyone calling in, or speaking in, establish whether you have taken the oath or if you need to be sworn in. Let's go.

MR. FRANTZ: Okay. I'm not hearing anything from -- not hearing anything from that phone number. So I'm going to move on to our next registered speaker and that is Kathy Robbins.

HEARING EXAMINER DICKMAN: Okay.

MR. FRANTZ: Kathy, are you there?

MS. ROBBINS: Yes, I am, and I would like to introduce myself, and I was here for the original swearing in at the beginning of the meeting.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. ROBBINS: My name is Kathleen Robbins, and I live at 10525 Gulf Shore Drive, Unit 231, and that's here in Naples, and I've been boating for 19 years on the Vanderbilt Lagoon, always with fairly small boats that were shallow draft. I had a big boat up north, but I knew it wasn't going to work down here.

I've observed with my depth finder on both boats that there is depths of only two to three feet in the central part of the bay, you know, the part you have marked red in one of your drafts there, and I submit that your due diligence must include some hard facts regarding the depth or lack of depth that boats will have to traverse, because of the -- because they need to avoid this extended dock.

So it's possible that this subject boat, the 38-footer, which is really a 35-footer, and I know about that sort of thing, that is causing this request to be made, will not even be able itself to sail past its own boat dock without bottoming out at certain tides.

I asked the man from Turrell if you've done soundings, and if you do soundings, you may discover that you do need to put some markers out there in the back bay to have people not accidentally ground their boat in the middle.

Also I'm worried about the precedent this sets as the other speaker mentioned. It seems like a grand, open bay and it's tempting to say it's all available for boating, but how much of the bay is really useable by the boating community is up for question. So that's it. Thank you very much.

HEARING EXAMINER DICKMAN: Thank you. Appreciate that.

MR. FRANTZ: Our next speaker is Margaret Butler. Margaret, are you there?

MS. BUTLER: Hello.

MR. FRANTZ: We can hear you. You have five minutes.

MS. BUTLER: Okay. My name is Margaret Butler and I live at 307 Oak across the street, and I've been in the community for six years. I take my kayak and paddle board and everything in the Vanderbilt Bay. I have also been in boats through Vanderbilt Bay.

MR. FRANTZ: Margaret, one moment.

HEARING EXAMINER DICKMAN: Can you tell me whether you were here when the oath was administered to witnesses, or do we need to swear you in now?

MS. BUTLER: No. I was here in the beginning.

HEARING EXAMINER DICKMAN: All right. Thank you very much.

MS. BUTLER: All right. I've been around boats in the back bay and I've had no issues whatsoever. I support them. You know, it improves the neighborhood, and it brings everything up to code, and in the way it's supposed to be. I'm in favor of this.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. BUTLER: Thank you.

MR. FRANTZ: That's our last speaker on Zoom.

HEARING EXAMINER DICKMAN: Okay. No one else? We're going to allow for some rebuttal, sir. How are you, sir?

MR. ROGERS: Good. Thanks. Again, Jeff Rogers. Yes, so pertaining to, I do have those setback waivers signed, and those residents that do live in Canada, I would like to speak to that.

Basically the state and federal permitting process for this dock took approximately eight months to get these. The letter is dated, I'm not sure. We can pull it up if we'd like to look at it, the setback waiver, but Gigi Sarazin, the applicant, went next door to each owner and met with them in person. I believe they're on the Zoom as well, so they might be able to testify to that, if you would like.

In regards to that, the county process takes about four to six months to get here as well. So we try not to overlap those two, because it's a state and federal zone issue, there is no point moving forward with the boat extension process. This has been ongoing for almost a year at this point for the applicant, if not longer. I can't state the exact date, but it's been a year process.

When we originally started this process they did own a different vessel, again, I want to stress was not adequate for this waterway. It was an inboard/outboard vessel, which means you can't trim the engines up in shallow waters.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: Basically the choke point in this waterway, from local knowledge, is water at Turkey Bay, where the county is constantly dredging, as well as Wiggins Pass. Thread of navigation wise, again, if there was any hazard areas, it's the responsibility of the state or Coast Guard or the county, dependent on the subject waterway, to develop or lay out a thread of navigation. It's not up to the homeowners to put in channel markers; that is up to the state and federal government, as well as county entities.

I could go over the design details for the dock and show you we have minimized this as much as we can. We did provide a two-foot section of dock in front of the bow of the vessel, which we -- it's a safety issue when you're pulling in to a concrete seawall, accidents happen. No one's perfect in driving a boat, so we wanted to provide something there in case they came in a little fast for preventive measures from them impacting the seawall. The seawall, again, I will stress is being replaced. It's going to be put on the waterward side of the existing wall. So the existing wall will not be removed. It's just a new wall in front of the existing wall, which is what the state, DEP and Army Corps -- that's their guidelines, that's what we have to do.

The pool in their backyard is right there, so if we were to rip out the existing wall, a little bit of a domino effect, in regards to start losing sediment and potentially hurting the foundation of the pool and leading to bigger, much bigger issues for the homeowner and a huge expense, on top of what they're spending here.

The dock is aged. I don't know exactly when the existing dock was built. It does have a boathouse on it, a roof over it. We are protruding out further than what is there, but, again, I need to stress that it's the vessel size that's driving this, and per the letter from Marine Max, they own the vessel, which we can prove and have, and they have every right to put the vessel at their dock.

As for Turrell, we've worked with them on numerous concepts to reduce and minimize the protrusion, as we knew this area of Naples and Collier County is, you know, people like to come out and complain a little bit about it. There are areas, I did a little research on the people complaining -- or objecting -- excuse me -- there is -- no one has really a boat dock extension. However, one of the docks is out to the 20-foot mark, and their vessel does extend over the 20-foot protrusion mark, and they do not have a BDE for that.

So technically that's why we're here. We don't want this client to be out of compliance and their vessel to extend out past the allowed mark, because the vessel is also part of the protrusion measurement criteria. I would be happy to answer any additional questions you have as well.

HEARING EXAMINER DICKMAN: Don't go anywhere. Unless do we have anybody else to speak before we close the public hearing?

MR. FRANTZ: I don't have someone registered to speak, but I did receive a message from Marc Sarazin asking for a letter of support to be displayed. Would you like to see that?

HEARING EXAMINER DICKMAN: Sure. Yes, please.

MR. FRANTZ: I think this is part of the presentation, Jeff. If you could help me find that, that would be great.

MR. ROGERS: It was sent yesterday afternoon to John.

MR. ROGERS: I don't think it's on the PowerPoint. I believe it's in John's package.

HEARING EXAMINER DICKMAN: I have it, too; right?

MR. KELLY: You do.

HEARING EXAMINER DICKMAN: Okay. Great. I do have it. If we don't have anyone else, I'm going to close the public hearing. All right. Going once, going twice, closed. Couple quick questions for you. I know this is a large body of water, and water being what it is, obviously, it's a tidal area.

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: What are the tides like?

MR. ROGERS: On average Naples has at most a two-foot tide swing. Everyone in Naples.

HEARING EXAMINER DICKMAN: What about in this area?

MR. ROGERS: I'd say about 18 inches to 24 inches.

HEARING EXAMINER DICKMAN: Okay. And even though it's a large body between the two land areas, where is the channel, per se, for the boats that actually ingress/egress this area? Have you determined that, because it seems to me that, obviously, the canals, you know, is it deeper along the land area, is that usually where --

MR. ROGERS: That's where most of the traffic would be due to that's where the docks are, and them coming and going, but the whole subject waterway is traversable with vessels. We have, you know, we did not get water depths due to that. We knew the whole waterway was open for navigation. It wasn't the driving factor here. So to our knowledge there is no navigational hazards at all here.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: We did Regatta Landing across the way, our firm did. We did numerous boat dock extensions in this area. I've personally dove numerous areas as well. Grew up here, born and raised in Naples, very familiar with the area.

I am, again, a licensed captain, so if there navigational issues, there would be established thread of navigation like everywhere else and in the ICW's along Naples and Collier County.

HEARING EXAMINER DICKMAN: Let me address this decking, if I could. Starting from the west to the east on your diagram that I'm looking at, you've got a five-foot wide deck. This is where the jet skis are?

MR. ROGERS: Correct. Yes, sir.

HEARING EXAMINER DICKMAN: And then you have eight feet on the other side, which is between the jet skis and the boat. Are those the minimum necessary to be safe or --

MR. ROGERS: What we did there was basically we split the middle, four feet for each side for access on each one, and they do have a family member that is in a wheelchair, so they will be going down on the dock.

The dock is designed to be flush with the top of the seawall cap, so there is no step down. So we did take that into consideration. This is a not a commercial or multi-family facility, but I stated that in the application. So that is another special criteria that we had to take into consideration here.

HEARING EXAMINER DICKMAN: All right. And then in front of the jet skis you have

approximately an area 25x11, for what looks like kayaks, but I'm sure other things will happen there.

MR. ROGERS: Recreational, yes, kayaks and paddle boards, indicates there is other recreational storage going on on these dock facilities. As we know chairs and tables are not allowed basically on your dock facility.

So, you know, the 8 foot area we, you know, we did -- when I started this process with the owners, I did say that that, you know, could be considered excessive. They are open to minimizing that down to six, but that would be the only, you know -- we still have to provide enough room for the wheelchair access, that's the -- that's kind of one of the driving factors there, big driving factor.

HEARING EXAMINER DICKMAN: Okay. And then 6 feet on the very eastern side, I guess, would be right side of the boat is port?

MR. ROGERS: Yes. No, it's -- actually it's starboard.

HEARING EXAMINER DICKMAN: Starboard.

MR. ROGERS: Port is to the left side, so starboard is right.

HEARING EXAMINER DICKMAN: Just checking. You said you were a captain.

MR. ROGERS: Yes. You tricked me. Starboard is the right side, so that would be the east side, and why we did that, so you know, manufacturers of boat lifts, they don't technically want you to load and unload vessels when they're on the lift. They specifically say that is a manufacturer's safety issue.

So on the far west side, just temporarily mooring the boat there, I know it's within the setback, they could technically load and unload there real quickly and leave. So state and federal usually requires handrails to prevent additional mooring there, so you cannot moor a vessel there. It's within the setback, and it's not allowed to moor there, other than a temporary basis.

HEARING EXAMINER DICKMAN: And lighting on the dock, I guess, you're going to have electricity out there for the lifts; correct?

MR. ROGERS: Yes, sir. We always spec out low voltage lighting that basically illuminates downward on the dock piles that stick up. They look like little hockey pucks and shoot downward only, because the way that sound and lighting does go out on the waterways, a lot more than in a normal setting, so we have to, per code, we have to follow the building code that's established and basically illuminate just the walkways.

HEARING EXAMINER DICKMAN: Okay. Okay. And you indicated that the waivers were really part of the state permitting process?

MR. ROGERS: Correct. It wasn't required for this, because we met the county's setback requirement of 15 feet. The state's requirement is 25 feet here.

HEARING EXAMINER DICKMAN: When you got that waiver, was the notice already on the front of the property for this hearing?

MR. ROGERS: No, we did that prior to the -- again, we do the state and federal permitting process first before the notice goes out. However, they did have an exhibit. We have that on the PowerPoint, if you would like to see it? It has the exhibit. They signed it and initialed the exhibit itself and dated it.

We have to do that for the DEP requirements. So the first page of that setback concurrence letter is basically the project details, and the second sheet is the proposed dock exhibit, and it shows clearly setbacks, the docking facility, because the setbacks are what was driving that waiver to be signed.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: Again, I'm not sure why they're now objecting to it.

HEARING EXAMINER DICKMAN: Well, I'm sure they have their reasons.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: But if that particular neighbor wishes to withdraw the waiver to the state, that's up to them; that's not under my purview.

MR. ROGERS: Right.

HEARING EXAMINER DICKMAN: I do have a letter, I guess it's an e-mail of objection on

them.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: So I have that here in the packet. I don't have any further questions for you. John, do you have anything else you want to add?

MR. KELLY: No.

HEARING EXAMINER DICKMAN: He's saying no for the record. Then I appreciate all the information from the neighbors, from the applicant's representatives and from the county for doing their analysis of this. I will close this item, and I'll render my decision as soon as I can get through this.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Thanks for being here. Great. All right. Flip the page here. We're going to 3B; 3B on the agenda. Who is up? The applicant. Wow.

MR. ROGERS: Not going anywhere. I got two more.

HEARING EXAMINER DICKMAN: Busy guy.

MR. ROGERS: Yes. For the record, Jeff Rogers with Turrell, Hall & Associates, here representing Mike McKenna located at 24 Pelican Street down at Isles of Capri. There is a PowerPoint as well for this one.

This one is also a unique situation. The dock -- the reason we're here is basically because the dock was damaged due to Hurricane Irma, and all we are proposing today is to basically rebuild the previously-damaged dock that was there, and replace it with exactly what was there. There's the Isles of Capri, go to the next one, Jeremy -- go to the next -- go to the fourth slide, please.

MR. FRANTZ: It moves a little slow between my computer and the screen, so it's on the way.

MR. ROGERS: No problem. Keep going. Next one. So this is a 2017 aerial showing you the dock facility pre-Hurricane Irma damage. So the applicant has been -- we've been dealing with the State of Florida DEP as this area is also an aquatic preserve, and due to it being an aquatic preserve, we have much more restrictive requirements for docking facilities.

However, in this case, a lot of these docks that you see here along this waterway are -- were built prior to the aquatic preserve being established in 1975. So these are technically grandfathered docking facilities with the State of Florida. That is honestly why we are proposing to rebuild the existing -- the previously-damaged dock, because once you change the footprint of the existing grandfathered structure, you have to come into compliance with the State of Florida's water preserve rules, which in this case, not to, you know, bore you with all their rules, would require us to put a marginal dock up along their shoreline and basically reduce us down to a 500-square feet only with one boat slip. I do have pictures of the damaged dock in the slide show. However, the applicant is proposing, honestly, to rebuild what's there. It is also grandfathered with the county.

However, we're adding a boat dock lift to it, which is why we're here in front of you today. We're adding a boat lift to the west side where he had a damaged boat lift; that was not permitted originally with the county. So we are basically bringing that into compliance.

The applicant purchased the house and the dock the way it is in front of you today. So he did not install the boat lift that was there and damaged. A contractor installed it without a building permit.

In order to put that back in, we have to go through the boat dock extension process, which is why we're here today. If he was not proposing to do that boat lift, we would not be required to be here in front of you today.

So that is -- I just want to stress that that's the only reason we're here, really, is to justify the installation of the boat lift. So the docking facility is grandfathered, again, with the state, feds and the county. We meet these setback requirements. We have reduced -- if you see the 13 foot there, if you go forward, Jeremy, one slide, please.

There is the damaged dock as it sits today. The whole terminus end of the dock was basically ripped off during Irma. We would like to extend it back out there. There is mooring piles out there that show where the dock was, but other than that, it has basically floated away. Go to the next slide, please.

So here is what we're proposing: It's basically within the same footprint. The boathouse is

existing and still there today. As part of this project, he will be basically rebuilding the whole facility, as it has aged and structurally needs to be rebuilt and brought up to current hurricane code with the roofs and everything.

So we did minimize the extension of the 20-foot terminus end of the dock from a 13-foot setback requirement. The applicant -- any minimization like that DEP allows you to do. It's when you significantly change the footprint in regards to increased decking or anything like that, that's when they lose the grandfathered structure. Here we're trying to meet code with the 15-foot setback. So we've trimmed off two feet of that terminus end to avoid having to do a setback variance with Collier County as well.

It is state lands here, and we are technically required to do 25-foot setbacks, but, again, it's a grandfathered structure, so we do meet the 25-foot setback that's on the, called the northwest side, and on the southeast side, we do meet county requirements. So DEP, again, it's a grandfathered structure, so they allow that. Next slide, please.

There is a cross-section view of it extending out, water depths here on Marco River is significantly deep, and there is plenty of water to moor the vessel, but, again, if we were to rebuild it per county -- or excuse me -- DEP's rules, we would be bringing it way closer in to shore, and in the previous slide there's docks that extend out on either side of this.

So ingress/egress to a slip in there would be very difficult with the currents that are within the Marco River. Next slide, Jeremy. I've got some photos. There is an example of all the other docks. Again, let me stress, we are obviously the one with the proposed dock. As you go further east there, the state rules will allow you to extend your dock out past the negative four-foot mean low water contour, per the aquatic preserve rules, which is why all the docks on the north side of Pelican Street, and on the south side, extend out to get to adequate depth for the vessels. The state will allow you to do that to get to a proper depth, which is negative four feet mean low water.

So this gives you an idea if we were to bring our dock back way in to meet code for the state, it would be very difficult to ingress/egress that slip, and we would lose the grandfathered structure of it. Next slide. Do the next one.

We're within the ST overlay, that's an environmental overlay there. So there is the width of waterway. I'm not sure if you're familiar with it, but the Snook Inn is immediately to your right.

So there is an established thread of navigation in this waterway. You can see the channel markers, roughly the brown dots off of that big L dock there on the south side of the Marco side. So there is a thread of navigation here to follow, and these docks are existing, and it's a common area that these do extend out further out. Next slide. I've got some pictures. Keeps going. That's where I dove. There is no resources, that indicates the area we have to check for resources.

So that's the dock prior to Irma, just to give you an idea of what it looks like, and how it fits in with the other docks in the area. I believe the next picture -- next slide is the existing conditions today.

So the dock is unsafe and unusable currently, and been like that since Irma, and due to permitting issues with the state and all that, it's taken a lot of time to get here in front of you today. The dock to your immediate right on the picture on the left, was I believe also damaged during Hurricane Irma, and has since been rebuilt, and they have reduced the overall protrusion of that docking facility.

I don't know what drove reduction, whether it was the boat dock extension, or they weren't grandfathered, I believe is what it ultimately was with DEP, so they had to rebuild what was actually grandfathered, which the boat lift on the outside and the terminus were not grandfathered structures. So that dock since has been reduced in regards to overall length.

Other than that, that's basically an overview of the whole project. Again, I just want to stress it's a grandfathered structure. Per the criteria, we meet it, staff will attest to that. I don't want to run through it all, but we are asking for an extension, and it's a grandfathered structure. I keep stressing that. We're rebuilding what was there.

HEARING EXAMINER DICKMAN: And you didn't get the job next door?

MR. ROGERS: No, I did not.

HEARING EXAMINER DICKMAN: All right. John, come on up.

MR. KELLY: For the record, John Kelly, Senior Planner. Good morning. So in listening to the applicant, they are correct. The structure would be grandfathered. What they are here for pretty much is to add the boat lift.

Staff analyzed this and found the petition satisfies four of the five primary criteria. Of the six secondary criteria, one is the Manatee Protection Plan, which does not apply and they've satisfied four -- rather five of the remaining six secondary criteria. They satisfied all seven of the boathouse criteria, and, therefore, staff recommends approval.

HEARING EXAMINER DICKMAN: Okay. So on the first criteria, it's the water depth that you're saying criteria is not met, I believe, No. 2?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: All right. And then the Manatee Protection Plan is not applicable. All right. Are you satisfied with the notices that were sent out and everyone has been properly notified?

MR. KELLY: Again, newspaper advertising and by mail was satisfied by operations staff with the county. I personally posted the sign to the front of the property 15 days prior -- at least 15 days prior to this hearing.

HEARING EXAMINER DICKMAN: And correct me if I'm wrong, does the applicant have to sign an affidavit that they've done the mail-outs, or who has to attest to that?

MR. KELLY: County staff requests the mailing and the advertising. I --

HEARING EXAMINER DICKMAN: So the county does the mailing and the applicant pays for it?

MR. KELLY: Perhaps, Ray, can you, please?

MR. BELLOWS: Would you repeat the question?

HEARING EXAMINER DICKMAN: With regard to notices, I want to know a little more about that, the radius mail-out, is that the newspaper and the sign, does the applicant -- is the applicant required to sign an affidavit, but, I guess, they don't do it, the county actually physically goes out, puts the sign out?

MR. BELLOWS: For the record, Ray Bellows, Zoning Manager. The Land Development Code has the rules and regulations for land use petitions and it's also in our administrative code.

The intent is that where the property is an acre or less, the county staff will place a sign on the site. If it's an acre or larger than an acre, the applicant is required to place a much larger sign.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BELLOWS: And that's usually contracted out with one of the sign companies, and we have a format of what the signage is supposed to convey on them, on the advertisement.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: Newspaper ad is the same kind of title language we use for the resolutions, and they are incorporated within the letters that are also mailed to property owners within 500 feet of the site.

HEARING EXAMINER DICKMAN: So the county takes on that responsibility?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: Great.

MR. FRANTZ: I can provide a little bit more background for you on the mailing portion.

HEARING EXAMINER DICKMAN: That is Jeremy by the way.

MR. FRANTZ: Jeremy Frantz, thank you. Staff prepares the mailed notice, the letter that goes out is a mailed notice. We coordinate with the agents or the applicants to ensure that that letter is correct. We then receive an affidavit from the printing company that sends the letter that it has, in fact, been mailed.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you for that. I just wanted to get that into the record. All right. Thank you. Anyone here in the audience live that would like to speak to

this? Do we have anyone signed up?

MR. BELLOWS: No one has registered.

HEARING EXAMINER DICKMAN: No one has registered. All right, Jeremy?

MR. FRANTZ: No one on zoom as well.

HEARING EXAMINER DICKMAN: No one on zoom as well. Okay. I'm going to close the public hearing, obviously, unless you have heard something from staff you want to rebut? I see the applicant's representative shaking his head no. We'll ask him not to do gestures like that. I will interpret that.

MR. ROGERS: No, for the record.

HEARING EXAMINER DICKMAN: Then we'll close the public hearing. I have heard testimony from the applicant, staff have reviewed all of the materials that have been provided to me, much of which is what was shown here today at the public hearing. I do understand the reason for this, and I will be rendering my decision within a reasonable time frame so...

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: You're welcome. All right. So that item is over and done with; that was 3B. I think we're going on to 3C; is that right?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: Is this another dock? All right.

MR. ROGERS: We have a monopoly on these docks.

HEARING EXAMINER DICKMAN: Not according to the last hearing.

MR. ROGERS: Jeff Rogers for the record, here representing the owners of 207 Bayfront Drive. This is up in Little Hickory, up on the north end of Collier County. Located -- it's basically a new build, single-family residential lot here, that the house is currently under construction and basically we are proposing a 39-foot boat dock extension and requesting a 19-foot extension from the allowed 20 feet. One slip is being proposed.

HEARING EXAMINER DICKMAN: One second, if you would?

MR. ROGERS: No problem.

HEARING EXAMINER DICKMAN: Can we -- just let them get into the room.

MR. ROGERS: No problem.

HEARING EXAMINER DICKMAN: Do we have a lot of people outside waiting? Okay. Good. I appreciate everyone's cooperation with the social distancing. Thank you very much. Sorry for the interruption.

MR. ROGERS: No problem.

HEARING EXAMINER DICKMAN: It's important that we conduct this properly.

MR. ROGERS: Understood. No problem. I'll be relatively quick. Jeremy, can we go forward with the slide, please. Show you the proposed dock here. Actually, the house -- there was an existing house, and it has since been torn down.

Here in this general subdivision development there is mangrove fringes along all the subject shoreline here. Most of them are within a county easement. That is a required conservation easement that is required to be there, so most of these docks basically extend out past the mangrove fringe, which is the driving factor on this one.

We are extending out past the existing vegetation to get out into adequate depths as the neighbor to our immediate southwest has done on this aerial. Jeremy, next slide.

As you can see we propose -- we're allowed a four-foot walkway through the mangrove fringe, that is all that is allowed to extend out past, so that is what is being proposed. It does pan out to be five feet once we get out past the fringe, in order to provide adequate access to the vessel for maintenance, cleaning and loading and unloading.

Again, we meet the side area -- this is state lands again, and we have to have 25-foot setbacks. No setback waivers were received on this one, I believe. We could meet the setbacks with this one, and the adjacent existing -- the adjacent properties have existing docks, and the closest one is on the bottom of

the screen, that you can see, and the property to our immediate east, northeast wraps around, and their docking facility is around the corner, which you can see on the next aerial moving forward.

Next one, you got some water depths. We do have depths here, plenty of adequate depths here to moor the vessel. We basically brought the terminus platform, which is the dock that's parallel to the shore, that's close to the mangrove fringe, as we possibly could to reduce impacts to the mangroves. Lateral branch trimming is allowed over time to maintain that walkway from branches extending out over the walkway, which is what the State of Florida allows, as well as Collier County to maintain access. Moving along, next one, yeah, that's a good one.

This shows the mangrove fringe and the cross-section view of the overall dock protrusion. Most restrictive point is from the top of the riprap here, so the mean high waterline protrusion is 35 feet into the subject waterway.

The subject waterway is approximately 144 feet wide, so we are well within the 25 percent width of waterway to maintain navigation. This one is pretty straightforward, and not much else we can do on the subject site. If you have any questions, I will be happy to answer them.

HEARING EXAMINER DICKMAN: I'm pretty sure that you told me that they recommend not to enter your vessel on the starboard side.

MR. ROGERS: Yes. This would be the port side, actually, the left side.

HEARING EXAMINER DICKMAN: The left side.

MR. ROGERS: Yes.

HEARING EXAMINER DICKMAN: Just checking.

MR. ROGERS: As I think it, left forward, you know, yeah.

HEARING EXAMINER DICKMAN: Yeah. Thankfully I sold my boat a long time ago.

MR. ROGERS: If you ever need a dock, let me know.

HEARING EXAMINER DICKMAN: Best decision I ever made.

MR. ROGERS: It is a lifestyle, I will say that.

HEARING EXAMINER DICKMAN: Okay. I'll let you sit down and save time for rebuttal. John, you guys have a monopoly on docks?

MR. KELLY: For the record, John Kelly, Senior Planner. Staff analysis finds that the request satisfies four of the five primary criteria. Of the six secondary criteria, the Manatee Protection Plan is not applicable, reducing it to five; therefore, the applicant satisfies four of the five remaining secondary criteria.

In this case the property has been razed. We're uncertain of how much has been reconstructed on the property. Therefore, we would recommend that this petition be approved with the stipulation that the issuance of the Certificate of Completion for the dock facility not precede the issuance of a Certificate of Occupancy for the dwelling, as you cannot have an accessory structure without a principal structure, and that would conclude my presentation.

HEARING EXAMINER DICKMAN: One question for you. I know on the --

MR. KELLY: The sign was posted.

HEARING EXAMINER DICKMAN: Okay. Let's do that; that wasn't my question, but thanks for reminding me. I want to make sure we cover the sign.

MR. KELLY: The sign was posted at least 15 days prior to the hearing on the right-of-way to the front of the residence.

HEARING EXAMINER DICKMAN: Mail-out and newspaper; right?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay. Did you actually post the sign yourself?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Great job. You can take the rest of the day off.

MR. KELLY: Thank you.

HEARING EXAMINER DICKMAN: I notice the criteria they didn't meet on the first part is the navigation is not driving this; is that correct?

MR. KELLY: Would you repeat the question, please?

HEARING EXAMINER DICKMAN: I think you said there was one criteria that, in your evaluation on the primary criteria, that you said it did not meet and it looks like it was --

MR. KELLY: I believe they satisfied all the primary. I stand corrected.

HEARING EXAMINER DICKMAN: Okay. I'm looking at No. 2.

MR. KELLY: Oh, I'm sorry.

HEARING EXAMINER DICKMAN: Water depth is not the primary factor driving the subject -- this is proof that I do read these.

MR. KELLY: Correct. My spacing is off, I confused No. 2 with No. 3. You are correct, water depth was not the driving factor for this boat dock extension and was not provided, and, therefore, it was not reviewed. The staff simply found that they do not satisfy that criteria.

HEARING EXAMINER DICKMAN: Okay. And according to the code they must meet four of the five criteria, primary?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: They have four of five; correct?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay. Don't go anywhere. Any members of the public, Jeremy, Ray, anybody; anybody sign up?

MR. BELLOWS: No one has registered in person.

HEARING EXAMINER DICKMAN: Anybody here want to raise their hand, if they want to speak to this? No? I see none. Anybody online, Jeremy?

MR. FRANTZ: There is no one online.

HEARING EXAMINER DICKMAN: Okay. Going smoothly. Do you have anything you want to final off with Ray? You want to argue with Ray a little bit?

MR. ROGERS: No, the mangrove fringe is what's driving this petition.

HEARING EXAMINER DICKMAN: The mangrove?

MR. ROGERS: Yeah, that is the driving issue to get it out past the mangroves. We're not allowed in the mangroves.

HEARING EXAMINER DICKMAN: And you understand the second condition that John mentioned to you?

MR. ROGERS: Yes. Oh, yeah. Yes, sir.

HEARING EXAMINER DICKMAN: And do you know why that is?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: Great. You can't just put docks out there on vacant land.

MR. ROGERS: Correct.

HEARING EXAMINER DICKMAN: Okay. I'm glad everybody understands each other. I've read everything. I understand. I believe notice has been proper, and I will render a decision as expeditiously as possible.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Do you have any more docks today?

MR. ROGERS: I'm out of here.

HEARING EXAMINER DICKMAN: You're out of here.

MR. KELLY: So am I.

HEARING EXAMINER DICKMAN: Go build some docks. Get wet. Stick around. He's kind of fun. All right. Get set up here. What do we have now? We have 3D. All right. Going to Item No. 3D, who do we have? The applicant or applicants, there you are. How are you?

MS. MARIHUGH: Good. How are you?

HEARING EXAMINER DICKMAN: Fine.

MS. MARIHUGH: Congratulations on the new position.

HEARING EXAMINER DICKMAN: Thank you.

MS. MARIHUGH: Put the mask on. One to match my suit, you know.

HEARING EXAMINER DICKMAN: Yeah.

MS. MARIHUGH: All right. Debra Marihugh (phonetic) for the record. I represent Eco-Site II, LLC in the variance application. Thank you, Mr. Dickman, for presiding. Good morning, Mr. Bellows.

MR. BELLOWS: Hello.

MS. MARIHUGH: James could not be here today. Hopefully I will answer all the questions for you. Thanks for bringing up the PowerPoint. Take my reading glasses off. Anyways, we're here on a variance application. There are several variances being requested due to the shape of the parcel. Can you go to the next slide?

So you can see on the location that this is a rectangular parcel resulting from the condemnation case through I75 South many, many, many moons ago. It is a heavily-wooded lot, as you can see on the aerial, north of the Palm Springs Park, and let's see. I think that's a little far away for me to read. I'm going to follow along with my hard copy.

HEARING EXAMINER DICKMAN: Take your time.

MS. MARIHUGH: It's right in between where I can't see up-close, and I can't see that far.

HEARING EXAMINER DICKMAN: Take your time.

MS. MARIHUGH: It is zoned agricultural. We probably spent -- this project has been in the works about three years. We spent a good deal of time to locate an appropriate zoned parcel to request the towers, but also the variances.

This is limited to variances because it's zoned agricultural. This is not really about the tower use. Let's see. The existing use, like I said, is vacant, and this is an unmanned facility, so there would be no public services or facilities required for the -- for the operation of the unmanned facility. Can you go to the next slide? Thank you.

This slide will highlight, again, in the hashing, the triangular portion just north of the site and north of the park and there is a 60-foot wide platted public easement that goes down to the roadway that's on the western boundary of the park, and the hashed portion, which is right along the western boundary, would be our access easement which is consistent with the public easement.

We did review, back when we were doing the investigation for this site, we pulled title on all of the lots that abut that easement, as well as search all the county records in conjunction with staff to make sure that there was no vacation of that easement, and we did confirm that through title as well as the staff and the county records.

So you can see on this particular site, or this particular slide, and you'll see it in more detail as we get closer, the setback. The only setback we're asking for the tower itself is from I75. We meet and exceed all of the other setback requirements which is twice the height from the east and the west, and half the height from the park to the south, based on code.

We did have to ask for the variance from I75; the point being we were shifting the compound and the tower as far east as we could, where we could design the compound and make it useable, but maximize that distance from the west. Next slide, please.

It is a 10,000 square feet leased parcel, which is a little larger than we normally have, means we have to have more control over the property to accommodate all the additional buffers and mitigation that we're offering.

The compound itself is a little over 6,000 square feet, and right now we can fit in, you can see, three concrete equipment pads. Those, if you go to the next slide, you can see those are the setback variances that we're requesting, again, all from the north and all from I75.

The goal of the design of the compound was again to shift the equipment as far east as we could, and it still work from a design standpoint, and what ends up happening, it pushes us closer to I75, but in working with staff, we all felt that was the least -- that would be minimizing any adverse impacts on the surrounding properties to the west, to the east and to the south, which of course to the south is the park. Next slide, please.

On the landscape buffer we're not asking for any variances from landscaping, but the landscape buffer requires 20 feet on every side. Obviously to the east it's a little problematic because it becomes a triangle, so you're not getting the full 20 feet. To the north and the south we were able to put in ten feet on either side, which abuts an 8 foot architectural facade, an architectural facade on the CMU. It's not just going to be a concrete block wall.

But, again, to the north we're constrained by the I75 right-of-way. We're constrained not by the park, but there's a 30-foot easement to the south that we can't put landscaping on, and that is part of our access.

So what we did is we added additional buffer to the west. Its average width is 47 feet. It's 46 feet -- it's a trapezoid, so it's 46 feet on one side, and 48 feet on the other. So we have an average width of about 47 feet, again, to the west which is where we felt that would be most appropriate, since the residents that live in single-family homes are more to the west and southwest. So we can go to the next slide?

Again, we're not asking for any variances from the landscape plan, just want to make that clear for anybody who may be online watching or in attendance. Next slide.

This shows the overall plan. Again, you can see the triangular nature of the parcel, but it also shows the preserve area. Collier County has a preserve area plan requirement, and we are adding 42 feet in width, the whole length of the west side of the parcel, because there was an existing preserve area adjoining that on that west boundary that belongs to the PUD.

So, again, in working with staff we want to expand that preserve area and create a more contiguous and larger preserve area that would be managed, instead of isolating it somewhere else on the site. We're not asking for any variances, but I think that's important information for those that might be watching or here today. Next slide.

I know that it's easier to look at aerials than it is plans sometimes, so we did do some photo sends. I think normal people who work in the engineering and architectural world relate to photographs a little bit better than plans and line drawings.

So this will show you the different areas, like, the top red dot is where the facility will be, and those numbered orange dots are where we took the photographs, so you can see before and after. Next slide.

So this is the view from that cul-de-sac Pine Vale Drive, the very terminus at the very top is what it looks like today, what it will look like with the facility. Next slide. This is from that southwest -- no, from the public easement to the west in the northwest corner of the park, looking, so from that public easement that's along the west boundary of the park. Next slide.

This is from the southwest corner of the park. You can see the park side. So it's little bit north of the Pine Vale Drive road -- or Palm Lake Drive. I'm sorry, Palm Lake Drive road looking north or northeast. Next slide.

We also took a photo from the southeast side of the park, which is closer to where the apartments are, and looking northwest. Next slide.

This is the view from the parking lot in the far northwest corner of the Sherwood Park Apartments that is on the east side of the Palm Springs Park. Next slide. We'll get to that, because that typing is too small for me to read.

So we concur with staff's reports and findings and analyses. They did agree that we're consistent with the Collier County Growth Management Plan. We are not asking for any landscape variances. We're not asking for any preserve area variances.

This is an existing 1.56 acre triangular parcel that is wedged in between a park and I75. To the north is heavily-wooded. The development options are extremity limited due to access and the size and the configuration of the parcel, and that's why this is really the highest and best use for the parcel.

It's an unmanned facility. When it's built it will only need one or two maintenance trips a month for the wireless providers to go out there and check their equipment and routine maintenance.

The triangular configuration of the subject property is unique. It's a peculiar circumstance not

created by the owner or the applicant, and it places an undue burden and hardship on any future development or use of the property.

There really is -- due to infrastructure requirements, if you have anything that was habitable, that would present a problem. This is a utility-type use, and there are no, obviously, nuisances, and no strain on public services or facilities.

The five of the six variances requested are from the north boundary, which is adjacent to I75, the other is from the park, and that was the landscape buffer width, not any setbacks, just the landscape buffer width we're mitigating on the west side of the compound.

I think staff has analyzed and has very detailed findings regarding all of the variance criteria, which is quite repetitive, you know, when you're asking for three different types.

It all boils down to the triangular nature of the parcel, so that's contained in staff's report, and based on our justification narrative that's in the record.

I'm happy to answer any questions. I understand that there are at least two people here today in person. My client is on the phone. She was sworn in. She doesn't care to speak unless you have a specific question for her, and here to answer any questions.

HEARING EXAMINER DICKMAN: Why don't we let you reserve some time for rebuttal at the end?

MS. MARIHUGH: Sure.

HEARING EXAMINER DICKMAN: If your client wants to speak we'll do it then. I will hear from the county and the public.

MS. MARIHUGH: Let me just add that I did provide yesterday, when we got notice that there was concerns, I provided the plat. It mainly related -- and they can speak for themselves, but from what I understand, it may be related back to the facility itself, but to the access, I think some of them were under the impression or they didn't know that was a platted public easement.

It is posted. There is a sign posted, so I provided a plat and explained and tried to get information, so we'll hear from them, and I appreciate any time to rebut.

HEARING EXAMINER DICKMAN: Very good. Thank you. Ray, is this your item?

MR. BELLOWS: Yes. For the record, Ray Bellows, zoning manager for the county and I'm filling in for James Sabo who I coordinated with on this review of this petition.

The staff analysis indicates that the project for a proposed tower complies with the variance criteria. Staff found there was a land-related hardship, and due to the unusual configuration of the triangular-shaped parcel, and we are recommending approval with no additional conditions.

HEARING EXAMINER DICKMAN: You feel comfortable that proper notice has been completed?

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Okay. Great. So let's open it up to the public. Anyone here?

MR. BELLOWS: Yes. We have three individuals who have registered. There might be others who came in later, but the first one that registered was Gwen Brown.

HEARING EXAMINER DICKMAN: Great. Come up.

MS. BROWN: Hello, gentlemen. Well, my name is Gwen Brown.

HEARING EXAMINER DICKMAN: Did you have -- were you already sworn in?

MS. BROWN: Yes, I was here.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

MS. BROWN: But we can do it again.

HEARING EXAMINER DICKMAN: No, once is enough.

MS. BROWN: My name is Gwen Brown, and I own 731 Pine Vale Drive, which is affected by the road that they're going to use to bring in the equipment to construct the tower. Yes, I did speak to Ms. Marihugh --

MS. MARIHUGH: Marihugh.

MS. BROWN: -- yesterday, and she was explaining to me what their plans were for the temporary road, and like I said, I've owned that parcel for -- since 1982, and I had no idea that it was public access, and the sign that she mentioned had been put up, I don't know when it was put up. It was not there long-term.

But I'm just, as this is my backyard, so, of course, I'm concerned. I don't -- I have no argument against a cell tower, in fact, probably will help my reception, but I do hope you understand my concern, and Jackie Collins who signed up is not here because of a problem at work, but he's also concerned, and do we have any say-so? Can we -- nothing has been given to us in writing.

We never even knew about a meeting that talked about the access and whatever they're going to do, and I'm just very concerned about it. If what she says -- told me yesterday it was a temporary road, it's not going to be open, you know, like a sign saying, here, come drive through here, because my understanding of public access is that anybody can use it, and this is our backyard. So I know the plat has the date of 1967, sir, about using that as a public access --

HEARING EXAMINER DICKMAN: Uh-huh.

MS. BROWN: -- that was before any homes were built. So I know this is an old plat, and this is a residential area now.

HEARING EXAMINER DICKMAN: Okay.

MS. BROWN: So...

HEARING EXAMINER DICKMAN: I'm looking at the aerial photograph, and I want to identify where you live. If you go to the cul-de-sac, which is Pine Vale --

MS. BROWN: Pine Vale Drive.

HEARING EXAMINER DICKMAN: -- where are you in the plat?

MS. BROWN: I'm No. 2, the second lot in from when you turn in on Pine Vale.

HEARING EXAMINER DICKMAN: To the right if you're going in. You have that very large lot?

MS. BROWN: Well, it's a pie shape lot. It narrows down to the park.

HEARING EXAMINER DICKMAN: To the park. Okay. Great. That's a public park; is that right?

MS. BROWN: Yes, sir, it is.

HEARING EXAMINER DICKMAN: Thank you. I will ask the applicant to address the issues that you brought up.

MS. BROWN: Okay. I appreciate it, sir, very much.

HEARING EXAMINER DICKMAN: Thanks for being here. Make sure you put your mask back on.

MS. BROWN: Yes, sir, I will.

HEARING EXAMINER DICKMAN: All right. Who else do we have?

MR. BELLOWS: The next speaker is Cathy Smith.

HEARING EXAMINER DICKMAN: Hello, Ms. Smith.

MS. SMITH: Good morning. My name is Cathy Smith and I live at the very end of the cul-de-sac at 761 Pine Vale.

HEARING EXAMINER DICKMAN: On the right-hand side?

MS. SMITH: On the right-hand side.

HEARING EXAMINER DICKMAN: So the pond is in your backyard?

MS. SMITH: The park and the pond.

HEARING EXAMINER DICKMAN: I'm looking right at it.

MS. SMITH: I've lived there since 1993, and my concern, the tower I have no problem with, it's the access road. Temporarily, I don't mind, but what's going to happen, I've been there since 1993, I've had many calls into the sheriff's department.

There is some apartments on the other side that have gang activity, and they will come down our cul-de-sac and they will park and wait for 45 minutes, pick up their drugs, sometimes they come back and

do them and leave. I've had to call the sheriff's department several times.

Before the park put up that fence perimeter around it in our backyard, they would drive back behind the park, the teenagers, and sit there at the back of my property in the woods, where they can't see if they pull up, people that pull up to the park, it's supposed to be closed at dark, and play music and party back there. We have had to call the cops.

My concern is this road, this temporary road. I would like a gate put up with a no trespassing sign. It's not a thoroughfare. People should not be going back there to see what's going on, driving back there with their cars, that sort of thing. I think it's a safety issue for the people who live there, especially down at the end.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. SMITH: That's all I have to say.

HEARING EXAMINER DICKMAN: Thank you.

MS. SMITH: Uh-huh.

MR. BELLOWS: The next speaker is Garrett Beyrent.

HEARING EXAMINER DICKMAN: How are you, Mr. Beyrent?

MR. BEYRENT: Good morning. My name is Garrett Beyrent. I'm a registered lobbyist in Lee and Collier County.

HEARING EXAMINER DICKMAN: Okay.

MR. BEYRENT: I'm the father of the kid that owns the property, that's Maximilian X. Beyrent.

HEARING EXAMINER DICKMAN: That owns the property, the subject property?

MR. BEYRENT: Right. It's a lease with the tower.

HEARING EXAMINER DICKMAN: Okay.

MR. BEYRENT: The long and short of it is yesterday was Maximilian's 26th birthday, and he's a waiter in a small family diner in Brooklyn, so he's, like, unemployed. He can't go outside. So I told him I would come up here and just basically say that, I guess, nobody's crazy about towers, but we always need them when we get that dropped phone call, and it does conform to everything.

It's really a safety issue. Towers are necessary for mostly fire and safety response. In this case, that's a perfect location, because that's a -- the whole area around there is really going to grow, and it's going to be heavily used by people that need to use their cell phones.

As far as access, it's a dedicated public road, so I can't really say anything about that. Other than that, that's pretty much it. If you got any questions, I'm sitting right here, and Ray has known me for 20 years so...

MR. BELLOWS: 30 years.

MR. BEYRENT: I'm sorry. It was 30 years? I brought this project in, I think 20 years ago, when my son was 12. He said he would rather be a stand-up comic than be in the real estate development business. I said okay.

HEARING EXAMINER DICKMAN: Brooksville (sic) is a nice place there. Who else? Anybody else? Jeremy, anybody online?

MR. FRANTZ: There's no one registered other than as the agent indicated.

HEARING EXAMINER DICKMAN: The -- okay. All right. So let's -- Ms. Marihugh, do you want to respond to some of that stuff, or do you want me to ask you questions?

MS. MARIHUGH: Well, I can respond and you may not need to ask questions.

HEARING EXAMINER DICKMAN: Okay.

MS. MARIHUGH: So again, we're here on the narrow issue. We're not really here on the use of the tower, not really here on the access issue. The access issue and how we deal with that is going to go through the SDP process, the site development plan process, and the building plan process with more extensive views; correct, Mr. Bellows?

MR. BELLOWS: Correct.

MS. MARIHUGH: And, obviously, we investigated title quite -- I was quite active and involved in that before we even, you know, pursued this site. It will be a temporary situation in terms of

construction, and I mean that's not a long-term situation, and, again, after that, it's just maintenance, which may be once a month per carrier. So I didn't do the plat. It is an old plat. It is dedicated public, platted right-of-way, which the county controls, so I think certainly having information from the neighbors there probably is going to be helpful to Mr. Bellows and further staff review as we go through the process, but I just want to emphasize that today we're talking about the variances, and we have met all the criteria and staff is recommending approval. Do you have any questions?

HEARING EXAMINER DICKMAN: Yes, thank you, a couple of questions. So when we're talking about the right-of-way that was platted, it's 30-foot wide unimproved easement; is that correct?

MS. MARIHUGH: It's a 60-foot platted right-of-way.

HEARING EXAMINER DICKMAN: 60 foot. Got it.

MS. MARIHUGH: If you went to the one slide that has the yellow with the hashing of the triangle, and the hashing down to the roadway, you can see that anything that we would work with the county, in terms of providing access to the site, would be on the western -- no, the eastern side of that platted -- that would be our proposal.

HEARING EXAMINER DICKMAN: And what is --

MS. MARIHUGH: You see that?

HEARING EXAMINER DICKMAN: What is the estimated construction time for this, approximately; do you know?

MS. MARIHUGH: You know, I hate to, because I'm not in the construction business, I've seen them go up as quick as three months. I've seen them take, you know, six months, because this one -- this one, I think, is fairly simple, I think, you know, in between three or six months, but I just don't want anybody to say, "Oh, my God, they took longer than three months." I'm just not in the construction business. It's not a year. It's not like that.

HEARING EXAMINER DICKMAN: So I'm going to either Ray or Ms. Monahugh (sic), whoever wants answer these, that's fine. Does this in any way fall under the Wireless Deployment Act? Are you familiar with that, as far as, like, putting up cellular towers and colocation with public poles and things like that? Okay. I'm getting a no.

MS. MARIHUGH: That would be under a conditional use or special exception. The variances -- confirm, Mr. Bellows -- but the variances all have to do with the setbacks and the landscape buffer widths.

HEARING EXAMINER DICKMAN: Very good. Ray, as far as the roadway that everyone seems to be concerned and surprised about, which I understand a lot of people don't always look at plats and things like that until they see it, what is going to happen there?

MR. BELLOWS: Well, the platted right-of-way or access easements are legitimately created for access to parcels so they are not landlocked.

HEARING EXAMINER DICKMAN: Yeah.

MR. BELLOWS: This parcel looks like it was created as part of the taking when I75 was created. It's primary access is through this easement. We cannot restrict their use of their property by blocking off this access road or right-of-way.

However, there may be an opportunity to work with the residents as a voluntary basis to provide some more security or signage or a gate.

HEARING EXAMINER DICKMAN: How much improvement will occur there? It's a very wide area, but how much improvement is going to be needed there? Not sure?

MR. BELLOWS: Not sure, but at time of the site development plan there will be more detail required as to how much the road is to be paved or created or what kind of surface.

MS. MARIHUGH: Right, that's going to undergo review by multiple departments.

HEARING EXAMINER DICKMAN: I understand. I just want to know. There is some people here concerned about that. As far as -- definitely for the public notice, everyone has to have access to their property. During, as Mr. Bellows mentioned, this was a taking during the interstate, so really can't leave anyone's property landlocked. It does appear that the purpose of this is only to access

one parcel; is that right?

MS. MARIHUGH: Correct, and unmanned.

HEARING EXAMINER DICKMAN: And unmanned, right. So maybe you all would be willing to talk with the neighbors about, you know, just some of their security issues, and access, and, you know, I can't require it, but I'm just hoping you guys will keep talking with the county, might be open to that, as far as addressing any security issues, since it is unmanned and doesn't require that.

MS. MARIHUGH: Well, let me assure everybody, that, obviously, our equipment is very sensitive and high voltage by the way. So it's a secure compound. It's within an eight-foot wall, and it has security. I don't have an official address yet, because that's part of the site development review process, an address will be assigned based on E-911. So there won't -- you know, as in a typical, as Mr. Bellows indicated, everybody has some right to develop their property. Somehow you have to have access to it.

This is, like, the least intrusive type of use that you could put there, and but for, or except for, the short-term construction period, say, between three and six months roughly, there wouldn't be a lot of vehicular traffic there, and we just want to comply with the code, and I really can't guess at what the different review departments, and I'm going to say maybe fire, is going to review. We just have to comply with the code.

HEARING EXAMINER DICKMAN: Uh-huh.

MS. MARIHUGH: We're not looking to do anything that attracts a nuisance. They appear to already have a little bit of an issue, but nobody should be attracted, and quite frankly, I can't imagine that anybody will even see from a distance the compound, because of the heavily-wooded area and the wall and the landscape buffering. So what may be in existence today, in terms of trespassers, I guess, is not obviously the result of what we, you know, are proposing.

HEARING EXAMINER DICKMAN: No, I don't think that -- I don't think that was the issue.

MS. MARIHUGH: Yeah.

HEARING EXAMINER DICKMAN: I think they want to try to --

MS. MARIHUGH: No, I do get it.

HEARING EXAMINER DICKMAN: I'm hoping that everyone can talk to each other.

MS. MARIHUGH: We intend to be good neighbors, and I have Gwen's phone number.

HEARING EXAMINER DICKMAN: Great.

MS. MARIHUGH: We will certainly try to keep them apprised of the process, particularly during construction, if this is approved.

HEARING EXAMINER DICKMAN: Okay.

MS. MARIHUGH: We certainly -- you know, they'll have contact information. It's always posted right on the gate to the compound anyways if issues did arise.

HEARING EXAMINER DICKMAN: So I see on the documents here it says T-Mobile will be on here?

MS. MARIHUGH: T-Mobile and AT&T have expressed interest. Yeah, this is a -- as many have noted service -- not that this is relative to criteria, but service is pretty bad in this area, and it is an evacuation route. It's important to try to get some coverage out there.

HEARING EXAMINER DICKMAN: I imagine you wouldn't put a tower out there if the coverage wasn't bad.

MS. MARIHUGH: I know my calls drop on the way to Miami in that area, so that's my personal testament.

HEARING EXAMINER DICKMAN: All right. Okay. Anybody else? Anything else? Last minute words? County?

MS. MARIHUGH: I concur with their staff report and recommendation of approval.

MS. BROWN: Can we get the site plan?

MS. MARIHUGH: Well, it was in the PowerPoint, but staff has it as a matter of public record so...

MR. BELLOWS: Yeah, for the record, we will be able to furnish you with a copy of the plan.

HEARING EXAMINER DICKMAN: Great. Very good. Thank you very much.

MS. MARIHUGH: Thank you.

HEARING EXAMINER DICKMAN: The public hearing is closed. I have everything. Thank you for all the testimony. Thank you for everyone coming out. I have all the documents, and I'll render a decision as expeditiously as possible. Once again, everyone stay safe and have a great day.

MS. MARIHUGH: Thank you.

MS. BROWN: Thank you.

HEARING EXAMINER DICKMAN: Moving right along.

MR. FRANTZ: It is 11:00, and I just wanted to check in with the court reporter to make sure there is no break needed?

HEARING EXAMINER DICKMAN: How are you feeling?

(A discussion was held off the record, and a recess was had from 11:10 a.m. until 11:15 a.m., and the proceedings continued as follows:)

HEARING EXAMINER DICKMAN: Okay. Get my computer up and running here. I see we are on 3F; is that correct?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: 3F. All right. So let's get started. Hi. How are you today?

MS. HARRELSON: Good. How are you?

HEARING EXAMINER DICKMAN: I'm fine.

MS. HARRELSON: Good morning. I'm Jessica Harrelson. I'm the certified planner with Davidson Engineering here representing the applicant in the Evangelical Free Methodist Church conditional use, and I have just a few very quick slides that Jeremy can run through for me.

HEARING EXAMINER DICKMAN: By the way, everyone, when we're referring to Jeremy, he is actually the Wizard of Oz who is pushing buttons and cranking everything, including all the things up on the screen, and pretty much controls everything.

MS. HARRELSON: If you can move to the next one. Sorry. So the subject property is located within Golden Gate City. It is on the north side of Sunset Road just east of Sunshine Boulevard.

The site is currently zoned RSF3 and is surrounded by RSF3 and RSF12 zoning. This is just a current aerial of the site showing the property and the existing church that exists today. We can go to the next very quick slide.

This is a historic aerial showing the existing church. The church has existed on this property and was established in 1971. You can go on. Churches are permitted conditional uses within the RSF3 zoning district, and we are here today seeking approval of the conditional use that will permit the redevelopment and expansion of the existing church facilities.

This is a copy of the existing conditions on site, the survey. You can see on the south side of the property the existing building, the sanctuary that will remain, and just north of that there is an existing fellowship hall that will be demolished. It suffered excessive damage from Hurricane Irma. Next slide.

This is our conceptual site plan. The current plans are, again, to demolish that existing fellowship hall and construct a new larger fellowship hall to provide more space for the existing congregation.

Ingress and egress will be redesigned to allow for a better flow of traffic in and out of the site, and to provide a greater distance between those access points and intersections.

The site will be improved by adding perimeter landscaping buffers, sidewalks, and the parking lot will also be updated to provide code-required landscaping islands, 129 parking spaces. The parking spaces both grass and paved are proposed. Next slide.

This is just a couple of photos of the site. The photo on the left shows, again, no landscaping. The photo on the right shows just existing poor conditions of the parking lot and the site itself. Next slide. This is the existing fellowship hall that will be demolished. Next slide.

To address compatibility with the surrounding residential community, the church has agreed to ten conditions of approval. These include hours of operation, no leasing of the church facilities to outside groups. The need for a temporary use permit for any special events.

Development will be limited to a maximum of 12,291 square feet for the church and fellowship hall and a maximum of 300 seats. The seats are not increasing. The 300 seats do exist today. Permitted access uses have been added.

Daycare services will not be permitted. Required perimeter landscape buffers and fencing. Trips are limited to 8 p.m. two-way peak hour trips and 164 peak hour Sunday trips, and, lastly, the need for traffic control as determined by Collier County.

HEARING EXAMINER DICKMAN: Stay on that for a minute.

MS. HARRELSON: Sure.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. HARRELSON: I'll take any questions. That concludes my presentation. Very quick.

HEARING EXAMINER DICKMAN: Very good. All right. Why don't I let you have a seat and step back. I'll ask the county to come up, ask for public comment.

MS. HARRELSON: Okay.

HEARING EXAMINER DICKMAN: And you can come back up.

MR. BELLOWS: Ray Bellows, zoning manager for the county. I worked on this project with Laura DeJohn, and we reviewed this petition and found it consistent with the conditional use criteria, and found it consistent with the competency plan and are recommending approval.

HEARING EXAMINER DICKMAN: All right. Two things, tell me about the notice so I have that on the record.

MR. BELLOWS: It was properly advertised and the sign was posted and meets all the county criteria.

HEARING EXAMINER DICKMAN: And the neighborhood information meeting?

MR. BELLOWS: Yes, a neighborhood information was held, find the date of that.

MS. HARRELSON: It was January 6th.

HEARING EXAMINER DICKMAN: January 6th.

MR. BELLOWS: Yes, thank you.

HEARING EXAMINER DICKMAN: It's in the packet. I read it. I'm having you put it in the record.

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Looks like 57 people signed up?

MR. BELLOWS: That's my recollection.

MS. HARRELSON: Yes, 57 people did attend, and they were all members of the church.

HEARING EXAMINER DICKMAN: Okay. Great. Just so everyone knows, I like to -- I'm not quizzing staff. I like to get that on the record so that we can identify that proper notice was given to the public, and they're aware of this.

I do have a second question, Mr. Bellows. She had ten conditions, and in the staff report there are 11, and the 11th one has to do with site lighting, which shall adhere to the applicable county Land Development Code criteria. Are you aware of this?

MS. HARRELSON: Yes, and I could have absolutely missed that on the slide in the presentation, so I'm sorry.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: I'd like to blame her on that one. It does seem like, to my recollection, we did have 11 all along.

MS. HARRELSON: Yes, I did mention that before the hearing.

HEARING EXAMINER DICKMAN: Does the applicant need to know about this?

MS. HARRELSON: No, they're aware of everything.

HEARING EXAMINER DICKMAN: They're aware?

MS. HARRELSON: Yes.

HEARING EXAMINER DICKMAN: So for the record it says site lighting shall adhere to the applicable Collier County Land Development Code criteria with the following conditions: Site lighting will be dark sky compliant with flat panel and full cut off fixtures, B, sight lighting will have a maximum height of 25 feet. Project -- I guess, no higher than 25 feet. Project site light poles, structures and fixtures will be shielded away from residential property lines; is that agreeable to you --

MS. HARRELSON: Yes.

HEARING EXAMINER DICKMAN: -- to your client actually?

MS. HARRELSON: Yes.

HEARING EXAMINER DICKMAN: In the affirmative yes. I want to make sure that's there. It's in the staff report.

MS. HARRELSON: Thank you.

HEARING EXAMINER DICKMAN: All right. So why don't we open it up to the public? Is there anyone signed up to speak?

MR. BELLOWS: No one has registered. I think I see some folks that might come in to speak.

HEARING EXAMINER DICKMAN: Okay. If you want -- does anybody want to speak on this item? Raise your hand. Nobody? Everybody okay? All right. Anybody online, Jeremy?

MR. FRANTZ: There is no one registered.

HEARING EXAMINER DICKMAN: Nobody's registered. Nobody's online. Okay. Any last comments?

MS. HARRELSON: No.

HEARING EXAMINER DICKMAN: So it's my understanding the church property has been -- it's been used as a church for, historically, for quite some time. There was hurricane damage.

MS. HARRELSON: Yes.

HEARING EXAMINER DICKMAN: I see the site needs, definitely, improvement. Looks like you're going to be making improvements to it.

MS. HARRELSON: Absolutely.

HEARING EXAMINER DICKMAN: You're going to go through all the county process to make that happen, and I have all the documents. I've read all the materials. I've corrected everybody on the number of conditions now, and I will read everything and render a decision as expeditiously as possible.

MS. HARRELSON: Thank you.

HEARING EXAMINER DICKMAN: I appreciate you being here. I appreciate everyone else being here.

MS. HARRELSON: Thank you.

HEARING EXAMINER DICKMAN: Don't forget to put your mask on.

MS. HARRELSON: Okay. Thank you.

HEARING EXAMINER DICKMAN: All right. So it looks like that was it; right? Is there any other business?

MR. BELLOWS: No business from the county.

HEARING EXAMINER DICKMAN: Why don't we let everybody file out first. Let's wrap this up here. Any other business we need to deal with? Any additional public comments? No. All right. Then that being said, I am going once, going twice. I'm adjourning this meeting. Having trouble saying that word.

I want to thank county staff once again for keeping us all safe, and setting this up. This is a little more complicated than regular meetings, but I think they're going really well, at least from my perspective. Thanks, everyone.


* * * * *

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 11:25 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW W.J. DICKMAN,
HEARING EXAMINER

These minutes approved by the Hearing Examiner on 11/16/20, as presented  or as corrected _____.

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