

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER

Naples, Florida
February 11, 2021

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
Parker Klopf, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER DICKMAN: Everybody ready to go? Jeremy giving me the thumbs up. Good morning. This is the February 11th, 2021 Hearing Examiner meeting. Why don't we all start with standing and doing the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right. Thank you very much. A couple quick housekeeping things: My name is Andrew Dickman. I'm a practicing attorney here in Florida. I was retained by the County Commission, I am not a county employee, to be the Hearing Examiner.

I've practiced in Florida over 20 years in land use and local government. I'm familiar, very familiar with the quasi-judicial proceedings. While the code does permit me to have ex parte communication, I choose not to do that. I think that it's essential for everyone here, all the applicants, the county and everybody else to believe that I'm an unbiased decisionmaker in this case.

What I have reviewed is all the materials that have been submitted that are on the city's website, the staff report, everything, even the opposition letters, things of that nature. The -- that is true for all three applications. So that's my disclosure on that.

The other thing would be that I'd ask everyone to silence your phones, your beepers. I don't think anybody has beepers anymore. Probably some of you don't even know what beepers are. I do, but please silence any.

If you have to make phone calls, step outside. I appreciate everyone exercising the rules here at the county for social distancing, and using the sanitations and so forth.

The county has set up very good safe environment here. We have two podiums, one in brown and one in yellowish gray. So the way we're going to do this is have the applicants and the applicant team be over here on the brown podium under the clock, and then the county and public would speak at the other podium.

It's okay to take your mask off while you're speaking. I know a lot of people have trouble speaking with the mask on. As soon as you're done speaking, put the mask back on, and I believe we have someone here who is going to keep everything clean and wiped off. With that, we also have a court reporter here, and I see we have two court reporters here, that's two is always better than one maybe. We have the county's court reporter, who takes everything down and will live forever in posterity for whatever you say.

Because they have to capture everything that you say, they cannot articulate in writing what, you know, hand gestures and thumbs up, thumbs down nodding of heads, and if you speak too fast, she's going to wave at me or throw something at me and tell me that -- or actually she'll probably tell you to slow down. So keep that in mind, please, a good record of these hearings is essential, and with that am I missing anything else?

We do have a hybrid meeting. So we have folks live and in person. There is Jeremy over here who is going to handle the virtual part of that.

We have folks that are watching this virtually, so the county has taken steps to ensure that everyone that wants to participate and attend can do it either in person or virtually, so I appreciate the county doing that, and, hopefully, you all as well. So we're going to start off with I think we have Item 3A. So why don't we go ahead and get started with this. Oh, sorry. One second. So we're going to start with the county introducing the item. Then we're going to have the applicant make their presentation, then we'll open it up for public comment.

Now, anyone who is going to speak, provide testimony, needs to be sworn in, and so I'd like to do a mass swearing in at this point by the court reporter, and then if anyone else comes in later and hasn't been sworn in, we'll do that.

So at this point anyone who is going to speak and provide testimony, stand up and the court reporter will swear at you.

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

HEARING EXAMINER DICKMAN: Thank you, everyone. I really appreciate that. So if there's not any other business that the county or anybody wants to handle, are there any continuances or any preliminary things that we need to handle on the agenda?

MR. BELLOWS: No, there are no changes to the agenda.

HEARING EXAMINER DICKMAN: No changes to the agenda. So we have three items today; correct?

MR. BELLOWS: Correct.

THE COURT: I'm on a roll now. Why don't we get started with 3A, 3A, and who is the -- hello.

MR. KELLY: Good morning. John Kelly, Senior Planner. This is your Item 3A. This is going to be a boat dock extension, PL20200001309, 75 Pelican Street West, Isles of Capri. It's for a 30-foot boat dock extension, and a maximum 20 feet allowed by Section 5.03.06.(E)(1) of the Land Development Code, for a total protrusion of 50 feet to replace the existing dock facility with a boat dock facility with two boat lifts, one for a 33 foot vessel, and the other for two personal watercraft for the benefit of 75 Pelican Street West.

HEARING EXAMINER DICKMAN: Okay. And just real quickly under that section there is a primary and secondary criteria. I see in your staff report that you have fully evaluated that and your recommendation is?

MR. KELLY: I wasn't sure if you wanted the staff report presented?

HEARING EXAMINER DICKMAN: Well, you can just tell me what your...

MR. KELLY: Okay. Staff analyses found that to the request complies with five of the primary criteria and four of the six secondary criteria, with one being not applicable.

HEARING EXAMINER DICKMAN: Okay. That's good enough for now. I just wanted the applicant and everyone else to understand what you have done and what your recommendation is. We'll get into that in a little more detail later. So with that, thank you very much. I appreciate it, sir. With that I see a familiar face here.

MR. ROGERS: Morning.

HEARING EXAMINER DICKMAN: You must be doing well? How are you, sir?

MR. ROGERS: Jeff Rogers with Turrell Hall & Associates, here today representing, as John just said, John and Jill Gaynor. The property is located at 75 Pelican Street West.

HEARING EXAMINER DICKMAN: One second, let me interrupt. John, feel free to sit down for now. Thank you.

MR. ROGERS: The property is located on Isles of Capri on the northwest side of Pelican Street West. As John indicated there is an existing dock onsite that was constructed back in 2019. We can go to the next slide potentially, please, Jeremy. There you go. That's the existing dock, we were here in front of the exact -- like I said, back in 2019 we received approval through HEX No. 2019-06 granting a 23-foot extension from the allowed 20 feet, for an overall protrusion of 43 feet into the subject waterway.

Since then the applicant has purchased a new vessel and has come to conclude that the existing dock will not fit his 33 foot vessel. This is an aquatic preserve with the State of Florida, and we

are very restrictive on their criteria on what we can and can't do in regard to design with the dock, as well as any dredging options.

We reviewed that, and, unfortunately, no dredging is allowed, so pushing the dock out further into the waterway, as you can tell by the other adjacent surrounding docks, is common in this area. The design now -- go to the next slide, Jeremy, please.

The proposed dock is obviously a complete change. You can see the overlay with the existing dock underneath shown in white there. As proposed we are doing two boat lifts. Basically we call this a finger dock extending straight out, four feet wide and then expanding out to a very unique shaped terminal platform, because again this is due to the state rules. We have to meet their criteria in regards to overall square footage; that's why there's a very unique design with this one.

The vessel is basically the driving factor on this boat dock extension. With that we extend out 50 feet overall from the top of riffraff, which is the most restrictive point.

We do have a second lift with two jet skis on it, so overall we have three vessels on this property, and the overall length is greater than 50 percent of the shoreline length; that's one of the criteria we do not meet with this.

These shorelines are pretty -- pretty tight on Isles of Capri. They range from 59 to 60 feet wide. So with the going trend of larger vessels, that's one of the criteria we don't meet consistently.

The dock meets the required setback of 7.5 feet because we are under the 60 feet requirement.

If we were over that, we'd have to have 15-foot setbacks. Luckily we meet that criteria.

Basically no impacts to navigation. This is an extremely wide waterway, 1500 feet wide, so we're approximately 4 percent width of the waterway with our protrusion. So we're well within the allowed 25 percent width. Water depth at the end of the dock, negative four feet mean low water, that's all we're allowed to do per the state criteria, and that's what we've stayed within.

Decking has been minimized, just to provide access to the vessel as well as provide a small two-foot catwalk on the south, basically on the west side, southwest side of the vessel for maintenance, routine maintenance and such.

Again, you know, we're asking for a 30-foot extension from the allowed 20. Decking has been minimized. We do meet most of the criteria. One was not applicable, which is the Manatee Protection Plan, not subject to single-family docking facilities.

Other than that, we're basically requesting a 30-foot extension, and take out the old one and put in a new one.

HEARING EXAMINER DICKMAN: Couple quick questions, if you don't mind?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: No. 1, the two-foot aluminum catwalk between the jet skis --

MR. ROGERS: Uh-huh.

HEARING EXAMINER DICKMAN: -- how do you access that? Is this a floating --

MR. ROGERS: No, sir. It's a fixed dock. Unfortunately, we're limited to square footage per the state criteria, so terminal platform is the state's criteria, and they give you 160 square feet they let you do. So if we were to deck over that lift, which ideally we would want to do for safety access, we would be over that threshold.

So the only option there is for a person to climb onto that first jet ski, step over it onto the aluminum walkway in the middle to gain access to the second further jet ski to the east. It's really all -- our only option.

HEARING EXAMINER DICKMAN: And the -- have you seen the new vessel?

MR. ROGERS: I have, yes.

HEARING EXAMINER DICKMAN: You have?

MR. ROGERS: Yes.

HEARING EXAMINER DICKMAN: What brand is it?

MR. ROGERS: It's a Whaler, it's 32, but overall it's LOA 33 feet.

HEARING EXAMINER DICKMAN: And what kind of outboard engines?

MR. ROGERS: Two outboards, Mercury, yes, sir.

HEARING EXAMINER DICKMAN: Mercuries?

MR. ROGERS: Yes, sir.

HEARING EXAMINER DICKMAN: And the prior boat is where?

MR. ROGERS: It's still on the -- currently on the lift. It's a deck boat. It's a much smaller boat, I think a 25-foot deck boat, little beach run-around boat. He's going to get rid of that one, and he currently has a 33-footer at a marina around the corner.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: When the dock is built, which will probably still be four to six months out due to lead time for contractors, he will bring it over at that time.

HEARING EXAMINER DICKMAN: Okay. All right. And what is the draft of that 33 -- the new vessel?

MR. ROGERS: Approximately 24 inches, two feet.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: I don't know if we have the water depth shown, but the bow of the boat is in like one foot of water at mean low tide, so it is a very shallow area, but we are very limited. The state will only let you take the dock out to the negative 4 feet mean low water contour line. Ideally I wish I could push this out to 60 feet, 65 feet, which would be great, but the state we've argued with them and went back and forth and the aquatic preserve rules are very restrictive, and we had to have the terminus end of the dock be located over the four-foot contour line.

HEARING EXAMINER DICKMAN: So it's the stern of the boat that's primarily the two foot?

MR. ROGERS: Correct, yes, sir. Where it's located, where the motors are and the stern of the boat is located is four foot, four and a half foot, plenty of water in that regard.

HEARING EXAMINER DICKMAN: And so it's my understanding that they would -- having been around boats, obviously the lift would have to get down low enough for the boat to float on and off; correct?

MR. ROGERS: Correct. The lifts typically take, you know, 12 to 18 inches, depending on the bunk support on top of the aluminum framing of the lift. So he is going to be restrictive to a mid level to high tide coming on and off of that boat lift. Unfortunately dredging is not an option here. Resource wise there are -- you know, there are resources within the surrounding bay, but not within our project area, nor within 200 feet of it, so the state -- it's an aquatic reserve so they're -- Rookery Bay is in charge of this aquatic preserve, so really no options.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: The applicant did hire an attorney to go after the state, and, you know, try to really push for as much as we possibly could, and this is where we ended up.

HEARING EXAMINER DICKMAN: So in terms of the watercraft, are those considered two -- two slips or one?

MR. ROGERS: It's per the -- it's two slips, but we have more than the allowed two vessels, so we've got three personal watercraft -- or two personal watercraft and one vessel, so we have three

vessels overall onsite, which is allowed, you just have to go through the permitting process with the state and federal government, but the county is considered two slips.

HEARING EXAMINER DICKMAN: All right. Do you have anything else you want to tell me?

MR. ROGERS: No, sir.

HEARING EXAMINER DICKMAN: Why don't you stick around in case we have any questions.

MR. ROGERS: Of course.

HEARING EXAMINER DICKMAN: John, do you want to -- anything you heard you want to contradict or elaborate on?

MR. KELLY: No, on the first day -- well, let me get to the notification requirements. The hearing notification requirements are contained in LDC Section 10.03.06(H). Mailed notice went out by the county on January 22nd, 2021. A sign was posted by me on January 26, 2021. Those requirements have been satisfied. On the day that the mailing went out, I had roughly six people call me right away, and once they had further explanation of the project and saw the design off the dock and the others in the vicinity, there were no objections.

So I'm not aware of anyone objecting to this facility, and with that staff recommends they do approve Petition BDE PL20200001309, with the condition that an ST permit, special treatment, must be sought and approved prior to the issuance of any permits to construct the subject dock facility, in accord with the following documents that are contained with Attachment A of the staff report; that's the full legal description being as the shoreline of the property is not in the platted state, additional property was added to that, and, two, the proposed site plan with dimensions.

HEARING EXAMINER DICKMAN: So I just want to be clear. Maybe you can elaborate on this a little bit more, the code seems to be driven by essentially when someone buys a boat, they come in and get a request for a dock, so it's all driven by what kind of boat, how big a boat they want, that drives this so...

MR. KELLY: It doesn't require a vessel.

HEARING EXAMINER DICKMAN: It doesn't even require a vessel?

MR. KELLY: It does not require a vessel; however, the dock facility is a boat and vessel combination.

HEARING EXAMINER DICKMAN: Right.

MR. KELLY: So it's someone thinking they're going to buy a boat in the future, and they probably designed to their dream.

HEARING EXAMINER DICKMAN: To their dream. Okay. So in your opinion they don't have to prove any purchase of a vessel, they just have to dream of a vessel, and dream the draft of the vessel and so forth and so on?

MR. KELLY: It helps to substantiate their request. It's not required.

HEARING EXAMINER DICKMAN: Right. Interesting. All right. Well, I guess that's up for me to evaluate. As far as which criteria, you've got criteria -- this is on the secondary -- secondary criteria, No. 2, whether the proposed dock facility would allow reasonable safe -- I'm sorry, that's not it, No. 3, for single-family dock facilities, whether the length of vessel or vessels in combination described by petitioner exceeds 50 percent of the subject property's linear waterfront.

You're saying it's not met because the proposed -- the proposed 33-foot vessel, absent the addition of the two personal watercraft, exceeds 50 percent, threshold 50 percent of -- I'm going to round it up, 60 feet is 30 feet; is that correct?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: So that's the only one the county is seeing as not being met?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: And then there's one that's not applicable.

MR. KELLY: The not applicable, Manatee Protection Plan. It's a single-family dock, which is exempt.

HEARING EXAMINER DICKMAN: Right. So, honestly, as I read these codes and I've read them multiple times about the docks, you know, I respect your opinion about someone can dream of a boat that they want and ask for the dock.

The way that it's worded it really -- it really insinuates that someone has purchased the boat, and that they need the dock, but that's okay. I mean, maybe that's something for you all to think about in drafting of the code and be very clear, if you dream of a dock, it will be.

So I see your recommendations, is there anything else? I see that you've got a legal description, survey plan, sign posting, prior HEX decision, applicant's backup and applicant's supporting documents. Is there anything else that, Ray, you want me to have for my decision?

MR. BELLOWS: That's the complete packet, that should be fine, and we can provide a clarification to the interpretation of that as well.

HEARING EXAMINER DICKMAN: Yes. Well, I mean, it would be after the fact. So I'm an attorney I can read the code.

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: I mean, maybe next time you would come in with a dock, I would like to hear what the county attorney's interpretation of this is. In reading it, to me, it sounds like somebody has gone out and purchased a vessel.

In this case they've got a vessel that's -- that was built -- the dock was built around the vessel that they have?

MR. BELLOWS: Right.

HEARING EXAMINER DICKMAN: And now they have -- I mean, this -- there's sworn testimony, so I'm not going to question it, but they've purchased a new vessel, and need a new dock. So as I read this part of the code, it does seem to be a valid question for me to ask, whether they have a vessel or not.

MR. BELLOWS: It's a very good question, and I think what staff has historically applied or requested of the applicants; what is your current needs in regards to boats or future needs.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BELLOWS: So there have been instances where the current boat is smaller, but they know they're getting a bigger one and they want to time it so the dock is ready first. They design it to that boat that they're going to purchase, and I think that's what John was getting at.

HEARING EXAMINER DICKMAN: Yeah, and I appreciate that. It's a difficult way for you all to have to deal with it because --

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: -- how do you tell someone what's the difference between owning the boat, thinking about owning the boat, looking at boats or just trying to improve your dock so it's more available.

MR. BELLOWS: Yeah, we may get that as well.

HEARING EXAMINER DICKMAN: I totally understand, and as you guys go through your codes, you may want to, you know, articulate --

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: -- for the public and for everyone else that it's not necessary for someone to demonstrate that they have a boat, but, yeah, it would be nice, if not for this application --

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: -- but in the future, some type of opinion from the counsel for the county about this.

MR. BELLOWS: No, it's a good point, and we'll follow-up with it.

HEARING EXAMINER DICKMAN: Appreciate that. Thank you very much. All right. Anything else?

MR. ROGERS: No, sir.

HEARING EXAMINER DICKMAN: You sure? Quit while you're ahead?

MR. ROGERS: Exactly.

HEARING EXAMINER DICKMAN: Good advice. I've heard that one before from many people.

All right. How about the public? Do we have anyone here from the public?

MR. FRANTZ: There is no one registered in the room or on Zoom.

HEARING EXAMINER DICKMAN: I appreciate you telling me, John, about the folks that called in, and once you explained they were satisfied with it. So I appreciate that very much. So have you heard of any objections? Anybody contacted you?

MR. ROGERS: No, sir. I mean, to be honest with you, on the aerial the dock is less protruding than most in the area.

HEARING EXAMINER DICKMAN: Seems like it's the smallest dock in the area.

MR. ROGERS: Yeah, it really is.

HEARING EXAMINER DICKMAN: And I do appreciate you minimizing the decking area, that's always something that I'm looking at, so I appreciate that.

MR. ROGERS: And just to touch on some of the rules --

MR. FRANTZ: Can you step up to the mic?

MR. ROGERS: 25 percent width of the waterway's usually our most restrictive factor in this, and that will get into what size vessel an individual could purchase. They can't go past that per state rules, as well as county rules, so that is a driving factor as well.

HEARING EXAMINER DICKMAN: Yeah, and I appreciate that, and I guess what I was getting at, maybe we're getting sidebar here, but I think it's important, you know, that's more of an objective -- seems like that is a more objective reasoning for coming here and asking for a dock extension would be water depth, and, you know, if your water depth is X, and it should drive the maximum type of a boat and length of the boat. I mean, some boats have shallower drafts, even though they're 33 feet.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: So I guess what I'm looking for is some type of objectivity for county purposes, because you guys are in the same situation as I am, where I have to read the code and --

MR. BELLOWS: Yeah.

HEARING EXAMINER DICKMAN: -- and legally interpret it, so you make a good point. Thank you.

MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: All right. So I will, if we have no public comment, I will

close the public hearing and get a decision rendered as quickly as I can. Thanks for being here.
MR. ROGERS: Thank you.

HEARING EXAMINER DICKMAN: Thank you, John. I appreciate it. All right. Why don't we move on to Item 3B, Item 3B. So, John, is this John again? John?

MR. KELLY: Yes.

HEARING EXAMINER DICKMAN: Go ahead. Welcome back.

MR. KELLY: John Kelly, Senior Planner for the record. This is going to be your Item 3B. This is Petition VA PL2020001732 for 689 35th Avenue Northwest. It's an after-the-fact variance request from Section 4.02.01(A), Table 2.1 of the Collier County Land Development Code, to reduce the minimum side yard setback from 30 feet to 17.1 from the east side, and to 15.77 feet for a roof overhang for an existing single-family dwelling in the Estates Zoning District. Just to provide a quick summary, this house was designed for a nonconforming lot in the Estates; however, it was built upon the wrong lot, which was a legally compliant lot, so the setback increased, and that's why you're here today.

HEARING EXAMINER DICKMAN: Thanks. I was looking forward to this one. Anything else, John?

MR. KELLY: Not at this time.

THE COURT: All right. Thank you. Rest your legs. How are you, ma'am?

MS. RODRIGUEZ: Good. Thank you. My name is Magdevys Rodriguez.

HEARING EXAMINER DICKMAN: You need to speak into the microphone.

MS. RODRIGUEZ: Thank you. My name is Magdevys Rodriguez, and I'm here on behalf of the applicant, Raymond Piedra.

HEARING EXAMINER DICKMAN: Are you okay?

THE COURT REPORTER: Spell your first name.

MS. RODRIGUEZ: M-A-G-D-E-V-Y-S.

HEARING EXAMINER DICKMAN: There you go. Great. Well, welcome. I'm -- I was curious about -- well, I'll let you go ahead. It sounds like the surveyor found the wrong place?

MS. RODRIGUEZ: Yes, so this happened back in 2018. We applied for a permit. I was actually back then the listing agent, property owner and also related to the builder of the property for the adjoining lot to the east of the current property that we're discussing this morning, 689 35th Avenue Northwest. 677 35th Avenue Northwest was where the initial project was supposed to be constructed. The surveyor, unfortunately, surveyed the wrong property. We have a couple vacant lots on the same street side by side. So we realized this incident back in December 2018. As soon as we realized it was being built on the wrong lot, we informed the county officials and the problem that we're having.

So after that we started investigation with the survey company, until like very recent, where we were able to obtain also the adjoining lot, Raymond Piedra was able to purchase the lot from the previous property owner, and in order to avoid any more litigation and problems and continue, we decide we wanted to bring this property to be a legal conforming property and finish it, because it's pretty much over halfway under construction.

So we're seeking a variance for this property to stay where it's at, and, hopefully, the variance will be approved.

HEARING EXAMINER DICKMAN: So this is a -- this is a fully-built, single-family home; correct? Has it been -- Certificate of Occupancy?

MS. RODRIGUEZ: No, it doesn't have a CO because as soon as we realized that it was being built

on the incorrect lot, obviously, the construction was stopped immediately.

HEARING EXAMINER DICKMAN: How far did they get in construction?

MS. RODRIGUEZ: It does have block, plus roof, the roof is completed, windows, doors, electrical, partitions. It's pretty much everything is roughed, it's done, it's pretty much the final is what needs to be done in order to be CO'd.

HEARING EXAMINER DICKMAN: So who actually had the, "Oh, my God" moment?

MR. RODRIGUEZ: Well, my father, he's at the job site. He works for T-Metro Construction. So he called me, and I'm a Realtor and he's, like, the neighbor next to the lot to the east of 677, she was just like those people they just go to the lot, they sit, they have a table, they have a picnic on the vacant lot. They enjoy being out there, and they're like, okay, they just stopped, and say we are building on the wrong lot.

My father is, like, that must be a mistake. I said what are you talking about? Of course we are building on the right lot, but I was never personally out there, like, I have a sense, like, even when I sell property, I have an idea of is it 75 feet, 105 feet, all the setbacks and everything out in the Estates, but I've never been to the construction site before. I said something is wrong here. She must be confused. Well, as soon as I got myself to the lot, I said, yes, we're definitely on the wrong lot, because there is another property to the east. There is a vacant lot. There is 677 and there is this property that is where the 689 is right now, that's 2.88 acres, so that has a frontage of 180 feet, so that's when everything started, and, yes, the surveyor came back and he admitted the mistake and...

HEARING EXAMINER DICKMAN: And now you're in court with this, that's just terrible. Okay.

MS. RODRIGUEZ: Yes, so it was, like, very sad, the home has to stay there. Nothing could have been done in 677, and it was a process of two years in litigation with the survey company and the property owner next door and...

HEARING EXAMINER DICKMAN: Okay. I understand. And so in balancing the equities, it certainly seems to me that it would be financially problematic and probably unfair from an equitable point of view to have to demolish this, and you have the county as party to this in issuing the permits, I assume, so, you know, it just seems that in reliance on other professionals and it just seems very difficult for me to understand why we would require demolition of this under the circumstances.

So I appreciate you coming in and working with staff and they've directed you to the right place for a variance, and so first time I've ever heard of this. This is interesting.

MS. RODRIGUEZ: And I appreciate everyone, and John Kelly has been very helpful, which I had to apply to the variance myself. The first time that I've done this. I hired someone else to do this, and they told me it was out of their scope of work.

At that point I said, okay, I need the help of the county staff to walk me through the process.

I'm willing to do it, and when we finish the litigation and everything with the survey companies, the lawyers and everything, part of the deal was that we were going to take this property, because they didn't want it, you know, attorneys and insurance companies, they don't want to pay, so part of this thing was for the property to stay.

So we will be very thankful if we can keep this property, as it would be a financial hardship on the owner.

HEARING EXAMINER DICKMAN: Right. So I want to emphasize this, so you were able to come in, make your own application and work with staff; correct?

MS. RODRIGUEZ: Yes.

HEARING EXAMINER DICKMAN: This is exactly in my opinion exemplifies why the county went ahead and established the Hearing Examiner, because, otherwise, you realize you would have had to have gone to the Planning Commission?

MS. RODRIGUEZ: Yes.

HEARING EXAMINER DICKMAN: Have a huge hearing and pay a lot more money.

MS. RODRIGUEZ: Yes.

HEARING EXAMINER DICKMAN: I'm sure staff treated you well --

MS. RODRIGUEZ: Yes.

HEARING EXAMINER DICKMAN: -- and explained things to you. So it's nice to hear that you didn't have -- I mean, I'm an attorney myself, so I appreciate getting clients, but I also like to hear that regular folk can come in and work with the county on minor things that don't need to go to a major public hearing, and are able to get before the hearing examiner and county and have resolution of these problems. So I appreciate that. Hey, John, you want to -- unless you have anything else to say, ma'am?

MS. RODRIGUEZ: I'm good for now.

HEARING EXAMINER DICKMAN: Stick around. Don't go anywhere.

MS. RODRIGUEZ: Thank you.

HEARING EXAMINER DICKMAN: Welcome back, John.

MR. KELLY: Thank you. John Kelly, for the record. Jeremy, if you could please pull up Attachment B, and go to the very end of Attachment B.

HEARING EXAMINER DICKMAN: This is the backup package. Is the sign posted?

MR. KELLY: Yes, it has a great photograph of what's existing.

HEARING EXAMINER DICKMAN: Can't wait to see it.

MR. KELLY: You'll see on the top, the house is near -- it's completed as for the shell. It's the interior work that hasn't been done.

HEARING EXAMINER DICKMAN: So it looks like it's around 80 percent almost. Okay.

MR. KELLY: So that's where we're at. So the notice requirements for variances are contained within LDC Section 10.03.06(F), as in Frank. The property owner, their agent, sent out the required agent letter on or about November 5. The sign was also posted by the applicant or their contractor on or about January 22, 2021, and the mailed notice and newspaper ad were accomplished by the county on January 22, 2021.

HEARING EXAMINER DICKMAN: Pretty hard to miss that sign.

MR. KELLY: In fact, I had a call yesterday afternoon, the only call I've had in response to this project, and they were wondering where the auction was.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: So I have no opposition to the project, and, therefore, staff recommends that you approve variance Petition VA PL20200001732, to reduce the minimum side yard setback on the east side from 30 feet to 17.1 feet for the building and to 15.77 feet for the roof overhang, as depicted within Attachment A, with the condition that the applicant pursue issuance of building permit PRVD 20201043213, and obtain a certificate of occupancy upon completion of construction for the single-family residence located at 689 35th Avenue Northwest.

HEARING EXAMINER DICKMAN: Real quick question in reading the staff report, so you're going to issue a new building permit, not you personally, but the county?

MR. KELLY: The way the building official prefers to handle this is they took the building permit that was for this house, put it on the adjoining lot. They are going to build the identical house

on the adjoining lot, and this has a new building permit.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: For the house.

HEARING EXAMINER DICKMAN: And everyone is going to double-check the location of that new building, I hope, the new house. Let's hope. This is very interesting, but it happens.

Yeah, so maybe Ray is the best person to state this, but approximately what is the difference in cost to the applicant here at the Hearing Examiner versus the cost to -- if she were -- if I weren't here, to the Planning Commission, what would that process be?

MR. BELLOWS: There's a requirement for variances, if not heard by the Hearing Examiner, it would go to the Planning Commission, and then the Board of Zoning Appeals. So there's additional advertising costs associated for the Board of County Commissioner advertising.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: And then there might be some additional processing fees but --

HEARING EXAMINER DICKMAN: Okay. Gotcha. Okay, so, that makes sense to come here.

So, great. I really don't have any other questions. This is a very interesting application. I'm glad it was caught before the house was finished and sold, and then you would've probably by the time they were in the middle of title -- title search and closing hopefully --

MS. RODRIGUEZ: Yes.

HEARING EXAMINER DICKMAN: -- somebody would have caught it at that point, but it would be much further along. The worst case would have happened if someone bought it and then found out this is on the wrong property, and who knows what would've happened after that. So I wish you the best of luck with your litigation, and I will take your testimony, staff's testimony, and everything that's here under advisement. John, do you have something else to say? You look like you do.

MR. KELLY: No.

HEARING EXAMINER DICKMAN: No. All right. Thank you. I can never tell. You have a great poker face.

MR. KELLY: It would be a pleasure.

HEARING EXAMINER DICKMAN: Ma'am, do you have anything else?

MS. RODRIGUEZ: No. I want to thank everyone here for their time, and yourself. John has been very helpful throughout the process, so I very much appreciate that, and if there's anything else, feel free to reach out.

HEARING EXAMINER DICKMAN: Okay. So, Jeremy, is there anyone here from the public or online?

MR. FRANTZ: No, I think the only slip that was turned in was Ms. Rodriguez.

HEARING EXAMINER DICKMAN: Okay. And the attorney for the surveyor? No? Just kidding. All right. Thank you very much. I will get an order out, a decision out on this, as soon as I possibly can.

MS. RODRIGUEZ: Thank you.

HEARING EXAMINER DICKMAN: All right. Have a good day. Thank you, John.

MR. FRANTZ: Sir, could I ask for maybe just a five-minute break prior to the next hearing to make sure that I've got all the materials straight for our presentation?

HEARING EXAMINER DICKMAN: Yes. This is going to be -- this is an item that was continued a few times. Let me ask, also, a question, do we have other folks in another room on this? I know we did at one time.

MR. FRANTZ: Actually, I think everyone is here in the room today.

HEARING EXAMINER DICKMAN: Okay. Perfect. Great. Yeah, let's take -- is five minutes okay, Jeremy?

MR. FRANTZ: That's perfect.

HEARING EXAMINER DICKMAN: All right. We'll take a five-minute recess.

(A recess was had from 9:44 a.m. until 9:53 a.m., and the proceedings continued as follows:)

HEARING EXAMINER DICKMAN: Great. So we're going to reconvene the Hearing Examiner meeting. This is Item 3C, and I do want to point out that it looks as though they have their own -- somebody has a court reporter here, and I've informed her that we are also going to make sure that she is able to capture the record as well.

So if you have an issue, wave your hand, and we'll get it straight. So, ready to go? Who is the planner on this? Come on up, Mr. Finn.

MR. FINN: Good morning. Yes.

HEARING EXAMINER DICKMAN: How are you? Good to see you. Can you give me an abbreviated introduction and then --

MR. FINN: Okay.

HEARING EXAMINER DICKMAN: -- we'll have the applicant come up.

MR. FINN: All right. For the record, I'm Tim Finn, Principal Planner, just to introduce, this is Item 3C, Petition No. VA PL20190002701, CitySwitch II-A, LLC requests two variances from LDC Section 5.05.09(G)(7)(b), to reduce the eastern boundary setback from 125 feet to 60.5 feet, and from the western boundary setback of 125 feet to 82.2 feet for a proposed 250 feet communication tower. With regard to notices, did you want me to get into that?

HEARING EXAMINER DICKMAN: Why don't you just -- well, we'll get back to that --

MR. FINN: Okay.

HEARING EXAMINER DICKMAN: -- later, but I see that we're asking for two variances here; correct?

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: And that you've gone through the criteria --

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: -- that's listed here, and you have recommended what?

MR. FINN: We recommend approval.

HEARING EXAMINER DICKMAN: So I'm asking -- I know what you're recommending, what I'm asking -- I'm just asking you because I want to get it on the record.

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: Okay. Great.

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: So I'm not trying to act as though I don't know. I've read the staff report. I've read everything. I've read the objections. This is a matter that's been continued at least twice, I think, and so hopefully we're going to get through this today. So thank you. Why don't you have a seat, rest your legs. Don't go anywhere. Read your book, whatever you need to do. All right. Applicant?

MR. WRIGHT: Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MR. WRIGHT: I'm Jeff Wright with the Henderson Franklin Law Firm, here for the applicant. I also have with me Jim Alderman, our consultant with JJ Consulting. He's our expert on

communications towers.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: We're seeking approval, as Tim mentioned, of variance -- actually two variances, to allow construction of a 250-foot tall essential services communications tower as part of the FirstNet First Responder's Network. Jim will provide some additional information on the FirstNet Network during his presentation.

The parcel involved -- next slide -- is -- next slide, please -- is a little over 1.25 acres in size. It's located about five miles due east of Pine Ridge and 951. It's located in the receiving lands between a fairly large mining operation to the west, and that mining operation is right underneath where that blue rectangle is, and a ag or nursery use to the east, and you can see that up in the upper right corner of the screen.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: There's some low density residential in the area. The reason for our request is that in this area, as Jim will explain, Tim alluded to, towers need to be set back from neighboring property boundaries a distance of half their height, which is in this case 125 feet, around all four setback dimensions, or the other measurement you can use is your certified collapse area, but you're bound by whatever's greater, and in this case, it's 125 feet for us.

HEARING EXAMINER DICKMAN: Right.

MR. WRIGHT: If we were measured by the certified collapse area, we well exceed the requirement.

So in effect, we fall right in between the two measurements that are articulated in the LDC for measuring the setbacks.

Again, we're bound by the 125 feet, so the north and south setbacks exceed that 125 feet requirement under -- under either measurement, really, but the proposed eastern and western setbacks fall between the two LDC measurements. So we're here seeking a variance for the eastern and the western side setbacks. As Tim mentioned, on the east we're seeking a variance to allow a 60.5 feet setback, and on the west an 82.2 foot setback.

I just want to point out, again, the tower exceeds the required setbacks on the north and south, and that's primarily where the residential is, and there are no structures to the east or to the west of this parcel. The nearest accessory structure, as you can see, is several hundred feet away.

HEARING EXAMINER DICKMAN: Are we saying north is up?

MR. WRIGHT: Well, yeah --

HEARING EXAMINER DICKMAN: I don't see the north arrow there.

MR. WRIGHT: Yes. Yes, north is up in this picture.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: Yeah. So to the north you can see we meet that up northern boundary, and the southern boundary, but on the sides we need more room.

HEARING EXAMINER DICKMAN: Side ones you don't. Okay.

MR. WRIGHT: So we have reviewed the staff report. We agree with them that we meet all eight criteria for approval. We also agree with their recommendation of approval.

As I mentioned, Jim's here today. He's going to give the bulk of the presentation. I don't intend to call anyone else as a witness. As a formality I'd like to have Jim introduced as an expert, and recognized.

He's been doing this for a long time. He's been recognized in similar proceedings, and we would request you recognize him as an expert today. I'm happy to provide more information, or Jim can come up here and give you a little of his credentials, but that's our goal, is to have him

officially recognized as an expert.

HEARING EXAMINER DICKMAN: I understand that, and if he can maybe, just briefly give me enough information to do that? I don't know -- was his resume put in the record?

MR. WRIGHT: No, it was not.

HEARING EXAMINER DICKMAN: That's fine, maybe just come on up, Mr. Alderman. I see you're with JJ Wireless Consultants, LLC; is that correct?

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: And if you can just take 30 seconds and give me a little bit of -- excuse me. Sorry.

MR. ALDERMAN: I just took my mask off --

HEARING EXAMINER DICKMAN: Yeah, right.

MR. ALDERMAN: -- to breathe a little bit.

HEARING EXAMINER DICKMAN: A little bit of your background.

MR. ALDERMAN: Okay.

HEARING EXAMINER DICKMAN: I see you're very well-versed in this, but let me just get that on the record.

MR. ALDERMAN: Okay. First of all, I have a Bachelor of Science Degree in Real Estate and Urban Land Studies from the University of Florida, and I've been in the wireless business since 1995, doing site acquisition, leasing, zoning, permitting, tower management, tower construction, and then now I have my own company just doing consulting.

HEARING EXAMINER DICKMAN: Okay. I will recognize you as an expert.

MR. ALDERMAN: Thank you.

MR. WRIGHT: Call you up in a minute.

MR. ALDERMAN: Thank you.

HEARING EXAMINER DICKMAN: Welcome.

MR. WRIGHT: Before I call Jim up for his presentation, I want to acknowledge that there's some opposition to this request, and we've made sincere efforts, both sides have, unfortunately, we have not been able to -- excuse me -- find middle ground.

HEARING EXAMINER DICKMAN: On any points?

MR. WRIGHT: On any points.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: I'll bite my tongue. We tried.

HEARING EXAMINER DICKMAN: Okay. No, I appreciate that, and I assume you want to -- are you -- you're not done with your -- your presentation right now, are you?

MR. WRIGHT: No, this is all leading into Jim taking over.

HEARING EXAMINER DICKMAN: Yeah. I just want to make sure you reserve some time for rebuttal.

MR. WRIGHT: Okay. I appreciate that. I would like to. Thank you.

HEARING EXAMINER DICKMAN: All right.

MR. WRIGHT: Like I said we're going to make our presentation via PowerPoint. We provided that to county staff. It's pulled up here. And we appreciate the opportunity to present our case today, and all staff's work on this project.

I know there's been several continuances and staff's been great all along, and I appreciate your patience. At this time I would ask Jim to come up and give his presentation. Thank you.

HEARING EXAMINER DICKMAN: Thank you.

MR. ALDERMAN: Okay. Okay. For the purposes of this presentation -- the purpose of the presentation is to show that CitySwitch and AT&T meet the criteria to place a tower at this location, the primary use of the tower, the reason we need to be at this specific location, and to show that the tower is not threatening the safety of the surrounding properties due to collapse or failure.

Okay. Slide 4. Okay. This slide confirms that the zoning and AT&T's qualifications to locate the 250-foot self-support tower on the subject property. The subject property is located in agriculture zoning, within the Rural Fringe Mixed-Use, RFMUD, receiving and North Belle Meade Overlay Districts. To locate a 250-foot self-support tower within this zoning, the tower would need to be classified as an essential service. This requires that government entities such as police, fire and EMS, have access to and use of the tower.

Okay. Slide Five. Okay. The primary reason that AT&T needs to be at this location is to fulfill its commitment to the First Responder Network Authority, under the Department of Commerce; that authority was tasked with building a dedicated network for first responders, also known as FirstNet.

So AT&T has been awarded the contract to provide a nationwide dedicated seamless 5G network to first responders; the police, fire and EMS.

Okay. Next slide. This is the next slide. I'm sorry. Back up, missed it. There you go.

Okay. 5G network provides first responders with high-speed dedicated network in urban, as well as rural areas with no dropped call or data interruptions, and the best technology available today, and in the future, to save lives and protect the community.

Next slide. So the FirstNet being a primary reason to build this tower, we meet the requirements to be classified as an essential service tower. Okay.

HEARING EXAMINER DICKMAN: Yeah, can I ask a quick question?

MR. ALDERMAN: Sure.

HEARING EXAMINER DICKMAN: I've seen these maps.

MR. ALDERMAN: Uh-huh.

HEARING EXAMINER DICKMAN: This is just AT&T coverage?

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: Yes, this is -- there are three towers here, up in the top left-hand corner, down in the bottom left and over to the right.

HEARING EXAMINER DICKMAN: Got it.

MR. ALDERMAN: Okay. And what this shows is the propagation -- it's a propagation map, shows cell site coverage and signal strength. Okay.

HEARING EXAMINER DICKMAN: And how tall are these towers, the other -- the other two towers?

MR. ALDERMAN: I don't know what the height on them is because they -- different towers in different topographies and different things require different heights.

HEARING EXAMINER DICKMAN: Got it.

MR. ALDERMAN: So, but, that's what their actual coverage is, and in the middle there in the blue X is the where the proposed tower location is. Okay. So, anyway, the green areas is good service outdoors and indoors. The yellow service is useable outdoor and marginal indoor. The red is marginal outdoors and poor to no service. Okay. Then the magenta is no indoor and poor or no outdoor service.

So the red area in the middle there around the X and below the X, is the area that AT&T needs to provide service, and that's the reason for this tower in this location. Okay.

All right. Next map. Okay. So this is the network propagation map that shows the cell site coverage and signal strength with the new proposed tower, which covers the gap for the seamless network.

Okay. Slide 9. Okay. The next five slides that we have go into a lot of detail, and if I may, I'd like to just summarize, and if I miss anything, or you have any questions, I'll be happy to address them for you.

HEARING EXAMINER DICKMAN: Yeah, I think it's important that you go through the criteria.

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Thank you.

MR. ALDERMAN: Okay. Okay. So we're proposing to build a 250-foot essential service self-support tower. The current code requires a setback from the property lines of one-half the height of the tower, 125 feet, or the tower's certified collapse area, which is within a 100x100 foot area, whichever distance is greater.

If we use the requirements of half the height of the tower, we meet setback requirements on the north and south boundary line. The setback variance we are asking for is 65 feet on the east side, and 82 feet on the west boundary line.

Okay, and Slide 14, please. Okay. This is a Fall Zone Letter from -- this is a certified Fall Zone Letter from the manufacturer. It's signed and sealed by a Florida licensed structural engineer. The letter is specifically for this tower that we would be installing.

This letter, they didn't put the whole letter on here, but I do have the letter if you want me to --

HEARING EXAMINER DICKMAN: It's in the packet. I have it.

MR. ALDERMAN: Okay. You have it. Okay. All right. Okay. So to summarize this letter, the tower is designated as a -- designated -- or designed for an ultimate wind speed of 160 mile per hour with an overall minimum safety factor of 25 percent.

Therefore, it is highly unlikely that the tower will fall, or fail structurally in a wind event where the designed wind speed 160 miles per hour is exceeded within the range of the built-in safety factors.

So with the 25 percent safety factor, the tower highly -- is highly unlikely to fail up to 200 miles per hour. Okay.

Should the wind speed increase beyond the capacity of the built-in safety factors, the point of failure, the most likely location of the failure would be within one or more tower members in the upper portion. This would result in a buckling failure mode.

Therefore, it's likely that the overall effect of such an extreme wind event would be localized buckling of a tower section in the upper portion of the tower. This would result in the portion of the tower above the failure location folding over onto the portion of the tower below the tipping.

So if there is a failure, it's in upper area, and it would just fall over onto itself.

HEARING EXAMINER DICKMAN: As opposed to the entire --

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Okay. Now, that goes to the collapse zone?

MR. ALDERMAN: Yes -- no, the collapse zone -- so next is in the unlikely event of a total separation, this would result in collapse within a 100x100 foot compound, or area, or at least the area there is by 100x100.

HEARING EXAMINER DICKMAN: Gotcha.

MR. ALDERMAN: Okay. Next slide, please. Okay. So this map shows the 100x100 foot lease area, 75x75 foot fenced compound for the 250-foot self-support tower and 100-foot certified fall zone or collapse area.

So as you can see, the proposed tower is separated from all the property lines a distance that far exceeds the certified collapse area. Okay. Additionally, the county code was written in 2005, and recent advances in technology have made it possible to design communication towers that can stand hurricane-force winds; in extreme cases buckle and fold upon themselves.

So when evaluating the variance request, I believe that more weight should be given to -- given to the results of the certified collapse letter for this specific tower, than using half the height of just any random self-support tower. Okay.

I've reviewed the LDC criteria that applies to this request, and in my professional opinion the request meets these criteria. We ask that you approve this variance based on the certified collapse letter, and the importance of FirstNet and the benefits that it brings to the community. Thank you.

HEARING EXAMINER DICKMAN: Yeah. I don't have any -- I have -- my questions are really for the attorney. So thank you for that presentation. Don't go anywhere.

MR. ALDERMAN: Okay.

HEARING EXAMINER DICKMAN: I have a couple of questions --

MR. WRIGHT: Sure.

HEARING EXAMINER DICKMAN: -- for clarification. So on the aerial it looked as though there's a trail that goes to Kapok Street; is that right?

MR. WRIGHT: A trail that goes from Kapok Street?

HEARING EXAMINER DICKMAN: Yeah, that's the access point; right?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: And who owns the property in between, yeah, that particular one. So they would have to -- in order to -- back to the -- yep, that one, 15, so it seems as though there's unimproved trail or roadway that goes to the site; is that correct?

MR. WRIGHT: Yes, and that's one of the things you'll probably hear about. There's different views on that. Now, for our purposes, we're going to be entering on the south of both of those paired parcels. We're going to enter on the south on the third parcel, the southernmost parcel that you see there.

HEARING EXAMINER DICKMAN: Yeah.

MR. WRIGHT: So our access point will be along the northern boundary of that southernmost parcel.

HEARING EXAMINER DICKMAN: Oh, that's clearer. Thank you.

MR. WRIGHT: Yeah, so if you look at the two paired parcels that we're talking about with the path through them, we're going to enter south of that and enter straight north up into the tower; that's our access plan.

HEARING EXAMINER DICKMAN: So to the -- I'm going to assume that the up is north. There's no north arrow on this one, but I'm going to assume to the west, right --

MR. WRIGHT: Uh-huh.

HEARING EXAMINER DICKMAN: -- to the right, that parcel is also owned by -- is owned by another individual or --

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: -- or leased?

MR. WRIGHT: The two parcels that we're -- the one that we're providing access, and the one that has

the tower on it, those are all under common ownership.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: The one to the left of our parcel, the subject parcel, is not part of our project.

HEARING EXAMINER DICKMAN: Right.

MR. WRIGHT: It's another owner, and the parcel to the east and to the north are all different owners.

HEARING EXAMINER DICKMAN: Okay. So but for the fact that you don't own the parcel to the left, the one that's -- has Kapok Street abutting it, you would be able to meet the criteria, I would think, if you centered the tower, if you owned that property or leased it --

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: -- you would be able to?

MR. WRIGHT: Absolutely. If you centered it right in the middle there, you'd have plenty of room.

You see those -- that blue line, for example, is 420 feet, so give you a sense of scale.

HEARING EXAMINER DICKMAN: Okay. Now, a couple of things. So there was a -- there was a lot of emphasis on the first responder --

MR. WRIGHT: Uh-huh.

HEARING EXAMINER DICKMAN: -- issue, and it seemed like -- I want to understand what's driving that. I know AT&T sounds like the provider that's actually wanting this tower?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: But are the first responder requirements required for all towers, regardless of who has built them, or how is this tower different with first towers -- first responders?

MR. WRIGHT: Well, this tower -- and Jim may be able to elaborate, but I'll tell you what I know.

HEARING EXAMINER DICKMAN: You want him to put that on the record instead?

MR. WRIGHT: I'm sorry?

HEARING EXAMINER DICKMAN: Do you want him as an expert to put that on the record?

MR. WRIGHT: Yeah. I just wanted to give you a brief time line, because this -- the FirstNet was -- it's a result of 911.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: And after 911 they had a 911 Commission.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: And the 911 Commission issued a report, and in their report they recommended the government to provide some sort of network, as a specific dedicated bandwidth just for emergency first responders.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ROGERS: So -- and it took from 2001 is when 911 happened, but by 2012, Congress had created FirstNet, and FirstNet Authority that Jim alluded to is a governmental authority, and my understanding is that the people on the authority are, include the United States Attorney General, the department -- Secretary of Homeland Security, and the Director of the Offices of Management and Budget, at the federal level. They're all permanent members of the FirstNet Authority.

So then what do you do once you create the authority? Well, you have to hire a company to make it happen, and that's what they hired, with via contract with AT&T.

HEARING EXAMINER DICKMAN: So they have an exclusive contract with AT&T?

MR. ALDERMAN: Yes, nationwide, that's what I understand.

MR. WRIGHT: Maybe I'll turn it over to Jim.

HEARING EXAMINER DICKMAN: Yeah, maybe that's a -- sorry.

MR. WRIGHT: That's okay. Come on up, Mr. Alderman.

HEARING EXAMINER DICKMAN: By the way, congratulations with your University of Florida affiliation. Won't influence my decision whatsoever.

But I'm trying to understand this, because, you know, the FirstNet, obviously, is very important for the safety of everyone, but AT&T is a private company, and I'm trying to -- obviously, they want to also sell their services, but I'm just trying to understand, is how this FirstNet -- I thank you for the legal background on it, but is this what's driving this as well, that only AT&T has a contract or affiliation with FirstNet?

MR. ALDERMAN: Right, they did an RFP, you know, a government RFP, and AT&T was awarded the contract to provide the seamless dedicated network, and what the dedicated network is a 5G seamless, so they have to put towers in areas like this.

If it wasn't for FirstNet, AT&T would have no interest in building a tower here, because there's not that many pops, population, people --

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: -- that would use that service.

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: So by putting this in, it's going to provide 5G to this community, which, you know, the technology that they're going to be able to get on the 5G speed, you know, is in the future is just going to, you know, it's going to be totally different than it is.

HEARING EXAMINER DICKMAN: And under that contract is this federal, this procurement, meaning that they bid on the contract, and were -- went through the arduous government process of getting a contract --

MR. ALDERMAN: Right.

HEARING EXAMINER DICKMAN: -- through the government, is that the requirement for this type of tower and the height of the tower?

MR. ALDERMAN: The height in order to get the coverage, yes.

HEARING EXAMINER DICKMAN: That was part of the bid process?

MR. ALDERMAN: Right, they want a seamless network.

HEARING EXAMINER DICKMAN: They don't want a 200-foot tower.

MR. ALDERMAN: They want first responders to be out -- to go anywhere and be able to use that communication, and it's a dedicated network. It's not -- so let's say when 911 happened, everybody got on their phones, and so the first responders were using the same phones, just like with hurricanes or any national or natural disaster, first thing everybody does is get on their phone, try to find their loved ones, and call people, let them know they're okay, or tell people about it, and so what that does, it clogs the network.

So the first responders are trying to save lives and find people and communicate with physicians, this new 5G, because with robotics today, you know, you could have a doctor, a surgeon halfway around the world, and he can perform surgeries. Well, with 4G, he could never do that, because the speed wasn't fast enough. You had to have exact, you know, within milliseconds.

HEARING EXAMINER DICKMAN: Yeah. So AT&T was in sort of a, let's call it a mathematic evaluation of the optimal location for this tower?

MR. ALDERMAN: Right.

HEARING EXAMINER DICKMAN: And it's FirstNet -- I mean, obviously, it's going to serve cell service to private customers but --

MR. ALDERMAN: Right. True.

HEARING EXAMINER DICKMAN: -- part of this is also in the event of an emergency, they drop that, and go to -- well, I don't know if they drop that, but --

MR. ALDERMAN: No, they just --

HEARING EXAMINER DICKMAN: But at that point they make --

MR. ALDERMAN: They have a separate frequency.

HEARING EXAMINER DICKMAN: -- they make room for the FirstNet.

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Exclusively; correct?

MR. ALDERMAN: Exclusively.

HEARING EXAMINER DICKMAN: And so the actual contract and the bid drove the type of tower, but not only, are you saying the criteria for where it has to go?

MR. ALDERMAN: The criteria for the height of the tower is determined by the radio frequency engineers.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. ALDERMAN: They're the ones that -- where you saw the propagation maps, so those are the ones that provided that. They said, hey, we need to cover this area, and site acquisition, what they do is they do propagation maps, and then they give us a search range. Say, hey, we need a tower. It has to be within this half-mile radius, or, you know, area. And then when we go out to find property like this, we talked to the property owners around it, and when we get somebody that's willing to lease us the property, and it meets, you know, all the criteria that we're looking for, then we sign the leases and then go through this process.

HEARING EXAMINER DICKMAN: Okay. Couple more questions.

MR. ALDERMAN: Okay.

HEARING EXAMINER DICKMAN: This is going to -- besides the FirstNet, the tower is exclusive for AT&T, or is there other colocation for other services?

MR. ALDERMAN: There's going to be other locations. The way it is --

HEARING EXAMINER DICKMAN: Other services on the same tower?

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: There's room for four other carriers, and depending, it could be more carriers, depending on how many antennas they put up, yes, but CitySwitch will be the lessor of the property, and they will be leasing to AT&T space on the tower. AT&T doesn't own towers anymore. They lease them all from tower companies, and so CitySwitch is a tower company. So they -- they ask CitySwitch to go out and find sites, you know, for them, and so that's why that's that relationship.

HEARING EXAMINER DICKMAN: And CitySwitch is, for lack of a better word, the broker, and would also work with other providers?

MR. ALDERMAN: Yes. Uh-huh.

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: Yes, they're the ones that -- they will own the tower, like, vertical real estate, so, you know --

HEARING EXAMINER DICKMAN: That's what I was getting at.

MR. ALDERMAN: Yes. Yes. Yes.

HEARING EXAMINER DICKMAN: Okay. They say we have extra space for an antenna, come on

out.

MR. ALDERMAN: Right.

HEARING EXAMINER DICKMAN: So the other towers, I want to talk about those for a minute.

MR. ALDERMAN: Okay.

HEARING EXAMINER DICKMAN: It's my understanding there are other towers, or at least one tower in the vicinity, looked like, I'm going to call it 2,000 feet approximately. I was reading the staff report, and do you know about that tower? I mean --

MR. ALDERMAN: Uh-uh. No.

HEARING EXAMINER DICKMAN: Okay. So let me just find that.

MR. ALDERMAN: Is this a new proposed tower?

HEARING EXAMINER DICKMAN: Maybe that's a question for staff, but I'm pretty sure I saw that in the -- well, are you aware of other towers in the vicinity?

MR. ALDERMAN: Not existing towers.

HEARING EXAMINER DICKMAN: Not existing towers.

MR. ALDERMAN: Right.

HEARING EXAMINER DICKMAN: Not built towers.

MR. ALDERMAN: And I believe -- I did hear something about another tower, but they said it was a monopole and it was only going to be 100 feet. I'm not sure if that's accurate but -- but that was after -- we've been doing this. We've done pre-ap meetings back over a year ago, I think we started this.

HEARING EXAMINER DICKMAN: Yeah. Yeah. Okay. So I'm reading on Page 4 of 6, very last paragraph, staff has been receiving opposition letters regarding the close proximity of another tower to be located at 550 Frangipani Avenue approximately 2,065 feet east of Kapok Street site; that's what I was wondering, if this 185-foot communication tower has not been built, and is currently in the SDP review, so, but you're not familiar with the location of this site?

MR. ALDERMAN: I heard something about it, but it -- but from what I understand they submitted it to the RF engineers for evaluation and they ran the propagation map on it, and it did not meet the requirements. They need to be at the 250-foot level, okay, in order to reach that --

HEARING EXAMINER DICKMAN: For FirstNet?

MR. ALDERMAN: For FirstNet.

HEARING EXAMINER DICKMAN: Okay. Got it. Okay. I don't have any other questions.

Jeff, you want to talk to me about -- have you gone through -- I guess, we have to really look at the criteria for these variances, regardless of the tower, that it's still a variance.

We need to go through the criteria, and make sure you've covered everything. There's, looks like staff says yes to everything, and then on the last one, so it's A through H of 9.04.03(A) through H, so maybe you can hit on those and explain some of those things?

MR. WRIGHT: Sure. First of all, we agree with staff, and we incorporate their analysis into our response, and we've also -- and it's on packet page -- I don't know if this is any help to you, but on Packet Page 172, we have our formal responses to each of the criteria and might be best to get those on the record. They are already in the record, but on the record for today's proceeding. If it's okay with you, I can fly through them really quick?

HEARING EXAMINER DICKMAN: Yeah, that would be great. I'd love that.

MR. WRIGHT: Okay. Because it's -- ultimately it is all about the criteria. The first criteria, this is 9.04.03(A), there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure or building involved.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: And we said yes, the circumstances, particularly this location being rectangular, big enough, but not shaped properly for our purposes, and the structure, obviously the structure is fairly unique. These don't go up every day.

Got a little bit more here, the property is rectangular. The proposed structure is unique, a 250-foot tall essential services tower. It meets the separation requirement with respect to northern and southern boundaries. You've heard that already.

It meets the LDC certified collapse area measurement, and the nearest structures are several hundred feet away from the property's perimeter. The certified collapse area alternate measurement isn't there. The reason that they have an alternate measurement is to ensure the safety of nearby properties and structures, and this unique set of circumstances is peculiar to this property and both structures.

Additionally, the code was written in 2005. The recent technological advances, as Jim mentioned, has made it possible to design communication towers that can withstand hurricane-force winds.

In the highly unlikely event of a structural failure, the proposed tower will be designed and built to buckle and fall if, in the unlikely event, within a 100x100 foot compound. By the way, that 100x100 foot is also the lease area, and it comprises about 20 percent of the coverage of this property.

B, are there special conditions and circumstances which do not result from the action of the applicant, such as preexisting conditions relative to the property which is the subject of the variance request? We said yes. Staff said yes.

Our reasoning, the property is large enough to safely accommodate the proposed tower. Its rectangular shape makes it necessary to obtain a variance to meet the LDC separation requirements for the eastern and western boundaries.

C, will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create practical difficulties on the applicant?

Yes, the proposed tower, it's a permitted use at this location that will accommodate critically important, essential services communications.

We've demonstrated through an engineer's certification that the structure is designed to meet the underlying purpose of the separation requirements, that is, safety, distance with respect to neighboring properties.

And, again, this question asked about literal interpretation, as Jim mentioned, using just half the tower height is not custom to this tower. Using the certified collapse area is custom to this tower.

So in this case a literal interpretation of that half tower height is an undue hardship, and without the variance to enjoy the permitted use of the communications tower, the applicant would be required to substantially decrease the tower's height, and basically it would be a nonstarter.

D, will the variance, if granted, be the minimum variance that will make possible the reasonable use of land, building or structure and which promotes standards of health, safety or welfare?

Well, we definitely score high points on the health, safety and welfare component of that. Is it the minimum amount? Well, what we did in measuring these, our variance request is down to the decimal, and it's based on a sketch right up to the inch. So it is the minimum amount necessary to enjoy this use.

E, will granting the variance confer any special privileges that is denied by the zoning rights to

others in the area? This is one where we said no, and staff said yes, but we are both using the same rationale.

We said no, there's no specific privilege here, anybody can do this, and staff, I believe, said, yes, anybody can do this, but it is giving them a special privilege. So I'll be happy to get staff's comment on the record straight from the staff report.

HEARING EXAMINER DICKMAN: Uh-huh. I'm reading it.

MR. WRIGHT: Okay.

HEARING EXAMINER DICKMAN: I have it right in front of me.

MR. WRIGHT: Okay. Great. So we are saying the same thing, is my point there, even though there's a yes in one case, and no on the other.

Okay, and a little elaboration on E still, it won't give us a special privilege, because anybody could, theoretically, seek a similar variance. Communication towers of this height are a permitted use, and the tower is designed to withstand hurricane-force winds, in the highly unlikely event of failure.

So we basically are saying no. It's something that you have to seek, and if anybody else in the area wanted to seek it, they could do the same thing.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: F, will granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood or otherwise detrimental to the public welfare? The answer is yes.

The location and nature of the proposed variance meets the intent and purpose of the LDC.

Safety and distance from structures will not be injurious or detrimental to the neighborhood or to the public, and will fall within a collapse area in the unlikely event of its structural failure.

The outside perimeter of the certified collapse area is 46 feet from the western boundary and 25 feet to the eastern boundary, roughly, and several hundred feet from any neighboring structure.

It will provide a benefit to the public, and is designed to prevent any detrimental impacts. One thing I wanted to mention on that, will it be in harmony with the intent and purpose of the zoning code and not injurious to the neighborhood, as I mentioned early on, this proposed tower is located between a mine and an agricultural operation in receiving lands. And both the LDC and the Growth Management Plan of Collier County, direct development to receiving lands, so to that extent, it is in harmony with the code.

HEARING EXAMINER DICKMAN: Let me ask you a quick question. Are you -- are you aware or familiar with any legal doctrine that addresses view and aesthetics and things in construction of the tower, because right now, so far we've been talking about collapse areas, and distance from structures or anything like that, but I imagine I'm going to hear folks talk about what this looks like, what it's going to look like at night, and things of that nature.

Are you familiar with any right under case law or anything of that nature?

MR. WRIGHT: Yes. General rule in Florida is you do not have a right to a view. In fact, there's cases that a neighbor will out of spite put a fence up to block their neighbor's view, and in those cases, the Court says, Geez, there's no right to a view in Florida.

So even if they do it with a wicked heart, it still doesn't matter. You don't have damages under that. There's no right to a view in Florida. The only exception I know of is in eminent domain when they talk about a riparian view. There's a lot of cases on that, but that's not applicable here.

We're talking about straight up right to a view, and I do have a case that I haven't looked at it in a

while, and I brought it with me, where the fence -- this is a case in the Second DCA. The case is Mickel v. Norton 69 So.3d, 1081, and the Court basically held that, as in this case, the fence served a useful purpose, does not constitute a nuisance, and also emphasizes that you have a -- there's no right to an unobstructed view, so that's one case that I did have handy, that's how I see the law on the right to a view.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: I don't know if that answers your question?

HEARING EXAMINER DICKMAN: That's what I was curious about. I mean, you know, I know that that's -- that's going -- probably going to be -- if I were there, I would probably be concerned about that, but I don't know that there's a legal right to it, and as you said, you know, I'll address this with staff, this is a permitted -- this is a legal permitted use listed as a permitted use, right, not as a permissible use or anything like that?

MR. WRIGHT: I think, to be accurate, essential services towers are a permitted use in this location.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: Not every other --

HEARING EXAMINER DICKMAN: Okay. Gotcha. Thank you.

MR. WRIGHT: And if I may just point out that whatever perceived negative impact on the view should be weighed against the positive public benefit of having solid emergency services in the area.

HEARING EXAMINER DICKMAN: I understand. Thank you.

MR. WRIGHT: And I think, did I get through H?

HEARING EXAMINER DICKMAN: No, you didn't. I stopped you at F, I believe.

MR. WRIGHT: Yes. Okay. So getting on to G, I think we're done with F. G, are there natural conditions, or physically-induced conditions that ameliorate the goals and objectives of the regulation, such as natural preserves, lakes, golf courses, et cetera.

We didn't have any of those physical-type things, but we did emphasize the fact that this is a remote area, and populations in this area is less dense than urban areas, and communications at this location can be challenging because of that in emergency and storm events.

And, H, finally, will it be consistent with the Growth Management Plan? Yes, as I mentioned, the Growth Management Plan directs development to this area. Farms are a permitted use there today. So you could have a noisy, smelly operation as a matter of right.

This is a lot more compatible with the neighborhood, we believe, because it's a lower impact, low traffic type of use, so we meet the H.

HEARING EXAMINER DICKMAN: So on H, on the GMP part, you're saying that the land use and zoning designation is going to, you know, it basically anticipates population growth; correct?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: And that, therefore, essential services are necessary?

MR. WRIGHT: Yes. Yes.

HEARING EXAMINER DICKMAN: And are there any other provisions in the GMP that address essential services, or anything to that nature or...

MR. WRIGHT: I'm sure there are.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: None come to mind.

HEARING EXAMINER DICKMAN: Okay.

MR. FRANTZ: Your mic is not picking you up.

MR. WRIGHT: I'm sorry. Yeah, I'm not sure if -- I know the LDC has definitions, and very specific regulations. I'm not sure how much the GMP gets into that specifically, but in the rural fringe they divide it into sending and receiving. Sending, being more preservation friendly, receiving meaning more development friendly.

HEARING EXAMINER DICKMAN: Right.

MR. WRIGHT: We are in receiving.

HEARING EXAMINER DICKMAN: And I'll probably -- I'll be asking staff that question, because on H, it does seem to be just more of a conclusion and not really an explanation on the consistency with the GMP. So I'll address that with staff.

MR. WRIGHT: Understood.

HEARING EXAMINER DICKMAN: Can I ask your expert to come back up real quick?

MR. WRIGHT: Sure thing.

HEARING EXAMINER DICKMAN: Mr. Alderman; correct?

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: My mind is still active, my faculties are working. You heard Counsel's explanation of the criteria; correct?

MR. ALDERMAN: Correct.

HEARING EXAMINER DICKMAN: And did you -- did you work with -- were you an active part of answering these criteria and putting these together because you had to --

MR. ALDERMAN: No, I was not. I reviewed them for the presentation that I gave today.

HEARING EXAMINER DICKMAN: And in your professional opinion, do you agree with -- I mean, basically Counsel reiterated what was in staff's -- in the application. In your professional opinion, do you agree with those --

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: -- opinions? Okay. Thank you.

MR. ALDERMAN: Uh-huh.

HEARING EXAMINER DICKMAN: Thank you very much. Is that it, Mr. Wright?

MR. WRIGHT: Yes, that concludes our presentation. I just want to emphasize this request, if approved, will improve the safety of the citizens of Collier County, and the FirstNet would be a big help for first responders and the public during emergency events, and we've demonstrated by competent and substantial evidence in the record before you, including our experts, and the county's experts, that we meet the applicable LDC criteria for approval. Glad to answer any questions, and we respectfully request your approval. Thank you.

HEARING EXAMINER DICKMAN: Yeah, why don't you reserve some time?

MR. WRIGHT: Yes, I'd like to reserve time for rebuttal. Thank you.

HEARING EXAMINER DICKMAN: Okay. Let me hear from the county. I have a couple questions, if you would. Okay. Describe for me the difference between essential services as a permit -- as a permitted use, rather than a nonessential service tower, as a -- I don't know how you would do it, as a special exception or conditional use.

MR. FINN: The best I can -- I'm sorry. For the record, I'm Tim Finn, Principal Planner. The best I can describe essential services would be emergency services, fire and EMS, any disaster-related services.

A nonessential service would be, Ray, correct me if I'm wrong, would be like AT&T or something of that nature, not of pertaining to an emergency service.

MR. BELLOWS: Or a radio station communication tower would not be an essential service.

HEARING EXAMINER DICKMAN: Ray Bellows for the record.

MR. BELLOWS: For the record, Ray Bellows.

HEARING EXAMINER DICKMAN: Yeah, so, fine, Ray jump in, the way that I'm -- these are kind of rhetorical questions. I want to get them on the record, if you don't mind.

MR. FINN: Okay.

HEARING EXAMINER DICKMAN: So my understanding is they are a participant or through FirstNet, which, to me, meets the definition of essential services, as opposed to just a tower that would sell commercial wireless services; right?

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: And what would be the -- if they were own -- not FirstNet, how would they -- how would the approval process take place? Ray, or if you -- either one of you can answer this.

MR. FINN: I'll try. To the best of my knowledge, FirstNet, they did meet the definition of essential services.

HEARING EXAMINER DICKMAN: I'm saying if they were not FirstNet.

MR. FINN: Then they wouldn't meet the definition; therefore, they would not have been allowed.

HEARING EXAMINER DICKMAN: So it would be -- it would not -- it would be not permitted here?

MR. BELLOWS: Well, for the record, one thing, I just didn't come prepared for that question. The zoning district would have to list it as a conditional use, and I didn't check to see if it was a conditional use in neutral lands.

HEARING EXAMINER DICKMAN: Okay. These are neutral?

MR. BELLOWS: But if it isn't listed as a permitted use -- or a conditional use in neutral lands, then it can only be essential.

HEARING EXAMINER DICKMAN: It's prohibited.

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: So it's prohibited. So if it's not listed it's prohibited. If it's not listed as a permitted use or a conditional use, then it's prohibited; right?

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: It's got to be expressly listed. That's the way I understand the LDC.

MR. FINN: There was a zoning -- a zoning verification letter dated March 17th, 2020.

HEARING EXAMINER DICKMAN: I read that.

MR. FINN: That says that for an essential services tower, this does not meet conditional use, but would be subject to the variance.

HEARING EXAMINER DICKMAN: Gotcha. Okay. Couple other questions. So I believe I read in the staff report that, and correct me if I'm wrong, that the county is working on new LDC amendments that deal with distance requirements; is that right?

MR. FINN: Yes. Yes. Yes, that's correct.

HEARING EXAMINER DICKMAN: Yeah, so I did read that. Okay. So can you explain that to me, because right now there's no distance requirement. I would understand why you would want a distance requirement, because, otherwise, you'd have basically collections of -- possibly collections of antennas very, very close to each other, but is that correct, that the county is working on a distance requirement?

MR. FINN: I believe we are. I think we have somebody from our Land Development Code, they

could answer to this.

HEARING EXAMINER DICKMAN: Ray, is that you or --

MR. BELLOWS: Could you repeat the question?

MR. FRANTZ: I can speak to it. Jeremy Frantz, for the record.

HEARING EXAMINER DICKMAN: Well, let me find this in the staff report, because I want to make sure of it. It is in the staff report; right? I thought that I saw that. Yes, it says, as such staff will be amending the LDC to address communication tower distances -- distance separation requirements in the near future. Jeremy, you want to talk to that?

MR. FRANTZ: Yes. Jeremy Frantz for the record, Land Development Code Manager. We have identified this is a potential need; however, we don't have an amendment that's currently in the CDD review process right now.

HEARING EXAMINER DICKMAN: Yeah.

MR. FRANTZ: So that's -- that's something that would be a future change.

HEARING EXAMINER DICKMAN: So it's not -- it's not -- it's not in the pipeline, so to speak, where it's already a completed ordinance and being pushed forward for approval yet?

MR. FRANTZ: That's accurate.

HEARING EXAMINER DICKMAN: Okay. And have you -- has there been identified or discussed any proper distances at this point?

MR. FRANTZ: It's not -- the discussions haven't gone to that level of detail yet.

HEARING EXAMINER DICKMAN: I gotcha. Okay. I appreciate you disclosing that staff is looking into this, and I'm sure that it's been raised in other areas as well. Okay.

MR. BELLOWS: I do have an answer to the one question about whether a conditional use could be requested. I went to the Land Development Code, and it is not listed as a conditional use, so they would have to qualify as an essential service at this location.

HEARING EXAMINER DICKMAN: All right. And, again, the code is, if it's not articulated, then it's not permitted?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: Bear with me for a minute. I'm going to look at my notes. Okay, that's it for now. I appreciate it. Let's open it up for public comment. How many people do we have signed up?

MR. FRANTZ: I have seven or eight slips the last time I counted. I'm not sure if everyone has filled one out, but that's how many have been turned in.

HEARING EXAMINER DICKMAN: Okay. So here's what I want to do. I've read that -- I read in the record that their letter from -- there's a homeowner's association out there, or civic association, and then at the last meeting, I saw that there was an attorney here. So what I would like to do is hear from the attorney first, if you don't mind, and then if there's -- is there a representative from the homeowners association? Great. And that way if we hear from those two folks then anybody -- I'm not going to prevent anybody from speaking, but I would respectfully request that, you know, repetition and redundancy be kept to minimum. All right, Counsel, you want to come on up, and about how much time do you need?

MR. LEWIS: We need about 25 minutes.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: Maybe 30.

HEARING EXAMINER DICKMAN: So let's try to keep it --

MR. LEWIS: I'll be very concise.

HEARING EXAMINER DICKMAN: Yeah, I appreciate that.

MR. LEWIS: I understand.

HEARING EXAMINER DICKMAN: Yeah, I get it. This is quasi-judicial, and as a professional courtesy I want to make sure -- they've hired you. I want to make sure that you have adequate time to make your arguments, and, of course, you understand Counsel is going to have time to rebut those. Okay?

MR. LEWIS: Absolutely. Thank you. Good morning, Examiner Dickman. My name is Doug Lewis. I'm with the firm of Thompson and Lewis. We also have a court reporter here today. I am appearing today on behalf of the J. Richard Smith Revocable Family Trust and David Sherf. They are affected property owners. They're also business owners. They're adjacent to the proposed and extremely tall 250-foot cell tower, whose rights are uniquely affected. They've owned the property adjacent to the applicant's land for approximately 33 years, and like many of their neighbors who were drawn to purchase in the North Belle Meade area, given its rural nature and natural beauty, that's part of why they're there. I do want to thank Mr. Jeff Wright for his professionalism, and for meeting with me to explore a possible resolution, including alternate sites that would be more suitable to the location. I greatly appreciate that.

We were unable to reach any resolution, and also as part of that, there are unresolved questions, information, that we've felt were very material and important, both in the interest of public transparency and to ensure a proper process that we still haven't received as of today.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: And I'll cover those in my presentation.

HEARING EXAMINER DICKMAN: So let me ask a quick question, and I apologize for interrupting. Are you going to show a slide of the location of your --

MR. LEWIS: (Nodded head.)

HEARING EXAMINER DICKMAN: Okay. Because I know the applicant has a slide, too, if you wanted to show that, I'd like to see the location of --

MR. LEWIS: We have a PowerPoint. We can pull that up.

HEARING EXAMINER DICKMAN: Just so I know which properties they are.

MR. LEWIS: Absolutely. The very first or the second page on that slide.

HEARING EXAMINER DICKMAN: Do you have experts with you at all?

MR. LEWIS: I do. So my team this morning, I've got Tom Barber, he's an AICP Planner with AB&B.

I also have Mr. Ralf Brookes, who is a board certified attorney in both city, county and local government by the Florida Bar. He's also approved by the Florida Bar for CLE credit on a CLE he's done called "Florida Law Regarding Variances."

They will provide the expert testimony, and they're both being proffered today as expert witnesses on the variance criteria, and I have copies of Mr. Barber's AICP License information today.

I also have a CV for Mr. Brookes, which I'm happy to share, and I would like to ask you if we need to take the time now to qualify, or if we can stipulate to their -- or however you would like to proceed?

HEARING EXAMINER DICKMAN: Well, let me just be clear about Mr. Brookes. He's just going to be acting as an expert, not as legal counsel?

MR. LEWIS: As an expert, that is correct. Absolutely.

HEARING EXAMINER DICKMAN: Okay. Great. I'm familiar with Mr. Brookes' expertise, so I'll admit him as an expert. I'm not familiar with the other gentleman, but once you bring him up I'll, you know, you can present a few parts of his credentials and we'll see from there.

MR. LEWIS: Okay.

HEARING EXAMINER DICKMAN: Just give me an idea of where the property is, if you don't mind.

MR. LEWIS: If we can go to the second slide. If you look at the bottom right, you see the yellow shade, that's the subject parcel.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. LEWIS: Below that is the same -- is the yard -- is the same parcel that is owned by Johannes Steffens, if I'm pronouncing it correctly. He owns both parcels. He owns the five-acre piece below it. He's purporting to -- he's under contract to lease that north piece. To the right, you see two parcels, that would be east. If you look north, there are two red squares there and there's 15 and 15, those are the parcels that are owned by my clients.

HEARING EXAMINER DICKMAN: The two parcels to the right --
(Simultaneous discussion was had.)

MR. LEWIS: Correct. Correct.

HEARING EXAMINER DICKMAN: Those are only 15-acre parcels?

MR. LEWIS: Correct.

HEARING EXAMINER DICKMAN: Okay. Are they unimproved or improved?

MR. LEWIS: They're improved. There's a home there. They do VRBO for folks that want to go out and enjoy nature, enjoy the scenery at night. They also do agribusiness, and they've got cattle that runs through a cattle path where the tower is proposed to block. So that's the property.

In addition today, I will have Ms. Arnette Smith, she's with the J. Richard Smith Revocable Trust, and she'll provide competent and substantial fact-based testimony pertaining to the agri tours and the VRBO business and other property uses that are occurring on that 30-acre parcel that we described, which is adjacent to the tower project; along with testimony as to the adverse impacts of that proposed tower.

HEARING EXAMINER DICKMAN: Okay. So those are your clients?

MR. LEWIS: Correct.

HEARING EXAMINER DICKMAN: All right. Great. Sorry to interrupt you.

MR. LEWIS: Absolutely. So the applicant today seeks variances from -- two variances from LDC 5.05.09(G)(7)(b) to reduce the eastern boundary setback of 125 feet to 60.5 feet and from the western boundary setback of 125 to 82.2 feet, and that's the code as of today.

We're not sure what can happen to the code in the future. We really can't speculate as to what a board may or may not do and the rationale for changing the code, but those are the requests today, and those are per code as of today.

My clients oppose the application for the two variances and the resulting construction of the 250-foot massive tower at this adjacent project site.

This morning the competent and substantial evidence will show three things: The first thing that we're going to show is that there is absolutely no hardship that exists under the law that would permit the granting of the variance.

Now, I've looked at these. I've done these and we're going to have experts testify, but I would submit in all honesty that any hardship that we're looking at here, as best I can tell would be

self-created in selecting a very small 1.25 acre parcel to go under contract.

Now, the documents I saw show that the parcel is under contract and they can select another site. They can walk away. The second thing that we're going to show is the applicant has not met the burden of proof to show compliance with the LDC.

And the third item that we'll address is that while we recognize that there are many instances where variances are appropriate and necessary, there are also alternate cases where there are abuses, and we believe that this in the case of the latter here.

The applicant seeks to overbuild a 250-foot tower, which is not in harmony with the neighboring structures. In fact, I don't think there's anything in the record that shows a 250-tower anywhere in this area -- anywhere in that area. It's on a nonconforming, as to the lot size, it's a 1.25 acre parcel in the protected RMFU (sic) receiving and North Belle Meade overlay districts, and they're doing this in order to pay significantly less, and perhaps a quarter of the price in land acquisition costs, when compared to a five-acre conforming parcel, conforming as to the size parcel. All of this is done at the expense of the neighbors.

The decision today to grant or deny the variance is based on the criteria found in LDC 9.04.03(A) through H.

HEARING EXAMINER DICKMAN: Can I real quickly --

MR. LEWIS: Yeah.

HEARING EXAMINER DICKMAN: Articulate for me again very shortly the third, you know, one, two, three.

MR. LEWIS: The third point is that the variance, the approval of the variance is inappropriate here.

HEARING EXAMINER DICKMAN: Not appropriate?

MR. LEWIS: Inappropriate, yes.

HEARING EXAMINER DICKMAN: For the location?

MR. LEWIS: Yeah, given the height, the request to the 250-foot versus the 148, which they would be permitted, it's not in harmony. They've selected an undersized 1.25 acre parcel versus the five-acre parcel.

HEARING EXAMINER DICKMAN: Okay. Are you going to stipulate that -- I mean, obviously you've been here a couple times or at least once, that there are no notice failures here?

MR. LEWIS: I'm not aware of any notice failures on my clients' part, as to my client.

HEARING EXAMINER DICKMAN: Okay. Right.

MR. LEWIS: Yeah, I can do that. So the -- so the decision today to grant the variance will be based on that criteria we mentioned under 9.03.04.03 (sic) A through H. The evidence will show that the applicant meets none of the criteria.

With that background introduction, I will ask Mr. Barber and Ms. Smith to provide the bulk of the testimony pertaining to hardship and the legal criteria for granting of the variance.

Together they will walk us through each of the criteria items, providing relevant background and legal testimony. I would like to -- and then following that, Ms. Smith will have a short video presentation to share and she'll proffer some brief fact and knowledge-based testimony related to that video, and then I will end with some concluding remarks addressing some of the points.

I appreciate you doing a nice job of getting those issues out there that we can address as well, so thank you for doing that.

I would like, before I do that, just to make sure for the record we -- Jim Alderman was proffered as an expert today. I just wanted to ask, what exactly is his expertise? I didn't see his bio.

HEARING EXAMINER DICKMAN: He -- his expertise seems to be based on the wireless -- we can

have him come back up, but from based on what he said, and he's got a CV, a resume that's been put in the record, but he's been dealing with wireless.

MR. LEWIS: Yeah, I apologize. I haven't seen it, but is he an AICP? Does it show that on there?

HEARING EXAMINER DICKMAN: You're welcome to ask him.

MR. LEWIS: Perfect.

HEARING EXAMINER DICKMAN: I mean, it's quasi-judicial. If you want to -- why don't we do this? Why don't you go through your presentation, or if right now you want to put on the record any challenges to his expertise, when they have time for rebuttal, and they can, you know, address that issue --

MR. LEWIS: Okay.

HEARING EXAMINER DICKMAN: -- at that point, but if your next argument is that he's not an expert, then just make that argument.

MR. LEWIS: Yeah. No, I'm not -- I'm not -- I'm not making that argument, Examiner. What I'm asking is just the scope of his expertise. I think it's relevant. I'd like to know is he an expert in planning use and an AICP? Is he -- does he have a -- is he an expert on the law of variances? The other part that was intriguing was there was that letter on the fall area, and there was some engineering there. So I wanted to -- I don't think he did that work, so I wanted to establish his qualifications as to whether or not he can opine as to ambiguity in that letter and what things mean, and his expertise to do that, so I wasn't sure --

HEARING EXAMINER DICKMAN: Why don't you cross-examine him? He's right there.

MR. LEWIS: Sure. Absolutely.

DIRECT EXAMINATION

BY MR. LEWIS:

Q Mr. Alderman?

A Yes.

Q Okay. Thank you for being here today. In terms of expertise, what is the subject area of your expert testimony today?

A Well, I've -- well, I've got 25 years of site acquisition experience. I've got four years of tower management with Crown Castle and -- but one of the parts of my job as a site acquisition specialist is to review structural analysis, construction drawings. So I've done that for several years.

I've evaluated these letters that show a fall radius, so that's, as far as this goes in my testimony today, that's what my expertise is.

Q Okay. Are you an engineer?

A No.

Q Do you do the calculations?

A No.

Q You farm that out?

A No, that's done by engineers.

Q Understood. Yeah, I get that. That's a whole another area beyond my level.

HEARING EXAMINER DICKMAN: Just keep asking him questions.

MR. LEWIS: Absolutely. Sure.

BY MR. LEWIS:

Q Did you have any discussions with the engineer about his letter in particular?

A No.

Q Okay.

A It's a signed and sealed letter so...

Q Okay. Are you an AICP Planner?

A No.

HEARING EXAMINER DICKMAN: AICP, American Institute of Certified Planners?

MR. LEWIS: Correct.

MR. ALDERMAN: No, I'm not.

BY MR. LEWIS:

Q You're not. Okay.

Do you have a law degree or a background, a board certification --

A No.

Q Okay.

(A court reporter interruption was had. The proceedings continued as follows:)

HEARING EXAMINER DICKMAN: Yeah, let's slow this down a little. We want to get it on the record.

STAFF MEMBER: Yeah, sorry. You are cutting off each other.

HEARING EXAMINER DICKMAN: Yeah.

STAFF MEMBER: Just let him finish and then answer the question. The mic is on you.

HEARING EXAMINER DICKMAN: Yeah, gentlemen take your time. Take your time, and let's get this done right.

BY MR. LEWIS:

Q So my question was do you have a law degree or a background in the law of variances?

A No.

Q Okay. Are you providing or proffering any testimony today as to the criteria for the variance -- variances?

A What was the question?

Q Are you proffering any testimony today about the granting of the variance, the criteria for variances for approval of the variances?

A I'm not sure I understand what you're asking me.

Q Are you providing expert testimony today in the area of the criteria today that's being evaluated for variances?

A No.

Q Okay. Are you providing any planning testimony today relative to land use compatibility, aesthetics, things of that nature?

A No.

Q Okay.

HEARING EXAMINER DICKMAN: Okay. So I think we're getting a little far afield. I think that the questions -- I mean, you -- what was -- give me your educational background. I think you mentioned that --

MR. ALDERMAN: Okay.

HEARING EXAMINER DICKMAN: -- your degrees.

MR. ALDERMAN: I have a Bachelor's Degree from the University of Florida in Real Estate and Urban Land Studies, I'm a Florida real estate broker --

HEARING EXAMINER DICKMAN: Okay.

MR. ALDERMAN: -- since 1974.

HEARING EXAMINER DICKMAN: And your wireless -- dealing with wireless, how long have you been doing that?

MR. ALDERMAN: Yes, yes, wireless real estate.

HEARING EXAMINER DICKMAN: Right.

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: And you did -- I mean, I did ask you the question after listening to Counsel for the applicant, who essentially read the county staff's expert testimony or expert staff report, and then I -- you were listening to that, and I did ask you whether you heard that, and whether you agreed with it, and based on that is it your expert opinion that it meets the variance criteria, and I believe you said yes --

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: -- in the affirmative?

MR. ALDERMAN: Yes.

HEARING EXAMINER DICKMAN: Okay.

BY MR. LEWIS:

Q Okay. In preparing for today's hearing, have you reviewed any of the contracts between the -- are you employed -- first of all, are you employed by the cell company, or who is your employer?

A No, I'm a contract -- I'm a contractor.

Q Okay.

A Work contract.

HEARING EXAMINER DICKMAN: Okay. So are these questions about his expertise or his --

MR. LEWIS: Yes, I'm trying to explain the foundation for his opinions on the AT&T cell net, is where I'm trying to go to, just to figure out the --

BY MR. LEWIS:

Q In providing that testimony today, did you review any of the contracts that AT&T has in place with the applicant?

A No.

Q Okay. Have you reviewed any of the contracts that FirstNet has with AT&T or the applicant?

A No. No.

MR. LEWIS: Okay. Okay. I appreciate that. Thank you.

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

MR. LEWIS: If we have any questions later, I reserve the opportunity to ask him again. I think that covers it. Well, thank you.

HEARING EXAMINER DICKMAN: Just to conclude, are you saying in your opinion that you don't believe he's an expert?

MR. LEWIS: Yeah. In my opinion I don't see him as a qualified expert in the area of the AICP planning.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: Or in the area of the law relative to variances and whether variances are appropriate or not.

HEARING EXAMINER DICKMAN: Well, he's not -- he's not arguing legal --

MR. LEWIS: No, I understand.

HEARING EXAMINER DICKMAN: He's not a legal --

MR. LEWIS: Correct.

HEARING EXAMINER DICKMAN: He's not an attorney, and he's told you that so...

MR. LEWIS: Yeah, I agree with that, and then the final thing, obviously, is I don't think he's proffered as an expert to give testimony as to the fall radius and the AT&T FirstNet comments that were made.

HEARING EXAMINER DICKMAN: All right. Well, Counsel for the applicant will clarify that at -- during rebuttal. I'll just give you time to clarify that, because I want to clear up this idea of the expert. I did -- I did accept him as an expert, but we'll narrow the scope. Mr. Wright will come up in rebuttal and we'll -- we'll get to that. Okay?

MR. LEWIS: Thank you. That's all we're trying to do is narrow and identify clear scope for the record. Mr. Barber will now be joined by Mr. Brookes in a presentation via PowerPoint, and staff has a copy, it's up on the screen, and we appreciate the opportunity to be heard and present testimony this morning.

HEARING EXAMINER DICKMAN: Thank you.

MR. LEWIS: They'll proceed now and then we'll follow.

HEARING EXAMINER DICKMAN: You mentioned somebody named Smith?

MR. LEWIS: Correct, yeah, she'll be -- she'll follow their PowerPoint and then I'll conclude.

HEARING EXAMINER DICKMAN: Okay. One second. There's somebody in the audience raising their hand; oh, is that your client?

MR. LEWIS: Well, yes.

HEARING EXAMINER DICKMAN: You're okay?

MR. LEWIS: Yeah.

HEARING EXAMINER DICKMAN: Okay. We're good.

MR. BROOKES: Good morning. My name is Attorney Ralf Brookes, and I am a University of Florida graduate in 1988, and I'm certified in the area of city, county and local government law. By being certified that means you take additional continuing legal education requirements, and that you take tests, and you have peer review, and upon certification, the Florida Bar says that you can hold yourself as an expert in that particular field, specialty of law. I've been certified in city, county and local government law since 2004. So it's been quite a few years now. City, county, local government law includes the fields of zoning and land use as applied to cities and counties. I've represented numerous cities and counties, including Sarasota County, Monroe County, Bradenton Beach, St. Pete Beach, Madeira Beach, the town of Yankee Town, Florida. I have also presented continuing legal education presentations on the Florida law of variances, both to lawyers, I do the Florida Bar, the Florida Municipal Attorney's Association, and also to laypersons who have been appointed to what is typically called a Board of Zoning Appeals or sometimes a Planning Commission of appointed members of the community that are heard -- that are appointed to hear variances cases so that they can get up to speed on what the law is on the variances, being non-lawyers. One of the things that the Hearing Examiner today pointed out is the Hearing Examiner process affords the efficiencies of time and of money. So it costs less money and it takes less time to go through than a full-blown public hearing perhaps in front of a Planning Commission and then a Board of County Commission or City Council. One of the other things that the Hearing Examiner process does is it ensures uniformity of decision, because one person is making a decision each time, instead of a majority of five

members who are not lawyers.

It also ensures a perhaps stricter interpretation, reading of the law, because it's done by someone with a background in law and not a person who has no background in law and is perhaps more swayed by what used to be called a weeping variance.

So the criteria for variances is something that I would like to talk about this morning for the record. I'm well aware this particular Hearing Examiner knows what variance is, and what the criteria are and is familiar with some, if not most of the case law.

However, I think it would be informative and also necessary, because the planner who will get up here after me is an AICP planner, and knows the planning aspects, and can talk about these facts, but really can't get into the law, because you need a law license to practice law, and you really need a certification to be able to be an expert in a particular area of law.

HEARING EXAMINER DICKMAN: Mr. Brookes, I just want to be absolutely clear for the record that you're not here as a lawyer presenting legal arguments. You're here as an expert explaining the general laws of variances, and this particular type of variance; correct?

MR. BROOKES: Yeah, that's correct.

HEARING EXAMINER DICKMAN: Am I correct to say that, or maybe it needs to be articulated differently?

MR. BROOKES: I think you're for the most part correct. I'm going to try to walk you through how variances differ from special exceptions or conditional uses, what the criteria are under common law, how common law was codified throughout Florida in various codes, and highlight some of the most applicable points for you to apply, and for planners to apply as they consider this case.

HEARING EXAMINER DICKMAN: And one other thing, I just want to make this clear for the record that when Mr. Brookes says he wants to walk me through it, this is really for the record. I'm familiar with the law, and I'm going to evaluate the law, but, you know, this has to be said. So a lot of things that I may say are a bit rhetorical, but I think it's important to have them on the record for both parties.

MR. BROOKES: Thank you, Your Honor, and no offense intended, as I'm sure you understand.

HEARING EXAMINER DICKMAN: I do.

MR. BROOKES: So as I present in my continuing legal education program on variances -- and I have copies if you'd like them?

HEARING EXAMINER DICKMAN: Certainly. If you want to put those in the record, that would be great.

MR. BROOKES: Okay.

HEARING EXAMINER DICKMAN: Yeah, anything that anyone wants me to consider, it's best to give it to me now so I can take it with me, because my decision is not going to be made here.

MR. BROOKES: I was going to say, it's probably helpful to take this CLE presentation, it was drafted originally in 2004, presented many times and then again updated in 2018 and presented, back with you rather than trying to read it now.

What's helpful about it, it has some case law. You can certainly go and look at that case law. They're cited in here. I'll try not to read the citations --

HEARING EXAMINER DICKMAN: Thank you.

MR. BROOKES: -- and clog the record with that. I'll just call out a case like Askew, and then Askew will be cited in there.

HEARING EXAMINER DICKMAN: That's fair.

MR. BROOKES: So Askew v. Gables-by-the-Sea is an old 1976 case, and explains that a variance is

necessary because sometimes a code, if strictly applied to a uniquely-situated parcel, would render the parcel unusable for the purpose it's zoned, and a typical example that you'll see in law school hornbooks or in law school classes or case law where a variance is needed to prevent a taking of the land, you couldn't use the land. We have a triangle-shaped parcel and there's setbacks from the sides and the front, and if you calculate those setbacks, there's absolutely no useable area left on the property, and that would result in a taking if the variance weren't granted. So a variance is not supposed to allow for a more intense use than the code allows. It's supposed to be there to prevent the code from having perhaps unintended consequences on uniquely-shaped parcels or in unique circumstances.

It's contrasted with what they call a conditional use and some jurisdictions call it a special exception. Conditional use is a use that's allowed if conditions would be appropriate to its location. So it's a use that's really a permitted use, but we need to have conditions on hours of operation or ingress and egress, these types of things to make sure it's compatible with that neighborhood.

But a variance is something that you are allowing an applicant to depart from the code requirements as applied to that particular parcel. So it's clear that under the case law, Taylor, that each variance is decided on its own merits. One does not create a precedence for another. You have to look at the unique circumstances of each case.

So ordinances authorizing variances can be awarded in different ways. Most of them arise from the criteria that's created by Florida case law. After 1985, the Growth Management Act, local government, cities and counties all revisited their comp plans, and within one year, they all revisited their Land Development Codes.

So they looked at their Land Development Codes and reenacted them or amended them and enacted them, and most of those, if not all, they are criteria for variances.

You have to read the specific words. These standards can be different. What is a standard is the criteria must be mandatory. They are not permissive, and most codes say you must meet all of the criteria to obtain a variance.

So generally what cuts through most of it, in fact all of it, is that the criteria as applied to land have to do with circumstances that are unique to the applicant's property, and not shared by other property, and create an undue and unnecessary hardship. The case law starting way back, but even including more recent cases like Burger King, Nance, and some of the other cases you'll see in the outline say that a mere economic disadvantage to the owner's preference as to what they'd like to do with the property is not a sufficient hardship.

Just because I want to get more economic return out of my property, doesn't mean that that's a sufficient hardship. In fact, it's most likely a self-created hardship.

If you purchase property with zoning restrictions on it, you are bound by those restrictions. If a purchaser buys land with a condition creating a hardship on it, the owner participated in an affirmative act which created the hardship.

If someone is out looking for properties to put a cell phone tower, one of the due diligence things they should do is to look at the code and look at the code setbacks and choose a size parcel that's adequate for the proposed use.

So the *Friedland v. Hollywood*, and *Elwyn*, these cases all say that purchase of property with a zoning restriction on it will normally not constitute a hardship. The properties purchased after the adoption of the criteria, you purchase with knowledge of what those criteria are.

Variance law is kind of the other side of the coin from takings law. Variances are granted so

that the code does not work a taking or take all reasonable economic use from the property. If you didn't have the variance and you could not use the property for the purpose zoned, that would perhaps be a taking. So both variances and takings of law doctrines look to what's called the parcel as a whole. You can't shave out a piece of the land and say this is my land. If you buy a substandard-sized lot or even if you buy more property, and then you plat out a substandard sized lot, the courts will look at the property as a whole. Variances are more typically applied for by the land owner. Even if someone is proposing a use and wants to put a contract contingent upon getting a variance approval, they still need the owner's authorization for the variance.

It's important that whoever is looking at the variance, whether it's a BZA or a Hearing Examiner, look at the parcel as a whole. If you look at the slide that is on the screen right now, Slide No. 2, from the applicant's presentation, I'm color blind, so it's either the red or the orange parcel that you see there, I believe it was represented at a certain acreage. It's on the slide, 1.25.

HEARING EXAMINER DICKMAN: Is the applicant's presentation or your --

MR. BROOKES: The applicant's, yeah.

HEARING EXAMINER DICKMAN: This is?

MR. BROOKES: Yeah.

MR. WRIGHT: No, it's ours.

HEARING EXAMINER DICKMAN: Yeah, no, this is --

MR. BROOKES: Oh, is it? Is it ours?

MR. WRIGHT: It's our presentation.

MR. BROOKES: Oh, it's ours.

HEARING EXAMINER DICKMAN: Yeah.

MR. BROOKES: Okay, sorry, he'll be getting -- our expert planner will be getting to it. This is a good slide to show the parcel, which is a piece of all of the property that's owned as a whole. So the red or orange rectangle is 1.25, but immediately below it is a square, and that is 1.25 and 1.25. So we're really looking at 3.75 acres owned by Johannes Steffens. So if you were to move the cell tower to another part of the parcel that's owned as a whole by Johannes Steffens to the south, there's enough land there to put a cell tower, 250 feet, and meet the code requirements, which means you can really use the parcel as a whole without a variance.

For whatever reason they've leased a piece in the top part of the parcel as a whole that does not meet the criteria. It's a self-created issue, is there, because they are purchasing a lease, I guess, on a parcel that exists that's part of a larger common ownership so --

HEARING EXAMINER DICKMAN: Mr. Brookes --

MR. BROOKES: -- in order to get a variance you have to show that there's no reasonable legal use that can be made of the property without a variance, not just one particular use.

So not only would -- comparing it to this case where you have to show that you couldn't use it for a tower that's less high, but you also couldn't use it for any other reasonable economic use, for example, a home, and our planner will talk about what other reasonable economic uses are allowed. Use variances are disfavored, if not prohibited. You're really not supposed to give variances to uses. I think you heard from your own -- the planning director, that a private cell tower for private cell use service is not a permitted use in this area. This proposed use would be used not only for FirstNet but also private providers; that's something to consider.

If we are going to have a FirstNet as an essential service, it can be located on the same property on its property to the south and not require a variance. The Hearing Examiner asked about

another proposed tower 2,000 feet away that does not require a variance. It's within the height that would be allowed.

It's simply going through what they call SDP review. I think the acronym stands for Site Development Plan review, so it's an as of right type of staff review, doesn't have to come to the Hearing Examiner, doesn't have to go to the Planning Commission or Board of County Commissioners.

So most courts have focused on the hardship criteria, and whether a hardship is self-created, whether other alternatives exist, whether it's a grandiose scheme of development, it's not allowed by the code, whether less development would be allowed by the code, whether there is another way to use the parcel.

Sometimes there's a pool that they're trying to site, is -- can this pool be put in the front yard versus the back yard? Even if you don't have a pool, can you still have a house; is that still a reasonable economic use of the property?

Another important corollary doctrine to variances is a variance should not be used time and time and time and over and over and over again as an amendment to a regulation that no longer makes sense. If the technology changes, if things happen with cell towers where the criteria no longer makes sense, that is for the elected body to consider.

HEARING EXAMINER DICKMAN: Mr. Brookes, can I interrupt you?

MR. BROOKES: Sure.

HEARING EXAMINER DICKMAN: Are you going to use any of these slides, or can I turn the lights back on?

MR. BROOKES: You can turn them back on.

HEARING EXAMINER DICKMAN: Because I'm getting some weird reflections in that.

MR. BROOKES: We have all the Plexiglass from COVID.

HEARING EXAMINER DICKMAN: Yeah.

MR. BROOKES: That makes it like the Super Bowl halftime show.

HEARING EXAMINER DICKMAN: Yeah, I'm get like ten dimensions here.

MR. BROOKES: Okay. Okay. I'm getting very close to wrapping it up here.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

MR. BROOKES: The Land Development Code, 5.05.09(G)(7)(b) says that communication towers shall be separated from all other surrounding property boundaries by a distance of not less than one-half the height of the tower and its antennas, or the tower's certified collapse area, whichever distance is greater.

So they're picking the larger distance, not just based on the collapse area, so, one, obviously, there is more -- it's -- more was being considered by the commission with regard to this setback, than simply the collapse of towers. They are also looking at more traditional setback things for aesthetics, how far should you be off the road for views and aesthetics and things like that.

Here they want you to be half the height of the tower. If the half the height of the tower is no longer the legislative intent or direction of the Board of County Commissioners, they can amend that Land Development Code section, as well as looking at the separation, not between cell phone towers, which was what the staff report talks about, but if they want to amend the actual separation of side setbacks, if you will, they could do so.

In closing, there's the Brennan (phonetic) case. Unnecessary hardship is generally defined as a non-self-created characteristic of the property which renders it virtually impossible to use the land for the purpose and manner which it is zoned, and Matura (phonetic) is a legal hardship will

be found to exist only in those cases where the property is virtually unusable or incapable of yielding a reasonable return when used pursuant to applicable zoning regulations, and I will give you that case, case excerpt.

And with regard to the criteria in this particular case, the planner will walk you through them. I did want to make note, with regard to one of the criteria about harmony in the neighborhood, I believe it's H -- it's F. Will be in harmony with the neighborhood and the zoning scheme, the specific intent and purpose of the zoning code.

Please, keep in mind that the zoning code does not allow private cell towers. It does allow essential cell towers like FirstNet, I guess, if they meet the criteria and the zoning code for the setbacks.

If it was truly in harmony with the neighborhood, I don't think you would have neighborhood objectors, like you had in the first case, there were no objectors. In this case the neighborhood does object, and you'll hear from them today on how they believe it's injurious to the neighborhood, and remind the Hearing Examiner that citizen-based testimony, as long as it's fact-based observations, is competent, substantial evidence, particularly with something such as community, character of the community, compatibility, which is similar to injurious to the neighborhood.

HEARING EXAMINER DICKMAN: I understand that layperson testimony, as long as it's fact based is -- can be considered, but it's my choice to the extent that I want to consider it.

MR. BROOKES: That's true, but I'd ask you to look at that with the Criteria F, in harmony with the neighborhood and would it be injurious to their particular uses in this area.

HEARING EXAMINER DICKMAN: May I you ask a couple questions?

MR. BROOKES: Sure. I'm happy to.

HEARING EXAMINER DICKMAN: Great. So a lot of this is predicated on the fact that it's an essential service, FirstNet. They apparently have a one great, you know, procurement and federal, I don't know how much it is, but it seems to be an essential service, and what I'm being -- and that seems to be a big driving force behind this, and I'm -- let's -- let's take for granted for a moment that FirstNet has certain criteria about where, in order to have this contract, where the tower needs to be, and without taking into consideration the multitude of reasons why the lower parcel, five-acre parcel isn't being used versus the other parcel, because I can think of a lot of reasons why, you know, they didn't have a choice between A and B parcel, but what if this was the only parcel available in that area, would that make this parcel a unique parcel?

MR. BROOKES: Well, but there's the law of variance. You're supposed to look at what reasonable uses are allowed on this parcel.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BROOKES: I think if the county wants to promote FirstNet, the essential service towers, they really should amend the code and say these are the setbacks that are required.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. BROOKES: Perhaps not if it's FirstNet or essential tower then reduce the setbacks to simply the fall zone, but the county commission was clearly trying to protect at least some of the other reasons for setbacks, including aesthetics to the neighborhood.

HEARING EXAMINER DICKMAN: Yeah, and I appreciate that. I guess what I'm getting at is --

MR. BROOKES: This case is different because you have a lessee -- potential lessee applying for the variance, where the case law analysis looks at the property and the person that owns the property. Johannes Steffens owns this reverse L-shape, and this cell phone tower could be sited within that

bottom of the L. It looks like a -- the -- oh, gosh, it's the horse chess.

HEARING EXAMINER DICKMAN: I understand.

MR. BROOKES: Yeah, the larger parcel on the bottom could easily accommodate this. If you're going to use this one, you could use it for essential service cell tower, yet it would be 140-some feet, and there are some essential service towers, my understanding, that go 125 feet. So it's possible.

250 feet is what they're asking for, but this parcel won't accommodate it, so that's why they're looking for a variance, and they are not the land owner, and there are other uses of this land that are available.

STAFF MEMBER: Sir, sir, sir, can we just clean between examinations, give us a minute when he's done, please.

HEARING EXAMINER DICKMAN: Yes.

MR. BROOKES: Let me answer his questions. I think he wanted to talk about that, too, but do you have any more questions?

HEARING EXAMINER DICKMAN: No, no, that answered -- that was my question. And just so you all know, we're taking every precaution we can for social distancing, and this fine gentleman is going to direct traffic up here, and we want to clean microphones and everything like that. It might slow the process down, but it's in everyone's best interest, so I hope you'll bear with us. Counsel, you have something to say before your other expert gets in?

MR. LEWIS: I just wanted to add on your question. I thought it was a good question that you asked. They could put a tower there. It could be a AT&T FirstNet tower at 148 feet, assuming it's a permitted use, assuming that would be an essential services, that's a separate question, but assuming that's the case, you could put a 148-foot tower.

I can tell you having looked at FirstNet, and having read several articles, which I have with me today, there's no magic requirement that FirstNet use a 250-foot tower as an absolute for their equipment. They're putting towers in that are less than 200 feet. They're putting FirstNet communication equipment on towers that are existing.

HEARING EXAMINER DICKMAN: Right.

MR. LEWIS: So I've asked the applicant, you know, is there a particular reason why you need 250 feet? I think today we heard some interesting testimony from their tower person, sounds like you may need other sites perhaps, to get the coverage that they're looking for, so that's really an applicant question.

So to answer your question as relates to the law of variances, yeah, you could put a -- assuming it's an essential use function, you could put a 148-foot tower in there and not come in for a variance. So it's not like they're being deprived the right to put an essential service tower on the property.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: It's the size of the tower.

HEARING EXAMINER DICKMAN: Well, if you have information about FirstNet and to your argument that they have -- FirstNet allows a shorter tower or a lower tower, put that in the record. I definitely want to take that back with me.

Everybody understand I'm not making a decision today. I'm going to need as much information as possible that I'm going to take with me. You can give that to me, but I guess my point was the uniqueness of the parcel, because this is part of the argument, but in a lot of instances, local governments have -- have run afoul of the law, maybe not the law of variances, but the law of

basically not -- using zoning to not allow something, even though it's, let's say it's a, not-in-my-backyard use, and they essentially zone their area so that there's either very little or no availability for that property; that was the essence of my question, so, and that goes to the 250-foot issue as well as -- and, frankly, I don't know that it's relevant that I drill down into why they're leasing this part of the parcel. I mean, they seem to be two separate -- I think they're two separate parcels or one?

MR. LEWIS: Same ownership but different parcels.

HEARING EXAMINER DICKMAN: Common ownership but different parcels.

MR. LEWIS: Correct.

HEARING EXAMINER DICKMAN: So I don't know that it's -- I don't know that it's relevant. I'll look at it and I'll think about it. I don't know that it's relevant for me to drill down into why two private parties have negotiated a lease on one piece of property, rather than the other. I -- Mr. Brookes made his point about it's the property owner not a contract purchaser or a lessee, but I certainly can appreciate a lessee not wanting to go through the expense of leasing property without knowing that they can do what they can do on that property.

There is a zoning verification letter in the record. I'll look at that. But I think you get my point and my question has been answered, but I do want to see the FirstNet information you have.

MR. LEWIS: Yeah, I'll provide those to you.

HEARING EXAMINER DICKMAN: Thank you, Counsel. Do you want to let your other expert go forward? Thank you. How are you, sir?

MR. BARBER: I'm good. How are you?

HEARING EXAMINER DICKMAN: You're going to use the PowerPoint, I bet?

MR. BARBER: I am, yeah.

HEARING EXAMINER DICKMAN: I'm going to turn the lights off.

MR. BARBER: They've mostly said everything that's on there already.

HEARING EXAMINER DICKMAN: Yeah.

MR. BARBER: I'll be brief.

HEARING EXAMINER DICKMAN: Well, first, let's establish you as an expert. Give me some background.

MR. BARBER: I'm Tom Barber, for the record, AICP Professional Planner. I've been a planner for four years, and in the field of practice for 17. I've processed multiple zoning applications in both Lee and Collier County, so I'd like to be recognized as an expert.

HEARING EXAMINER DICKMAN: Your educational background?

MR. BARBER: I have a Bachelor of Science in Computer Science.

HEARING EXAMINER DICKMAN: And no postgraduate degree?

MR. BARBER: No.

HEARING EXAMINER DICKMAN: And -- but you still -- you still sat for the AICP Test?

MR. BARBER: I did, correct.

HEARING EXAMINER DICKMAN: Four years ago?

MR. BARBER: Yes.

HEARING EXAMINER DICKMAN: Okay. Have you worked for local governments?

MR. BARBER: I have not.

HEARING EXAMINER DICKMAN: You've never been employed by local government?

MR. BARBER: No.

HEARING EXAMINER DICKMAN: So your work experience has been with whom?

MR. BARBER: Agnoli, Barber & Brundage, it's a private civil engineering, planning, surveying firm.

HEARING EXAMINER DICKMAN: And you've worked as a planner for them the entire time?

MR. BARBER: I'd say about eight years.

HEARING EXAMINER DICKMAN: Eight years.

MR. BARBER: Yes.

HEARING EXAMINER DICKMAN: And what before then?

MR. BARBER: So I worked as a CAD technician project manager, more or less an EI without having an EI degree.

HEARING EXAMINER DICKMAN: Okay. So the last four years has really been the higher-level work at your expertise?

MR. BARBER: Yes, sir.

HEARING EXAMINER DICKMAN: Okay. Do you have a resume here with you today?

MR. BARBER: I do not, but I can -- I can get you one.

HEARING EXAMINER DICKMAN: Okay. I'm going to go ahead and let you go forward with this, and then I'll reserve judgment on -- on your expertise. Okay?

MR. BARBER: Thank you.

HEARING EXAMINER DICKMAN: One second. I'm going to hit the lights.

STAFF MEMBER: Behind the flag.

HEARING EXAMINER DICKMAN: Behind the flag. How's that? All right. Let's proceed.

MR. BARBER: All right. So I'll try to be brief and not repetitive. It is a 1.25 acre parcel in the Agriculture Zoning District. It would be a nonconforming parcel. The minimum lot size would be five acres.

The applicant is seeking a variance on the side setbacks, so on the eastern side they're looking for a 52 percent reduction, which I feel is quite a considerable reduction for setbacks. We can go to the next slide, please.

So this is just an elevation on the left side of what the tower might look like. It's 250 feet in height, above that 250 feet, you have a 10-foot lightning rod and then lighting equipment. To the right is the proposed site plan. The width of the triangle of the tower is 28 feet, I believe on all sides, and it is located a little bit further to the east on that parcel.

So if you were to compare the 250-foot height tower that would be approximately a 22 to 23-story building. So Kalea Bay, which is being constructed in North Collier County off Vanderbilt Road, is roughly 22 to 23 feet -- 22 to 23 stories. Sorry.

HEARING EXAMINER DICKMAN: Right. But you realize the mapping and scale and everything is very different than Kalea Bay?

MR. BARBER: I understand. I understand, just as a perspective on this, that's all. So next slide, please. So if you can see the purple line, that's an outline of what the side setback would need to be at 125 feet. So there's that much encroachment into the neighboring east and west properties. Next slide, please. So would you like me to read these variance Criteria A through F?

HEARING EXAMINER DICKMAN: You mentioned encroachment. How are they encroaching into the adjacent properties, because, I mean, encroachment means going into their properties?

MR. BARBER: Well, as far as the setback requirement is concerned.

HEARING EXAMINER DICKMAN: Okay. So you're saying -- you're actually referring to what a as-of-right setback would be if -- what the size of the building area would be if they didn't ask for

variances?

MR. BARBER: Correct.

HEARING EXAMINER DICKMAN: But just to be clear, they're not -- they're not asking for any -- any rights to the adjacent properties.

MR. BARBER: No, I understand that.

HEARING EXAMINER DICKMAN: You used the word encroachment, which is a little different.

MR. BARBER: Right.

HEARING EXAMINER DICKMAN: Gotcha.

MR. BARBER: Right. So as part of the zoning criteria, 3A, are there special conditions, circumstances existing which are peculiar to the location, size, characteristics of the land, structure or building involved?

So this 170 foot -- 170-foot nonconforming lot, which would be required to be five acres in that same zone, they are looking for a reduction of 125 feet to 60 feet, and the -- they asked for the variance is really -- is the applicant's -- the applicant is creating their own hardship in this instance, as picking this property for the variance.

3B, are there any special conditions, circumstances existing which do not result from the actions of the applicant, such as preexisting conditions relative to the property which is the subject of the variance request?

Now, I think it's important to note the portion that says which do not result from the action of the applicant. So it's my belief that this is the result of the action of the applicant.

3C, will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship on the applicant or create difficulties on the applicant?

I don't believe there is an undue hardship on the applicant. They are requesting this variance on a property that's smaller than what would be required.

Will the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure, in which promotes standards of health, safety or welfare?

So there's many other five-acre parcels around that area. As mentioned before, if it was centered on the property line to the west, it would have the appropriate setbacks, and there are many other uses that could be allowed on that property, such as agricultural activities, single-family homes, duplexes, mobile homes, multi-families, dormitories, golf courses or driving ranges, public educational plants and ancillary plants, parks, open spaces and recreational uses, and also private schools.

Will granting the variance request confer on the petitioner any special privilege that is denied by the zoning regulations to other lands, buildings or structures in the same zoning district?

Yes, the variance will not result in a reasonable use of the land. The tower's oversized for the site. There are other reasonable uses for the land. Another larger nearby property would be better suited for intensity of this use. The allowable tower height is determined by development standards and setback criteria.

Will granting the variance be in harmony with the intent and purpose of the zoning code and not be injurious to the neighborhood or otherwise detrimental to the public welfare?

County LDC 5.05.09(G)(7)(b) section states and from all other surrounding property boundaries by a distance not less than one-half of the height of the tower and its antennas, or the tower's certified collapse area, whichever distance is greater. So if the code was developed based on collapse safety alone, this would read whichever area is lesser.

Are there natural conditions or physically-induced conditions that ameliorate the goals and

objectives of the regulations such as natural preserves, lakes, golf course, et cetera? No, there are no such conditions to the site, and another nearby larger property could be chosen.

The Dome of the Glades and other residential related uses rely on that natural aesthetics of the property and the surrounding uses in the area. Next, please.

So this is a drone photo just as a view of what the tower might look like. The tower is widened a little bit to show the, you know, location of it, but the height is roughly 250 feet in relation to the surrounding uses. Next slide, please.

HEARING EXAMINER DICKMAN: So can you go back to that slide? So it's the property to the, I want to say on that side, says Johannes Steffens is the owner. Is that the same exact owner as the property that the tower is on?

MR. BARBER: I believe so, yes.

HEARING EXAMINER DICKMAN: You believe so. Okay.

MR. BARBER: Next slide, please. So here is some images from roughly the height of the tower and looking at the view of the height of the tower, this is what other properties would see back looking the other way, just as a perspective of the height of the tower; that concludes my presentation. I'd be happy to answer any questions.

HEARING EXAMINER DICKMAN: Okay. One second. Two things real quickly. I'm going to want resumes. I think Mr. Brookes already gave me something, but if I -- if you don't have a resume with you, I'd like it forwarded to me.

Typically, I like to get everything here at the same time, but I'd like to see your resume. If you could forward it to me through the county, and then they'll send it to me. Okay. A couple questions for you, sir.

MR. BARBER: Yes.

HEARING EXAMINER DICKMAN: So what is the minimum lot size for this area?

MR. BARBER: Five acres.

HEARING EXAMINER DICKMAN: Five acres. So you mentioned this was a nonconforming lot?

MR. BARBER: Yes.

HEARING EXAMINER DICKMAN: It's not five acres?

MR. BARBER: It is 1.25 acres.

HEARING EXAMINER DICKMAN: So it's a nonconforming lot, it's somewhat unique to the area. Is it a legal nonconforming lot?

MR. BARBER: Yes, I believe that lot was there.

MR. BELLOWS: For the record, Ray Bellows. It has to be deemed to be a legal nonconforming lot to have a structure to be able to be built there.

HEARING EXAMINER DICKMAN: Right. I understand that. So, all right, again, I'm asking these questions somewhat rhetorically, because I need to get them on the record. So it's a legal nonconforming lot. County has put that on the record, that it's a legal nonconforming lot, helping out the expert here. So it is somewhat unique to the other properties. Do you know of any other legal nonconforming lots of this size in the area?

MR. BARBER: Yes, the lot next door to it is.

HEARING EXAMINER DICKMAN: It is.

MR. BARBER: It's the same size.

HEARING EXAMINER DICKMAN: Okay. You mentioned that there are other suitable sites in the area that are quote on the market?

MR. BARBER: I don't think I said on the market.

HEARING EXAMINER DICKMAN: I thought you did.

MR. BARBER: I may have. If I did --

HEARING EXAMINER DICKMAN: The slides seem to say that maybe. Is that your slide show?

MR. BARBER: Yes, it is.

HEARING EXAMINER DICKMAN: Okay. Another thing, if I can get copies of everybody's slides so I can have that as well going forward, and I want everyone to also understand that read nothing into my questions. Okay? I haven't made a decision here today. If you feel like I'm being animus to you or anything like that, please, don't take offense to that. I'm just trying to make sure I have all the information as possible.

So, please, please, don't read anything into my questions or body language or anything like that, please. And explain to me what the Dome of the Glades is.

MR. BARBER: I think --

HEARING EXAMINER DICKMAN: You mentioned it; do you know? No, no, no, one second.

He's the expert. You mentioned Dome of the Glades.

MR. BARBER: Yeah, it's a single-family home that was previously mentioned and it's used as VRBO. I think it will be described in detail.

HEARING EXAMINER DICKMAN: So it's a short-term rental space?

MR. BARBER: I believe so.

HEARING EXAMINER DICKMAN: You believe so. Okay. Uh-huh. All right. Thank you.

Thank you for this. You're done?

MR. BARBER: Yes.

HEARING EXAMINER DICKMAN: Finished? Okay.

MR. BARBER: Thank you.

HEARING EXAMINER DICKMAN: All right. Thank you for your help. Counselor, do you have any other experts you want to put up?

MR. LEWIS: I think those are our experts for today.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: I did have a presentation from our client, but before moving to that, I just wanted -- you said you are going to reserve judgment on qualification of our expert?

HEARING EXAMINER DICKMAN: Yeah, and, frankly, I respect his expertise, and he did a fine job presenting it, I think what I'm going to do is get his resume and look at it very carefully. I mean, you really highly questioned Opposing Counsel's expert to that effect, so I'm going to get his resume as well, you know, I think I'm inclined to say that everyone here that was presented as an expert is an expert, but to what degree they're an expert, I think I have that latitude to pick and choose whether the competent substantial evidence that they presented is sufficient or not.

MR. LEWIS: Yeah, I think we established the scope fairly well with Mr. Jim Alderman.

HEARING EXAMINER DICKMAN: Okay. And a couple other things real quickly. I see Mr. Wright jumping up, and so, you know, again, FirstNet versus -- as an essential services versus a commercial cell tower, in your opinion, I mean, do you know of any reasons why having, like AT&T or some other service on a FirstNet tower, somehow eliminates its identification as a essential service?

MR. LEWIS: Yeah, that's a great question. 1.08.02 of the LDC provides the definition of the essential service. There's a copy that we provided in the record. We can get that up on the visualizer as well.

HEARING EXAMINER DICKMAN: I have that, that's okay. Go ahead.

MR. LEWIS: Yeah, and part of how it reads, first of all, it defines it as those governmental services necessary to promote health, safety, welfare, so that's the first thing.

We did a records request to Collier County, and it's in your packet and we asked several very detailed questions of staff relative to FirstNet and in the need, whether or not there is a need for that.

There is some background articles that you probably want to look at, there are many jurisdictions, including New York, that are rejecting the service because they really don't need it. We've got 5G capabilities, there's really no need.

It almost seems like, as I read the background of FirstNet, it's almost kind of the idea if we build it, they might come. In many cases they're not coming, but what I can tell you for sure about Collier County, based on our records request is that there are no requests from any Collier County governmental department for additional essential service communication towers and/or FirstNet services in Collier County in this area. There's absolutely zero requests, no records that we can find for that.

HEARING EXAMINER DICKMAN: So your records request has been satisfied?

MR. LEWIS: Correct. Yes, it was satisfied.

HEARING EXAMINER DICKMAN: You're basing your -- you're giving me this information based on the fact that your records request has been satisfied?

MR. LEWIS: Yeah, I'm basing it on the fact the government can provide -- there is no -- there is no document or record --

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: -- in Collier County requesting FirstNet.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: There is no document or record contained any problems of essential public services or communication towers in that area that is there. There is no records pertaining to insufficient public communications towers in the location, or demonstrating the need for this tower in this area. There are absolutely no records.

What was interesting is when their expert testified when he gave the coverage area, they limited that to the FirstNet AT&T tower. We know there are our towers. We'd asked for that information.

I can tell you I've looked at the Collier County -- or the cell tower locator site where you can look at the various towers, there are many towers, and I'll cover a little bit more about that in a minute.

But there are no -- no requests for that, and I've asked for a coverage map to say this new tower that's coming in about a few thousand feet, you know, a few streets down the road to the east, 185, 180, 185 foot, 195 foot monopole on Frangipani; that tower, I want to see the coverage ratio. I've wanted to see that. I've asked for that. We don't have that.

They can collocate. I can tell you that FirstNet collates on their towers. They have towers that are south of 200 feet. So, but in terms of the public services definition, they haven't met that burden based on the record I've seen, and then he says all services are designated --

HEARING EXAMINER DICKMAN: If I could just interrupt you for a minute?

MR. LEWIS: Yeah.

HEARING EXAMINER DICKMAN: So far your presentation has gone well over --

MR. LEWIS: Yeah.

HEARING EXAMINER DICKMAN: -- the applicant's presentation. So, I mean, there's some

redundancy here.

MR. LEWIS: Let me wrap it up. Let me wrap it up. Let me wrap it up here quickly so...

HEARING EXAMINER DICKMAN: I don't want anyone to allege that I'm cutting anybody off or not here, but you know --

MR. LEWIS: The difficult challenge is these are very complex -- I appreciate that, and I want to thank you for your deference. These are very complex issues. There are a lot of facts that need to be put in the record, so I appreciate your deference.

HEARING EXAMINER DICKMAN: I understand that, and I recognize that you're representing the adjacent property owners, so, you know, I'm pretty sure you would be considered an interested party, but -- rather than the general public, but I do want to -- your experts have established a lot, so let's try to speed it up a little bit.

MR. LEWIS: Right. Right, and the only overlap, they didn't cover the essential services, there's a couple areas they didn't cover, but the -- per the LDC these are services that are designed and operated -- and operated -- designed and operated to provide communications to the general public by providers that have been approved and authorized according to laws having jurisdiction.

FirstNet is not designed to or operated to provide services to the general public, like a private tower might do. Quite the opposite. It's designed to provide communications to first responders; that's the first thing.

So I think if you want to allow for these types of towers you can probably look at your LDC, but as you look at the actual language in your LDC, I don't see that it's providing communications to the general public.

To the contrary, the intent is to get the public off the tower bandwidth to allow first responders to connect where jurisdictions sign on, and that's the other problem they've got.

Kind of a chicken and egg for these folks, because you have to build the tower and then you have to have, once you have the structure, then you have to go solicit the local governments, Collier County, to buy into the system, with whether they do or whether they don't, that may or may not happen.

So what are we left with, we can very well today -- first of all, there's no contract. I asked. There's no contract in place that weds this site to AT&T that I'm aware of in the record. There's no contract that weds this tower to FirstNet that I can see in the record. So things can change, and things do change. So we could end up with the tower being built with this intent, and no FirstNet uses by the county or anyone else, and no essential government service occurring on the property.

So a statement about what may or may not happen in the future does not address where we are today. And as of today I think the burden of proof is not met showing that it's an essential service tower. I want to make sure the record is clear. We do not accept the claim that this is an essential services tower. I think the record shows that.

Second, the applicant has not met its burden of proof showing the shared use tower equipment. The LDC 5.05.09(D) says that as this towers exceeds 185 feet in height they have to demonstrate that no old or approved tower, like, for example, this 185-foot Frangipani monopole can accommodate the proposed antenna.

The applicant just hasn't done that. I've looked at the record. In fact, the applicant's required to contact each tower within six miles of proposed tower to request shared use of the tower.

The code also dictates that the information must be included in a letter. There's detailed

information under 5.05.09(D)(4). The record confirms the applicant has not provided any evidence confirming compliance to this requirement and merely stated this, I've reviewed their letters. 8/4/2020 letter it says, "We are not aware of any other towers that would provide the necessary and adequate capacity and geographic coverage area to achieve our objectives."

HEARING EXAMINER DICKMAN: Uh-huh.

MR. LEWIS: Well, respectfully, that's not the standard for compliance.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. LEWIS: Their objectives -- the county code is different, and that's the only document that I can find in the packet of material that addressed that question.

So, in addition, if the tower has a -- an approved tower has an effective radius, then the -- if there's another tower in that six-mile radius, which there are, then the applicant under the code is not deemed complete without all the documentation --

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: -- that the code requires under 5.05.09. So I think there's issues there that needs to be looked at. The tower is on top of an existing cattle path. The picture shows that, that violates the variance criteria under LDC 09.04.03(F).

(A court reporter interruption was had. The proceedings continued as follows:)

MR. LEWIS: It's on top of a cattle path. There's --

HEARING EXAMINER DICKMAN: Unfortunately, I've rushed him. I'm sorry, now it's affecting our court reporter, your court reporter.

MR. LEWIS: My apologies. So my third point that it is sited directly on top of a cattle path easement in favor of our clients, and the blockage of that path violates the criteria under variance under LDC 09.04.03(F).

Section 5785 promotes the types of agritourism that's occurring on the Smith/Sherf parcel. The approval of this application creates land compatibility issues with that agritourism business which is promoted under state statute.

The fifth point is that it's important to understand the extent of the variance request. They're entitled to 148-foot tower. I don't think anyone disagrees, assuming it's an essential service, that would be the main question. If you get past that, you can't do a private tower there, but you can do an essential service tower. If, for example, Collier County needed a tower, they can do that, but it would be limited to 148 feet, and there is nothing there.

The sixth thing is that there is record in the testimony, there was a record from a Louisa Solar, she's a real estate professional. She testified that the 250-foot tower will cause her value of her property and abutting parcels to go down, and that's in the backup material.

She also testified it's in your backup for the application, she also testified the 250-foot tower will impair the ability of the sellers to sell --

HEARING EXAMINER DICKMAN: I don't know that she's testified, she just --

MR. LEWIS: Well, she's made testimony. She's not here to testify. She provided testimony proffer.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: The means it's testimony. The fall radius -- the fall radius is an important issue, and that is because they really haven't provided and addressed that. Today you heard some analysis from -- from Jim Alderman, but the letter doesn't really provide a radius, which is weird.

They provided a square, but when something falls, it can fall anywhere within a 360-degree circle, so he gave some opinion of what that was, but I don't have anything from the engineer

today that says this is the fall radius. So that's interesting, and there are a number of assumptions that are made in that report that really haven't -- he's saying assuming this, assuming that, assuming these wind calculations, are we talking about high-level winds, low-level winds, tornado, you know, what type of assumptions are we making?

I've asked him for that. I've asked the applicant for that, they don't have it, but we don't know what the wind pressure profile looks like to support the conclusion. So we really don't know what the real fall radius is.

So we reject the idea that we have an established fall radius well within the map. We don't accept that, and the report doesn't say that, it makes assumption.

The folding over is interesting, because I need to better understand that. If it breaks and at some point the winds are high enough that piece, it will detach at some point, I think they recognize that. The question is where is it going to land? So we have some questions there.

HEARING EXAMINER DICKMAN: How far away is the short-term rental home that your client owns from where the pad of the tower is?

MR. LEWIS: We have a video we can show you, but out of time, I don't know if you want to see it. It's fairly close. I can give it to you after.

HEARING EXAMINER DICKMAN: It seems like it was fairly far away.

MR. LEWIS: Well, I can get you a measurement.

HEARING EXAMINER DICKMAN: Let's pull up the graphic. I want to see that.

MR. LEWIS: I think we're -- I think we're 74 feet from the lot line.

HEARING EXAMINER DICKMAN: Sorry. The one with the pool, that's your client's home; right?

MR. LEWIS: There is a home there and there's also some rental. Yeah, that's -- Mr. Smith lives there, resides there, correct.

HEARING EXAMINER DICKMAN: He resides there or he rents it?

MR. LEWIS: He has both. He resides there and there are people that come in and use it as well. He's also residing on the site.

HEARING EXAMINER DICKMAN: Okay. So I'm looking at the picture here, but is there an aerial? Jeremy, can you find an aerial that shows me the whole area, like --

MR. FRANTZ: One of these?

HEARING EXAMINER DICKMAN: Yeah, that one. So the tower to the dome house, I assume that's why it's Dome of the Glades, with the pool, how far away is that, do you think?

MR. LEWIS: 74 feet to the lot line maybe, Jeff, you got a --

HEARING EXAMINER DICKMAN: Not the lot line, the actual --

MR. WRIGHT: And I can tell you, this is not going to answer your question, but the accessory structure -- Jeff Wright for the record. The accessory structure there is 420 feet away from the tower.

HEARING EXAMINER DICKMAN: Right. So that's the closest accessory --

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: -- structure to the house. It looks like it's further away.

MR. WRIGHT: I think it's around 600 feet --

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: -- but I don't want to be imprecise.

HEARING EXAMINER DICKMAN: All right. Thank you.

MR. LEWIS: Yeah, I'll defer to Jeff. I don't have any numbers. I know it's -- I can get it later -- but 74 feet to the lot line. There are cattle roaming through there, so there are livestock and people that are traversing but --

HEARING EXAMINER DICKMAN: I understand.

MR. LEWIS: But let me -- let me briefly conclude. You know, as I looked at this, they're really seeking a variance of --

HEARING EXAMINER DICKMAN: Could you two separate a little bit? This is for your own safety. I'm not trying to offend anybody.

MS. PENNER: No, I'm sorry.

HEARING EXAMINER DICKMAN: I don't want anybody to get sick on my watch.

MR. LEWIS: We appreciate that. Thank you for your diligence.

HEARING EXAMINER DICKMAN: We have less than 20 more points, or are you --

MR. LEWIS: Done.

HEARING EXAMINER DICKMAN: You're done. Okay.

MR. LEWIS: Yes, thank you. I appreciate it. It's a little difficult to navigate within the record, but in a nutshell they're seeking to -- essentially a variance to overbuild a 250-foot tower.

HEARING EXAMINER DICKMAN: I understand.

MR. LEWIS: It's not in harmony with the neighborhood structures. It's on an undersized 1.25 acre parcel. In order to pay significantly less, in my opinion, land costs compared to a conforming five-acre parcel.

While the applicant could achieve a land cost savings if the variance is approved, it comes at the expense of the neighbors, is really what we're saying and we respectfully request a denial of the request, and we also welcome the opportunity if you have any questions, to answer those.

HEARING EXAMINER DICKMAN: Okay. What I want to do here is, because that was a fairly long presentation, and you're representing the adjacent homeowners -- Jeremy, how many more people do we have to speak?

MR. FRANTZ: I have four more slips.

HEARING EXAMINER DICKMAN: Okay. Are any of these folks your clients, or people you represent, they're --

MR. LEWIS: (Shook head.)

HEARING EXAMINER DICKMAN: Okay. Let's go ahead and hear from them, and, hopefully, those folks, if any of your points have already been made, please, try to be brief. We're going to keep this to three minutes each.

MR. FRANTZ: Sorry. I didn't mean to cut you off.

HEARING EXAMINER DICKMAN: What were you about to say?

MR. FRANTZ: I was just going to ask for another five-minute break so that we can switch out some microphones that we're having, kind of, continual issues with. I want to make sure that we're able to capture everything that everyone is saying.

HEARING EXAMINER DICKMAN: Okay. Five minutes then, we'll recess. Thank you.

(A recess was had from 12:01 p.m. until 12:10 p.m., and the proceedings continued as follows:)

MR. FRANTZ: Okay. You have a live mic.

HEARING EXAMINER DICKMAN: Let me -- let me get a -- if both lawyers would come up to their respective podiums quickly. I guess we lost a lawyer?

MR. WRIGHT: Ready.

HEARING EXAMINER DICKMAN: Okay. So I'm anticipating that we've got a few general public speakers that we can get through pretty quickly, but I'm trying to estimate how much more time we're going to need, and you've already made your case in chief. Mr. Wright has rebuttal time. Approximately how much time do you need?

MR. WRIGHT: I'm hoping I can wrap this up in the next -- Mr. Lewis estimated 25 minutes, and we ended up -- I took a lot of notes.

HEARING EXAMINER DICKMAN: Yes, I was very generous with that, but I want to make sure -- this has been going on. I know you -- I appreciate you all trying to work together privately, but, I think it's better to not rush everybody, but at the same time I don't want to -- I probably lost about ten pounds already by not eating today.

MR. WRIGHT: I'm fine with that time, it just that I took --

MR. FRANTZ: Speak into the microphone.

MR. WRIGHT: Yes, it just that I took a lot of notes.

HEARING EXAMINER DICKMAN: I don't blame you.

MR. WRIGHT: And I'm thinking five minutes I could probably sum up, but to the extent there might be lingering questions.

HEARING EXAMINER DICKMAN: Yeah. Yeah. Five to ten minutes is fine, and, you're, sir, you're done; correct?

MR. LEWIS: Yes, unless there's anything I need to cover in rebuttal. Sorry.

HEARING EXAMINER DICKMAN: You want re-rebuttal? Sorry. If I call you up and need some questions answered, I will. So, Jeremy, I think we're going to press forward. It looks like we can finish and not take a lunch break.

If I feel like it's good forward then we'll just play it by ear. Okay? So why don't we start with whoever the next speaker is.

MR. FRANTZ: The next slip I have is Mitchell Penner.

MR. PENNER: Good afternoon. My name is Mitchell Penner. I'm representing the Frangipani Ag Community Civic Association, and it should be like 30 minutes or so, and I'll be --

HEARING EXAMINER DICKMAN: Whoa. Whoa. Whoa. Whoa. Whoa. Whoa. Whoa.

MR. PENNER: I would like to be recognized as a normal person.

HEARING EXAMINER DICKMAN: Yeah. No, you're not going to get 30 minutes. Take five.

MR. PENNER: Sounds good. The Frangipani Ag Community Civic Association serves residents and property owners in an area of three square miles in North Belle Meade.

At our October board meeting our agenda included an issue of two proposed cell phone towers. I would like to share our concerns about the proposed tower on today's agenda.

HEARING EXAMINER DICKMAN: Are you reading from the letter that you submitted?

MR. PENNER: Yeah, kind of.

HEARING EXAMINER DICKMAN: Okay. I have that.

MR. PENNER: Yeah, so we're going to go -- okay. I'll get through. So it's not compatible. We believe it's not compatible with the neighborhood. The characteristics of the neighborhood is rural development with limited infrastructure and improvements.

The tower does not fit with the future land use of this area. Again, this is -- this is from our meeting that we had as board members. This is the opinion of the Frangipani Ag Civic Association members.

We believe these towers will inhibit -- this tower will inhibit the plan of the RFMUD. There are other towers within six miles of the site that should be explored. We do not believe that the applicant has done enough due diligence in exploring those options, and that's been talked about already.

We are concerned with the flashing warning lights illuminating the surrounding areas and disturbing the rural character of the neighborhood. We understand that this sometimes can be

viewed as a not-in-my-backyard issue, but we already have them in the backyard. We understand they've been there. We're fine with those.

We recommend that they be moved to other commercial areas such as Wilson Boulevard or Golden Gate Boulevard or Everglades Boulevard and Golden Gate Boulevard.

We have an exhibit showing the property owners who oppose, who have talked to us about how they do not want the towers or this tower in particular that we're talking about today.

These -- while we are not mighty in people here today, we are mighty in land and so --

HEARING EXAMINER DICKMAN: Do you have evidence of their opposition?

MR. PENNER: No, only, let's see, on the slide it says -- or on this thing it says verbally told us they opposed the tower. So these -- not to say that the people that are not highlighted don't -- or oppose the tower or don't oppose the tower, these are the people that are active in our community that have reached out to us, you know, specifically who we've talked to.

HEARING EXAMINER DICKMAN: Thank you.

MR. PENNER: This has been -- the applicant said that this is required for emergency communications, or FirstNet, they're pushing that forward, and earlier the attorney spoke to this, there's been no fire department involvement, no sheriff, Dan Summers with Emergency Management of Collier County, they're not here today asking for it. I think we all know if it was a true need in a community, they would be here, and they would have shown their support, and I don't think it's been talked about in the public, or, you know, you haven't seen it on the news. There hasn't been a widespread issue with emergency communications, and, "we need to do something about it." As a community we have not seen that through here.

We do not believe there is an undue hardship in this situation. There's plenty of other uses for this lot. Single-family home, ag uses, or he could sell it. He can put it up for sale, and I imagine there would be people that would want to buy it.

We have cell phone coverage where we live. I'm kind of in the middle of this little square, and we've been able to call 911 when needed. We have coverage inside our house. We have coverage outside of our house.

I think they're trying to use the FirstNet as the way to get their foot in the door, and then hop on a whole bunch of other uses that wouldn't be allowed. It's kind of like saying, I have a defibrillator, and I'm going to go put it in a high-rise, so I need to go build this high-rise because I have a first responder --

HEARING EXAMINER DICKMAN: Good analogy. I get your point.

MR. PENNER: It's been talked before, setbacks are not used for collapse, and we respectfully request this variance be denied. Thank you.

HEARING EXAMINER DICKMAN: How big -- how many members do you have?

MS. PENNER: 25.

HEARING EXAMINER DICKMAN: 25. Okay. Thank you. Thank you for being here, sir. By the way, did Counsel for the applicant or the applicant meet with you and try to work things out?

MR. PENNER: They did not. They did not meet with me personally, or the area civic association.

HEARING EXAMINER DICKMAN: Was there a public meeting there?

MR. PENNER: No, there was not. There was a -- just an association meeting.

HEARING EXAMINER DICKMAN: All right. Thank you.

MR. PENNER: I believe Counsel is fairly new onto this matter, you know, they weren't here at the first meeting that got continued.

HEARING EXAMINER DICKMAN: Okay. Your Counsel?

MR. PENNER: No. No. No. Sorry. The other guy.

HEARING EXAMINER DICKMAN: Mr. Wright?

MR. PENNER: Mr. Wright. Mr. Wright.

HEARING EXAMINER DICKMAN: Okay.

MR. PENNER: They weren't here at the first meeting that got continued. I think the cell phone tower people realized what was going on, and then said can we get a continuance and then I think --

HEARING EXAMINER DICKMAN: Gotcha. I'm aware of that. Thank you.

MR. PENNER: Yep.

HEARING EXAMINER DICKMAN: Thank you for being here.

MR. PENNER: Thank you.

HEARING EXAMINER DICKMAN: Who's next?

MR. FRANTZ: Next speaker is Richard and Arnette Smith.

HEARING EXAMINER DICKMAN: Mr. and Mrs. Smith, which one of you are going to speak for the Smith family, and was that your lawyer that spoke for you?

MRS. SMITH: Yes, sir.

HEARING EXAMINER DICKMAN: Okay. Do you have anything different than he said?

MRS. SMITH: Not much, but there was --

HEARING EXAMINER DICKMAN: Okay. I would love to hear from you. Do we have to hear from both you and Mr. Smith?

MRS. SMITH: No. No. No. No.

HEARING EXAMINER DICKMAN: Just you.

MRS. SMITH: Mr. Smith is not well.

HEARING EXAMINER DICKMAN: Okay. Is he okay, he's not here?

MRS. SMITH: No, it's simple.

HEARING EXAMINER DICKMAN: Okay. All right.

MRS. SMITH: He's got a heart issue.

HEARING EXAMINER DICKMAN: Okay. I understand. So why don't you take three minutes and give us your -- I've heard everything from your lawyer. You've got a very good lawyer. He's done you well. Your experts have done you well, so give me your personal impressions.

MRS. SMITH: Well, thank you. Thank you.

HEARING EXAMINER DICKMAN: Into the microphone so we can hear you.

MRS. SMITH: Good morning. Good afternoon probably by now. My name is Arnette Smith and Richard Smith is my husband. I've been on the property since 205.

HEARING EXAMINER DICKMAN: Uh-huh.

MRS. SMITH: He has owned it for much, much longer than that, and we started the Airbnb business in about 2017 --

HEARING EXAMINER DICKMAN: Uh-huh.

MRS. SMITH: -- to make ends meet and keep us afloat, and about a year ago we started the agritourism.

HEARING EXAMINER DICKMAN: Uh-huh.

MRS. SMITH: So this is what we're working on, and our guests who has been coming out to the Dome of the Glades I'm actually -- can they show my video?

HEARING EXAMINER DICKMAN: I'm familiar with it.

MRS. SMITH: Oh.

HEARING EXAMINER DICKMAN: I mean, I -- how long is the video? I don't want to --

MRS. SMITH: Must be two minutes.

HEARING EXAMINER DICKMAN: Two minute-video?

MRS. SMITH: Yeah, what I have to say really would probably cover --

HEARING EXAMINER DICKMAN: I understand. Here's the thing, I appreciate the video. In fact, I think I saw the video.

MRS. SMITH: Okay.

HEARING EXAMINER DICKMAN: At some point because this has been coming around, but I understand the perspective of your property to this property, so I really don't think I need to see the video.

MRS. SMITH: Okay.

HEARING EXAMINER DICKMAN: But --

MRS. SMITH: Well, we feel that this tower is going to destroy what we have out there, because it's a unique area, all of the old Florida, and guests from all over the country, all over the world, have been coming out to us, and they're really happy with what they're coming to, in tune with nature. We have wildlife, bird watching, star gazing, and we just feel like this tower is going to destroy the ambiance of what we are holding onto out there, and also income, our lifestyle and --

HEARING EXAMINER DICKMAN: Income from the Airbnb?

MRS. SMITH: Yeah. Yeah.

HEARING EXAMINER DICKMAN: Okay. I do think -- and this matter has been continued, I think, twice. I think it's appropriate that it was continued, because I think the reasoning was additional information, lawyers being able to talk to one another, trying to work things out. I try to really encourage that as much as possible.

I believe I saw an e-mail that was submitted into the record, and it might have been from you all, and I watched the video, and a lovely video, so I did see that.

MRS. SMITH: Okay, until the tower showed up.

HEARING EXAMINER DICKMAN: Yes. Yes. Okay. But anything else, I appreciate your comments, and thank you very much.

MRS. SMITH: Thank you.

HEARING EXAMINER DICKMAN: And I hope your husband feels better.

MRS. SMITH: Yeah. Thanks.

HEARING EXAMINER DICKMAN: You're welcome. Put your mask back on.

MR. FRANTZ: The next speaker is John Honden (sic).

MR. HOLDEN: Holden, H-O-L-D-E-N.

MR. FRANTZ: Holden, apologies.

HEARING EXAMINER DICKMAN: Welcome, Mr. Holden.

MR. HOLDEN: Good afternoon. Finally get to take this mask off. I have to apologize for just being a lowly engineer amongst all these attorneys, feels pretty much --

HEARING EXAMINER DICKMAN: Don't feel nervous with all the attorneys in the room, trust me.

MR. HOLDEN: Oh, I was wondering if I may use your Slide 7 and 8?

HEARING EXAMINER DICKMAN: Jeremy, Slide 17 of the applicant's --

MR. HOLDEN: Not 17, but seven and eight.

HEARING EXAMINER DICKMAN: Jeremy -- you want to say something?

MR. HOLDEN: Your presentation showing the projected area for the signal.

MR. WRIGHT: I have no problem with him pulling up our Slide Nos. 7 and 8.

HEARING EXAMINER DICKMAN: Seven and eight?

MR. WRIGHT: The propagation map, I believe.

MR. HOLDEN: Yes, it is.

HEARING EXAMINER DICKMAN: Okay. Okay. We need to keep your -- between three to five minutes. I don't want you to repeat anything that's already been said. I've been --

MR. HOLDEN: Thankfully, I'm not going to do that.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: Okay. First of all, I'm not --

HEARING EXAMINER DICKMAN: Your name and address for the record.

MR. HOLDEN: I'm John Holden. I live at 2nd Avenue Southeast. I'm a Golden Gate Estates resident. I'm not a resident of the Frangipani area.

HEARING EXAMINER DICKMAN: So you don't live in this area whatsoever?

MR. HOLDEN: No.

HEARING EXAMINER DICKMAN: So why are you here?

MR. HOLDEN: I'm here because --

HEARING EXAMINER DICKMAN: You can speak at any public hearing, but I'm just curious what your --

MR. HOLDEN: I'm here, because, yes, we do need better service out here, and let's face it, this whole tower issue is not about emergency services. It's all about providing service to people that need phones and cell phones out there and so on, and I live in the area, which doesn't have good cell phone --

HEARING EXAMINER DICKMAN: Right.

MR. HOLDEN: -- signal, and this is what this is all about. My question is -- the thing I would like to point out is on this -- I wish you have a slide to put up. Okay. There it is.

HEARING EXAMINER DICKMAN: So are you a proponent or opponent?

MR. HOLDEN: I'm an opponent.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: I don't want to see it come out there. It's not going to do any of us any good.

HEARING EXAMINER DICKMAN: Okay. Gotcha.

MR. HOLDEN: As an engineering student, I would sit there and tell you that where they're planning on putting that tower is not going to do anything but provide service to people that don't exist.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: There's nothing there.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: Okay. In the top right-hand corner is where the people live.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. HOLDEN: That's where the citizens out there in Golden Gate Estates live; that's -- that's where the tower needs to go.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. HOLDEN: From what I know, all the other towers there are single pole towers of a normal size. I guess you all said 145 feet. I think that was gathered from whatever the discussion this morning, and providing adequate service, all -- and just about touching each other; that's where it needs to be at that new fire station that's going to be in Desoto and Golden Gate Boulevard.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: That's where the services are, that's where the people -- that's where they're

responding to all these emergency calls; that's where the people are living, and that's where they're

going to need it, if they're going to go on the emergency services platform that this is what they're projecting this tower is going to be for.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. HOLDEN: But out there you're going to respond to what? There's nobody out there. Now, I would like to see the tower put -- and I gotta tell you, as a resident, I look to those towers east of 75 as a beacon, as everybody else does.

Those towers out there, you can go to every one of those towers at the bottom of it there's a fire station. There's emergency services; that's where those towers need to be, so that that way the emergency people have a clear signal at their station and within their radius that they do their service.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. HOLDEN: I mean, I can't see them going all the way out there into the middle of where there's nobody living and needing phone service. I mean, they've got radios, they've got everything else. This whole point of putting a tower there is pretty much a moot point.

HEARING EXAMINER DICKMAN: Okay.

MR. HOLDEN: You know what I'm saying? It needs to go where it needs to be -- there are other properties it can go on. At the end of Golden Gate, there's Gargiulo Farms. There's plenty of tomato land out there that they can put a 250-foot tower on that's not going to bother anybody, and if it falls on some tomatoes, I don't think Gargiulo is going to care.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. HOLDEN: I mean, I used to work for Gargiulo, so I can kind of speak for him in that aspect, but I'm opposed to the tower going there. I think all we're going to do is continue the problem that we have out there now of no cell phone signal, and when they do build this tower, it's still -- as you can see the slide here, there's still not going to be service where the people are living, and where that new Desoto Golden Gate fire station is going and where the services need to be at.

HEARING EXAMINER DICKMAN: All right. I get your point. Thank you.

MR. HOLDEN: All right. That's one. That gets me through my main point. It has been a long day.

HEARING EXAMINER DICKMAN: You sort of repeated yourself a couple times but --

MR. HOLDEN: Okay.

HEARING EXAMINER DICKMAN: -- I need to move to along here, or else everyone's going to starve to death.

MR. HOLDEN: All right. Thank you.

HEARING EXAMINER DICKMAN: All right. Was that it, or did you have anything further?

MR. HOLDEN: No, not really, but go ahead.

HEARING EXAMINER DICKMAN: All right. I appreciate it. Keep your mask on.

MR. HOLDEN: I won't repeat things.

HEARING EXAMINER DICKMAN: All right. Appreciate it. Thanks for the comments.

MR. FRANTZ: The last speaker slip I have is Melanie Penner.

HEARING EXAMINER DICKMAN: Melanie Penner. Okay. Hi, Ms. Penner. Thank you for your patience.

MS. PENNER: Thank you. Hi, my name is Melanie Penner, and I don't believe I swore --

HEARING EXAMINER DICKMAN: Can you swear her in?

(Witness was duly sworn. The proceedings continued as follows:)

MS. PENNER: I reside at 1235 Sugarberry Street in Naples. Most of my points have been made, and I won't repeat them, but I do want to just point out that I live very close to where this tower will be going in, and I personally have Verizon service. My husband has AT&T, and we've never had problems with cell phone service. We daily make calls from inside and outside of our home, and we receive calls as well.

We've also used our cell phones in both personal emergencies and natural disaster emergencies for police, fire and EMS, and we've never had any issue.

HEARING EXAMINER DICKMAN: Okay.

MS. PENNER: So I don't believe there -- I don't truly believe there's a lack of coverage in our area. Our neighbors also use their cell phones. I believe that the tower is an overdevelopment for that property that they're requesting.

HEARING EXAMINER DICKMAN: Can I ask you how far away do you live?

MS. PENNER: Yes.

HEARING EXAMINER DICKMAN: Are you quarter mile, half mile, whereabouts approximately?

MS. PENNER: I would say about a half a mile.

HEARING EXAMINER DICKMAN: Okay.

MS. PENNER: You can see my property on the maps --

HEARING EXAMINER DICKMAN: Okay.

MS. PENNER: -- when they put it up.

HEARING EXAMINER DICKMAN: Okay. I got it. Thank you.

MS. PENNER: You might not be able to see my actual house, but we have a large pond.

HEARING EXAMINER DICKMAN: So as far as, like, the service, both you and your husband have different services --

MS. PENNER: Yes, because --

HEARING EXAMINER DICKMAN: -- AT&T and Verizon and you're saying that in the house, outside of the house you have good service. Driving around in the neighborhood, do you have good service?

MS. PENNER: Yes. So I have Verizon because I've had it since I was a teenager and never changed. I grew up in a different area, and my husband is the same, so he has AT&T. We have service. We stream music. We make calls, all those things; watch YouTube. We do those things with no issues.

HEARING EXAMINER DICKMAN: Is it 5G? Do you get 5G reception out there? I know.

MS. PENNER: I get -- I get service.

HEARING EXAMINER DICKMAN: Okay. Take your time.

MS. PENNER: I think I also agree with the fact that they need to fully -- more fully explain that they have tried to get on other towers and haven't been able to. I think that's important, and I do agree that the -- from talking with other residents in the area, and I frequently drive to Labelle, and when I'm on -- once I'm out of my area and I get to Everglades North to Immokalee, that is where the service problem is. Everglades Boulevard north of the boulevard -- north of Golden Gate Boulevard. From that area to Immokalee Road, towards Immokalee, is very bad. So I believe a much better suited location would be the new ambulance bus station that's going in on Golden Gate Boulevard and Desoto.

HEARING EXAMINER DICKMAN: Okay.

MS. PENNER: I think that's a perfect place, and I think that would actually serve residents well.

And then I had a final question. I know you said you weren't going to make your decision today, but I was wondering when that would be anticipated, and how that decision would be delivered?

HEARING EXAMINER DICKMAN: That's a good question. Typically people don't ask questions of me, but I think that's a good procedural question. Under the code I'm required to render a decision by -- within 30 days.

I will tell you this is a complicated case, and I'm going to -- I think it's in everyone's best interest that I take as much time as I need to go through all the materials and render an opinion -- render a decision that's -- I can't say it's going to be 30 days, but I doubt that it's going to be three days.

MS. PENNER: Sure. Okay.

HEARING EXAMINER DICKMAN: So I'm going to take my time and do this.

MS. PENNER: And would that be posted somewhere or...

HEARING EXAMINER DICKMAN: You will -- we will make sure that everyone gets a copy both the -- I know we file it, Jeremy. How would some member of the public get a copy of the order? If you give -- maybe if you give them your e-mail, they can give it to you?

MR. FRANTZ: Yeah, we can take contact information from anyone who wants to get a copy directly from us, but absent that, the decisions are also posted on the Clerk of Court's website, and you can find any of your decisions there.

HEARING EXAMINER DICKMAN: So the -- Ray and that young man over there is the person you want to talk to to make sure you get a copy. My office will file it with them, and then they can distribute it to anybody who wants it; is that okay?

MS. PENNER: Yep, that's perfect, just in closing, I just oppose this.

HEARING EXAMINER DICKMAN: I understand that.

MS. PENNER: Thank you.

HEARING EXAMINER DICKMAN: Thank you for speaking here tonight -- today. It's not nighttime yet. All right. We have the county here. I know you introduced the item. I just want to ask you a couple questions, Ray, or it's not Mr. Finn -- Mr. Finn, come on up. The main question is, I just want to make sure that you all are satisfied that this is a complete application. There was some questions about the application not being complete, and whether this was really an essential service, things of that nature. So I just want to get on the record that you feel comfortable with that, and answering any questions that you heard that came up?

MR. FINN: For the record, I'm Tim Finn, Principle Planner, and, yes, it is complete.

HEARING EXAMINER DICKMAN: Okay.

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: So your -- you wouldn't have processed it or put it on the agenda if it wasn't a complete application?

MR. FINN: Yes.

HEARING EXAMINER DICKMAN: Mr. Bellows, do you concur?

MR. BELLOWS: Yes. For the record, Ray Bellows. I've reviewed this with Mr. Finn, and we are in the belief that the application for a variance was complete.

This process asked if we can confirm that the tower is an essential service. The information presented to us led us to believe it's an essential service tower, so we brought it forward.

HEARING EXAMINER DICKMAN: So in your professional opinions, plural, that this is an essential service, you all conferred internally. You're the professional planners, and you decided this is an essential service, and needs to be directed to me and you put it on this properly?

MR. BELLOWS: That is correct.

MR. FINN: Yes, that's correct.

HEARING EXAMINER DICKMAN: All righty, then. Thank you. Appreciate it. So rebuttal from Mr. Wright?

MR. WRIGHT: Thank you. Jeff Wright for the record.

HEARING EXAMINER DICKMAN: One second, Mr. Brookes, don't go anywhere. I need you to stay here. All right. In fact, why don't you come on up real quickly, Mr. Brookes? I want to -- I want to make sure that we cover everything.

So like it or not there's several lawyers in the room, some people may not like it. Mr. Brookes is a lawyer. I know Mr. Brookes, and I know Mr. Wright. As a lawyer, I'm going to -- it's inevitable that lawyers know lawyers, and -- but I would like both of you to put on the record that I have not spoken to either of you about this application. Can you do that?

MR. BROOKES: I have not spoken to you about this application, and probably haven't spoken to you in probably about a year.

HEARING EXAMINER DICKMAN: That's true.

MR. BROOKES: It's good to see you again.

HEARING EXAMINER DICKMAN: Thank you. It's good to see you, too.

MR. WRIGHT: And Jeff Wright, I have not spoken with you about this application in any way whatsoever.

HEARING EXAMINER DICKMAN: Okay. I appreciate that and I hope you understand that I'm trying to establish my impartiality here. Thank you.

MR. WRIGHT: If I may, I just have a few points to wrap up, and I will be respectful of everybody's time. I just wanted to hit on the essential services, and I really appreciate you going through that, because I had written down in my note that staff had made that determination as a predicate for this even coming forward, so to -- especially in light of all the information that we provided and testimony that we provided about our goal here with the first responders network, to me it -- it makes me wonder why would they question the essential services, when that's the core of our request, but I appreciate you getting that from staff, and that's what I was going to ask, too. I also wanted on that same subject, essentials services, Mr. Lewis made some reference about public records request, and you're probably familiar with how those work. When you ask for a record and you don't get it, that doesn't really -- it's not dispositive of all the questions that you're pondering, and in this case that's true as well.

We did -- I thought it would be good idea to contact the Emergency Director Dan Summers, so I talked to Dan, and I said, Dan, do you know about FirstNet and he said, Oh, yeah, it's going to be great when it gets here, and I said, Are you guys going to jump on it, and he said, Well, I don't know when it gets here, sounds like a really good network. It's nationwide, we're well aware of it, we hear about it all the time.

And so Dan summers is familiar with the network. They are not hooked up to it, but once it is up and running, they would be interested in --

HEARING EXAMINER DICKMAN: Who is Dan Summers?

MR. WRIGHT: I'm sorry. He's the Director of Emergency Management.

HEARING EXAMINER DICKMAN: For the Collier County?

MR. WRIGHT: For the Collier County exactly.

HEARING EXAMINER DICKMAN: And you're -- I mean, no one is getting up and screaming that this is hearsay, but I just want to -- you're a lawyer. You're not going to misrepresent the, you

know, this, but that was the essence that he would want to, you know, hook up to it?

MR. WRIGHT: Yes, and I even said to Dan, you know, if this has to come up at a hearing, I was trying to avoid it, but it's actually rebuttal, so I wanted to mention that --

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: -- what could I say? He said basically that we're aware of the network and we would be interested if it does get built and we could connect to it.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: Right now they're on Verizon, and so I think the idea of this robust nationwide network is naturally appealing to any emergency manager, and Dan's no exception. I also talked to the fireman chief, Kingman Schuldt, and he had kind of the same perspective, well, once it gets up and running. Now the goal set, the sheriff is going to be key, the sheriff's gotta to get on board, because a lot of the communications go -- I'm not a technical person, but my understanding is that the communications, that the sheriff plays a critical role in all the communications.

So the idea is there's a reference to this, if they build it then the emergency services will come, and that's the whole idea of this tower. So the essential services, I just wanted to reiterate, that this is indeed an essential services tower.

And also I should have hit this first, Hearing Examiner, you asked for clarification on the scope of the expertise of our expert, and I just want to make clear, he's not a lawyer, he's not a planner. He's an expert in construction design, permitting and operation of towers and networks. He's a consultant that specializes in this area, and we will be providing you with a resume.

HEARING EXAMINER DICKMAN: Thank you.

MR. WRIGHT: And then on a related note, Tom Barber, he's a great planner. I've worked with him a bunch. To the extent that you're considering whether or not he's qualified, I just wanted to say in the spirit of cooperation --

HEARING EXAMINER DICKMAN: Can you stipulate that he's an expert?

MR. WRIGHT: We don't object.

HEARING EXAMINER DICKMAN: Okay. Thank you. Then he will be an expert. I would like his resume though. Mr. Barber, can you get --

MR. BARBER: Absolutely.

HEARING EXAMINER DICKMAN: Send it through the county, please? Thank you. That's very nice of you.

MR. WRIGHT: It's hard for me to hit on every single point, but I'll try to hit on the main ones.

There was an LDC liability provision that's 5.05.09(G)(8), and it provides that there's joint and several liability for any damage to neighboring property from a tower collapse, so that's not something that came up, but it is some sort -- some form of additional protection.

Obviously, our testimony isn't that this tower would ever collapse, it would buckle before anything, and it doesn't rip out of the ground, but in the event that there's any damage whatsoever from this tower to neighboring properties or structures, the operator of the tower would be liable for that.

HEARING EXAMINER DICKMAN: Or people.

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: Yes. And, now, there's a reference to we run cattle across here. Well, I'm not really sure what the full story with that is, but, obviously, the Hearing Examiner is not the place

to establish a prescriptive right.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: That's somewhere -- it's not an easement in the public record. It's nowhere to be found anywhere. So if they did want to get an easement or have it formally established as a matter of title, they would have to go to circuit court and prove that up. So, Doug mentioned it in passing. I just wanted to make sure it's a high bar in the conclusive proof requiring each element in circuit court.

And I also just wanted to highlight some of the public benefits to the FirstNet Network and first responders would benefit, provides added public safety in the event of emergencies. It would benefit, foreseeably, the very people that are opposed to this project maybe even the most; better coverage and reception for essential services, and quicker emergency response.

I also wanted to mention in the subject of compatibility, the property is in receiving lands between a mine and a fairly intensive ag operation. The receiving lands are designated for development in both the LDC and GMP, and the towers are relatively low traffic, low impact use that fits in perfectly with the scheme of development in this area.

Agritourism, I'm not sure of the nature or the type of agritourism. I think early in this case Mr. Smith indicated in some correspondence that he's thinking about agritourism. So I don't know what the scope of that agritourism is, but there's nothing in the record to suggest that this would have an adverse impact on any agritourism business, and the same is true of the VRBO short-term rental.

It's very speculative to say that the rental would be adversely affected, and there's nothing in the record, other than what I said earlier about no right to an unobstructed view in Florida, and the rest, I know that there was a lot of emphasis on Criteria F. In fact, that's the only criteria -- I know Tom Barber went through and he had his own views that he put on the screen. I didn't capture those realtime, but the only criteria that I heard was F that's not in harmony with the intent and purpose of the LDC, and not injurious to the neighborhood or otherwise detrimental to the public welfare.

I understand I don't live there. I don't know what it's like out there to live there, but I do know that any negative impact from the view or not being in harmony with the neighborhood is outweighed by the other half of this detrimental to the public welfare.

This is, obviously, intended as a benefit to the public welfare, so we would ask that you consider weighing the burden versus the benefit to the extent there is a problem. And let me make sure I cover everything.

There's nothing in the record to suggest that light, noise, odor, anything of those things would be a problem, and as far as the shared use goes, I believe we had some correspondence with staff early on with this. We had to go back and forth with AT&T, and I think that there's letters included in the backup with the propagation maps, and we basically are saying it won't work on the other tower.

So we have in the record the reasoning behind the shared use not being an option on this tower. We can't just jump over to a shorter tower and be on the FirstNet Network.

And I'll sum up with it's all about the criteria. We had testimony on the record today from multiple experts that say we meet the criteria. As I indicated, the opposition has made some -- poked a little bit at some of the criteria, but I would urge you, as Mr. Lewis urged you, to look at the language of the criteria.

Mr. Brookes laid out some, I'd say academic types of perspective, and he probably provided you

with some helpful background materials, but, ultimately, you're driven by the language and the criteria, and there's, for example, terms like coming -- self-created hardship, they're embedded in here, but those terms aren't used.

So the language means a lot, and we'd just ask you to stay faithful with that language in determining whether or not we meet the criteria.

HEARING EXAMINER DICKMAN: I understand that, and at the end of the day, that is what this is. It's a variance not -- I mean, if it was a variance for a barn or something like that, it would still be a variance, but let me ask you a couple questions.

MR. WRIGHT: Sure.

HEARING EXAMINER DICKMAN: There was -- there was some insinuation that you could've -- you can find another site in the area, that there are other sites on the market, that there is a common ownership.

You know, from my perspective, I don't know that it's even relevant what the relationship is of the common ownership in the parcels, but because, I mean, there could be a lot of very good reasons why whoever this is going to be a lease, I assume --

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: -- that's the word I've been hearing said, and I'm not looking into that, but, you know, the reason that you're picking this parcel, I think, is kind of -- I think it's somewhat relative, but the reason I was asking the question of if you couldn't find -- if under the program that you're in under FirstNet, which is essential service that's been put in there, if you can't find an adequate site for it, that, to me, would go to the point of the uniqueness of the parcel, and I'm kind of curious about, like, what efforts were made to try to find parcels that would achieve the same goal and not require a variance?

MR. WRIGHT: Well, I -- I do know that early on, I think it was 2019, they started this process, met with staff and said what do we need to do, and originally they were told they needed a conditional use, so they kind of went running around. Again, this is after deciding on this site, and the question that they're trying to determine is can we build a tower there.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: So they go to staff and staff says, yes, you can, you can get a conditional use, and so they went running around again, so it's been going on for two years with their focus on the site with two zoning letters and a whole bunch of other work and communications.

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: And the idea of saying, well, why don't you put it here, or why don't you put it over here, why doesn't Johannes Steffens let you do it right there? Well, a lot of work went into picking that spot. A lot of work has gone into making it happen at that spot. If you look at the propagation maps and the goal of FirstNet to have a seamless coverage --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: -- this is a hole in their coverage --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: -- for first responders, and I don't disagree with the local that has fine reception, but that -- this is a coverage that we want -- that AT&T FirstNet wants to be seamless, and when there's a hole in the coverage, it's not seamless.

HEARING EXAMINER DICKMAN: So in other words when you say it's seamless, it's not seamless for the commercial user. It's seamless for the FirstNet first responders without being basically -- I understand that if you don't have it, they have to use the same service that the

general public is using and, then, obviously, during a hurricane and whatnot everybody's on the phone at the same time and it would crash, so I'm -- am I misunderstanding that, that this is a seamless -- the achieved -- the federal goal of this is to achieve the ability for first responders to not be interfered with; is that a fair statement?

MR. WRIGHT: Yes, separate bandwidth set aside just for them. I think 20 megahertz of bandwidth set aside for them.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: And if I may, I think that that red area that shows we don't have coverage here, supports what we're trying to do, because if it was just to make money --

HEARING EXAMINER DICKMAN: Uh-huh.

MR. WRIGHT: -- there's not a lot of customers.

HEARING EXAMINER DICKMAN: Was that coverage for commercial customers or was that coverage for FirstNet?

MR. WRIGHT: FirstNet.

MR. BARBER: Yes.

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: That's the FirstNet coverage?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: Okay. All right. So, again, I don't know that it's relevant for me to question any economic reasons, or, you know, searching for other viable things that are on the market, because, you know, anything could happen. That's -- those are all the kinds of things, but I think what you're telling me is that based on the data from the experts of your client, that they've said that this is the parcel that they need or want, and I've heard it's a nonconforming smaller lot than other lots.

I don't know what the motivation is for not picking a larger lot, other than the fact that maybe, you know, either side didn't want it, or something like that, but I do think that that's somewhat germane to, you know, the criteria in a variance, but I guess I'll have to ferret that out from everything that I've heard.

MR. WRIGHT: Understood.

HEARING EXAMINER DICKMAN: Is there anything else?

MR. WRIGHT: No. I would just point to the criteria and point out the fact that the record's replete with testimony that indicates that we meet those criteria and we would request your approval.

HEARING EXAMINER DICKMAN: Okay. I want to compliment everyone that has spoken today.

I know there's been a lot of work on this application by everyone, not the least of which was the county.

You've got some good experts on both sides. Everyone was very articulate, answered my questions, and gave me lots of good information.

I do want to, before we break up, this is very important to a lot of people, so I want to make sure that I get in my hands all the presentations. Jeremy or Ray I want to have all those while I have the ability to work through this.

I think that the graphics were really important for me, you know, so if you guys could funnel those to me, nothing that -- I don't want anything else that wasn't presented here. This is an on-the-record.

If there's something that comes up beyond this, it's all gotta be on the record, but does anybody have -- I mean, those were presented to me here, so I assume there's no objection to me having

those. In fact, I could have those.

The only other thing would be the resume of Mr. Barber. I hope I'm saying it correctly, his resume, so no one has any objection to me getting that. You stipulated that he's an expert. So, Jeremy, you're pointing at me?

MR. FRANTZ: I was just trying to raise my hand. I also want to point out we have a few documents have been passed to Ray throughout the hearing, and if those are materials that need to be included in the record, we may want to be clear on who they came from, because I'm just seeing a stack there.

HEARING EXAMINER DICKMAN: Yeah, can we just identify those things? I know that some things were passed to me -- or to -- I didn't get anything other than was passed through -- I know Mr. Brookes gave me some information. Can you identify those? I'm going to take my time here, gentlemen. I want to make sure I've got everything right.

MR. LEWIS: Case law is from Mr. Smith, Mr. Sherf.

HEARING EXAMINER DICKMAN: Okay. So the county should make a copy of everything and forward it to me, so there's a record, if anybody wants to get the record from the county, they can do that.

MR. BELLOWS: There's a 47 billion network.

HEARING EXAMINER DICKMAN: Speak in the mic.

MR. BELLOWS: For the record, Ray Bellows, is this from you?

MR. LEWIS: Submission from the Smith/Sherf; correct.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: Then we have a document from Doug Lewis?

MR. LEWIS: Yeah, submission, correct.

MR. BELLOWS: Then we have Ralf Brookes. It looks like a resume.

MR. LEWIS: That's our submission as well.

MR. BELLOWS: Then we have Florida law regarding variances, and that was submitted by --

HEARING EXAMINER DICKMAN: Mr. Brookes.

MR. BELLOWS: -- Mr. Brookes, and then we have a pamphlet from Tom Barber.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: Smith/Sherf as well.

HEARING EXAMINER DICKMAN: All right. Did you want to look at any of those? Are you okay with them? You want to just --

MR. WRIGHT: I'm fine with you considering all of that as far as your decision-making process.

HEARING EXAMINER DICKMAN: Yeah, let me explain how that's going to go, because what's driving me is the criteria, and then based on the criteria I have to sort out what -- what is germane to the criteria and what isn't.

I do agree with Mr. Brookes that lay testimony can be considered. The case law is pretty clear on that, but since I'm the one that's going to be making conclusions or fact -- establishing facts and conclusions of law, I want to see everything and have the opportunity for me, as opposed to the whole board, but for me to be able to look through it and discern what is germane, and what isn't.

I have the letter from the association. Thank you, sir. I have that. I don't know if you've submitted a letter or not, but you made very good arguments, very good presentation, and I think that's about it.

Was there anything else, Mr. Wright, that you had? I'm going to get all the -- everything that

was on the projector, I'm going to get copies of that, and I want it make sure the county has a full copy of everything in case somebody wants to make a public records request, and sort through all of that themselves; is that -- is that fair?

MR. LEWIS: Yeah, that stuff looks great, but I do need to make an objection for the record for hearsay testimony that was provided in rebuttal.

HEARING EXAMINER DICKMAN: Okay. So you're talking about the sheriff and the EEOC?

MR. LEWIS: The fire chief is no longer employed, as I understand it, and I haven't had a chance to --

HEARING EXAMINER DICKMAN: Okay. One second. He's made an objection as hearsay. It's well-taken. I don't know if you have any other additional information to that?

MR. WRIGHT: No, I have -- I understand his objection. I would just say that the hearsay can't be the basis of your ultimate decision, but I would ask that you consider it as part of the record.

HEARING EXAMINER DICKMAN: Yeah, it will be considered, but your objection is noted as hearsay. You know, this is a quasi-judicial hearing. At this point in time, I'm not a judge, but I would highly doubt either of you lawyers would present false testimony, false information to the Hearing Examiner.

MR. LEWIS: Yeah, and we would view that an admission, you know, if you build it they will come, supporting our position that there really isn't an essential service as of today.

I did want to note that the staff indicated before the hearing that they had reviewed, based on information provided by the applicant, and made an essential services determination, but they did not opine --

HEARING EXAMINER DICKMAN: Okay, let's not get into --

MR. LEWIS: I understand that, but I just want to object on the record as it related to -- as related to that testimony. We're okay with accepting it as hearsay statement, but we do think it is hearsay and --

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: -- and also we wanted to make sure that it is, in our view, viewed as an admission that there is no government service today occurring today.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: There would need to be future contracts for that to happen.

HEARING EXAMINER DICKMAN: Gotcha.

MR. LEWIS: That are not in place, that's all --

HEARING EXAMINER DICKMAN: That was my understanding. I understood that part of Mr. Wright's -- he was very clear about that, there's no contracts or any definitive, you know, but, you know, all he presented that for was the purpose of saying that, you know, they would like to, you know, they have an interest in that, that's what I think what he was essentially presenting. It wasn't anything concrete that there, right, am I correct, Mr. Wright?

MR. WRIGHT: You're correct.

HEARING EXAMINER DICKMAN: Okay. That's what I thought, okay, but your objection is noted. Thank you. The only other thing I want to ask is how fast can we get the transcript of this?

THE COURT REPORTER: Our turnaround is eight to ten days.

HEARING EXAMINER DICKMAN: I wouldn't mind having a transcript of this to help with my evaluation, but what is your typical turnaround?

(Court reporter discussion was had with the Hearing Examiner.)

HEARING EXAMINER DICKMAN: Eight to ten days is normal your turnaround? That's fair

enough. That will be fine, I have up to 30 days. I know that this has been in the works for a long, long time, but I think it's in everyone's best interest that I take my time and look at everything and put together something that's for better or for worse, you know, it is what it is, instead of trying to rush this.

MR. LEWIS: We're happy to offer the transcript -- we're happy to offer our copy of the transcript if that helps to expedite, to both you and Mr. Wright.

HEARING EXAMINER DICKMAN: Are you okay with that? I still want the county's transcript, but I'm sure they're identical, but that's fine, if you want to provide both Mr. Wright and the county your private court reporter's transcript, that would be fine, do it through the county, and then I'll have it within -- are you okay with that? That will be labeled -- that won't be the official county's transcript, but I'm willing to wait the eight days -- eight to ten days. You're looking at Jeremy with a cringe.

(Court reporter discussion was had with the Hearing Examiner.)

HEARING EXAMINER DICKMAN: No, they're just going to offer it as information, but it's okay. I think your turnaround will be fine for me. It's within eight -- you're saying you can't do it -- is it normal within eight to ten days? What's going on here?

MR. FRANTZ: I'm not sure what the question is.

HEARING EXAMINER DICKMAN: I'm trying to get a transcript.

MR. FRANTZ: Yes, when we receive the transcript, the official transcript, we modify the document so that it can be signed electronically, and then immediately send it to you, so there's not a long turnaround time from the county's perspective, if that's the question?

HEARING EXAMINER DICKMAN: Well, my -- okay. It's not really, it's partly a question, but it's also a demand that I get a copy of the transcript, so I can read back through all the testimony and information that's been presented.

I think that's a fair request. I don't -- what is the normal turnaround, now, you provide it to my office for signature, so what is the normal turnaround?

MR. FRANTZ: I think our contract is eight to ten days.

HEARING EXAMINER DICKMAN: Eight to ten days, that's fine. This has been a little longer of a hearing, but you have eight to ten days, and I think it's fine for the opposing counsel, if his court reporter has a transcript that is his from privately, and he wants to share it with -- to me through the county, and share it with opposing counsel, Mr. Wright, or Mr. Wright seems like that's okay; right?

MR. WRIGHT: Yes.

HEARING EXAMINER DICKMAN: I'm going to also look at the other transcript.

MR. WRIGHT: That's fine.

HEARING EXAMINER DICKMAN: But I need to be able to get started on this right away. I know you're not going to do it right away but --

MR. LEWIS: My client isn't here, but I'm willing to make a request, and if we can expedite, we're happy to do it.

HEARING EXAMINER DICKMAN: Okay.

MR. LEWIS: I would need to just confirm that with the client.

HEARING EXAMINER DICKMAN: Okay, but that's not going to be --

MR. LEWIS: I have no issue.

HEARING EXAMINER DICKMAN: -- understand that's not the official transcript, it's going to be something for me to reference, but at the end of the day, I'm going to be, if I use the transcript for

references, it will be referencing the official transcript.

MR. LEWIS: Understood.

HEARING EXAMINER DICKMAN: Okay. Is that fair, Mr. Wright?

MR. WRIGHT: Yes, sir.

MR. LEWIS: Thank you.

HEARING EXAMINER DICKMAN: Both lawyers are nodding their head in the affirmative.

Okay. Anything else? Anything else from anybody else? I appreciate everyone being here, putting in all the hard work, and I'll do my best to get this out, but don't expect it this week.

MR. WRIGHT: Thank you.

HEARING EXAMINER DICKMAN: All right. Do we have any additional business? Anybody?

Sorry. You guys don't get lunch today. Meeting adjourned.

* * * * *

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 1:01 p.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW W.J. DICKMAN, HEARING EXAMINER

Correction(s):

Page 19, Line 11 from the bottom should be "Mr. Wright" not "Mr. Rogers".

Page 54, Line 11 from the bottom should be "2005" not "205".

These minutes approved by the Hearing Examiner on 3/5/21, as presented _____ or as corrected ✓.