

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER

Naples, Florida

March 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 DICKMAN

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

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everyone. Today is the March 11, 2021, Hearing Examiner Meeting. Why don't we get started with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right, thank you everybody. Please silence your phones and any other electronics that you have. I'll do the same, actually. This is both a in-person and hybrid type of quasi-judicial hearing. There's going to be folks online. There's going to be folks here in the building. Please maintain social distancing. We're doing everything we can to keep everybody safe. We have two podiums. We're going to ask the Applicants to come up to the brown podium over here. County and public will use the gray podium in the middle. And that would hopefully help everybody stay safe. Keep your masks on. You can take your masks off when you come up to the podium to speak. We have a court reporter on the line?

MR. FRANTZ: The court reporter is online again.

HEARING EXAMINER DICKMAN: Court reporter's online, so please no talking over each other. Try to not talk too fast. We want to capture everything on the transcript so that it's made available and captures all the information correctly. This is a quasi-judicial hearing so the process is going to be the County is going to introduce the item, and then the Applicant will come up with anyone else on their team, and then we'll open it up for public comment. And then we'll give the Applicant time for rebuttal if they like.

My name is Andrew Dickman. I'm a land use attorney with offices here in Collier County. I have been practicing for over 20 years in land use and zoning. I was retained by the Collier County Board of County Commissioners to be the Hearing Examiner. I do not work for the County. I'm strictly here to hold impartial public hearings and decide the merits based on the criteria and the code, and on competent substantial evidence that I hear today. So without that, I think I've covered everything. Jeremy? Yeah, anything else? All right. All right, good.

So why don't we get started. We have two items today, and the first one is Item 3A. I believe we have a gas station, for lack of a better word. Come on up. How are you today?

MR. FINN: I'm doing good. For the record, I'm --

HEARING EXAMINER DICKMAN: Hold it, time out. I've got to do something here. I'm going to -- anybody who is going to speak today needs to be sworn in. So anybody that's in the virtual world online, in here in the building needs to be sworn in by the court reporter.

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

HEARING EXAMINER DICKMAN: All right, great. Sorry to interrupt you.

MR. FINN: For the record, Tim Finn, Planner. This is a petition number ASW-PL20190002183, Hammock Park Apartments, LLC, requests a 137 foot waiver from the minimum required separation of 500 feet between facilities with fuel pumps for development of an automobile service station located at the northeast corner of CR 951 and Rattlesnake-Hammock Road, with a resulting separation distance of approximately 363 feet from the property line of an existing RaceTrac service station pursuant to Land Development Code Section 5.05.05.B of the Land Development Code. This project is compliant with the GNP and LDC, therefore Staff recommends approval.

With regard to advertising, the Applicant has complied with all hearing notices by our operations staff. The advertisements and mailers went out on February 19th, 2021. The hearing advertisements, signage were constructed at the property by the Applicant per the affidavit of public notice, which is included in Attachment B of the document.

HEARING EXAMINER DICKMAN: Has the County received any opposition to this prior to the hearing?

MR. FINN: No.

HEARING EXAMINER DICKMAN: No opposition to this hearing? Okay, great. All right. Thank you very much. I appreciate you also putting on the record that this was duly noticed and advertised. So I will -- that's what I like to hear as well to get that off the list right away. All right, great. So is the Applicant here? How are you?

COURT REPORTER: Excuse me. Can I have him restate and spell his last name, please.

HEARING EXAMINER DICKMAN: Yes. I think they're having trouble hearing through your -- they're having trouble --

MR. FRANTZ: Remove your mask for a second.

MR. FINN: Yeah, for the record I'm Tim Finn, Principal Planner.

COURT REPORTER: Thank you very much.

HEARING EXAMINER DICKMAN: The court reporter will stop us and she has full authority to stop us at any moment. Hi, how are you?

MS. CRESPO: Good morning. Alexis Crespo with Waldrop Engineering representing the Applicant.

HEARING EXAMINER DICKMAN: Welcome, Ms. Crespo.

MS. CRESPO: Do I need to spell my name for the court reporter?

COURT REPORTER: Just your last name, please.

MS. CRESPO: C, as in cat, R-E-S, P, as in Paul, O.

COURT REPORTER: Thank you.

MS. CRESPO: All right. I just have a brief presentation. I want to start by thanking Staff for getting us through the process fairly quickly. As noted, this is for the automobile service station separation waiver requirement in 505 of the code. As Tim noted, the subject property is located at the northeast corner of Rattlesnake-Hammock Road and Collier Boulevard. The property outlined in yellow is the overall Hammock Park PUD which is about 19 acres in size. The service station is located on the frontage of the parcel. It's just under two acres in size. The MPD was most recently approved per Ordinance 2020-39 and the property has been zoned for commercial use since 2000, and allowing for the automobile service station use since that original CPUD zoning was established per 2000-79, that Ordinance. Next slide.

So the request before you today is to allow this two acre portion of the MPUD to be developed with eight fuel pumps and a convenience store. The property is 363 feet from an existing RaceTrac that's at the southwest corner of the intersection. That aerial -- I wasn't able to get an aerial that was up-to-date. It's very recently constructed, but the RaceTrac parcel is noted on the slide, it's location. The code does require 500 feet of separation but does allow the opportunity to seek a waiver of this based on meeting the criteria in the Land Development Code. Next slide.

This is the site plan that was included in your package and submitted with the application materials. I chose the layout of the proposed gas station with car wash and fuel pump facility as well as the convenience store. It notes the 363 feet of separation from the property corners that necessitates this waiver. I just want to note that all the other supplementary regulations in the code, the enhanced buffering and enhanced setbacks, all of those items have been met by this plan. The only waiver we need to build the gas station as proposed is the separation reduction. Next slide.

I'll just briefly run through the criteria. We are in agreement with your Staff that the request meets the criteria in the code. The first criteria, are there any natural or manmade boundaries that are intervening between the two gas stations that would make the request appropriate? We have a six lane arterial roadway, certainly a manmade condition, separating the two gas stations. And then additionally we have the Collier Boulevard canal that provides an additional hundred foot of separation in that right-of-way. So substantial separation between the gas stations by the roadway that intervenes. Next slide.

I have some animation here. The second criteria is what types of uses are occurring within the gas station and is it on a 24-hour basis? We don't have any repair or service associated with this use. It's really just the fuel pumps and the convenience store. It is a 24-hour operation, but again, it's located on a six lane arterial roadway which makes those hours of operation appropriate. We are not proposing any more intensive service or repair uses with the proposed gas station. And then we also don't have a lack of residential abutting properties that would make the 24-hour hours of operation inappropriate. Next slide.

The next is whether it's located within a shopping center and primarily accessed by a driveway

fronting on a plotted road right-of-way. The service station is within the commercial component of a mixed use planned development, so there will be additional commercial out parcels along that frontage that it will be interconnected with, so it is within the context of multiple commercial uses along the frontage. It will be accessed from a county maintained platted roadway, Rattlesnake-Hammock will provide the initial access and then interconnections within the property to other commercial parcels to the north. There's no direct access from Collier Boulevard.

And then the last criteria is really just a compatibility. Certainly proliferation of automobile use would not necessarily be appropriate if there's substantial low density residential in the area. The requests will have no adverse impact on existing residential lane uses in the area. We are surrounded by commercial planned developments for the most part. We do have the option of doing apartments on the east side of the site, but we are providing for those enhanced service station buffers per 5.05.05 of the LDC. So there will be substantial buffering between any internal multi-family residential and the proposed service station. And that would be our only abutting residential land use.

HEARING EXAMINER DICKMAN: You said optional apartments. Can you just explain that to me?

MS. CRESPO: Allows for either commercial uses of 260,000 square feet across the entire 19 acres or the option to do 80,000 square feet of commercial uses and 265 multi-family units. So the option was built in per the 2020 amendment.

HEARING EXAMINER DICKMAN: At this time there are no decisions whether that's going to be residential or commercial?

MS. CRESPO: No.

HEARING EXAMINER DICKMAN: Not at the current time? Okay. All right. Okay. That's all I have for now. Anyone here from the public? Yes, sir?

MR. SULICK: Can you put the slides back on?

HEARING EXAMINER DICKMAN: They can. I don't have --

MR. SULICK: My name is Peter Sulick and I hadn't really intended to come to this hearing, but I'm glad I did because it's kind of interesting. Can you go to the slide of the site, please? Let's see, slide number two. Yeah, so I own --

HEARING EXAMINER DICKMAN: Sir, just a second.

MR. FRANTZ: Sir, you need to be on mic.

MR. SULICK: I need to be on mic, okay.

MR. FRANTZ: There is a handheld mic over on the other podium.

HEARING EXAMINER DICKMAN: Your name and --

MR. SULICK: I gave it to him.

HEARING EXAMINER DICKMAN: Can you just tell me and --

MR. SULICK: S-U-L-I-C-K.

HEARING EXAMINER DICKMAN: And you live in the area?

MR. SULICK: In Naples, yeah. I gave them my address.

HEARING EXAMINER DICKMAN: But I need to hear it. I kind of want to know --

MR. SULICK: 3295 Fort Charles Drive, Naples, Florida.

HEARING EXAMINER DICKMAN: Are you in the vicinity of this application?

MR. SULICK: I am. I received the notice.

HEARING EXAMINER DICKMAN: Okay.

MR. SULICK: You see where the little yellow rectangle is?

HEARING EXAMINER DICKMAN: Yes, sir.

MR. SULICK: There's a ten acre parcel just to the north.

HEARING EXAMINER DICKMAN: Okay, got it.

MR. SULICK: I own the 20-acre parcel to the north of that.

HEARING EXAMINER DICKMAN: Abutting to the yellow line?

MR. SULICK: To the north.

HEARING EXAMINER DICKMAN: Right. So the un -- is it undeveloped? It looks like

it's --

MR. SULICK: It's cleared.

HEARING EXAMINER DICKMAN: It's cleared.

MR. SULICK: Yeah.

HEARING EXAMINER DICKMAN: Okay.

MR. SULICK: Do you know which one it is?

HEARING EXAMINER DICKMAN: Well, if you're saying the one that's directly north --

MR. SULICK: So if you see the rectangle.

HEARING EXAMINER DICKMAN: I see it.

MR. SULICK: Immediately to the north of that there's a undeveloped parcel --

HEARING EXAMINER DICKMAN: Okay, so it's not abutting.

MR. SULICK: -- of ten acres.

HEARING EXAMINER DICKMAN: So it's not abutting, it's adjacent. Okay. There you go.

That one?

MR. SULICK: That's correct.

HEARING EXAMINER DICKMAN: All right.

MR. SULICK: That's a 20-acre parcel --

HEARING EXAMINER DICKMAN: I got it, okay. Gotcha.

MR. SULICK: -- which I've owned for almost 25 years. And we've been waiting for a long time to get development going on this commercial -- let's call it commercially zoned quadrant. And I think it's a good -- I'm very supportive of this project and I'm glad to see that George Bauer or whoever it is that now owns that is finally developing it. So I think it's really encouraging that we're finally going to get some commercial on that site.

HEARING EXAMINER DICKMAN: You received the notice in the mail?

MR. SULICK: Yes.

HEARING EXAMINER DICKMAN: Okay, great. Well, thanks for coming out.

MR. SULICK: Sure.

HEARING EXAMINER DICKMAN: All right. Appreciate your comments.

MR. FRANTZ: I have no other slips and no one has registered on Zoom for this item.

HEARING EXAMINER DICKMAN: Mr. Finn, I have a quick question for you. So this goes to the last criteria, and I asked Ms. Crespo about this. When you're evaluating this application and the abutting property in this PUD has the option of residential -- in this case apartments -- or commercial, how do you evaluate whether, you know, in terms of the adverse impact to adjacent land use, especially residential land uses? Are you looking at that as future potential land uses or existing land uses?

MR. FINN: Potential land.

HEARING EXAMINER DICKMAN: Potential land uses.

MR. FINN: They are, with regard to the development immediately to the east, they are proposing a 30 foot landscape buffer. So whatever goes in there it'll act as --

HEARING EXAMINER DICKMAN: Right.

MR. FINN: -- a buffer for the gas station.

HEARING EXAMINER DICKMAN: So to that point, Jeremy, can you bring up the site plan, please? I believe it was slide five, something like that. All right. I guess there's no way to zoom in on that at all, to the site? Maybe not. Okay. So the future development would be to the right, which would be -- and then you've got the dumpster, 30-foot landscape buffer and then the car wash and then the convenience store. And then it looks as though you've got internal traffic ingress, egress onto that future development, correct? Okay. So that's the question I wanted to know, is that you looked at both potential -- all potential build out uses and when developing this impact and okay, got it. That's what I wanted to know. Thank you. Appreciate it.

Ms. Crespo, any last remarks?

MS. CRESPO: For the record Alexis Crespo. I just want to note for the record that the site development plans that we're working on for the gas station, actually at a different engineering firm.

They are making modifications because that site plan doesn't necessarily show the required 50-foot structural setback, so that dumpster has to be pushed further into the site.

HEARING EXAMINER DICKMAN: Okay.

MS. CRESPO: So kind of tagging onto what you were just asking of Staff, 5.05.05.D has an enhanced structural setback for dumpsters and any type of accessories as well as principal structures on the site from any residentially zoned property. So we'll meet that 50-foot setback through any ultimate design. There's also lighting criteria, prohibition on music after ten p.m. So there's a really great code in place that the site will fully comply with to ensure compatibility with any abutting residential uses that should be developed in the future.

HEARING EXAMINER DICKMAN: The dumpster will be moved further into the site so pick up and, you know, the banging of the dumpsters obviously can be loud. So yeah. Well, I appreciate that information and I understand what you're saying about lighting. It will be probably domed and on that side. The pumps will be on the other side so the 24-hour service will probably not affect the residential. That's my main concern, because if it's commercial it may not have as much of an impact. But if you have apartments there, that was really what I was looking at. Okay. Anything else? All right, that's great. You got a nice neighbor over there supporting you. Very good job. Anything else? Okay. We're closing the public hearing and I have no further questions. And so I will get a decision out as quickly as I possibly can. Thank you for being here and nice work everyone, County. All right.

Okay. This is 3B, Item 3B a Swimming Pool. Or not a swimming pool, tennis court. Everybody loves tennis.

MR. KELLY: Good morning.

HEARING EXAMINER DICKMAN: How are you, sir?

MR. KELLY: Just fine, thank you. Yourself?

HEARING EXAMINER DICKMAN: Fine.

MR. KELLY: For the record, John Kelly, Senior Planner. Before you is petition VAPL20200002057, 132 North Street variance. They're requesting you to consider an application for variance from Section 4.02.03.D of the Land Development Code to reduce the required accessory structure side yard setback from 30 feet to 12.5 feet to allow for a tennis court at this location. With that I'll give it to the --

HEARING EXAMINER DICKMAN: Let's talk about notices. Just throw that out there.

MR. KELLY: Okay. Sorry, I was saving that for my presentation.

HEARING EXAMINER DICKMAN: Let's just go with it.

MR. KELLY: The meeting and advertising requirements are contained in LDC Section 10.03.06.F, as in Frank, 2. The agent letter was sent by the Applicant on January 21, 2021. The sign was posted by the Applicant on or about February 20, 2021, and mailed notice and the newspaper ad for this meeting were run by the County on February 19, 2021.

HEARING EXAMINER DICKMAN: We can just go ahead and save some time and roll through your application on this one.

MR. KELLY: Staff analysis was based upon the variance criteria in LDC Section 9.04.03 A through H. We found it consistent with the growth management plan in the LDC. So, with that, I'll let you know that I have received a number of calls, approximately six, from neighbors. All were satisfied upon learning of the purpose of this petition, which is a tennis court. And the Applicant provided six statements of no objection. They are provided in the Applicant's backup. So with that, the County is recommending that you approve this petition to reduce the west side yard accessory structure setback from 30 feet to 12.5 feet for a one family tennis court to be located within the side yard, subject to three conditions. One of those is that the setbacks are as shown in Attachment A on the site plan. Two, since the court they're presenting, does not have fencing, any future fence or wall for the subject tennis court must comply with Section 5.03.02 of the Land Development Code, which is the fence section. And if approved, the tennis court utilized lighting, if there is lighting. Such lighting directed only onto the petitioner's property and shielded to prevent glare on the neighboring properties.

HEARING EXAMINER DICKMAN: Two quick questions for you. In the purpose

description of the project you say the outermost, "therefore the outermost court fair play line." What is the fair play line?

MR. KELLY: That would be the -- we're going with the play lines of the tennis court. So --

HEARING EXAMINER DICKMAN: This first line and also the sidelines for doubles, okay. Great. And then finally on Criteria E, I noticed that Staff lists what the Applicant's agent says and then Staff says "Staff does not disagree." Is that sort of normal practice on that item where it's really talking about granting special privileges? I understand Staff's response, because obviously a variance by definition bestows some relief from the zoning regulations. I mean, I notice on the other criteria you don't print the Staff's or the Applicant's answer.

MR. KELLY: I am only -- the Applicant had a statement to make which was made in their application. I presented it to you. We don't disagree with that, however, we do believe that there is some, just as you said, by definition there is some allowance made.

HEARING EXAMINER DICKMAN: Is the -- don't go anywhere, but you can have a seat. Thank you very much. Nice presentation. Is the Applicant here? How are you, sir?

MR. FOLEY: Good morning.

HEARING EXAMINER DICKMAN: Good morning. Thanks for being here. I guess you kind of have to be.

MR. FOLEY: For the record, Blair Foley, Professional Engineer with Foley Engineering. I've been practicing engineering here in Naples for about 30 years. Thank you for allowing us to present today on behalf of the owner.

We have a very brief presentation I'd like to elaborate on a few points at the conclusion of that, if I may. And of course, if there's any rebuttal or questions, I'm happy to answer those too.

The cover sheet was basically just the owner information. Could you go back to the first page please, briefly? Thank you, Jeremy. Yes, it states the owner, Mr. Sanitan(sic) and we have the zoning district and folio number and location map. It's in the Pine Ridge Estates area. Next slide please, thank you.

The reason I included the aerial here was to show how this is kind of unlike a lot of the lots up there. It's very well vegetated, very well buffered and it shows the boundary, shows the surrounding neighbors. It also shows the outline of the court. And we were constricted with a number of things due to the lake and the pond and the real environmental, environment that they put together. The nature of this facility and home is really nice. It's a contained spot. I don't think it's going to have a significant impact on the neighbors, good or bad. But I thought the aerial photographs would be important to see that to place a tennis court anywhere else on the lot would be very difficult. Next slide, please.

This just removes the aerial and shows the setback criteria. We certainly meet the front and the rear. It's just the one side yard that we're looking for relief on. And next slide, please.

We show some photographs on this last slide of the hearing notice and also the landscaping. Along the west side there's a big, there's a bamboo buffer as well that's going to -- you can see just a corner on the top. So that should really do well to buffer the neighbors. Thank you.

And if I may just to go over a few of the issues regarding the criteria. As stated, the criteria was listed in our package and I'm not going to go over verbatim, but I do have a few points I'd like to make. When we first were working together with the owners to site this court, we approached the neighbors in the area and we secured letters of no objection. Those letters of no objection, most importantly, are from the people that are adjacent to the property. There are other letters in there that are the surrounding neighborhood as well. The letter that we sent out as part of the advertising too, I didn't receive any calls, but I think what prompted the calls to Mr. Kelly may have been with the big sign going up and they weren't sure what they may be. But it seems like all that was positive.

Another item I'd like to mention, is there are several other tennis courts in this neighborhood. We counted less than a half dozen but there are several. Some with appropriate variances approved and some without. So my neighbor -- or excuse me, my client in this project is very adamant in moving forward in bringing forth the ability for them to get outside and use their property to the best of it's ability, noting that there are some other uses, basketball courts and also some other tennis courts in the

area. I just wanted to make that point that we did identify a few and we did some research.

Again, I mentioned the lake, how that makes it difficult to put the tennis court anywhere else. I also mentioned the landscaping, the significant landscaping that we talked about and I'm glad Mr. Kelly mentioned that there, at this time, is no fencing that's proposed as a part of this work.

And then lastly just for some additional engineering type stuff that I'll throw out there, is that this court is either going to be a Har-Tru or clay. It's going to be pervious in nature, so it's not going to increase the storm water runoff. The court itself will have it's own system of drainage and we're hopeful that it will drain into a below grade French drain system, all part of the court. It will treat the runoff appropriately and then it will be discharged on-site to the on-site lake.

So with that, that concludes my presentation. If you have any questions, I'm happy to answer those.

HEARING EXAMINER DICKMAN: I have a couple of questions. Thank you for the outreach to the neighbors. I just want to make very clear that the neighbor that is going to be most affected by the tennis court did or is in favor or didn't oppose it, right? We have -- I saw all those slips in there but one of those slips is the neighbor that's going to be adjacent to the tennis court.

MR. FOLEY: Yes, he is one of the neighbors that has a letter of no objection we provided in our packets, yes.

HEARING EXAMINER DICKMAN: The lake that is very unusual. Usually I just see basic retention ponds out there. Is that a natural lake?

MR. FOLEY: Hard to say. I think there's a combination of natural lakes there and some have been excavated for fill when the lots were first developed. But they've got a beautiful rocked area with a lot of fish back there and it's real nice.

HEARING EXAMINER DICKMAN: It's a very unusual shaped lake that looks like it goes at least across three lots and takes up quite a bit of their lot in the back.

MR. FOLEY: What's interesting about the lakes in Pine Ridge as a storm water engineer, a lot of those lakes do not have any drainage easements over them so they're part of the private property. That's the case here. Other lakes in Pine Ridge actually have a county drainage easement over them so there's some maintenance responsibility and some drainage facilities that go to that. This is more of a private lake for those homeowners that happen to have it within their boundary.

HEARING EXAMINER DICKMAN: I asked this question of the County on the fair play line. But yet I saw that there would still be, the clay court would go further from that. Is that normal to measure it from the fair play line versus where the court's going to be located?

MR. BELLOWS: For the record, Ray Bellows. The County doesn't regulate patios or kind of pavers or any kind of surface that's less than 30 inches that could be into the setback, as long as that's not really part of the playing court itself. You have to measure somewhere. Some have larger decks. Same as with a swimming pool. We measure from the inside lip of the pool, not the deck around the pool.

MR. FOLEY: May I add to that, please?

HEARING EXAMINER DICKMAN: Sure, absolutely.

MR. FOLEY: I thought it was interesting when we were working with the homeowner, I was talking to Ray and to John. If this tennis court had no lines on it, we wouldn't need to get a variance. So I believe, maybe I'm mistaken, but there are basketball courts in the neighborhood that are just built and people use them, they put up baskets. So my understanding was it needs to go from the play line in order to get this appropriately reviewed and approved.

HEARING EXAMINER DICKMAN: And Ray, I mean, you make a good analogy. Pools are measured from the pools, from the pool, the actual pool, but logically you're going to have a deck around the pool or else it's going to be kind of strange to have a pool like that.

MR. BELLOWS: Some of that is the reasoning is people can have patios in the back and in the same location that the surrounding deck of a pool or surrounding concrete area of playing surface. But we always measure those playing surfaces from the lines of the court.

HEARING EXAMINER DICKMAN: I find it interesting -- I have to say, because I play tennis

myself. But without a fence, your client must be an excellent tennis player.

MR. FOLEY: My client's wife is a professional tennis player.

HEARING EXAMINER DICKMAN: There you go. It is never going to go outside the play line.

MR. KELLY: If I may, John Kelly for the record. Jeremy, may I have the slide there for definition "yard." When we're dealing with the setbacks, we're actually dealing with required yards and the definition of a required yard does -- I'll wait for it to appear.

HEARING EXAMINER DICKMAN: You're losing your touch. While he's bringing that up, so the watering of the court is underneath? Most clay courts are watered underneath or is this going to be by sprinkler?

MR. FOLEY: I don't have an answer.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. KELLY: This is from the Land Development Code. You'll note that it's open space that is unoccupied. The second sentence, as used in this definition "unobstructed means a structure or portion of a structure from 30 inches above the ground." So we are looking at a tennis court. The court itself is well below 30 inches. So since the tennis court isn't defined accessory structure, we need some point of measurement. That would be the court lines.

HEARING EXAMINER DICKMAN: I understand.

MR. KELLY: Typically also a tennis court would include fencing and because of that fencing we would take the measurement from the fence line. This one has no fencing so you're left with the court line.

HEARING EXAMINER DICKMAN: My typical tennis court would be without a net and that way I would play so much better. I'm really proud of your client playing without any fencing because that's going to be impressive.

MR. FOLEY: I brought that up to them when we talked about it because there was a lot of great back and forth with Staff and I said well, give me a moment and let me make sure. Because if we're going to address this and they're ready to do it now, and she said, no, I don't think so. Not with the landscaping that we have there and what we have, I'm okay with it. So this is the desired approach and we're here to present it as is.

HEARING EXAMINER DICKMAN: A golden retriever will go get your tennis balls for you. Or some young kids. Go get those tennis balls. That's great. One other -- I have to make one other statement. I do appreciate you taking a survey of other basketball courts and other tennis courts that may have received variances, but the law compels me to judge every variance on its own merits, not to look at precedent. This would not be considered precedent in the future. I do understand your point of wanting to show that, but I look at every single variance on their own merits and I don't look at past or any potential variances. That's just the law on variances.

MR. FOLEY: Understood. Thank you for that. It was just kind of more to the point that there's a lot of outdoor use in the neighborhood as well. It's not just limited to this property, but again, I understand your position and your review has to be specific to this issue. Thank you.

HEARING EXAMINER DICKMAN: I know the area. They have large lots, lovely neighborhood and anybody here to speak from the public?

MR. FRANTZ: No one online or in the room.

HEARING EXAMINER DICKMAN: Okay. Anything else? Okay. Everybody, great presentations and I enjoyed it. Thanks for the explanation of the fair play line. With that, I will close public hearing and I will get a -- oh, I do have one other question. The lighting, is there any lighting on this one? Sorry, I meant to ask that.

MR. FOLEY: Blair Foley for the record again. No lighting is proposed at this time.

HEARING EXAMINER DICKMAN: Sunshine and beautiful days. Okay. All right, great. I have no other questions. I appreciate everyone being here. I will get a decision out as expeditiously as possible. So that's it for that one. Thank you.

And I don't believe we have any other items, do we?

MR. FRANTZ: Nothing else.

HEARING EXAMINER DICKMAN: Any other business?

MR. BELLOWS: For the record Ray Bellows. You wanted to talk about or clarify the NIM waiver?

HEARING EXAMINER DICKMAN: We can do that offline. What do we have coming up next agenda? How many items?

MR. BELLOWS: So the next meeting would be March 25th. Looks like we have two items, a boat dock extension and a PDA. That might be -- we want to talk to you about that one as well.

HEARING EXAMINER DICKMAN: Okay, great. All right. I just wanted to know what we had.

MR. FRANTZ: And I'll just add to that. As of right now we don't have any items scheduled for April 8th and we're kind of in the period of when those would need to be advertised. So most likely that meeting can be cancelled. But we'll address that next time.

HEARING EXAMINER DICKMAN: Okay. So we'll adjourn this meeting. Thank you everybody and stay safe, be well.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:39 a.m.

COLLIER COUNTY HEARING EXAMINER

ANDREW DICKMAN, HEARING EXAMINER

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

TRANSCRIPT PREPARED ON BEHALF OF U.S. LEGAL SUPPORT, INC., BY REBECCA GREEN,
REPORTER AND NOTARY PUBLIC