

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida, May 13, 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 Hybrid Remote session at 2800 North Horseshoe Drive, Room 610, Naples, Florida, with the following people present:

HEARING EXAMINER ANDREW W. J. DICKMAN, ESQ.

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Timothy Finn, Principal Planner
Laura DeJohn, AICP
John Kelly, Senior Planner

PROCEEDINGS

HEARING OFFICER DICKMAN: Okay. Good morning, everyone. Today is May 13th, 2021. This is the Hearing Examiner Public Hearing. And why don't we get started with the Pledge of Allegiance. All stand. (The Pledge of Allegiance was recited in unison.)

HEARING OFFICER DICKMAN: All right, perfect. Let me get through housekeeping items. Again, my name is Andrew Dickman, I'm a practicing attorney in good standing with The Florida Bar, I've been practicing over 20 years. I've been retained by the Board of County Commissioners to fulfill the duties of the Hearing Examiner as per the code, that would be Code of Ordinances, Land Development Code and Administrative Code. I am not an employee of the County.

And the process that we're going to follow here is that -- how I like to do it is have the County Planner responsible for the item just to introduce the item, give us a quick summary, recommendation, and then have the applicant come up as a second party and do their full presentation; I may ask questions of both parties. Then we'll open it up for the public to speak for a public hearing. Excuse me. I'll close the public hearing and then the applicant will have time for rebuttal.

Before we do that, anybody that wishes to testify here today, which means speak and offer evidence or testimony -- pardon me -- needs to be sworn in.

I'm going to go ahead and do that myself since we have a -- we do have a court reporter virtual here taking verbatim notes, so I want to make sure that everybody speaks clearly, hopefully, that she can hear me clearly, not fast, don't speak over each other, try not to answer things with nods of heads and hand gestures; I'm not sure how she -- she would report that.

So with that, why don't we go ahead and I'll swear anyone in who's going to speak today for any item, we'll do it for all of them, anyone today, and that's true for everybody that's virtually. This is a virtual and in-person hybrid meeting.

So raise your right hand. Under penalty of perjury, do you swear to tell the truth? "I do," all right. I hear -- I don't hear any "nos." Okay, good, that's good. All right, fantastic.

So with the agenda, do we have any changes to the agenda?

MR. BELLOWS: Ray Bellows, there are no changes to the agenda, just with the note the Items B and C are companion items and Mr. Kelly will kind of present them at the same time, but we'll take separate motions.

HEARING OFFICER DICKMAN: Okay. So with regard to that, for the benefit of the public, companion items meaning that it has to do with the same subject matter. And the way that I'd prefer to do that is have the same presentation, but there's going to be two different decisions.

My decisions will be rendered within 30 days, but I would prefer that we not have to hear the same facts and evidence, but there are different criteria; one is a variance, one is a boat dock extension, but I'll allow the applicant to make the full presentation when we get to that.

So that's B and C; correct? There's no sense in duplicating the same presentation.

MR. BELLOWS: That's correct.

HEARING OFFICER DICKMAN: Okay, great.

So the first item we have is 3A and this is Petition No. BDE-PL-20200002539 and it looks like the agent here, or the app -- the planner here involved is -- what do we have, Tim -- Mr. Finn? Are you here?

How are you, Mr. Finn?

MR. FINN: I'm doing well. Thank you.

HEARING OFFICER DICKMAN: It's nice to see you.

MR. FINN: Absolutely.

HEARING OFFICER DICKMAN: Okay. Just start off with just give me a quick summary of the notices that were done and then give me your -- your analysis of this.

MR. FINN: Okay, all right. This is for Petition No. BDE --

HEARING OFFICER DICKMAN: Hold on a second.

Ray, you guys are being picked up. Is there some issue here that I need to deal with?

MR. BELLOWS: In regard to Item D on the agenda -- or it is a continuance of --

HEARING OFFICER DICKMAN: One second. We're going to go -- we've got some other agenda

item changes.

Announce yourself for the record.

MS. DEJOHN: Hi, Laura DeJohn working on behalf of Collier County. Agenda Item 3D was an item that appeared on your agenda because you continued it back on April 22nd. There was an insubstantial change related to the Hacienda Lakes PUD and I just thought maybe as a matter of business up front during this proceeding, you may wish to act on Item 3D and make a determination. The petitioner does request and filed a request to continue again in order to hold their Neighborhood Information Meeting.

HEARING OFFICER DICKMAN: Right, okay. So I do recall that, they had requested a NIM waiver. In my approval, I had said that if there were any opposition at the time, we could -- I would, you know, require the Neighborhood Information Meeting. You're correct, it's not on the agenda. I appreciate you raising that item. We are going to continue that item to the date certain at the next HEX hearing.

Ray, what date is that or -- sure, yeah, of course.

MS. DEJOHN: We are -- so the NIM is required by Administrative Code to be held 15 days prior to hearing. So your next meeting in early June would not meet that 15-day requirement. The consideration should be given to the large number of folks who have been interested in that item and whether or not it will be held here in the facilities here or if there may be accommodations made to hold that meeting in a larger venue. I think it's --

HEARING OFFICER DICKMAN: Yeah, I'm going to let you guys make that decision. I'll go where you tell me to go. But it does affect the notice, letting the public know where to go. So it sounds like this is going to have to be renoticed in order to do that. So why don't we -- I'll let you handle that. Is this going to have to be moved to another item -- another agenda, is that what you're saying, in order to accommodate the NIM?

MS. DEJOHN: Today's decision we recommend would be an indefinite continuance so that the NIM is held next week and then you get a new date and it gets readvertised properly.

HEARING OFFICER DICKMAN: Okay. So I would call an indefinite continuance as a deferral and we're not tabling it, but we're deferring it. And that means that it's not a date certain, necessarily, but it's going to have to be readvertised because you may or may not change it, the public needs to know, not enough time for a NIM to get on the next agenda. So I appreciate you bringing that to my attention. Is that everything I need to cover? Yeah?

MS. DEJOHN: Yes.

HEARING OFFICER DICKMAN: Good job. Thank you. Appreciate it. That was Item 3D, which was an insubstantial change that needs to have a Neighborhood Information Meeting. Fantastic. We're done with that; right?

Okay. Once again, Mr. Finn, Principal Planner for Commission for Collier County.

MR. FINN: Try this again. For the record, I'm Tim Finn, Principal Planner. This is for Petition No. BDE-PL20200002539, 168 Pago Pago Drive West for a request for a 31-foot boat dock extension over the maximum 20 feet allowed by Section 5.03.06 of the Collier County Land Development Code for a total protrusion of 51 feet to accommodate a boat dock facility with two vessels for the benefit of property described as Lot 190, Isles of Capri, No. 2 subdivision, also described as 168 Pago Pago Drive West.

The project is compliant with the GNP and LDC, therefore, staff is recommending approval. The applicant has complied with all hearing notices by our operations staff. The advertisements and mailers went out April 23rd. The hearing advertisement's property signage were constructed at the property by zoning staff on April the 28th. That is included in Attachment C of the backup materials.

HEARING OFFICER DICKMAN: Great. I'm going to go ahead and ask this quick question, whether you can answer it or someone else in the County staff. I note that this has had a boat dock extension prior to this; is that correct?

MR. FINN: In 2017.

HEARING OFFICER DICKMAN: Okay. Is there -- what is the -- are there any code provisions regarding how many extensions you can get or time in between extensions you can get? If you could speak to that, Mr. Bellows?

MR. BELLWS: For the record, Ray Bellows.

The Land Development Code does not have any restrictions on the number of requests for extension that can be done and there's no time limit between requests.

HEARING OFFICER DICKMAN: Okay. That's that question.

All right, thank you very much. Don't go anywhere. You can have a seat, but don't take off from the room. Nobody let him out of the room; all right?

How are you, sir? You're here for the -- you're the agent?

MR. ROGERS: Yes, sir, Jeff Rogers, for the record.

Like I just said, Jeff Rogers, for the record, Turrell, Hall & Associates, representing the applicant, Joe Castrogiovanni. The property's located at -- as Tim just stated, at 168 Pago Pago Drive West, it's down in Isles of Capri.

I do have a quick little PowerPoint, but it's more just to show you exhibits up there. As previously just stated, the applicant -- well, I helped the applicant back in 2017 get his existing dock approved, which accommodated, basically, a 42 -- a 22-foot extension allowing for a 42-foot protrusion overall, which was done on April 13th, 2017, which was approved. And both neighboring properties on either side of the subject property both have been granted extensions as well. The neighbor immediately to our southeast was granted a protrusion identical to what we requested.

So we are coming in today to request for an additional nine feet from a previously approved 42 feet, which would be a total of 51 feet of protrusion. However, I just want to make clear, that a 51-foot protrusion mark is taken from the most restrictive point, which is the property line in this case, which is slightly landward of the face of the seawall, which is where the mean high-water line hits the property. It's not a significant amount, I believe it's about, you know, two feet at max. So, realistically, 49 feet of protrusion into the waterway is what the dock will extend. I just want to clarify that. However, the County criteria is from the most restrictive point, that's why we have to take it from that measurement.

So I'll quickly run through the criteria with you just to get it on the record. The primary criteria, number one, whether the number of dock facilities and/or boat slips proposed is appropriate in relation to the waterfront length, location, upland land use and zoning of the subject property. Per our submittal and County's review, the criteria is met. The dock extension is consistent, it allows two boat slips, meets the required side yard setbacks as outlined in the LDC of 15 feet in this case, so the dock will fit within that footprint.

Also, I'll get into the next one, water depths is number two. In this case the driving factor is not water depths. On my exhibits, there are water depths and the size of vessel that the applicant currently has and is proposing to -- or is purchasing. The depths are pretty restrictive to bring it in on a -- more of a marginal wharf area in regards to bringing it closer into the seawall to reduce our protrusion. But, again, the dock existing that was previously approved was bow to stern, so to speak, in regards to bow to the seawall, so we are keeping that consistent and just expanding the existing dock, reducing the overall construction aspect of the expansion. Number three would be inverse to -- or adverse impact to navigation. This is on a natural -- well, natural waterway that's been man altered down in Isles of Capri and the waterway width is approximately 300 feet wide. As proposed, the vessel and the dock would extend out approximately 17 percent width of that waterway. County criteria, as well as the State and Federal criteria, is 25 percent width of a waterway. In this case, we're getting closer to that.

I know there was a letter sent from one of the neighbors with concerns of that. I'm kind of jumping ahead here, but we are allowed to go out 25 percent of the width of the waterway. No one's pushed that envelope on this waterway, but, however, we are getting further out, so -- but navigation will not be impacted whatsoever with this docking facility. We are consistent with other docks on the waterway.

Number five, whether the proposed location and design of the dock facility is such that the facility would not interfere with the use of neighboring docks. As designed within, we meet the setbacks. The vessel basically, as I previously stated, is bow to the seawall, so when he ingress/egresses the proposed slip, he is not crossing over his riparian rights for access to the proposed slip, which is another reason we're out so far. Again, we can't put it parallel or marginal wharf or on an angle here with the size vessel. And, as a firm, we always try to design a dock that doesn't require the applicant to cross over riparian rights to gain access to their slip, if possible.

Secondary criteria, whether there are special conditions not involving water depths. In this case, you know, the Submerged Resource Survey was performed, there was no impacts to resources. Basically, the vessel is the

driving factor here. The setback requirement is -- we could have tried to gone through a variance for reducing the setbacks and go on more of an angled slip to reduce the overall protrusion, however, that would require full demolition of the existing dock and we just tried to expand off of what's already there and previously approved because of the fact we are within the setbacks and the overall protrusion limits of 25 percent width.

So criteria number two on secondary, whether the proposed dock would allow reasonable safe access to the vessel for loading and unloading. Yes, and it's not excessive. The County has reviewed that.

We do have a decked-over boatlift proposed that does kind of increase the decking area, but it's the -- it's not deck boards, it's not going to look like a dock, it's more of the -- it's a plastic material with a bunch of holes in it that allows light penetration to go through. The State required us to do that because of resources, to allow light -- the shaded footprint is reduced in that case. So, naturally, grasses take sunlight to grow, whether they're in the water or on land, so that's the purpose of that. So excessive decking, it's not excessive, it's been determined it wasn't. For single-family dock facilities, whether the length of the vessel or vessels in combination exceed 50 percent of the subject property's linear waterfront footage. We do not meet this. The vessel size is 47 feet overall, we currently have 70 feet of shoreline. So, therefore, we're about 67 percent of the canal frontage, so we are about 17 percent over the 50 percent criteria. So that one is not met.

Whether the proposed facility would have a major impact on waterfront views of neighboring properties. No. This is an allowed use for these waterfront properties, docks. There's an existing dock, like I previously said, that we're just expanding, there's an existing vessel in the same footprint as the proposed slip, so there should not be any major impacts to neighbors. And, again, I want to stress that your view as a homeowner is within your riparian rights, technically, so this should not interfere with any neighbors.

Whether sea grasses will be impacted; I already said there are no resources here. I've physically drove the site myself, basically the whole bay, going all the way across, which the County requires 200-foot, you know, expansion from the subject property, so that's pretty much the whole bay, pretty consistent.

Whether the proposed -- number six, whether the proposed dock is subject to the Manatee Protection Plan. This one, for single families, is not applicable. The Manatee Protection Plan allows single-family homes to have two boat slips, which is what we are proposing here, we're consistent with that.

So based off this criteria, based off the County's review, we are recommending for review -- again, we did receive one letter from a neighbor, so to speak, across the waterway that raised some concerns of, you know, where does this end in regards to extensions out into waterways. And, you know, to answer that question, you know, the criteria's set, it's 25 percent, you have to have -- you have to be able to justify your protrusion request. And in this case, it's the vessel that's driving it.

And the owner does have the boat on order, it's not here yet. I've been in front of you a couple times with others that the boats have been on order, and he is expecting delivery come fall of this year, around October, so the construction will be late summer if you approve this.

So, happy to answer any questions you have and go from there.

HEARING OFFICER DICKMAN: Why don't we run through your visuals that you have --

MR. ROGERS: Yeah, sure.

HEARING OFFICER DICKMAN: -- if you don't mind.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: Let's go ahead and do that.

MR. ROGERS: Can we pull those up, PowerPoint?

UNIDENTIFIED SPEAKER: I don't have any materials.

MR. ROGERS: I've got the exhibits here. They should have been e-mailed, but that's okay.

HEARING OFFICER DICKMAN: Are they any different than what you submitted?

MR. ROGERS: No, sir. What you have in front of you is exactly --

HEARING OFFICER DICKMAN: Okay.

MR. ROGERS: In the bottom right-hand corner, there are sheet numbers, you definitely need to squint to see them. So I would take a look at, you know --

HEARING OFFICER DICKMAN: Before we start on that, are these available to the public?

MR. BELLWS: Yes, they are, they're accessible through the County's web page.

UNIDENTIFIED SPEAKER: I have the presentation materials, my apologies.

HEARING OFFICER DICKMAN: He does have them? He does.

MR. ROGERS: I knew I sent them. Sure, thank you.

Okay. You can proceed to the third slide for right now, if you would. And, Mr. Dickman, if you have anything you want to exactly see, let me know, but this is the -- go back one slide for me, if you would. I just want to show the existing dock, I apologize.

So that's the existing dock which was, again, approved in 2017 showing the 42-foot protrusion and the 41 feet from the face of the seawall. So that's currently what is there today. And we do meet the setbacks of 15 feet on both sides. We have 17 on the -- I guess the northeast side, which will be reduced down to 15 with the proposed project.

Next slide, please. There's the -- in front of you there, there's the proposed plan, 15 feet on either side. The extension, basically, of 49 feet is on the far right side, that's from the mean high-water line. The 51-foot is from the property line, so that's that red bold line that you see on the landward side of the dock.

HEARING OFFICER DICKMAN: I have a question on this one. Okay. So you mentioned that there's about a -- approximately a two-foot -- I'm not going to hold you to exact numbers, but a two-foot differential between the seawall and the dock. Is that correct?

MR. ROGERS: On the -- well --

HEARING OFFICER DICKMAN: The upward land --

MR. ROGERS: Correct, the property line.

HEARING OFFICER DICKMAN: Okay.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: What's behind the seawall?

MR. ROGERS: A single-family home, yeah.

The red -- the red solid line that you see up by the site address. Hang on. You see the property line label on the far upper right-hand corner, it's not very clear there, but it's pointing to the red line that goes around the whole property, obviously.

HEARING OFFICER DICKMAN: Now, the decking part, I assume -- okay. So the smaller boat, what's in front of that, those diagrams, I see a swing lift, that's for personal water -- what is that?

MR. ROGERS: Personal watercraft and/or kayaks on there, that's why I've got both shown. So I ghosted in some kayaks there because he's not sure if he's going to ultimately get a personal watercraft and/or a -- use it for kayaks. But, basically, it's a pile mounted lift that swings over the dock, so it's not technically an over-water structure, you know.

HEARING OFFICER DICKMAN: All right. So is this the area that you said is holed and --

MR. ROGERS: No, that's the blue on the boatlift. If you see --

HEARING OFFICER DICKMAN: I see.

MR. ROGERS: -- a blue area, that's -- that basically --

HEARING OFFICER DICKMAN: There's a cover on that, is that what you're saying?

MR. ROGERS: It's a -- it's decked over, so to speak, per the industry, that's what they call it, but it's a grated material, it's a hard plastic that has -- it's, like, honeycomb shaped, basically.

HEARING OFFICER DICKMAN: Over the vessel?

MR. ROGERS: The vessel sits on it.

HEARING OFFICER DICKMAN: Okay.

MR. ROGERS: So it's -- it attaches to the actual hardware of the lift so that you -- ultimately, the purpose of that is to allow maintenance of the vessel on all sides because these lifts are open air, so to speak, so if you don't deck them over, it's -- we dropped the finger on the west side of that small slip to accommodate the beam of the bigger boat now, so we had to reduce some of the deck area of the existing dock. So in order to maintain, you know, cleaning, boat access, you know, all the maintenance of that small boat, you know, we discussed to grate it over with that.

HEARING OFFICER DICKMAN: All right. So when I'm looking at this, in front of that area where the -- the ghosted kayaks and so forth, I'm calculating that to be 17 by approximately 12, because I'm subtracting five for the finger that goes out. In your opinion, is that an excessive decking area?

MR. ROGERS: It's -- no, because he will be utilizing it for other recreational purposes, which, you know, docks

do provide areas for fishing, access to the water via, you know, for kayaks and/or paddleboards. So this gives him the ability to store some of that equipment on the dock, you know. Most of these homes down there maximize the buildable footprint on the landward side and any extra storage on the dock is nice to have, to say the least.

HEARING OFFICER DICKMAN: I think that's the appropriate word, nice to have.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: You know, I get that.

Is this a brand-new dock, so you're going to take the existing dock down that was approved in 2017?

MR. ROGERS: We're probably -- I would say about 50 percent, because we're not going to have to rip out all the pilings. We're going to reutilize, repurpose some of the existing piles that are in -- especially in the middle finger, the finger that runs down on both sides of the big slip, that one is within the same footprint and we're just going to repurpose most of those pilings and every piling along the -- in front of the boats on the landward side.

HEARING OFFICER DICKMAN: All new decking? Is it all new decking?

MR. ROGERS: Yeah, yeah, yes, sir.

HEARING OFFICER DICKMAN: So on that issue, anyone at the County can answer the question, why isn't this -- I get it, it's an additional protrusion, but why isn't this considered an amended decision, because I think that's kind of confusing a little bit to have, like, you know, a decision on decision on decision.

MR. BELLOWS: For the record, Ray Bellows.

The boat dock extension process, like the variance process, there is a resolution or a HEX determination that's issued and it's a one-time approval, there is no amendment process. We don't have an application fee or process or a Land Development Code provision to deal with an amendment to that, so they go through the process again and they have to recertify everything again.

HEARING OFFICER DICKMAN: Okay. Let me just run through. I like to have the visuals up there, but I want to ask a couple questions as I go through the criteria.

So on the first criteria, it asks about the -- you know, the number of dock facilities and boat slips proposed, which is two, I guess. I don't know what you consider the watercraft. Is that --

MR. ROGERS: Yeah, the two is over water. That one technically goes over the dock, so it's per the -- it's not considered a wet slip.

HEARING OFFICER DICKMAN: So then that is -- the question is whether or not that is appropriate, which is kind of a subjective word, in relation to the waterfront length, which would be the property, whatever is along the canal. But then it says location, upland use, zoning, subject property. So it looks -- correct me if I'm wrong, but even though it meets the setbacks, which on side yard setbacks -- which I believe are 7.5. Is that -- is that -- 15 in this case.

MR. ROGERS: It's on the length of shoreline.

HEARING OFFICER DICKMAN: Right, got it.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: So is this 73 percent?

MR. ROGERS: No, it's 67 percent that we were -- you're talking about the length of shoreline?

HEARING OFFICER DICKMAN: Uh-huh.

MR. ROGERS: If you go to -- where is that criteria?

HEARING OFFICER DICKMAN: Yeah, I noticed that in different criteria.

MR. ROGERS: Number three on secondary.

HEARING OFFICER DICKMAN: Yeah.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: So they calculate it as --

MR. ROGERS: 67 percent.

HEARING OFFICER DICKMAN: -- length of vessel. That's based on --

MR. ROGERS: Oh.

HEARING OFFICER DICKMAN: -- the length of vessel?

MR. ROGERS: The length of vessel, yes, sir.

HEARING OFFICER DICKMAN: Yeah. So it's a little different.

MR. ROGERS: It is.

HEARING OFFICER DICKMAN: You know what I mean?

MR. ROGERS: Yes, that's correct.

HEARING OFFICER DICKMAN: So there's a dock criteria, then there's a vessel criteria.

MR. ROGERS: Correct, yes, sir.

HEARING OFFICER DICKMAN: So that's the reason for that, I just want to make that clear.

MR. ROGERS: Okay.

HEARING OFFICER DICKMAN: So it is a higher percentage, so it's 73 percent --

MR. ROGERS: Correct, right.

HEARING OFFICER DICKMAN: -- of the entire --

MR. ROGERS: Shoreline.

HEARING OFFICER DICKMAN: -- canal shoreline attached.

MR. ROGERS: Understood.

HEARING OFFICER DICKMAN: Gotcha.

Water depth is not an issue because it's just not.

I do want to ask about the navigation. If you could bring up a larger --

MR. ROGERS: Yeah, yeah, go forward.

HEARING OFFICER DICKMAN: Can we go back to the sort of location map?

MR. ROGERS: Yeah. Well, go forward, actually.

HEARING OFFICER DICKMAN: Okay.

MR. ROGERS: We've got some aerials. There's depths, no big deal, keep going. There's the cross-section view showing the 51 and the 49, so it's, you know, outside of the motor.

Go to the next one, please. Here now we're getting into the width of waterways, so --

HEARING OFFICER DICKMAN: Okay. Go ahead and do that one.

MR. ROGERS: Yeah. Basically, I mean, you can see, we are matching the neighbors to -- immediately to our east, he's already at that point. We are further out than some of the older docks that are there, but a lot of those ones with boathouses that you see further to our east are grandfathered docking structures, you know, a lot of them are in the side yard setback. So as soon as they propose any changes to that existing footprint, they'll have to come into compliance with today's codes.

HEARING OFFICER DICKMAN: So what I'm getting at here is -- and you can -- you can take your shot at this and then the County can take their shot at this and somebody else can -- the criteria three on primary criteria, it speaks to impact on navigation within the adjacent marked or chartered navigable channel. So I don't -- I don't -- tell me what you think. I'm not sure navigational channel is the entire waterway. Is it or is it not?

MR. ROGERS: Yeah, I mean, honestly, when there is no channel markers, like, we call it -- or a local channel, basically, it's wide open for navigation. The depths are consistent throughout, you can drive through anywhere in this waterway and not have any issues.

HEARING OFFICER DICKMAN: Navigable channel --

MR. ROGERS: There is no channel.

HEARING OFFICER DICKMAN: It doesn't take into -- legally, there's no --

MR. ROGERS: There's no channel.

HEARING OFFICER DICKMAN: -- navigable channel --

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: -- and then so there are no shoals or anything, no depth.

MR. ROGERS: Correct.

HEARING OFFICER DICKMAN: And then I wanted you to -- okay. Right here I would like to know where 195 Tahiti Circle is. Can you just give me a reference there?

MR. ROGERS: Yeah. Really, it's in that corner -- that corner right above the O of Castrogiovanni down at the bottom of your sheet there, it's right in that back corner over there, so --

HEARING OFFICER DICKMAN: Back corner here.

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: Don't say anything when you're up there, but point to it. Okay, 10-4. Okay, got it.

So do you have a higher altitude aerial for me?

MR. ROGERS: Zoomed out further?

HEARING OFFICER DICKMAN: Yeah, I think at the beginning of your slide.

MR. ROGERS: Yeah, the location map, it's not the best size, but if you go back to the sheet one -- there you go. It's not the best, bottom right. Unfortunately.

HEARING OFFICER DICKMAN: So I guess what I'm looking at here --

MR. ROGERS: Back one more, I'm sorry.

HEARING OFFICER DICKMAN: -- is that --

MR. ROGERS: There you go. Is that better?

HEARING OFFICER DICKMAN: So the word adjacent is different than abutting, in my view. So this is a -- I guess an embayment, I don't know how you want to -- bayou, whatever you want to call it, but there is a choke point.

MR. ROGERS: Is that better?

HEARING OFFICER DICKMAN: Yeah.

MR. ROGERS: That one?

HEARING OFFICER DICKMAN: Yeah, that's perfect.

MR. ROGERS: So, basically, as you approach --

HEARING OFFICER DICKMAN: That smaller point. So it gets down to a smaller point. So I guess maybe this is -- you can take a shot at this or the County. Is this something that should be taken into consideration as an adjacent navigable area or is the adjacent navigable area just what is straight out from the riparian lines? Do you want to try that?

MR. ROGERS: I've been doing these BDEs with County staff for 16 years and my interpretation, I believe Ray will correct me, is it's basically the waterway that the dock is on and adjacent to that, basically, not -- where the BDE on the exhibit is, that is a -- that is a marked navigational channel to reach these canals and then it turns into a local knowledge waterway at that point, basically.

I mean, I am a licensed captain, I have been for 20 years, I've done this whole area, grew up in Naples, and this whole area is open for navigation.

HEARING OFFICER DICKMAN: Okay. So you're saying -- obviously, we know what a marked channel is, it's marked by --

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: -- what is it, FWC or --

MR. ROGERS: Well, the U.S. -- the Feds will do it, it just depends.

HEARING OFFICER DICKMAN: Or people?

MR. ROGERS: Yeah, yeah.

HEARING OFFICER DICKMAN: Neighbors will go out there and throw up signs, things like that.

MR. ROGERS: Down in the Keys, yes.

HEARING OFFICER DICKMAN: Okay. So chartered channel is actually -- is that a term of art where --

MR. ROGERS: Yeah, like, there's a chart.

HEARING OFFICER DICKMAN: -- it's actually on a chart --

MR. ROGERS: Yes, sir.

HEARING OFFICER DICKMAN: -- like a navigable chart?

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: So it's -- you know, we all know that tides change and you have erosion, you have accretion, you know --

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: -- you know all the words where things change. So I just wanted to make sure we all understood that these are legal terms of art that the County and the applicant have to take into

consideration, not just the variations here. And I see that this is all done at one -- well, it's a legal -- yeah, so that's the whole point --

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: -- it's so that boats can get in and out.

MR. ROGERS: Correct.

HEARING OFFICER DICKMAN: So I understand the location. We do have -- I have seen the e-mail from -- from the individual objecting across the waterway and I appreciate you pointing that out.

MR. ROGERS: If you don't mind me talking about that.

HEARING OFFICER DICKMAN: Yes, please do.

MR. ROGERS: The address on that that they list, I believe, was 195 Tahiti Circle, I believe, I don't have it in front of me, the letter -- the letter that was received was from 195. That's not even a -- that's a landlocked property, 195 Tahiti Circle, it's -- they're not even on the canal, according to that address.

HEARING OFFICER DICKMAN: Okay. So maybe it's just a mistake, maybe they're here, maybe they'll speak, let's wait and see.

MR. ROGERS: Yeah, I'm not sure, yes, sir.

HEARING OFFICER DICKMAN: Let's wait and see.

MR. ROGERS: And I have not spoken to them.

HEARING OFFICER DICKMAN: Okay. So on the -- another question here. On the -- this is criteria four on secondary.

MR. ROGERS: Okay.

HEARING OFFICER DICKMAN: You mentioned waterfront views --

MR. ROGERS: Uh-huh.

HEARING OFFICER DICKMAN: -- and I would like to get your point of view -- well, I already have your point of view on it, but maybe the County can give me their point of view. It says water -- waterfront view, it's the applicant's assertion that this is strictly the view from your riparian lines. Which riparian lines generally are the side yard property lines going straight out; is that correct?

MR. ROGERS: Basically, they're extensions of your property line to the center of a thread of navigation. So in this case, there's no real channel, so we took them straight out to the middle of the bay.

HEARING OFFICER DICKMAN: Okay. So if you're a neighboring property owner and you can't see over -- you know, over to the left or to the right, that's not relevant in your point of view?

MR. ROGERS: Per the past determinations by courts and judges, your riparian rights are -- is your view and that's -- that's -- so, technically, yes, of course, can you see over the invisible riparian right? Yes. And you could complain and say that's -- but it's been held up in court over the years that your riparian rights are your view. The County might interpret it differently, so just I'm throwing that out there. I don't believe they do, but I'll let them speak to that.

HEARING OFFICER DICKMAN: (Indiscernible) littoral rights?

MR. ROGERS: What was that?

HEARING OFFICER DICKMAN: Littoral lines?

MR. ROGERS: Yeah.

HEARING OFFICER DICKMAN: I always get confused why they -- those are lakes, I guess.

MR. ROGERS: Those are lakes.

HEARING OFFICER DICKMAN: Yeah, right.

MR. ROGERS: Yeah, we do those, too.

HEARING OFFICER DICKMAN: Ray, any viewpoint on that?

MR. BELLWS: For the record, Ray Bellows with planning and zoning.

The County, when we review these boat dock petitions for the view corridor, that is exactly the way we look at it, that it's within the riparian lines.

HEARING OFFICER DICKMAN: So the view impact is to the upland property only, really? (Indiscernible.)

MR. ROGERS: Some of these questions --

HEARING OFFICER DICKMAN: Yeah, I mean, to me, it just seems a little counterintuitive because

if you're worried about the impact of the person that's asking for the dock, who cares? You know, why would they concern themselves? But if that's the way that that's being interpreted, that is the way it's being interpreted.

MR. ROGERS: I do want to stress to you, if you look at the existing dock, that large deck area that you brought up --

HEARING OFFICER DICKMAN: Do you want to pull that up?

MR. ROGERS: If you could go forward probably two slides. Again, one more. There you go. See on the existing dock, that kind of matches. You see the difference there on the front of the smaller slip? If you look at that, the finger on the far west side is there, it's four foot. If you go in the large area -- deck area in front, that was previously approved in the past 2017 BDE. We're not really proposing any changes there other than adding that swing lift. Which, technically, you know, we didn't really have to show all that, you know, because it's not part of the protrusion, but we want to be up front and have everything on there.

HEARING OFFICER DICKMAN: There is a criteria regarding excessive decking.

MR. ROGERS: Excessive -- correct. And my point here is, basically, this is what was approved. And I don't really have the dimensions on it, but if you go to the next slide --

HEARING OFFICER DICKMAN: Go to the next one.

MR. ROGERS: -- you can kind of see it's the same.

HEARING OFFICER DICKMAN: So you're -- the finger in the middle is going another foot wider --

MR. ROGERS: Correct, yep.

HEARING OFFICER DICKMAN: -- from four to five.

MR. ROGERS: And we did that because we're losing the finger on the outside, so that finger provides access to both boats in this case, so we bought an extra foot there.

HEARING OFFICER DICKMAN: All right. So criteria one on secondary criteria, special conditions not involving water depth. And then somehow the justification is a Submerged Resource Survey was performed, indicates negative impacts to submerged resources. I don't -- I don't understand the correlation here.

MR. ROGERS: I don't either personally, but I -- I believe the vessel is the special condition here, that's what's driving this petition. I -- that's not what they're really looking for here.

HEARING OFFICER DICKMAN: I'm just having a hard time with that because usually this verbiage, although it doesn't say it, is very similar to kind of a hardship language without saying hardship.

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: Where you would have an odd shaped lot or something like that that would drive this. And, of course, these criteria are cumulative, that's why they say certain -- you know, this many out of this many have to be met.

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: I don't know. Ray, do you have any insight on this? I mean, I do -- I do take this to mean special conditions not involving water depth related to the property or waterway. So, you know, there's no water depth issue, that's been put on the record. So --

MR. ROGERS: Subject to the waterway, I want chime in here -- sorry, Ray. Subject to the waterway, the waterway width is 300 feet and it's -- there's no marked channel so, you know, you're allowed to go out 25 percent based on that. So maybe that's an angle --

HEARING OFFICER DICKMAN: So there's room?

MR. ROGERS: So there's room. And that's a special condition because there is no marked channel in this case.

HEARING OFFICER DICKMAN: Yeah, I gotcha, I gotcha, okay.

And tell me -- I mean, you're absolutely right, the vessel drives this, so if somebody wants to buy a new vessel that's bigger, they get to come in and, you know -- tell me about that vessel, please put that on the record, that it's been ordered, been bought. Do you have anything --

MR. ROGERS: I do and I could provide that if you would like, if there's --

HEARING OFFICER DICKMAN: No, no, no, I just -- you know, for future reference, it would be nice to see some kind of receipt or a letter or something from the property owner saying, "I've bought this vessel" and not just -- or, "I'm" -- you know, obviously, it's based on whether the dock is approved or not, I mean, I get that. Nobody's going to buy a, you know, larger vessel if the dock's not approved.

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: But some sort of statement or affidavit, I'm going to take -- I mean, you're an expert under penalty of perjury, so --

MR. ROGERS: Right. But, still, an affidavit or a letter backing it up or --

HEARING OFFICER DICKMAN: It would be helpful.

MR. ROGERS: I understand.

HEARING OFFICER DICKMAN: I think it would be helpful just because these applications are driven by a need by the applicant wanting just to have a bigger boat. And I think that would be helpful because I have to look at a lot of criteria here and not just, "Hey, I want a bigger boat."

MR. ROGERS: In regards to that, and based on that objection letter, if -- water depths are going to be more restrictive for vessels larger than this, to be quite honest with you. We're getting to the point where this is the max size vessel that can ultimately kind of navigate this waterway without having -- not just within this bay, but from access to this bay from the marked channel, I know it is a restrictive waterway in regards to water depths. So there will be a limitation here ultimately at some point in time, just -- just general information here for you.

HEARING OFFICER DICKMAN: So I -- sorry to interrupt --

MR. ROGERS: You're fine.

HEARING OFFICER DICKMAN: I just want to move along here, I'm trying to get things on the record.

As to Mr. and Mrs. Maxwell's objections, the first one deals with more boat traffic, but mostly I'm interested in wake. Is there a slow speed area in here?

MR. ROGERS: Yeah, it's all required no wake, minimum -- minimum speed, no wake is how it's --

HEARING OFFICER DICKMAN: Minimum speed, no wake?

MR. ROGERS: Yeah, correct.

HEARING OFFICER DICKMAN: All right. To seawalls, so -- you know, wakes -- yeah, right, got it -- on their side of the 300-foot waterway, okay.

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: Other kayaks, pontoons, small boats as well as big boats are in the area, it's a haven for manatees, dolphins, small boats from the area to avoid high traffic, high speeds immediately outside the bay -- immediately outside the bay. So I'm assuming that that's the intercoastal? Is that -- is that what's out there?

MR. ROGERS: The intercoastal doesn't (indiscernible) right up to our canal.

HEARING OFFICER DICKMAN: Yeah.

MR. ROGERS: The intercoastal is kind of on the other side of the bay.

HEARING OFFICER DICKMAN: Well, that's what I mean, you go through that point.

MR. ROGERS: That's what I was saying, there's a little bit of an area between the marked channel and getting to the canal.

HEARING OFFICER DICKMAN: And when does the slow speed stop?

MR. ROGERS: As soon as you leave the channel.

HEARING OFFICER DICKMAN: As soon as you leave the channel?

MR. ROGERS: It's 30 miles an hour allowed in the channel. Once you leave the channel, you will have to be at a no wake --

HEARING OFFICER DICKMAN: So there's a marked channel there?

MR. ROGERS: Yes.

HEARING OFFICER DICKMAN: Okay, great.

MR. ROGERS: Also, this is an aquatic preserve, just so you know, so it is a high use for wildlife and very restrictive on what you can and can't do per the State and Federal criteria, as well as the County. However, this particular bay was dug out of uplands 100 percent, so it's considered a man-made waterway and this bay is not within the aquatic preserve.

HEARING OFFICER DICKMAN: All right. Just like always, I respect the right -- that's the whole reason why we do notices for due process, I think that's reasonable. I have lots of respect for people who take the time and write in and have their -- their object -- I mean, what about the neighbors, are there any objections from

the immediate neighbors?

MR. ROGERS: No. Both of them, as stated in the staff report, have gotten boat dock extensions previously approved.

HEARING OFFICER DICKMAN: That's not, like --

MR. ROGERS: No, there's no objections, no, sir.

HEARING OFFICER DICKMAN: Okay. They're not --

MR. ROGERS: It's a boating community.

HEARING OFFICER DICKMAN: They're not proponents or opponents --

MR. ROGERS: Correct.

HEARING OFFICER DICKMAN: -- they're neutral?

MR. ROGERS: Correct.

HEARING OFFICER DICKMAN: All right. Got it. But they've then put on notice --

MR. ROGERS: Yes, sir.

HEARING OFFICER DICKMAN: -- for sure?

MR. ROGERS: Yep.

HEARING OFFICER DICKMAN: Okay, all right. Thank you. I just put you through the torture, but you gave me everything I wanted to know.

MR. ROGERS: No problem. That's what I'm here for.

HEARING OFFICER DICKMAN: That's what you are there for.

Okay. So why don't we take a pause and open it up for public comment. Anybody here? Anybody in virtual world?

UNIDENTIFIED SPEAKER: I do not have any registered speakers for this item.

HEARING OFFICER DICKMAN: No registered speakers? Mr. or Mrs. Maxwell, are they here to speak? Anybody? Nobody?

Okay, all right, great. I'm going to flip the lights back on. Hold your eyes.

Mr. Finn, any -- come on up. Any -- anything that I talked about that you want to correct? I know Ray has chimed in as well, but any of those questions that I asked, do you have any -- any contrary opinions to them or have I covered everything?

MR. FINN: You covered everything.

HEARING OFFICER DICKMAN: I've covered everything. All right. Thank you.

MR. FINN: No problem.

HEARING OFFICER DICKMAN: Thank you.

So by my count, you've got four out of five of the primary and four of six of the secondary. Is that -- according to staff report. Is that what we have here? Is that correct, Mr. Finn? Yeah? Just say yes or no.

MR. FINN: Yes, it is.

HEARING OFFICER DICKMAN: Yes, it is, okay.

And then I'm putting a question mark on secondary criteria one because, you know, that just -- we spoke about that, I don't need to talk about it. And then I'll grant you that secondary criteria six is not applicable, so I'm not sure that should be held against you or not, you know.

So I will say that, you know, there is -- and you know this, you've been in front of me before -- there is a -- there's always a concern of mine, because it is a criteria, about excessive decking. Now, I get it, we're in Collier County, this is a hyper-water oriented area, people like to boat, fish, recreation, whatnot, so, you know, a dock facility is almost an -- almost an expected accessory to the property, but I do have an obligation, as a Hearing Examiner, to look at that criteria of excessive decking and what's in front of the smaller vessel -- pardon me. I'm going to -- I'm going to -- I'm going to think about that; okay?

MR. ROGERS: Just to give you (indiscernible), personal watercraft is about 12 feet long, typically.

HEARING OFFICER DICKMAN: Okay.

MR. ROGERS: We have 17 feet shown as the overall area. So there is some play that we would be open to minimizing if that would --

HEARING OFFICER DICKMAN: How much play do you have?

MR. ROGERS: Five feet -- or four feet, let's call it.

HEARING OFFICER DICKMAN: Four feet?

MR. ROGERS: So we have a foot of just --

HEARING OFFICER DICKMAN: Four feet in protrusion or --

MR. ROGERS: Four feet of area, basically --

HEARING OFFICER DICKMAN: Of area.

MR. ROGERS: -- that we could lose of that deck. Yeah, four feet -- well, not -- the vessel is the driving factor. So if you want to -- this is a different topic, in my opinion, in regards to excessive decking. The protrusion is one thing, we need that for the vessel.

HEARING OFFICER DICKMAN: For the larger vessel?

MR. ROGERS: For the larger vessel.

HEARING OFFICER DICKMAN: That's all -- I'm talking about the larger vessel, I get that.

MR. ROGERS: So we could technically kind of bring that slip landward. We tried to keep it within the same footprint so we wouldn't have to change pilings and stuff, however --

HEARING OFFICER DICKMAN: So in that area, your pilings are going to stay the same, more or less?

MR. ROGERS: That's --

HEARING OFFICER DICKMAN: Okay, all right.

MR. ROGERS: That's why that deck area is relatively matched to what's existing --

HEARING OFFICER DICKMAN: Right.

MR. ROGERS: -- that's the point.

HEARING OFFICER DICKMAN: Right, right, okay.

MR. ROGERS: But --

HEARING OFFICER DICKMAN: I'm not saying one way or the other, I just -- you know that I've asked this question before --

MR. ROGERS: Yes.

HEARING OFFICER DICKMAN: -- and for the purpose of -- you know, it's a criteria that I have to look at.

MR. ROGERS: I understand.

HEARING OFFICER DICKMAN: I'm not just pulling this out of --

MR. ROGERS: Gotcha.

HEARING OFFICER DICKMAN: -- my right pocket. So that's -- that's my only -- or not only, I'm not going to limit myself to other criteria, but that's the first thing that jumps out and everything like that, but -- all right.

So I think this has answered all my questions. Boat dock extensions are always interesting for me just because you can just go on and on and on --

MR. ROGERS: It's a hot topic.

HEARING OFFICER DICKMAN: -- until the channel -- until you hit the channel, apparently. I didn't make the rules. Everybody knows that; right?

Okay. I'm going to close the public hearing. I will get something out within the required 30 days, I'll try to do it as fast as possible when I get back from Europe and -- if I get back -- I'm just kidding, I'm not traveling anywhere.

MR. ROGERS: Get your passport.

HEARING OFFICER DICKMAN: My European -- my only and one European trip got cancelled, thanks -- a long time ago, so I'm sad about that, but Florida is a beautiful place and I'm always happy to be here.

MR. ROGERS: Everybody wants to be here right now.

HEARING OFFICER DICKMAN: Everybody wants to be here and that's a fact, that's a fact.

Okay. Are we ready to move on to the next one? All right. Let me close up this file.

All right. So I have two files in front of me, I'm going to open them both at the same time. These are companion items, as I stated earlier, it's regarding the same property, 66 3rd Street West, but one -- for the unique nature of this location, one is a variance for side yards, I believe, and the other one is a boat dock extension. So here we go.

How are you, sir?

MR. KELLY: You're correct. Good morning, Mr. Dickman. John Kelly, Senior Planner, for the record. And I do have one correction to make on the staff report for the BDE in the purpose and description of project on page one, it states "unimproved property" and also it says on page three, the second paragraph, "unimproved property." The -- there is an existing lawful dock at this location that's under the 20 -- required 20 feet, so this is, in fact, improved property.

HEARING OFFICER DICKMAN: When you say that, I mean, are we talking about the upland property or the water -- over water?

MR. KELLY: The over water. I'll get to that.

HEARING OFFICER DICKMAN: Okay, gotcha. I had a feeling you were going to talk about that. Go ahead.

MR. KELLY: Okay. This is a 30-foot wide lot with a natural mangrove waterfront. It's important, when I get started, there are quite a few properties using the same address 267 3rd Street West. This is going to be Lot 13, it's legally described as Lot 13, Block G, Replat of Unit Number 3, Little Hickory Shores Subdivision. The subject lot is one of 34 that are recognized as boat dock lots per Board of County Commissioners' resolution number 87-260. Said lots are all legal nonconforming with respect to lot area and width and they cannot support any of the principal structure requirements with regards to lot area or building area. That is the reason they went through the process to become boat dock lots. You were provided with a copy of that resolution. So to continue, the boat dock res -- I'm sorry -- the boat dock petition before you is to allow an additional 26 feet for a total protrusion of 46 feet into a waterway that is plus or minus 400 feet in width to accommodate two slips, each with a lift, one for a 20-foot vessel and the other 25-foot. Review criteria are contained in LDC section 5.03.06 H. The boat dock before you satisfied five of five of the primary criteria and four of six of the secondary, with number six being not applicable, the Manatee Protection Plan.

As mentioned, this is a companion item to a variance. The variance is consistent with another resolution, that being number 2000-51, which allowed 19 of 34 boat dock lots at a zero setback, and an additional three have come forward since that time. Presumably, had the applicant owned the property at the time of that resolution, they could have become a part of it, and it also enjoyed the zero foot setback. Both of the adjoining properties were contained within that resolution.

The review criteria contained in LDC section 9.04.03 A through H, and staff is recommending approval for both the BDE and the variance. Notice requirements for the boat dock extension are a mailed notice of hearing and a newspaper ad; both of those were done. And for the variance it contains an additional requirement for an agent letter to be sent by the applicant to property owners within 150 feet and that was satisfied by the applicant.

Again, staff recommends approval and welcomes any questions.

HEARING OFFICER DICKMAN: Actually, one question because I want to understand this better. So is there -- is there a principal single-family residence somewhere else associated with this or can -- literally, because of the geography here, you can buy that parcel and put a dock on it?

MR. KELLY: Again, the properties will not support a principal structure.

HEARING OFFICER DICKMAN: I'm talking about anywhere else, like where there's -- I mean, they're not associated --

MR. KELLY: They are not associated with any --

HEARING OFFICER DICKMAN: Okay.

MR. KELLY: -- property -- any other property other than its own self.

HEARING OFFICER DICKMAN: Okay. And is this address, 66 3rd Street West, the accurate address for this property or is it the address for someplace else?

MR. KELLY: It's 267 3rd Street West and Lot 13. There are roughly maybe 20 lots contained within that one address. However, that's something assigned by our addressing department. It would be identified by legal description.

HEARING OFFICER DICKMAN: Okay. The notices would have been subject to the actual location of where the dock is?

MR. KELLY: Correct.

HEARING OFFICER DICKMAN: Okay, all right.

MR. KELLY: And --

HEARING OFFICER DICKMAN: This is really unique. And I wanted to get that on the record for folks, that the County did have -- I mean, these are special circumstances. I'm not sure I -- I mean, I've seen something like this, where right-of-ways cut through between the waterway and the upland single-family home, but this is unique and I get it and it's done by resolution, done legally, so --

MR. KELLY: I'll just mention, you have no view issues, everybody is the same within that corridor.

HEARING OFFICER DICKMAN: All right. Thank you very much. Thanks for the description and the notice. Applicant's here.

And, again, these are companion items, so we're doing one presentation of the whole thing, but there will be two different decisions because it's two different criteria.

Mr. Turrell (sic)?

MR. ROGERS: It's me again. So, for the record, Jeff Rogers with Turrell Hall representing the applicant, Edward and Nancy Brennan.

You did ask a question about the -- I just want to address that about the address of the applicant at 66 3rd Street West. That is their residence and it is further east. If you go a little bit further east -- or come from the east on this road, there are single-family lots and nothing's deeded to any other lot. You know, there are boat dock lots on both sides of this -- of this section of the street and then it kind of turns into single-family homes as you work your way further south and west.

So, yes, touch about the dock. So there is an existing dock on site that is extended out 20 feet into the waterway, which did not require a boat dock extension to construct. The applicant just recently purchased this property, he purchased the property with the existing dock in place. It is aging and showing its age, it needs to be rehabbed, so that is part of the project. But we are looking to extend the existing dock an additional 20 feet out into the waterway, utilizing the existing dock and the associated piles just because it's already in place and the impacts in the pilings are still usable, so we're -- you know, we're doing this economically on this, it makes total sense to utilize what's there.

And the vessels are not large vessels, so to speak, compared to others that we've done; a 20-foot vessel and a 25-foot vessel is what's being proposed. And the overall extension request is for 46 feet, however, the dock -- I want to stress, the dock will only be out 40 feet into the waterway. It's the vessel on the boatlift that will extend out past the actual dock itself, which is the additional six feet.

HEARING OFFICER DICKMAN: Are there two vessels there?

MR. ROGERS: Yes, sir.

HEARING OFFICER DICKMAN: So -- okay. So it's just a -- I'm looking at one of your exhibits here and there's a blue area, which I think is the existing area?

MR. ROGERS: Yeah, I'll have them pull that up right now.

HEARING OFFICER DICKMAN: Yeah, why don't we go through that.

MR. ROGERS: Yep.

HEARING OFFICER DICKMAN: Let's just go do that.

MR. ROGERS: No problem.

Here's your overview real quick. It's on -- so that road that you see on the top of the aerial, that's Bonita Beach -- Bonita Beach Road -- excuse me -- and that is, basically, the north end of Collier County, so 3rd Street is off of that. You can see the single families surrounding it and then the section of 3rd Street where we're located are the boat dock lots, which are unique in Collier County, you are correct about that. It's -- I've done probably a dozen BDEs on this property over my years. So it is a common thing and the length of shoreline is very restrictive, as John stated, it's 30 feet. So typical beams of boats these days are ten feet, you know, typical, so that leaves you ten foot to play with in regards to getting a dock and providing setbacks. So in this case -- I'm kind of mixing the two up --but in this case we would be required a seven-and-a-half-foot setback from the property lines. So that would take away 15 feet of the 30, leaving us not much room to -- to work with in regards to getting two vessels on there.

So go to the next -- not that -- go to the next one, please. So that's the existing dock, per your questions. The dark blue is what's there. There's a small little platform, let's call it, on the landward side of the mean high-water line, which is technically not part of this petition, it's on the -- it's on the uplands. So the red dashed bold line is obviously your subject property line.

There's a bunch of squiggly green lines that you see as well and that is your mangrove fringe, basically. So we had the surveyor locate the leaf line of those trees and that's kind of the fringe line. So you can see the walkway goes right through -- through the mangroves, which is allowed, you're allowed to go four feet wide.

Go to the next slide, it's got some dimensions. So that walkway is four feet wide, as you can see on the top of that blue area. And we are doing a uniquely shaped dock here, it's not right down the middle. Ideally, we would love to have a finger pier extend straight out and not have the jog in it so you could get potentially larger vessels, at least that 20-foot vessel could get a little bit bigger. However, the applicant wanted to utilize what was there and just build off of that, so that's where we ended up.

So the 25-foot vessel, which is on the right side, the east side of the dock, that is basically right up to the green squiggly line, which is the mangrove line. We did not want to impact mangroves in this case and, you know, maybe some additional trimming would be required over time once the vessel is on there, which is 100 percent allowed. But we didn't want to go down the road with the State and the Feds of dealing with the mangroves, so that's one of the issues. That's a 25-foot boat and that's another reason the boat extends out past the dock.

So we are consistent with others. As you can see on this aerial, we're actually -- we've matched the guys immediately to our east. And then on the east of them, those white canopy covered ones obviously extend out further, basically matching our overall protrusion of 46 feet. So the point of this is, we're consistent with what's been previously approved along this shoreline. And other than us doing proposing canopies currently -- we are going to be doing that, but that's on a separate application.

So with that being said, we're 46 feet out from the property line/mean high-water line, we have a one-foot setback from the riparian lines. The riparian lines are those yellow lines extended from each corner of the property.

I've done some other side yard setback variances and, typically, we maximize it out and basically go to zero. In this case, we are at least proposing a -- somewhat of a setback. We will not be putting the pilings on the property line, which is technically allowed.

This property, like John said, was not part of the original blanket variance application that was done, I think, 2000, if that's correct? Yes? That had -- I don't know the exact number of properties, but a good dozen, maybe 18 of the properties were subject to that. The previous owner did not adjoin and go through that process, so Ed Brennan, the applicant, is, you know, trying to be consistent with everybody and get the two slips that he is allowed per the Manatee Protection Plan.

So if you have any questions, happy to answer them.

HEARING OFFICER DICKMAN: Just curiosity, what's -- what are those two white -- white things that --

MR. ROGERS: Those are -- those are mooring vessels -- or, excuse me -- mooring piles that were -- I don't know if they're --

HEARING OFFICER DICKMAN: They fell -- they fell over?

MR. ROGERS: No, they're in the water, they're standing, they're there. I think it's remnants of an old lift/dock that's part of the property just to our west. It's -- unfortunately, they're not on our property and I don't have the history of that to answer your question.

HEARING OFFICER DICKMAN: As long as they're not manatees there.

MR. ROGERS: No, no.

HEARING OFFICER DICKMAN: All right, great. Let me get the lights.

Do we have any objections? The neighbors -- I know there were -- notifications occurred.

MR. ROGERS: Not that I saw, not that I received.

HEARING OFFICER DICKMAN: John, anything?

MR. KELLY: John Kelly for the record.

I haven't heard anything from anyone other than the applicant's agent on this dock.

I did want to add just a little bit more. On the boat dock extension, I believe we're recommending five conditions. Those come from the original resolution that allowed for the boat dock lots. And I believe we're recommending two conditions on the variance, those come from the blanket variance request, to make everything consistent.

HEARING OFFICER DICKMAN: Have you -- Mr. Turrell (sic), have you seen those conditions?

MR. ROGERS: I have not. I'm looking through it right now. Is that on the last sheet, John?

MR. KELLY: Which are you looking at?

MR. ROGERS: I'm sorry, the --

HEARING OFFICER DICKMAN: Start with the extension.

MR. ROGERS: Yeah, we'll look at the extension first.

MR. KELLY: The boat dock extension, it's going to be on page eight of nine. I'm sorry, there are four.

HEARING OFFICER DICKMAN: So it's -- basically, let me do this real fast, if you don't mind, John.

Obviously, they're companion items, so if you don't get the variance, you don't get the extension, they're connected.

MR. ROGERS: Yep.

HEARING OFFICER DICKMAN: Second one, obtain building permit, right-of-way permit shall be obtained for access to improvements to prevent damage to the roadway. So there's -- per the resolution, you have to deal with the right-of-way permits.

John, is that correct?

MR. KELLY: Right.

HEARING OFFICER DICKMAN: Okay. So, you know, this is a very thin area. It looks like parking is a little odd in that area, so I think that has something to do with that.

No rental purposes here?

MR. ROGERS: Yes, sir.

HEARING OFFICER DICKMAN: No rental?

MR. ROGERS: Yep.

HEARING OFFICER DICKMAN: Okay. Did you see any rental signs out there, John?

MR. KELLY: No, sir.

HEARING OFFICER DICKMAN: Okay.

MR. KELLY: And I was there to post a sign.

HEARING OFFICER DICKMAN: This is not a commercial dock; right?

MR. ROGERS: No.

HEARING OFFICER DICKMAN: Residential dock?

MR. ROGERS: Correct, yeah.

HEARING OFFICER DICKMAN: Okay. That's a whole different animal.

MR. ROGERS: That's -- we don't want to go there.

HEARING OFFICER DICKMAN: Don't want to go there, okay.

So let's go to the variance. I have a feeling one of them is going to be connected with approval of the other one.

MR. KELLY: On the variance, they're on page seven of seven and there are two.

HEARING OFFICER DICKMAN: The dock has to be no rental purposes and no commercial purposes. And I'm surprised that that one's not -- I guess you can get the variance without the extension. Do we want to, like, make sure that it's all or nothing.

MR. KELLY: I don't think -- I don't think there's a reason for the variance without --

HEARING OFFICER DICKMAN: Yeah. So this is an all-or-nothing situation, one or the other.

MR. ROGERS: Right, it is.

HEARING OFFICER DICKMAN: So I've got to go both ways on that.

MR. ROGERS: Right.

HEARING OFFICER DICKMAN: So I think that's the condition.

Agreement? I need to have it on the record. Do you have an agreement with those conditions? Can you speak for your client?

MR. ROGERS: Yes, sir. He's here today.

HEARING OFFICER DICKMAN: Oh, he is here?

MR. ROGERS: I don't believe he's objecting to it, so --

HEARING OFFICER DICKMAN: Okay, all right. So --

MR. ROGERS: Those are typical requirements.

HEARING OFFICER DICKMAN: I'm sure if he was not authorizing you to say that, he would -- he or she --

MR. ROGERS: He would be --

HEARING OFFICER DICKMAN: -- the trustee -- yeah, Ed and Nancy Brennan are the trustees, so --

MR. ROGERS: Knowing Ed, he'd be calling me or texting me or yelling at me right now; right?

HEARING OFFICER DICKMAN: All right. Does -- does your client want to say anything?

Anybody? No? Okay, great. Nothing? No, he's good. Yeah, that's a good rule of thumb.

MR. ROGERS: Yes.

HEARING OFFICER DICKMAN: When you feel like you're doing well in court --

MR. ROGERS: Keep it quiet.

HEARING OFFICER DICKMAN: -- just don't say anything, yeah.

MR. ROGERS: Just to clarify the parking for you --

MR. BRENNAN: Can I -- can I say something?

HEARING OFFICER DICKMAN: Yeah, sure. You have to come -- let's open it up for a public hearing, let's go ahead and do that.

Is this your client?

MR. ROGERS: Yes, sir.

HEARING OFFICER DICKMAN: Okay. Come on up, sir.

MR. ROGERS: State your name for the record.

MR. BRENNAN: My name's Ed Brennan. Do you want me to go up?

HEARING OFFICER DICKMAN: How are you?

MR. BRENNAN: There was a question about -- I thought I heard -- I'm hard of hearing and plus I forgot my hearing aids, but about access to the property, about parking and stuff or --

HEARING OFFICER DICKMAN: Yeah, I just made a --

MR. BRENNAN: That's all been done.

HEARING OFFICER DICKMAN: That's all been done?

MR. BRENNAN: It got permitted, the driveway is there, it's only ten-foot wide just to park one car, but it's been all approved, and it passed and the final inspection and everything.

HEARING OFFICER DICKMAN: Very good. Very good. I just made a comment because it does look like there's challenging parking in there, but I think that was one of the conditions that the County had, that you deal with that situation as well as the right-of-way. So thank you for putting that on the record, okay.

MR. BRENNAN: Thank you.

HEARING OFFICER DICKMAN: Nice to meet you, sir.

Anybody signed up to speak for the public hearing?

UNIDENTIFIED SPEAKER: No, sir, we have no public speakers for this hearing.

HEARING OFFICER DICKMAN: Nobody, nobody.

All right. Let's just wrap up here. Give me one second to make sure I didn't write down any other questions that I have.

This has nothing really to do specifically with this application, but I know you are here frequently. It would be helpful for me if you would snap a photograph from time to time, you know, one or two, just ground level.

MR. ROGERS: Of the property?

HEARING OFFICER DICKMAN: Yeah, just so I could see, you know, existing conditions --

MR. ROGERS: Sure.

HEARING OFFICER DICKMAN: -- things like that, that would be very helpful for me.

MR. ROGERS: You know, we visit every site and take pictures, so it's very easy for me to --

HEARING OFFICER DICKMAN: I'm sure you do, yeah.

MR. ROGERS: Yeah, yeah, no problem.

HEARING OFFICER DICKMAN: Okay. And, okay, I don't really have any other questions.

John, do you have anything else you want to put on the record?

MR. KELLY: No, sir, that's it.

HEARING OFFICER DICKMAN: Yeah. Did you get any pictures while you were out there, go for a swim or anything like that?

MR. ROGERS: I didn't, no. But there is an aerial showing the general vicinity on page four of nine of

the staff report.

HEARING OFFICER DICKMAN: I saw that, great. Yeah, you've got all the exhibit in there that I needed. I just -- visually, I guess I can go on Google, but sometimes I like to see the condition. You know, the mangroves, I understand, I can visualize how that's working out and you've got to go through the mangroves to get out to the water and things like that; right?

MR. ROGERS: Yes, sir. Yes, you do. I'm taking notes to provide pictures to you on future applications.

HEARING OFFICER DICKMAN: Yeah. And --

MR. ROGERS: And I'll tell my staff to do the same thing as well, so -- we have a lot of applications in with you guys.

HEARING OFFICER DICKMAN: Okay. Ray, are you letting John and others swim when they're out there, fish or something like that?

MR. KELLY: That would be our environmental services division.

MR. ROGERS: Brown's job.

HEARING OFFICER DICKMAN: Perks, perks, perks.

Okay, I'm going to close the public hearing if there are no other speakers. We're good? I'm getting a signal that there are no other folks to speak. We'll close the public hearing and, as usual, you know I have 30 days -- up to 30 days to render a decision. Typically, I do that in a faster manner. It's not going to happen today, I guarantee you that, and it's not going to happen tomorrow, I guarantee you that, but I'll try to do it as fast as possible.

So, yeah, thanks for being here, you were the center of attention today.

MR. ROGERS: Thank you guys.

HEARING OFFICER DICKMAN: Appreciate it. Thank you, everybody.

Any other business for the Hearing Examiner?

MR. BELLOWS: I have nothing else.

HEARING OFFICER DICKMAN: No? Okay, all right.

So at some point you're going to let me know on that NIM waiver situation whether I have to go to a new location or not?

MR. BELLOWS: Yes, I -- my understanding after discussing this with Laura DeJohn is that after -- once that NIM is held, we'll see if there's the same level of opposition and see if we have a better understanding of what the applicant is trying to do.

HEARING OFFICER DICKMAN: Okay.

MR. BELLOWS: And if there is that same level, we will need a larger room to accommodate the crowd.

HEARING OFFICER DICKMAN: Okay. Well, let's hope that they get everything worked out before -- before then. That's the whole purpose of the NIMs, in part, actually, just to put people on notice, but also for the applicants to respond to any concerns that the neighbors or anybody else have, so I appreciate that. Anything else? Otherwise, we are going to adjourn.

I thank every -- I thank everyone here, staff especially, for keeping us safe and healthy here, it's been a nice experience. So we are adjourned.

* * * * *

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:24 a.m.

COLLIER COUNTY HEARING EXAMINER



Andrew W. J. Dickman, Esq., Hearing Examiner

These minutes approved by the Hearing Examiner on 6/10/21 as presented ☒ or as corrected ☐.