

TRANSCRIPT OF THE MEETING
OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 24, 2021

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER ANDREW W.J. DICKMAN

ALSO PRESENT: Anita Jenkins, Zoning Manager
Tim Finn, Principal Planner
John Kelly, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER DICKMAN: All right. Good morning, everyone. Today is June 24th, 2021. This is the Hearing Examiner meeting. We will have two items on the agenda today. Why don't we start with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING OFFICER DICKMAN: Okay. Thanks, everybody. Let me do some housekeeping things here. My name is Andrew Dickman. I'm a practicing attorney in good standing. I've been practicing for over 20 years. I have been contracted with by the Collier County Board of Collier County Commissioners. I'm not an employee of the County.

If everyone would, please, as a courtesy turn off your phones and anything that makes noise. We do have our court reporter here who takes verbatim notes of the hearing. So if you're going to speak, try to speak slowly and clearly so that she can get everything down.

We have two podiums here. The brown podium will be used by the applicant. The gray podium in the front will be used by the county and by members of the public. This is a hybrid meeting. We have folks that are logged in through the internet. My good friend over here from the county is going to be the mastermind and switching back and forth and making sure that everybody gets a chance to speak.

My job here is to give everybody a fair opportunity to speak and present evidence. What I am mostly going to be looking for is evidence applied to the criteria for the specific items.

So for those who are going to speak, obviously, you can talk about pretty much whatever you want, but if you really want to have me focus in on the issues, try to, you know, focus on whatever evidence you have as applicable to the criteria and the issue at-hand.

The way that I like to proceed in these hearings is I like to have the county come up, present the -- briefly present the application, give me a brief description of the notices that went out so I can check that box, and also give me their recommendation.

The applicant will come up and present their full presentation, and then I'll open it up for public speakers, whether here in the building or on the internet, then I'll give the applicant an opportunity to rebut if the applicant would like to do that. So with that, I'm also going to go -- I'm also going to need to have all the witnesses that speak today and give testimony, you need to do so under oath.

So anyone here and wherever they are in the world on the internet, please, stand and raise your right hand and the court reporter will administer the oath.

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

THE COURT REPORTER: Thank you.

HEARING OFFICER DICKMAN: All right. Great. Moving on. Is there, looking at the agenda, is there any changes to the agenda at all?

MS. JENKINS: No.

HEARING OFFICER DICKMAN: So we have two items on the agenda, start with Item 3A. Whose got this? There he is. How are you, sir?

MR. KELLY: Good morning, Mr. Dickman. For the record, John Kelly, Senior Planner. This is before you going to be the signed variance Petition PL20200002008 Arthrex at Ave Maria. The applicant requests a variance from Land Development Code Section 5.06.04.G.2.A to increase the sign area of an off-premises directional sign from 12 square feet to 32 square feet within the Rural Agricultural Mobile Home Zoning District with a Rural Lands Stewardship Area Overlay in the town of Ave Maria Stewardship Receiving Area.

The subject sign is to be located in Tract R of the Arthrex Commerce Park Subdivision at the intersection of Arthrex Commerce Drive and Oil Well Road, and the sign will be located immediately adjacent to an arterial roadway.

All other standards for an off-premises directional signs contained within Land Development Code Section 5.06.04.G will be satisfied. Staff did review -- well, let me take care of the administrative

part of this.

Notice and hearing requirements for sign variances are contained in LDC Section 10.03.06.F, as in Frank. The agent letter that's required by the LDC was sent by the applicant on or about January 22nd, 2021.

A property owner notification letter from the county for this meeting went out June 4, 2021, as did the newspaper ad around that date, and the public hearing sign went up 15 days in advance of the meeting posted by the applicant. Staff's analysis was under the review criteria contained within Land Development Code Section 5.06.08.B.1, and based upon our analysis we are recommending approval in accordance with Attachment A as attached to the staff report.

HEARING OFFICER DICKMAN: Thank you. Okay. Do we have the applicant or the applicant's representative?

MS. CRESPO: Good morning. Alexis Crespo with Waldrop Engineering representing the applicant, Arthrex or RAS Holdings, LLC. I have a brief PowerPoint presentation to walk you through the request.

HEARING OFFICER DICKMAN: Would you like the lights down, or let's see how it looks. You okay with that?

MS. CRESPO: I'm okay with that if everybody else can see.

HEARING OFFICER DICKMAN: Yeah, I can see it fine.

MS. CRESPO: Next slide, please. As John outlined, we're here today requesting your approval of a sign variance to allow for a slightly larger off-premise directional sign related to the Arthrex at Ave Maria project, which is shown on the area location map. The site is generally located north of Oil Well Road at the intersection with Arthrex Commerce Drive within the town of Ave Maria within Tract R, is where the sign would be located, and as John noted, this is within an agricultural zoning district, in terms of the Agricultural Mobile Home Zoning District that it's within.

It's also within the RLSA and a part of both the Arthrex property and where the median will be located in part of the town of Ave Maria and RLSA boundary. In that regard it's not necessarily an off-premise sign when you look at it from the new town perspective, but certainly it's on a separate parcel, and, therefore, staff, decided the variance criteria was the mechanism of getting the sign approved as proposed.

Next slide. So what we're seeking is to allow for a 32 square foot off-premise directional sign in the median to direct traffic to the Arthrex facility where the code would limit the sign space area to 12 square feet.

Next slide. This depicts what the sign copy would include, which is simply the Arthrex name and logo. We did submit a sign permit to the county and this is how the item was raised as an issue which resulted in us requesting the variance. We will meet all of the criteria of the sign code, in terms of maximum height. It will not exceed eight feet. It will be set back from the property line per the code. It will be double-faced and maximum 32 square feet. So we will meet all criteria except for the copy area.

Next slide. This aerial depicts the location of the sign in relation to the Arthrex facility; that's the main facility. It's set back 200 feet from the road. You can see there is an intervening parcel.

Arthrex does not own up to the right-of-way. They have about 200 feet. Within that there is drainage infrastructure, storm water management, as well as preserve area that's controlled by the master developer of Ave Maria that would preclude them from locating signage closer to the roadway, in order to direct traffic to the site.

We see that as a unique hardship, in terms of the parcel configuration and lack of ownership up to the roadway. The dimension there is about 500 feet. So the sign would be within that 1,000 foot radius of the subject property, so we do not need relief from that criteria. Next slide. This is a view westbound if you're traveling along Oil Well Road. Oil Well Road, you can see the Arthrex building set back with intervening vegetation and drainage features there.

The yellow area is where the sign will be located, again, set back from the property line per the

code in that median to direct traffic travelling from the east to the west.

HEARING OFFICER DICKMAN: On this slide can I ask a quick question?

MS. CRESPO: Yes.

HEARING OFFICER DICKMAN: Is this going to be located -- looks like you have a boulevard there. Is that in the middle of that boulevard, that area of the grass area?

MS. CRESPO: Correct. Correct. Next slide. So to conclude, we are in agreement with staff in terms of the staff report, as well as our materials submitted with the application that we meet the sign variance criteria of LDC Section 5.06.08.B.1.

The building has substantial setback from Oil Well. There are intervening site features that were not constructed or done by the applicant, Arthrex, but done rather by the master developer, that would significantly limit visibility of any signage on their property from the traveling public. It will increase safety by providing for more signage copy, when taking into account travel speeds along Oil Well Road.

We will adhere to all other criteria for signage within your code. We are in agreement with staff. It's consistent with the Growth Management Plan and LDC and would respectfully request your approval.

HEARING OFFICER DICKMAN: Okay. Thank you. A couple -- okay. So I do note you have a unique parcel, in terms of you don't own up to the right-of-way; is that what I'm hearing? The master developer of Ave Maria owns that land?

MS. CRESPO: Correct.

HEARING OFFICER DICKMAN: Okay. So it makes it very difficult to do what other property owners would be able to do, had they had a normal parcel configuration that would go right up to the right-of-way, plus, you have water features on the south side. Any lighting with the sign?

MS. CRESPO: No.

HEARING OFFICER DICKMAN: Just a stand-alone sign. Maybe this is a question for county, but let me ask you this question: Would you be able to put signage on your building, the wall of your building under the code?

MS. CRESPO: There is signage on the wall of the building.

HEARING OFFICER DICKMAN: There is already signage?

MS. CRESPO: It's substantially set back. They have been in operation since 2013. They are finding people are having difficulty navigating easily to the site from that eastern access point.

HEARING OFFICER DICKMAN: Okay. What I was getting at, there might be a preference to have this sign that you are requesting rather than enlarging a sign on the building to have presence, which may not be as attractive in that area. It's fairly rural in that area.

MS. CRESPO: That's an excellent point. Thank you.

HEARING OFFICER DICKMAN: Why don't we let the public speak. Who do we have from the public?

MR. YOUNGBLOOD: Mr. Dickman, we have no registered public speakers for this item.

HEARING OFFICER DICKMAN: All right. Do you have any rebuttal?

MS. CRESPO: No, sir.

HEARING OFFICER DICKMAN: John, can I ask you that same question about the signage, in terms of -- I want to get a sense, you know, it does seem to make sense because of the ownership configuration of the property that's along the roadway, but as far as -- you know, the idea is to be able to give the folks -- I mean, the building is set back fairly far, probably because of that ownership. It has a little boulevard that goes back to it, as far as visibility and people driving up and down, that's Oil Well Road; correct?

MR. KELLY: Correct. There is just some confusion, I believe, as to which entrance they prefer people to use.

HEARING OFFICER DICKMAN: Sure.

MR. KELLY: There is a sign on the building, I believe, on both sides of the building.

HEARING OFFICER DICKMAN: Yeah. Okay.

MR. KELLY: So I just wanted to note for the record that we have obtained letters of no

objection from all of the utilities.

HEARING OFFICER DICKMAN: I saw those. They are in the record. And I do understand, you know, because they have that boulevard, it seems as though the sign would help people not pulling in on the wrong way -- wrong side. In other words, if you don't, I mean, the sign would help with that?

MR. KELLY: Yeah. Staff has no disagreement with this request at all.

HEARING OFFICER DICKMAN: And in terms of the just the triangle visibility somebody pulling out from the Arthrex property being able to take a left or right, there is visibility for the cars and so forth?

MR. KELLY: This was reviewed by our transportation staff, and they didn't mention the site triangle, safe site triangle.

HEARING OFFICER DICKMAN: Safe site triangle. So there is no hazard?

MR. KELLY: No. I believe it's set back far enough it doesn't interfere.

HEARING OFFICER DICKMAN: Okay. Thank you very much. All right. So my decision will be based on the variance criteria, because they are seeking a variance due to the configuration of the property where they need to have that. I have 30 days to render my decision, and I will do so based on whenever -- by the way, for everyone's sake, I've had no -- almost -- I don't have any ex parte communication with anyone about any substantive issues on any of the agendas. I make that a practice of mine. Usually I don't talk to the county. I don't talk to the applicant, anyone else.

I do have the packet that's made available to the public, which is everything that has been submitted to the county, and is available to the public, so I'm reading what everybody else is reading.

My job is to listen to whatever evidence is presented. You know, I realize what -- what notices are necessary, but I like to get that on the record, and then my job will be to apply whatever evidence and testimony is made here today and apply it the variance criteria and render a decision.

So with that I guess we don't have any other speakers. Going once. Going twice. Going three times. We're done. All right.

MS. CRESPO: Thank you.

HEARING OFFICER DICKMAN: All right. Item 3B, ready for that one? I see no one leaving. Here we go. Why don't we go ahead and introduce that one.

MR. KELLY: Okay. Again, John Kelly, Senior Planner for the county. This is going to be an insubstantial planned unit development change for the -- Old Cypress Planned Unit Development specifically for the Amberton community's compactor.

The petitioner requests that the Hearing Examiner approve an insubstantial change to Ordinance No. 00-37, as amended, the Olde Cypress Planned Unit Development PUD to allow for a deviation from Land Development Code 4.06.02.C, which requires a ten-foot Type A buffer where multifamily use abuts multifamily use, to instead allow a one-foot buffer yard only in the area where the compactor enclosure and approach apron will be located at 8074 Dancing Wind Lane within the Amberton Townhomes Development.

This was originally scheduled for you on March 25th, 2021 and was proceeding with a conditional neighborhood information meeting waiver that was rescinded when you learned of opposition to the project. So it was rescheduled. The neighborhood information meeting was held at the Max Haas Park on May 5th, 2021, and since the time of the neighborhood information meeting I believe the applicant has been working diligently with Counsel for Fairway Preserve, which is the neighboring community to the west.

With regards to notice, the hearing and notice requirements for a PDI are contained within LDC Section 10.03.06.H. There was a NIM required that was held. The property notification letter for this meeting went out on about June 4, 2021. The newspaper ad ran on June 5, 2021 and the public hearing sign was posted well in advance of the required 15 days by the applicant.

The county reviewed the application on the basis of LDC Section 10.02.13.E.1 and 2, and staff notes that there is a -- the reason for this compactor is a bear issue within the development. I believe that it continues today.

So there was a reason to try to move this to you sooner; that was the basis for the NIM waiver. So, anyway, there is still a bear issue. I'll let the applicant describe that further.

Staff -- the one other thing staff would like to note for the record is that this compactor was initially approved by means of a site development plan amendment. However, it was determined that that site development plan that the county was -- previously approved, there was a surveying issue, an error of 9 feet, and that is what brings us before you today. So that -- that approval was rescinded when it was learned that there was a surveying issue, but, again, that's what brings us here today. It was previously administratively approved.

HEARING OFFICER DICKMAN: All right. Thank you. I do recall this item, so, yeah, why don't we have the applicant come forward first. Just as the -- or the applicant's representative. I do want to hear -- I mean, I know --- all right.

So there's two issues here, one is wildlife, bears are becoming an issue, I guess, with individual trash receptacles, and then that means going to a larger communal compactor.

Secondarily, there was a measurement issue on the survey, which means that the ten-foot requirement can't be met, so where ten feet of a buffer is required, one foot is being requested. So I do want to hear about both of those on the record. I think it's important. And you, obviously, understand the criteria for a variance that I have to follow for insubstantial change?

MR. OTTENBERG: Yes, sir. My name is Russell Ottenberg, 3737 Lake Joyce Drive, Land o' Lakes, Florida 34639 for the applicant. I know you have the questions regarding the setback and the history and I'll be going through that briefly as part of my presentation and the materials I've left to be entered as part of the record.

HEARING OFFICER DICKMAN: One question for you real quickly. I don't know if you mentioned this, are you an attorney or --

MR. OTTENBERG: I'm a land planner.

HEARING OFFICER DICKMAN: Land planner, great. Was this material provided to the county ahead of time?

MR. OTTENBERG: The visual exhibits that will be up were presented. There was material in here that wasn't presented previously.

HEARING OFFICER DICKMAN: Okay. Anita, do we have any issues with that?

MR. OTTENBERG: If I may, the materials that were not given to the -- well, actually, they were all there except for my CV.

HEARING OFFICER DICKMAN: Okay, that's fine.

MR. OTTENBERG: Should be.

HEARING OFFICER DICKMAN: Again, I want everybody to relax. This is a very -- I've got all the time in the world to be here. I want everybody to relax. This is not -- this is, you know, if we have to stop and talk and get this straight, it's very important for me to -- I'm not going to be able to come back and redo this hearing, so I want to get every bit of information I can.

So don't worry if we -- if you have to gather your thoughts or look through your materials, that does not bother me one bit.

MR. OTTENBERG: Thank you. Appreciate that.

HEARING OFFICER DICKMAN: All right. Let's get going.

MR. OTTENBERG: So as John noted, the purpose for this insubstantial change is to allow a reduction in the buffer area between Amberton Townhomes and Fairway Preserve from ten feet to one foot to allow the construction of a compactor and enclosure within that area.

So a little history I think is in order to put things into perspective here. Fairway Preserve Condominium, which abuts the subject property to the west, was developed initially as apartments, and I believe subsequently converted to condos, at least that's the information that I gleaned from the Collier County Property Appraiser's website.

Amberton -- and they had a compactor on their property that was initially constructed around 1999, and then they relocated their compactor right around 2012 from the original location.

Amberton Townhomes began construction around 2005 and completed around 2016. Amberton did not have and does not have a compactor. They're using curbside trash service. So what has happened is the bears in the preserve have found a ready food source with the curbside trash receptacles that Amberton has.

HEARING OFFICER DICKMAN: Let me just ask you a quick question about that. What is the number of units in this community?

MR. OTTENBERG: There are 306 units in the Amberton Townhome development.

HEARING OFFICER DICKMAN: Okay. Each one of them have their own receptacles that are curbside; is that correct?

MR. OTTENBERG: Correct.

HEARING OFFICER DICKMAN: Can you give me an idea of the number of bear garbage receptacle encounters, or can you describe that as dangerous or is it just a nuisance?

MR. OTTENBERG: It is actually a danger, and as part of the materials I've submitted here, there were 95 bear incidents at Amberton alone from, I think 2001 through this year, and counting.

Most of those, or the vast majority of those, did not result in any injuries. There was one bear attack that did result in a serious injury, and so this is an ongoing issue referenced in the staff report as a current safety and welfare hazard to the residents and that is really the issue here. This is a health, safety and welfare issue.

HEARING OFFICER DICKMAN: Just so you know, if I ask you a question that is already going to be part of your presentation later on, just tell me that you're going to get to it, and I'll let you go on.

MR. OTTENBERG: Okay. Thank you. So it is a current health, safety and welfare issue, and there is -- we have some video, if you would, we have short four videos that show what the bears are doing.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: And they are going to be brought up and put on the screen.

HEARING OFFICER DICKMAN: Okay. Great. Thanks.

(Video published at this time.)

MR. OTTENBERG: Not what you want to see at your front door. You can see one of the bears is carrying the trash. This is the food source that is the issue that Amberton is trying to deal with.

HEARING OFFICER DICKMAN: Was that it or you have one more?

MR. OTTENBERG: One more.

HEARING OFFICER DICKMAN: All right. Save the most dramatic for last.

(Video published at this time.)

MR. OTTENBERG: So, again, here you can see a bear carrying garbage, and this, you know, this typically happens after dark, that's when the bears are active between dusk and dawn, that's when they are most active. I think you can stop this one. If you would, please, bring up Appendix B.

HEARING OFFICER DICKMAN: And while that's happening, just for the record, we've watched four short clips, I assume, caught on Ring cameras that are in the community showing wildlife bears. What kind of bears are these, black bears?

MR. OTTENBERG: They're black bears.

HEARING OFFICER DICKMAN: Florida black bears.

MR. OTTENBERG: This is a screen shot from FWC's interactive bear map, and it shows a number of the recorded incidents with bears on Amberton. You can see the yellow dots and the orange-ish diamonds. Those are bears that have been handled, as opposed to just bear incidents. This isn't all of them, but some of them.

There is also some shown on the Fairway Preserve property to the west, also to the east, and you can see they range from the northern end of Amberton all the way down to Immokalee Road. So it's -- they're ranging across the entire development. Thank you.

If you would, please, bring up Appendix C. So this is a -- this is the site plan of the compactor

and enclosure that we're proposing for approval. This is substantially similar to what was initially approved through the site plan amendment process that was later rescinded due to the survey bust. It is basically the same geometry for the compactor enclosure with the same proximity to the property line. It is located just at the bend of the boulevard entrance drive to Ambernton, and so as you can see the property line running north to south goes right to the entrance.

There is an ingress/egress easement across that, and that area is paved, so the ten-foot buffer from that point in the entrance drive south down to Immokalee is already encumbered by pavement. It's not a pristine, undeveloped buffer area.

This particular location was chosen after reviewing different areas within the Ambernton community. This was the only place where it would really fit. It's still a tight squeeze, but it does fit, and it is going to be the most beneficial for the residents in this location.

So we've identified the problems. It's a health, safety and welfare issue with the bears; that is the result of the individual curbside trash containers. The solution to that, and as you'll see later is supported by FWC, Florida Fish and Wildlife Commission, is to put that curbside trash or eliminate the curbside trash pickup and go to a compactor. The compactor itself was sized in consultation with Waste Management for this community.

As you'll see later, Ambernton is getting two to three times a week scheduled pick up, and if they need more, would have Waste Management pick up more often. The goal here is to solve the problem not move it.

We've gone through the -- briefly the survey, but I don't know if you want to hear anymore about that. I can certainly speak to that if you do. That was -- I'm sorry?

HEARING OFFICER DICKMAN: Yeah, please touch on that for me. I want to get everything in the record if I can.

MR. OTTENBERG: Sure. So we went through initially -- I initially contacted -- we are also an engineering firm. We initially contacted Collier County after we were approached by Ambernton to do the compactor enclosure. We said here's what we want to do, here is the way we want to do it. What is the process? At the time the understanding was that it could be done through a site plan amendment, so that is what we submitted. We went through to full review, received permits and approvals, and this was in coordination with Waste Management, staff here at the county, as well as, you know, Waste Management and transportation, to make sure that it all worked.

The contractor started construction. He was digging for his footings. Fairway Preserve sent the letter to Ambernton said, hey, you're on our property, cease and desist.

As soon as we got that letter I called the surveyor and the contractor immediately stopped operations. I called the surveyor. I said, you guys gotta get down here, confirm property corners and all that. They did. They came back and said yes there was an eight or nine-foot bust in the survey. Everything stopped.

We reached out to Collier County and Collier County rescinded approval, which, of course, was the appropriate thing to do, and then they identified, oh, by the way, since there isn't a ten-foot buffer here, this has to be an insubstantial change to the PUD, so we started that process. Between the -- there was quite a lag between when we stopped construction and filed for the PUD, because we were still trying to figure out if this would still work here and other locations, and went back and looked at that, and this was the location that was -- that was still thought to be the best location. So that put us into the PUDI process; that's how we got here.

HEARING OFFICER DICKMAN: Okay. Couple of questions. So the curbside pickup happens how frequently; is that twice weekly?

MR. OTTENBERG: Two days a week.

HEARING OFFICER DICKMAN: Two days a week, that's with a private contractor.

MR. OTTENBERG: I believe it's Waste Management.

HEARING OFFICER DICKMAN: So they go around the neighborhood, pick up trash with their noisy trucks and so forth and so on. So absent the bear issue, would there not -- there would not be

a need for the compactor; is that right?

MR. OTTENBERG: That is correct.

HEARING OFFICER DICKMAN: The curbside -- it's my understanding of what you said the curbside is going to away. The compactor is going to be put in place, and each individual person is going to be responsible for putting their own garbage into the compactor?

MR. OTTENBERG: That is correct.

HEARING OFFICER DICKMAN: Okay. I get the survey issue. It's amazing how frequently that happens. At least since I've been here it's been four or five quote unquote errors. Sort of makes me wonder if I should go out and check my survey.

So the other question I have, so you've had consultation with the Fish and Wildlife Commission?

MR. OTTENBERG: Yes. We've had different conversations with FWC. We've had the architect for the compactor enclosure reach out to FWC to review the enclosure, and make sure it meets their best practices, and also, and this is the next exhibit. I would like to bring up Exhibit D. It's a letter from FWC.

HEARING OFFICER DICKMAN: That's what I want.

MR. OTTENBERG: It's actually -- this was their initial letter. I actually have --

HEARING EXAMINER DICKMAN: Is that in your packet?

MR. OTTENBERG: It is in your packet. I have a slightly modified letter that I would like to add.

HEARING OFFICER DICKMAN: All right.

MR. OTTENBERG: This new letter is pretty much the same as the original letter that the -- in my discussions with FWC, one of the things that came up was in discussion, you know, how to do this, was if they have preference as to the type of compactor, and so they had already issued the initial letter, and then they came back and gave me this slightly-revised letter, and I'll just read this, the revised letter, in the record if I may.

"Mr. Ottenberg, as discussed at the neighborhood information meeting on May 5th, the FWC recommends that all attractants be secured in a manner that prevents access by bears to reduce human/bear conflicts. Because residents do not have access to a secure exterior storage structure like a garage, bears routinely access the property in search of unsecured garbage cans.

Your decision to install a fully enclosed garbage compactor at Amberton is an excellent option to reduce the likelihood of bears entering the community and receiving a food reward, which is the primary reason bears spend time in the neighborhood.

The FWC's position is that with a well-maintained, fully enclosed compactor following best practices like keeping of the pad area clean, emptying the container regularly, and not leaving garbage outside of the compactor, and ensuring the compactor door is closed when not in use, will reduce the number of human-bear conflicts.

The specific location of the compactor is the decision of the community. Compactors are used successfully by communities across the state to secure garbage from bears, and their deployment locations vary from the center of those communities to the edge of preserves.

FWC has recognized that if the compactor is working and the community is following the best practices to prevent the bears from accessing the garbage, the specific location in the community, the brand, and the design are irrelevant.

We appreciate the effort Amberton is making toward becoming a BearWise community, which is safer for both people and bears. The FWC is committed to assisting with this process, and we are available to offer outreach and education to the community.

If you have any addition questions or concerns, please, do not hesitate to reach out again." This is from Mike Orlando, the Assistant Bear Management Program Coordinator with the Florida Fish and Wildlife Conservation Commission.

HEARING OFFICER DICKMAN: What's the date of this letter? It's not dated.

MR. OTTENBERG: I received this via e-mail last night.

HEARING EXAMINER DICKMAN: That would be June 23rd.

MR. OTTENBERG: The 23rd, yes.

HEARING OFFICER DICKMAN: I'm noting that there is apparently a program called BearWise. It's a registered trademark. There is a website that I'm looking at right now. I was curious what BearWise is, and it is a website that says BearWise helps people live responsibly with black bears. So I assume that this is some kind of best practices to have humans and bears live, coexist, with one another?

MR. OTTENBERG: That's correct, and they also allow education. The FWC has offered to host events at Amberton, I think twice a year, and, you know, where Amberton provides a space and whoever wants to show up from the community can come and receive information, education, on how best to live in bear country, and it's my understanding that Amberton is going to take them up on that offer.

HEARING OFFICER DICKMAN: Okay. Is Amberton fenced in? I mean, obviously, this development occurred -- I mean, bears probably were there before the development was there, but is -- are these developments fenced in, or are they fenced?

MR. OTTENBERG: I don't believe it's fenced in on the north side where the preserve is; is that correct? No, there is no fence there.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: So they can enter and leave as they want.

HEARING OFFICER DICKMAN: I guess the people can go into the preserves, too?

MR. OTTENBERG: As you saw in the letter I just read, FWC does not issue recommendation as to the site of the compactor or location. They believe it's immaterial, that really the only thing that will prevent bears from -- or that it's effective in preventing bears from regularly visiting the communities, to deny them a food reward, and a compactor that is regularly maintained is the best practice to do that.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: So as part of that, to determine and maintain best practices, we've been working -- Amberton has been working in close coordination with Fairway Preserves HOA board via their counsel, Katie Berkey, who is here today to prepare a list of conditions of approval, which are also included in this packet, and that we would respectfully request, if it is your pleasure to approve this, that those conditions be a part of the approval.

It's been a -- I have to say these types of situations are often adversarial, and Katie has been nothing but professional and courteous the entire time. We've had numerous conversations, dozens of e-mails, and they've been very productive.

As a result of all those, that is how the conditions of approval are put together. I'll go over those in a little bit. And we're also -- or Amberton is also going to move forward with a restrictive covenant outside of this proceeding, provided it is -- it is approved, to offer other assurances or further those assurances that are in the conditions of approval. A restrictive covenant would mimic the conditions of approval, and so there would be two layers of protection if those conditions were also included in the approval as part of this insubstantial change.

The -- if you could, please, bring up Appendix E, I wanted to talk a little bit more about the compactor location.

HEARING OFFICER DICKMAN: Yeah. Just so you know, I mean, I get the idea about the bears, so I understand there is a bear issue.

MR. OTTENBERG: Sure.

HEARING OFFICER DICKMAN: Let's focus on the compactor now.

MR. YOUNGBLOOD: Which appendix?

MR. OTTENBERG: E, Edward. Thank you. Now, this is a photo of when Amberton was under construction, and you can see towards the top center Fairway Preserve's initial compactor and enclosure location was very close to where Amberton is proposing to put theirs.

There is some precedence for having that close to the preserve, or that far back, I'm sorry. Fairway Preserve, as I stated earlier, around 2012 relocated their compactor to the southeast corner of their property. The reason I bring this up, despite the fact that we're proposing the conditions of approval, and despite the fact that Amberton is committed to moving ahead with their restrictive covenant, it is my understanding that the Fairway Preserve HOA Board is still going to object to this application, which is fine.

Amberton wants to be a good neighbor, wants to do the right thing. We believe that these conditions that are also reflected in the restrictive covenant are the appropriate vehicle to do that. Thank you.

The conditions of approval for the compactor are shown in Appendix F, and I'm not going to read through them entirely. I'll just talk about them briefly. One is to limit the hours of operation.

HEARING OFFICER DICKMAN: One second. Are these staff's recommendations?

MR. OTTENBERG: These are our written --

HEARING OFFICER DICKMAN: For the covenant?

MR. OTTENBERG: And also for conditions of approval. We have two things we would like these -- if we're approved, we would like to adopt these conditions of approval for the insubstantial change, and then beyond that, whether or not it is your pleasure to include them, if you were to approve it, Amberton is going to move forward with a restrictive covenant. A copy of the draft restrictive covenant is also in your materials.

The draft conditions of approval include limited hours of operation, and provide additional screening along the western side of the compactor and the approach apron, to screen it from Fairway Preserve.

There are commitments to additional pest management, additional odor control, to ensure that the, you know, the compactor is kept as clean as possible. There are also commitments to regular maintenance, cleaning, pressure-washing the enclosure and the surrounding area.

We want to make this -- you know, this is also at the entrance of Amberton's property. They don't want it to be an eyesore. So they have, aside from the -- their desire to eliminate the bear issue, they have a real desire to keep this clean and neat for their residents and for their future residents. They're going to, you know, as I said, we've worked with FWC for best practices on how to design and operate and manage the compactor. There is going to be amended lease language that provides for fines for violators, you know, of those provisions of the lease with respect to the use of the compactor.

They already provide educational materials four or more times a year to all the residents, but we're going to have that in the conditions as well, and that will be in the restrictive covenant, and ensure that the frequency of compactor service is sufficient to accommodate the trash generated by Amberton.

As I said earlier, the compactor itself, the specific unit, was selected in consultation with Waste Management, and Waste Management believes that it is appropriately-sized for this community, and then, lastly, ensure that any proposed compactor enclosure lighting is screened and directed away from the Fairway Preserve property.

Those are the conditions, and those conditions are reflected in the draft restrictive covenant, and as I said, regardless of the -- of whether Fairway Preserve and/or Fairway Preserve's residents objects to this, Amberton wants to do the right thing here. They're going to move forward with the restrictive covenant, and, hopefully, conditions of approval will be included as well. Collier County staff has found this application to be consistent with the relevant elements of the Collier County Comprehensive Plan, and has concluded, and I quote, "Due to the increased chance of bear encounters without the compactor and without an alternative location for the compactor, staff recommends approval, finding that, in compliance with the LDC Section 10.02.13.83, the petitioner has demonstrated that the element may be waived without detrimental affect on health, safety and welfare of the community.

In LDC Section 10.02.13.B.5.H, the petitioner has demonstrated that the deviation is justified as meeting public purposes to a degree at least equivalent to literal application of such regulations. Staff recommends approval of the application."

So in summary, again, this is primarily a health, safety and welfare issue, albeit with a zoning component. FWC has documented 95 bear incidents at the Amberton development, including a bear attack. FWC has stated the location of the compactor is immaterial, as to whether it will attract bears. FWC has not issued a recommendation as to a preference to the type of compactor, and they have stated the primary determinate is the efficacy of the compactor's operation and maintenance.

Amberton has in good faith worked closely with the Fairway Preserve HOA through Katie to address this concern with respect to the location, operation and appearance of the compactor and enclosure and surrounding area.

Amberton in coordination with Fairway Preserve's HOA has committed to significant and ongoing maintenance items to ensure the compactor is operating in such a way as to eliminate it as an attractant for bears.

These commitments are in the form of the draft, the submitted draft conditions of approval, as well as the submitted draft restrictive covenant. Amberton requests that if it's the pleasure of you, Mr. Dickman, to approve this application, the draft conditions be included as conditions of approval.

Now, there is one wrinkle to the conditions that were originally submitted, because Fairway Preserve is, as we understand it, is going to object to this, right now they are a party to the restrictive covenant because one or several of the conditions have to do with installing plantings on the Fairway Preserve property, and so were this insubstantial change approved -- and by the way, the goal is to have the restrictive covenant recorded prior to issuance of a -- any construction plan approval by the county, because after we go through this, if we're successful here, we have to submit for construction plan approval.

So Amberton would like to have that in place as an assurance to Fairway Preserve that they will abide by that. However, this is where the wrinkle comes in, the plantings on the -- on the Fairway Preserve property, if for whatever reason we cannot come to terms on the language of the restrictive covenant -- I don't think that's going to happen, Katie and I have discussed this, we think it's unlikely, because we've already gone through a couple iterations of the -- or we've gone through one iteration, and Katie has gone through one iteration on the draft covenant.

However, if we cannot come to terms then what we don't want to have happen is have Fairway Preserve use that as a veto item, if you will, in our effort to obtain construction plans. So in the unlikely event that we cannot come to terms on the language of the draft covenant, then what Amberton would like to do is remove the conditions, and I guess it's 2A, 2B and 2E, from the draft conditions.

Those would be removed from the conditions. They would be removed from the covenant and Fairway -- or Amberton would then move forward with a balance of the conditions, and the balance of the restrictive covenant, and get all of that recorded.

So everything would still occur, with the exception that the plantings would not occur on the Fairway Preserve property, so that's the only wrinkle to both the conditions and the restrictive covenant; that could happen, although, we believe it's unlikely.

Then Amberton also recognizes that once the compactor is placed into operation, should adjustments need to be made to the operation and maintenance regimen, they are committed to doing so.

They have and are investing a considerable amount of time, resources and dollars to address this bear issue. They do not want to make this investment only to see it be ineffective, and so if they need to do other things beyond what is listed in the draft conditions, or the restrictive covenant, obviously, within the parameters of governing laws and regulations, then that is what they're going to do. If that means increased maintenance or what have you, then that's what they are going to do.

Just so everyone understands what we're trying to prevent here, if you could bring up Appendix H. The one bear attack that did occur, was on a gentleman named Andrew Meunier who lived at Amberton, and Mr. Meunier was trying to walk the dog late at night.

He opened the front door, let the dog out, the dog barked and ran right back in. Mr. Meunier stuck his head out the door, and was slashed by a bear. He pulled his head in --

HEARING OFFICER DICKMAN: Just so you know, I get it. I saw the picture in here and I

read it. I understand there is a bear issue.

MR. OTTENBERG: I just want everyone -- the reason for that is, you know, we're all talking about this very theoretically.

HEARING OFFICER DICKMAN: Yeah.

MR. OTTENBERG: This is the practical end.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: I want everyone to be aware of what we're trying to prevent. With that, that's the end of my presentation.

HEARING OFFICER DICKMAN: Sorry. I thought you were going to show the photograph.

MR. OTTENBERG: No. You've seen it, so as long as you've seen it, that's all I wanted to have happen.

HEARING OFFICER DICKMAN: I'll recognize that's a true human/bear incident. I have a question real quickly, so stay put, Mr. Ottenberg. So I want to make sure that, you know, I know you're a planner, AICP. It says member of the American Planning Association 1998 to 2013.

MR. OTTENBERG: Correct.

HEARING OFFICER DICKMAN: Did you drop out of the --

MR. OTTENBERG: I did not bother to renew it after that.

HEARING OFFICER DICKMAN: Your AICP has lapsed?

MR. OTTENBERG: I'm no longer AICP.

HEARING OFFICER DICKMAN: Gotcha. The reason I'm asking that, does the county have any objection to Mr. Ottenberg presenting this information as an expert at all?

MR. KELLY: No, sir.

HEARING OFFICER DICKMAN: Ms. Jenkins, do you have any problem with that?

MS. JENKINS: I have no objection.

HEARING OFFICER DICKMAN: I want to get that on the record. You have a full presentation and I need to get competent, substantial evidence from an expert.

MR. OTTENBERG: Understood. I believe my CV says I am a court-qualified expert.

HEARING OFFICER DICKMAN: I see that. I have your CV. I believe the county has a copy of the CV. I wanted to get that in the record. There has been a packet submitted. I glanced through it. It does appear to be pretty much everything that's in the record already. I don't know. Does the county have any objection to any of this information being presented at all?

MS. JENKINS: Anita Jenkins for the record. We have no objection for it to be entered, no.

HEARING OFFICER DICKMAN: Great. Then I just want to make clear here a couple of things. Has the county -- I note in your staff report you're making an observation that -- of the discussions between the private parties about a restrictive covenant, but the county doesn't have any true recommendations for this, or conditions, so to speak; correct?

MR. KELLY: Again, John Kelly for the record; that's why I came back up here. I wanted to explain. The staff is not putting forward any conditions on this, as it was previously approved administratively except for the nine foot difference on the survey.

Staff does -- there's also, when you look at conditions of approval, there's an enforcement aspect, and I have to tell you the parties, if I may call them that, Mr. Ottenberg as well as Katie Berkey who is counsel for the homeowners to the west, they've been working back and forth right up until this packet was published, and the county saw a need to push this forward due to the bear aspect of this.

So, again, we're recommending approval without conditions; however, we do believe that as part of your decision, you are able to put in decisions, if you would like, and the county would support conditions, such as hours of operation, sanitation and lighting. They went above and beyond that in their covenants. We believe that's up to the parties to work out and so --

HEARING OFFICER DICKMAN: I get your point, that's why I was going to ask you the same question, so thanks for reading my mind. I'm going to -- this is how I want to treat that covenant, because the county and the Hearing Examiner is not going to opine to the legality of this covenant.

If two parties want to work out a restrictive covenant, I mean, there's all kinds of issues that could happen with a covenant that is not in favor of the county. It's in favor of two private parties.

I will, however, look at some of the things you all have been talking about because I assume that some of those issues, operational issues, are things that you've been talking about. I will look at those and, you know, as Mr. Kelly mentioned, maybe those things are -- some of those things are positive things that would go into a decision. I'm not saying one thing or another, but I just want to make it clear that the county and the Hearing Examiner is not going to opine or require the restrictive covenant, the filing of the restrictive covenant. It's going to be a completely private decision between you and the neighbors.

I also want to mention just for the record in these types of quasi-judicial hearings, there are two parties. It's the county and the applicant, and then there's affected parties, and then the general public.

Usually affected parties generally are the ones that are abutting neighbors, or somebody that would have to demonstrate some type of adverse effect. I'm not going to make those decisions here.

What I normally do is I recognize folks when they bring in experts, or an attorney, and it appears to me as though they have been engaged with each other to try to work things out. I'm not going to make a determination that there's an effected party or any of that, but I do want to give everybody their fair share of the public hearing speaking, and I do want to do everything I can to collect as much information as possible. I can use lay testimony if I like as long as it's fact based. If there are experts here in the audience that are hired by somebody, I can look at that. It's my job to weigh the validity of the evidence as applied to the criteria.

So I just hope -- maybe I'm just trying to educate everybody here towards my thought process, since my decision is not going to be here. It's going to be later on. Hopefully that was somewhat helpful. I just wanted to make sure that the county was okay, and that I was clear with all that.

Do you have any -- I'll give you time for rebuttal later, but do you have anything else you want to say before we end?

MR. OTTENBERG: Just very briefly with respect to the covenant. The intent was not to request that you opine on that in any way, just to let you know that these two parties are looking to have a private, independent document to help secure this.

HEARING OFFICER DICKMAN: I get that, and I also understand, and I'm really glad that the NIM did happen, and this is what they're for. I'm really glad that it appears from the staff report that FWC was at that meeting.

MR. OTTENBERG: Correct.

HEARING OFFICER DICKMAN: And, you know, that's the type of information that I need to really understand, and have in the record, that, you know, we have a bear problem. I don't know -- you know, I feel bad. I mean, bears are bears. It's their place, too, but we have to -- I like bears. I'm not going to say the bear problem. It's just bear/human interaction that doesn't, you know, doesn't -- isn't conducive to a good lifestyle for either one of them.

To be honest with you, I don't like bears eating garbage, and they should be in their natural habitat; however, I do appreciate the work that you've done with FWC, and really getting them involved, especially at the NIM. They're the folks that deal with this particular species of animal, and, you know, that helps me a great deal to, you know, sort of wrap my head around the reason that's triggering the compactor.

Okay, so with that, why don't we go ahead and bring up, I guess there's an attorney here with the neighboring -- hold on one second. So is any -- is there another attorney, or just one attorney? Okay. One attorney representing -- come on up. Let me talk to you on the podium real quick. I just want to line up who is here.

MS. BERKEY: What I was going to suggest -- I'm Katie Berkey, and I'm attorney and AICP. I'm working with Fairway Preserve Olde Cypress Condominium Association, but there are individual owners in the condominium that did want to speak. I was going to offer to let them go and I kind of sum up for my client on behalf of the corporate condominium entity.

HEARING OFFICER DICKMAN: Two questions. You said, one, I'm an attorney and also AICP, but I've been told several times at other public hearings that you've got to pick one. Are you the attorney or are you the expert? You can't be both, so which one do you want to be?

MS. BERKEY: I was going to qualify myself as a planning expert today, but with respect to the covenant, there is a nuance there with the legal aspect, too, so we did have to discuss that. So I was prepared. With respect to the compatibility, the criteria, I was going to speak to those things with my planner hat on, and I have my CV here as well.

HEARING OFFICER DICKMAN: Okay. Just so you understand that attorneys cannot present expert -- I mean, we're not allowed to testify as an expert --

MS. BERKEY: I understand clearly advocacy, but I'm putting in substantial, competent evidence.

HEARING OFFICER DICKMAN: Okay. I recognize your law degree. You're an AICP. I'd like to see your CV, but I'm going to handle your information, unless there's an objection -- Mr. Ottenberg, can you come up real quickly?

Again, you all know, you guys both know this, I have to look at competent, substantial evidence and apply it to the criteria. Do you have an issue with Ms. Berkey being here as a planner?

MR. OTTENBERG: Well, I'm not sure, frankly.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: All of my conversations and e-mail with Katie has been in her role as the attorney --

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: -- for the HOA board.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: So, now she's coming here as an expert and not an advocate, so I'm a little --

HEARING OFFICER DICKMAN: Okay. Fine. You don't have to go any further. I wanted to get your position on that. I will make my own decision. I mean, does the county have any issue? I mean, we all know American Institute of Certified Planners, that, you know, you have to sit for a test. You have to, you know, you've got to be qualified to sit for that test.

Does the county have any issue with me taking testimony from Ms. Berkey as the planner or an expert?

MS. JENKINS: Anita Jenkins, for the record. The county has no objection.

HEARING OFFICER DICKMAN: She is with the firm of Becker Poliakoff. My experience over the last 20 years is that many law firms have planners on staff and experts as well, but I will tell you that, you know, having two hats and trying to flip them back and forth is confusing. Especially for a decisionmaker who has to decide, okay, who is going to give the evidence, and, plus, you understand, as part of the record, if this were to have to go to a judicial forum, they're going to be looking at the competent, substantial evidence and where did it come from.

MS. BERKEY: Yes, I understand. I think the legal minutia, this would not be the proper forum mainly with respect to the covenant anyway, so I don't suspect we would be touching on that.

I have been qualified as an expert in land use planning and zoning in unincorporated Lee County, Village of Estero, Glades County, City of Fort Myers, De Soto County, City of Punta Gorda and Okeechobee County.

I have degrees, a juris doctor as well as a master's of city and regional planning from UNC Chapel Hill. I qualified to sit for the AICP exam, even before I became an attorney.

HEARING OFFICER DICKMAN: Okay.

MS. BERKEY: I sat for that exam in 2012. As a function of being young professional starting a new job, coming off of the bar exam also and being newly-engaged and planning a wedding, that was the delay for the exam. But I qualify -- my legal experience did not constitute the professional planning experience to qualify as a planner.

HEARING OFFICER DICKMAN: Okay. I understand. Sorry you had to go to North Carolina. University of Florida has got the best planning program. We all know that.

MS. BERKEY: Thank you for not holding that against me.

HEARING OFFICER DICKMAN: Let me also understand, you're representing whom?

MS. BERKEY: Fairway Preserve at Olde Cypress Condominium Association directly to the west.

HEARING OFFICER DICKMAN: Okay. And you have some of the residents that are here?

MS. BERKEY: In their individual capacity as unit owners, yes.

HEARING OFFICER DICKMAN: Okay. What I'm going to ask is that if any of the information that's being provided by Ms. Berkey, I'm not going to stop you from speaking, but I would ask, respectfully, not to, kind of, reiterate and repeat and things like that.

I do want to hear, and I always like to hear, personal experiences. Ms. Berkey, you don't live there, do you?

MS. BERKEY: No, I do not.

HEARING OFFICER DICKMAN: I think it's important for me to understand from the residents, but try to be -- let's, you know, I always defer to the fact that you've got paid folks here, so that's why I let them have a little bit more time, but if the residents, when they come up, if you can just, please, try to be a little briefer and get to the point, but I do like to hear personal testimony from folks that are actually affected.

MS. BERKEY: What I was going to suggest, if they could go first, in case they need to go about their day, I don't want to hold them up, and I can sum up at the end, if that would be okay?

HEARING OFFICER DICKMAN: Let's do that. Why don't you go ahead and have a seat, and we'll start with the folks that are here from the neighboring community.

MR. YOUNGBLOOD: Mr. Dickman, we have five registered speakers present with us in the room. We also have five online speakers.

HEARING OFFICER DICKMAN: Okay. All right. Now, let's go with the -- you know, I hate to say this, because you may be, like, I don't know if everybody is opponents or proponents or people in between, why don't we start, just go through the list. We have ten people. I'll figure it out. Tell me if you're an opponent or proponent or somewhere in between.

MR. YOUNGBLOOD: First is Frank Steinhauser.

HEARING OFFICER DICKMAN: Okay.

MR. STEINHAUSER: I'm an opponent.

HEARING OFFICER DICKMAN: Okay. Come on up. Speak into the microphone, talk to me. How are you, sir?

MR. STEINHAUSER: Good morning, Mr. Dickman. How are you today?

HEARING OFFICER DICKMAN: Fine. Thank you. Thanks for being here.

MR. STEINHAUSER: Thank you for your hard work.

HEARING OFFICER DICKMAN: Okay.

MR. STEINHAUSER: Before I make my remarks, I would actually thank Mr. Ottenberg.

HEARING OFFICER DICKMAN: Okay.

MR. STEINHAUSER: He made a very important point when he showed the video of Amberton preconstruction where they want to put their compactor, where our compactor was located, and where our compactor is now located.

HEARING OFFICER DICKMAN: Okay.

MR. STEINHAUSER: Because when we had the compactor where it used to be, we had some bear activity. Since we've -- which is in reasonable proximity to where they want to put theirs.

HEARING OFFICER DICKMAN: Uh-huh.

MR. STEINHAUSER: Since we moved our compactor in February/March of 2013 to the southwest corner of Fairway Preserve along Immokalee Road, we've had no bear complaints. I think that's very important to keep in mind, so thank you for pointing that out.

To my statement it's all about location, location, location, to coin a phrase. I have no objections to Amberton installing a compactor in the interest of safety of their residents.

My concern is their total disregard for the safety of the residents of Fairway Preserve. In the location where they have chosen the compactor, to be clear, the proposed location is along the east fence line of Fairway Preserve, a mere 21 feet from our fence.

To put it in perspective, Mr. Dickman, these tables are approximately six feet long. With that table being considered, that's 21 feet, approximately, from where the construction starts to the fence, and when if completed the project would be a mere 14 feet away from the back of 2100 Dancing Wind Lane, which is maybe from this young lady to where you're sitting. Imagine residents of Amberton or Fairway Preserve having to come out to their lanais and seeing that every day?

Their once peaceful area is now interrupted by noise from the compactor, cars pulling in and out to drop off trash, and let's not forget the pungent odors emanating from the compactor area. So much for any resident being able to come out in the morning to sit on their lanai to enjoy a cup of coffee or an evening glass of wine.

Now, Amberton will tell you that they have done their due diligence and completed an exhaustive search to try and find the best location for a trash compactor. Except for a recent, and apparently very brief examination of an alternate location that Fairway Preserve suggested on one of our many requests, they have been unable or unwilling to provide any documentation of said searches.

In my opinion they did none. They simply picked the location that was probably the easiest, most convenient and lowest cost to them, rather than picking a location that was more appropriate for this facility. Was any kind of traffic studies done regarding this location? Specifically, what would be expected to happen if more residents, and, therefore, more cars, needed to stop at the compactor than the unloading area allows for? This will block the one traffic lane exiting the property.

What happens if residents become impatient and cannot get out of their cars to dispose of the trash or simply exit the community because the traffic lanes are blocked.

Do those with trash not take the time to go all the way to the compactor box and start leaving trash on the roadside? And/or do drivers start honking at each other to get out of their way? Neither issue would be harmonious to the neighborhood and the adjoining Fairway condominium buildings.

They are requesting what they have called an insubstantial change to the buffer area. I would respectfully submit this is not an insubstantial change at all. The land code for Collier County has come to pass, I assume, over many years with exhaustive input from planners and the residents of Collier County. There is a reason -- there is a reason there is a ten-foot buffer between multifamily properties. Why is this so casually being tossed aside? Is it not that important to have a ten-foot buffer after all?

This buffer is also not being encroached by an insignificant structure. It is not an extension of a parking space or a few feet of a driveway. It is a large concrete structure housing a large, noisy, smelly compactor.

Not only is Fairway losing a buffer should this be approved, a quiet strip of landscaping is being replaced by a significant structure that significantly impacts those close to it.

In summary, Amberton tried to circumvent the process but avoiding a NIM meeting by informing the county there are no objections to their project, despite knowing full well and being told that Fairway Preserve was opposed to their project.

They got caught with their pants down so they scrambled to throw a new plan together with no real thought, no plans or concerns about the location or safety issues. This in my mind is a slap in the face to Fairway Preserve, and should be an insult to the county and this board. In short, they have concocted a recipe for disaster and they expect the county to be the chef. I urge you to deny this petition that is before you today, and send it back to Amberton and their representatives to come up with a new plan. Thank you very much for your time.

HEARING OFFICER DICKMAN: Thanks. Real quick couple questions. Is there an association for your community?

MR. STEINHAUSER: Fairway Preserve Condominium Association.

HEARING OFFICER DICKMAN: Okay. Great. You're just a resident, you're not speaking on behalf of the association?

MR. STEINHAUSER: I'm speaking for myself.

HEARING OFFICER DICKMAN: That's all I wanted to know. One other question, so, I'm looking at the aerial photograph of your area. Which building do you live in approximate to where the compactor is proposed?

MR. STEINHAUSER: I live in Building One. I'll give you the full perspective.

HEARING OFFICER DICKMAN: How far away are you going to be from it?

MR. STEINHAUSER: The new compactor would be more towards the back. I'm actually closer now to the -- my compactor than I was when I first moved in.

HEARING OFFICER DICKMAN: Okay. All right. Thank you. Appreciate it.

MR. STEINHAUSER: Thank you.

HEARING OFFICER DICKMAN: Thanks for your time. Who is next?

MR. YOUNGBLOOD: Our next speaker is Patricia Moore, followed by Arthur Moore.

MS. MOORE: Good morning.

HEARING OFFICER DICKMAN: Ms. Moore, is Arthur your husband?

MS. MOORE: Yes.

HEARING OFFICER DICKMAN: Do you live in the same household?

MS. MOORE: Arthur is also the property manager of Fairway Preserve, so he will be speaking on behalf of the association.

HEARING OFFICER DICKMAN: Okay. I'll do husband and wife, and they are in the same house and then I hear the same thing.

MS. MOORE: We own multiple units in Fairway Preserve, but I have been a resident in Fairway Preserve since 2004.

HEARING OFFICER DICKMAN: Okay. Go ahead.

MS. MOORE: When we first bought our home there, we had a compactor in the same end of the property that Amberton is now trying to put theirs. For the first few years of our compactor being close to that preserve, we had on many occasions, sometimes more than twice a week, bears, and every day there was raccoons, rodents.

There were days where we had to wait out a bear standing up -- I live on the third floor. So I would stand on the second floor landing and wait for that bear to get off my car.

Our compactor was behind a ten-foot wall. It had a gate. We had 25 to 30 recycling cans for a community of 264 units. After many close calls and lot of garbage being ripped up daily, we as homeowners of Fairway decided to move the compactor away from the preserve, because nothing we tried mitigated the problem with the animals coming from preserve. They could simply smell that compactor.

We relocated our compactor at great expense to the homeowners to the front of our property closer to Immokalee Road. Amberton is now looking to have their compactor built even closer to the preserve than Fairway initially had ours. Amberton's compactor will be less than 30 feet from where I park my car, my neighbors park their cars. It will be less than 75 feet from where our old compactor location was.

They say it will be behind the wall, which we know from experience won't matter. The animals will come. There is a better location for Amberton's compactor. I'm not opposed to them having one. I agree they need one. It would be the front right side of their own property where there is room, and a commercial property along that side.

The lack of planning on their part should not penalize Fairway homeowners who have already dealt with the problem. What about our safety and our rights to not have to deal with the animals, and most importantly the stench of garbage?

If you allow this to be built at the requested location, it will negatively affect my property and my quality of life. Several times a day I walk my dogs out along that property line out where they want to

build this compactor. I'm very concerned about the bears, the other wildlife that I can literally see as I sit on my lanai and I drink my coffee and watch the bear and the deer. It's a beautiful preserve. It is not an insubstantial change for the homeowners of Fairway.

We ask that you, please, do not allow this to be the location of Amberton's compactor. They have it -- they can have it placed to the front right side of their property, just like we did. I think the most important thing is that the homeowners in Fairway Preserve have had this problem.

We have spent over \$50,000 to correct it, and Amberton is here now asking us to disregard our concerns to place a compactor less than 75 feet away from where we already learned it's 100 percent not a suitable location.

The bears will come out and we will once again be dealing with ripped-up trash, the smell, the rodents and all that comes along with it. It is not a change that the people who should be forced to live next to this trash, who have already spent the money to have the issue corrected.

We ask that you, please, stipulate they can have the compactor, but it must be built along the frontside of their own community away from the preserve along the side of the commercial property where it makes the most sense. For the record I live in Building Nine, which is, literally, I can look out from my patio and see where they are going to put this thing.

HEARING OFFICER DICKMAN: All right. Thank you. Just so everyone knows, if I look away don't be offended. I'm looking at exhibits while you talk. I am listening. Okay. Who else do we have?

MR. YOUNGBLOOD: Arthur Moore is our next speaker, followed by Lowell Dunn.

HEARING OFFICER DICKMAN: All right. Mr. Moore, come on up.

MR. MOORE: Good morning, sir.

HEARING OFFICER DICKMAN: Good morning.

MR. MOORE: My name is Arthur Moore. As you are now aware, I'm a resident of Fairway Preserve for over 15 years, and I've also been the property manager for over ten.

HEARING OFFICER DICKMAN: So you're the property manager hired by the association?

MR. MOORE: Yes, I am the CAM for the property.

HEARING OFFICER DICKMAN: You're the CAM for the property. Okay. Are you testifying as the CAM for the property --

MR. MOORE: I honestly don't know what the specific legalities --

HEARING OFFICER DICKMAN: -- or were you authorized by your client to come here and speak?

MR. MOORE: I would say I'm actually here --

HEARING OFFICER DICKMAN: One second. Problem with the mic. You're too tall. All right. Yeah, I just want to be clear whether you're here in your individual capacity or whether the association, itself, has asked you to come here and express --

MR. MOORE: The association hasn't expressly asked me to come as the property manager. I'm identifying myself as the property manager because I have the practical experience of operating a compactor.

HEARING OFFICER DICKMAN: You said they have asked you to come here?

MR. MOORE: They have not. It was not specifically brought up that I represent the association.

HEARING OFFICER DICKMAN: Okay.

MR. MOORE: I didn't know that that was going to be asked, so I never asked am I representing the association.

HEARING OFFICER DICKMAN: Well, it just helps me understand who you are speaking on behalf of and also the -- how to weigh what you're testifying to, but, go ahead, no big deal.

MR. MOORE: Right. As I said I'm testifying as property manager of a community with a compactor.

HEARING OFFICER DICKMAN: Fair enough.

MR. MOORE: And my interactions with the other communities is two things I wish to bring up.
HEARING OFFICER DICKMAN: Fair enough. Go ahead.

MR. MOORE: The first thing is I do feel that this project is being ramrodded from the beginning with no consideration to our community. It was me that discovered the construction, and with the intimate knowledge of our property that I have as a property manager, and also a long-time resident, I was the one that went out and said, hey, guys, what's going on? Why are you building on our property? I was told to some degree to leave, and which is when we immediately called our attorney, said something fishy is going on here. I would defer to your expertise that survey mistakes happen. I sort of believe it was more of a, let's build it and get forgiveness later; that's my personal opinion.

After that first iteration of the project, no apology was made, no offer was made to reimburse the association for the expenses we went to in stopping them from building on our property.

So I also think the county approved this project based upon the false information, and, therefore, was an incorrect application, and, unfortunately, I'm hearing that that is a reason they're looking to continue with the approval, and I think that that's just compounding a mistake that was made at the beginning.

So this community, and we all saw the empty plot plan, they had lots of room to put a compactor back before they started building their town homes. I don't know who is the decisionmaker that decides that a town home with no storage, which Mr. Ottenberg actually brought up as well, was approved. It was recipe for disaster from the beginning, and now a compactor is being forced into an area that we don't believe is where it should be. And, again, I would also like to state I have no objection to a compactor, just the location. It's not about the bears or the compactor, it's about where the compactor is going.

I think the developer got this taken care of and figured, hey, it's going to be the next guy's problem. The original developer is not the current owner of the property. In fact, that development was developed as a condominium, too, and they converted it to an apartment community, the exact opposite of what Fairway did.

Speaking to their promises of maintaining, and FWC saying we do not oppose, or we would prefer a compactor as long as it's properly maintained, again, as the operator, for want of a better term, at Fairway Preserve, compactors by their nature get messy. There's just no way around it.

Due to its proximity as spoken to by previous people, we know from practical experience that the bears come out, and they will come out, no matter how much you try to keep it clean, and how is it going -- there's no staff at night. They've already said there is no staff on the weekends, that hasn't actually been brought up. So despite all your best efforts to teach people, to threaten people with fines, we are a mixture of homeowners and renters, and people just -- it just doesn't happen all the time.

We do not live in a perfect world. There's going to be trash, and there's going to be bears, and it's going to be in that location. We have not had any bear issues since we moved it to the furthest point away from both preserves, and that's -- that's just -- that's just the facts.

HEARING OFFICER DICKMAN: Let me ask a quick question. We're at five minutes right now.

MR. MOORE: I'm sorry.

HEARING OFFICER DICKMAN: I'm looking at an aerial photograph of the location where they're proposing the compactor. It looks like the two structures in your community that are closest, one is a carport?

MR. MOORE: Carport and building.

HEARING OFFICER DICKMAN: What is the number of that building that's going to be abutting it?

MR. MOORE: 7940, Building Nine.

HEARING EXAMINER DICKMAN: Yeah, that's what I wanted to know, Building Nine.

MR. MOORE: Building nine, carports, and then a garage structure.

HEARING OFFICER DICKMAN: And then so are the lanais screened lanais facing the preserve?

MR. MOORE: There's front and back.

HEARING OFFICER DICKMAN: Front and back.

MR. MOORE: There's units on the frontside that will be looking at the compactor, and there's units on the backside that are overlooking the preserve.

HEARING OFFICER DICKMAN: Okay.

MR. MOORE: They don't directly look at the compactor, but you can see the preserve is very close to that building. There's a green space there where lots of people walk their dogs.

HEARING OFFICER DICKMAN: Okay. Got it. Thank you.

MR. MOORE: And that's another one of those primary concerns I have. I understand I've gone a little long, so people addressed certain things and so I was jumping around a little bit. I would like to bring up one point.

Again, we're not opposed to a compactor, but one of the reasons for the compactor, they keep talking about bears and trash. Well, they don't -- they didn't, because there's not enough space, they didn't adequately plan for a recycling center. So they're going to continue with curbside recycling. So they are literally only reducing half the problem.

HEARING OFFICER DICKMAN: No. No. They already said they're going to eliminate curbside.

MR. MOORE: Curbside trash. They're keeping curbside recycling.

HEARING OFFICER DICKMAN: We'll get to that. Thank you.

MR. MOORE: They are only eliminating half of the problem. Thank you for your time.

HEARING OFFICER DICKMAN: Thank you. All right. Who else do we have?

MR. YOUNGBLOOD: Our next speaker is Lowell Dunn followed by Kathleen Dunn.

HEARING OFFICER DICKMAN: All right. How are you, sir? Nice to see you this morning.

MR. DUNN: My name is Lowell Dunn. I am an owner. We have been an owner since 2009 and a resident since 2013.

HEARING OFFICER DICKMAN: Are you in Building Nine, by chance?

MR. DUNN: No, I'm in Building Seven.

HEARING OFFICER DICKMAN: Okay.

MR. DUNN: Which would be directly across from the compactor if you ran a line to the west.

HEARING OFFICER DICKMAN: Okay. Okay.

MR. DUNN: Having lived there over the years, we were originally directly adjacent to the existing compactor in Fairway. Arthur and his team are a phenomenal management company that do whatever it takes to keep everything on the property perfect, but you can't clean stink.

As a professional I've worked in the food manufacturing industry for 35 years from dairy to pickles. We handle tons and tons of waste. We spend hundreds of thousands of dollars to eliminate the odor that's attributed from the waste that's generated.

The same thing exists at a compactor. You are putting in anything from food to adults' Depends to children's Pampers. This product is supposed to land up in the compactor. I can guarantee you from years and years of living at Fairway that it won't.

We have valet garbage five days a week where our garbage is picked up by association employees that take it to the compactor. Well, come Saturday and Sunday when we have to rely on our residents to bring their own trash to the compactor, some of them put it in the compactor, some of them don't, and the odor that is generated is impossible to remove.

Professionally the companies I have worked for have spent hundreds of thousands of dollars to mitigate odor, and Russell Ottenberg will tell you they're going to put these 20-pound blocks to help eliminate the odor that's being generated.

These blocks are the equivalent -- and pardon what I'm going to say -- of walking into a bathroom after someone did a bodily function and spray a little bit of Fabreze, and what you have is an odor of poop and Fabreze, and that is not an odor that people that live at Fairway and at Amberton in close proximity will want to smell.

On a good day where it is controlling the foul odor of the compactor, you're going to open up your window and smell Fabreze. It's just -- it's -- when you live in your own home, you place the garbage as far away from your door and your window as possible. You don't place it under your bedroom window. Maybe you build a little shed, and put it in, or put it on the far side of your property; that's what Amberton -- that's what Fairway did concerning its own compactor. It was moved as far away from any of our occupants' residence as possible. This compactor is being put under the nose of everyone who lives there.

HEARING OFFICER DICKMAN: Thank you. One -- maybe two questions. One question is do you all have recycling pickup and how is it done?

MR. DUNN: Recycling is done on a person by person basis. We have a --

HEARING OFFICER DICKMAN: You have private receptacles?

MR. DUNN: Yes. Yes. Each resident is --

HEARING OFFICER DICKMAN: Hold on, everybody. You'll get a chance. Let me ask the questions so I can understand what's going on. I want to understand. So recycling is different than garbage. So your recycling is set out on the street and someone picks it up?

MR. DUNN: No. Adjacent to our compactor area we have a walled-off storage area. I don't know the number of --

HEARING OFFICER DICKMAN: Okay.

MR. DUNN: -- containers. Arthur would be better suited to speak to that, but there's at least 20 to 35 containers --

HEARING OFFICER DICKMAN: Okay.

MR. DUNN: -- and the residents take their own recycling to the compactor and recycling area and it's stored there.

HEARING OFFICER DICKMAN: In an ad hoc manner, whenever they feel it's necessary they go there?

MR. DUNN: Yes. Right.

HEARING OFFICER DICKMAN: All right. And, secondarily, your pickups, and I'm sure your expert will come in and talk about this, but you have a truck that comes through the neighborhood --

MR. DUNN: No.

HEARING OFFICER DICKMAN: -- and picks up at the compactor?

MR. DUNN: Okay. Regarding a person's daily trash Monday through Friday?

HEARING OFFICER DICKMAN: Yeah.

MR. DUNN: Between the hours of 8:00 and 10:00 in the morning residents put their trash directly outside their door. There are a number of employees that work for Fairway Preserve that pick that up, they deliver it to the compactor area, put it in the compactor, and that's it.

HEARING OFFICER DICKMAN: Okay. All right. So -- all right. Thank you. That helps me understand.

MR. DUNN: You're welcome. Thank you very much. Appreciate your time.

HEARING OFFICER DICKMAN: Thank you for being here. All right. Who is next?

MR. YOUNGBLOOD: Our next speaker is Kathleen Dunn, followed by Katie Berkey.

HEARING OFFICER DICKMAN: All right. Ms. Dunn, come on up.

MS. DUNN: Is this okay?

HEARING OFFICER DICKMAN: Can you move that mic down a little bit?

MS. DUNN: Thank you very much. I'm Kathleen Dunn, and I am a resident of 7965 Preserve, Building Seven. We --

HEARING OFFICER DICKMAN: I take it that was your husband?

MS. DUNN: Yes.

HEARING OFFICER DICKMAN: All right.

MS. DUNN: I have a different viewpoint on it. I mean, I agree that it's wonderful they're going to put in a compactor. It just shouldn't be right next to us.

HEARING OFFICER DICKMAN: I understand.

MS. DUNN: And the reason why, in fact, when I walked in here today, next door is the Bureau of Tourism, I believe, and we have owners of the condos and some of these people come with their families on and off through the year from different areas of the United States and internationally. This brings in tourism dollars, and we all want tourism dollars in Collier County as well as Naples.

If there's -- if people are coming in and they see garbage and smell and disgusting things right next to where they might park their car or might live, or even drive around, that's unacceptable. It really is.

When we came here we came from the northeast, and sometimes because there's so many people there, that sometimes people aren't that neat and you see garbage different places on the streets, in condominium associations, et cetera, even in the fancy ones.

Well, down here everything is clean and that's part of the attraction to Naples and Collier County and I do feel -- I mean, I've seen people go up to people if they've thrown things out of their car, or in a parking lot, and they consider that disgusting. Well, how would you like to live next door to that type of problem? I wouldn't.

I wouldn't want to buy in a place -- because you're going to have your family, your kids, your grandkids, maybe your grandparents, but you're spending all the money to come here from -- I know we have people from England, from Canada, from all over the U.S., and it's just not fair. This can be -- can be dealt with, but in a different part of Amberton. That's it.

HEARING OFFICER DICKMAN: That's it? All right. You did a wonderful job. Thank you for being here.

MS. DUNN: Thank you very much.

HEARING OFFICER DICKMAN: All right. Who do we have next?

MR. YOUNGBLOOD: Go back to Katie Berkey.

HEARING OFFICER DICKMAN: All right. Ms. Berkey, come on up. Is that -- we have other speakers?

MR. YOUNGBLOOD: We have online speakers.

HEARING OFFICER DICKMAN: Why don't we take the online speakers. Let's get all that out of the way.

MR. YOUNGBLOOD: All right. Our first online speaker is going to be Carl Renda. See if Carl is still with us here. Does not appear so.

HEARING OFFICER DICKMAN: All right. Next?

MR. YOUNGBLOOD: Next speaker is Betty Mair. Betty, would you, please, unmute your microphone for us? Betty, are you with us? Maybe we'll come back to Betty.

HEARING OFFICER DICKMAN: Yeah. Let's move on.

MR. YOUNGBLOOD: Okay. Next speaker is going to be Yuliana Franco. Yuliana, are you with us?

MS. FRANCO: Hello. Can you hear me?

MR. YOUNGBLOOD: Yes, we can hear you loud and clear.

MS. FRANCO: Okay. Hi. Good morning. My name is Yuliana Franco. We live in 7965, Apartment 717. It's just across the -- across where you guys just have explain to where the new compactor garbage is, just straight in front of me. I just want to put an observation. I just buy this property. I've been renting in Amberton for two years, and I want to just put one other point for, like, owner of this apartment is not really observation view is nice when you just purchase, and like the other owner that say it's not good for families, come over around all the United States and you've got a place to be nice with your kids. Also with this smell, and all they just tried to put on the right way to live.

One of my comments to give an option for Amberton, like I said before, I was renting, one of the issues that they have the can, the garbage can outside the old apartments, is that they get rid of all the cans and put a compactor in the other side of the community, that way all the problem that the bear have. I was there when they had the attack on the bear in the home on the back side of the preserve to the front of

the Amberton gate.

So on the issues I see they have to take it like personal to Amberton and not move it to our community, when we just have issue before that I want to mention, that they already changed on the side of the community.

So I'm not agreeing with this option to move all the package -- the compactor garbage on this plan. Thank you.

HEARING OFFICER DICKMAN: Thank you. Next?

MR. YOUNGBLOOD: Our next speaker is going to be Joseph Albano. Joseph Albano, are you with us? All right. We'll move on to Paul Becerra. Let me find Paul here. Mr. Becerra, are you with us, sir?

MR. BECERRA: Hello. Yes, I'm here. Can you hear me?

MR. YOUNGBLOOD: Yes, sir. Go right ahead.

MR. BECERRA: Okay. I'm Paul Becerra. I'm here to speak as owner of Units 627 and 936. My company is part owner in that building as well as Building Nine. That is closer to the project proposed by Amberton.

Instead of going to follow the consideration of recommendations and supposed better practices, I would like to put the record numbers from official sources. The first, according to the United States Environmental Protection Agency almost five pounds of waste per person is produced per day on average in the United States on the report of 2019.

Amberton has around 300 apartments. We're talking about 1,000 residents. We're talking about 5,000 pounds of waste produced daily. We're talking about 2.5 tons of waste produced by Amberton daily. According to this report 1.16 pounds per person per day of recycling waste is produced. We're talking 1,160 pounds of recycling waste produced daily by Amberton, and they're planning to solve that with four trash bins, just four?

This is going to be an overflow of waste, and infestation of birds, rats and other animals, and it's going to be an affect to all of us. Also, I would like to put on record that I believe a professional engineer recognized in previous meeting that we have on this Golden Estates in the public that the design was deficient.

Why the county would approve a design that is deficient and build a bad design, why you insist on this? It's better no design, than a bad design.

Engineering is designed and concerned about solving problems with numbers, but not a bad design that may harm both communities. Why to consider that if it's a deficient design from the beginning? Also on the documents presented by the professional engineer, there is no mention of operations. There is no drainage for the leaching. The maintenance is just a compromise not a plan, not even talking about cleaning. One other thing that was mentioned by one of the previous participants of the meeting, there is no traffic study. There is no traffic study, not even a parking spot for people to park there, and to put their trash away. So how do they plan to solve that?

One more thing that I want to speak about, and it was said by our attorney, we're talking about just owners or rented community who doesn't even live in Amberton, who doesn't even live in the State of Florida that is going against hundreds of fellow owners, including myself and my part, my company that are owners that we represent.

We the people ask the county to reject this project for our health, since it's deficient from the beginning, and it may cause harm and problems to both communities. Please, I ask that the county to reject this design, relocate the compactor, make new dimensions for the sewer works, make new capacity for the waste system and double-check the calculations and the design and the plans. Let's don't make a worse problem without a better solution. Thank you very much for the audience.

HEARING OFFICER DICKMAN: Thank you. Who else do we have?

MR. YOUNGBLOOD: That was our final registered speaker. We can go back to Ms. Berkey now if you'd like?

HEARING OFFICER DICKMAN: Real quickly I want to make sure no one -- there was a

couple people that either dropped off or couldn't unmute. Let's call their names real quickly, see if they're back.

MR. YOUNGBLOOD: Let's see. I checked in with Betty Mair. She said she does not intend to speak. She's just watching. The other participant that we have is Joseph Albano. Mr. Albano, are you with us?

HEARING OFFICER DICKMAN: Okay. Let's move on.

MR. YOUNGBLOOD: That's it.

HEARING OFFICER DICKMAN: That's it? Okay. All right. So what I want to do right now if I could is we're at 11:00, I'd like to take a brief comfort break, if I could, maybe, why don't we come -- reconvene at -- we'll take ten minutes. So it will be 11:05. All right. Yeah, thank you. Ten minutes.

(A recess was had from 11:00 a.m. until 11:07 a.m., and the proceedings continued as follows.)

HEARING OFFICER DICKMAN: Okay. We're back reconvened. It's about six or seven after 11:00. I have been informed there is one more public speaker. Let's go ahead and have that public speaker, and we'll have the lawyers/planners go at it.

MR. YOUNGBLOOD: All right. We have David on the phone with us. David, for the record can you, please, state your first and last name for us? David, are you with us? David, are you with us? I'm sorry.

MR. WICKSTROM: Yes, I am. Yes.

MR. YOUNGBLOOD: All right. For the record could you, please, state your first and last name for us?

MR. WICKSTROM: Yes. My name is David Wickstrom.

MR. YOUNGBLOOD: All right. Go ahead.

MR. WICKSTROM: All right. For context I am an Amberton resident. I'm also in a way representing my wife, who lives in the same unit. I have been in Amberton for three years in the same unit, which is 2103, and actually one of the units that will be directly in front of or adjacent to, if you will, the trash compactor itself.

So I have a little bit more of a personal stake in this in that I will actually have to see and smell and just be a part of everyone using this trash compactor every single day, as both my wife and I work from home, have worked from home for three years, and will continue to work from home for the foreseeable future.

So when I first heard about this project, it was actually my own research, if you will. Last year before the COVID pandemic is when this whole project kind of originally came up.

I saw them doing construction in my backyard, if you will, you know, the shared back space of my fellow Amberton residents, and I didn't know what it was. We literally had a crane up above our unit holding up different pieces for the construction, and I was pretty confused. I just wasn't sure what was going on. So on my lunch break I walked to the front office and I asked and they explained that they were putting in a trash compactor, and right then I voiced my opposition to this for mostly the same reason as the other people have already mentioned, but I've done trash compactors before. They're not more convenient.

Nobody likes to drive to a trash compactor. Everybody prefers to put their trash in a trash can and have it picked up. They're dirty. They smell. They attract pests, and in my opinion this is a way for them to lower the monthly cost and hope that the cost of the unit itself will be made up over time.

So from my perspective when I voiced this, they were pretty receptive, I could say, but really it was more about trying to get me onboard. The perspective that was taken was, well, I understand that the value of the unit, my unit, has gone down, and in defense that each unit in Amberton is according to its perks, location, layout, et cetera, each unit here in Amberton is a little bit different. They are not all equal.

For my particular unit I expressed that I would not have chosen this unit had there been a trash compactor. I would not renew my lease if there was a trash compactor. It was just not part of the

aesthetics, and got rid of the perks that has been one of the best perks for the entire community for us, not having to worry about lugging trash in your car or on your car or walking down the street to trash compactor, and the simple response was, okay, we'll pay you for it. So I was offered rent credit to basically get me onboard with this project.

Now, none of this was official. None of this was in writing. None of this was documented in the lease, because at the time I was in between leases. I was not up for a lease renewal yet. So I don't know if they would've actually followed through, but at the time I was not pleased either way. I did not want to take the rental credit and I was not going to -- my plan was to not renew.

Then the COVID pandemic came along and halted this construction project along with many other construction projects. To me that was the end of it. I actually was not aware this was going to be an ongoing project. I thought it was taken care of.

In fact, it seemingly has been renewed, and I'm only aware of this meeting and able to make the phone call because a gentleman came to my front door yesterday afternoon to let me know that this meeting was taking place and that I would have an opportunity to speak and voice my opposition to this. So quite frankly I'm really disappointed in the process overall.

I'm taking time off of work to be here to voice this, and if there's any inclination among anyone that this project was okay by any quote all residents or anyone in Amberton, that is definitely not the case, as I have voiced my opposition to this to the front office multiple times since the very beginning.

So I truly hope that this project does not move forward. It will definitely be one of the reasons that I consider moving away from Amberton if it comes through, and in my opinion is not part of the aesthetics of Naples.

It's not the area of Naples, and not part of what I would consider to be a typically expected luxury community, and even still this is the -- this is the way that Amberton even advertised themselves.

So if you can't tell, I'm strongly opposed to this project. I appreciate your time in allowing me to speak on this, and if the gentleman who came to my front door is listening, I appreciate the time that he spent to let me know of this. Thank you. That's all.

HEARING OFFICER DICKMAN: Thank you very much. Any other public speakers?

MR. YOUNGBLOOD: No.

HEARING OFFICER DICKMAN: Okay. So we're going to close that part of the public hearing. Ms. Berkley (sic), would you, please, come up, and, Mr. Ottenberg, you're going to have plenty of time for rebuttal. Don't worry. So here's what I have to do, Ms. Berkley --

MS. BERKEY: Berkey, for the record.

HEARING OFFICER DICKMAN: I apologize.

MS. BERKEY: Everyone adds an L. I'm not sure why.

HEARING OFFICER DICKMAN: No, it's my fault. I apologize. So the reason I'm asking what hat you're wearing, and I note here that you're -- it looks like you say you're an alternate Hearing Examiner for Bonita Springs; is that right?

MS. BERKEY: For code enforcement, yes.

HEARING OFFICER DICKMAN: For code enforcement, so you sit as a hearing examiner?

MS. BERKEY: I've not been called upon yet.

HEARING OFFICER DICKMAN: Okay. So, well, in that capacity, you know, would you allow somebody to be both a lawyer and provide testimony as a lawyer, and then also argument, legal argument?

MS. BERKEY: I am making planning arguments, and with respect to code consistency, and as I have mentioned, I'm a deputy or alternate. I have not been called upon yet, but so far there has been no objection.

HEARING OFFICER DICKMAN: Well, no, no, wait, wait. All right. So I just want to -- the record has to be clear here and I need to make some decisions, so the rules of evidence in this forum, quasi-judicial forum are informal, however, meaning that I can weigh them to the extent that they're germane to the criteria for this insubstantial change.

So, you know, obviously for -- in those scenarios, and I assume you've been acquainted with quasi-judicial hearings, that expert testimony is weighed differently than layperson testimony, in that, you know, that attorneys don't give any expert testimony, and here's what I'm going to do, because I don't want to argue about it, okay, so what I'm going to allow you to do by close of business tomorrow, is to provide me with legal doctrine, provide it through the county, provide Mr. Ottenberg the same copy. I just want legal doctrine that says you can wear both hats.

MS. BERKEY: And to clarify I'm not seeking to wear both hats. I'm seeking to only wear my planner hat.

HEARING OFFICER DICKMAN: Okay. All right. So you're going to present testimony only as a planner, and you're not going to make legal arguments?

MS. BERKEY: Yes. It may be helpful to hear my testimony first to help clarify what weight it should be given, but it is with respect to the criteria for the insubstantial change, and I just have a couple general questions with respect to notice, but, again, through the lengths of complying with the administrative code and LDC with respect to notice.

HEARING OFFICER DICKMAN: Okay. So I'm going to put at the top of your resume that you are a planner --

MS. BERKEY: Okay.

HEARING OFFICER DICKMAN: -- not a lawyer. And if you would step back for a second, I want to ask the county a couple quick questions. This has been presented to me as an insubstantial -- is John here or did he disappear? No, there he is. He's holding out here.

There's been argument saying this is not an insubstantial change, you know, that's a term of art in the city's Code of Ordinances and Land Development Code, et cetera. Is it your opinion still that this qualifies as an insubstantial change?

MR. KELLY: Again, John Kelly for the record. As you'll see in the staff report, the criteria are specifically addressed on page -- beginning on Page 5 of 9, specifically LDC Section 10.02.13.E.1 and E.2. Given the responses to each of those criteria, yes, staff believes that it's an insubstantial change.

HEARING EXAMINER DICKMAN: Okay. We're going to put that to rest. Okay. There was some questions about notice. All right. So for the record, the Hearing Examiner in Collier County has the ability to waive neighborhood information meetings. It just says that, it does, and there have been multiple requests of waivers and I have approved waivers such as neighborhood information meeting waivers with the caveat that once they come to the hearing, if I sense or feel there is a need for that, then I would send that back, but this is -- this is my ability to do that, I did do that, but then we did ultimately require a NIM take place, and a NIM did take place, and that's part of due process.

There were also -- and I'm going to say this, and correct me if I'm wrong, I get corrected all the time, you know, radius notices went out; is that correct?

MR. KELLY: Correct. I'll just say that this meeting was completely readvertised.

HEARING OFFICER DICKMAN: Readvertised. Okay. Did mail notices go out?

MR. KELLY: Yes.

HEARING OFFICER DICKMAN: And those mail notices go to the property owners; right?

MR. KELLY: Property owners and associations.

HEARING OFFICER DICKMAN: And associations, so if you're a tenant, it's the property owner's responsibility to let the tenant know about this. If you're a renter, when you sign your lease, you better put in there, please, notify of any public notices you receive.

MR. KELLY: There should also be a pretty prominent sign nearby.

HEARING OFFICER DICKMAN: That's right, and why I put this on the record, and it may seem a little elementary, but it's important to check the box of due process. I believe there has been a lot of notice of this.

It's unfortunate that someone might get surprised. There's always somebody that learns about this at the last minute. I'm not questioning that. There's only so much noticing you can do on this, and I believe it has been done.

MR. KELLY: Correct. The legal obligations have been satisfied.

HEARING OFFICER DICKMAN: All right. Thank you very much. Thanks for clarifying that. All right. So let's -- Ms. Berkey, if you could let me just do this, how much time do you need, and please don't tell me twenty minutes?

MS. BERKEY: No, I was trying to keep my comments to five minutes or less.

HEARING EXAMINER DICKMAN: Perfect. Excellent. Start out by telling me who your client is.

MS. BERKEY: Yes, my client is -- again, Katie Berkey for the record, I have been sworn, with Beck and Poliakoff, representing Fairway Preserve at Olde Cypress Condominium Association directly to the west.

HEARING OFFICER DICKMAN: The association, the board of directors of the association?

MS. BERKEY: Right. I am here at the pleasure of the board.

HEARING OFFICER DICKMAN: Okay. Correct.

MS. BERKEY: And with respect to due process, my only question was with the mailed notice to the property owners. The affidavit for this renote was different than the affidavit for the NIM, and didn't expressly provide the date of mailing. It just says on June 4th we received notice from the county so --

HEARING OFFICER DICKMAN: Wait. Wait. Hold on. You're a planner, and now you're making legal arguments about the notice.

MS. BERKEY: The code requirement for notice is 15 days prior, and I don't think Russell would object to just clarifying the date the letter went out.

HEARING OFFICER DICKMAN: You're making legal arguments about notice. Get to the competent, substantial evidence about the criteria.

MS. BERKEY: With respect to compatibility and proximity, as many of the speakers before me had mentioned, the code does require the Type A ten-foot wide buffer, even between two multifamily uses, for a reason, and that's to avoid deciding incompatibility between even very similar multifamily projects.

Here the buffer that the facility would be encroaching into, to require the anticipated effects of just straight multifamily residential uses, you're instead placing the most unwanted, undesirable accessory use that a multifamily development could have, nine feet into that required buffer with only a one-foot setback.

This is not the best location, certainly, for the facility. Although, I think everyone in the room agrees that bears are an issue, a compactor is one option to address those concerns, but this location is not ideal given the proximity.

With respect to the criteria for unsubstantial change approval with respect to traffic circulation, I just want to mention that as a function of the site plan as proposed, the internal traffic circulation is changing. The trash truck is either going to have to make a U-turn or loop around, pull into the exit road and back up into the apron to access the facility. There's one pull-off space for ADA accessibility for residents to pull off into the shoulder, essentially, and deposit in the compactor as well.

HEARING OFFICER DICKMAN: To that extent what is your experience with traffic planning?

MS. BERKEY: Zero, but I mention that because the applicant has the burden to put on substantial, competent evidence with that item, and only conclusory statements were made with respect to traffic circulation.

With respect to their consideration of an alternate southeast location, in what the applicant had provided into the record, there was the reference to stacking and redirecting traffic to the southeast corner. So those concerns with respect to stacking are also very much going to be present in this location on the exit road, so I just wanted to mention that as well.

With respect to Appendix D, which is the letter from Fish and Wildlife, which was just provided today and I don't believe was in the initial materials, Fish and Wildlife staff acknowledges that the compactor is not the only solution or only option, but it does say it's an excellent option.

As you go to the BearWise website as well, it provide alternatives, such as latched, individual toter bins, among other solutions, so I just want that out as well.

HEARING OFFICER DICKMAN: Do you have any other solutions?

MS. BERKEY: Well, just from what Fish and Wildlife offered, which is latching --

HEARING OFFICER DICKMAN: Well, I need your expert testimony about what other things they should be doing.

MS. BERKEY: Well, I'm just reiterating that Fish and Wildlife, who is the expert who put that letter in the record --

HEARING OFFICER DICKMAN: You're making a legal argument now that Fish and Wildlife's letter is somewhat deficient.

MS. BERKEY: I'm not. I'm saying in no way do they endorse this as the only solution. Just from the plain letter of their terms, it says it's an excellent option. I'm just reiterating that their own materials provide that there are other options.

HEARING OFFICER DICKMAN: I understand that, Ms. Berkey, and I'm not trying to be adversarial here, but this is what is confusing, is that I know the difference between a legal argument and giving me expert testimony about the issues at hand, and you're making a legal argument that, okay, Fish and Wildlife has other options. You're just saying that, but you're not saying here are the options that they should be using.

MS. BERKEY: Well, an option that they can use, which has been provided as a suitable option, is latching, individual toter bins, which haven't been incorporated as an alternative to this location, with respect to the compactor.

And in terms of context, too, and I do appreciate Mr. Ottenberg having worked with us so closely, it was a function of Fairway Preserve's proactiveness that we have been involved in the process and Mr. Moore had mentioned that with respect to the surveying error, in November 2019 after the surveying error was identified, Fairway Preserve had sent a letter to Amberton and said please keep us apprised of your plans and where it would be located, to which there was nothing in between up until the courtesy notice of this application, and the NIM waiver, which, thank you for making it conditional on whether opposition did arise, clearly this has been a challenging process and location for the neighbors, and we appreciate the opportunity to have the NIM and be here before you today.

With that said we've noted the challenges, the concerns of the residents as well as the concerns of the tenants, with that said if -- I think there are reasons why it is not approvable in this location, but if it your pleasure to approve it, we kindly ask, as Mr. Ottenberg has requested, too, that consideration be given to the conditions of approval that we've negotiated since the NIM that in our view are minimum best practices given the one-foot setback from the shared property line in an attempt to address odor, pests, bear attractive qualities and things of that nature.

With respect to the covenant in general, the negotiation between Amberton and Fairway Preserve has always been twofold. The conditions of approval presented to you for consideration as a part of this request, coupled with the covenant. So there were enforcement opportunities for the parties outside of the zoning approval.

To Mr. Ottenberg's point about possibly making the items, specifically the western hedge and resodding the Fairway Preserve property optional or conditional upon the covenant being executed between the parties, that's really beyond the scope today, but we would ask to not be removed as a party.

We provided comments on the draft that's before you today for Amberton's consideration they are still reviewing. We've been very willing and cooperative to try to reach some sort of minimum solution given the proximity here, and we will continue to be cooperative, and those two items are material for the association as they are an attempt to screen on the western side and restore the sodding as well, so we kind of ask those be considered, too, and we're optimistic that Mr. Ottenberg will continue to work with us.

The hope was to have the covenant executed before today, so there was some level of comfort for all parties. Unfortunately, it wasn't possible for the hearing today. And do you have any other questions

of me, Mr. Dickman?

HEARING OFFICER DICKMAN: Don't go anywhere. Have you evaluated their area and have you -- do you have a recommendation for a better location for this particular compactor?

MS. BERKEY: Well, Fairway Preserve at the NIM had presented the southeast corner as an alternate location for Amberton to consider, and Fairway Preserve was suggesting that Amberton do what Fairway Preserve did at great expense when they were faced with the same bear issues in a similar location, and that was to consider the southeast corner along Immokalee Road.

It's my understanding that there's a buffer running east to west and north to south in that corner, so it would be the same process that they're in now, is my understanding, to locate it there, and that has a similar road, asphalt arrangement similar to the entry road. So it would allow a truck to pull forward and then back in.

In my limited estimation, I don't believe Amberton went so far as to get an engineering sketch to see what the spacial availability would be, but that was discussed at the NIM as an alternate solution.

HEARING OFFICER DICKMAN: Do you have any doubt that there is an issue with human/bear interaction?

MS. BERKEY: No. No, I do not, and I think the residents have agreed that that is a concern, it was a concern, and their original compactor location is very close to where the proposed compactor is today for Amberton wasn't working there. It was too proximate to the preserve.

At their own expense I believe they had a special assessment on the members to make that change happen. They elected to move it to the southeast corner, and I believe at that time it was in concert with Fish and Wildlife staff to make that change.

HEARING OFFICER DICKMAN: Okay. Do you -- does your client -- do the residents there have any bear -- human/bear interactions now?

MR. MOORE: Can I speak to that?

MS. BERKEY: May I call Mr. Moore back up?

HEARING OFFICER DICKMAN: We'll get back to that. We'll get back to that. I want to know if you're having the same problem, even though you have a compactor? Do you have any argument about whether or not this is an insubstantial change? Do you believe it is or isn't?

MS. BERKEY: I believe the traffic circulation would maybe prompt it to be substantial.

HEARING OFFICER DICKMAN: Okay. All right. So one of the things I'm going to be looking at -- okay. So I'm -- it definitely appears to me that this was on your client's radar screen for a long time. It was supposed to come here. We kicked it back for a NIM. I don't see any surprise here. I mean --

MS. BERKEY: Except the delay from November 2019 until the courtesy notice was sent, despite having reached out to Amberton.

HEARING OFFICER DICKMAN: And I suspect that I'm going to hear that up to now you've been a lawyer, and now you are a planner, so that's a bit of a surprise to the other side.

MS. BERKEY: And my signature provides I am both. I'm a shareholder and a certified planner.

HEARING OFFICER DICKMAN: I understand.

MS. BERKEY: We've been in close communications leading up to the NIM and since.

HEARING OFFICER DICKMAN: Okay. I understand that, and, again, I would be curious to know if you have any legal doctrine that allows you to operate in both capacities. If you do, supply it to the county by close of business tomorrow, and to Mr. Ottenberg, if you would.

MS. BERKEY: Understood.

HEARING OFFICER DICKMAN: Okay. Yeah, let's hear about the human/bear interaction from your client.

MR. MOORE: Do I need to go up to the microphone?

HEARING OFFICER DICKMAN: Yes, you do, sir.

MR. MOORE: Again, for the record Arthur Moore, property manager for over ten years,

resident for 15, give or take. Since we -- we did have bear interactions when our compactor was where it originally was. I had multiple reports and conversations with other residents.

Apparently, nobody bothered to report it to Fish and Wildlife, because, hey, there's woods, and there's bears. Since we moved it to the front, we have not had a single report, and I can -- I'm saying that under oath, a single report from a resident of a bear at the new compactor location. We've had a couple of bear sightings just in general --

HEARING OFFICER DICKMAN: Uh-huh.

MR. MOORE: -- but there has not been a single interaction that I'm aware of at the new location.

HEARING OFFICER DICKMAN: Okay. That was a good solution to your community?

MR. MOORE: Yes, it's been a good solution to our community, and not just bear by the way, raccoons, possums, the general folk.

HEARING OFFICER DICKMAN: Lots of animals out there.

MR. MOORE: But the bear is obviously the largest and most dangerous when it comes to interactions. Our issue with wildlife has been eliminated, as far as we are aware, when it comes to bears, and substantially reduced regarding every other animal, because they have to traverse through a much further area from the preserve and obviously through parking areas closer to buildings.

HEARING OFFICER DICKMAN: Okay. All right. Thank you very much. I appreciate you coming up. All right. Ms. Berkey, anything unless else you would want to close up?

MS. BERKEY: That was it, and, of course, if there is questions of me following rebuttal, thank you.

HEARING OFFICER DICKMAN: I appreciate you being here. Please don't take my questioning of you adverse. I respect you highly.

MS. BERKEY: Thank you. I appreciate that, and Russell and I were just talking yesterday, that despite being on opposite sides of this issue, we have been both keeping it professional and courteous, and thank you for doing the same.

HEARING OFFICER DICKMAN: Thank you. Okay. So, Mr. Ottenberg, I have some questions for you.

MR. OTTENBERG: Certainly. Russell Ottenberg.

HEARING OFFICER DICKMAN: All right. Let me go through a few things because I wrote down some things, and maybe it will have to go to the county, maybe not. Let's see how this is going.

So it sounds like a lot of this has to do with the location, I mean, the -- your neighbors seem to sympathize about the bear issue, doesn't seem to be a question, not, you know -- understand that there's a compactor issue. Although their planner has said there could be other options, but the location, tell me about the location. Did you -- how -- how much did you search for a location?

MR. OTTENBERG: Certainly, and just to be clear, I was not involved in the initial location search.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: So what had happened when Ambernton decided to go to a compactor, they looked at, I think, two or three locations throughout the property, and this is also addressing one of Mr. Steinhauser's comments about not having documented that.

At the time that that search for a location was done, there was no knowledge, thought, idea, that this was going to go to a public forum, so there was nothing recorded, as you would expect.

I mean, you know, the folks involved go look at the property, said what about this location, this location or this location, and so they looked at the southeast corner, which is where you have heard testimony where the Fairway Preserve folks would like to have it, and that was not a preferred location for a number of reasons.

First of all, there isn't room, the room to have the compactor, the approach of the apron and everything that's needed to get the truck off.

HEARING OFFICER DICKMAN: Is all of that dictated by the company picking up the

compactor, and picking up the garbage, they need -- they have certain design criteria to do what they have to do, as well as I imagine the county has its own, you know, building code, design codes; right?

MR. OTTENBERG: Yes. So there is a certain size that the enclosure needs to be, and then you have to -- you have to have enough of an approach apron to get the truck completely out of traffic, and those geometrics are to get the truck out and to turn it are governed by other things.

So when we did do this location, we had to prove to the county and Waste Management that the truck could access the compactor by getting completely off the road and make the turns, and we provided truck-turning movements to the county and to Waste Management to demonstrate that. The revised plan, we did the same thing, to ensure that that would work.

So the southeast corner, because of geometric constraints just doesn't work. The other issue is the southeast corner has normal parking stalls that back into the driveway, similar to what a shopping center would have, and so if there was a truck or something or cars stopping at the compactor there, then they would potentially block people from backing out of those parking spaces. So, obviously, we don't want that to occur.

Now, at the location that we have proposed, the outbound lanes are actually two lanes, okay, so there is a bypass lane for people who want to get out of Amberton without blocking traffic.

HEARING EXAMINER DICKMAN: Let me ask you about that. I was going to get to that. So both communities share ingress/egress; right?

MR. OTTENBERG: Correct.

HEARING EXAMINER DICKMAN: They share that; right?

MR. OTTENBERG: Well, they don't share that; that driveway is within an easement, but towards the southern end is where Fairway Preserve accesses their property.

HEARING OFFICER DICKMAN: All right. So the main access is onto what major arterial?

MR. OTTENBERG: Immokalee.

HEARING OFFICER DICKMAN: Immokalee. All right. So everybody that lives there has to go through the main area, but what you're saying is that there is another route to, you know, that's -- in other words, you're not going to get blocked?

MR. OTTENBERG: You're not going to get blocked, because there is a -- the outbound side where the compactor is, is actually two lanes.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: Okay? So that provides the ability for -- if there was car stacking there, that would provide the ability for cars to get out, and if I may, I can talk about traffic a little bit, or do you want to ask some more questions?

HEARING OFFICER DICKMAN: No, I just wanted to clarify that, because I'm looking at some things that are in the record. Hole Montes put together some diagrams, as well as some other -- I have them here. I just wanted to clarify that, about the access onto Immokalee, and both communities have to use that, and I wanted to find out, you know, there were arguments about, you know, the, however frequent the pickup is going to be, whether that's going to impact, you know, traffic, and so forth, and you mentioned -- I think you answered my question to that extent.

MR. OTTENBERG: Okay.

HEARING OFFICER DICKMAN: The other thing was, I want to understand, you know, recycling came up, okay, so can you speak to the recycling issue?

MR. OTTENBERG: Certainly. So as was noted I believe by, I want to make sure, by Mr. Becerra, at the NIM, and, in fact, I think everything you've heard today was brought up at the NIM as well. So at the NIM the question was asked about the adequate sizing of the recycling area next to the compactor enclosure, and prior to that we had internally agreed it's -- it's not nearly big enough. It will not suffice, and I did state that at the NIM as well. I said, you know, that's not going to be used for recycling. It's going to be a large items area only.

So we were discussing with the county and Waste Management how to handle recycling. Unfortunately, because we have 306 units, there is not an area large enough on the property to consolidate

recycling, there just isn't, and so, unfortunately, we have to continue with curbside recycling and individual totes, and as you can see in the proposed conditions of approval and the restrictive covenant, we're taking measures, or Amberton is committed to taking measures, to ensure to the best of their ability that that recycling material is as clean as possible to, again, tamp down on the incentive for bears to come into the community.

HEARING OFFICER DICKMAN: So the reason, obviously, I think you understand why I'm asking this, the bears are driving this whole thing. The bears, you showed some footage of bears, and if the bears are driving this to get the compactor and there's recycling still going to be on the street, how -- did you have any discussion with FWC about the recycling and whether, you know, whether the bear situation is actually going to be resolved or not, or if the recycling is still going to attract wildlife?

MR. OTTENBERG: Sure. We did discuss the recycling with FWC, and they understand the limitations, and I told them that, you know, Amberton is going to take measures to get the recycling clean and rinsed and washed out as best as possible to reduce that, but that is the best they can do. There is no other option for recycling, because there just isn't the room. As you saw on the bear videos, the main things the bears are interested in is the garbage, because that's where the vast majority of food waste is, and so Amberton believes that eliminating that as a viable food source for the bears is going to greatly reduce, hopefully eliminate, but probably not, at least greatly reduce bear activity on the property.

HEARING OFFICER DICKMAN: Okay. So moving on there was a concern raised about odor and overflow. Do you have any response to that?

MR. OTTENBERG: Sure. Where we have the compactor siting is obviously immediately adjacent to units on Amberton's property, much closer than -- excuse me -- much closer than the units that are on the Fairway Preserve property, that's one.

Secondly, the compactor is going to be at Amberton's front door. When you drive in you can't get into the community without driving by the compactor enclosure.

So Amberton has an incentive far above and beyond just the bear issue to keep that as clean, neat and odor-free as possible. They're a rental community. Curb appeal is a large part of what they do. They have two different incentives here. One is they want to take care of the bear issue for resident safety, and for the safety of Fairway Preserve residents as well.

Secondly, they need to maintain the curb appeal of a high-end community, and so as I noted in my presentation, and as you will see in the conditions of approval, or in my presentation rather, if what has been proposed, in terms of odor control and pest management, does not end up being sufficient through their experience after they construct the compactor, provided, of course, they can, then they're going to take other measures in order to mitigate those effects, because they want to get rid of the bear problem, and they have to maintain high curb appeal.

So there is -- and we haven't talked about Amberton's curb appeal and need to maintain this as a first-class community and so on and so forth, but that is a very real and immediate need for them. So they have a very strong incentive to maintain the compactor in the highest possible condition.

HEARING OFFICER DICKMAN: Yeah, and that seems to me to be an operational item that, again, I don't want to delve into the declaration of restrictive covenants. I respect you all working together to try to get there. I hope you do, but that seems to be operational. Just so you know it was raised, and one of the criteria has to do with adjacent land uses, so I do need to think about that and take it into consideration.

MR. OTTENBERG: Certainly, and, again -- well, let me -- I'm sorry, sir. Do you have any further questions?

HEARING OFFICER DICKMAN: No. No. I checked the boxes. I've got two more for the county, but if you want to go ahead and summarize, that will be great.

MR. OTTENBERG: Sure. Sure. I'll try not to be duplicative, because some of this was.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: One of the comments that was made by Mr. Steinhauser and Mr. Moore, since they moved their compactor they haven't had any bear issues at the compactor. I fully believe that,

but I'm not certain that the sole reason is the relocation of the compactor.

The relocation of their compactor left Amberton and the curbside trash service as the primary food service. So I suspect that a large chunk of the reason that they no longer have a problem at their compactor is simply because the bears are going for the low-hanging fruit, which are the curbside trash receptacles, and, obviously, this is an attempt to get rid of that.

As you saw on the FWC interact bear map, the bears are not limited to any one part of the property. They go all the way down and across Immokalee. They're ranging everywhere. As far as odor control and pest management, again, we've taken a lot of steps and memorialized them in the conditions of approval and the draft restrictive covenant, which I know is not in your wheelhouse, but we have done those to address those concerns, and, you know, and those are to -- those are best practices. Again, if they're not sufficient, Amberton will take additional measures.

HEARING OFFICER DICKMAN: Okay. Anything else?

MR. OTTENBERG: I think we talked about -- I'm going through my notes here.

HEARING EXAMINER DICKMAN: Take your time.

MR. OTTENBERG: There was some discussion about this being not quiet, and the compactor not being quiet, and this being some sort of quiet area. It's the main drive to Amberton. All the traffic goes in and out there. This is not a quiet, pristine, you know, idyllic location, so, you know, it is located on the main drag with people coming in and out.

One comment was -- and I think you understand this, but one comment was made that there was more of a, hey, let's see if we can get this to fly, on the original application, and if we get caught then it will be a problem; that never happened, that's not the intent. It was a legitimate survey bust.

Prior to any applications to the county, I personally reached out to confirm the submittal requirements and submittal procedures, and so I'm a land planner. My company does land planning, civil engineering. I do permitting all day long, and so that's the first thing I do.

There was no intent or desire to do an end-run on anything that the county would require. If they said, hey, you need to go through a PUDI initially, we would have started there.

As to the letter of objection that Fairway Preserve sent to Amberton, I personally was not aware of that. I've kind of been the face of this project moving forward, but had I known that there was a letter of objection, I certainly would have reached out immediately to Fairway Preserve or to Katie to have a meeting.

I've done this many times before in many different communities, and I know that as soon as we hear that there's an objection, we go meet.

HEARING OFFICER DICKMAN: Okay.

MR. OTTENBERG: Mr. Becerra spoke about the compactor volume, and I think he read into evidence some numbers concerning volume of waste generated, and so on and so forth, and asking how this compactor can handle that, and I would reiterate, this is in my initial testimony, that the compactor selected was done so in consultation with Waste Management to properly size the compactor for a certain number of services per week.

There was a comment regarding drainage. This will drain into an inlet that is basically directly in front of the approach apron for the compactor.

As to traffic circulation, we had some discussions of that. Certainly the placing of the compactor at the extreme southeast corner of the property, you know, even though it can't fit there, but if it could fit there, that would significantly change the traffic within Amberton. It would force all the residents to go to that southeast corner. Right now they all go through the front entrance. So there's really not going to be a change in traffic circulation as a result of that.

I would just like to reiterate a couple things. Fish and Wildlife has stated these compactors, they see these all over the state. I understand Fairway Preserve has a perspective on what has happened at their community. Fish and Wildlife sees these all over the state in all different locations, the center of communities, at the edges, front, back, all over, and as they noted in their letter, the location is immaterial. It's the operation and maintenance.

Amberton is committed to ensuring first-class operation and maintenance of this, and, incidentally, in response to one of Katie's points, the initial letter from Fairway -- from FWC was included in your materials. The slightly-revised letter is what I handed out today.

In wrapping up, again, this is a health, safety and welfare issue primarily. It does, obviously, have a zoning component. The status quo is unacceptable, and so we need to be able to address this bear problem, and Fairway Preserve has done so with a compactor.

Amberton would like the ability to do the same in the location that has been proposed, as that is the only location that the compactor, the approach apron, and all the geometrics and accessibility can fit. With that, thank you for your time and consideration.

HEARING OFFICER DICKMAN: Thanks a lot. I appreciate it.

MR. OTTENBERG: Thank you.

HEARING OFFICER DICKMAN: Okay. John, I have a couple quick questions for the county to sort of wrap this up, and this is partly for everybody listening here. There -- in the county's code, Code of Ordinances, Land Development Code, Administrative Code, there is certain things that can be approved administratively, which means without a public hearing, and there is certain things that have to be approved at a public hearing. Some of them are at the Hearing Examiner's meeting, some of them are at the Planning Commission, some of them are at other public hearings, but I didn't write that. I didn't write that code.

You know, you've heard today that it was originally thought to be something that could be done administratively. When the survey was examined, it became obvious that there was an issue with that, which, John, that kicked it to me; is that correct?

MR. KELLY: John Kelly for the record. The only reason this is before you is because they are encroaching nine feet into a required ten-foot buffer.

HEARING OFFICER DICKMAN: Okay. So with regard to that, you know, I note that we have -- we have criteria here for the insubstantial changes, and I've been looking at them as I've been going along, and in the staff report, the attachments, No. B, says draft conditions. Are those conditions the covenant that they're referring to?

MR. KELLY: Yes, sir.

HEARING OFFICER DICKMAN: So those aren't any conditions that I can, or you can, enforce; those are just suggestions?

MR. KELLY: At the time that we drafted this staff report, the parties were still battling back and forth, or not necessarily battling, but they were trying to work out an agreement.

HEARING OFFICER DICKMAN: Uh-huh.

MR. KELLY: I believe it was Amberton's hope that by going through the process they could eliminate any of the concerns brought by Fairway Preserve.

HEARING OFFICER DICKMAN: Okay. But your recommendation, or the county's recommendation is that staff recommends that the -- that me, Hearing Examiner, approve the PDI to decrease the otherwise required ten-foot Type A buffer to one foot with enhanced planting as provided in Attachment A, which is the proposed deviation plan.

So where I'm going with this, and I'll have to go back and look a little bit more at my jurisdiction and my abilities, because I know that under a dock extension, you know, there is some flexibility for me to redesign the dock a little bit, and is there excessive decking and things like that, so I'm going to look at the PDI criteria to see what -- what if anything I have to, is it a yes or no, does it meet the criteria, or can I actually incorporate --

MR. KELLY: If I may?

HEARING OFFICER DICKMAN: Go ahead.

MR. KELLY: We refer to the site plan that was provided, that would become one of your approval documents, as that was what was reviewed by our landscape architect, and any additional plantings that come forth as part of the covenants or conditions, they are not shown on that plan. This is what would be acceptable by the county.

HEARING OFFICER DICKMAN: Yeah, I just wonder, I'll have to figure this out, because I know everything -- there's different things that come to me. I have different types of jurisdictions for everything, so I'm not sure I have -- I'll have to look at what discretion I have in terms of, you know, suggesting this or that, but I'm -- I'm really, as I said before, this is a private covenant.

I see that there's been a lot of work done between the private parties, and, you know, that's a good -- that's a good thing; that's the whole point of the NIM and everything, to get people together. So I'll just look at that. I had one other question. One of the criteria talks about, in essence, me weighing the competent, substantial evidence as applied to the adjacent land uses, okay, one of the -- how is the adjacent land uses, so is this referring to existing land use, or just the designated land use in general, because, you know, I have to look at a compatibility issue, and, you know, both land use types are the same. They're residential.

So I'm trying to get a little bit of clarity, and some of this is more rhetorical. Is this referring to whether that's residential and this is commercial, or some incompatible type land uses, or did some of your analysis go into looking at these are two residential land uses and how do we -- how do we address that criteria?

MR. KELLY: For improved properties we would be looking at the existing. For un -- if it was unimproved, we would be looking at what it states, what is allowable.

HEARING OFFICER DICKMAN: So in this case did you look at -- we've got two residential -- you know, built, residential spaces that, you know, we're concerned about that part of the criteria that says, how does it impact the adjacent land use.

MR. KELLY: Yes. When I'm looking at it, the compactor is adjacent to a parking area.

HEARING OFFICER DICKMAN: Sure. Okay. Gotcha.

MR. OTTENBERG: If I may?

HEARING OFFICER DICKMAN: One second. The other thing I had to -- the other thing I want to ask you about, John, is about code enforcement. If there's noise and there's garbage and other types of nuisances that would fall under code enforcement.

Is it possible for someone that lives in these neighborhoods to call code enforcement, and say, I'm hearing a lot of noise, this is a nuisance? Is code enforcement capable of going in there and dealing with it?

MR. KELLY: Certainly. There is a noise ordinance, and also code enforcement does have noise monitoring equipment.

HEARING OFFICER DICKMAN: Okay. That would be the same probably, I would think, with regard to on Super Bowl Sunday, you know, garbage is just strewn all over the place because the compactor is full, someone can call?

MR. KELLY: That would fall under their litter ordinance.

HEARING OFFICER DICKMAN: Call code enforcement, they come out, and someone would be in front of your code enforcement hearing officer at some point. Okay. I just wanted to get all that out, and I appreciate your help. Do you have anything last minute, you know, statements you want to make before you sit down?

MR. KELLY: No, other than this was reviewed by our transportation department, and I took the time to go back. I didn't just look at my staff report comment, which did come from them, that there's no impact. I looked at what they actually provided us to review, and it was not applicable.

HEARING OFFICER DICKMAN: Okay. And this was approved as a single PUD at that point, right, so it's under one PUD, but you have two communities within one PUD; right?

MR. KELLY: It's under the Olde Cypress PUD; however, this is the Amberton Community within.

HEARING OFFICER DICKMAN: Right, and that would explain why there's one ingress/egress into Immokalee basically, that probably would have been part of the evaluation of that PUD?

MR. KELLY: Correct.

HEARING OFFICER DICKMAN: All right. So that's really all I need, and I just want to make

this clear to everybody involved. So in a quasi-judicial hearing, there are two parties, there's the applicant, and then there's the county where the application is being submitted.

Now, there are other folks that may have -- that may be adversely affected to some degree or more, and then there are the general public. I am not going to opine who is -- I know who the parties are, but I, at this point, I'm not going to opine, or I won't opine in any fashion, who has standing, who has -- who is more affected than the other.

You know, I do give leeway and respect to people that go through the trouble of hiring lawyers and hiring experts to give them time. You know, I don't like to -- I mean, this hasn't been a cross-examination, and I know in quasi-judicial you can do that, but this has been very cordial, very collegial.

I appreciate that very much, but I also want to make it very clear I'm not deeming Ms. Berkey's clients as a quote unquote party. The courts may. The courts may say, yeah, they're an affected party, they can file an appeal if they want to, but that's not my job. Okay? I just want to make that clear to everybody. You know, just sometimes that gets confusing. You're up again here, Mr. Ottenberg. I have to keep looking at your name. I want to call you Russell. We are informal here. Whatcha got?

MR. OTTENBERG: That's fine. Russell Ottenberg for the record.

HEARING OFFICER DICKMAN: Yes.

MR. OTTENBERG: Very quick, I just want to clarify the draft conditions of approval and the restrictive covenant, and, obviously, the restrictive covenant is something you would not opine on in any shape or form.

The restrictive covenant is based on the draft conditions. Those conditions are included in the restrictive covenant. I know I speak for Katie when I say this, both Fairway Preserve's HOA board and Amberton would appreciate, to the extent you can under your jurisdiction, to incorporate those draft conditions of approval into an approval should you choose to approve this PDI.

HEARING OFFICER DICKMAN: Katie, do you mind coming up? Do you mind if I call you guys Katie and Russell?

MR. OTTENBERG: That's fine.

MS. BERKEY: That's fine.

HEARING OFFICER DICKMAN: It's so much nicer here. I understand you guys have been negotiating a covenant that would be running with the land that addresses the operation of this compactor; am I correct?

MS. BERKEY: Yes.

HEARING OFFICER DICKMAN: Okay. Where are you all with that, if you can just give me an idea?

MR. OTTENBERG: Sure. So we prepared -- we had Amberton's attorney prepare the draft covenant which include the conditions of approval, and other language. Some of this was requested by the board through Katie. We sent that draft to Katie. Katie has marked it up and sent it back to us. We have not had an opportunity to review it yet, so that's the next step.

HEARING OFFICER DICKMAN: Okay. Very good.

MR. OTTENBERG: It's an ongoing --

HEARING OFFICER DICKMAN: Will you stipulate to that; is that a fair understanding?

MS BERKEY: Yes, and let me just give you some context, too, it was always intended going into the NIM, our negotiations leading up to the NIM, and immediately following, it was going to be a twofold approach to get to what the baseline mitigative measures would be for that location one foot away from the shared property line.

The proposed conditions of approval which we negotiated first to make sure both sides bought into them, at least in draft form, to present to you, in hopes that they be incorporated into an approval, if that is your pleasure, and then secondly, the covenant which would carry those forward and provide other enforcement mechanisms beyond code enforcement, prevailing party attorney's fees, notice requirements, because there has been a history of breakdown of communication, let's say, and to make sure that

successor owners of interest are put on at least constructive notice that those requirements and expectations are in place, whereas, the zoning approval, as you know, sometimes they got lost in the shuffle and not readily available in the public records as a covenant would. So it was always intended to be a two-prong approach. We received the draft covenant from Amberton Friday afternoon, I believe. We responded by Monday evening with our comments, which are still under review.

I think in good faith having come this far, if I am incorrect in stating this, let me know, Russell, the plan is to continue those negotiations, and I think we're fairly close.

Granted, they haven't yet reviewed my comments but the most substantive one, which the Amberton property is held by numerous tenants in common, so I wanted to make sure that they have the authority to execute, and all those things but --

HEARING OFFICER DICKMAN: A couple of things, I sincerely, sincerely hope -- it sounds like you guys are on the five yard lane or maybe even closer, I don't know. Guys always use sports analogies. I know that's terrible. You're close; right?

MR. OTTENBERG: We believe so, yes.

HEARING OFFICER DICKMAN: Sounds like you're close. Understand I have 30 days to figure all this out and render my decision. I haven't rendered it. I'd be curious to know if you get to that. You know, I'm trying to stay away from sport analogies. If you get an agreement, it would be okay. I would like to see that if you get there. I would like to maybe, if you could as a courtesy, send it through the county and let me see that.

As of right now what I'm looking at are, you know, a draft, it's basically a draft document of where you're going and where you hope to be. If you get to a place where you feel like you guys are within the 30 days that I have to render this, it would be nice to know about that.

I can't require it. I can't demand it. I can't do anything that's not going to really say -- I can't really say it's going to affect my decision, because I'm looking at the evidence that's been put in here, but it's really, really appreciated by the Hearing Examiner that you guys are doing this in good faith, and you're moving in that direction.

Lots of people don't do that. They get adversarial, go to court, spend all kinds of people's money and you know how that goes. So, you know, if you do -- if you do get there, it might be good for the county to be able to have that in their file, even though it wouldn't be -- it wouldn't affect the county at all. It wouldn't be in their favor or whatnot. It's just between two private parties. Ms. Jenkins, is that fair? Would you like to have that in your file?

MS. JENKINS: Yes, we would like to have that as part of the application if we come to that agreement.

HEARING OFFICER DICKMAN: That would be great.

MS. BERKEY: I would kindly ask that it not be solely in reliance on the covenant being executed again, keeping in mind --

HEARING OFFICER DICKMAN: No. No. My decision is not going to be based on that.

MS. BERKEY: No. No. I just mean, instead of deferring that a covenant will eventually hopefully be executed, that it still be considered --

HEARING OFFICER DICKMAN: Yeah, so I want to get to that. Thank you for that. Again, as I said, if you ever want to have fun and try to figure out what the Hearing Examiner's jurisdiction is on docks, on conditional use permits, on all of this stuff, there's different -- how do I say this -- different discretionary avenues that I have, and I'm going to have to look at this one because it's different for different applications.

So, you know, to the extent that I can do that, I would love to do that, to help everybody out to have clarity, but I'm going to have to look at that, because I'm not 100 percent sure I have full range to just go hog wild and redesign, you know, what you guys are doing.

MS. BERKEY: Understood. I think why Russell jumped up so quickly when Mr. Kelly was giving his comments is that the staff report alludes to it being solely a function of the covenant as opposed to conditions.

MR. OTTENBERG: That's correct.

HEARING OFFICER DICKMAN: If I can and I feel like I'm not crossing a line, you're an attorney -- it doesn't matter, you don't have to be an attorney. It's easy to say the law is the law. I have to follow the law, and codes are the law, and so I just can't come up with my own. Just because I sit here, I just can't come up with my own rules. All right.

MR. OTTENBERG: Thank you.

MS. BERKEY: Thank you.

HEARING OFFICER DICKMAN: You guys are awesome. Thank you. Everybody here, thank you for your time and effort, and the county, you guys are awesome. You guys did a great job.

It's moving into your lunch time and I'm sure everybody is starving. We have a court reporter over here who has been wonderful. We're all happy here; right? Let's go into the weekend and enjoy it.

Any other business here? I'm going to close this public hearing. Any other business for the Hearing Examiner?

MS. JENKINS: No, sir.

HEARING OFFICER DICKMAN: Okay. Great. Mr. Youngblood, I have to look at you because you seem to have the internet at your fingertips. Do you have to do anything else?

MR. YOUNGBLOOD: No, sir.

HEARING OFFICER DICKMAN: Okay. Fantastic. The meeting is closed. Thanks, everyone. Have a great and wonderful weekend.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 12:15 p.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW W.J. DICKMAN, HEARING EXAMINER

8/26/21



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

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