

August 12, 2021

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida,
August 12, 2021

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

HEARING EXAMINER ANDREW W.J. DICKMAN

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Nancy Gundlach, Principal Planner
John Kelly, Senior Planner

PROCEEDINGS

THE HEARING EXAMINER: In a moment I'm going to swear in anyone who is going to provide testimony here today on any of the items. As you can see we have a hybrid meeting here; we have folks in person and we have folks that are electronically participating. That's just a system that's been put in place by the county in order to observe some of the CDC guidelines for anybody that doesn't feel comfortable or can't attend in person.

We have two podiums here, we have the brown podium and we have the gray podium. So the way that I like to work it so it makes the record clear, it makes it easy, and makes it easier for our Court Reporter, who I assume is electronically with us? I'm getting a thumbs up over there. So we'll have the applicant and the applicant's -- or the applicant's representatives over here in the brown podium. And then the county and any members of the public that are going to speak will come up here at the gray podium.

So I'm going to ask everyone to speak clearly and project your voice. The Court Reporter is going to take verbatim minutes of the meeting and in order for her to do that she needs to be able to understand everything that is being said verbally. Can't really capture yeses and nos and nods of heads and other kinds of hand gestures you might make, whatever they may be, so let's try to observe that.

The process that we follow here is that I like the applicant to do their presentation and I'll ask any questions. A lot of times there's going to be some visuals on the screen, we'll go through that. Actually, I'm going to back up a minute. We'll have the county introduce the items, their staff report briefly, cover the due process issues that I want in there, then the applicant will put on their full presentation. There might be some Q & A with me and then we'll open it up for public comment and I'll close the public hearing and allow the applicant or the applicant's representative to have time for rebuttal on anything that has been heard through the process. Then we'll go through that.

Once we have concluded on a petition, I have under the code up to 30 days to render a decision. My office will issue that. My paralegal will issue that to the individuals that are listed and need to get a copy of that.

Did I miss anything, Ray? Okay. Great. Let's move on.

Are there any changes to the agenda?

MR. BELLOWS: For the record, Ray Bellows.

We do have a change to the agenda. It's Item 3D, it's for the Baumgarten PDI. Due to an advertising error we need to continue this item to September 9th HEX meeting so we can get the advertising correct. The applicant is here if you have questions.

THE HEARING EXAMINER: So we want to go ahead and continue that to a date certain because the advertisement has been --

MR. BELLOWS: We need to place the sign on the property with the correct hearing date.

THE HEARING EXAMINER: I'm going to give the applicant an opportunity to state something. You know that I'm very particular about due process and notice and advertising is one of those things that's part of that. That's

one of the easiest things to appeal on and I'm going to highly recommend that you take the advice and continue.

MR. SCOTT: For the record, Chris Scott with Peninsula Engineering.

We did have an issue with the sign postings on the property were not out on the date that they were required to be (sic) so I contacted the zoning division and coordinated with Ray and Mr. Kelly to see what date we could move the meeting to. At their suggestion we're requesting that this be deferred until September 9.

THE HEARING EXAMINER: I appreciate your cooperation on that. It's very important to have notice to the public, so we'll continue this to the 9th. And that means that if it's a date certain -- I do want you to correct the advertisement but do we need to do all the advertising? The mail-outs?

This is just the on-property sign?

MR. BELLOWS: Just the on-property sign. The other notices were issued at the appropriate time frame and because we're continuing dates certain, anybody here knows it's being continued.

THE HEARING EXAMINER: On the sign though we are going to change that to September 9th; right?

MR. BELLOWS: Correct.

THE HEARING EXAMINER: On the property sign; correct?

MR. SCOTT: Correct. The new date is on the sign and the signs are --
(Speaking simultaneously)

MR. SCOTT: (Inaudible) so I apologize for the inconvenience and to anyone who came in to speak on this.

THE HEARING EXAMINER: Great. So I need to put a dollar in the error jar because I haven't sworn anybody in on that one, so if you would raise your hand? Anybody who is going to give testimony today, stand up, raise your right hand.

Swear to tell the truth, all the truth, under penalty of perjury, say aye.

POTENTIAL SPEAKERS: Aye.

THE HEARING EXAMINER: All right. Great. Thank you.

Thank you, sir. We'll continue that to a date certain. Have a nice day. Appreciate your help.

Okay. Anything else on the agenda we need to goof around with?

MR. BELLOWS: No other changes.

THE HEARING EXAMINER: Okay. Great.

Let's go on to Item A. And the applicant, I believe that's 3A. Who's handling this one?

MS. GUNDLACH: I am. Good morning.

THE HEARING EXAMINER: Good morning, fantastic to see you. Introduce yourself and let's go.

MS. GUNDLACH: Good morning, Mr. Hearing Examiner. I'm Nancy Gundlach, Principal Planner with the zoning division and I'm here to present the Rockedge PDI to you.

It's a very insubstantial change to the Rockedge PUD, which is located on the northeast corner of Sable Palm Road and Collier Boulevard. A little over a hundred acres, it's approved for 266 residential dwelling units. And they're here for a very

small change to the PUD document. They are required -- they have a commitment to provide a Collier Area Transit, a CAT bus stop with shelter, and they would like to also have the option to do a payment in lieu. That's why we're here this morning. The petition was duly advertised on the proper dates.

And was there anything else I need to tell you?

THE HEARING EXAMINER: Recommendation?

MS. GUNDLACH: I sure do. We are recommending approval.

THE HEARING EXAMINER: And any conditions?

MS. GUNDLACH: Yes, subject to the attachment of the proposed revised language which will allow them a payment in lieu option.

THE HEARING EXAMINER: Great. So what I have before me, and I have the bus stop report, everything that's been made available to the public, I do everything in my power to remain a neutral impartial decision maker. I don't do my own independent research. Normally I don't have substantive conversations with staff. From time to time I'll have procedural conversations with staff. My goal is to be here, again, impartial, hear all the evidence testimony provided here today, apply it to the criteria, come out with a decision.

So to that point I do also want to emphasize that anyone that's going to speak and provide me information, that you be succinct and do it directly at the criteria that I have to make those decisions on.

That being said, under Florida law, public meetings like this, the public has the opportunity to have reasonable opportunity to participate. I'm not going to -- what are we, three minutes on these things? About three minutes for the public individuals? I think three to five minutes.

MR. BELLOWS: Three to five typically.

THE HEARING EXAMINER: We haven't really been -- everybody is relaxed and we haven't had any real issues here since I started. So if everyone could just be succinct, give me the information I need to make a positive evaluation of the petition.

So we have what's called an insubstantial change to PUD. There are insubstantial change, there are substantial change. I'm allowed to look at insubstantial change which are small changes.

So what I'm hearing today is that under this particular PUD there's a bus stop that's needed in this case and there's opportunity to pay in lieu of building that bus stop. I'm sure we're going to hear reasons why that bus stop needs to be -- you know, not there or relocated or just paid in lieu to the public transportation system.

So why don't we go with that and bring the applicant and/or the applicant's representative to the brown podium.

How are you today, sir?

MR. DELANDER: Good, sir. How are you?

THE HEARING EXAMINER: I'm fine, thank you for asking.

MR. DELANDER: For the record, I'm Ken Delander (Ph), certified planner with RW Engineering. I always appreciate your time, and Miss Gundlach, thank you for your overview of the project.

I do have a presentation. I'll make it brief because --

(Inaudible comment from unidentified speaker)

We heard already about the subject property east of Collier Boulevard, north of Sabal Palm, just over 106 acres. Zoning was approved 2016. The site development and plat were approved last year in September. The development is actually under construction at this time.

Next slide, please.

The typical subject property location, northeast of Collier Boulevard/Sabal Palm, just for our reference.

Next slide, please.

Jumping to the component of why we're here, there's an existing CAT stop which is located just south of Sabal Palm Road and Collier Boulevard. That's the general location of it, but moving to the next slide will give us an understanding of what we're dealing with.

So this is the existing stop. It is right against the right turn decel lane into -- or onto Sabal Palm Drive. And the desire and the commitment is requiring that that be improved to meet accessibility, providing all the necessary infrastructure for an appropriate and efficient transit system.

So through the development review process it was identified that there's quite some challenges out on this site to be able to properly meet the accessibility from the existing pedestrian network, which is on the other side of the canal there. You can see the pathway, meeting grades, addressing the existing canal, the requirements they must meet. And obviously you can see the slopes to be able to put a shelter and all those components.

So quite an effort was taken place to coordinate with all the stakeholders; Big Cypress Basin, Department of Transportation, Traffic Operations, Zoning, ourselves, and obviously CAT, Collier Area Transit, to figure out where locations are. And timing became an issue, so the ability to really plan for and have the flexibility to work through the planning and the ability to construct a stop and finding that appropriate location. (sic)

So through that effort it was identified that working through amending the commitment language to -- for the opportunity for a payment in lieu working with CAT and continuing that process. It just adds that level of flexibility, level of opportunity and options that we feel is best.

Moving on to the next slide.

I've gone over many of these aspects already.

Next slide, please.

So the existing language here is presented and what has been worked through with the help of staff and with Collier Transit and all the coordination, the amended language that we're all agreeable to.

Next slide, please.

So we have -- yes?

THE HEARING EXAMINER: (Low Audio-Inaudible).

MR. DELANDER: Sure.

THE HEARING EXAMINER: (Low Audio-Inaudible) safety or situation?

MR. DELANDER: Yes, it's adding that payment in lieu as an option.

So for the public involvement component we conducted our neighbor information meeting. We had some folks attend. They were more interested in the

actual development and what was going on so we informed them of the status of that. And they were even interested that there was an actual CAT stop, so that was helpful.

Moving forward, we satisfied the insubstantial change evaluation criteria. My professional opinion, we're consistent and remain consistent with the growth management plan, the land development code, and we certainly concur with the staff report analysis and the recommendation to the HEX.

Hopefully I didn't belabor too much.

THE HEARING EXAMINER: That was perfect. Thank you.

So I understand what's happening here. You guys are under construction at this point right now. It does seem as though you've got -- I assume that that's a public stormwater facility. It looks like there's a pretty fair large swale there that deals with stormwater? Is that --

(Speaking simultaneously)

MR. DELANDER: (Low Audio-Inaudible) Cypress Basin.

THE HEARING EXAMINER: That looked pretty tricky to get to that existing site.

MR. DELANDER: We're continuing to work on it. So in order for CAT to work maybe some options out, the payment in lieu may benefit them to find some other opportunities.

THE HEARING EXAMINER: Any idea about current ridership at all there? You mentioned that some folks didn't even know it was there.

MR. DELANDER: I can't speak to those exact numbers. Two times that I was out there, there were actual individuals waiting in that -- crawling over the barrier and waiting to get on the bus.

THE HEARING EXAMINER: In other words, in order to get there from the site it would have to come out that -- it looked like an ingress-egress area, and walk down the decel lane to get there through the grass and over the barrier.

MR. DELANDER: So we're working out some challenges as we put it to --

THE HEARING EXAMINER: My concern is there might be individuals that rely on public transportation right now and they don't -- they would be losing that. I didn't know if there was some other area nearby where CAT --

MR. DELANDER: (Low Audio-Inaudible) intent that we lose that spot, it's just perhaps relocating --

THE HEARING EXAMINER: Moving it --

MR. DELANDER: -- within the general area.

THE HEARING EXAMINER: You're not taking it away right now, you just want, as time goes by, for you to be able to put that in a more logical --

MR. DELANDER: (Low Audio-Inaudible).

THE HEARING EXAMINER: Okay. That is an odd place to put that. But I think it was a requirement I guess so you put it somewhere.

MR. DELANDER: Yes.

THE HEARING EXAMINER: Is there any -- were there any comments or was this reviewed by the area transportation folks?

MR. DELANDER: Yes.

THE HEARING EXAMINER: Okay. Do you want to speak?

MS. GUNDLACH: CAT did review this.

THE HEARING EXAMINER: They're okay with it?

MS. GUNDLACH: Yes, they are.

THE HEARING EXAMINER: Okay. Good.

All right. So let me open this up to the public and let's hear from them and I'll give you time to respond if you'd like.

Anyone here from the public to speak on this issue?

MR. BELLOWS: We have a gentleman on line with us, James Ratz.

Mr. Ratz, are you available, sir?

MR. RATZ: Hello. Yes, I am. Can you hear me okay?

MR. BELLOWS: Yes, sir. Loud and clear.

MR. RATZ: Yes, I'm James Ratz, I'm actually with Four Star Group, the developer of the Rockedge PUD.

I'd just like to reaffirm what Ken was speaking to, that the current bus stop now is in an unfavorable location. It has been there for some time and we are not proposing to abandon it, we're just proposing to not install a new one because of the site configurations. So we're asking to make a payment in lieu of instead.

THE HEARING EXAMINER: Well, I think what I heard it's an either-or; you may put it someplace else or you want the option of payment in lieu.

MR. RATZ: That is correct. But the facility that is there today, or the bus stop, it has been there for some time, it is not one that we already put in place. Yes, we are proposing to either install a new facility or make a payment in lieu of.

THE HEARING EXAMINER: Okay. I just wanted to be clear about that. Thanks for your participation on that.

MR. RATZ: Thank you.

THE HEARING EXAMINER: Anybody else? Going once, going twice. Nobody else wants to talk to you. Do you want to rebut anything your client said?

MR. DELANDER: Absolutely not.

THE HEARING EXAMINER: Good choice.

Nancy, anything from you?

MS. GUNDLACH: Nothing further.

THE HEARING EXAMINER: Ray, anybody from the county? Nothing? All good?

Okay. So I'm going to go ahead and close the public hearing on this matter. I believe I have enough information.

I do want to say that I appreciate the county and everyone else paying attention to the transit authority and, you know, making sure that individuals who don't want to invest in a car, can't invest in a car, I think that's a good thing because we get more cars off the road. So to the extent that we can support that, I always think that's a good thing and I think having that in the original PUD was a smart idea. One way or another we're going to have a stop somewhere. Maybe not on your site but in lieu of with the payment it will actually do that. So I appreciate it.

I don't have any other questions for you, sir. And it appears like no one else wants to speak on this item. That's a good thing I guess. By the way, the NIM meeting, what was the attendance at that meeting?

MR. DELANDER: Other than myself we had four people -- three people.

THE HEARING EXAMINER: Okay. Must have been fun. Great. That's always a good thing.

Seems to me when you have those meetings, even though you did have a notice issue, but hopefully the NIM notice issue was correct.

MR. DELANDER: All of our advertisements were all on par.

MS. GUNDLACH: Correct.

THE HEARING EXAMINER: Everything was --

(Speaking simultaneously)

THE HEARING EXAMINER: Oh, D. Sorry about that.

All right. It sounds like we're good on this one. I will make a decision as quickly as possible. Thanks for being here.

Bye, Nancy.

Let's go to Item Number (sic) B. Are we ready to do that?

MR. KELLY: Good morning, Mr. Dickman. Before you is going to be Petition UPL20200001823. It's your Agenda Item 3B, South Florida Gas.

The request here, the applicant seeks a conditional use to allow an unmanned LP gas storage and bulk distribution facility, SIC Codes 5171, 5172, at a location that is 0.4 miles north of Tamiami Trail East in Section 18, Township 51, Range 27. It abuts Recycling Way West and Basik Drive to the east.

The site will comprise one or two 18,000 to 30,000 gallon tanks, maximum of 48,000 gallons of LP gas to be on the site, maximum, at any time. To be operated as a refill facility for delivery trucks of South Florida Gas and it will be accessed to be on Basik Drive.

Notice and hearing requirements for conditional use are set forth in LDC Section 10.03.06C. A neighborhood information meeting was held on May 27, 2021, at 5:30 p.m. at the Eagle Lakes Community Park. A public hearing sign was posted by the applicant on or about July 21, and a property owner notification letter and newspaper ad announcing this meeting was provided by the county on July 23.

I also would like to introduce at this time a letter of support that was received after the hearing packet was put together. Ray has a copy for you and I'll get a copy to the Court Reporter. I also have this available for video. I believe the letter is very to the point and of value to this case. It was produced by a neighboring citizen.

Again, it's a letter of support. If you'd like to take a moment to look at that, let me know, otherwise I'll proceed with letting you know that the county has reviewed this based upon the conditional use criteria located in LDC Section 10-08-00. And we are recommending approval with the conditions, number one, there being no retail sales. Two, the hours of operation would be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Three, that the security of the facility shall be in accord with the applicable Florida Department of Agriculture and Consumer Services and the US Department of Homeland Security regulations. Four, that a site development plan is required for the development of the site and the applicable fire district must provide approval for the site development plan with respect to compliance with public safety standards. And, five, all lighting is to be shielded to the extent that there is no offsite spillage of said lighting.

That wraps up (Low Audio-Inaudible) presentation.

THE HEARING EXAMINER: Okay. Stick around. I appreciate it. I may have some other questions. Thank you for that thorough presentation.

Is the applicant here or applicant's representative? I always say that with a question but they're always here.

MR. DAVIES: Good morning, Mr. Hearing Examiner.

For the record, Noel Davies with the law firm of Davies Duke. I am here this morning on behalf of the applicant. The full team is here today, my client representative is here, Terry Fisher with South Florida Gas, which is a propane delivery service company. Daniel Delise is our professional planner with Delise, Inc. Christina Johnson is here from JR Evans Engineering, and Norman Trebilcock is our transportation engineer with Trebilcock Consulting Solutions.

The whole team is here for your questions. This is a minor conditional use application, as you heard. It is for a very passive innocuous use, which is a storage use only for up to two propane storage tanks. There will be no employees on the site, no retail component here, and a di minimus amount of trip activity.

My client anticipates only one large truck per week to fill up the storage tanks on the site and then approximately two to three smaller truck visits per week to obtain the propane from the facility for subsequent deliveries throughout the county.

The purpose of this particular facility is to avoid my client's team having to go to and from Lee County, where it has existing facilities, to service the delivery needs of its customers here in Collier.

County staff, as you heard, has reviewed the subject application and is recommending approval. There are five staff conditions and we are agreeable to all of those conditions.

With that, Mr. Hearing Examiner, if I may, I'd like to turn it over to the professional planner, Mr. Delise, and he'll walk you through a more detailed presentation.

THE HEARING EXAMINER: Good morning, Mr. Delise.

MR. DELISE: So, for the record, Dan Delise. I am a professional planner. Just by way of background, I have a master's in city planning which I got in 2000 from MIT and moved down here right afterwards and working as a land use planner in Southwest Florida for 21 years, minus about two and a half years where I was the chief of staff at the South Florida Water Management District.

Of course, Noel introduced the rest of our team that's here today in case you have any questions. But I'll go through the presentation, the criteria for approval, and then answer any questions you may have.

It is a fairly unique use so it takes a little bit of explanation. But I'll just say at the outset, in my 21 years of practicing as a planner I've actually never worked on a use that's so passive in its nature. There really aren't external impacts of any nature. The only reason why I can imagine it's a conditional use is because of a perception of safety. But we'll go through that and define that.

So slide, please.

So the property is located, as John said, about a half mile north, .4 miles north, of 41 and Basik Drive. Over a mile east on US 41 from Fiddler's Creek. As you can see on the aerial it's a little small, the distances that are drawn on there. But it's very well isolated, if you will, from a lot of activity.

Next slide.

Staff noted in their staff report that this is in the rural industrial future land use category. It's hard to see on the big future land use map so I zoomed in. It's this little piece here that I circled in red and that is an industrial future land use category.

Next slide.

The zoning of course implements that future land use category. It's in an industrial zoning district and, of course, you can see the rural industrial area a lot easier on this map, it's all that gray area. So if you look at the zoning map, we're surrounded on the north, south, and west side by industrial uses. On the east side we have the TTRVC zoning and so the conditional use is for this use. This is an allowed use in the industrial zoning category through a conditional use process.

Next slide.

So what exactly is the proposed use? As Noel said, it's simply a storage tank and that's what that storage tank looks like. So we'll have two of these side-by-side. There are no onsite workers. As Mr. Davies mentioned, we anticipate one truck per week to fill up a tank, two to three smaller trucks -- the smaller trucks on the bottom right, to pick up the gas and then deliver for customers.

There are safety features involved in this. There are automatic shutoff valves. This industry is highly regulated for safety and so that's the use in its entirety.

THE HEARING EXAMINER: Stop you there and ask you a quick question.

On the top photograph you have some yellow tanks. And it's my understanding -- I've seen some of these that if, for example, a residential house is built or remodeled and they want to run a lot of their appliances on propane or gas, that those small tanks are in the ground. Is that kind of activity also going to take place, where storage of small tanks and trucks come in, picking them up and going back and forth or is it strictly just that large tank for storage?

MR. DELISE: It is strictly that large tank. There is none of those small tanks. We don't have any retail sales, we're not storing tanks onsite, it's just simply the storage of the bulk distribution. And so those smaller trucks will go to -- if you go to the next slide. Sorry, the slide after that.

Okay. So if you go to the next slide -- or this slide. Sorry, keep on this slide. This is what we deliver to. And most of them are underground, as you mentioned. I was just up in Northern Michigan on a little bit of a vacation, driving around, and you see the aboveground storage tanks everywhere; in the middle of the neighborhoods, close to other residential units. But these are the customers, residential, commercial. You see down here they're mostly in-ground, as you mentioned.

If you could go back a slide?

So there are a number of similar sites in Collier County and Lee County. I'm showing some pictures here.

I'd say the difference between these sites and our site is that our site is much more remote. A lot of these sites are in areas with a lot of activity going on. The one on the bottom right is one of the South Florida Gas facilities and that's on Evans

just south of Edison in Fort Myers. Again, A lot of activity, major urban roadways. This is the type of -- so the design for safety has to account for these things being located in areas of high activity. So a lot of stuff going on in close proximity to make sure that these tanks are safe.

In our instance we're in a much more remote area and away from any significant activity.

Next slide.

Slide after.

So this is the concept plan. Essentially you have two storage tanks side-by-side. You can see them on the west side of the plan. What I'll note about that is a correction in the staff report and what Mr. Kelly just said, there are either two 18,000 gallon tanks or two 30,000 gallon tanks. So they got to the 48,000 gallons by adding 30 plus 18. But it's either two 18s, so it's going to be a total of 36, or it's going to be a total of 60. That doesn't affect anything with transportation, the transportation analysis, or actual operations. That's done by market demand essentially.

THE HEARING EXAMINER: Let me stop you there.

Does that affect your analysis at all?

MR. KELLY: For the record, John Kelly, Senior Planner. I failed to introduce myself the first time, sorry.

It does not affect the staff report; however, I will say, at the neighborhood information meeting -- I listened to the recording again last evening. At the 47-minute and 40-second marker, the applicant's representative did indicate that there would be one or two 18,000 to 30,000 gallon tanks and that the maximum LP gas on the site would be 48,000 pounds. That was represented at the --

THE HEARING EXAMINER: So it's cumulative?

MR. KELLY: I don't believe these tanks can be filled to capacity. I believe there was a calculation involved where they need to be up to 30 percent empty. I think there was some calculation involved. But they did say 48,000.

THE HEARING EXAMINER: As long as that doesn't affect your recommendation, that's fine. Thank you.

MR. DELISE: It also doesn't affect any operation of the site; trucks going in, trucks going out.

I will note one other thing about it. At the NIM and in my narrative and, of course, what Mr. Davies just said about the operation with the number of trips, so what we anticipate the operation to be is different than what we put in the TIS. The TIS did an analysis based on a distribution facility of a thousand square feet and talked about the number of trips and came up with essentially a total maximum of five two-way trips per day which, of course, is shockingly low. In fact, I've never worked on a case, as I said, that has such low trip generation. But that's the TIS and that's what the analysis is based on. That's what staff's analysis was based on and that's what the condition use is based on. Our point is in reality, the operation of this type facility is even less than that shockingly low number of five trips per day.

Just to make a finer point, there will be days when there will be zero trips. There will be days when there will be only one trip. But there might be a day when you have three trips because someone goes out to the site to inspect things or take a

look at things.

Typical operation, one large truck per week, three small trucks per week to pick up and deliver to sites.

So with the master concept plan, as I mentioned, you have the two tanks. No onsite workers, just delivery, storage, and bulk pickup. The site's fence, there's no public access to this site. We don't have any retail sales so the public's not going to be going in there. No one is going to be fiddling with equipment or dealing with any of that. We have perimeter buffers on all sides as well.

We designed this in conjunction with the fire department so you have a -- essentially, just a turnaround area where trucks come in and then they fill up or deposit gas and then go out.

Next slide.

So from a compatibility standpoint the tanks are placed on the west side of the site. On the east side we do have some large lot residential uses. The closest home is approximately 700 feet from the tanks. It's a pretty far distance. To the south we have, of course, industrial usage, outdoor storage. To the west we have the auto recycling facility, we have two concrete batch plants. And, you know, all of that, again, is in the industrial zoning district. And to the north we have a vacant property that's in the industrial zoning district as well.

I'll say immediately to the east of our site, as you can see it's vacant in that TTRVC zoning category. Right now most of that site to the southeast of us is being used for storage of travel trailers so it's, again, just an outdoor storage area.

THE HEARING EXAMINER: (No audio) is on Tamiami Trail because it's my understanding everybody there is going to access -- is that Baskin? (sic)

MR. DELISE: Basik Drive.

THE HEARING EXAMINER: Basik Drive. Is everyone accessing all that property through that drive?

MR. DELISE: So the operations on the west side of us, the concrete batch plant, auto recycling, and other concrete batch plant, they access their properties through Auto Village Way, which is that street right there. So the storage units access their properties through Basik Drive. So we're extending Basik Drive North to the site.

THE HEARING EXAMINER: But right there on Tamiami Trail, is that a marketplace?

MR. DELISE: The last time I looked at it it was vacant. I believe the owner is here and if I'm incorrect on that he can talk about what's in there, but it was commercial vacant.

THE HEARING EXAMINER: I'm asking these questions because, as you know, as a planner that's part of the criteria I have to evaluate, is the impact on adjacent properties, not just the land use but the existing land use.

Thank you.

MR. DELISE: Just to, again, to be clear, I think, you know, Norman can come up if you want more information on this. But in the industrial zoning there are a whole list of uses that we can put in by right. This use that we're asking for is a conditional use that generates far less trips than any of those other uses on a comparative basis. So if you imagined a one-acre of industrial use, you know, what

types of trips that would generate, truck traffic going up and down Basik Drive versus what we're proposing, I believe it's one-tenth the amount of trips is very much de minimis.

Next slide.

So the evaluation criteria for conditional uses, as Mr. Kelly pointed out, is an LDC 10-08 or 10-08-00. And there are four criteria. Consistency with the land development code and growth management plan. Again, that's not really an issue here. It's already zoned. We're in the rural industrial future land use category, zoning implements that land use category and we're asking for this use as part of -- or in conjunction with the zoning. So we are consistent with the future land use category and the growth management plan.

There is adequate ingress and egress. We have direct access to US 41 through Basik Drive, but on top of that the trips are de minimis. The effect on neighboring properties, specifically with regard to noise, glare, economic, and odor, you know, the unique aspect of this use is unlike other industrial uses where this could be an issue. There is no noise that emanates from this type of use, there's no glare, there's no odor, and because of that there's no nuisance in someone's backyard and there would be no economic impact.

Again, it's very isolated in its location just from there are some large lot units to the east but they're pretty far away and it's very passive in terms of its external impacts.

So from a compatibility standpoint, my conclusion is it's definitely a compatible use to the surrounding uses. With that, we agree with staff's recommendation.

And if you want to just flip to the last slide?

We agree with staff's recommendation of approval and would respectfully request that you also approve this application.

Thank you.

THE HEARING EXAMINER: I have a question about the hours of operation. And I appreciate that because, you know, they're back and forth.

So hours of operation means the gates to your facility will be open during that or are trucks going to queue up and wait for that? I know we've had issues with that on dump trucks at concrete facilities and things like that.

MR. DELISE: That's a good question.

So the hours of operation are just when a truck would come to the site. Because there's so -- there's such a small amount of traffic, it's not like the batch plants to the west of us where you would have that type of thing. Trucks aren't going to come to the site outside of daylight of course. And there would be no queueing either because there's only one truck per week that would be delivering gas and then, you know, the other trucks that are picking up the gas to deliver to customers will be leaving from the Fort Myers site, coming down, delivering gas, picking up here, delivering more gas, so it all happens during daylight hours.

THE HEARING EXAMINER: Will there be anyone staffing this site or it's strictly the trucks that are employees of -- I guess their trucks associated with this business will have the ability to get in and out?

MR. DELISE: Correct, no staffing of the site. It will be monitored so we

can see -- with cameras so we can see what's going on on the site but there are no staff located onsite.

THE HEARING EXAMINER: And the RV storage area, that's just storage; right? No one is living there or it's just storage?

MR. DELISE: The last time I went out there it looked like just storage so I'd have to get a confirmation on that.

THE HEARING EXAMINER: I mean, is anyone allowed to live out there or is it just storage? I think I know the answer to this, but go ahead.

MR. BELLOWS: For the record, Ray Bellows.

The TTRVC zoning district allows for the development of sites for recreational vehicle living facilities. My recollection is that the site is not currently being used as such, maybe it's storage. But I'll defer to John if he made a site visit out there.

MR. KELLY: Based on representations that I've received it is storage right now. There is an attachment to your staff report, and if I can have that placed on the visualizer I'll tell you which one in just a second.

It's Attachment C. That is the greater site plan for this planned unit development. And we'll give it a second here.

THE HEARING EXAMINER: (Low Audio-Inaudible) I'm just joking with everybody. I try to make this a fairly relaxed environment.

MR. KELLY: It's going to be Attachment C, as in Charley, please.

I was going to try mother may I.

THE HEARING EXAMINER: Whatever it takes.

MR. KELLY: Next slide.

If we can zoom in a little bit on the more right-hand side, the more right-hand half?

In the top above the area that you'll see the red cloud, below that within the area of the red cloud is where we're looking for the use. And I believe -- if you can just go up a little bit -- that it is storage area.

Can we go back one slide? Same general area. Oh, I guess it was forward one page. No, back. If you can zoom in around the red box a little bit?

That should be storage area. They haven't declared use that I see on the site plan. So this is -- if you can go back to the first page of this -- the current site plan for Cypress Marketplace, which is the document that they will need to amend for this project to go in. But, yes, at this time it's storage.

MR. DELISE: There is a condition on Number 5 that talks about lighting to make sure there's no off-site spillage as staff mentioned in their overview. So that's a further protection of off-site impacts.

THE HEARING EXAMINER: Noise and lighting is definitely a criteria but you're going to be closed at 5:00 so I presume there's not a lot of noise coming out of this after hours?

MR. DELISE: (Low Audio-Inaudible) truck coming in is the only noise you're going to hear. It's not like a batch plant where this is noise loading trucks. There is no noise associated with this type of use, it's just not an issue. Glare is not an issue, odor is really not an issue. You know, to the extent that there is any gas that would leak, it quickly dissipates into the air.

THE HEARING EXAMINER: Why don't we go ahead and open it up to the public and we'll answer any questions that may come up there.

Anybody here from the public to speak on this item?

UNIDENTIFIED SPEAKER: Mr. Dickman, I have one speaker, Paul Rodriguez, (sic) is with us.

Mr. Rodriguez, are you with us?

THE HEARING EXAMINER: Come on up, Mr. Rodriguez. (sic)

How are you, sir? Let me get the lights, one second.

MR. RABINSKI: Good morning.

Is there any way the planner can put up the compatibility picture, or the compatibility?

THE HEARING EXAMINER: The compatibility picture?

MR. RABINSKI: Yeah, that you just had up there.

THE HEARING EXAMINER: Well, I understand what's the compatibility here so if you could just speak to -- just give me a description of what your comments are.

MR. RABINSKI: My name is Paul Rabinski (Ph), I live at 11231 Trinity Place and I have some questions on this propane tank that's -- what is it, 40,000 gallons of liquid propane?

THE HEARING EXAMINER: So here's the way we're going to do this. Normally the way the public hearing part of this is set up is for you to just provide me questions -- provide me information that will help me evaluate this but not to ask questions. The parties here are the applicant and the county but if you want to raise issues I'll write them down --

MR. RABINSKI: No, I just wanted to have a picture of it so it would be more -- understand it more.

THE HEARING EXAMINER: (Low Audio-Inaudible) saw the pictures.

MR. RABINSKI: Fine, I can go on.

THE HEARING EXAMINER: Were you at the NIM?

MR. RABINSKI: This propane tank that's proposed for the back of my property is -- from property line to property line is 600 feet.

THE HEARING EXAMINER: Which property do you own?

MR. RABINSKI: I'd show --

THE HEARING EXAMINER: All right. Let's go ahead and show the area. Try to find a good -- maybe aerial or something.

MR. RABINSKI: The last map you had --

THE HEARING EXAMINER: Pardon me, I guess that would help.

I do want to know where you are in juxtaposition of this site.

MR. RABINSKI: There's a bigger one like that.

There you go.

THE HEARING EXAMINER: Tell me where your property is.

MR. RABINSKI: Directly in back of the gas -- right there.

THE HEARING EXAMINER: So north is up --

MR. RABINSKI: There's a house in there and there's another house in the back of that house.

THE HEARING EXAMINER: I see. Okay. So you're --

MR. RABINSKI: There's another one right on the easement where the brown is.

THE HEARING EXAMINER: So in your opinion how far away are you from this particular application?

MR. RABINSKI: Approximately 610 feet from property line to property line, but I wouldn't hold me on that.

THE HEARING EXAMINER: You're allowed to put lay testimony in there. That's your house so we'll --

MR. RABINSKI: My concerns are -- is explosions. I'm paranoid. I talked to the owner of the plant, which made me feel better. I got in and researched these tanks and found out they're almost 99 percent safe unless, of course, there's a -- somebody shoots something at it, a high powered rifle, or my main concern is lightning. Collier County is number one in lightning in the United States, Golden Gate to be exact.

THE HEARING EXAMINER: Are you sure Tampa is not?

MR. RABINSKI: It's Collier County.

THE HEARING EXAMINER: All right.

MR. RABINSKI: In the meantime there's a cell tower near there that attracts lightning. I've been struck many times. Naples Insurance Company won't even insure me anymore. They've already paid out like \$16,000 worth of lightning damage. I have FPL lightning damage. What's going to stop 5 million volts of lightning? There's a cell tower. What's going to stop 5 million volts of lightning hitting this tank? I'm only 600, 700 feet away from this tank. And everything that I see on the computer, that there is an accident, mainly it's man-made accident, filling cylinders all the time, which they're not going to do, it's just a storage facility, which is pretty safe if it has the proper safety features around the plant. Because we've had gunfire and other things over there. It needs some kind of security with cameras that if there's any motion in this particular project, if anybody goes over near this thing, these motion detectors would go off and call a telephone number so somebody could get on the phone and look and see if anybody is near the plant, invading the plant, doing something to the plant. It needs security.

Nowadays we need a lot of security because we don't even know who's coming into the country now and we need security on these things. Most of the security and things that were put on these things were after World War II, to tell you the truth, on propane, because that's what won us the war, is communications and propane. Well, not propane, gas in general.

And I'm really worried about lightning. Really worried about lightning. I just want to tell you my last experience with it. I unplug everything in my house constantly. My last experience was unplugging everything in my house, laying back on my bed, and staring out my back window watching the tower get hit and lightning coming out of my wall sockets three feet and hit the plugs on the floor that I unplugged and still snapped the whole house and burnt up my whole house as far as electronic equipment.

So I'm here basically to say that I don't know what they're going to do for hurricane prevention but I think they should do quite a bit more on this particular site because 5 million volts of electricity, that tank is going to blow up and all my

property is only going to be a hole in the ground with a bunch of water. I feel as though I'm here today basically to say that we need extra protection from lightning at this plant.

THE HEARING EXAMINER: You mentioned you earlier researched that -- what was the percentage of accidents on these types of uses?

MR. RABINSKI: A meteorite or a plane crash --

THE HEARING EXAMINER: No, you gave me a percentage.

MR. RABINSKI: Other than that, there's really a gunshot.

THE HEARING EXAMINER: Wait, you gave me a percentage. You researched this and you said there was -- I think it was 90-something percent safe?

MR. RABINSKI: They're 99 percent safe if you don't have those things around it. But as far as lightning goes they can't really control that. In other words, there's been accidents with lightning with propane but I can't say how this was or could they have protected the tank more. As far as accidents goes and as far as propane tanks blowing up and breaking and everything, it don't happen. The only time it happens is if you have a truck with 8,000 gallons of propane and it gets in a car accident and it catches on fire, usually the fire department has to stay away about half a mile and let it burn out.

THE HEARING EXAMINER: I think I understand your -- I'm going to sum up your concerns and I'll speak to the applicant or to the county in a minute, but it seems like safety is your concern.

MR. RABINSKI: That's it, especially on this particular piece of property because I've had so much damage from lightning in that area. I don't have any idea on the people surrounding it.

And another thing, I want to say one more thing too. It is a storage company and nowadays I don't think they should store any kind of a storage container near the plant because we don't know what's inside any storage containers that are being stored in the plant. But boats and cars and trailers and everything else is great to park around the plant but I would suggest that there's no steel containers that they don't know what's inside them parked anywhere near a propane site.

THE HEARING EXAMINER: Storage surrounding the site, not this site?

MR. RABINSKI: In other words, a POD. They shouldn't have a POD unless the POD's been examined to not hold any --

THE HEARING EXAMINER: I just want to understand; you're talking about storage by other entities around this propane?

MR. RABINSKI: Yes, around the plant, that the owner should take due care because nowadays we don't know what's inside these containers.

THE HEARING EXAMINER: I appreciate everything you've told me, thank you. I appreciate you being here.

MR. RABINSKI: Thank you very much.

THE HEARING EXAMINER: Anybody else here?

I'm going to get back to all that. I wrote down everything, but anybody else here to speak or out there to speak?

UNIDENTIFIED SPEAKER: Mr. Dickman, I do not have any other registered speaker for this item.

THE HEARING EXAMINER: Great. We're going to close the public

hearing.

Let me start by asking some questions and then you guys might want to say something to clarify all this stuff.

I do take it seriously. I mean, part of this evaluation, because it is a conditional use and not a use as of right, that's the whole purpose of having this hearing, is to make sure it's a good fit.

Frankly, it is a little -- I know you're referring to it as a remote rural area but it is an unusual property that's long and deep, but then you're using part of that area with access roads. So I totally understand your point of view on that but then there's multiple types of uses that sort of are central to that area.

So I want to know a couple of things: Number one, tell me about the regulation of propane. I'm guessing that it's pretty high, so can someone tell me about that?

MR. DELISE: What I'd like to do is call up the representative from South Florida Gas.

THE HEARING EXAMINER: We'll do that in a minute. I do want to hear about that and I want the community to hear about that.

Secondly, talk to me about lightning.

MR. DELISE: He could also give you more details. This came up at the NIM and I think Terry explained it quite well. These facilities are grounded. They're designed specifically to withstand a lightning strike in how they are grounded so a lightning strike would -- if it ever did, and, of course, you know the chance of being struck by lightning -- it would immediately dissipate into the ground and cause no harm.

THE HEARING EXAMINER: So let me ask you this because we need to get expert testimony on the record here. If you feel like someone else in your team is better to answer these questions, you might want to bring him up.

MR. DELISE: Terry, who deals with this daily from South Florida Gas, can go through all of those answers.

THE HEARING EXAMINER: Bear with me, I just want to get through this.

For those of you who don't know, my evaluations have to be based on evidence from experts. I can consider lay testimony as long as it's as to the facts known to that person, but as far as the record, you know, the county has experts, you have experts. I want to understand from your expert, the propane folks, how strongly you're regulated by maybe the state, county, the federal government. This has nothing to do with the site plan, I just want to know operationally. Also dealing with any type of -- I don't know, let's call it -- I don't even want to call it terrorism, but somebody that might be doing some knucklehead stuff that are out there that could damage these. So maybe your folks from there. (sic)

MR. DAVIES: For the record, Noel Davies, applicant's attorney.

With respect to the formalities today, prior to my client speaking I just wanted to proffer him as an expert in propane in these types of facilities. He's been in the industry for over 30 years. I will let him, if I may, speak briefly about his qualifications prior to testifying. We would like to formally proffer him as an expert in response to the lightning comments, also in response to the regulatory

authorities for propane, and matters of operation for these types of facilities based on his personal experience with these types of facilities.

Thank you.

THE HEARING EXAMINER: Mr. Fisher?

MR. FISHER: Good morning, Mr. Dickman.

THE HEARING EXAMINER: Good morning, sir.

MR. FISHER: My name is Terry Fisher, South Florida Gas Company.

THE HEARING EXAMINER: I'm going to guess that our Court Reporter is going to tell you to speak up. Speak into the microphone.

MR. FISHER: I've been in the propane industry about 34 years. I've been with South Florida Gas Company 25 years since the beginning, day one. Chuck Robb, the owner of the South Florida Gas right now, and I founded the company 25 years ago. My whole career has been in service and understanding about propane. Worked extensively with the state of Florida with respect of the inspectors that we have to deal with.

THE HEARING EXAMINER: I'm going to cut to the chase and say you're an expert.

Tell me about safety here.

MR. FISHER: In a propane gas plant, roughly in the state of Florida there's about 148 of these facilities that have 18,000 gallons or larger tanks. Most of those facilities are retail places that have a lot of trucks coming and going and a lot of employees and stuff like that. Not quite what we're doing here. But they have the tanks and the facilities. So there's about 148 of these facilities in the state of Florida alone.

As the thing with the lightning, Lee County, Collier County --

THE HEARING EXAMINER: You can address me on that.

MR. FISHER: All the lightning in these counties -- you're absolutely right, we're the number one lightning capital of the world. These tanks are designed to be struck, literally struck by lightning. And the lightning passes through to ground. They're not attached to the ground as far as the tanks. The tanks are sitting on piers, which are concrete piers which go into the ground. But the tanks usually have at least two grounding cables. They have, like, three-quarter inch grounding cables that are attached to them, which are professionally installed and put in to where it doesn't affect the tank at all.

Like I said, these things, the tanks you see in all the pictures up there that there's facilities, (sic) those facilities have been in place for over 30-something years and those tanks I imagine have been struck by lightning in the past.

THE HEARING EXAMINER: So I know that you don't want your tanks to be struck by lightning but how -- is that part of the regulatory process by the state, by the Feds? Tell me a little bit about that.

MR. FISHER: They make sure that they come in -- we have to be inspected by the -- not by the federal government, the State of Florida regulates us. The State of Florida comes in and they have an inspection team that comes in, usually one or two inspectors, and they go through top to bottom. Every single aspect of our plant has to meet certain criteria. We have safety designs in the plant for -- if let's say a car runs underneath the tank and sheers off a valve, everything is designed to

where -- you were talking about you were wanting to know about a terrorist or something like that. So I'm sharing --

THE HEARING EXAMINER: (Low Audio-Inaudible).

MR. FISHER: Exactly. But in that case, just to let you know, that has all been considered and with excess flows inside the tank internal excess flows. (sic) Someone drives a car up underneath the tank, it's designed to shut down. Everything is designed around safety in this industry. That's why there's so few accidents on these facilities.

As far as addressing the issue of a gunfire in the area, stuff like that, these things are usually about three-quarter inches in thickness, plus they're pressurized. So it would take an extremely high powered rifle to puncture a hole. You can't just walk up and shoot it with a handgun, it will just bounce off. Even if you did shoot a propane tank -- you can watch Myth Busters, they show it where they actually do that -- it does not do anything.

THE HEARING EXAMINER: When it explodes what happens? You're such an expert in this, I mean, that type of tank, I mean, I agree, I think this is something that obviously would be regulated just like petrol and other types fuel. But have you ever seen one of these explode; and if so, how dangerous is it?

MR. FISHER: There has been in the past, but like I said, every time an accident happens in the past, same like the airline industry, they try to come up with ways to make things safer. So the ones that have happened in the past, things are different in the industry at this point.

But, yes, there has been bleves -- what they call bleve. That's where the propane is totally non-harmful to the environment. It dissipates completely. You release it and it just goes away, and that's what propane does, it just goes away. So that's what a bleve is, the release of the whole thing. Like I said, they're designed to be safe and they're designed to be where that doesn't happen.

THE HEARING EXAMINER: Let me ask you this, because -- and we saw a picture of it. I've been seeing more and more of this where residential development folks are putting in those smaller tanks that I guess you're going to be filling, and they're in residential areas in the ground or above ground. You know, I've seen more of them down here because I'm from Florida and I see everything. But lightning strikes there too; right? And I assume that those are also designed with safety features as well?

MR. FISHER: Our company alone, we have 10,000 customers. We're going to do -- like, 3 million gallons will go through our Fort Myers facility this year. So that tells you how much gas is going through in this area. We're just one of several propane gas companies in the area.

THE HEARING EXAMINER: All right. I think you've answered all the questions that I needed from you. I don't think anyone here is a lightning expert, but I've always been taught the I4 corridor is the lightning capital of the world, which is why the Tampa Bay hockey team is called the Tampa Bay Lightning. You guy -- Everblades. I don't know, whatever. But there is a lot of lightning and I was in a heck of a lightning storm up in St. Pete Beach the other day. Anyway, Florida has a lot of lightning, we know that.

So I appreciate your information on the safety factors. I know it would not

be -- I assume it would not be in your best interest as a business and operating for so long to try to skirt the State of Florida rules on it this. It seems like you'd be shut down and not really making any money so I think that that's part of the recommendations here on the conditions that you comply with, and you've got a big red book there you're showing me with regulations.

MR. FISHER: This is our safety manual just for the Fort Myers facility from the State of Florida.

THE HEARING EXAMINER: I want to make this clear, and your attorney is doing a great job. I do want to make this clear that in asking these questions, I'm asking them but I also have a lot of respect for an individual, or the gentleman that came forward and spoke. And, you know, rightly so. I'm sure you've heard some of these comments before where people are worried, they see a big tank like that, it could be scary. But I wanted you to put on the record the types of things that are going to be going on.

The other final question that I just thought about was after hours security. Do you have any security cameras or what are you required to do?

MR. FISHER: I'm not required to have as far as security cameras, but we are going to have security cameras. We have security cameras on all of our facilities. The Department of Homeland Security, who I have to deal with also, they require, and the State of Florida, requires a six-foot chain-link fence. There will be a six-foot chain-link fence, barbed wire all the way around and locked facilities. So this facility will be locked up tight.

You were asking earlier about the drive coming in. That is a gated drive so the general public cannot just drive into that facility because it's a storage facility. So it is gated with a gate code so the general public can't drive up that road.

THE HEARING EXAMINER: Thank you for answering my questions, I appreciate it very much. Thank you for coming up and answering those questions.

To any of those -- I want to know if the county has anything else they want to say to any of the public comments that came out. And I do deem, you know, plus or minus 600 feet away, I think the gentleman put some valid questions for me to ask on the record to that extent so let's address those.

MR. KELLY: John Kelly, Senior Planner for staff.

Really, at this stage we're concerned but the actual application of the regulations comes at the time of site development plan and so we defer to the experts that do the site development plan review.

THE HEARING EXAMINER: I know what you're saying because I'm also a planner, AICP, Lawyer, been doing this a long time. But I also like to put on the record and I also like to help the community understand what's going on here.

So this particular property on the future land use map has been designated a certain way. It's zoned a certain way. And whenever you have that designation there are listed uses that are as of right, there are listed uses that are prohibited, and then there's some uses that are conditioned on exactly here today. It might work, might not work. That's why you have a public hearing. So there could be other things. And I don't really necessarily like it when people go through a list of horrors in order to say this is a better thing. I think what we're doing here today is exactly what is supposed to be. County doesn't advocate for anybody other than the

decisions and recommendations that they're making. They're not advocating for what goes there. And what you just heard is that the actual details of the site plan, notwithstanding the fact that I did see a lot of graphics that showed me how this is going to work for my purposes, my job is to determine whether this use is appropriate as a conditional use on this piece of property. Then, based on my decision, if it's in the affirmative there's going to be a whole bunch of other stuff that has to happen at site plan review. Site plan review is a lot more detailed.

Am I wrong about this?

MR. KELLY: I couldn't have said it better.

THE HEARING EXAMINER: There you go. Thank you. I appreciate that.

Anything else? Thank you. All right. Good.

Did I close the public hearing already? All right. Good. Thanks for reminding me.

Counsel, do you have anything else?

MR. DAVIES: Yes, sir.

One point of clarification and then I just wanted to make a final statement if I may.

THE HEARING EXAMINER: Okay.

MR. DAVIES: So if we could call up the PowerPoint presentation with the conditions from staff? I believe there's a notation on there, before we get there, it's Bullet 5 or Condition 5. This relates to the lighting, Mr. Hearing Examiner.

THE HEARING EXAMINER: I see that.

MR. DAVIES: So with respect to the precision or the quantification of what no lighting means, I'd actually like to invite Mr. Trebilcock to speak to that a little bit as to applicant's requested language. They're just to clarify the shielding of the lighting and the no offsite spillage so that we've got a measurable, quantifiable measurement for what that means.

THE HEARING EXAMINER: I appreciate that. I saw that and I was -- there is going to be lighting there, but just like any other use, you know, I think it's normal to make sure that lighting and noise are not going to permeate from your use.

How are you, sir, today?

MR. TREBILCOCK: Fine, thank you. Good morning.

For the record, my name is Norman Trebilcock, I'm a professional engineer and certified planner. I have 30 years of experience here in Collier County. Our firm prepared the traffic study for the project but also we prepared lighting designs, prepared hundreds of them here in Collier County for residential and commercial projects and I've worked with staff in past on criteria for PUDs and the such.

In terms of the lighting, what -- really, the staff recommendation is well founded. The only thing we'd just request is have any specific criteria for the north, south, and west property lines to have 0.5-foot candles as the standard at the property line so that way it's a measurable criteria. Those adjacent land uses are industrial as well but at least it establishes a criteria.

The reason I didn't establish an east criteria is because that's right where the entry is so typically you'd have -- want to have a higher light level there anyway. So

the staff's recommendation with shielding would really protect that issue for folks further away and then the limitations of height that we have there as well. So that's why we wanted to establish a specific criteria for the border property lines. And then just on the east side it would be protected by the shielding criteria. So as long as -- it would be shielded downward. Just make sure that's good with staff.

THE HEARING EXAMINER: Come on up, let's have a conversation about this. I think it's a great topic.

Real quick question: Is lighting also going to be addressed in the site plan process?

MR. BELLOWS: For the record, Ray Bellows.

The site development plan review team will review the conditional use application or the HEX determination. If this condition is a part of it then we'll review to ensure --

THE HEARING EXAMINER: They'll look at the -- this is one thing that -- I'm good with noise but not with lighting. Light candles?

MR. DELISE: Foot candles. It just helps staff with a measurable standard as opposed to just saying no spill. That could mean zero foot candles and, really, with adjacent industrial uses, to have that probably is in the best interest of anybody.

THE HEARING EXAMINER: So here's what I'm going to do, I don't want to hem the county or you on any particular foot candle, but if I were to make an affirmative decision it would be something to the effect the during site plan to ensure that the lighting is sufficient for security but also controlled in a way that it is on the property and not going to create a glow.

MR. DELISE: Nuisance, yes, sir.

THE HEARING EXAMINER: Jeez, these guys are putting words in my mouth. That's great. Thank you.

MR. BELLOWS: Just for the record, sir, Number 5 is staff's recommendation, ended after lighting. It's the language that's in all caps that they're proposing to add, that's not in your staff report. I'm uncertain if it needs to be read into the record but that would be up to you, sir.

THE HEARING EXAMINER: I trust the experts at the county, I trust -- obviously you're an expert. I'll recognize you as an expert for the record. If I were to, again, rule in the affirmative it will probably be not specific language like that since I'm not an expert in lighting, although I'm an expert in understanding adjacent nuisances and things like that. So it may not be tying you into any specific number because I'm going to want -- if I were to decide in that way, and I'm not saying one way or the other, but I would like the experts at the county to be able to make sure that the lighting, again, high security, low spillage.

Thank you. I appreciate you putting that into the record.
Counsel?

MR. DAVIES: Thank you, Mr. Hearing Examiner, for indulging us on that clarification.

To conclude we do believe that the county's conditional use criteria has been met through the substantial and competent evidence provided today with the testimony, including Mr. Fisher's testimony and the other expert testimony, as well as the evidence of record in the county file.

Accordingly, we believe we are consistent with the county's growth management plan and we're in compliance with your land development code as well. And through that and because of that we are respectfully requesting, Mr. Hearing Examiner, your approval of this proposed use.

THE HEARING EXAMINER: I appreciate that. Thank you very much.

You did a fine job and certainly your client should be happy with the services you did today.

MR. DAVIES: Thank you.

THE HEARING EXAMINER: Thank you. Well done.

I say that only because a lot of people don't understand quasi-judicial hearings. I talk about this a lot around Florida. I require -- I'm required to look at expert information from experts but also, again, I said layperson testimony is possible as well to the issues that they know about. So when folks, such as the gentleman that spoke here, I really appreciate staying on point and expressing his true and accurate concerns. And that's exactly what I need here today. And with that -- and also the county does a great job of evaluating these things.

So, Ray, John, you guys have anything else you want to tell me before we shut this down?

MR. BELLOWS: We're good.

THE HEARING EXAMINER: Okay. We're going to close this and I'll get a decision out to you-all as quickly as I can.

Thank you all for participating and bringing your whole team here. And, sir, thank you for being here from your neighborhood. I appreciate that and I'll definitely -- I wrote down everything you said.

Let's go to the last item, which is 3C, on the agenda.

MR. KELLY: Again, John Kelly for the record, Senior Planner.

This is going to be VAPL20190001140, Charleston Square, which is located within the Imperial land unit development.

The applicant is requesting to replace an 8-foot wall that was destroyed by Hurricane Irma with a 10-foot wall. The complication being that this is actually built atop an 8.33-foot berm. And so the way the LDC measures wall height, it includes the berm, so this looks like an extremely tall wall. It's actually a 10-foot wall atop an 8.33-foot berm for 18.3 feet total.

Notice and hearing requirements for a variance are contained in Land Development Code Section 10.03.06F2. The applicant did satisfy the requirement for an agent letter to be sent on or about June 9, 2021. A public hearing sign was posted by the applicant on or about July 14, and the property owner notification letter and the newspaper ad for this meeting were run by the county on July 23, 2021.

Staff analysis is based for variance on the criteria within Land Development Code Section 9.04.03 A through H. Staff recommends that the hearing examiner approve the petition to allow the replacement of the 8-foot wall with a 10-foot concrete wall to be atop an 8.33-foot buffer.

THE HEARING EXAMINER: So we've got a structure fence on top of a ground berm, all together has to be measured cumulatively; correct?

THE WITNESS: Correct.

THE HEARING EXAMINER: All right. Thank you.

All right. Is the applicant here or applicant's representative?

MR. MCCONNELL: Hello, my name is Jackson McConnell. I'm with Agnoli, Barber & Brundage. We're here to talk about the variance for the wall on the north end of the property.

Also with me from Agnoli, Barber & Brundage is Tom Barber. He's my senior on the project and if there are any questions that I'm not able to answer, he's here to back me up and help me out with that.

Also with me is Trevor Calhoun, he's the applicant and our client for the project and a property owner for the Charleston Square community.

Next slide.

So just to give you an idea of the location of the project, it's located within the Imperial Golf Community on the north side of Imperial Golf Course Boulevard, which is to the east of US 41.

UNIDENTIFIED SPEAKER: Real quick. The Reporter --

THE HEARING EXAMINER: I knew that was going to happen. Slow it down and speak louder. I knew that was going to happen, just a matter of time.

MR. MCCONNELL: So, like I said, we're in the Imperial Golf Community on the north side of Imperial Golf Course Boulevard and to the east of US 41. This is in North Naples heading up towards Bonita Beach Road.

You can go ahead and go to the next slide, please.

Some zoning information: The Charleston Square parcel is about 3.43 acres in size. It is currently zoned as PUD and the land use is as an urban residential subdistrict. There you can see on the diagram highlighted in black for the property boundary.

Next slide, please.

So just to reaffirm, we're seeking a deviation from the Collier County LDC which restricts residential components of PUD to a maximum fence or wall height of six feet. This variance request would allow for a 10-foot wall to replace a preexisting 8-foot wall that was destroyed in Irma that sits atop an 8.33-foot berm. So the difference in wall height from the preexisting wall to the current wall is two feet higher than what was damaged in the storm.

Next slide, please.

So looking at the land use, you can see the incompatibility of some of the land uses onsite. Our site is highlighted in yellow. In the middle is yellow being a medium intensity and to the west and to the east you can see highlighted in blue is recreational facilities.

THE HEARING EXAMINER: Let me ask you a question. The fence is going to go the extent of the -- I assume -- yeah, north is up. So the blue and the yellow, that's all part of the property; right? That's the recreational area for the residential area?

MR. MCCONNELL: To the west highlighted in blue is actually the Gomez Tennis Courts Academy. (sic) Only the yellow site in the middle is the property boundary for the Charleston Square.

THE HEARING EXAMINER: Is there a separate ownership there?

MR. MCCONNELL: There is separate ownership.

THE HEARING EXAMINER: I'm just asking a question. Hold on one

second.

Ray, are we good with that? Was there -- it seems like there's two property owners. Did you have to have two applicants or two individuals here? Seems like they're putting a fence on someone else's property?

MR. KELLY: John Kelly, Senior Planner for the record.

I was under the impression the wall only extends the width of the property, the subject property.

THE HEARING EXAMINER: So you've got a red line -- is that red line just to show the use?

MR. MCCONNELL: The property boundary of the Cemex concrete plant to the north.

THE HEARING EXAMINER: Okay. So the fence is just going to be on your yellow part; right?

MR. MCCONNELL: Yes.

THE HEARING EXAMINER: Okay. That clarifies it for me. I appreciate it.

MR. MCCONNELL: Absolutely. There will be another slide coming up that will show the exact --

THE HEARING EXAMINER: I'm sorry.

MR. MCCONNELL: No, you're totally fine.

THE HEARING EXAMINER: I'll let you finish.

MR. MCCONNELL: This was just to show the difference in intensity, the most intense just being that Cemex plant to the north that the client is really seeking to just buffer between the two different uses, the industrial use.

Next slide, please.

So, again, this is just kind of showing a close-up. This is just a screen grab from Google Earth just showing the difference in intensity and the proximity between the Charleston Square community and the Cemex facility to the north. This is looking to the north.

Next slide, please.

And just another view of it; the Cemex plant on the northern end. This is looking eastward from the west and the Charleston community on the south side.

THE HEARING EXAMINER: Let me stop you there and let me ask you a question.

MR. MCCONNELL: Yes, sir.

THE HEARING EXAMINER: So who is required to build that berm and that fence? Was it Cemex? Because it seems like extremely incompatible uses next to each other. Do you know? Does anybody know? Does the county know?

MR. CALHOUN: I'm the president of Charleston Square Homeowners Association. We had several conversations prior to Irma about who owns that property and ultimately we ended up having a survey done and Charleston Square actually owns an additional approximate ten feet from the center line of the preexisting fence. And we did contact Cemex, talked to them several times in hopes they would -- since they're in the cement business, help build the fence -- wall. But ultimately the property falls within Charleston Square's boundaries.

THE HEARING EXAMINER: Who came first, you-all or them?

MR. CALHOUN: To the best of my knowledge, there's a picture, the plant was there in 1963.

THE HEARING EXAMINER: Thank you for the clarification.

MR. MCCONNELL: Next slide, please.

THE HEARING EXAMINER: Hold on one second.

John, did you want to say something?

MR. KELLY: John Kelly, for the record.

I don't know who was responsible at the time that the wall was constructed; however, I can tell you there was a site development plan done at that time. It was the Charleston Square folks that erected the wall.

THE HEARING EXAMINER: They probably would have wanted it. Somebody would have wanted it.

Quick question, was there -- John, do you know, was there a variance included in that approval?

MR. KELLY: There was not.

THE HEARING EXAMINER: Okay. Sorry to interrupt your presentation.

MR. MCCONNELL: You're totally fine.

Like he said, there was the site development plan prior.

Next slide, please.

So this is just a little bit of the history of the wall. The wall originally did run through the Gomez Tennis Academy to the end of the Charleston Square parcel. It was an 8-foot wall that was built on top of the 8.33-foot berm. It was originally made of concrete slats and posts which was difficult to maintain and unfortunately most of this wall on the Charleston Square property was destroyed in the storm along with a lot of the plantings that served as the Type E buffer that should be there on the property.

Next slide, please.

So here is just looking at some of the damage post Irma. As you can see the wall is completely destroyed on the Charleston Square side. It's no longer standing there and the Cemex facility is completely visible from street level. And this has led to increased noise and sediment levels onsite. The Cemex plant does operate seven days a week and it just creates a lot of noise for the residents and all those big trucks driving through there, it drives up a lot of dust in the air. And if you actually go out to the site you can still find some of the concrete slats lying there.

Next slide, please.

This is just a couple more pictures showing the wall. You can actually see the wall running along the Gomez Tennis Court Academy side as it goes back there so all that is standing at the moment and you can see where our property is on the other side.

Next slide, please.

So here's the exact location of where we're proposing the wall. The approximate length of it is right about 292 feet from property line to property line. The difference, you can see it highlighted there in purple, and on the west side it will be about 11 feet from the property line and to the east side where it will be about 13 feet from the property line. That represents the top of the berm. And our plan is for the existing Type B buffer that should be there will be restored to meet

LDC requirements and the site development permit that was previously in place.

Next slide, please.

So here's the design for what the new wall will look like. It will be 10 feet tall with the foundation underneath the berm. It's designed to be more resistant to hurricane, hopefully not to repeat the same problem that they had, and it will be a precast stone finish on the wall.

Next slide, please.

This is just another cross-section showing it from a different angle where you see the entire height of the wall from the 8-foot-4-inch berm to the 10-foot wall on top of that.

You can go ahead and go to the next slide.

So this is just discussing the landscape buffer that should be present onsite. Like I said before, that will be restored to meet LDC requirements. Basically what that will include is 10-foot trees at time of planting, every 25 feet on center, along with a five-foot hedge running the length of the wall. Any existing plantings onsite, including the trees and any hedges that are there, will remain and they will just bring in additional plantings to complete that buffer. And this will all be done in accordance with the preexisting site development plan.

Next slide, please.

This is just another close-up shot kind of showing the line of sight from the Charleston Square community in the hopes to buffer and obstruct the view from the cement plant, block some of the noise and sediment from coming over the wall into the community for the betterment of them. And this is just showing the 10-foot wall, the plantings, and the buffer onsite.

That's it for my presentation. If you have any comments or questions?

THE HEARING EXAMINER: I have a couple of questions for you.

If you were to rebuild the existing wall at the height that -- I mean, a lot of stuff happened. My property was damaged during Irma as well, I had to replace stuff. But if you were to replace the wall at the existing height, would you need a variance or would that be -- John, would you need to answer that one?

MR. BARBER: Good morning, Tom Barber for the record, Certified Planner.

Yeah, I believe it would be in compliance with current code. We'd be requesting a variance as well.

THE HEARING EXAMINER: Please, not that I'm questioning your judgment. I just want to know because they actually want to build a little bit higher --

MR. KELLY: Correct. And staff has tried to research this. We can't come up with the -- any permission for the prior height of the wall. The LDC restricts them to six feet.

THE HEARING EXAMINER: So six feet at ground level; right?

MR. KELLY: Yes.

THE HEARING EXAMINER: Wow. So somewhere in here somebody said build a berm.

MR. KELLY: Well, they have a site development plan that shows a six-foot wall -- I believe it's a six-foot wall -- atop the berm. I don't know how the LDC

applied measurement of wall height at the time it was proposed.

THE HEARING EXAMINER: So, no matter what, they're trying to get back to where they were pre-Irma but maybe with better material and a slightly higher wall. And I get the fact that berm plus structure is measured from --

MR. KELLY: The LDC is quite clear now that it includes the berm, so they would be here for a variance today one way or the other. And I will add that there is a letter of no objection from Cemex within the package.

THE HEARING EXAMINER: I would imagine. Maybe they're even on your property now that you know.

Okay. That answered my question on that one. I just wanted to know if that was grandfathered in and they could just rebuild it but I didn't think they were.

Anything else from the team? Applicant?

MR. CALHOUN: No, not from me, unless either Trevor would like to speak or Rob as well.

THE HEARING EXAMINER: Anybody from the tennis academy?

MR. CALHOUN: No, but we do have a letter from them.

THE HEARING EXAMINER: They don't want to have a wall? I'm just curious, why wouldn't everybody? Yeah, that's a different conversation. Never mind, forget about it. It's not relevant to this.

Let's just open it up to the public. Open to public comment. Anybody here live or electronically?

UNIDENTIFIED SPEAKER: Mr. Dickman, I have one registered speaker online, Cheryl Calhoun.

Cheryl, are you with us?

MS. CALHOUN: Yes. Thank you, but I have no comments.

THE HEARING EXAMINER: I close the public hearing.

Okay. So it appears to me that the cement factory -- street language -- was there before you-all. But that's okay. You guys came in, got approved. Logically had a berm and a wall. It was a wood wall, a wooden fence, normal for the time at that time. I see that what they're proposing is slightly higher than what they had before but also it's my understanding from what I'm hearing that the material and the construction procedures are going to be more resilient to tropical storms, hurricanes, and so forth. And also possibly give a little bit more relief from both parties really, the cement folks and you-all, for being able to be so close together. So I think that's that.

So I do have a variance criteria that I have to follow with the understanding that you're trying to get back to where you were on that.

Let me just go through my notes here for a second.

Okay. John, did you guys have any conditions on this?

MR. KELLY: No, sir. None that aren't already in the land development code.

THE HEARING EXAMINER: Okay. All right. Great.

MR. CALHOUN: Mr. Dickman?

THE HEARING EXAMINER: Yes, sir.

MR. CALHOUN: I'd just like to -- Trevor Calhoun, for the record. Part of the request for the additional two feet, we also had four or five

additional banyan trees or ficus trees that were approximately 40 to 50 feet in height. So not just the eight-foot wall that was currently existing, but the banyan trees really helped with the sand, the silt, the noise.

You see in the one picture, I'm not sure, but I think the plant is about a hundred and some feet tall. So when you drive down into the community going from the south to the north, it was kind of hidden behind the -- not necessarily the wall, but the banyan trees. Those also came down during Irma so we can't plant those trees back, in our lifetime they'll never grow that high. So I appreciate the consideration for the 10-foot wall to help the visual as well.

THE HEARING EXAMINER: And you're on the association board?

MR. MCCONNELL: Yes, I was on the board late 2016, so we inherited Irma in 2017. We didn't even know at the time that we needed a variance so we've actually been working on this project since 2018, early. And it wasn't until the building permit was declined, then we started the process and hired the engineers because we just couldn't get past -- we're volunteers, so.

THE HEARING EXAMINER: Sometimes you realize you need a variance while you're in the process.

MR. CALHOUN: I really appreciate these guys helping out.

THE HEARING EXAMINER: Okay. Thank you.

I'm going to close the hearing unless, Ray or John, do you have anything else you want to add?

MR. BELLOWS: Nothing further.

THE HEARING EXAMINER: Thanks very much.

I'm going to close this. You guys did a great job. Make sure you guys wear masks, wash your hands, do everything and stay safe. I appreciate it.

(Proceedings concluded.)

August 12, 2021

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:50 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW W.J. DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 10/5/21, as presented or as corrected _____

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