

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
NAPLES, FLORIDA
AUGUST 26, 2021

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

HEARING EXAMINER ANDREW DICKMAN

ALSO PRESENT:

Andrew Youngblood, Operation Analyst Zoning Division
Nancy Gundlach, Principal Planner
John Kelly, Principal Planner
Raymond V. Bellows, Zoning manager

THE HEARING EXAMINER: So first of all, I need you to silence whatever electronic devices that you might have. If you have to speak with someone, please step outside in the hallway and it usually doesn't bother anybody, so please do that. If you're going to have a conversation with somebody, if you're in the building with one of your colleagues, step outside, please. I try to get through this as expeditiously as possible.

The other items are going to be that we do have a court reporter at all of these meetings, this is a hybrid meeting. The County has facilitated that individuals who don't want to be here in person can participate electronically and that includes our court reporter.

Our court reporter has to capture everything and she cannot capture everything if we are all talking over each other, shouting from the audience, nodding your heads, things like that and frankly the court reporter is going to scream out and say stop doing that and you'll hear, so keep that in mind.

The way that I run this meeting is I will first ask -- for each item, ask the County to come to the gray podium, introduce the item, points to go over, notice, check the box on the notices, make sure everything was noticed properly and then a quick explanation of the project and then recommendations and any conditions associated with that.

Then the Applicant, a representative of the Applicant, or team of the Applicant will use the brown podium. You need to speak directly into the microphones so that it is captured, so everyone can hear it. Once the Applicant makes their presentation, then I'll open it up for any public comment either in person or electronically. Then I will give the Applicant time for -- a short time for any rebuttal that the Applicant would like.

At any time during this process, you may ask questions. And I'm going to ask everyone to try your best, even though anyone has the right under Florida statutes to have a reasonable opportunity to speak at public meetings, but it's really going to help me personally as the decision maker if you will focus your comments directly on the criteria of each individual application. That's going to help me the most. I'm going to be weighing the evidence and testimony that's not only -- that has been submitted to the County for review, anything else you're going to submit, anything that creates the record of this hearing, because once this hearing is finished, I don't receive anything else, that's it, so please try your best to focus on that criteria. That's what's most important to me.

If you've got good jokes or if you want to tell a story, you know, I'll entertain that a little bit of that, okay? I try to keep it calm here, relaxed. It's usually an informal hearing. I don't want anybody nervous about speaking in public. Let's just get through this and everybody enjoy their time. Sometimes -- it's usually a good time here.

The other thing that I would like everyone to know is that I have -- I will not be making a decision here today. Under the code here in Collier County, my decision will be made after reflecting on everything in 30 days as of the date of this hearing. Typically I try to get these out as quickly as I can. It's not going to be tomorrow. If I did it tomorrow, you might infer that I haven't really looked at anything, so -- or I stayed up all night which I'm not going to do, so be patient.

The other thing is I do not -- I make it a practice to try to at -- at my best to eliminate any ex parte communication. What I mean by that is I am here as a quasi judge and I do not want to taint this hearing with one party or the other giving me information that the other side doesn't have. I don't do my own independent research ahead of time, I really -- I literally have the packet that the public has which includes the staff report, all the submittals that the Applicant has made, any e-mails or written correspondence of objections or support of an application. I look at it all. I look at it all.

And then I don't typically haven't yet had to, I'm fairly good at reading maps and I know the geography and the rules of the County. I don't go out and do sit visits and investigate things than do anything else than be here today, listen to everything, which is why I'm emphasizing you-all addressing the criteria for whether it's a boat dock extension or insubstantial change or

something of that effect. They all have different criteria.

So why don't -- at this time, so anyone who's going to speak today, provide testimony, I would -- I need them to stand -- I need you-all to stand up, raise your hand and I'm going to ask the court reporter to have you swear -- give you the oath so that we all know what you're saying is the truth at the podium.

THE COURT REPORTER: Do you solemnly swear or affirm that the testimony you give will be the truth, the whole truth, and nothing but the truth?

(Witnesses were sworn as a whole and all answered in the affirmative.)

THE HEARING EXAMINER: So far in 20 years I've never heard anyone say no or maybe, so that's good. All right, so the Applicants -- just also another piece of information, and part of this is educational for everyone, parties to this are the Applicant and the County, so those are the two parties to this hearing.

So it's a quasi-judicial hearing, quasi-judicial means judicial, so think of it as you're in a judicial chamber, you have two parties, plaintiff and defendant, those are the two parties. There is the public, there may be substantially affected parties in the public, there may be folks that are -- feel as though they have arguments that says this is going to benefit me or being detrimental to me. I personally am not going to make that determination. I'm happy for you to put that on the record. I may ask you questions about where you are in proximity to the application, but I think it would be very unfair for me to try to make that decision about, you know, qualifying you as an indispensable party or affected party or otherwise. So if you feel like you are, go ahead and put it on the record. I think we have five minutes per speaker, is that what do we do, Mr. Youngblood? Let me check first. He's definitely my keeper of all information known to man, so, yeah, do that. I'm not going to do that because that would really cause me -- it's not that I don't want to or -- I just feel that it would cause me to dig deeper into the record and make my own investigation about which speaker, which speaker isn't, and that would really cause me a way to have ex parte research on my own that each party would know, so I'm just wanting you to be aware of that. You know, there is case law that describes who might or might not have standing in the field; that's not my job here to do that. That's for upstream for someone to appeal, so I hope everyone understands that.

If there's any other information I think you should know as I remember it during this process, I will help up along with that. Masks are optional here. You know, we all know what the situation is out there, so please try to be respectful of your colleagues, friends and members of the public in the audience. I can't really tell people in the electronic world what to do, but let's all try to stay safe and follow those requirements.

Okay, anything else? Ray, anything else? You did the pledge, reviewed we the agenda, anything we need to change here, any continuances, any withdrawals?

MR. BELLOWS: No continuances and no changes to the agenda.

THE HEARING EXAMINER: Okay, then here we go. So based on this I see we have two planners here that are going to be handling all of this. Ray, that's not very nice of you. Actually, three okay.

MR. BELLOWS: Yeah.

THE HEARING EXAMINER: You have three people working in here, great. Why don't we start with the first one, item A, 3A, and let's get started with that. This one the coordinator is Nancy Gundlach, did I say that right?

MS. GUNDLACH: It's a tough name. Okay. Would you like me to tell you about the petition?

THE HEARING EXAMINER: Yeah, absolutely. Please.

MS. GUNDLACH: Okay. Well, this is petition PDIP202140324, the Gray Oaks mixed use plan unit development. And for the record I'm Nancy Gundlach, principal planner with the zoning division. And the request is to restate the building plan in the PUD. Currently it is six stories over parking and the petitioner would like for it to be restated in their current format which is (inaudible) natural heights and then zone height would be 103 feet and the actual height

would be 118 feet.

And it's important to note that there currently is a building on the site. And the site is located on the south side of Golden Gate Parkway in the Moorings at Grand Lake, currently developed and under construction and there is a building there that's already 118 feet actual height. It's the clubhouse residential building. So this proposal will affect two tracts and staff is recommending approval of it and we do have a condition of approval. And the sites such as this that are located in the flight path of the Naples Airport, we are required to send it out to the Naples Airport for comment and they had requested that the residents be notified that they are near -- they are in a flight path and there is noise, so we've requested that. The petitioner added the commitment to the PUD document to let potential residents know that and. If you'd like me to state the language of the commitment precisely I can. I have it right here.

THE HEARING EXAMINER: No, that's fine. You can just put it into the record. I think sooner or later they're going to find that airplanes are going over their head.

MS. GUNDLACH: Okay. Ironically, Jason (inaudible) of the Naples Airport Authority reported that people are complaining about that, so I just want to make sure they're aware of the fact they're buying, you know --

THE HEARING EXAMINER: (Inaudible). Just real quickly, you did the notices on this one?

MS. GUNDLACH: Oh, I'm -- thank you for reminding me. Yes, it's been duly notified and Staff is recommending approval.

THE HEARING EXAMINER: Signs are out on the street, radius notices, right?

MS. GUNDLACH: Yes, the agent has posted the sign. I drive by it.

THE HEARING EXAMINER: Okay. And it was advertised?

MS. GUNDLACH: Yes.

THE HEARING EXAMINER: So it's duly noticed? MS. GUNDLACH: Yes.

THE HEARING EXAMINER: All right. Perfect just short synopsis, are we talking about going from measuring things from stories to feet; is that what we're talking about?

MS. GUNDLACH: Yes.

THE HEARING EXAMINER: Okay, so that's the (inaudible) --

MS. GUNDLACH: Uh-huh.

THE HEARING EXAMINER: -- so that gives the ability for someone to have one story higher than the other, the entrance higher, things like that, okay, so as long as we stay within the envelope; is that a fair understanding of it?

MS. GUNDLACH: Correct. Correct.

THE HEARING EXAMINER: All right. Is the Applicant here? Come on up. How are you today?

MS. ROBIN: Great. Can you hear me good?

THE HEARING EXAMINER: I can.

MS. ROBIN: Lindsay Robin, I'm a planner at Stantec. I'm here today on behalf of the Applicant, LB Grain Naples, LLC. We're here requesting approval of an insubstantial change to the Gray Oaks mixed use planning and development.

First, I just wanted to introduce our team here applicant, Lisa VanDean, who's the general counsel and vice president. John wasn't able to make it. We have our land use attorney, Richard Yovanovich, with Coleman, Yovanovich and Koester, myself with Stantec, and the project manager, Raymond D'Esente (ph) also with Stantec. Nancy did a great job outlining the request, so I'll just go ahead and restate it for you. We're seeking approval to modify the development standards for the cluster, multi-family, and townhouse to allow the buildings located on two roads of the parcels the (inaudible) to be constructed at a maximum sight of 103 feet zoned at a 113 feet actual opposed to the current restriction of six floors over two floors of parking which has no actual height assigned to it.

THE HEARING EXAMINER: I have a question, has the new flood regulations gone into

effect which requires (inaudible) --

THE COURT REPORTER: I'm sorry, Mr. Youngblood, I'm having a difficult time hearing the hearing examiner and I'm picking up a lot of feedback from maybe you typing on the computer on that microphone and I'm having a hard time understanding the witness as well.

THE HEARING EXAMINER: I told you guys.

THE COURT REPORTER: Maybe if the Hearing Examiner could just speak a little louder because you're kind of far away, same with the witness, we could try that at first? I'm sorry.

THE HEARING EXAMINER: Okay. Mr. Youngblood, can you say something to -- are you typing?

MR. YOUNGBLOOD: I'm not typing very often.

THE COURT REPORTER: Well, when you do, I miss words unfortunately, so I don't know, can you mute yourself without muting me?

MR. YOUNGBLOOD: No --

THE COURT REPORTER: Okay, we'll work through it. No problem. Just be aware, please.

THE HEARING EXAMINER: So my question right off the bat, and Nancy or the Applicant can answer this, I know new flood maps are out all over the state of Florida and they're changing the base flood elevation and it's also -- there's free board; is that something that Collier County is dealing with now that would raise -- even though the zoning or the PUD would say the maximum height is this, but the actual would be higher?

MS. ROBIN: If you don't mind, I'd like Ray, because he's the project injury manager to speak to that.

THE HEARING EXAMINER: Yeah, if you could, just so I can have that in my mind. I know that's important. I'm experiencing that in other places.

MR. D'ESENTE: Good morning. For the record my name is Ray D'Esente. I'm with Stantec. Basically the new FEMA base flood elevations are being evaluated and based on our correspondence with the Collier County floodplain management department, those elevations are still be evaluated and they anticipate those elevations being adopted either at the end of the second or the beginning of the third quarter of next year.

THE HEARING EXAMINER: So Collier County hasn't adopted those yet, okay.

MR. D'ESENTE: That is correct. However, depending on when the building permit is issued, those buildings would have to adhere to that new standard.

THE HEARING EXAMINER: Thank you.

MR. D'ESENTE: You're welcome.

THE HEARING EXAMINER: Sorry to interrupt you.

MS. ROBIN: No, please interrupt all you'd like. Andrew, if you don't mind, the next slide.

Okay, so this slide here, Mr. Hearing Examiner, is to show you the two parcels that we are discussing here today in regard to specific tracts within the Moorings Park project just south of Golden Gate Parkway and you'll notice I have the 500-foot radius drawn around each parcel just to kind of show you the lack of impact this will have on the notice area that's required for this project.

All right, and here's the development standards table, just a snip of the areas they're changing noted by the star. We were adding a footnote to the table. Again, to very specifically tie this height restrictions to these two parcels, so it's very evident there what we're asking for.

And then this exhibit here will also go with the table as part of the PUD document. There's no question to where the height applies. And then I just wanted to briefly hit on public notice. I know that's important to you.

We did hold a neighborhood information meeting that was both virtual and in person. We did notice 12 properties within 500 feet of the subject parcels and all HOAs within Gray Oaks by

mail. We also did an ad in the newspaper, the Naples Daily News. We had a meeting at the New Hope Ministries church and via Microsoft Teams. A link was provided in the mailing and the newspaper ad and we had zero participants. And we also had no contact prior to the hearing as well from anyone. And then for today's hearing, of course we posted our sign well in advance of the 15 days that we provided date of compliance to Staff.

All of our criteria we've outlined in depth in our application and in the staff report. They did a great job doing and with that, that's all I have unless you have any other questions for me or our team.

THE HEARING EXAMINER: I don't. I think this one's pretty straight forward. Why don't we go to the public hearing part and see what happens.

MR. YOUNGBLOOD: I don't have any registered public speakers for this item.

THE HEARING EXAMINER: That tells me you guys did a great job.

MS. ROBIN: Thank you.

THE HEARING EXAMINER: Or the homeowners around this property don't care.

MS. ROBIN: Maybe a little bit of both.

THE HEARING EXAMINER: Let me just take a minute and explain to people, I'm not -- I want to see these notice signs and have express notice in the record. It's very important. I don't want my decisions appealed, so I try to do them as thoroughly as possible. The types of appeals that go up have to do with due process, has to do with the criteria for approval of this type of application wasn't followed, and that the evidence, the expert evidence that I applied to their criteria was insufficient to do that. So if you feel like I'm asking obvious questions, it's only because I need to get that on the record and I want my decisions to be thorough for the Applicant, for the public, for the County, and for myself because I want to conduct these hearings as properly as I can, so I appreciate you picking up on my past scenarios. I think it's very important to get through that, so thank you.

MS. ROBIN: Thank you.

THE HEARING EXAMINER: Nobody here to speak on the public, I'm going to close the public hearing. Do you have any rebuttal of any of that public hearing?

MS. ROBIN: No. Next time I'll come prepared with a joke for you though.

THE HEARING EXAMINER: And I'm serious, ask Alexa about that.

MS. ROBIN: Thank you very much.

THE HEARING EXAMINER: Okay. Take care. Thank you. So any anything else from the County on that item you want to state?

MS. GUNDLACH: No. Thank you.

THE HEARING EXAMINER: You did a great job. Thank you very much for being here and have a nice day. Don't get wet. Hopefully you brought your umbrellas.

Okay, 3B. 3B we have -- is John Kelly here? Hi, John.

MR. KELLY: Hello, Mr. Dickman, how are you today?

THE HEARING EXAMINER: Wonderful. Thanks for asking.

MR. KELLY: For the record, John Kelly, senior planner. Before you is agenda item 3B. This is a variance petition identified as PL20210000256 for a property at 2617 Longboat Drive. Initially the petitioner was interacting with the building department to replace an existing lanai. However, it was determined at the time of permitting that that lanai did encroach into a rear yard, a ten-foot required rear yard setback by 6.25 feet.

Then upon contacting our department, we further reviewed the survey and it was determined that the principal structure actually encroaches 6.4 feet into the required 25-foot rear yard for principal structures.

We obtained a property card and Staff realized that the -- based upon the permit history and the plans that we were able to obtain, that the encroachment is the result of unpermitted -- the unpermitted enclosure of a screened living area. I need to mention that there is new ownership for this property. They were not the owners at the time that it appears the enclosure

transpired. So in other words, they've run into a problem.

The permits -- the original permits for the structure reveals that it has a ten-foot roof -- I'm sorry, a two-foot roof overhang that we also need to include in this variance petition as it encroaches as well further than the allowable three feet.

As far as some -- as far as notice and hearing requirements, they're contained with the Land Development Code Section 10.03.06(f)(2). The agent letter was satisfied by the agent, mailed on or about June 17, 2021. A public hearing sign was posted by myself on August 10, 2021, and the property owner notification letter and the newspaper ad pertaining to this hearing was run by the County on or about August 6, 2021.

The Staff analysis was based upon the variance criteria contained within Land Development Code Section 9.04.03 A through H. And the Staff is constrained from recommending approval at the requested variance as no land related hardship has been identified. However, we are of the opinion -- we're also constrained as to the encroachment was the result an apparent unpermitted activity, although not on the part of the Applicant, so Staff does however see that bringing the structure into compliance would be cost prohibitive and so we would suggest that should you find sufficient -- that the criteria has been sufficiently satisfied that you base your approval upon Attachment A and that that be included within any decision involving the rear yard reduction from 25 feet to 18.6 feet for the principal structure and to allow a roof overhang to extend up to 8.4 feet in the required rear yard and to reduce the listed accessory structure rear yard setback from 10 feet to 3.75 feet to allow for the replacement of the screened porch.

THE HEARING EXAMINER: Thanks, John. I'm looking, I just want to be clear, the attachments on the staff report that I have are A through G, boundary survey, public hearing sign posting, and then you have C through E which are various building permits?

MR. KELLY: Uh-huh. Correct.

THE HEARING EXAMINER: F is the Applicant's backup application narrative, et cetera, and then G is the ex-hybrid meeting waiver; is that correct?

MR. KELLY: Correct.

THE HEARING EXAMINER: Okay.

MR. KELLY: I would like to add that this is the Applicant's first petition before the Hearing Examiner. I don't believe they have much of a presentation, so photographs are available on Attachment B which I took when I was out posting the sign.

THE HEARING EXAMINER: Okay. Did you go in the swimming pool?

MR. KELLY: No.

THE HEARING EXAMINER: I do have all those photographs, I'm looking at them right now, so I do have those. Everything that is here in the I guess 880 pages of the full packet today, I have all of that information, so -- all right, first of all, I'm sure they explained to you the situation with regard to variances. You know, there's criteria that has to be met. You have standard zoning performance with side, rear, and front setbacks. This is not uncommon. We've had after-the-fact permits for various reasons.

The first thing, after you announce yourself, I would like for you to put on the record that you weren't the one that caused this, whatever improvements occurred that are now being discovered that are causing this.

MR. BURKE: All right. For the record, my name is William Burke, Tech Construction and Development. I'm the general contractor they hired to come in and replace the existing structure, the accessory that's there now, that's rotting and falling apart.

I believe it was permitted sometime in '93 and they just built it the way they wanted it to, just never called it in for an inspection or anything, so the homeowner wants to bring it up to date, tie into the existing gable roof, so the house looks all like one and it's going to be screened in and it's going to improve the look of what it looks like now.

THE HEARING EXAMINER: Okay. And your client's not here today or --

MR. BURKE: No.

THE HEARING EXAMINER: Okay. So to the best of your knowledge, this isn't due to actions of your client?

MR. BURKE: No, absolutely not.

THE HEARING EXAMINER: Okay. Your client recently purchased the house or --

MR. BURKE: Yeah, a couple years I believe.

THE HEARING EXAMINER: A couple years, okay. Okay. So that's the reason why Staff has trepidations about recommending approval because a typical variance you have to go through a litany of, you know, descriptions of why there's hardships and why, you know, variances are needed. In this case, you know, we're really looking at more of an equity situation of would it be equitable to have to come into compliance and tear down or modify the existing to match the building permit that was pulled and not closed or grant the variances; that's in essence what I have to weigh.

MR. BURKE: We're trying to keep what's there, not just replace it, because I think the original permit shows something different and that's why they never got it inspected.

THE HEARING EXAMINER: Never called for an inspection, okay. All right. I understand 100%. Any public comment on this one?

MR. YOUNGBLOOD: I have one registered speaker online. Give me just one moment here. I have Mr. Ted Swanson. Mr. Swanson, are you with us?

MR. SWANSON: Yes, I am.

MR. YOUNGBLOOD: Okay.

MR. SWANSON: Can you hear me?

THE HEARING EXAMINER: Yes, we can hear you. Go ahead.

MR. SWANSON: Okay.

THE HEARING EXAMINER: Mr. Swanson, do you have something you want to say on behalf of your application?

MR. SWANSON: Well, my whole purpose for this was, you know, we purchased the home with an existing structure and had no idea about any of these things that the previous homeowner did and all I'm really trying to do at this point is to replace what exists with a like structure. It's been there for 30 years almost and it is really decaying. The homeowner built it pretty shabbily unfortunately, so that's the purpose of the whole thing. I've been trying to get something to build in the backyard and I don't know that it makes any difference, but when you look at the setback area, I mean, there's still an additional 20-some, 30 feet maybe of yard. Quite honestly, when I built -- or purchased the home, I didn't even realize that that was not included in the property sale, but it's not like I'm actually encroaching on another structure back there. It's just to try to have something that, you know, can be used like the original structure was intended to be used.

THE HEARING EXAMINER: So just for the record, you are unaware of the fact that the permit had not been closed out --

MR. SWANSON: Right.

THE HEARING EXAMINER: -- or constructed in the way in which it was permitted?

MR. SWANSON: Right. Correct.

THE HEARING EXAMINER: Anyone else to speak today? Anyone here? Nobody?

MR. YOUNGBLOOD: No, sir, that is our only registered speaker for this item.

THE HEARING EXAMINER: We're going to close the public hearing part about this. John, did you have something you wanted to say?

MR. KELLY: Yes, I did. John Kelly, senior planner for the record. I will add that the property owner is correct, this house does sit on a lot that abuts a 20-foot canal easement and so there is considerable property beyond the property line to the edge water to help ameliorate the effects of the encroachment, so I just wanted to add that for the record.

THE HEARING EXAMINER: Yes. I see the survey that's here dated -- it looks like it's

dated 2021, so it's a recent survey, I see that.

Sir, anything else you are want to add in?

MR. SWANSON: No.

THE HEARING EXAMINER: Okay. All right. And neither neighbor, they're not speaking here today? There was nothing that was e-mailed in or no objections from neighbors?

MR. KELLY: Pat has not heard from any of the neighbors. We have not received any objections.

THE HEARING EXAMINER: Thank you for being here. I have no further questions. I appreciate it. I'll get my decision out as quickly as possible.

MR. BURKE: Great. Thank you.

THE HEARING

EXAMINER: Thank you. Thanks, John.

So we have of the next item which is item 3C. It looks like Tim is going to be here today?

MR. BELLOWS: For the record, Ray Bellows. I'm filling in for Tim.

THE HEARING EXAMINER: Why don't you go ahead and introduce the item and we'll get started.

MR. BELLOWS: I'm presenting a boat dock extension petition number PF20200001108. It's a property located at 260 Charlotte Drive. It's requesting a boat extension of 12.8 feet over the allowed 20 feet for a total protrusion of 32.8 feet to accommodate an existing boat dock facility with one vessel. And I have pictures in your packet that show the advertising was done with the sign posting. We did do a mailing and a newspaper ad, so we have advertised for this. I have -- in your packet, you will also notice that we have a letter in support from I believe it's the adjacent property owner and the Staff is finding that it met four of the five primary criteria and four out of the six secondary criteria, so we are recommending approval.

THE HEARING EXAMINER: I have a question before we get started on this and it has to do with the property line. What waterway is this, this is the one that drains out of the Cocohatchee area, is this -- goes into Wiggins Pass? The reason I'm asking is that I see on page -- page 215, it's a fairly large parcel. I assume this came from the property appraiser or actually it says it came from the property appraiser which is in yellow, but then there's a red line presumably going through the center of the waterway into a drainage waterway, so -- and I guess the Applicant's representative's here and he'll probably explain all of this to me, so I just wanted to focus on that.

MR. BELLOWS: Yeah, I don't see a name for it, but it is part of a drainage waterway that the mean high water line is no longer --

THE HEARING EXAMINER: So there was -- yeah, so there's questions about high and low mean high water, okay. How are you, sir?

MR. NELSON: I'm good. My name's Bill Nelson. I work with Greg Orton Marine Construction and we're representing the owner.

Yeah, this is the Cocohatchee River and Palm River where they converge into Wiggins Pass. This does have Gulf access, so it's not, you know, beyond the weir where a boat couldn't get to this. And, yes, the property line is out beyond the actual dock.

THE HEARING EXAMINER: Is that because it's riparian area or the actual area that the property appraiser would take into consideration? That's the only reason I'm asking this.

MR. NELSON: I think it's mostly because this is just a natural shoreline. There's no -- I mean, there is -- in this section where the dock is, there is some riprap for stabilization for the shoreline, but basically most of this is all mangrove and natural, so it's kind of ever changing I guess.

THE HEARING EXAMINER: So at some point obviously to determine the measurement, you have to determine where the shoreline is and that helps determine what the extension variance is.

MR. NELSON: Yeah, precisely. The County lays out a couple different options for

determining where to measure the protrusion from and it's usually the most restrictive of those options and in this case there was no actual recorded mean high waterline, so we did have to use another option which I believe was edge of water or top of bank, but --

THE HEARING EXAMINER: Okay. And this is Palm River or -- who maintains this? Is it --

MR. NELSON: The waterway is actually maintained by Collier County. You guys actually recently just dredged it.

THE HEARING EXAMINER: Okay. Do you have a full presentation here?

MR. NELSON: No, just answer any questions. It's pretty basic. This was first spawned by a code enforcement complaint along with about 50 others I believe in the neighborhood and we're just addressing it to bring it into compliance and put it to bed.

THE HEARING EXAMINER: All right. Are you familiar with the code enforcement complaint and it looks like a lot of the docks were flagged?

MR. BELLOWS: Yes. For the record, Ray Bellows. I serve as the primary contact for code enforcement when there are code issues and where we need an interpretation and I have talked to Mr. Finn about this, so I'm generally aware of the past conditions and it was, like, I think some residents reporting each other.

MR. NELSON: The one resident reporting everyone.

THE HEARING EXAMINER: All right. Well, that's code enforcement, it's neighbor report driven. Let's see though, I'm looking on page 222, it shows a schematic or a drawing of the dock proposed. It looks as though the dock as measured from the upland deck is a full dock which goes

out -- I assume this is just a straight pier dock and how wide is the decking?

MR. NELSON: The deck going out is five feet wide.

THE HEARING EXAMINER: Five feet wide. MR. NELSON: And there's a terminal platform at the end of the walkway which is 7 and a half feet by 13 feet. And this is not a proposed dock, this is an existing dock that we're bringing into compliance.

THE HEARING EXAMINER: So are you doing any repairs to it, new pilings?

MR. NELSON: Nope, permitting only.

THE HEARING EXAMINER: After-the-fact permitting it.

MR. NELSON: This dock's been here for over 20 years.

THE HEARING EXAMINER: Did your company build it?

MR. NELSON: Probably Greg's dad, yes.

THE HEARING EXAMINER: It's a large parcel, I see that. I'm still going to have to read up about this. I'm very -- if that's the County maintained waterway, I know how to measure, you know, if you take the side yards -- side yard property lines and put it out to the center, that would be a riparian line repairing an area, and that would -- that would -- that would trigger how the County evaluates this. There's criterias about how far out it goes and whether it's in a navigable area; is this in a navigable area?

MR. NELSON: No, it's actually within the property lines of the subject property. It does not extend out into the County waterway and the riparian lines are shown on the drawing and there is -- they're well beyond the County setbacks. The setback's 15 feet for the County and we are -- so the closest riparian line is over 90 feet away.

THE HEARING EXAMINER: Pardon me while I'm reading through some of the e-mails that are here. So FDEP has not established the mean high water or low waterline even though it is tidal. Okay, so, Ray, nothing's going to happen to this dock, it's staying in place. After this -- if I were to approve this, is the County going to go out and make sure that it's to code and it's legal?

MR. BELLOWS: Yes, for the record, Ray Bellows. They're still subject to obtaining all required to after-fact permitting and so those would be -- that facility will be inspected at that

time.

THE HEARING EXAMINER: Out of curiosity, how far down is the pass that gets out? It's Wiggins Pass, right?

MR. NELSON: Yeah, it's Wiggins Pass. Timewise, it's probably a little less than an hour, somewhere between 45 minutes and an hour. Distance, probably about two and a half, three miles I'd say. And you've got to go under the 41 bridge, it's pretty low, so it kind of limits the size of vessel that can get back up in there.

THE HEARING EXAMINER: Pardon me while I go through your -- the application. Okay, any public speakers today?

MR. YOUNGBLOOD: Mr. Dickman, I do not have any registered speakers for this item.

THE HEARING EXAMINER: No property owners, I see there's signs put out on the property, it's probably a radius notice on this one, correct?

MR. BELLOWS: Correct.

THE HEARING EXAMINER: Okay. So everyone's been duly noticed of this public hearing. Okay, if you don't have anything else you want to provide, I do have all the information in the packet that was submitted and I will review that and get a decision to you as expeditiously as possible.

MR. NELSON: Thank you.

THE HEARING EXAMINER: Thank you. Have a great day. Yeah, you're staying here; do more.
John, hi.

MR. KELLY: Good morning.

THE HEARING EXAMINER: This is 3D, 3D, by the way, on the agenda.

MR. KELLY: Good morning, Mr. Dickman. I'm John Kelly, senior planner for the record. Again, this is your item 3D. It's boat dock extension PL20200001107 for 275 Third Street West. The Applicant is requesting a 40.3 foot boat dock extension that extends 20.3 feet from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a construction of a boat dock facility with two boat lifts and the establishment of a boathouse with a 1.3 foot roof overhang that protrudes 41.6 feet into a waterway that is plus or minus 872 feet in width for the subject property which is within an area zoned RSF4.

Notice and hearing requirements for a boat dock extensions are contained within LDC section 10.03.06(h). The property owner notification letter and ad were run by the County on or about August 6th, 2021, and a public hearing sign was posted by me on August 10th, 2021.

This was reviewed by the boathouse criteria contained in Section 5.03.06(h) of the LDC and was found to satisfy five of five of the primary criteria and five out of six of the secondary criteria, with six being not applicable, the manatee protection plan.

The boathouse review criteria is contained within Section 5.03.06(f), one through seven, and it was found that the boathouse satisfies all seven of the criteria.

There is a unique feature on this property that being that it is presently in a raised condition, so there is no principal structure. For that reason, Staff needs to include a condition that the building permit for an allowable principal structure be obtained prior to obtaining a building permit for the subject dock facility. And number two, that the certificate of completion for the subject dock facility will not be issued until such time as the certificate of occupancy was issued for an allowable principal structure.

Staff does recommend that you approve the petition to allow for the permitting of a proposed dock facility as depicted within Attachment A.

THE HEARING EXAMINER: John, do you have any idea where they are with filing for their single family home construction?

MR. KELLY: Do not.

THE HEARING EXAMINER: Do not, okay. Is the owner of the property here today?

MR. NELSON: No, the owner is not here, but I'm representing them in this. I do

believe they've applied for the single family permit, but I can definitely confirm that if I have the chance.

THE HEARING EXAMINER: All right. So that's pretty key and you understand why the condition's there, right?

MR. NELSON: Yeah, we run into this a lot with normal permits. It's usually due to the electricity for the boat lift, obviously if there's no home there, we have to run it.

THE HEARING EXAMINER: Plus, it will probably be easier to access that area to put the dock and whatever else you want to build, correct?

MR. NELSON: Sure, but that's no problem, but --

THE HEARING EXAMINER: You can slip it in anywhere you want. All right, so I agree with that condition. There's no reason -- I mean, we can't have a dock on a vacant single-family parcel; that's just not the way it works. I think the condition is, what, it's how much time do you want to give them?

MR. KELLY: Actually, because it would prohibit an accessory structure prior to a principal structure, so that is the reason for the condition. Staff will concede you can obtain a building permit and proceed once that's occurred for the principal structure.

THE HEARING EXAMINER: And that means 100% can't be accessory to nothing, right? That's the whole point of an accessory, all right.

This is really my primary concern here, are there -- let me just look at the public hearing phase here. Anyone here to speak?

MR. YOUNGBLOOD: I do not have any registered public speakers for this item.

THE HEARING EXAMINER: I see no property owners on either side, there's nobody here, I'm going to close the public hearing.

This seems like you-all have checked the boxes for both primary and secondary criteria for the dock, as well as we've looked at the boathouse criteria there, what kind of -- is this a fabric type of covering or is it -- what type of covering is this?

MR. NELSON: The covering will have to match the primary structure for per the Collier County code. It will be a ridged roof plywood underlayment structure.

THE HEARING EXAMINER: I'm just curious, the proposed 7,000 -- the 7,000 square feet boat lift with thru-flow deck platform, can you describe that for me?

MR. NELSON: Yeah, no problem. It's actually a 7,000-pound capacity boat lift. And the thru-flow is basically like a grading-type decking that allows water to easily flow through it which helps the platform sink and these are basically the most convenient way to access paddle boards, kayaks, jet skis, because you can basically stand on the platform in, like, ankle deep water to get your vessel off of the platform.

THE HEARING EXAMINER: Okay. So are the boats purchased?

MR. NELSON: For this property, they have not. He's given us an idea of length and size of the vessel, but he does not actually own it yet.

THE HEARING EXAMINER: Is the boat here on page 269 is depicted as a 30-foot vessel stern to bow, not including the two outboard engines, frequently -- I mean, part of this criteria is the need and the boat actually drives the need for this, so I very frequently ask for that information just because if this type of boat is being illustrated, then that drives the design of the dock, which is you have it looks like four four-foot finger piers on either side which would allow for safe access to the vehicle, or vessel, sorry. And then is it your opinion in the front of the -- in front running parallel to the seawall, the existing seawall, there's a 6 by 32 and a half foot decking area, do you feel like that is the minimum necessary for the use of the vessels there?

MR. NELSON: Yeah, basically that gets it far enough away from the seawall to where a deck won't be an issue and we are wouldn't interfere with any oysters that are currently there or anything like that.

THE HEARING EXAMINER: From what I understand, is this -- so when you say the

7,000 pound one, is that more for watercraft, like personal watercraft and kayaks and things of that nature?

MR. NELSON: Yeah, exactly.

THE HEARING EXAMINER: Does it go up and down?

MR. NELSON: Yep, the whole platform goes up and down and it's in this case mostly for kayaks and paddle boards.

THE HEARING EXAMINER: So nobody wants to just jump into the oyster bed and go kayaking anymore?

MR. NELSON: Yeah, it's just way easier than climbing down a ladder, especially in areas where there's -- this area is a no-wake zone, but in some areas, you know, it's full wake and it can be pretty scary walking down there with the big wave runners.

THE HEARING EXAMINER: Okay. So I see that the -- the actual Little Hickory Bay channel looks to be according to your designs, 914 feet from the dock directly across and it looks like it's a 1,019 from seawall to seawall, something on that nature. Is this -- I have to ask this question, but are there any designated channel markings or undesignated channels that this particular boat would be interfering in?

MR. NELSON: No, there is a channel there and we're well away from it.

THE HEARING EXAMINER: Okay. So the structure that's being shown on the documents submitted by you, that's already been demolished?

MR. NELSON: The original dock I don't believe has been demolished yet, no.

THE HEARING EXAMINER: I mean the outside principal use.

MR. NELSON: Yes, that I believe has been demolished. It's been a while since we've started this, so --

THE HEARING EXAMINER: I'm looking on page 277, but it's your -- it's your unsigned and undated document. You're Bill Wood, correct?

MR. NELSON: No, I'm Bill Nelson, representative of Greg Orton Marine Construction.

THE HEARING EXAMINER: What is your capacity there?

MR. NELSON: I'm basically vice president. I do a little bit of everything really. I run the electric crew, service. I work as a project manager with the clients. I make a lot of the dock drawings and proposals and --

THE HEARING EXAMINER: How long have you been with the company and how long have you been working in marine construction?

MR. NELSON: I've been -- they're basically one in the same. I've been in marine construction and working with the company for about nine years.

THE HEARING EXAMINER: The same amount of time?

MR. NELSON: Yes.

THE HEARING EXAMINER: Okay. So I would say you're an expert.

MR. NELSON: Thank you.

THE HEARING EXAMINER: Anything else, John? You want to add to this? That's my only concern is that we don't have a principal structure.

MR. KELLY: That's our concern as well.

THE HEARING EXAMINER: Okay. So we're not going to allow the -- are we anticipating this dock and boathouse to be built prior to construction?

MR. KELLY: That's why we're requesting the permit be issued first for the principal structure and so that you don't run into that.

THE HEARING EXAMINER: All right. Well, let's talk about this. So lots can happen when you issue -- when someone comes in with plans for the principal structure, a lot of things can happen and the principal structure's not built, but then the dock is built. What's the plan there?

MR. KELLY: That would be your second condition that the certificate of occupancy or completion cannot be issued for the dock until there is a certificate of occupancy for a residence.

THE HEARING EXAMINER: Right. Okay. So what is the timeline for getting that; is

there -- how much time -- does that expire at some point?

MR. KELLY: Building permits do expire. I believe there's allowed six months between inspections, but I'm not certain. They do expire. They can't be extended.

THE HEARING EXAMINER: So we could be in a situation possibly where there was a dock built with a boathouse with two lifts and nothing built there for a long time worst-case scenario. I'm always thinking about worst-case scenarios.

MR. KELLY: I'm going to defer to Grady if he has a comment on something like that.

THE HEARING EXAMINER: This is the first time I've been asked for me.

MR. BELLOWS: For the record, Ray Bellows. The scenario that you outlined is a possibility; that's why we came up with the conditions with approval that would prohibit the use of any dock construction prior to C.O. of the principal use.

THE HEARING EXAMINER: Okay, C.O. of the principal use, the dock will be built, will they still be able to put their boat there while the principal use hasn't been constructed?

MR. BELLOWS: The Land Development Code would prohibit the use of accessory structure prior to having a principal use permitted, so the permitted use would be the dwelling. It would have to be up and running and C.O.'d before they can use the dock and use it, they wouldn't be able to moor a vessel there until then.

THE HEARING EXAMINER: That answers my question. Is your client aware of that?

MR. NELSON: Yes, I believe that's actually the current code for any dock.

THE HEARING EXAMINER: Sometimes, you know, the client doesn't know that.

MR. NELSON: Yeah, our clients are aware and we'll definitely tell them. This will incentivize them to get in there and get their building permit faster.

THE HEARING EXAMINER: All right.

MR. KELLY: Again, John Kelly, for the record. If I may, they would not be allowed to use that dock until there's a certificate of completion for which you would have a condition that it cannot be issued until such time as the certificate of occupancy for the residence is.

THE HEARING EXAMINER: Is there a way to -- I mean, I believe I have jurisdiction to also put conditions in there as well --

MR. KELLY: Absolutely.

THE HEARING EXAMINER: -- about possibly having to come back to me if -- I'm saying I believe everyone's working in good faith, trust me, but I have to think about multiple scenarios that could happen and one thing I do not want, the worst-case scenario is the principal structure not built, the dock -- a beautiful dock built and someone starts using the dock and fishing and so forth and then the neighbors get furious and then you know what happens. And so I may think about that as well, you know, putting in maybe you might have to come back here if -- if the principal structure -- if there isn't any continuous use or continuous action on the permit and then continuous construction. You know, the economy can affect houses, building, people buy properties, speculate, they start building, financial things happen, building stops, so I'm going to think about that quite a bit and you can pass that along to your client.

MR. NELSON: I'm just asking if I could make a comment about that.

THE HEARING EXAMINER: Of course.

MR. NELSON: Is there any way the restriction can be put on the building permit and not this planning, because as you know these are nine months to a year long processes, very much time and money is put into this, so I really would hate to basically have to go through this application process again because it's very expensive.

MR. KELLY: If I may, sir, John Kelly for the record once again. As part of the building permit process for the single-family residence, assuming that is the type of structure to be built there, there would be a requirement for a spot survey to be submitted once they've poured the slab and that would be a pretty good demonstration that there will be construction underway, so I might recommend that perhaps you tie it to the approval of the spot survey for the principal structure.

THE HEARING EXAMINER: I assume you could build this dock once the principal structure is built, right?

MR. NELSON: Yes. Yes, sir.

THE HEARING EXAMINER: So the fact that -- I mean, having a bare parcel, while it may make it easier for you to unload and off load some of the wood and piles and things like that, it's not impossible to build the dock once the principal structure is constructed.

MR. NELSON: No, not at all. We don't even plan on having an empty lot.

THE HEARING EXAMINER: Did you put the sign out there?

MR. KELLY: Yes.

THE HEARING EXAMINER: What did the property look like when you went out?

MR. KELLY: You do have photographs there. It would be attachment -- Attachment C if you can get that pulled up.

THE HEARING EXAMINER: I see it. So this is what I was wondering, there appears to be some type of realtor sign on the property and so my concern is that this is someone speculating and then trying to sell the lot and part of the sales is the dock; that's my concern. You see that? Has this property been purchased?

MR. NELSON: I know it's -- it was the same applicant as the one next door and he owned both properties, but I'm unsure what their plans are with the sale or the -- you know, the conditions of what they're planning.

MR. KELLY: One more item for your consideration, sir. I did have one telephone call on this property. It was from a neighbor, so I have to assume it was the neighbor to the south, and their concern was that it had been expressed to them that the dock would not proceed until the property had new ownership, but I'm unable to verify that. I only had the one call who he asked who was the owner of the property and that was all I had, but for the record, I did have one contact on this property.

THE HEARING EXAMINER: Do you have any information about whether the permit has actually -- the plans have actually been started?

MR. KELLY: I did check our permitting system, City Tier, last week, I unfortunately have not this week. There was no permit issued.

THE HEARING EXAMINER: All right, this is what I'm going to do, I'm going to continue this item to the next hearing because this is my primary concern, this is not the usual process that you go on. And I think you know this, you are in the business in this and you're an expert, and my concern here, again, is that we're really -- if this property is just being listed for sale and there isn't a buyer, and if there isn't a buyer, then logically there wouldn't be a home being contemplated for this property.

So then we get into a situation where someone says, well, yeah, Mr. Dickman, you approved one of these before, and it becomes a situation where, hey, guess what, you have a dock. And actually these things are supposed to be boat driven. Basically you have the boat and you need the dock for a variance, okay. You're not just asking for a dock that meets the code without having, you know -- as of right, without having the boat. You're asking for a variance that would inure to the land and run with the land, but there's no principal structure there and there's no -- there's no way for me to evaluate, you know, any of that stuff. And, frankly, it just puts me in an awkward situation, right?

John, would you have a problem with me continuing this and getting the property owner here around getting testimony from the property owner telling me what the -- what their plan is?

MR. BELLOWS: For the record, Ray Bellows. I think that's appropriate given the fact that it seems to be a speculative boat dock extension with no current owner.

THE HEARING EXAMINER: Sir, do you have a question?

MR. WORHEES: Yeah. For the record, Mark Worhees (ph). I handle all the permitting and everything, all the information for Greg Orton.

THE HEARING EXAMINER: You work for whom? MR. WORHEES: For Greg Orton.

THE HEARING EXAMINER: Oh, he works for you?

MR. NELSON: Yeah.

MR. WORHEES: As well. For the planning part, in terms of this situation, we are well aware that we have -- we have no -- how do I say it, we're not trying to get anything through the cracks. I understand your principal structure; that's completely Collier County code. I used to work here, so I did all the permitting here as well, so I know principal structure can't have an accessory, no sheds or anything on the property. So in terms of the planning process, we're -- the owner does know that we have no intentions to -- not no intentions, we basically told him that we cannot do anything until the house is in there. We can't even apply for a permit until an actual principal structure building has actually been applied for.

So even if we applied for a permit trying to start it, the permitting intake would actually stop us and tell us that there's no principal structure, so there's several checkmarks that have to be sent and made before we can even do our process in terms of the permitting itself, so I completely understand.

There's also conditions which can also be put in place for the slab inspection or multiple different inspections that at any point in time can halt a permit and stop the procedure. The planning is the same because we know the planning takes 9 to 12 months. We've been working this one for almost probably -- probably over a year.

THE HEARING EXAMINER: For the dock?

MR. WORHEES: Yeah, for the dock.

THE HEARING EXAMINER: Not for the house?

MR. WORHEES: No, because we don't want -- we -- basically the owner didn't want to -- how do I explain it? The owner kind of wanted to get everything in place first, so now that the -- if the dock extension gets approved and everything like that, the owner will be rushing to get the house and principal permit in and taking care of it now that he knows that this longer procedure has been taken care of.

THE HEARING EXAMINER: Where is the boat now?

MR. NELSON: As far as the boats go, you are correct, that designs are definitely driven around a boat, but as far as the owners already having a boat, that is rare, especially in situations with these boat dock extensions because we tell these people right off the bat it's going to be at least a year before we can even apply for a building permit and a lot of times they don't want to put a boat in storage and pay \$2,000, \$3,000 a month just to store something they can hardly use, so in this case there is no boat, and in most cases for boat extensions there isn't a boat. It's either on order or they're going to get one in this general size.

And the size of the lift we're proposing for this as well is definitely the typical for that sized boat. If you were to go above that sized boat and extend beyond what we're asking for in the boat dock extension, that lift wouldn't have the capacity to basically hold something of that size.

THE HEARING EXAMINER: It's a 10,000, 100,000?

MR. NELSON: This one is a 13,000 pound lift, the one under the boathouse.

THE HEARING EXAMINER: And what's the maximum size for a 13,000 pound lift?

MR. NELSON: It depends on the type of boat, but basically if you're talking about a heavier style, like a cabin cruiser or something like that, you're basically limited to like, 30, 32 feet. A center console, you might be able to get a little more in, 35, 36, but -- but this, again, is typical for this area and for that sized boat.

THE HEARING EXAMINER: I'm sorry, sir, what was your name again?

MR. WORHEES: Mark.

THE HEARING EXAMINER: Mark, and you have had experience with the County, I appreciate what you're offering. So I'm a little confused because Mark has said that they won't start construction until there's a principal structure. I think that's what you were saying.

MR. WORHEES: Which is basically Collier County rule of law.

THE HEARING EXAMINER: I didn't hear that from you, Ray.

MR. BELLOWS: For the record, we don't have any time on when they're going to submit their building permit for the principal structure, so it seems like they are speculating on the sale of the house to some other person who they have no idea what the house will look like or how it's to be designed, they just want the dock to be part of the marketing of the principal structure.

THE HEARING EXAMINER: Do you know the owner of the property?

MR. NELSON: Yes.

THE HEARING EXAMINER: I'm speaking to Mark. MR. WORHEES: Oh, yeah, I've spoken to him several times.

THE HEARING EXAMINER: Who is the owner?

MR. WORHEES: (Inaudible) currently right now, it is Mr. Stuart Wood.

THE HEARING EXAMINER: And does he live next door or in the neighborhood or --

MR. WORHEES: (Inaudible).

THE COURT REPORTER: I can't hear, I'm sorry.

THE HEARING EXAMINER: Yeah, you've got to speak louder.

MR. WORHEES: I'm sorry about that. Yeah, he owns this property and the one next door.

THE HEARING EXAMINER: Okay. So I'm going to need some testimony from the owner. I get what you're saying, you know, I could approve this and hope that this works out correctly or I could get testimony from the owner about the boat and the -- all of this.

I definitely understand what you're saying, you know, why buy the boat if you don't have the dock. This particular code is written in an odd way in my opinion, you know, so I always ask this question about do they have a contract on the boat or are they storing the boat someplace else pending the approval of the dock, you know, because you have designs in here that show a vessel of a certain size and, you know, that would -- that could be very much part of this.

You know, you won't be able to buy a vessel any bigger than that and so a prospective buyer could have a bigger vessel and want a different dock.

So that's my concern here is that what if this property is bought by someone else and then they have a 35-foot vessel and they need 10,000-pound lift? It's a quandary or they may come back in for modification of this approval.

MR. KELLY: I need to correct the record. The next case that's before you is going to be the adjoining lot. They both -- at the time that these applications came in, this property and the other were from a PBK Properties, LLC out of Downers Grove, Illinois. And so, yes, this property owner did own the adjoining property. However, it has since been sold and so now the new owner of your next project is the new owner of the next project, so he does not own both lots, or this corporation does not own both lots.

THE HEARING EXAMINER: Ray, John, would you prefer that we hear from the owner and find out a time line of -- I mean, my biggest concern is this hasn't been sold.

MR. NELSON: It --

THE HEARING EXAMINER: One second, one second. I'm not going to -- everyone is going to have their say before they leave, trust me.

So my concern is if this is still on the market, we don't know what the principal structure is and we don't have a property owner that can at least say I've hired this very reputable contractor to build this dock for this boat and the safety I need to get in and off this boat -- that's a criteria -- and I don't need this amount of decking, can you get two boat lifts at max for a single-family home. I do have kayaks and I want to enjoy this type of -- I mean, that's important. It's important to the neighbors, it's important to me to make a decision. And what I'm -- I feel like I'm putting in a situation where I'm part of the speculative real estate process, I really do. MR. BELLOWS: For the record, Ray Bellows. I believe the conditions of approval are adequate for the purpose of the County to enforce the rules and the intent.

However, I do believe that the intent seems to be that because there was no current owner, no occupant on the property, that the approved dock facility helps to sell the property and we should probably get the owner to talk about it.

MR. NELSON: May I?

THE HEARING EXAMINER: Oh, yeah, absolutely. I want to whatever you want to say whatever you want to say.

MR. NELSON: Well, basically I just have a question and it goes back to kind of what Ray just said. It seems that the failsafes are in place for the building permit to avoid the situation that we keep discussing, so I'm just asking why is that not enough.

THE HEARING EXAMINER: Here's why, I'll tell you exactly why, because you're here. And the reason you're here is because you're not entitled to -- not you, when I say you, I'm talking about the property owner, whoever that is, or is going to be -- you're not entitled to a variance, you're not. It's based on hardships and other criteria. And so you're entitled to what you have under the code and so asking for a variance is essentially asking for a deviation from what everybody else has to live with, okay?

And the reason you're asking for a deviation is because, hey, guess what, I have a unique property that requires me to have a dock because it's too shallow or I'm in this situation or that situation, or I have plans on buying this type of boat. Whoever of the owner of this property is, I mean, you don't know that, and so that's why. I mean, everyone here has to understand, variances are deviation of the policy that the legislators of this county have adopted as proper land development codes and 20 feet out is what is given to every single-family home to build a dock, but there are in certain situations special circumstances for why you need an extension; that's why you're here in front of me in the first place because, you know -- and I'm very open and reasonable about those things, but I just feel as though, as I said before, I need competent, substantial evidence to help me justify my decisions so that these decisions are airtight, they're fair.

And it's not going to be based on -- I know some jurisdictions do this, if you have -- if you have letters of no objection from either side, oh, fine, we'll just approve it. Well, that's not why you're here. I'm just obeying the code. So I do -- I'm really frustrated here because I -- I'm not trying to put this on you at all. I mean, you're here, you're hired by the landowner to do this. It would have been helpful if the landowner were here and had an interest in getting this passed and could provide me with information.

MR. NELSON: That is why he hired us. I'm sorry I couldn't express all of his, you know -- what he's planning on doing here, but, you know, it is going to be very similar to the next case, which, yes, he did sell to a new owner and they continued with the same dock design we're already trying to get a variance for and it's basically, if I'm not mistaken, going to be almost an identical situation.

THE HEARING EXAMINER: Well, we'll see about that. I'm not going to rule on that, but, again, if I owned property and I'm trying to get a dock variance, I would be here or I would be on the phone. That's even easier, even if they're in Australia they could call in and clarify --

MR. NELSON: Well, they're, on our recommendation, not here because we've basically never run into this exact situation.

THE HEARING EXAMINER: Well, okay, Terrell, is that the name of the other company, has never done that ever, to me, to me.

MR. NELSON: They've never done --

THE HEARING EXAMINER: They have never requested this type of a scenario to me. Maybe to my predecessor, but as far as I recall, there's never been a situation where we don't have a principal -- well, there was one, but it was a very odd situation where it was just boat dock row or something like that, but, I mean, this is why I'm asking these questions, I mean, because it's -- it's principal-structure driven. And frankly whoever owns this property, I guess you gave them the advice that -- I mean, do you want to move on to the next item and see if you can get

him on the phone, but -- I'm just saying, I'm frustrated here and, you know, if -- I mean, I may -- I could do a couple of things here. I could say we're going to continue until I find out more about this or I could say no construction whatsoever --

THE COURT REPORTER: Excuse me, excuse me -- thank you. I'm sorry, go ahead.

THE HEARING EXAMINER: Okay. Was it the background talking or --

THE COURT REPORTER: Yeah, yeah, I was hearing Mr. Bellows and not the Hearing Examiner.

THE HEARING EXAMINER: Put a dollar -- he's going to put a dollar in the foul jar.

THE COURT REPORTER: Okay. Good, I need some new shoes.

THE HEARING EXAMINER: Okay, he'll send the money.

THE COURT REPORTER: "I could say we're going to continue until I find out more about this or I could say -- and that's where I left off.

THE HEARING EXAMINER: Or I could say do nothing on this dock until I hear from -- until the County has this principal structure in place. I mean, Ray, correct me if I'm wrong, I've never seen this situation, me. The prior Hearing Examiner may have, but I'm not in this building. I'm not an employee of the County. Everyone needs to understand that. I've been retained by the Board as a land use attorney whose been practicing for over 20 years and then a city planner for over 10 years before that. I'm very familiar with land development codes and all of this and I'm very much concerned that the -- that the proceed -- that the situations I'm going to be in, in the future are going to be just like this where I'm actually helping a speculator to improve their property with what is something that is a deviation of the code. And it's almost a gift and it has to be evaluated perfectly and you can't -- you know, you have rights to build a dock and that's part of the selling of the property. And you can say, by the way you could go to the Hearing Examiner and ask for a boat dock extension, but they're going to want to see all this other stuff. So I kind of feel like I'm being put into a part of a sales job for this property.

MR. BELLOWS: Yes. And I was just inquiring of the possibility if we could move this item last on the agenda, give the consultant time to contact the property owner and see if they can participate by Zoom and maybe we can get some answers.

THE HEARING EXAMINER: Sure. We can do that. So we're going to continue this item to the end of the agenda and maybe we can get some answers from the property owner. Ray, has this ever -- I mean, this seems like the first time I've had to deal with this.

MR. BELLOWS: This is the first time a situation like this came to you. We've typically in the past when something similar to this happens, it's usually with a contract purchaser and we know who's going to buy the property and sometimes the sale is subject to getting these permits approved. It's more unusual to have no contract purchaser inhouse actively being sold.

THE HEARING EXAMINER: Would you agree with me that a variance is really -- I mean, I don't know if people think that maybe variances are just a given, but they're not. In my mind, they're not. I have to follow -- you know, as a planner, what is your opinion about a variance?

Mr. BELLOWS: Yes, for the record, Ray Bellows. The boat dock extension process has specific criteria and it's really pertaining to a dock and a boat situation where we know what the boat is and designing a dock facility around the boat. Now we don't even have an owner who is actively -- who is actively marketing the property for sale to another individual who may or may not need the dock, but it appears that the intent is to build a dock concurrently with the dwelling.

We have conditions in there to help ensure that the use of the dock cannot occur until principal structuring is C.O.'d, but it does seem like a generic type of a dock approval that could need to be modified once they sell to another property owner who that is a different boat need.

THE HEARING EXAMINER: So, sir, could you be asking for a dock that doesn't require you to come here?

MR. NELSON: In this situation, it would be very limited because like Ray said, boat

dock extensions are unique from most variances. And another way that is, is most of these are due to a hardship and not necessarily just wanting more, wanting to go out further, so that's why the specific criteria is set up. And if you checked that area, which I believe we have an aerial that shows neighboring docks, this is a typical design for this area. Almost every dock on that shoreline has a shore normal perpendicular to the seawall orientation. And, again, this is just typical for the area. It helps speed up the process. Even if I'm sure he is speculatively going to develop this property -- and I will admit normally by this point inspect process we're dealing with a homeowner. This is not the case for this one, but I'm still dealing with the current owner. And, again, the dock is typical for the area, two boat lifts is typical for the area and there really isn't much here that isn't what we normally do for any other dock. THE HEARING EXAMINER: All right, so you have an 80-foot wide lot and then as of right you can go out 20 feet from the seawall; is that correct, Ray?

MR. BELLOWS: Yes.

THE HEARING EXAMINER: So you're telling me you can't build a reasonable dock within 20 feet?

MR. NELSON: Yes, because the neighboring docks protrude --

THE HEARING EXAMINER: No, no, neighboring docks --

MR. NELSON: The neighboring docks affect the approach to the property especially when it's less of a distance out.

THE HEARING EXAMINER: Okay. Well, the neighboring, I mean, it could be parallel to the seawall?

MR. NELSON: Which means you would have to bring the boat in somewhat parallel.

THE HEARING EXAMINER: Well, you're trained to do that. I'm just -- this is really more of a rhetorical. I mean, I'm looking at the aerial and the other docks are quite far away --

MR. NELSON: There's depth issues within the 20 feet, you know, so, yeah, this is all laid out in the criteria, but --

THE HEARING EXAMINER: I'm guessing that the dock on the right-hand side is more than 100 feet away and the dock on both sides actually are well over, you know, at least 100 feet away, so all I'm saying is that everyone in this area has the same requirement under Land Development Code as of right, okay?

MR. NELSON: If I pulled up the zoning map, you could see almost every property has a boat dock extension there.

THE HEARING EXAMINER: Okay. So under the law of variances, I'm required to review everything on the merits of that. It's not based on precedent or, you know, if someone were to come around to me said, well, you approved this, this and this, I would say so what, I don't care.

MR. NELSON: That's not what I'm saying. THE HEARING EXAMINER: Okay.

MR. NELSON: Basically what I'm trying to explain is there is a hardship there, and this is related to it --

THE HEARING EXAMINER: But those folks, as far as I would assume, were owners of the property, may or may not have -- probably had a house already on the property and said I'm getting this boat or I plan on getting this boat and I need this amount of decking to get on and off the boat safely and that's usually how it happens. I've never seen this situation where I'm being put in a position of enhancing somebody's real estate; that's what I'm being asked to do through a variance process and I just feel super uncomfortable with this.

So actually what I'm going to do is I'm just going to continue this to next month and then you tell the rest of your clients that don't bring these things to me again without a principal structure. I'll issue a decision if you want, but I'll --

MR. NELSON: What decision, the decision of the continuance or a decision of the condition that you just read?

THE HEARING EXAMINER: I'm going to tell you to come back in a month --

MR. NELSON: But I'm saying is that the appeal or is it for the condition you just --

THE HEARING EXAMINER: You're welcome to appeal that decision, but I'm verbally telling you --

MR. NELSON: Because many times, like I said, when we start this process with the developer, with the home builder, they usually already have a buyer and then we work directly with the buyer on the design of their dock and we get this going with you guys in the process in the time it takes them to close on the house, finalize their decisions with the house, and then usually we're able to time it out so at the end of their construction or towards the end of the house construction we can begin on the dock.

THE HEARING EXAMINER: Have you ever been in front of me before?

MR. NELSON: This is my first time in front of you.

THE HEARING EXAMINER: Right. And so what I'm telling you is that as a lawyer, okay, as a lawyer, I'm a lawyer that has been working for over 22 years and I know the law on variances. And while this might be your company's standard practice, it's not legal. So I don't know who has done this for you in the past, but I'm telling you it's not legal and you're putting me in a place to draft a decision that's illegal.

There are people that brought boat dock extensions to me almost on every agenda and I've never had this situation, so I'm either going to make a decision on the information you gave me or you could choose to come back in a month and address this issue of the principal structure. But keep in mind if what I'm hearing, what I'm surmising is that this particular company has bought up several lots and is developing them which part of this process is putting neighbors on notice about something that's going to happen here, okay?

These aerial photographs may be accurate or not, may be Ray's or not, but it's not giving - - it's not giving the property owners, the real residents that are going to live there adequate notice of a deviation from the land development codes that every other property owner has to live by asking for something special.

I'm just talking to you as a lawyer. I'm a lawyer here, I know these things, and I'm telling you, I'm regulated by the Florida Bar, I have a license, and if you sense in my voice, I'm extremely uncomfortable with this.

MR. NELSON: The continuation is fine.

THE HEARING EXAMINER: Okay. And thank you. Next month, Ray, John, I don't want to see any more of these. I don't want to be put in -- I'm not the real estate partner here, okay? I'm not going to give away variances just to enhance vacant property unless we have somebody that has said I'm putting -- I've already got my plans started, you guys can verify it, we've got some timelines, and I can have some certainty that my decisions are logical and legal.

MR. BELLOWS: For the record, Ray Bellows. We'll look into the code to see if we can regulate the application -- the property owner who's actively marketing the property to somebody else or we can just require a contract purchaser to be part of the application.

THE HEARING EXAMINER: All right. So I would consult with your lawyer, the County's attorney. I would feel more comfortable like that. Like I said, I am the person buying this property and I intend to build this principal structure. I'm about to -- I have my architect here and I'm about to file those plans and I have hired this expert marine contractor. And I have seen your company around, so I know you guys are reputable and good and the product you put in the water is excellent, I've seen that. You're not a fly-by-night company, I get that, so don't get me wrong, but I would feel much more comfortable if that contract purchaser comes in and says, hey, this is what I plan on doing. I do want to have an added fisherman. I want I need this type of boat and this is why I'm asking for the deviation from the Land Development Code.

I feel much more comfortable in that scenario rather than seeing vacant parcel with a realtor sign on it and nobody really knows what's going to happen to it, so -- do you understand what I'm saying? I mean, am I just talking to myself here?

MR. BELLOWS: Yeah. For the record again, Ray Bellows. This is similar to a situation a few years ago where the Applicant who owned the property sold the property in the middle of the review process, didn't notify Staff that they had sold the property, so we had a new property owner that only was revealed to Staff during the HEX meeting and that item was continued in order for Staff to evaluate the new ownership.

THE HEARING EXAMINER: Yeah, that's not fair. You guys are working hard, I don't want to put you in that position, I don't want to be in that position. I think the process ought to be here's the principal structure or the intended principal structure, we're in that process -- I mean, that's sort of being gracious any way, you know, versus, like, having a principal structure there and giving the neighbors an opportunity to know, like, what's going to happen with a dock that's going beyond what the Land Development Code requires. And that's the uniform Land Development Code that everyone has to abide by unless they come here and give notice to everyone and they're aware of it.

You know, I don't -- it's just fundamentally important to me. I'm not -- I know -- I know that it's important to also have some customer service here at the County and try to solve problems and to get things moving, but as an attorney and as the hearing examiner, I have codes that I have to follow and this is just not feeling right to me, so let's continue it to next month.

MR. KELLY: Understood. The next project that is going to add to the complexities that Staff needs to make such a determination, I'll just note that if they're ready to move on to your item 3E.

THE HEARING EXAMINER: Yeah, let's go ahead to 3E.

MR. KELLY: Okay. This property at the time the application came forward for the same plat, same property owner as your prior case. However, it has since sold and the new owner has taken over the application, so this is proceeding under the name of the property owner, Steven B. Dyson trust who I believe Mr. Dyson will be the occupant.

So this is boat dock extension PL20200001106 at 271 Third Street West. The Applicant is requesting a 41.8-foot boat dock extension that extends 21.8 feet from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow the construction of a boat docking facility with two boat lifts and the establishment of a boathouse with a 1.3-foot roof overhang that protrudes 43.1 feet into a waterway that is plus or minus 906 feet wide for the benefit of the named property.

Notice and hearing requirements for boat dock extension are contained within Section 10.03.06(h) of the LDC that the required property owner notification letter and newspaper ad were run by the County on or about August 6th, 2021. The public hearing sign was posted by me on August 10th, 2021. I will note I just checked the system, there is a -- this is two lots that have been combined for development and that development is for a single-family residence. A single-family residence was constructed utilizing building permit PRBD 20190627892 for which I just checked the County's permitting system, it has been finalized, so we should not have the same issue that we just had.

So based on the above -- let's see, the boat dock extension was reviewed by the criteria contained within Section 5.03.06(h) of the Land Development Code and was found to satisfy five of five of the primary criteria and five of six of the secondary criteria with the manatee protection plan not being applicable.

The boathouse review criteria are contained within Section 5.03.06(f) of the Land Development Code, one through seven. And the boathouse satisfied all seven criteria.

It's Staff's recommendation that based on these findings that you approve this petition to allow for the construction of the proposed dock facility as depicted within exhibit Attachment A.

THE HEARING EXAMINER: Okay. So this one is different. I mean, I'm seeing on --

this is the full packet through page 344 where your public hearing sign there shows a very large house in the background; that house is existing?

MR. KELLY: Yes.

THE HEARING EXAMINER: Okay, very different situation, we have a principal structure. In the new -- so you've changed out the name of the property owner applicant?

MR. KELLY: The application, everything, the affidavit of authorization, all of it's in the new owner.

THE HEARING EXAMINER: Who is that new owner?

MR. KELLY: Steven B. Dyson trust. I believe the trustee is Steven Dyson.

THE HEARING EXAMINER: Okay. So it's on your staff report, okay. Bill Nelson and Sabrina Dobbs, are they related to your company?

MR. NELSON: Yes, I'm Bill Nelson and Sabrina is no longer working with us.

THE HEARING EXAMINER: So, Bill, I'll get to know you. Sorry. This is very different for me. I mean, it puts me in a much more comfortable situation. I hope you understand that. So go ahead with your presentation. It looks almost like an identical dock.

MR. NELSON: Yes. Basically this -- these both started around the same time. Basically they're just looking for a dock to get out away from the natural resources and to get more depth, so they're asking for an extension beyond the 20-foot allowed and they're also asking for a boathouse and there will be two slips, one bigger lift to support about a 30-foot boat and the other slip will be for either PWCs, kayaks, or paddle craft.

THE HEARING EXAMINER: The owners are not here or on the phone?

MR. NELSON: No, I'm representing the owner. At my request they're not present.

THE HEARING EXAMINER: Okay. Anyone else here to speak in the public?

MR. YOUNGBLOOD: Mr. Dickman, I do not have any registered public speakers for this item.

MR. KELLY: Again, John Kelly, for the record. I've received no contact from the public pertaining to this lot or these lots.

THE HEARING EXAMINER: It's a good-sized lot, so I can't see -- it would be pretty hard to offend anybody here. I'm just flipping through the pages here, sorry. Anything else that you'd like to state for the record?

MR. NELSON: No. I'm just happy to answer any questions.

THE HEARING EXAMINER: Anything else from the County?

MR. BELLOWS: We don't have any other comments.

THE HEARING EXAMINER: And no one from the public want to speak, okay. Thanks a lot for that. I appreciate it. That's the kind of application that makes it a lot easier for me. I appreciate it.

And, again, don't be offended by anything I said. I know your company, I've seen -- I don't know you, but I've seen your company around a lot and I've seen the product out there and you guys seem to do a wonderful job.

MR. NELSON: Thank you. Appreciate it. THE HEARING EXAMINER: And your applications are well done.

MR. NELSON: Yeah, moving forward, you know, it's pretty clear what we need to do, so I appreciate that.

THE HEARING EXAMINER: All right. Court reporter need to take a break at all?

THE COURT REPORTER: Nope, I'm good. Thank you.

THE HEARING EXAMINER: Thanks a lot.

MR. NELSON: (Inaudible).

THE HEARING EXAMINER: On that one -- yeah, yeah, come back up here. Let's clarify that. I wanted to make sure that was clear.

So my ruling on the prior one was a continuance, continue it so that we can have more information in a month on your property owner and the plans, things like that, okay?

MR. NELSON: Yeah, we did get a hold of the current owner and he's actually on his way to come here in person, which I'd almost like to clarify whether he does have the building permit in or anything like that, because if he doesn't, I would recommend a continuation.

UNIDENTIFIED SPEAKER: (Inaudible.)

THE HEARING EXAMINER: Don't speak from the back, please.

MR. BELLOWS: Ray Bellows for the record. John Kelly did do a follow up through the computer and John --

MR. KELLY: John Kelly for the record. I did check ten minutes ago the permitting record and there is demo permit for -- which resulted in the raised property. There is no building permit review under process for a residential permit.

THE HEARING EXAMINER: Do you think that your property owner could get here before I'm done?

MR. NELSON: You have two left after this?

THE HEARING EXAMINER: Yes.

MR. NELSON: Yes, I do.

THE HEARING EXAMINER: If he's not here, I'm not going to reopen the item because we all have to go.

MR. NELSON: Okay. No problem. Understood. THE HEARING EXAMINER: So we're going to put that item -- that was Item E or was it Item D? MR. BELLOWS: That was item D.

THE HEARING EXAMINER: So for the record, Item D we're going to table it until we handle the other items and we're going to wait and see if the property owner can get here so that we can get clarity here, okay?

MR. NELSON: All right. Thank you.

THE HEARING EXAMINER: Sure. So we're on item 3F. Why don't we get that started and who is our -- who's going to be handling this?

MR. BELLOWS: Mr. Kelly.

THE HEARING EXAMINER: The dock guy. The dock expert.

MR. KELLY: Good morning, Mr. Dickman. Before you is Item 3F, PDI PL20210000063, the Orange Tree PUD. It's in PDI for waterways which gives the development within the PUD.

The Petitioner requests that you approve an insubstantial change to the Orange Tree Planned Unit Development Ordinance 04-73 as amended by including a deviation from Section 5.03.02 and C.1 of the Land Development Code to increase the maximum wall height from six feet to eight feet to allow an eight-foot high wall within Tract B of the Waterways of Naples, Unit 7, commencing at the eastern property line and continuing west parallel to the 74-foot access easement for a distance of 280 feet for the benefit of Waterways of Naples, Unit 7 subdivision which comprises 116.04 acres. The notice of hearing requirements for a PDI are located in LDC Section 10.03.06(h). A NIM -- a duly-advertised NIM was conducted by the Petitioner on June 29, 2011. The required property owner notification letter and newspaper ad were run by the County on or about August 6th, 2021 and public hearing signs were posted by the Applicant on or about August 4th, 2021.

This petition was reviewed by the criteria contained within Section 10.02.13(e) 102 of the Land Development Code and the County recommends that you approve of the petition to allow the proposed deviation thereby permitting construction of an eight-foot high wall as described and provided for within Attachment A.

THE HEARING EXAMINER: Thank you.

MR. KELLY: You're welcome.

THE HEARING EXAMINER: All right, who do we have for the Applicant?

MS. HARRELSON: Good morning, Jessica Harrelson, certified planner with the Peninsula Engineering Firm. I'm sorry, oops. It's been my first hearing in a while, so --

MR. SAWATZKY: For the record, Taylor Sawatzky, Collier County Public Utilities Project Manager.

THE COURT REPORTER: I'm sorry, I can't hear you, Taylor, and I didn't get your last name.

MR. SAWATZKY: Oh, I do apologize. Taylor Sawatzky, Collier County Public Utilities Project Manager.

UNIDENTIFIED SPEAKER: (Inaudible).

MR. SAWATZKY: That's a common problem. S-a-w-a-t-z-k-y. And again, that's sierra, alpha, whiskey, alpha, tango, zulu, kilo, yankee.

THE HEARING EXAMINER: All right, Jessica, welcome. Let's hear it.

MS. HARRELSON: Thank you. Good morning. So I'm here representing Collier County on behalf of Waterways of Naples regarding the Orange Tree PDI. If you are want to go to the next slide please.

So Collier County as the Applicant on behalf of Waterways of Naples is requesting approval for the addition of deviation to the Orange Tree PUD which is located in Eastern Collier County.

The PUD is depicted by the yellow shaded area. And Waterways of Naples, a residential subdivision located within Orange Tree is depicted by the red solid line.

The deviation is seeking relief from requirements outlined in the LDC to increase the maximum wall height from six feet to eight feet within a portion of Waterways. The wall is proposed to commence at the northeastern property line and continue west parallel to 39th Avenue Northeast for a distance of 880 feet and the location of the wall is depicted by the blue dashed line. Next slide please.

This is the view looking west -- I'm sorry, looking east from 39th Avenue. The wall will be installed beginning at the easternmost property line and continue west and will end where that existing berm you see there will end against.

Next slide please.

The purpose of the wall is to mitigate impacts such as noise and headlight glare from government facilities and the fairgrounds located across 39th Avenue Northeast from Waterways.

THE HEARING EXAMINER: You're saying the fair is noisy?

MS. HARRELSON: (Inaudible).

THE HEARING EXAMINER: I have a quick question for you.

MS. HARRELSON: Sure.

THE HEARING EXAMINER: So I noticed there's a berm already there --

MS. HARRELSON: Right.

THE HEARING EXAMINER: -- and the fence is going to be on the berm?

MS. HARRELSON: No. So the wall will begin where that berm ends and will continue the remainder of the property.

THE HEARING EXAMINER: Berm will stay, trees will stay?

MS. HARRELSON: Yes. I'll get to the trees.

THE HEARING EXAMINER: (Inaudible).

MS. HARRELSON: Yes. The wall will be built at a height of eight feet and installed within Waterways' existing ten-foot landscape buffer. Swing gates are proposed at the eastern end of the wall to allow continued access for Waterways for maintenance purposes. Next slide. This is just a visual wall representation of what that wall will look like. Next slide.

A neighborhood information meeting was held on June 29th. It was properly advertised and over 2,100 letters were mailed out and only a total of five individuals from the public attended the meeting. There was no opposition to the request made at the NIM. Next slide.

Since the NIM was held, the County has received one letter of objection from a resident within Waterways with concerns regarding removal of vegetation that's necessary for the wall installation. Next slide.

So through coordination with the Waterways HOA, we had a six-foot wide clearing area staked earlier this year and from the photos you see here, clearing will be needed -- there's no clearing needed at the western end where the wall's proposed. And as you continue towards the eastern property line, there is clearing that is evident for that wall installation. The amount of vegetation to be removed within the landscape buffer will be determined by the contractor at the time of the wall installation.

THE HEARING EXAMINER: Okay, let me ask you a question here. So you're here on behalf of Collier County Solid Wastewater Management, so is this a right-of-way? Is this going to be in the right-of-way or on the boundary of the right-of-way?

MS. HARRELSON: It's located within Waterways' property within their existing landscape buffer.

THE HEARING EXAMINER: All right.

MS. HARRELSON: So there is an access easement --

THE HEARING EXAMINER: Right. Okay.

MS. HARRELSON: -- for 39th Avenue Northeast.

THE HEARING EXAMINER: All right. Thank you.

MS. HARRELSON: Sure. Next slide, please. And there is an existing sign and recorded agreement between the Waterways HOA and Collier County for the installation of the eight-foot wall within the subject location. The agreement also states that each party will be responsible for maintenance of their respective sides of the wall and then that concludes my presentation.

THE HEARING EXAMINER: Noise has not subsided?

MS. HARRELSON: No.

THE HEARING EXAMINER: The fair ground's nice. You know you can get your motorcycle license out there?

MS. HARRELSON: I am aware of that.

THE HEARING EXAMINER: It was kinda hot in July when I did mine. We were quiet. All right, this seems pretty straightforward. I saw the objection letter, it really had more to do with views and what they bought into. So you're telling me the berm is going to stay in place?

MS. HARRELSON: Correct.

THE HEARING EXAMINER: The trees will stay in place, well, that's somewhat of --

MS. HARRELSON: Some of the trees will need to be removed.

THE HEARING EXAMINER: Some will have to be removed, I get it.

MS. HARRELSON: Right.

THE HEARING EXAMINER: But some of those pine trees will remain there?

MS. HARRELSON: Correct. We're only talking 880 feet of that whole stretch of their landscape buffer there.

THE HEARING EXAMINER: Okay. I do need to ask John a question and I just want to make sure -- I know it's here, but is this -- do I have jurisdiction over this? I just want to make sure in your opinion you guys decided that this is an insubstantial change to the PUD.

MR. KELLY: Correct. And you do have jurisdiction. I'll let Ray speak to it.

MR. BELLOWS: For the record, Ray Bellows. This insubstantial change process was designed to -- with criteria to establish what is an insubstantial change and then that would be the jurisdiction of the Hearing Examiner to deal with these types of changes to a PUD document. There was about -- a few years ago that was kind of a big issue about whether the Hearing Examiner had jurisdiction and this turns out that we do -- you do have jurisdiction.

THE HEARING EXAMINER: Okay. So do you have any recollection whatsoever in the appeals or settlements that are attached to this project whatsoever that would effect this?

MR. BELLOWS: Nothing that I'm aware of.

THE HEARING EXAMINER: How about the Applicant?

MS. HARRELSON: No.

THE HEARING EXAMINER: Some of these things that are out there are controversial when settlements occur and I don't want to have things like that. I'm curious why the Association didn't put in a letter of support in for this.

MS. HARRELSON: They're the co-applicant. THE HEARING EXAMINER: They're the co-applicant.

MR. SAWATZKY: (Inaudible) HOA present and everything.

THE COURT REPORTER: I can't hear him.

THE HEARING EXAMINER: I have no other questions. Do you have anything else?

MR. KELLY: No, sir. No.

THE HEARING EXAMINER: Okay. Anybody in the public? Did I already ask about that, anybody here to speak?

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

THE HEARING EXAMINER: Either we're all doing something right or something wrong, I don't know. The community is busy worrying about other things. All right, thank you very much.

MS. HARRELSON: Thank you so much.

THE HEARING EXAMINER: Great job, both of you.

MS. HARRELSON: Thank you.

THE HEARING EXAMINER: Thank you, Ray. Great job. John, Nancy is back. Did you have a nice lunch?

UNIDENTIFIED SPEAKER: (Inaudible).

THE HEARING EXAMINER: We're all suffering through this. Don't think of us. We're on the last item best I can tell, 3G. Nancy's back. MS. GUNDLACH: Nancy Gundlach, principal planner with the zoning department -- division that is. And today we're here to discuss PDI PL2021301014 Fiddler's Creek planned unit development insubstantial change. And the purpose of the change is to add an additional on premises sign at the brand new Fiddler's Creek Publix and that sign is going to be located at the intersection of Sandpiper Drive and the East Trail, And staff is recommending approval of it. The petition has been duly advertised. And I can't think what else I can tell you. I can't think of anything else I need to tell you about it. Do you have any questions?

THE HEARING EXAMINER: No. Thank you for introducing that. I do see the sign. Do we have anybody from Lakeland and Publix to handle this? Do I have an applicant?

MS. GUNDLACH: Wayne Arnold's here.

THE HEARING EXAMINER: Wayne Arnold's here. MR. ARNOLD: Mr. Dickman, I'm Wayne Arnold, certified planner with Grady Minor & Associates here representing the Applicant for the sign.

This is a PDI to add a -- effectively a sign deviation that would allow the shopping plaza know as Fiddler's Creek Plaza to have a sign. This would be in addition to the directory sign. There's also a residential entrance to the back side of the shopping center that's got a second sign to, so the third sign would be a directional sign located at Sandpiper and US 41.

The Publix is not quite open. It's getting ready to in the next week or so, they're stocking the store and we believe it would we warrants for traffic signal very shortly after the store opens. We believe that it's kind of essential for people to know that they should be the using the Sandpiper entrance to turn into the Publix and that's it. I'm here to answer any other questions.

THE HEARING EXAMINER: You know the staff recommendation?

MR. ARNOLD: Yeah.

THE HEARING EXAMINER: Okay.

MS. GUNDLACH: We've also provided an Attachment A, the proposed language for you to attach to your HEX decision.

THE HEARING EXAMINER: This time I've actually read all 108 pages.

MS. GUNDLACH: I feel privileged.

THE HEARING EXAMINER: No attendees?

MR. ARNOLD: No, everybody wants Publix.

THE HEARING EXAMINER: Yeah, I drive all the way across town to get groceries.

MR. ARNOLD: I think we had several hundred attendees (inaudible) --

THE HEARING EXAMINER: You're about to get in trouble by our court reporter.

THE COURT REPORTER: Uh-huh.

THE HEARING EXAMINER: (Inaudible). No one's here from the public?

MS. GUNDLACH: No.

MR. YOUNGBLOOD: Mr. Dickman, we are seven for seven.

THE HEARING EXAMINER: Wow, do you even have it on?

MR. YOUNGBLOOD: Yes, I do. The court reporter can vouch for me.

THE COURT REPORTER: I can.

THE HEARING EXAMINER: Okay. All right.

Mr. Arnold. Thank you for that presentation. I appreciate it. Nancy, everybody, thank you for being here.

And we'll move on to the next item in the agenda which is business, new business, anything that we need? I don't know that the dock owner, property owner is here. No? Come on up. Sorry. Sorry to drag you around here. Believe it or not, once upon a time I was working for a marine contractor and then I decided to go to college because it was so darn hard. The strangest things make you want to go to college. He's not here?

MR. NELSON: He said he's two minutes away, but I won't hold up guys up. It's unfair to hold up guys up.

THE HEARING EXAMINER: Yeah, I appreciate it. So on that item -- what item is that, C or E?

MR. YOUNGBLOOD: That's 3D.

THE HEARING EXAMINER: 3D, so that's the most fair thing I can do.

MR. NELSON: I understand. Yeah, he was giving me information on the phone and I'm like, no, you guys gotta be here.

THE HEARING EXAMINER: Yeah, this is the fairest thing we can do. It's not going to -- it appears as though there's still work to be done on the property, so it's not going to stop that at all.

MR. NELSON: No, it's no problem.

THE HEARING

EXAMINER: So, Ray, we're going to put this a month out?

MR. BELLOWS: I was going to ask, we have a couple of dates; one would be the September 9th, which is the first HEX meeting in September or the second meeting which is September 23rd. Do you think you'll have more information in regard to filing a building permit with the principal or sell or --

MR. NELSON: We can do September 9th. We can have any information that you guys need. There's no problem getting that information because like I said I just noticed there is a permit and all that stuff gets moving in the right direction, but obviously we need things set in stone not speculation, but I completely understand.

THE HEARING EXAMINER: I appreciate you understanding that. So we're going to continue this item to September 9th, okay? All right. Great. And maybe we put them first on the agenda, get them in and out.

MR. NELSON: Do we need to submit anything else for September 9th?

THE HEARING EXAMINER: Well, your application I think is fine, unless there needs to be an owner change, but as far as like the substance of the it, I don't believe we need anything else.

MR. BELLOWS: For the record, Ray Bellows. The application is sufficient and we are recommending approval subject to conditions, but we do have those concerns about there not

being an actual owner.

THE HEARING EXAMINER: Right. So whoever contracted you-all, you guys did a great job with the design, it's exactly what I need; that's what I want. So the only issue for me, I hope you understand --

MR. NELSON: I completely understand.

THE HEARING EXAMINER: -- is that part about --

MR. NELSON: I completely understand. (Inaudible).

THE HEARING EXAMINER: All right, we're going to continue that item. Thank you for being here.

MR. NELSON: All right. No problem. Thank you.

THE HEARING EXAMINER: All right. Any other business we want to take care of today?

MR. BELLOWS: I don't have anything. THE HEARING EXAMINER: Order out for pizza, Nancy is buying.

MR. BELLOWS: Oh, I do want to introduce a new principal planner, Gabriella Castro. I see her back there. Come on up.

THE HEARING EXAMINER: Yeah, let's say hello. How many more positions do we have open?

MR. BELLOWS: Actually, we are all filled. THE HEARING EXAMINER: Hi, Gabriella. Where do you hail from?

MS. CASTRO: I originally am from Wellington, Florida, but I've been here. I was reviewing site development plans before.

THE HEARING EXAMINER: Okay. Okay. And so you -- Wellington, Florida on the other coast, great. You're on the right coast now.

MR. BELLOWS: She said this is a much better town.

THE HEARING EXAMINER: Yeah. Yeah, great. And you have your background in planning?

MS. CASTRO: Yes, graduated undergrad and master's from University of Florida.

THE HEARING EXAMINER: Yes. Thank you.

MR. YOUNGBLOOD: Gabby just got favorite planner status.

THE HEARING EXAMINER: Yeah, it's -- all right, I'm just joking around. I try to keep this as light as possible, so I look forward to seeing you and congratulations.

MS. CASTRO: Thank you.

THE HEARING EXAMINER: All right. Welcome aboard. Thanks everybody. Anything else we need? Thanks for loading up my agenda. That was a lot of fun.

MR. BELLOWS: That one was a little unusual, but we pulled it together.

THE HEARING EXAMINER: It's perfectly all right; that's what you guys hired me to do. I have Thursdays that I set aside for y'all so whatever you want to do; 50 would probably be too many, but --

MR. BELLOWS: If you have a few moments, I'd like to talk about other stuff.

THE HEARING EXAMINER: About other stuff, okay. Meeting adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 11:17 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 10/4/21, as presented or, as corrected

TRANSCRIPT PREPARED ON BEHALF OF U.S. LEGAL SUPPORT, INC., BY SHARRON DUTTON,
COURT REPORTER AND NOTARY PUBLIC, STATE OF FLORIDA.