

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
NAPLES, FLORIDA
SEPTEMBER 9, 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, Operations Analyst Zoning Division
John Kelly, Principal Planner
Raymond V. Bellows, Zoning manager

THE HEARING EXAMINER: All right. Good morning everyone. Today is September 9th, 2021. It is 9:05. This is the Hearing Examiner hearing for Collier County, Florida. And why don't we start by the pledge of allegiance.

(Pledge of Allegiance was said.)

THE HEARING EXAMINER: All right. Great. Thank you everyone for being here. We have two items it looks like, maybe two and a half or three, we'll see what Ray says. Andrew, do we have the court present? Great.

So my name is Andrew Dickman. I'm an attorney. I've been practicing in planning, use, and local government law for over 20 years. I have been retained by Collier County -- I'm not an employee of Collier County -- to be the Hearing Examiner for the items that are specified in the codes of Collier County, so my job is to hear the evidence, apply it to the criteria, and render a decision within 30 days. The information that you provide to me today should be focused on that criteria for whatever application it is to help me evaluate that.

I have not done my own investigation. I am provided the information from staff, County staff, whatever the packets are that are available to the public, I have those. I don't do any of my own independent investigation prior to being here at the hearing. My job is to try to be here as impartial as I possibly can and hear testimony and see evidence from the Applicant, from the County, and also from individuals in the public who wish to speak either here in person or electronically through the Internet, so we'll be kind of going back and forth on that.

The way that I like to run my meeting is to have the County start off with introducing the item and giving me a little bit of information on it and the recommendation and the basis for their recommendation, have the Applicant come up here to the darker podium and do their full presentation, then I will open it up -- allow them to reserve time for rebuttal if they'd like, then open it up to the public for public comment.

With regard to public comment, if you would, please try to -- you're welcome to say what you want. It would be more helpful if you would speak to the criteria that I have to use to evaluate the application. I know a lot of people want to talk about other things and that's well and good. This is a public meeting, you're entitled to be here, but it's going to be a lot more helpful if you give me factual information related to the criteria.

Also I want to -- we do have a court reporter. These meetings are kept verbatim, the court reporter needs everyone to speak loudly, clearly, and verbally and not make hand gestures or yes or no things like that or I promise you and I guarantee you she will stop the whole meeting and make us behave, including me.

So additionally, we need all individuals who are going to give testimony to the Hearing Examiner today to be sworn in and I would like to go ahead and do that. This would be for all the items, anybody here who is going to speak today should stand and the court reporter will administer the oath, please.

THE COURT REPORTER: Good morning. Can you hear me okay?

THE HEARING EXAMINER: Yes.

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

(All participants were sworn as a whole and answered in the affirmative.)

THE HEARING EXAMINER: All right, I think that was unanimous, excellent. Okay. Also, just a precaution. The County has really done a fantastic job here to wipe down the podiums to keep everybody safe and clean, but in order for you to be heard, frequently -- I mean, you probably will have to take off the mask. Try to speak clearly

into the microphone, but then when you're not speaking, you can put your mask on if you wouldn't mind. You're not required to, it's appreciated, but we will be wiping down the areas to try to keep everything as sanitary and safe as possible.

Andrew, did I miss anything, the rules, regulations, weather report, anything else?

MR. YOUNGBLOOD: No, sir, I think we're ready roll.

THE HEARING EXAMINER: All right, we're ready to roll. Let's take the number A -- number A -- 3A, review the agenda. Here we go, yes. I knew I was going to that was going to happen. Review the agenda.

MR. BELLOWS: For the record, Ray Bellows. I do want to note that the item 3A, this item was published in error and it was already heard by the Hearing Examiner. The one that should have been referenced is now 3C, which is BDE-PL20200001107, and that's the one on the agenda for today.

THE HEARING EXAMINER: So the one on the agenda for today is going to be A or C?

MR. BELLOWS: It's C.

THE HEARING EXAMINER: It's going to be C, so A is going to be continued because it's --

MR. BELLOWS: It was issued in error. It's already been heard.

THE HEARING EXAMINER: It's already been heard, okay. Fantastic. Okay, let's go to item 3B then, right?

MR. BELLOWS: Yes.

THE HEARING EXAMINER: All right, 3B.

MR. KELLY: Morning, Mr. Dickman. THE HEARING EXAMINER: Hey.

MR. KELLY: Before you is agenda item 3B. It's PDI-PL20210000379, the Baumgarten PUD Founder's Square, Tract H2 PDI.

The petitioner requests that you approve an insubstantial amendment to the Baumgarten mixed use planned unit development ordinance number 1911 as amended, Exhibit B, Section 1, the mixed used development standards, by decreasing the required minimum yard setback from the eastern project boundary from 50 feet to 25 feet, removing the applicable provision that any building exceeding 50 feet in height shall increase the setback by one foot for each one foot exceeding 50 feet of zoned height from the eastern PUD boundary and limiting the maximum height of principal structures within 50 feet of the eastern project boundary to 35 feet zoned height and 45 feet actual height.

This petition was reviewed based upon the criteria contained within LDC Section 10.02.13(e) 1 and 2. Notice requirements are contained within LDC Section 10.03.06(h) and included a neighborhood information meeting. A duly-advertised neighborhood information meeting was conducted by the Applicant on June 29th, 2021 at 5:30 p.m. The property owner notification letter and newspaper ad were satisfied by the County on or about August 6th, 2021. And the public hearing sign or signs were posted by the Applicant on August 4, 2021 with a new date for this hearing as this was continued from a previous meeting as there was a sign posting issue.

Staff recommends that you approve petition PDI-PL20210000379 as proposed within Attachment A which is the insubstantial change document. And that concludes Staff's presentation.

THE HEARING EXAMINER: Thank you for that. The Applicant's here or the Applicant representative --

THE COURT REPORTER: I'm sorry, who is that speaker's name?

MR. KELLY: John Kelly, senior planner for the record.

THE COURT REPORTER: Thank you.

MR. SCOTT: Good morning. Thank you,

Mr. Kelly. My name's Chris Scott, I'm a planning manager with Peninsula Engineering. It's good to be with you this morning. With me also is Dan Waters. He has been a project engineer also with Peninsula Engineering. And he's done most of the work out in Founder's Square or the Baumgarten PUD. How do I forward with this?

MR. YOUNGBLOOD: I do.

MR. SCOTT: Go ahead and forward one. Thank you. Eric Mallory could not be here, he's with Metro Commercial, but he manages the property.

Next slide, please. This is location maps of the area highlighted the Baumgarten mixed use planned unit development. It's located at the southeast intersection of Collier Boulevard and Immokalee Road, to the west are the Shoppes at Pebblebrooke, the south and east you have two residential planned unit developments, Tuscany Cove and Bent Creek Preserve respectfully.

Next slide, please. This is a copy of the master concept plan with the property being located at the intersection of two major arterials. It is designated as being within a mixed -- an activity center on the Collier County growth management plan that's designated by the hatching we see here. Activity centers are intended for higher-intensity commercial employment uses as well as higher-density residential projects.

As shown on the master concept plan, we have areas that are designated as mixed use along both of the road frontages. Residential is located adjacent to Tuscany Cove to the south and Bent Creek Preserve to the east for the most part. And then there's a large portion that's a hybrid mixed use/residential. The PUD provides specific permitted uses and development standards to reach the residential and mixed use tracts, so the request today, the insubstantial request, is to modify the mixed use development standards. Specifically the request is to reduce the setback to the eastern PUD boundary from 50 foot to 25 feet.

In combination with that, we are proposing to self-impose additional height limitation for any building that's within 50 feet. Currently those buildings would be allowed anywhere from 45 to 50 foot zoned height, but we'd be reducing that to a 35-foot zoned height.

THE HEARING EXAMINER: If I could interrupt for a minute, the area in question we're talking about is the yellow highlighted area?

MR. SCOTT: Yes. The changes would only affect tract H2, mixed use standards to the eastern property boundary, the highlighted area there the only tract that is effective.

If you'll go to the next slide, I think there's -- this is the actual language for the proposed changes in strike through and underlined format. So the minimum yard external from eastern project boundary, the proposal is to strike through the 50 foot, replace it with the 25 foot. You'll note there's a three asterisk footnote that is associated both with that external setback requirement and the maximum height.

The existing PUD language has an increased setback for buildings that are taller than 50 feet, but they also setback an additional foot for each foot over 50 feet. The proposal strikes that, but again, introduces the height limitations that --

THE COURT REPORTER: Andrew, I cannot hear. I need to take a break. I need to stop. Sorry.

MR. YOUNGBLOOD: Okay. All right.

MR. SCOTT: We're going to move to the next slide. So the proposed changes to those setback requirements and the additional height limitations, those are consistent with the existing PUD standards for the accessory structures. The accessory structures are already allowed to be within 15 feet of the eastern boundary. We're proposing to allow principal structures at 25 and then we're also proposing that those structures will match the height limitations that are currently allowed for the accessory structures at 35-foot

height and 45-foot actual height.

THE HEARING EXAMINER: How many dwelling units are we talking about approximately?

MR. SCOTT: There are about six to eight homes and I have an aerial coming up on the slide after this one.

THE HEARING EXAMINER: All right. If I asked this question, then say I'll answer that later.

MR. SCOTT: Okay.

THE HEARING EXAMINER: Okay.

MR. SCOTT: The setbacks that are proposed, I would just point out that they're also consistent with the commercial setbacks established within the land development code for the commercial districts as shown here as side yards adjacent to residential for the C1 through C5 zoning districts are a minimum of 25 feet and you can see the heights allowed within the C1 through C5 range anywhere from 35 feet up to 75 feet.

Here is an aerial that shows the adjacent Bent Creek Preserve. These are twin villas. I believe there are two units within one structure. This shows the tracts within founder's square, Martin PUD, adjacent to the existing development.

Within the Baumgarten, we have 15-foot Type E buffer which is trees every 25 feet to five foot edge; that buffer within a commercial portion of the PUD also includes a masonry wall.

On the Bent Creek side, they also have a 15-foot buffer on their property and as you move north towards Immokalee Road, there's a large mainly vegetation area that was required to be preserved. That extends as wide as 105 feet to provide some additional buffering.

Can you scroll back on this slide real fast? All right. For that cross section, it kind of shows -- if you'll hit it one more time -- this is under a current PUD provisions, the left side of that cross section with a 50-foot tall building with a 50-foot setback is currently allowed. You can see where the property line is, the two Type E buffers and then the adjacent residential development on the east side.

And if you'll hit it one more time, this would be the reduced height building. It does get closer to the property line, but it also provides -- allows the buffer to combine better on the site. You would not be able to see the building as well.

I would also like to point out that the PUD doesn't include any other provisions to help minimize any impacts of the commercial developments and mixed residential uses; that was a big item when it was originally proposed. The dumpsters must be a minimum of 105 feet from the eastern PUD boundary.

There's additional lighting standards that must be met. It Dark Skies compliant, any light fixtures within 50 feet of the eastern boundary or no taller than 15-foot pole lights. This parcel already has restrictions that would prohibit any outdoor music or televisions, as well as any outdoor lighting. And then there are also -- the developer commitments that would prohibit service bays from facing residential development to the east.

So with that, that concludes my presentation.

Oh, here's a recent drone footage that kind of shows from the direction looking over Bent Creek toward the development. You can see the existing native vegetation area buffers that are there.

Keep in mind the Founder's Square development is relatively new, as is this section of Bent Creek, so those buffers are still at least on the commercial side less than a year old. And if you hit it one more time, it zooms in a bit, so that's a little built closer angle.

And with that, we respectfully request that you approve the insubstantial change. The proposed changes are consistent with the criteria established within the LDC and I'm

happy to answer any questions that you may have.

THE HEARING EXAMINER: All right. So the lots are still -- no additional lots, it's the setbacks and the height changes related to the insubstantial change?

MR. SCOTT: Correct.

THE HEARING EXAMINER: No additional units, therefore no additional traffic, no additional -- stormwater is not going to be the to be the same, you're just talking about setbacks?

MR. SCOTT: Correct.

THE HEARING EXAMINER: All right. Okay, do you have anyone else that you want to speak right now?

MR. SCOTT: That works. If you have any questions or --

THE HEARING EXAMINER: Stick around when we open it up to the public comment. Anyone here to speak on that?

MR. YOUNGBLOOD: Mr. Dickman, I have three speakers from the public, Connie Walters followed by Dale Walters.

THE HEARING EXAMINER: Okay. Come on up to the gray podium in the front. It's all yours.

MS. WALTERS: I apologize for the audience having to look at my back side.

THE HEARING EXAMINER: Oh, no, they don't care.

MS. WALTERS: My name is Connie Walters. I live in Tuscany Cove. You saw my property up there on the picture.

THE HEARING EXAMINER: That would be you.

MS. WALTERS: So I have a few issues in regards to this development. We have been going to planning meetings and I have spoken at previous planning meetings.

THE HEARING EXAMINER: You mean the NIMs?

THE WITNESS: Well, they were at the very beginning of the proposal for the property.

THE HEARING EXAMINER: Okay.

MS. WALTERS: And so at that point we were negotiating setbacks and the buffers and the plantings and I think it will apply to your newly-proposed site as well as our property.

We were negotiating for them to have the setback because the parking lots were going to be right adjacent to our properties, our homes, the headlights from the cars were going to be shining into our bedroom windows. And so at that point, the commissioners or the then committee, they said that they were going to have a setback and that they were going to have the landscape. The landscape was going to be an extra height to account for the parking, and so we waited. And we also agreed at the time they were going to have a fence along there with green slats to try to eliminate the headlights from the cars.

So since that time, they did put the landscaping in. However, they did it -- they were supposed to do it at the very beginning before construction started, they did not. They waited two rainy seasons past, so they can't use the we were waiting for the rainy season excuse. They were two seasons past before they did it.

The landscaping, there is a tall tree, but then there's not another one for several feet. So it's not adequate. They also said they were going to put the fence in with the green slats to prevent the parking lot the lights coming right in our bedroom, it's all along; they did not. It's still not done.

As far as the setbacks, I have trust issues with this Founder's Square because of all of the issues then said they were going to do and they did not.

If they're adding ten feet, they are going to be adding population for traffic control, there is going to be occupancy, more traffic because there's a whole another floor level to the wing that they're adding so there's going to be more ingress to those

buildings, I would assume. I'm not an engineer, I'm not building the facility, but I would think if you're raising up your building, you're raising up occupied space.

THE HEARING EXAMINER: Well, I'll have them address that when they come back.

MS. WALTERS: Okay. The sound issues, we have called Collier County numerous times for their workers, their companies, their subcontractors, their contractors, because they have been working on Sundays at 4:30 in the morning, and my apologies to the court reporter, but this is what we heard over and over, we did not record it because we didn't think we could use a phone here, but sorry reporter, this is what we hear, beep, beep, beep, beep, and this has been going on for a year now.

THE HEARING EXAMINER: And that's the typical sound that you hear when somebody's backing up?

MS. WALTERS: Exactly. However, they don't stop that. They're must be driving around the whole property. Anyway, we've called the County to get this corrected.

They have been very smart, these contractors and subcontractors and builders, they know if they get a warning, an issue of a sound ordinance, a disturbance, they know to wait X amount of days before they can do it again because they only have a few days to get multiple complaints before they can be fined, so they wait those days and then they do it again. And this went on for a year and a half. It's still going on.

However, those are some of the points I wanted to bring up that we are don't trust the Founder's point people, so you need to look into carefully what they have done.

We were told they were going to have three apartment buildings and now it looks like there's five, so somebody really needs to be checking up on them and making sure that they really are in actual at complying to all the things they've said because we know they haven't for the fencing and the plants.

THE HEARING EXAMINER: Did you give me your address already?

MS. WALTERS: Yes, it's on that form, 15497 Cortona Way. If you bring it up I can show you.

MR. YOUNGBLOOD: Let me see if I can -- this one?

THE HEARING EXAMINER: Is your house anywhere in that one?

MR. WALTERS: If you go to -- there's a parking lot in between them.

THE HEARING EXAMINER: One second, sir. Let me handle this, okay? We all have to speak into the microphone.

MR. WALTERS: Oh, I'm sorry.

THE HEARING EXAMINER: I've got a new toy right now from the County, so are you in this area?

MR. WALTERS: No.

THE HEARING EXAMINER: Not you, I'm asking your wife.

MS. WALTERS: All right, where's your pointer? I don't see your pointer. All right, right there. Go to your left. More, more, down, right there -- what you're pointing at almost, go down a little more, there's a construction trailer there.

THE HEARING EXAMINER: Right there?

MS. WALTERS: All right. Now go directly down from there.

THE HEARING EXAMINER: Okay. You're in the residential right there?

MS. WALTERS: Right in there. My point was that what they have not done for us they're not going to do for the other people along Bentley or whatever it's called.

THE HEARING EXAMINER: Okay. I understand. I just want to -- I want you to put everything on the record. I want you to kind of talk to me.

MS. WALTERS: Yes.

THE HEARING EXAMINER: But it's important for me, you're in neighborhood --

MS. WALTERS: Yes.

THE HEARING EXAMINER: -- and that neighborhood's called what?

MS. WALTERS: Tuscany Cove, densely populated.

THE HEARING EXAMINER: I can see that. I can see that.

MS. WALTERS: Yes.

THE HEARING EXAMINER: And we're talking about --

MS. WALTERS: Right there.

THE HEARING EXAMINER: This parcel that just disappeared on me, there it is.

MS. WALTERS: Yes. Yes.

THE HEARING EXAMINER: Down in here, so you're not --

MS. WALTERS: I'm not in any of those.

THE HEARING EXAMINER: Okay.

MS. WALTERS: I feel sorry for them too because of what we are going through and continue to go through, so that was just have some -- make sure that they're really complying to what they said they were going to do. I mean, it was in the minutes of what they promised, I'm sure. One resident said they remembered they promised a wall. I know they promised us the green slats in the fence and the extra landscaping. We're still waiting.

THE HEARING EXAMINER: Thank you very much. That was really helpful. I appreciate you being here. Nicely done.

Who's the next speaker?

Mr. YOUNGBLOOD: Next speaker we have Dale Walters followed by Chad Sweet.

THE HEARING EXAMINER: Okay, Mr. Walters, nice to see people live and in person. Sorry to cut you off over there, sir. I'm afraid of the court reporter, so --

MR. WALTERS: That's not a problem. I'm going to be very brief. My wife got pretty specific and that's good. I'm thankful for that. She already pointed out where we live, but we have probably the closest is property in Tuscany Cove for this construction site unfortunately. We did have views of the trees thankfully and that's why we actually bought that home because we have a nice backyard, but we don't know.

Anyways, directly behind us is going to be a large parking lot, probably about 200 cars to be honest with you, with the apartment buildings that they have on either side of the parking lot that's proposed. And I believe it was mentioned that courthouse when this was all being finalized--

THE HEARING EXAMINER: Are you talking about the planning commission?

MR. WALTERS: That would be county commissioners.

THE HEARING EXAMINER: County commissioners hear it?

UNIDENTIFIED SPEAKER: (Inaudible).

THE HEARING EXAMINER: Right. Okay.

MR. WALTERS: With the south end of the parking lot, I believe they said they were going to put a wall off over there, but that hasn't happened and I just want to see if that was going to be in the plans to have that wall because the parking lot is going to be about 120 from the back of our home, so when you got 200 cars parked that close to you, you need a wall there.

When you look at Pebblebrooke and Mercado, and all those other developments, they put up a wall to provide what was going on within that property and we think we ought to have the same kind of respect.

THE HEARING EXAMINER: Walls are better than fences though I guess.

MR. WALTERS: Absolutely. We have some sound protection there. Also, as my wife already mentioned, but the slatted fence up as far as visual --

THE HEARING EXAMINER: One question, did you receive a mail notice about this?

MR. WALTERS: This meeting?

THE HEARING EXAMINER: Yes. You knew about this meeting because --

MR. WALTERS: Tuscany Cove informed the homeowners.

THE HEARING EXAMINER: Okay. All right. So, John, that happened through notification of the association or are they within the radius or they just received notice through the association?

MR. KELLY: John Kelly for the record. I believe they received it just through their association.

THE HEARING EXAMINER: What's the radius of notice on this, 375 or 500?

MR. BELLOWS: For the record, Ray Bellows. It's 500 feet from the parcel.

THE HEARING EXAMINER: So you're close, okay, but I'm glad you got notice of it anyway.

MR. WALTERS: This parking lot is like 120 feet from our home.

THE HEARING EXAMINER: I understand.

MR. WALTERS: Thank you.

THE HEARING EXAMINER: Thanks for being here. Appreciate it. We have one other speaker?

MR. YOUNGBLOOD: One more speaker, Mr. Chad Sweet.

THE HEARING EXAMINER: Mr. Sweet, thank you for being here, sir.

MR. SWEET: Hi. My name is Chad Sweet. I'm here on my private time as a private citizen. I live in Bent Creek.

THE HEARING EXAMINER: Bent Creek, okay. So can you give me an idea, you see my pointing out where the prior speaker lives?

MR. SWEET: Correct.

THE HEARING EXAMINER: Are you in that area?

MR. SWEET: I would be closest to the parcel in the development right there which is the subject parcel, the aerial view does not show the two-story homes in the subdivision.

THE HEARING EXAMINER: Would it be back here?

MR. SWEET: Correct, yes. Yes. So basically there's a lake right there --

THE HEARING EXAMINER: I see.

MR. SWEET: So, yes, that's where I am. I'm representing myself as a private owner, but also because this is the middle of summer, it's sometimes convenient to have these because no residents are here.

THE HEARING EXAMINER: Let me stop you on that. I represent clients on the outside in private practice and over the last 22 years, I know that that's a theme that is said from time to time. I promise you, there's no -- I mean, I've been on the other side of this representing the public and things like that, but I don't see -- I mean, the County's just processing things. I don't see any --

MR. SWEET: I'll move on from that. That's fine. It was a little off color, I apologize.

THE HEARING EXAMINER: Yeah, I don't see -- That would actually be very hard to do wouldn't it, Ray, to time it so that no one's around the summer?

MR. BELLOWS: For the record, Ray Bellows. This question comes up every so often. The County can't put all projects on hold until the season starts again. And we

do have Zoom participation ability and we can get people from all over the country to participate.

THE HEARING EXAMINER: Sure. Sure. Sure. So I don't want you to be feeling as though --

MR. SWEET: Yeah, that just came up because you asked my radius from the subject parcel, so I felt I had to speak on behalf of the Association.

THE HEARING EXAMINER: No, no, no, I get that. I get that. Just from my perspective and knowing what's goes on in local governments, I find it really -- wow, it'd be -- knowing local governments and how difficult it is to run them, it the incredible strategic plan to try to get them where the fewer people would attend, so either way --

MR. SWEET: I appreciate it.

THE HEARING EXAMINER: -- your comment's well taken. Thank you.

MR. SWEET: So I guess I will then proceed with I've been a resident in Bent Creek, one of the original ones, I believe I was the tenth homeowner, December 1st, 2015, so I've lived here for a while. I've also been in areas historically like Los Angeles, as well as Phoenix and Austin, so I'm very much in favor of an urban environment.

Unfortunately, the site here I have some concerns because I have a two-story house and having a building that's going to be up to 45 feet, you know, with the reduced setback of 25 feet, there's an angle. As a trade, I'm an engineer, so I'm very particular about line of sight and I will actually see this from my second floor. Not that it's an issue, but I was mainly concerned about the first floor. The single-family residents will actually see this obstruction which is an architectural obstruction.

And I will point out to the slide that Mr. Scott had said earlier slide showing reduced setback with the building does not appear to be 45 feet. He showed the 50 foot building on the schematic and then he showed the other one and it looked about 25 feet.

THE HEARING EXAMINER: Let me bring that up real quick for you.

MR. SWEET: The single-family roof line is probably 26 feet from the ground.

THE HEARING EXAMINER: Right. Yeah. I believe it's elevations.

MR. SWEET: Yes, correct, it's a vertical elevation.

THE HEARING EXAMINER: Okay. Is the one on the right the one that would help you?

MR. SWEET: Yeah, that's the one that's showing the reduced setback, the reduced type there. And the other one is actually showing the 50 foot with the allowed building heights, so you'll see there's a --

THE HEARING EXAMINER: Right.

MR. SWEET: So that slide there, you go to the next one, the building's closer, and then it drops considerably. The application's saying up to 45 feet and I know that's not zoned height, but physical appearance, what people see is the 45-foot obstruction which is the sunset side, so I'm losing part of my sunset with the result of the building.

THE HEARING EXAMINER: Well, how far away are you?

MR. SWEET: Well, I'm about 1,400 feet is where I am here, so less -- it's less than a quarter of a mile. So the actual house that's at the corner, there is 90 feet to the proposed reduction and they'll have a 26-degree obstruction of this building at 45 feet, so that property there just above the AB. I did a Google Earth just showing where they want to propose a building and that would actually give 26 degrees of vertical obstruction before they can actually see the sunset.

THE HEARING EXAMINER: Do you have any of those documents that you want to submit?

MR. SWEET: I was going to bring them. I can submit them after this --

THE HEARING EXAMINER: Can't do it.

MR. SWEET: -- meeting. I have them at home, but I wasn't sure I was going to come, but I am glad I did because the rest of the association may not show up.

THE HEARING EXAMINER: Yeah, just so you know, there isn't any post-hearing submittals, very rarely do I accept that. In fairness, the County, the parties here, which is the County and the Applicant, need to have an opportunity to see those, so -- but you can --

MR. SWEET: I would like to request the Applicant actually show the angle obstruction from the adjacent property.

THE HEARING EXAMINER: Well, I will address that.

MR. SWEET: Thank you.

THE HEARING EXAMINER: But, you know, in the future, if you come to these, you know, try to bring your documents and even submit them ahead of time would be very helpful.

MR. SWEET: Understood. I got notice from my property manager for a week before the August 12, so I scrambled. Fortunately they have a counsel that actually voiced opposition which I support the Bent Creek counsel.

So anyways, next item, I'd like to go over the Peninsula Engineering slides. You know, on page packet 93, it's mentioning the request does not increase areas or relocate areas for nonresidential land uses. Well, they're actually requesting to move the building about half the distance --

THE HEARING EXAMINER: I'm going to tell you right now, the court reporter's going to snap at you in a minute because you're talking really fast.

THE COURT REPORTER: Getting close. Getting close.

THE HEARING EXAMINER: He's getting close, right?

THE COURT REPORTER: Yes.

MR. SWEET: I apologize. So on page 93, which would be compliance with LDC Section 10.03.13(E), (E)(D), where it talks about the request does not increase areas or relocate areas for nonresidential use is not going to impact or it says for proposed relocation, I don't want to get into the verbiage, but there's a statement from the Applicant stating the request does not increase areas or locate areas for nonresidential land uses. Part of the insubstantial change is to have a setback so you can move the commercial primary building, I don't believe this is an accessory building, primary building closer to the boundary of the PUD. Just a statement.

THE HEARING EXAMINER: Yeah, any factual statements you can give me, that's what you need to do.

MR. SWEET: Correct. So on packet page 94, this would be item H, and this was submitted as part of the revised 5/25/2021 Baumgarten PUD application from Peninsula Engineering.

So the statement under H, it says the request does not create incompatibility with or negatively impact adjacent land uses. I believe the Applicant's asking for an architectural deviation from what the standard is for the insubstantial change because of the fact that we are getting a large building half the distance from the county-approved guidelines which is fine, we don't have an issue, I want the urban, I want the highway, but we're going to be losing sunsets.

I also wanted to mention two other deviations that really aren't shown here for the overall MPUD. I don't mean to digress, but they were granted permission to put a traffic signal less than a quarter of a mile from what the standard is, which is a half mile. They did that with some concessions with water and future overpass, but they're getting things already that are not listed here in the deviations.

Now, the second one is a parking lot issue at Founder's Square, which is part of the Baumgarten MPUD. They also received a deviation which is not shown as part of the

application to shift the parking to the front at the corner of Immokalee and Collier and then have the building setback. And so I already asked for the deviation and the deviation does not show it in the packet. So the Applicant would be advisable to do that, but I can't dictate what they do, but they're missing information.

MR. YOUNGBLOOD: Mr. Hearing Examiner, the speaker is at five minutes.

THE HEARING EXAMINER: How much more do you need?

MR. SWEET: I can do it real quick, okay.

THE HEARING EXAMINER: Not too fast.

MR. SWEET: Packet page 71 of the Staff analysis, the proposed 25 feet is consistent with the requirements for commercial zoning. It's a statement at the end of that paragraph under Staff analysis, the 8-foot high wall and the proposed 20-foot setback heights (inaudible) separation to remove the proposed commercial building from the adjacent residential lots if that occurs. There's an architectural -- you know, you're asking the (inaudible) to transfer that.

I apologize, I was not aware of the five-minute limit. Again, I would close with I support Bent Creek counsel, Goede & Adamczyk. This would be page packet 157. The Association initially didn't find any objection to this Founder's Square development as I believe the originally --

THE COURT REPORTER: Excuse me, yeah, you've got to slow down or you're not making a record.

MR. SWEET: Yes, and I apologize. So, to close, I'll state that on August 11th, which is almost the date of the original Hearing Examiner's notice. And, again, the HOA let me know a week before, so I don't know, I heard that it was -- notification was earlier, it was only a sign-in sheet, but I believe they did not give proper notice.

So at the second paragraph where it says: Dear Hearing Examiner -- and this is page packet 157 -- the Association initially did not object to Founders' Square development as it believed the originally proposed and approved setbacks requirements were likely sufficient. However, it must strongly object to any proposed reduction of the original proposed approved setback requirement.

We just want people when they go and get applications they stick to the requirements. It seems the Founder's Square as well as (inaudible) is looking for a little give and push, so I'll leave it at that. Thank you very much.

THE HEARING EXAMINER: Thank you. That was the kind of factual information I enjoy to hear. Thank you. And then just the record, it might be good to bring in shadow studies and things like that, that you believe support your information, but --

MR. SWEET: I'll bring it next time. Very important to me. Now I've got to take vacation time to come to these.

THE HEARING EXAMINER: Okay. You can always log in. Thank you for being here. I appreciate it. Did you have anybody else? I don't think --

MR. YOUNGBLOOD: That concludes our public speakers portion.

THE HEARING EXAMINER: I close the public portion of this. I wrote down some notes and I'm going to go through these. You know, we have two parties here, the Applicant and the County; one or the other might be able to answer these, but we'll just go through them first and I'm sure you were taking notes or mental notes and want to address these.

One thing I do want to understand, okay, so I'm only equipped and have jurisdiction to do insubstantial changes, so I do have a concern about a PUD that's approved, but then how frequent are you-all letting folks come in with insubstantial change? The reason being is that, you know, there's a term called segmentation where in order to get into the lower -- I don't want to call myself lower-level approval process, but

I get concerned about these multiple insubstantial changes that I don't have -- I don't have information on that. Ray, do you guys know how many -- how many hearings? There haven't been any of them in front of me, so it must have been my predecessor; if you know.

MR. SCOTT: I do.

THE HEARING EXAMINER: You do know?

MR. SCOTT: Yes. Again, for the record, Chris Scott with Peninsula Engineering. This community was originally approved in 2019. There was one insubstantial change that was previously approved to add some sign deviations as well as some deviations as it relates to facilities with fuel pumps or gas stations; that was done in 2020. This would be the second insubstantial change request, number two.

THE HEARING EXAMINER: Is that about right, Ray?

MR. BELLOWS: I was just looking at it.

THE HEARING EXAMINER: While you look that up, you guys understand my perspective on this, right? You know, I don't want someone -- don't take this the wrong way -- but sort of trying to get around the planning commission and the county commission, more intensive broad-based scrutiny. I'm only allowed to look at small changes, i.e., insubstantial. My decisions are insubstantial.

MR. BELLOWS: Yes. I was able to open up our PUD monitoring file and Mr. Scott is correct.

THE HEARING EXAMINER: So some signs and some -- okay, got it.

I'm just going to go through my list here. You know, I know that the couple that was here, I know where they live, they were kind enough to point out where they live. Are those buildings still under construction, those apartment buildings or do you know? Do you know anything about any kind of negotiated settlement with that? I know it's in a completely different area than this, but they were mentioning, you know, noise and construction areas and buffers and things like that. I don't want that to become an issue with this section as well. So they're raising issues that I think their experience from a prior public hearing were maybe this was discussed, but I think the potential for similar alleged activities could occur.

So buffering, obviously construction times are being strictly adhered to; 4:00 a.m. would be very annoying to me to hear that. You know, probably would annoy you as well, so can you speak to that buffering and especially on the subject property, trying to control any noise because you do have single-family homes I believe that about this.

MR. SCOTT: Just to address the couple from Tuscany Cove, there is a condition, it's not necessarily germane to the insubstantial request, but there is a condition that fencing with slats go up. That apartment complex is an active construction site, so -- and these are large buildings, the a large cite, so there's bound to be construction noise. Those slats and the buffers adjacent to Tuscany are required to be in and will be inspected before any building on the apartment complex gets a certificate of occupancy.

THE HEARING EXAMINER: Okay.

MR. SCOTT: In regard to this property, the code required buffers for Baumgarten along the commercial portion adjacent to Bent Creek were put in as part of the original subdivision approval, as well as the eight-foot tall masonry wall.

THE HEARING EXAMINER: So it seems like they brought up -- I mean, the subject area that I'm reviewing, is there potential for car lights to be shining through or is the orientation of the buildings such that there won't be any car lights shining through?

MR. SCOTT: There will be parking lot, but with the eight-foot wall that would shield any car lights from coming into the residences.

THE HEARING EXAMINER: So you're talking about the buildings will be closer -- is the parking going to be along within that 25-foot setback?

MR. SCOTT: Currently the parking could be allowed up to that 25-foot setback, so --

THE HEARING EXAMINER: If you were within --

MR. SCOTT: Theoretically it could be as close as 15, so as long as it's not within the current buffer.

THE HEARING EXAMINER: Okay.

MR. SCOTT: But if a building were set back at 25, then it will logically push the parking to the opposite side further to the west away from the residents.

THE HEARING EXAMINER: Okay. And John, Ray, as far as that area, what kind of traffic are we talking about in that area; is it deliveries or any kind of parking? I just want to make sure because there is -- I mean, I had circled this. Let me see here, criteria, I'm looking at all the criterias, I believe it's H talking about incompatible with adjacent land use and I still don't -- maybe you can opine to this. Is that adjacent future land use or existing land use? It's not clear. I think we should take into consideration existing land use.

MR. BELLOWS: For the record, Ray Bellows. If I under the question you're reading from the staff report findings --

THE HEARING EXAMINER: Yes.

MR. BELLOWS: -- and that is existing conditions you are looking at. Plus, if we know what the zoning is and it's something that hasn't been built, we take that into account as well.

THE HEARING EXAMINER: Okay. So I'm just referring to criteria H. It says will the proposed changes bring about a relationship to an abutting land use that will be incompatible with an adjacent land use.

MR. BELLOWS: So we're not changing the uses. It's a setback change, so when Staff looks at this, are there things being done that would mitigate that impact of that reduced setback. And I think there is going to be a wall; is that correct?

MR. SCOTT: That's correct there's an existing wall.

MR. BELLOWS: Yeah, so that would address the headlight issue.

THE HEARING EXAMINER: All right; impenetrable wall or solid wall?

MR. SCOTT: Concrete masonry, so it's solid.

THE HEARING EXAMINER: Okay. Now, it was brought up regarding increased traffic due to the height increase; do you want to address that? The reason I'm asking that is I think you need to put something on the record.

MR. SCOTT: Certainly. Yeah, the -- I wasn't quite sure where she was going because we're proposing to limit the height or reduce the height, but either way, whether there's a change in height or not, there's no proposed increase in commercial intensity, square footage or increase in residential density, so this change doesn't affect any, you know, traffic.

THE HEARING EXAMINER: Okay. Yeah, so I want to make that clear. I think it was a misunderstanding that in exchange -- this is not a party, but in alleviating the smaller rear yard setbacks or the setback, the buildings will be lower, right; is that the idea?

MR. SCOTT: Yeah, we're proposing to reduce the setback, and where it's reduced, the buildings could not be as tall. It's otherwise level.

THE HEARING EXAMINER: And I think if I heard the individual speaking, I think they thought that the heights were going to be higher, not lower, but somehow that related to traffic, but it's been deemed by the County and by you as an expert that this is not an increased traffic; is that right, Ray.

MR. BELLOWS: That's correct. THE HEARING EXAMINER: Okay. I'm just going through these. The gentleman who lives

somewhere between 1,000 and 2,000 feet away has a two-story house, is concerned about shadows and line of sight, you want to address that?

MR. SCOTT: Yeah. I would just point out that we certainly appreciate Mr. Sweet's comments and being here. The current PUD would allow a building up to 65 foot actual height and it still does within the PUD.

This request is simply to reduce a setback and if they don't take advantage of that reduced setback, it would significantly reduce the allowed heights (inaudible) --

UNIDENTIFIED SPEAKER: It --

THE HEARING EXAMINER: Are we missing something, Madam Court Reporter?

THE COURT REPORTER: No.

UNIDENTIFIED SPEAKER: No, I haven't yet. I've been listening to the HEX since I got here.

THE COURT REPORTER: No, somebody's talking and it's interfering, I can't hear. I'm not sure, someone maybe that needs to be on mute.

THE HEARING EXAMINER: Okay. All right.

THE COURT REPORTER: There, I think we got it. Thank you.

THE HEARING EXAMINER: All right. All right. So the line of sight, shadows, in your professional opinion is there going to be a shadow issue, 1,000 or more feet away?

MR. SCOTT: No, I do not anticipate any shadow issues 1,000 feet away. And for those residents that are closer with the reduced setback, the building would be lower and it would lessen any shadow or direct line of sight impacts on them as well.

THE HEARING EXAMINER: Ray, John, you concur?

MR. BELLOWS: Yeah. John and I did review this together and I am supportive of the proposal because it will reduce the building height in order to allow the reduced setback.

THE HEARING EXAMINER: Okay. I have a question. I do have a letter here from a law firm. It appears that they're in opposition. Do we have an attorney here that's going to speak or is this just a letter being submitted? Have you seen the letter, the objection letter?

MR. SCOTT: I have.

THE HEARING EXAMINER: Is there anything you want to speak to this or you just want let it be?

MR. SCOTT: Well, I think my testimony speaks to the insubstantial change request. The -- there was position within the letter that referenced increased heights, so I'm not sure if they understood that with the reduction in setback, we were also imposing a height limitation on those buildings. There was a comment that it would allow parking lots to be closer. The setback, the proposed changes wouldn't affect where a parking lot could be laid out, so --

THE HEARING EXAMINER: Okay.

MR. KELLY: John Kelly for the record. Prior to -- that letter was received I believe one day prior to the initially scheduled date for this hearing. I did speak to the person that drafted the letter who indicated that they were just providing us with written notification of objection and they did not intend to appear.

THE HEARING EXAMINER: Okay. So they're not here, the attorney represents Bent Creek Preserve Homeowners Association, Inc. The association representative has not chimed in on the public hearing, nor has the attorney, but for the record I have the attorney's letter. Anyone else?

MR. SCOTT: I just want to make two small additional points in response to some of the comments that were made both by the public and during your communication -- or

conversations with staff.

In regards to being incompatible to adjacent land uses, I would just like to reemphasize that the proposed setback and building heights are consistent with what the Collier County adopted land development codes would have for a commercial use adjacent to a residential use, so in that regard, it is not creating incompatibilities.

And then just also note that there are no architectural deviations that were referenced by one of the public commenters.

THE HEARING EXAMINER: Okay. Well, this is part of the process. You know, the public gets notice, you have the NIM and you have the public hearing. I'm glad people are at least showing up to express their opinions on it; that's what this is all about and then you get to address them, the parties address them, the County addresses them, you address them, I address them, so that's the beauty of a public hearing.

Okay, thank you very much. This matter is over. I'll render a decision as quickly as I possibly can. Thanks for being here. Thank you everyone for being here to speak.

All right what else do we want to do today? Anything else?

MR. BELLOWS: Yes. We're going to hear 3C, which is the application for the boat dock from Johnson Engineering. They're going to request a continuance.

THE HEARING EXAMINER: All right, the docks. Another boat dock matter.

MR. KELLY: Okay, this is going to be item 3C on the revised agenda for BDE PL20200001107. The Applicant's here to request a continuance to an indefinite date and are aware that they will need to re-advertise the item.

THE HEARING EXAMINER: Okay. So at this time, just speak to the continuance, no substantive matters at all. Let's just talk about the continuance, you're requesting a continuance to an indefinite time, right?

MR. NELSON: Yes, sir. My name is Bill Nelson with Greg Orick Marine and we are just requesting a continuance to an indefinite time.

THE HEARING EXAMINER: Okay. You will need to re-advertise the public is listing to this, so you will have the opportunity to be noticed of this and attend either in person or otherwise, so County has no objection to this?

MR. KELLY: No objection.

THE HEARING EXAMINER: Okay, I see no objections, I have no objections, whatever you need the continuance for, I'm presuming that's to perfect your application even more, so thank you very much for being here.

MR. NELSON: All right. Thank you.

THE HEARING EXAMINER: Have a great day. So the continuance is granted.

MR. NELSON: Thank you.

THE HEARING EXAMINER: You're welcome. Everybody is polite. You guys learn. Did you put your dollar in the foul jar? What else do we have? Anything else on the agenda you want to talk about?

MR. BELLOWS: Nothing else here.

THE HEARING EXAMINER: Nothing, new business, anything? Nope? Nope? I like the pointer. I'm going to leave it here. I'm known for picking things up and putting them in my pocket, but that was really nice. Thank you. Appreciate it.

UNIDENTIFIED SPEAKER: (Inaudible).

THE HEARING EXAMINER: All right, with that we will adjourn the meeting.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:05 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on ^{11/7/21}_____, as presented ☒ or as corrected ☐.

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