

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00019

IN RE: RESURGENCE BREWERY & ROCK GYM

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Hearing Examiner

DATE: February 1, 2023

TIME: 9:00 a.m. to 9:37 a.m.

LOCATION: Lee County Examiner
Hearing Room, Second Floor
1500 Monroe Street
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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13 ALSO PRESENT:

14 Ahmad R. Kareh, Haley Ward
15 Benjamin Hofland, Haley Ward
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P R O C E E D I N G S

HEARING EXAMINER RIVERA: Good morning. My name is Amanda Rivera. I'm the Hearing Examiner presiding over today's hearing. The date is February 1st, 2023, and this is case DCI2022-00019. It's a rezoning to a request for an IPD but recommended for an MPD.

Because this is a quasi-judicial hearing, all evidence and testimony must be taken under oath. So if you intend to speak today, if you could please raise your hand.

(Participants sworn en masse.)

HEARING EXAMINER RIVERA: Thank you.

We do not have any members of the public here today so I will dispense with those instructions, and we can begin with the Applicant.

Good morning.

MR. DAVIES: Thank you. Good morning, Madam Hearing Examiner, Noel Davies with the law firm of Davies Duke on behalf of the Applicant today. I have with me Ahmad Kareh and Benjamin Hofland --

HEARING EXAMINER RIVERA: Not to interrupt, I'm sorry, if you don't mind going to the podium?

MR. DAVIES: Oh, sure.

HEARING EXAMINER RIVERA: I think that the way that they are set up with the cameras it may not be

1 capturing where you're sitting. Thank you.

2 MR. DAVIES: Again, good morning, Noel Davies on
3 behalf of the Applicant. With me today is Ahmad Kareh
4 and Benjamin Hofland with the planning and engineering
5 firm of Haley Ward. I would respectfully request that
6 Mr. Kareh and Mr. Hofland be accepted as experts in
7 both planning and engineering.

8 HEARING EXAMINER RIVERA: Yes.

9 MR. DAVIES: The Applicant has provided its
10 48-hour letter to Madam Hearing Examiner's office, as
11 well as Applicant's exhibit list. There are only two
12 minor requested clarification changes to the conditions
13 to the Staff Report which County Staff is in agreement
14 with. Except as noted in the 48-hour letter, Applicant
15 has no changes to the Staff Report and is in agreement
16 with County Staff.

17 With that, I will turn it over to Mr. Kareh to
18 walk you through Applicant's presentation, and I will
19 remain for any questions.

20 Thank you --

21 HEARING EXAMINER RIVERA: Thank you.

22 MR. DAVIES: -- Madam Hearing Examiner.

23 HEARING EXAMINER RIVERA: Good morning.

24 MR. KAREH: Good morning, Madam Hearing Examiner,
25 how are you?

1 HEARING EXAMINER RIVERA: Well. How are you doing
2 today?

3 MR. KAREH: Fine, thank you.

4 Okey-doke, one more time.

5 First of all, good morning, everybody.

6 Second of all, for the record, my name is Ahmad
7 Kareh. I am a registered engineer in the state of
8 Florida. I'm a senior vice president with Haley Ward,
9 Inc., which is -- which acquired BWLK, Inc., back in
10 September of 2018, so it's old history but just to
11 remind people of our history.

12 I would like to be accepted as an expert witness
13 in the field of planning, zoning, and engineering,
14 which I have been accepted before.

15 HEARING EXAMINER RIVERA: Yes, thank you.

16 MR. KAREH: Thank you.

17 I will make my presentation as simple and short as
18 possible, and I will divide my presentation into three
19 different parts.

20 Am I speaking...

21 THE REPORTER: (Nods head.)

22 MR. KAREH: Thank you. Thank you, ma'am.

23 The first part of my presentation, we'll cover the
24 background of the subject project; the second part will
25 touch on compliance with aspect of the -- of the

1 rezoning -- this rezoning case; and the third part will
2 cover our conclusions, our comments on the Staff
3 Report.

4 With that in mind, we'll start the first part.
5 The subject site is approximately 8.13 acres in size --
6 and I'll come and point to it. It's lined along
7 Exchange Lane from there to there. It's about -- this
8 is Exchange Lane; this is Six Mile Cypress/Ben C.
9 Pratt; and this is Mike Rippe Parkway.

10 Again, it lies along the south side of Exchange
11 Lane, which is a public local road to the southeast of
12 the intersection of Ben C. Pratt and Michael G. Rippe.
13 Both of them are public arterial roads. Both of them
14 are named after engineers so maybe this poor engineer
15 can get a break today because they are -- it's very
16 odd, two engineers' names, which is okay.

17 The subject site lies within the South Fort Myers
18 Planning District. Also, as you can take a look at the
19 area, the overlay, it's vacant. It's cleared really
20 with no vegetation at all.

21 The subject site is currently zoned general
22 commercial, CG, and lies within the intensive
23 development future land use.

24 The subject site is surrounded by commercial
25 rezoned land to the north and to the west, and to the

1 environmentally critical land to the south and east,
2 mainly the Six Mile Cypress Slough.

3 Our request today in front of Madam Hearing
4 Examiner is to rezone the subject site from CG to IPD
5 with a caveat -- and we'll touch on that IPD -- to
6 allow for the development of a combination of a brewery
7 and recreational facility, a rock gym, with most -- for
8 the record, with most of the requested uses already
9 allowed by right or by administrative approval or
10 special exception within the CG, including the
11 recreational facility, a restaurant, a bar, a COP. All
12 of them are allowed already in the CG with the
13 exception of the brewery, which is considered a
14 manufacturing use. And that's why we are here today
15 because Staff -- we can't have the brewery. It's
16 considered industrial use. So early on in the process
17 we have met with Staff, and it was suggested we should
18 go through an IPD process because of that odd use. And
19 later on, through the Staff Report, which Madam Hearing
20 Examiner -- we'll let Staff touch on that. It was
21 recommended to switch from an IPD to CPD. Again,
22 hence, we are requesting the IPD zoning which has been
23 switched to a CPD by Staff through the Staff Report.

24 Early on there was -- like I say, there was
25 discussion regarding which planned development to

1 pursue, which Staff suggested at that time to be an
2 IPD; however, the Applicant is satisfied with the CPD
3 suggested zoning as it achieves the same goals and
4 objectives. So we are -- no problem with that.

5 The subject site, just for the record, has access
6 to both central public water, central public sewer, and
7 sufficient -- with sufficient capacity, and as is
8 clear, sufficient public access roadways. Hence, we
9 think with the proposed condition, including the
10 inherent existing buffering along the slough, and the
11 proposed buffer along the roadway and to the west, we
12 think the proposed development fits properly with
13 adjacent existing uses and within this vicinity.

14 Per our submitted application, narrative
15 statement, Staff Report, this rezoning request was
16 analyzed against all applicable goals of the Lee Plan,
17 such as:

18 Goal 1, future land use: The subject site lies
19 within -- as I stated, within the intensive
20 development, which allows high density of commercial
21 limited light industrial development, especially when
22 it's contiguous to commercial zoned land, which that's
23 our use. We have limited industrial, very low-profile
24 industrial with commercial use. Again, we have CG to
25 the -- surrounding the property with a CPD to the

1 northwest and the two major roadways.

2 We also -- we are complying with Goal 2, which is
3 growth management. The subject site lies within a
4 highly developed area of South Fort Myers with all
5 infrastructure being available with sufficient
6 capacity.

7 Goal 4, general development standards: The
8 subject site is served, as I stated, with water --
9 public water and sewer system and has no
10 environmentally sensitive land.

11 Goal 6, commercial land use: The proposed
12 development is an extension of the existing surrounding
13 uses, with all infrastructure being existing, and the
14 proposed project is being developed with all the
15 required stormwater management and landscaping.

16 Goal 11, mixed use: The proposed development is a
17 mixed use of limited light industrial with commercial
18 development, which are encouraged in the intensive
19 development future land use. Moreover, the proposed
20 development will be within the allowable commercial
21 allocation as listed in Map 16, table 1(b) of the Lee
22 Plan. That table suggested 638 acres available for
23 commercial land so we should have no allocation
24 problem.

25 It is evident, we think at least, that this

1 request will comply with all applicable goals,
2 policies, and objectives of the Lee Plan, including
3 Goal 37 of the transportation element of the Lee Plan.
4 The level of service is at B on the adjacent road, and
5 even with -- with our background traffic, it still
6 stays within Level of Service B so it should be no
7 problem there.

8 Furthermore, this rezoning request has been
9 reviewed against applicable sections of the Lee Plan --
10 of Lee County -- I apologize -- Lee County Land
11 Development Code including, but not limited to,
12 Sections 34-145, 34-411, 34-931 through 34-936, which
13 are applicable to planned development, and we think we
14 are complying -- again, both the narrative statement
15 and the Staff Report will confirm that.

16 This -- the Applicant is requesting one deviation,
17 which is a reduction of five percent of the required
18 parking spaces. This deviation is justified and
19 supported by the proximity to public transportation and
20 direct access to that facility along Metro Parkway.
21 The Lee County Land Development Code, frankly, suggests
22 that we can even administratively obtain the same
23 deviation, but we thought it's better to clean up
24 house. And that's, frankly, one of those issues which
25 we touch on in the 48-hour, which maybe I'll come back

1 in a minute to talk about it.

2 Again, it is evident that this request complies
3 with all applicable sections of the Lee County Land
4 Development Code. To summarize, the proposed rezoning
5 request complies with the Lee Plan; meets Lee County
6 Land Development Code's applicable -- applicable
7 regulations; it is compatible with the adjacent uses
8 and adjacent zoning; has sufficient roadway access and
9 utilities; will not affect any environmentally
10 sensitive lands. The proposed development, in our
11 opinion, is an appropriate use of the current location,
12 especially with its limited list of uses and only one
13 limited scope of deviation.

14 In the spirit of not belaboring this presentation,
15 I will not go into the details of all compliance items
16 which were discussed at length, like I say, in both our
17 narrative statement and the Staff Report.

18 My last part of the presentation is my -- as
19 stated by our land use attorney, is that my client and
20 our team agree with the Staff Report recommendation and
21 conclusion and suggested conditions, with a few
22 exceptions as listed in my 48-hours (sic). The two
23 conditions are very limited. One of them is the
24 rewriting of the COP language -- and, again, we -- if
25 Madam Hearing Examiner has a question, we can always

1 ask our land use attorney, who came up with the
2 language, to discuss it. And the second thing is the
3 Staff Report, in their -- one of their conditions,
4 suggested that we need to build a sidewalk along Molly
5 Lane, as shown here or as shown there, and we thought
6 there's really no need to do that since we are putting
7 a sidewalk along all of our frontage property along
8 Exchange Lane and adding a crosswalk. There is already
9 a sidewalk on the south side -- or north side of
10 Exchange, south of the Racetrac, and there's a sidewalk
11 which will take us all the way to the LeeTran facility.
12 So there's really no reason to go ahead and go through
13 this -- we think it's a shorter distance instead of
14 going to Molly Lane. So we would like that condition
15 to be modified, if it's okay with the Staff, which
16 Staff can comment on that, and Madam Hearing Examiner.

17 With that, I thank you for listening and thank the
18 Staff for their assistance in this case. Thank you so
19 much.

20 We are here to answer any questions.

21 HEARING EXAMINER RIVERA: Can you discuss
22 briefly -- it wasn't clear from the EC. I'm assuming
23 that the dotted line matches the linear demarcation of
24 the EC districts; is that correct? So there wouldn't
25 be any development in the ECs --

1 MR. KAREH: That's correct. That's definitely a
2 correct statement, no development in the EC.

3 HEARING EXAMINER RIVERA: Okay. And what is that?
4 That's a drainage easement?

5 MR. KAREH: It's frankly -- can we take a look --
6 there is a drainage easement which --

7 (Mr. Mendez adjusts PowerPoint slide.)

8 MR. KAREH: That's correct. All of this is
9 already encumbered by the drainage easement.

10 HEARING EXAMINER RIVERA: The entirety of the EC
11 portion?

12 MR. KAREH: That's correct.

13 HEARING EXAMINER RIVERA: Okay.

14 MR. KAREH: And we are not touching that.

15 HEARING EXAMINER RIVERA: Okay.

16 MR. KAREH: For both reasons, being in the EC
17 zoning and being a drainage easement.

18 HEARING EXAMINER RIVERA: And will that be
19 otherwise preserved or open space --

20 MR. KAREH: It's already -- it's counted as open
21 space.

22 HEARING EXAMINER RIVERA: Okay.

23 MR. KAREH: And it is definitely encumbered by the
24 easement so there will be never development there.
25 It's being used for water management.

1 HEARING EXAMINER RIVERA: But there isn't any
2 indigenous areas or any environmentally sensitive --

3 MR. KAREH: That's -- that's correct.

4 HEARING EXAMINER RIVERA: Okay. It's always been
5 a drainage easement, from what --

6 MR. KAREH: That's correct.

7 HEARING EXAMINER RIVERA: -- I understood from the
8 Staff Report.

9 MR. KAREH: You can see that it's -- there's very
10 low environment -- it's just water management. It's a
11 couple of feet deep.

12 HEARING EXAMINER RIVERA: Okay.

13 MR. KAREH: And then -- then there's -- just this
14 piece of property goes -- which is not part of this
15 property but the overall subdivision, there's some
16 mitigation area on -- when the subdivision was
17 approved. Because of the proximity to Six Mile
18 Cypress, they had some area there for flood
19 replacement, which this is --

20 MR. DAVIES: (Sneezing) excuse me.

21 MR. KAREH: And that's, again, preserved within an
22 easement -- I mean, it's not part of this rezoning, but
23 it's part of the overall subdivision.

24 HEARING EXAMINER RIVERA: Okay. There was mention
25 in the Staff Report that this site is subject to an

1 existing ERP, so is that what you're talking about? It
2 ties in somehow?

3 MR. KAREH: That's correct.

4 HEARING EXAMINER RIVERA: Okay. Do you have an
5 exhibit -- is that an overlay? I can't quite see what
6 that exhibit is on the right-hand --

7 MR. KAREH: This?

8 HEARING EXAMINER RIVERA: -- side. Yes. Is that
9 an aerial overlay that --

10 MR. KAREH: That's an aerial, and you can have it.

11 HEARING EXAMINER RIVERA: Okay. Yes, if I could,
12 I'll go ahead and --

13 MR. KAREH: Yeah.

14 HEARING EXAMINER RIVERA: -- accept that then into
15 the record because it would be helpful.

16 MR. KAREH: Yeah.

17 (Applicant's Exhibit 1 submitted.)

18 HEARING EXAMINER RIVERA: So I will accept that as
19 Applicant's Exhibit 1, and that will just be an aerial
20 overlay. Do you have it in that size only, or do you
21 have a smaller size, an 11 by 17 --

22 MR. KAREH: We can email you a -- do we have
23 smaller size? Yes, we do.

24 HEARING EXAMINER RIVERA: That would be excellent.

25 MR. KAREH: I stand corrected. Okay. You can

1 have both.

2 (Supplement to Applicant's Exhibit 1 submitted.)

3 HEARING EXAMINER RIVERA: Thank you.

4 MR. KAREH: Thank you.

5 HEARING EXAMINER RIVERA: And then with respect to
6 the proposed uses, it's separate buildings; correct?
7 So the rock gym recreation facility building will be
8 completely distinct from the brewery?

9 MR. KAREH: That's correct.

10 HEARING EXAMINER RIVERA: And that's --

11 MR. KAREH: And I apologize, I didn't get into the
12 details.

13 HEARING EXAMINER RIVERA: Thank you.

14 MR. KAREH: We have two buildings. The eastern
15 part -- the eastern building is actually the brewery,
16 the restaurant, the COP, the bar. The bigger building
17 plan is the rock gym, and they are completely two
18 separate buildings with a plaza walkway between them.

19 HEARING EXAMINER RIVERA: Okay. So the proposed
20 language to the COP condition is designed to restrict
21 entirely COP from happening in the recreation facility
22 building?

23 MR. KAREH: And that's, frankly, where -- it's a
24 little -- I guess there is some limited use of COP both
25 outside and possibly within the recreational area.

1 HEARING EXAMINER RIVERA: But only within seating
2 areas, I think --

3 MR. DAVIES: That's correct.

4 HEARING EXAMINER RIVERA: Okay. And is that
5 something that maybe Mr. Davies could speak to a little
6 more, just what the --

7 MR. DAVIES: Sure.

8 HEARING EXAMINER RIVERA: -- intention of that
9 language is trying to capture?

10 MR. DAVIES: Thank you, Madam Hearing Examiner.
11 Noel Davies, for the record.

12 So in the 48-hour letter, the revised language,
13 you know, really to tries to clarify that there will
14 be -- you know, that there will be certain areas
15 within -- let me just walk through it here. So
16 alcoholic beverages may not be consumed within areas
17 solely dedicated to recreation activities, i.e., rock
18 climbing. So the facility -- the building that will --
19 that will hold the rock climbing facilities, the idea
20 is to prevent alcoholic beverage use anywhere near
21 those actual recreation areas. It's contemplated that
22 there may be observation areas within that structure
23 for which we would specifically demarcate, you know,
24 observation area and then make it clear, after that
25 demarcation point, that alcoholic beverages cannot

1 proceed into the formal recreation areas.

2 So that's the intent of the language, Madam
3 Hearing Examiner, that consumption on premises with
4 respect to that structure is not prohibited altogether,
5 but it would be prohibited in the true recreation
6 areas, and then there would be demarcated areas for
7 observation which would not be actual recreation areas
8 where consumption would be allowed.

9 HEARING EXAMINER RIVERA: And so -- but it's
10 consumption only so there wouldn't be service within
11 the recreation facility building? It's all coming from
12 the brewery next door? Is that the intention?

13 MR. DAVIES: That's the intention.

14 HEARING EXAMINER RIVERA: Okay. That answered all
15 of my questions.

16 Did Staff have any questions?

17 MR. MENDEZ: No questions, thank you.

18 HEARING EXAMINER RIVERA: Thank you.

19 MR. DAVIES: And as a formality, Madam Hearing
20 Examiner, just with respect to exhibits, we would ask
21 that you accept the County Staff Report and the County
22 file into your file with respect to exhibits; and then
23 as you already accepted, the -- the exhibit prepared by
24 Mr. Kareh with respect to the sidewalk item; and then
25 also the master concept plan, which is part of the

1 County record; and our 48-hour letter with the revised
2 proposed language.

3 HEARING EXAMINER RIVERA: Thank you.

4 MR. DAVIES: Thank you.

5 HEARING EXAMINER RIVERA: Just for the record, I
6 can go over those then. Applicant's Exhibit A -- they
7 pre-marked that -- is the 48-hour letter, just for your
8 records --

9 MR. DAVIES: Okay.

10 HEARING EXAMINER RIVERA: -- and then I would be
11 the aerial overlay that I just accepted, and then the
12 Staff Report would be Staff Exhibit 1 and all of its
13 attendant exhibits. We've got the master concept plan
14 in there. Thank you.

15 MR. DAVIES: Thank you.

16 MR. MENDEZ: Good morning, Madam Hearing Examiner.
17 Adam Mendez, senior planner with the Zoning section. I
18 do have two copies of Staff's PowerPoint presentation.
19 I have provided the Applicant a copy.

20 HEARING EXAMINER RIVERA: Excellent, thank you.
21 So that will be Staff's Exhibit 2.

22 (Staff's Exhibit 2 submitted.)

23 HEARING EXAMINER RIVERA: Thank you.

24 MR. MENDEZ: The general basis for Staff's
25 recommendation is really the overall appropriateness of

1 the mixture of uses on the site. The Applicant has --
2 went into detail in terms of their testimony and their
3 exhibits to kind of demonstrate that -- that point.

4 The subject property is eight acres in size. It's
5 primarily within the intensive development future land
6 use category with approximately 1.3 acres in the
7 wetlands future land use category, as demonstrated on
8 this future land use map.

9 As noted by the Applicant, the intensive
10 development areas are well-suited to accommodate high
11 densities and intensities, as specified by Policy 1.1.2
12 of the Lee Plan. Mixed-use developments are encouraged
13 by this policy by way of reference of Lee Plan Goal 11,
14 which addresses mixed-use developments and integrate
15 multiple distinct land uses, such as the integrative
16 recreation, restaurant, retail, and manufacturing uses
17 proposed on premises with this request.

18 The subject property is vacant and cleared and is
19 split zoned: General commercial, CG; and
20 environmentally critical, EC. The CG district is
21 relatively -- a relatively heavy conventional
22 commercial district that permits a wide array of
23 consumer-oriented commercial facilities containing
24 sales, administration, repair, servicing, and
25 manufacturing uses. The environmentally critical

1 district serves to preserve -- to protect certain land
2 and water areas in unincorporated areas of the county
3 which have overriding ecological, hydrological, or
4 physiographic importance to the public at large.

5 The property is near the intersection of three
6 arterial roads. In the Staff Report they're identified
7 as County-maintained; however, the correct assessment
8 is that Michael G. Rippe Parkway and Metro Parkway are
9 both State-maintained arterial roads. This does not
10 have any impact or bearing on the recommendation.

11 This slide depicts an expanded view of the
12 surrounding properties, including the fringe of the
13 Andrea Lane and Six Mile commercial and industrial park
14 over here in the northeast quadrant. There's also a
15 convenience food and beverage store that's catty-corner
16 from the RaceTrac in the same quadrant.

17 Working to the northwest quadrant, we have a
18 planned development known as Hope Hospice, which is
19 right here. This is approved for a mixture of office,
20 medical, hospice, healthcare facility, independent
21 living facilities, and a 124-unit hotel tract that is
22 zoned mixed planned development or mixed-use planned
23 development.

24 Also, notable to the northeast is this large
25 building here. That's the Arthrex -- what do we have

1 here? That's the orthopedic product manufacturing and
2 distribution facility.

3 Further to the northeast is the County's Hammond
4 Stadium baseball sports complex.

5 And to the west, across Michael G., is the Sun
6 Harvest Citrus Planned Development -- that's the name
7 of the planned development. It's a commercial planned
8 development which permits a maximum of 33,250 square
9 feet of commercial uses on 3.1 acres. It's currently
10 developed with about 24,000 square feet of specialty
11 food/convenience store.

12 To the southeast is the Six Mile Cypress Slough
13 which separates the subject property from the nearest
14 residential, which is the Briarcliff community
15 approximately a quarter mile -- it's a stretch from the
16 development footprint to -- you can see kind of here is
17 where you have some -- some property over there in the
18 Briarcliff subdivision.

19 Staff's recommendation of a commercial planned
20 development approval with conditions is based on the
21 desired mixture of uses and allocations of each
22 respectively. Those fall below the mixed-use planned
23 development entry thresholds and outside of the
24 obtainable uses in an industrial planned development.

25 An evaluation of the use and site design of the

1 project demonstrates consistency with the review
2 criteria contained in the Land Development Code for
3 planned development rezoning considerations. The
4 details of the findings are contained in the Staff
5 Report, and the Applicant's presentation has touched on
6 them, how these standards are met. I feel it's
7 important to note that all 4.4 acres that are currently
8 in the EC designation on the subject property are
9 proposed as open space and will be preserved
10 accordingly. We had our Planning section map out and
11 georectify the zoning lines and the footprint on this
12 master concept plan, and we did confirm, in fact, that
13 there may be an excess of area that is not going to be
14 within the development tract you see here contouring
15 Exchange Lane.

16 In terms of conditions of approval, we have the
17 general conditions pertaining to consistency with the
18 project's master concept plan, use, and property
19 development regulations.

20 Condition 3 requires consistency with the
21 project's proposed open space acreage, which is in
22 excess of the Code.

23 Condition 4 is relative to the consumption on
24 premises of alcoholic beverages and addresses time
25 limitation, outdoor seating, uses correlated with COP

1 locational restrictions when the restaurant component
2 is not serving full-service meals, and a limitation
3 with regard to commingling of COP and commercial
4 recreation. Staff believes the level of specificity
5 adequately captures the request, as proposed, in a
6 manner that negates the need for further zoning action
7 at time of local development order and building
8 permitting.

9 Staff is -- Staff is in agreement with the
10 modification to bullet 5 of Condition 4 as presented in
11 the Applicant's 48-hour letter. I'll touch on this
12 again shortly.

13 Condition 5 is recommended to ensure the unlisted
14 manufacturing uses are subordinate in terms of
15 comparative area as required by the Land Development
16 Code and demonstrated on the master concept plan.

17 Condition 6 prevents the local development order
18 TIS from incorporating internal trip capture into the
19 project. The basis for that, essentially, is at time
20 of sufficiency review the zoning-level TIS was
21 accepted, and it included, I think, roughly 10 to 13
22 percent of internal trip capture based on a land use
23 that was represented as entertainment. However, the
24 recreation component of this particular planned
25 development doesn't fall within the purview of

1 entertainment in the way that the ITE and supporting
2 transportation documents or -- or -- that the Staff
3 relies on to make assessments on these didn't support
4 that. So it was brought up during substantive review
5 which resulted in this condition. I spoke with the
6 Applicant about this a little bit. I don't believe
7 that, in terms of this project because of the scale,
8 it's going to make any impact as far as what off-site
9 improvements will be required by virtue of not -- or
10 disallowing internal trip capture.

11 Condition 7 assures that the former EC district
12 areas on the subject property are -- which are
13 encumbered in easements requires app -- if any -- any
14 use contrary to open space or, you know, public --
15 drainage easement and public utility easements, which
16 are further up on the site, that that be done through
17 the public hearing process.

18 HEARING EXAMINER RIVERA: So when Staff did their
19 geomapping of the EC area overlay, it was confirmed
20 that the entirety of the EC area is already encumbered
21 within either a drainage or utility easement so there's
22 no need for conservation easements or anything
23 additional?

24 MR. MENDEZ: That is correct. I mean, it's
25 already completely within and encumbered in the -- the

1 open -- the drainage easement, and there's even an FPL
2 easement that kind of goes north to south here on
3 this -- you can see in the boundary survey, attached as
4 Attachment B, the delineation of each respective
5 easement, and those are in line with the EC district's
6 zoning line as georectified.

7 HEARING EXAMINER RIVERA: Okay. And the drainage
8 easements were reviewed to ensure there's no
9 development that's permitted within those areas?

10 MR. MENDEZ: That's correct. It's for drainage.

11 HEARING EXAMINER RIVERA: Go back for one
12 second --

13 MR. MENDEZ: Yeah.

14 HEARING EXAMINER RIVERA: -- to Condition 5. So
15 the intention there is that Staff is comfortable with
16 the brewery manufacturing operations expanding so long
17 as they're still enclosed and pretty low-level
18 industrial uses, since we're recommending a CPD now
19 instead of an IPD, but you don't want to see the COP or
20 the restaurant area expanded? Is that kind of the
21 intention of that?

22 MR. MENDEZ: Not without going through the
23 appropriate approval process. So what we're trying to
24 do is we're trying to, through this process, ensure
25 that COP is permitted as it was proposed so they don't

1 have to come in through an administrative approval or
2 special exception. If they want to differ from this
3 language, they can in accordance with the LDC, whether
4 it's administrative or special exception, those kind of
5 guide markers will be in place.

6 HEARING EXAMINER RIVERA: Okay, thank you.

7 MR. MENDEZ: You're welcome.

8 The Applicant has -- has provided a deviation in
9 terms of the parking that's required. I've got a
10 couple of insets I've copied over from the Applicant's
11 master concept plan and Attachment F, which is the
12 Applicant's narrative and supporting documents to kind
13 of break down the nature of the five percent deviation.

14 It results in effectively ten spaces, if you
15 follow their parking calculations, though they are
16 providing 200 instead of 198. So they're providing in
17 excess of what would be allowed currently, but it gives
18 them the latitude to -- to kind of shift those around.
19 As Mr. Kareh said, it meets the criteria for an
20 administrative deviation for parking, and there's
21 probably an opportunity to go to ten percent, if they
22 meet the additional criteria in the future, so we have
23 no issue with this deviation as conditioned. And we
24 believe that this deviation does enhance the objective
25 of the planned development and is no less consistent

1 with public health, safety, and welfare.

2 Staff has reviewed the Applicant's 48-hour letter
3 response and is in agreement with the findings in the
4 revised condition pertaining to Deviation 1, which
5 would ensure the developer has the ability to develop
6 the required pedestrian facility in an efficient manner
7 given the surrounding road network and existing
8 sidewalks. The intent of the condition was to ensure
9 that the Applicant does not pursue an absence of need
10 determination under the Land Development Code Section
11 10-256 since the justification for the parking
12 reduction is rooted in the project's ability to connect
13 to multimodal transportation facilities.

14 In terms of the proposed modification to bullet 5
15 of Condition 4, which is the COP condition, Staff
16 agrees that the Applicant's revision clarifies the
17 condition while maintaining the intent to ensure COP,
18 in conjunction with a strenuous recreation activity, is
19 moderated appropriately.

20 Staff recommends approval of a commercial planned
21 development rezoning on the subject property -- the
22 facility, the intended mixture of uses -- and believes
23 it fulfills the -- and satisfies the review criteria in
24 the Land Development Code. The mixture of uses is
25 appropriate on the site, and the deviations do enhance

1 the objective of the planned development.

2 I am here for any questions.

3 HEARING EXAMINER RIVERA: Thank you. I don't have
4 any questions.

5 Did Applicant have any questions of Staff?

6 MR. DAVIES: No questions from Applicant.

7 HEARING EXAMINER RIVERA: Thank you.

8 I did not have any further questions. I asked
9 them as I went along, and it was a very thorough Staff
10 Report and an excellent presentation from the
11 Applicant, so thank you for that.

12 Did anybody want to make any final or concluding
13 comments?

14 MR. KAREH: No, thank you.

15 MR. MENDEZ: Anything from the public?

16 HEARING EXAMINER RIVERA: Thank you.

17 MR. DAVIES: No final comments. Thank you, Madam
18 Hearing Examiner.

19 HEARING EXAMINER RIVERA: Thank you.

20 All right. With that, we will conclude the
21 hearing. Thank you, everyone, for coming today, and
22 please stay very well.

23 (Proceedings concluded at 9:37 a.m.)

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3 CERTIFICATE OF REPORTER
4

5 STATE OF FLORIDA)

6 COUNTY OF LEE)
78 I, Deborah Bruns, Florida Professional
9 Reporter, do hereby certify that I was
10 authorized to and did report the foregoing
11 proceedings, and that the transcript, pages 1
12 through 30, is a true and correct record of my
13 stenographic notes.
1415 Dated this 13th day of February, 2023.
1617 
1819 Deborah M. Bruns, FPR
2021 (This transcript was electronically signed.)
22
23
24
25

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