

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00004

IN RE: THE NEST SWFL

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Hearing Examiner

DATE: June 8, 2023

TIME: 9:05 a.m. to 10:29 a.m.

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

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Florida Professional Reporter

ORIGINAL

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15 Camryn Siverson, Lee County Staff
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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 am the Hearing Examiner presiding over today's hearing. The date is June 8th, 2023, and this is case DCI2022-00004. It's a request to rezone to a combined RPD and CPD zoning district.

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 please raise your hands. Do you swear or affirm the testimony you will provide is the truth?

(Participants respond en masse.)

HEARING EXAMINER RIVERA: Thank you.

So the way that we'll proceed this morning is first we're going to hear from the Applicant. They'll present the request in the case and call any witnesses and experts that they may have to support that request.

Following their presentation, we will turn to the County Staff, who will present their review of the case. In this case they are recommending approval with deviations. There was one that was recommended to be withdrawn I'm sure that we'll discuss in detail, and there are conditions of approval, as well, that they've suggested.

Following the public -- excuse me, the Staff's

1 presentation, then we'll turn to the public
2 presentation. If you would like to speak, if you could
3 please fill out one of the forms by the door and
4 provide that to the Staff, they can offer that to me
5 here, and then I'll call the cards in the order that I
6 have them.

7 There is only one opportunity to speak, so I would
8 encourage you to take notes as we go through things
9 this morning so that you can make the most of your time
10 at the podium. There is no time limitation, however,
11 once you are at the podium to speak.

12 On these cases, if you do have comments to make,
13 if there are suggested ways that you think that the
14 project could be enhanced through the conditioning or
15 any of the deviations, that would be welcome, to
16 provide that kind of comment, whenever you've got the
17 opportunity.

18 With that we will turn to the Applicant and get
19 started. Good morning.

20 MR. WRIGHT: Good morning. For the record, I'm
21 Jeff Wright with the Henderson Franklin law firm here
22 on behalf of the Applicant.

23 With me today -- our next slide here -- is our
24 team. Matthew Slaughter is the Applicant and the
25 owner's representative; myself; Margaret Emblidge, our

1 planner; Barry Jones; Paul Owen; and Jim Banks round
2 out our team.

3 As you mentioned, we're seeking approval of a
4 rezoning of 15.75 acres from AG-2 zoning to a combined
5 residential planned development on 12 of those acres,
6 and 34.75 remaining acres would be in a CPD, commercial
7 planned development.

8 The property is on the west side of US 41 in the
9 South Fort Myers Planning Community -- really the San
10 Carlos Planning Community that's in South Fort Myers.
11 There's a look at the map to get oriented. It's about
12 one mile north of that intersection of 41 and San
13 Carlos.

14 We've reviewed the Staff Report. We agree with
15 their recommendation of approval. We were seeking
16 originally six deviations, now five. Staff and the
17 Applicant agreed to withdraw Deviation Number 1. So
18 we're left with five, and Staff is recommending
19 approval of all five. They're also recommending
20 conditions on three of those five deviations, which
21 Margaret will cover in more detail as we go along here.

22 We're in agreement with all of the recommended
23 conditions.

24 Like I said, our project team is here. Margaret
25 is going to come to the podium after me and present the

1 bulk of the testimony today, including the planning
2 framework and the rezoning request, and the rest of our
3 team is also here in case any questions come up.

4 Just a few logistical matters to attend to in the
5 front end here. The first is our 48-hour letter. I
6 was informed this morning that the Hearing Examiner did
7 not receive a copy of our 48-hour letter. I'm not sure
8 if that's true, but I do have a copy here.

9 HEARING EXAMINER RIVERA: I received one that was
10 dated June 2nd that had some minor changes to the
11 schedule of uses --

12 MR. WRIGHT: That's it.

13 HEARING EXAMINER RIVERA: I did receive that.

14 MR. WRIGHT: Okay, great, so I will set that
15 aside. And I will just point out that all those items,
16 there's nothing really in dispute, just kind of some
17 scrivener's issues and things that we needed to hash
18 out with Staff, but nothing's in dispute there in the
19 48-hour letter.

20 The next item is our exhibits. We have three
21 exhibits that we're proposing to enter into the record
22 today. The first exhibit is a composite exhibit with
23 the two résumés.

24 HEARING EXAMINER RIVERA: Okay.

25 MR. WRIGHT: And they're Margaret Emblidge and

1 Barry Jones' résumés. My understanding is that the
2 remainder of our experts have already filed their
3 résumés with the Hearing Examiner's Office.

4 HEARING EXAMINER RIVERA: Okay.

5 MR. WRIGHT: That would be our first exhibit, and
6 I'm not sure if the Hearing Examiner would prefer A or
7 1 but --

8 HEARING EXAMINER RIVERA: I'll do a Composite
9 Exhibit 1, and then we'll do A and B --

10 MR. WRIGHT: Okay.

11 HEARING EXAMINER RIVERA: -- would be --

12 MR. WRIGHT: Perfect.

13 HEARING EXAMINER RIVERA: -- appropriate. I can
14 do that.

15 MR. WRIGHT: Perfect. So the next exhibit, which
16 presumably would be Exhibit 2, is our PowerPoint; and
17 the third exhibit, Exhibit 3, would be our master
18 concept plan, large size. So if it's okay, I'd like to
19 tender those --

20 HEARING EXAMINER RIVERA: Yes --

21 MR. WRIGHT: -- into the record.

22 HEARING EXAMINER RIVERA: -- please. Is the
23 master concept plan the same as what was provided in
24 the Staff Report, or have there been any revisions
25 since --

1 MS. EMBLIDGE: There haven't been any changes.

2 HEARING EXAMINER RIVERA: Okay. Just to make sure
3 I'm citing to the correct one --

4 MR. WRIGHT: Yeah.

5 HEARING EXAMINER RIVERA: -- thank you.

6 MR. WRIGHT: So...

7 (Applicant Exhibits 1 through 3 submitted.)

8 HEARING EXAMINER RIVERA: Thank you.

9 MR. WRIGHT: And I have provided a copy of those
10 exhibits to Staff. I'll admit they didn't have a ton
11 of time to look at them, but I'm not aware of any
12 objections.

13 HEARING EXAMINER RIVERA: Okay.

14 MR. WRIGHT: The last logistic matter is our
15 experts. I expect that Margaret, like I said, will
16 give the bulk of the testimony, and I want to make sure
17 that she's recognized as an expert on the record. Her
18 résumé is there in Exhibit 1A, and she has an extensive
19 background in planning, and we respectfully request
20 that you recognize her as an expert in that field.

21 HEARING EXAMINER RIVERA: In land use planning and
22 the Land Development Code for Lee County?

23 MR. WRIGHT: Yes, ma'am.

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. WRIGHT: Okay. I just want to make sure I'm

1 covering everything before I turn it over to Margaret.

2 I just want to say thanks to Staff. You look at
3 the number of our applications, one of the early ones
4 in 2022. So there's been a lot of work on this one
5 from Staff and from the Applicant, and a lot of
6 evolution, and hopefully we've gotten to a point where
7 it's acceptable to everybody. And like I said, we
8 agree with Staff's recommendation of approval.

9 And thank you for the opportunity today, and at
10 this time I'll turn it over to Margaret.

11 HEARING EXAMINER RIVERA: Thank you.

12 Good morning.

13 MS. EMBLIDGE: Good morning, Madam Hearing
14 Examiner. I appreciate being accepted as an expert.

15 And thank you, Jeff, for the introduction.

16 This next slide is an overview of the site
17 information. The project is called -- name is The
18 Nest, and for good reason. As you can see, the
19 existing conditions on the property, there's four
20 parcels total. There is cattle grazing in accordance
21 with an approved ag exemption. The property previously
22 had an eagle's nest that was destroyed during Ian;
23 however, based on monitoring of the nest tree, there
24 have not been any visible eagles in the last couple of
25 seasons and -- but because of the eagle's nest tree

1 being still there and not meeting the time of it being
2 abandoned, we went through the process with ETAC, and
3 they have approved our -- approved of the Bald Eagle
4 Management Plan, and that will be presented to the
5 Board of County Commissioners prior to the approval of
6 this project. And so the -- the intent here is that
7 we'll comply with the Bald Eagle Management Plan and --
8 until such time as the nest is deemed lost.

9 This gives you an overview of the surrounding
10 properties and their uses and zoning. As you can see,
11 the -- the surrounding area is highly developed. We
12 have -- we have a mixed use of different types of
13 residential at different types of densities. We have
14 commercial planned developments and conventionally
15 zoned commercial surrounding primarily along, of
16 course, US 41.

17 And as you can see, the property highlighted to
18 the north of it is an existing mobile home park, and to
19 the south is an existing -- two projects that are a
20 mixed use of -- I should say residential developments
21 that are a multi-family-type product and --

22 MR. BADAMTCHIAN: Sorry.

23 MS. EMBLIDGE: We've got moving slides.

24 And I think that the conclusion of this slide is
25 that there is existing development. This property --

1 where did you go?

2 MR. BADAMTCHIAN: Oh, sorry. Which way?

3 MS. EMBLIDGE: Okay. I'll go. Okay.

4 So the property is -- is appropriate for
5 development based on the existing conditions in the
6 surrounding area.

7 So this slide portrays the future land use. The
8 existing future land use categories on the property is
9 urban community and wetlands. The majority of the
10 properties surrounding this property are also in urban
11 community; however, to the east of U.S. 41 there is the
12 mixed-use overlay area, and also an overlay on this
13 property is the coastal high hazard area, which will
14 require certain -- certain improvements to meet FEMA
15 and so on, which is already -- we understand that, and
16 it will be consistent with.

17 So here's a list of many of the Lee Plan policies,
18 goals, objectives, and standards that we are consistent
19 with. You know, I refer to the applicable Lee Plan
20 policies, et cetera, because not the entire Lee Plan
21 has to be con -- this does not have to be consistent
22 with the entire Lee Plan.

23 So here we are with the master concept plan, and
24 what I wanted to do was to highlight what the elements
25 are of the plan; and, Madam Hearing Examiner, you have

1 the master concept plan in front of you.

2 This -- so first I'm going to walk through the
3 elements, and then we'll get into more detail further
4 on. We'll start with -- on -- got to find this one.
5 Along US 41 you can see that our access is off-site.
6 We have an existing easement agreement with the
7 adjacent property owner, JEM Realty Trust. We will
8 also be providing -- as far as for traffic mitigation,
9 we'll be providing right-in and left-in turn lanes
10 along 41.

11 Getting into the commercial planned development,
12 we have -- which is 3.75 acres, plus or minus, the
13 proposal is for a maximum of 10,000 square feet of
14 commercial. The plan is to have a -- excuse me -- a
15 restaurant along US 41 that will have outdoor seating.
16 There's a second building that's along Mullock Creek.
17 That will include a variety of uses, with one of them
18 being focused on kayak and canoe rentals and -- which
19 will be open to the public, providing the opportunity
20 for the public to access the county's waterways, which
21 is a -- a goal of, let's see, Goal 79 and Goal 82.

22 So also within the CPD is this -- whoa. Sorry, I
23 overreacted there. So where did it go? There we go.

24 This area is going to be open space, drainage, and
25 the like. I'll get into details on why that is open

1 space. As previously proposed, we had proposed a
2 commercial building in that area; but based on working
3 with Staff and ETAC, that is no longer being proposed.

4 So then I'm going to go to the residential planned
5 development tract. So over here we have this tract.
6 It's a little irregularly shaped. It includes the
7 eagle's nest and the surrounding upland preserve. We
8 have wetland preserves, as well, and all of the
9 wetlands and the upland preserves that are shown will
10 be put into a conservation easement.

11 And then as far as the residential aspect of it,
12 the proposal is for 62 multi-family units. Currently
13 the plan is to construct two or three stories over
14 parking, and there will be accessory uses such as a
15 pool, gazebo, and possibly, with the permitted uses
16 that we've worked out in the 48-hour letter, having a
17 observation deck or a fishing pier and the like, in the
18 residential planned development area.

19 And that reminds me, I'm going to need to go back
20 to -- I'm going to go back to the commercial planned
21 development. I was remiss in highlighting that this
22 second building is also in support of the proposed
23 kayak launch and a temporary tie-up dock that would be
24 complementary to the -- to the rentals that I spoke of.

25 So I guess this is a good time to highlight that

1 we have the eagle protection zones that are shown, the
2 660 and we have the 330. And then we provided an
3 exhibit to highlight this 227-foot circle that shows
4 that the eagle's nest is in greater -- or closer
5 proximity to the property and development to the south;
6 and based on our negotiations with ETAC, we had removed
7 that commercial building here so that there would not
8 be any vertical development in that circle or that zone
9 and -- but I wanted to highlight that because I'm sure
10 that it makes sense that -- why those are on there on
11 the master concept plan.

12 So the master concept plan has gone through a lot
13 of changes based on the feedback of ETAC and also on
14 compatibility. We know that it's important to make
15 sure that a project fits within the community and that
16 it is compatible, and to that end the Applicant has
17 agreed to a number of revisions to the plan in order to
18 accommodate the ETAC recommendations. I'll go through
19 them here.

20 We have -- where I have the list here for the ETAC
21 revisions, we removed that commercial building I
22 referred to that's south of the internal road within
23 the CPD. The Applicant has agreed to recording a
24 conservation easement over both the wetland preserve
25 and upland preserve. And the upland preserve around

1 the eagle's nest area will be part of the conservation
2 easement to accommodate any potential future nests
3 being constructed either within the same tree or in the
4 preserve area. Providing the preserve around the nest
5 results in the Applicant providing a total of 4.85 plus
6 or minus acres of indigenous, although the requirement
7 is only 2.4 acres.

8 So going to the compatibility items that I've
9 highlighted here -- but we'll talk a little bit more
10 about that in a second -- is that the residential
11 planned development height was lowered from the
12 proposed 95 feet to 62 feet; and the 62 feet, as I
13 mentioned earlier, is based on allowing flexibility for
14 the final product or number of stories, but it would
15 not go above the 62 feet.

16 And we revised the number of units by removing the
17 34 affordable housing density bonus units to keeping
18 just the 62 market rate units, which meets the
19 allowable 6 units per acre within the urban community
20 future land use category, and is consistent with the
21 surrounding properties under that same allowable
22 density.

23 We also are proposing landscaping and pathway
24 along Mullock Creek. There's no buffer required;
25 however, we felt it was necessary to have some type of

1 landscaping that will include some of the existing
2 native vegetation, primarily clustering in areas so
3 there are still view sheds allowable by both the
4 commercial planned development users and then the
5 residences of the residential portion.

6 HEARING EXAMINER RIVERA: Just going back to the
7 height for a second.

8 MS. EMBLIDGE: Yeah.

9 HEARING EXAMINER RIVERA: So 62 feet on the
10 residential, but those are well outside of the 660
11 feet; right? So the CPD buildings will be shorter?

12 MS. EMBLIDGE: Yes, ma'am. The -- yes, the
13 residential is outside of the 660; the commercial
14 buildings will be a maximum of 35 feet.

15 HEARING EXAMINER RIVERA: Thank you.

16 MS. EMBLIDGE: So starting into the deviations, as
17 Jeff had mentioned, that both Staff and the Applicant's
18 in agreement with Staff's recommendation. One is to
19 withdraw Deviation 1, and then the remaining deviations
20 are approved with conditions and/or just straight
21 approval.

22 I don't have the conditions up here on my screen.
23 Would you like me to read them into the record, or is
24 that not necessary?

25 HEARING EXAMINER RIVERA: No, they don't have to

1 be. The only question I had was the mention of the
2 conservation easement. I didn't recall that being a
3 condition of approval. Is that through the South
4 Florida Water Management permit or through the DO
5 requirement?

6 MS. EMBLIDGE: Um...

7 MR. WRIGHT: I think -- just for clarification,
8 Jeff Wright for the record. It may be that there
9 were -- Exhibits F, G, and H to the Staff Report
10 contain conditions related to environmental, and they
11 weren't related to the deviations that were requested.
12 So I think the one you were asking about was
13 environmental so it's not tied to one of our
14 deviations, but it is a condition of approval if you
15 find it acceptable.

16 HEARING EXAMINER RIVERA: Thank you.

17 MS. EMBLIDGE: And, again, that was a result of
18 working with ETAC and -- and Staff, also.

19 So if -- if I do -- don't need to go through the
20 details of the deviations, I will skip on to the
21 discussion -- further discussion of compatibility and
22 fit within the surrounding area.

23 As I had mentioned earlier, there's a surrounding
24 mixed use of residential and commercial of varying
25 densities. The -- there were recent approvals for

1 projects south of this project that allow for
2 multi-family and some heights of up to 56 feet.

3 To the north of the property is the Coach Light
4 Mobile Home Park, which includes approximately 178
5 units on its 28 acres, and there are approximately 17
6 boat docks and a boat ramp. If you look on the master
7 concept plan, you can somewhat see here where every one
8 of the mobile home lots on here have a dock, and then
9 further west in this area is somewhat like a
10 maintenance or community building that -- where the
11 boat ramp is and another dock.

12 So then -- and then further west of the Coach
13 Light Mobile Home Park, there are properties that are
14 zoned A-2 that have single-family homesites on that.
15 And I think I -- I'll get to putting that in
16 perspective here in a minute.

17 So from a planner's perspective, we rely on the
18 Land Development Code's definition of compatibility,
19 but we also rely on an industry standard that I have
20 here. Following this slide, we have illustrative cross
21 sections that demonstrate separations and views, again,
22 that show that -- the appropriateness of the project
23 and how it fits.

24 And I have a lot of these so I'm going to try to
25 make them quick, but I think it's important to be able

1 to see this -- and something jumped.

2 So my band up top is explaining what the view is.
3 So the -- this slide shows the view looking -- looking
4 north, from this perspective, this is an example of
5 what you might see with the architecture and
6 landscaping and so on. I will highlight that this area
7 right here, there's a cluster of live oaks that will be
8 preserved as much as possible, and we do have that on
9 the master concept plan, as well.

10 This is just another view from internal to the --
11 internal of the project to the commercial building.

12 And then this is the building that is along
13 Mullock Creek. The intent here is to have a -- a
14 raised building that will have the ability to have
15 maybe the kayaks and canoes stored underneath, and
16 having it open would accommodate that type of use.

17 And as you can see, adjacent to that we're showing
18 a -- you know, a dock, which isn't exactly what it's
19 going to look like, but it's similar to what we're
20 talking about for the canoe and kayak launch.

21 And that's the view of that same building from
22 Mullock Creek. And you can see, you know, where we
23 have landscaping not only along Mullock Creek, but also
24 the required landscaping for the parking areas that
25 will block the headlights, which is important.

1 This is another view that's, you know, looking
2 from the -- looking east from that perspective.

3 And then we're at the residential elevations here.
4 The -- this particular cross section shows you the view
5 of the single-family residence that would be here, what
6 they would possibly see from their home to the project.

7 And, again, this is the residential area, but the
8 view is directly from Mullock Creek and across the
9 creek and -- which highlights the -- the landscaping
10 and screening that would occur.

11 HEARING EXAMINER RIVERA: Could you go back one
12 slide? I'm sorry.

13 MS. EMBLIDGE: (Complies.)

14 HEARING EXAMINER RIVERA: What is the proposed
15 height? What would that be? Is that at the full 62
16 feet of the residential buildings?

17 MS. EMBLIDGE: Well, we have 62 feet proposed, but
18 right now we're looking at possibly just two stories
19 over parking. So, again, as I mentioned earlier, is
20 that we have 62 feet to allow for some flexibility
21 based on some changes that may be made through Water
22 Management permitting and having to bring the footprint
23 in and having to go up one more story.

24 HEARING EXAMINER RIVERA: Is that showing the
25 two-story over parking?

1 MS. EMBLIDGE: Yes, ma'am.

2 HEARING EXAMINER RIVERA: Okay. So that's what
3 this illustration is showing?

4 MS. EMBLIDGE: Yes, yes.

5 HEARING EXAMINER RIVERA: Thank you.

6 MS. EMBLIDGE: And then this shows the cross
7 sections, the viewpoints from the Creekside project to
8 the south, and we have representatives from Creekside
9 here today.

10 And another cross section here, as well, to their
11 project.

12 So the 48-hour letter, I don't know that I need to
13 go into too much detail -- oh, I'm sorry, I'm going to.

14 When we received the Staff Report, Staff had
15 revised the uses that we wanted, changed them to --
16 changed the kayak and canoe launch and the temporary
17 tie-up dock to boats, ramps, and dockage, not marinas,
18 and inadvertently the qualifier of "for the exclusive
19 use of the residents," which the Applicant -- they can
20 speak to that, but that was inadvertently included.

21 So that's removed, but we were concerned about the
22 fact that we -- the Applicant would prefer to have this
23 limited to the kayak and canoe launch and a temporary
24 tie-up. We didn't want any misunderstanding of what
25 the intent was so we asked if we could put in that

1 qualifying language that we have there.

2 So then the second item was, again, the same use
3 that was recommended from Staff in the residential
4 planned development; and we, again, did not intend on
5 having boat ramps or dockage. What we do want -- would
6 like to have is what we've added to a qualifier for the
7 accessory uses and structures, that being using the
8 language from the Land Development Code, "fishing
9 piers, observation decks, or kayak and canoe
10 structures." And, again, the Applicant prefers to have
11 that type of use clarified so that there's no
12 misunderstanding.

13 Any questions on --

14 HEARING EXAMINER RIVERA: No. In both cases it's
15 essentially not a down-zoning, but it's less intensive
16 than what the Staff Report was including?

17 MS. EMBLIDGE: Yes, ma'am.

18 So this is the conclusion of the project complying
19 with the requirements of the Land Development Code,
20 34-145, subsections noted here. And I'm not going to
21 read them, but we want to make sure that this is
22 included and considered. And that's not exactly from
23 the Staff -- Staff's recommendation. I made some minor
24 adjustments, but it's the concept.

25 And that ends my presentation; however, I'm

1 available for questions.

2 HEARING EXAMINER RIVERA: On the access -- if we
3 could go back to that for one second. So it's
4 off-site, and I understand there's an easement.
5 What -- is that access point currently in place; and if
6 so, is it serving the development to the south?

7 MS. EMBLIDGE: It is not. It will be the
8 responsibility of this Applicant for the permitting and
9 construction of that access. We've already started
10 negotiate -- not -- working with FDOT and Lee DOT on
11 that access, which is why we were showing those
12 right-turn/left-turn lanes there, because we've already
13 worked with them on having that be part of the
14 improvements.

15 HEARING EXAMINER RIVERA: But there is a future
16 access that would feed into the property to the south
17 once you construct that?

18 MS. EMBLIDGE: Yes.

19 HEARING EXAMINER RIVERA: Okay.

20 MS. EMBLIDGE: Yes. It's a shared access with the
21 property adjacent to -- let's see if I can go --
22 whoops, I didn't want to go that far.

23 Here we go. So here we're showing -- this is the
24 easement area that's defined by this dashed line and
25 the property line. So as you can see, not only will

1 there be access for the subject property and the
2 property to the south, there will also be an
3 interconnection to this -- further to the south that
4 eventually will connect to this existing road. So
5 there will be internal connections and
6 interconnectivity that is always a desire for future
7 development.

8 And to note that this property is currently zoned
9 A-2, but it would be a good guess that it would be
10 coming forward with some type of proposal for rezoning.

11 And then further south here is an existing CPD.

12 HEARING EXAMINER RIVERA: And is there a similar
13 interconnection proposed to the north? I didn't see
14 that on the master concept plan anywhere, to the C-1A
15 property that's adjoining it?

16 MS. EMBLIDGE: No, because that's Mullock Creek.
17 There's a --

18 HEARING EXAMINER RIVERA: So you'd have to cross.

19 Is there a deviation that's required for that, or
20 is it Staff's interpretation that they're not adjacent?

21 MR. BADAMTCHIAN: They are not really adjacent to
22 it. There's a creek between.

23 HEARING EXAMINER RIVERA: Okay. That answers the
24 question.

25 MS. EMBLIDGE: And if I may, I'll highlight here,

1 there is a freshwater wetland here that is going to be
2 preserved.

3 HEARING EXAMINER RIVERA: Uh-huh.

4 MS. EMBLIDGE: And once you get further west from
5 this wetland preserve, then it gets into the more --
6 the open waters of the Mullock Creek, and so the
7 feasibility of a connection is -- is just not
8 available.

9 HEARING EXAMINER RIVERA: So the creek runs all
10 the way to 41 to --

11 MS. EMBLIDGE: It does.

12 HEARING EXAMINER RIVERA: Okay.

13 MS. EMBLIDGE: It goes -- yes, it goes all the way
14 in east of 41. It is a major drainage facility for San
15 Carlos Park.

16 HEARING EXAMINER RIVERA: Okay. What's the
17 existing -- right now it shows -- you've got the kayak
18 launch and dock, and then there's an existing dock --

19 MS. EMBLIDGE: Yes.

20 HEARING EXAMINER RIVERA: -- that's to be removed?
21 It's a vacant property for ag. What has that dock been
22 used for, do you know?

23 MS. EMBLIDGE: I don't have the answer to that,
24 but it had been there for years --

25 HEARING EXAMINER RIVERA: Okay.

1 MS. EMBLIDGE: -- and has just been left to, you
2 know, become dilapidated and no longer used for any
3 purpose. But if we need to know that, I could --

4 HEARING EXAMINER RIVERA: No, I just was curious.
5 It's a curiosity because it seemed like an odd location
6 for a dock given the historic use of the site. But
7 that will be removed prior --

8 MS. EMBLIDGE: Yes, ma'am.

9 HEARING EXAMINER RIVERA: -- to the installation
10 of the kayak launch.

11 Okay, thank you. I think that was the --

12 MR. BADAMTCHIAN: Madam Hearing Examiner?

13 HEARING EXAMINER RIVERA: Yes.

14 MR. BADAMTCHIAN: I have a draft copy of the
15 access easement if you're interested in --

16 HEARING EXAMINER RIVERA: Thank you, yes, that
17 would be helpful.

18 (Applicant Exhibit 4 submitted.)

19 HEARING EXAMINER RIVERA: This is a draft copy,
20 you said?

21 MS. EMBLIDGE: May -- may we see what --

22 MR. BADAMTCHIAN: That's what you sent me.

23 MS. EMBLIDGE: I get it, but if I may?

24 HEARING EXAMINER RIVERA: Yes, please.

25 I guess on that point then my understanding was

1 that access was existing, the easement. Not that it's
2 been constructed, but that you have a legal right to
3 access it.

4 MS. EMBLIDGE: Yes, ma'am. I'll answer that in
5 just a moment.

6 So this is the permanent access easement that has
7 not been recorded but is signed.

8 HEARING EXAMINER RIVERA: Okay.

9 MS. EMBLIDGE: We have a temporary access easement
10 that has been recorded; and once this project is
11 approved, that will be extinguished, and then this
12 permanent easement will be recorded.

13 HEARING EXAMINER RIVERA: Okay. But the County
14 Attorney has reviewed it, and they're satisfied that
15 there's access at this point? I don't recall a
16 condition requiring anything to do with that either.

17 MR. BADAMTCHIAN: I believe it was cleared.
18 Development Services took the lead on that, but I
19 believe it was cleared.

20 HEARING EXAMINER RIVERA: As a housekeeping -- do
21 you want me to accept this as Applicant's exhibit or
22 Staff's exhibit?

23 MS. EMBLIDGE: If it's the correct one, it's up to
24 you, Jeff.

25 MR. WRIGHT: I'm happy calling it an Applicant's

1 exhibit --

2 HEARING EXAMINER RIVERA: Okay.

3 MR. WRIGHT: -- since...

4 HEARING EXAMINER RIVERA: So that will be 4.

5 MS. EMBLIDGE: Okay.

6 And, Madam Hearing Examiner, I also have a copy of
7 the temporary access easement that we can provide for
8 the record.

9 HEARING EXAMINER RIVERA: And that has been
10 recorded?

11 MS. EMBLIDGE: Yes, ma'am.

12 HEARING EXAMINER RIVERA: Okay, thank you.

13 (Applicant Exhibit 5 submitted.)

14 HEARING EXAMINER RIVERA: Thank you very much.
15 And that will be Applicant's Exhibit 5.

16 (Discussion at lectern)

17 MS. EMBLIDGE: Oh, okay. So just if I may
18 clarify, your question about the condition for cross
19 access?

20 HEARING EXAMINER RIVERA: Uh-huh.

21 MS. EMBLIDGE: There is a condition that is
22 related to Deviation 2 --

23 HEARING EXAMINER RIVERA: Okay.

24 MS. EMBLIDGE: -- that talks about the cross
25 access, and there's -- there are three conditions that

1 would -- the Applicant will be required to fulfill.

2 HEARING EXAMINER RIVERA: Okay. And without
3 reviewing this in detail, to take the time right now,
4 do -- Mr. Wright, you might know. Do you know what's
5 the termination point for the temporary access
6 easement? Is it a time duration, or is it an event
7 that occurs whenever you intend to execute and record
8 the permanent --

9 UNIDENTIFIED SPEAKER: It's three years?

10 MS. EMBLIDGE: It's -- it's the event; right?

11 MR. WRIGHT: Three years.

12 MS. EMBLIDGE: Three years?

13 MR. WRIGHT: Yes. It's a three-year temporary
14 easement.

15 HEARING EXAMINER RIVERA: Okay. But the intention
16 is the permanent easement is going to be recorded prior
17 to that expiration?

18 MR. WRIGHT: Yes, that is -- so there would be no
19 gap.

20 HEARING EXAMINER RIVERA: Exactly. Okay, thank
21 you.

22 Okay. That was the extent of my questions. Did
23 Staff have any questions of the Applicant?

24 MR. BADAMTCHIAN: No.

25 HEARING EXAMINER RIVERA: Okay, thank you.

1 MS. EMBLIDGE: Thank you.

2 HEARING EXAMINER RIVERA: Did the Applicant have
3 any further witnesses you wanted to call?

4 MR. WRIGHT: That concludes our presentation in
5 chief. We obviously want a chance to rebut, if there's
6 a need to do that, and we have met the standard for
7 approval. We respectfully request approval of the
8 request, thank you.

9 HEARING EXAMINER RIVERA: Thank you.

10 Whenever you're ready, Chahram. Good morning.

11 MR. BADAMTCHIAN: Good morning, Chahram
12 Badamtchian from Lee County Zoning. My résumé is on
13 file. I've been recognized as expert in zoning and
14 land use issues, and I would like to be recognized as
15 such at this time.

16 HEARING EXAMINER RIVERA: Yes, thank you.

17 MR. BADAMTCHIAN: The request, as they mentioned,
18 was to rezone 15.75 acres from agricultural to RPD/CPD.
19 And this project has been around for 18 months, and we
20 are glad that finally we made it to the hearing.

21 And their request for commercial and residential
22 has changed a lot since the first request, commercial,
23 residential, also affordable housing is no longer
24 there. The number is now 62 -- regarding the height of
25 the buildings, at first they were asking for 95, now

1 it's 62. And we have the condition that anything more
2 than 35 feet in height requires additional setbacks.
3 So if they want to go 62, they have to increase the
4 setbacks on all sides. Basically that limits how high
5 they can go. And the condition is half a foot on all
6 sides for every foot of building height over 35.

7 And as they mentioned, they asked for six
8 deviations. One of them was not necessary, was
9 setbacks for docks and such, which the Land Development
10 Code allows them to be within the setbacks.

11 And other deviations are mostly about landscaping
12 and buffers, some of them internal to the development,
13 and Staff reviewed those deviations and recommends
14 approval with Staff conditions.

15 They are in the urban community planning, and a
16 small portion of it is in the wetlands. They comply
17 with the density and intensity of -- allowed by the Lee
18 Plan.

19 And they are in compliance with all requirements
20 of the Lee Plan and -- goals and objectives of the Lee
21 Plan and also the Land Development Code. Staff
22 recommends approval of this project subject to all
23 Staff conditions.

24 HEARING EXAMINER RIVERA: I didn't have any
25 questions. Did Applicant have any questions of Staff?

1 MR. WRIGHT: No.

2 HEARING EXAMINER RIVERA: Okay, thank you.

3 MR. BADAMTCHIAN: Thank you.

4 HEARING EXAMINER RIVERA: So with that we will
5 open the public comment period. Again, I'm going to
6 call the cards in the order that I have them.

7 The first that I have is for -- I have Tom and
8 Kris Kern. Is there an order that you would like to
9 go?

10 MR. KERN: (Raises hand.)

11 HEARING EXAMINER RIVERA: Yes, sir.

12 MR. KERN: Should I come up there?

13 HEARING EXAMINER RIVERA: Yes, please, if you
14 could come up so we can capture your comments for the
15 record. Good morning, sir.

16 MR. KERN: Hi, good morning, thank you.

17 I'm a resident of Creekside, and of course this
18 has always been a concern to everybody at Creekside.
19 The main concern is -- I don't know if there are any
20 Florida Department of Transportation here?

21 HEARING EXAMINER RIVERA: I'm not sure.

22 MR. BADAMTCHIAN: No.

23 MR. KERN: But there's no streetlights on Highway
24 41 along this area and along Creekside. And I spoke to
25 the developer, and something I would like to get added

1 to the proposal, you need to compare what we have here
2 to what Estero has just down the road a little bit, and
3 this area is like a black hole at night. There's no
4 lighting. That's one concern.

5 The other one is are they -- when I heard the
6 proposal of another access, are they going to tie it
7 into Lazy Creek, the road there to the south? I don't
8 quite understand that.

9 HEARING EXAMINER RIVERA: We're making notes, sir,
10 just so you know. So we'll answer them when we come
11 back after we close public comment.

12 MR. KERN: Okay.

13 HEARING EXAMINER RIVERA: We'll make a note of
14 everything, and then the Applicant and Staff can
15 address it when they close.

16 MR. KERN: I guess that's about all the comments I
17 have right now, but the street lighting has always been
18 a major concern.

19 HEARING EXAMINER RIVERA: Thank you. Thank you,
20 sir.

21 MR. KERN: Thank you.

22 HEARING EXAMINER RIVERA: Did Kris Kern want to
23 speak, as well?

24 MS. KERN: Yes.

25 HEARING EXAMINER RIVERA: Good morning, ma'am.

1 MS. KERN: Good morning. Thank you for taking our
2 comments.

3 I was surprised, as was Tom, about the -- the way
4 it goes on Lazy Creek, we have an access road that we
5 use all the time that I believe belongs to the County;
6 and then we turn onto our road, and our gate is set
7 back a ways, but in between those two we have an apron.
8 My question is, is that going to be a permanent access
9 that will go into The Nest area, or is this just for
10 construction? And if it is for construction, how are
11 they going to guarantee that we can get in and out of
12 our property? So that's a concern that just kind of
13 came up.

14 Another question I have is I know that when they
15 were building Creekside, they did bring in additional
16 soil to raise up the actual building height for -- you
17 know, for -- I don't know what they call it, but
18 anyway. I'm wondering how much would be required in
19 The Nest, and if there's the feasibility of them going
20 up so high that it would run down into that preserve
21 area, and then follow through and come into our lower
22 areas where the preserve already is.

23 So thank you for your time.

24 HEARING EXAMINER RIVERA: Thank you, ma'am. Thank
25 you for coming today.

1 The next card I have is for Robert O'Shea?

2 MR. O'SHEA: O'Shea, I'm fine.

3 HEARING EXAMINER RIVERA: Okay. Thank you, sir.

4 And Diane O'Shea? Good morning.

5 MS. O'SHEA: Good morning. Thank you for the
6 opportunity.

7 We heard, if I heard correctly, that eagles have
8 not been visible for the last two years. I'm an eagle
9 watch volunteer for the Audubon Society. That nest is
10 designated Lee County Number 118, and there were many
11 sightings of eagles in that nest in 2022, although it
12 did not produce.

13 2023, there are -- they're hanging around, and the
14 reports are with Lee County, and one of them even came
15 and sat in the area where -- looking at where the nest
16 was just a few feet away. So, yes, the eagles are
17 still hanging around.

18 I wonder -- second item -- if it has been looked
19 at about -- just to the east the Days Inn and a little
20 further back, the Pyramid Village, both have springs,
21 medicinal kind of springs, and I wonder if it has been
22 checked out that those will not be impacted.

23 And my last item is on a list from Mr. Wright that
24 he showed us just before the meeting, they had
25 proposed -- a list of proposed commercial things that

1 could be built. I'm in the building -- the Creekside
2 building closest to the eagle's nest, so the top right
3 building. The things on that list that I would
4 personally object to are the bar/cocktail lounge, the
5 restaurant and bar/cocktail lounge, and a convenience
6 store. And this would be due to evening noise. We use
7 our lanai frequently, and we can occasionally hear the
8 goings on from the tiki bar across the street.

9 That's it for me. Thanks for the opportunity.

10 HEARING EXAMINER RIVERA: Thank you. Thank you,
11 ma'am.

12 The next card I have -- oh, gosh, sir, I apologize
13 in advance, Ralph...

14 MR. CZEKALINSKI: Yeah, Ralph is good enough.

15 HEARING EXAMINER RIVERA: Thank you very much. I
16 apologize. I'm not even going --

17 MR. CZEKALINSKI: You should not apologize --

18 HEARING EXAMINER RIVERA: -- to attempt --

19 MR. CZEKALINSKI: -- I'm Polish.

20 HEARING EXAMINER RIVERA: -- to butcher your name.

21 MR. CZEKALINSKI: My name is Ralph Czekalinski,
22 and I'm with Creekside Preserve and also on the board
23 at Creekside Preserve. I just want to say both Lee
24 County and the developer has been in touch with
25 Creekside since the beginning of this development. So

1 we contacted them, they have sent us their drawings,
2 and we've always talked about being good neighbors. So
3 that's -- just wanted to let you know on that.

4 One of the things that -- I guess not a concern,
5 but let you folks know, there's a lot of wildlife
6 there. So besides the eagle's nest, actually
7 alligators cross over from Mullock into our lake or
8 pond at Creekside. So just don't run one over in your
9 parking lot. We also have bobcats and coyotes in the
10 area. There are -- and I brought this to their
11 attention. We have the gopher tortoise situation in
12 that area, so you'll have to go ahead and move those.
13 There's also a nest of swallow-tailed kite, which
14 migrates up from Venezuela here every -- our winter --
15 or our summer, their winter. So just letting you know
16 that.

17 And also that area that they talked about up in
18 front, by US 41 and Mullock, there's a lot of invasive
19 Brazilian pepper trees in there. So I don't know what
20 you're planning on doing with those, but you might want
21 to take a look at that.

22 But Creekside is there. I don't think we have any
23 majority objection -- and I'm looking at some of the
24 residents for that.

25 We would like to be a good neighbor, and I do

1 formally request that they send me this in PDF format
2 so that I can go ahead and present it on our website.
3 Okay?

4 HEARING EXAMINER RIVERA: Thank you.

5 MR. CZEKALINSKI: Thank you very much.

6 HEARING EXAMINER RIVERA: Thank you, sir.

7 MR. CZEKALINSKI: Thank you.

8 HEARING EXAMINER RIVERA: The last card I have is
9 for John Albion. Good morning.

10 MR. ALBION: Good morning. Thank you,
11 Ms. Rodriguez (sic), and thank you to Chahram for all
12 the work you've done on this case.

13 My name is John Albion, and we've been working
14 closely with the Applicant. My family has the property
15 directly south, and we are the other side of the road
16 easement agreement, and I wanted to possibly clarify a
17 few points.

18 First of all, I want to put on the record that we
19 are in favor of the Applicant's request for rezoning.

20 Second has to do with the cross-access easement.
21 The reason there's a three-year timeline on it is we
22 just didn't want it to be in perpetuity in terms of
23 just waiting for it to be built, because ultimately it
24 could affect what we could someday -- which we have no
25 plans right now, but what someday might happen with

1 that property.

2 So at the end of the day, we intend to continue to
3 work with the Applicant to make sure that if this
4 rezoning goes through, we'd like to see that roadway
5 built. We have clearly some selfish interest in it
6 because we think sharing that other access is helpful
7 to both of our properties, but we also have a selfish
8 interest because, by their good planning of moving it
9 further south, creates a longer turn or deceleration
10 lane that we think is safer for people on US 41. And
11 since we're the property right after heading in that
12 direction, we would also be impacted if it was not done
13 in this more well-constructed or surgical way. So we
14 think that's a real plus. Also, it means that -- means
15 the power poles have to be removed, which God only
16 knows what could end up from that. So we think the
17 road easement makes a great deal of sense for
18 everybody, and we were happy to work with them in a
19 very positive manner on this.

20 I do have to put on the record, however, there is
21 one concern that I have expressed to them that --
22 there's nothing in our agreement, and we cannot say
23 today anything having to do with the cross-access
24 agreement heading all the way to Lazy Creek Road, okay?
25 We have no idea what's going to go on this property,

1 and we are not in a position, nor are we desirous of
2 limiting what could potentially happen there in the
3 future. So at the end of the day, we expect it will
4 probably be in everyone's best interest to do so, but
5 we are not committing, nor do we want to see a
6 commitment made to it, until such time as somebody
7 wants to go forward with a rezoning of our property,
8 where we suspect that that's going to become probably
9 an important point for everybody.

10 So for the people that are affected by Lazy Creek,
11 that is really something that you're going to get
12 another bite at the apple, because there's nothing
13 that's being committed to in this rezoning for that in
14 placement or in requirement, I would hope, as well as
15 the fact that it will be probably more so for us.

16 It does make sense, however, having the access for
17 two ways into those properties, where our property sits
18 just south, rather than just one, which is one of the
19 reasons that we thought it was very beneficial to do.
20 So I think that's actually more of a plus than a minus.

21 I don't have any comment on the streetlights
22 because, to be honest with you, I know that Florida DOT
23 has come out with an improvement plan for the
24 sidewalks. I though there might be streetlights that
25 are going to be coming in on that project, but that's

1 something that's separate. I don't know if that's true
2 or not, but you should look that up with the current
3 plan that has actually been approved to go forward from
4 Florida DOT. So -- but I'm aware of it because it
5 affects our property, too, obviously.

6 As far as access for construction, all I wanted to
7 point out here is that there is no agreement to go
8 through our property for access for construction, so it
9 would have to be therefore west of our property, and we
10 have no expectation of changing that.

11 I will tell you that there's a likelihood that
12 when our property eventually does get developed, when
13 you really look at it, it becomes pretty obvious that
14 probably the water retention area for our 5.07 acres
15 would likely be in that southwest corner, which would
16 be along Lazy Creek Road and towards the back end of
17 the property. So more than likely that will be an
18 additional buffer that will actually make more sense
19 for everybody. Obviously we don't want a water
20 retention area along US 41, for one; and for two, as
21 far as having it creates a greater buffer towards the
22 back. But no fishing if that comes into creation.

23 There was another area here that -- in regards
24 to -- oh, there was concern that was expressed about --
25 and it's just because my family's had this property for

1 over 40 years that we're very familiar with what goes
2 on with the flow. If you stand on the west side of the
3 highway, and you look across the street, the east side
4 is clearly significantly higher than the west side,
5 very noticeably so. Admittedly, we have a lot more
6 interest in the property we own on the east side of 41
7 because it's mostly cleared and because it's so much
8 higher. All those are cost savings and predictability.
9 The drainage is supposed to head and it does head from
10 east to west. We know that because we have property a
11 little further south that is sadly impacted by where
12 the culvert is that goes under US 41. So the
13 likelihood of water flowing east rather than west would
14 be actually -- from what we understand would not be
15 consistent without a whole drainage project as designed
16 by the drainage district that exists there.

17 So at the end of the day, we see this as all being
18 beneficial because this affects our property, too,
19 because if it flows from west to east, we could
20 potentially be flooded. So we think that that's a real
21 plus.

22 And I just wanted to -- well, the Brazilian pepper
23 trees, just to mention, those should be removed.
24 They're not, obviously, native, and they're actually
25 damaging. So I don't see that as being a problem.

1 I am a little disappointed that of the wildlife
2 you talked about, you didn't mention the cows on the
3 property. We've worked very hard on that. But
4 nevertheless, it's really a benefit, and it's a signal
5 for the neighbors in terms of our property and our
6 neighbors' property, the fact that nothing is going to
7 happen as long as you see cows on the property because
8 that ag exemption is in place, and it allows developers
9 or landowners to be able to hold onto property longer
10 because of the savings while still helping an industry
11 that's important to the state of Florida. So at the
12 end of the day, that's a great signal.

13 And we've -- we've all made an investment, our
14 property and the other property owner, to make sure
15 that the fencing is correct to make sure that those
16 cows stay in, because cows looking through your window
17 while you're baking a pie is not something you want to
18 see. So -- we actually had that happen on the other
19 side at one point.

20 So anyway those are, I believe, the comments
21 that -- based on my conversations with the Applicant,
22 my reading of the report, and my knowledge of the
23 property and the area. Hopefully it's helpful because
24 we want to be good neighbors with you, also. We feel
25 that we have tried to do that and -- you know, in a lot

1 of ways, and we look forward to hopefully this going
2 forward with a recommendation of approval from the
3 Hearing Examiner.

4 And if there's any questions, I'd be happy to
5 answer them. But I appreciate the opportunity and all
6 the work that everyone has done for it.

7 And the last thing to put on the record is my
8 thanks to the Applicant. I've worked closely with Matt
9 Slaughter specifically for that group to get all of
10 this done so as to make sure that -- the only thing
11 that no one has mentioned is you want good developers
12 to come in next to you. If they work with you, they
13 make sure good stuff gets done for you, then everybody
14 benefits. Their communication, they're trying to be a
15 good developer, and that's one of the reasons that
16 we've worked closely with them, and why we're not up
17 here pounding our fists on the table saying something
18 different. So, therefore, I think that that's
19 important for the confidence of everybody that this be
20 done properly. Thank you.

21 HEARING EXAMINER RIVERA: Thank you.

22 That was the last card that I had. Was there
23 anyone else that wanted to speak today? No?

24 Would you like to take a five- or ten-minute break
25 before we go to rebuttal --

1 MR. WRIGHT: That would be great --

2 HEARING EXAMINER RIVERA: -- to stretch our legs
3 and --

4 MR. WRIGHT: -- thank you.

5 HEARING EXAMINER RIVERA: -- gather for a moment?
6 Okay. So we will reconvene at 10:15.

7 (Recess from 10:04 a.m. to 10:15 a.m.)

8 HEARING EXAMINER RIVERA: We're back on the
9 record.

10 Did the Applicant have some rebuttal they would
11 like to provide?

12 MR. WRIGHT: Thank you.

13 HEARING EXAMINER RIVERA: Thank you.

14 MR. WRIGHT: And for the record, I'm Jeff Wright
15 for the Applicant.

16 There are a handful of comments that we'd like to
17 address. A couple of the comments require our experts
18 who have not yet been recognized --

19 HEARING EXAMINER RIVERA: Okay.

20 MR. WRIGHT: -- and you may recognize their names,
21 Jim Banks on transportation and Barry Jones for the
22 engineering piece.

23 So at this point I just want to -- one thing that
24 was raised I'd like to address is this whole idea of
25 the connection to Lazy Creek. I could not have said it

1 any better than Mr. Albion, but the bottom line there
2 is we don't know what's going to go there. We -- our
3 plans include a lot of options for the future of that
4 property, but they're not before you today. And
5 hopefully that's a sufficient explanation about the
6 concerns that were raised about tying into Lazy Creek.
7 We just don't know yet.

8 The other concern I wanted to address is the uses
9 and the use list, and I think I might turn that over to
10 Margaret at the end here.

11 MS. EMBLIDGE: Oh, at the end?

12 MR. WRIGHT: First I just want to make sure Jim
13 Banks and Barry Jones are recognized as experts.

14 HEARING EXAMINER RIVERA: Yes.

15 MR. WRIGHT: Okay, thank you.

16 And -- and maybe while Margaret's right here and
17 ready to get up and tell you, she can address the uses
18 that were --

19 HEARING EXAMINER RIVERA: Certainly.

20 MR. WRIGHT: -- mentioned as potentially
21 objectionable.

22 HEARING EXAMINER RIVERA: Okay, thank you.

23 MR. WRIGHT: And then after that we'll turn it
24 over to Jim and then Barry. And to the extent that
25 there are any environmental concerns -- there were some

1 kind of raised but -- obviously there's the whole Bald
2 Eagle Management Plan, and Paul is here, and he can
3 address any questions that might come up specific to
4 that.

5 HEARING EXAMINER RIVERA: Okay, thank you.

6 MS. EMBLIDGE: Thank you again, Madam Hearing
7 Examiner.

8 The questions or issues or concerns that were
9 brought up about the uses, I want to highlight that the
10 uses for the commercial parcel were limited based on
11 compatibility with the eagles' nest. So we don't have
12 any drive-throughs, and of course we have to meet
13 the -- the County's noise ordinance. But there was a
14 lot of effort put into revising the use list for that
15 very reason; and if we can accommodate the eagles, I
16 think we can accommodate our neighbors.

17 HEARING EXAMINER RIVERA: Thank you.

18 MR. BADAMTCHIAN: Madam Hearing Examiner?

19 HEARING EXAMINER RIVERA: Yes.

20 MR. BADAMTCHIAN: I also want to mention that the
21 closest residence to the south is almost a thousand
22 feet away from the commercial lot, and there's a
23 preserve in between.

24 HEARING EXAMINER RIVERA: Okay.

25 MS. SIVERSON: Madam Hearing Examiner, Camryn

1 Siverson for the record.

2 So technically what is needed on a CPD is a
3 30-foot Type F when abutting a multi-family or a
4 single-family residence; but considering that it's
5 RPD-zoned property that is abutting Creekside, they are
6 providing way more than is required acting as a buffer
7 for both noise and sound, and it's using more mature
8 plants and landscaping.

9 HEARING EXAMINER RIVERA: And just to clarify that
10 point, too, so you talked about the RPD buffer, but the
11 open space area that's shown just north of that that's
12 in the CPD, that's going to remain undeveloped, as
13 well?

14 MS. SIVERSON: Yes, ma'am.

15 HEARING EXAMINER RIVERA: So is the thousand foot
16 distance, that's from the --

17 MR. BADAMTCHIAN: Well --

18 HEARING EXAMINER RIVERA: -- building to the
19 residence?

20 MR. BADAMTCHIAN: -- we can see from the 660 lines
21 and 330 lines of eagle -- eagle lines?

22 HEARING EXAMINER RIVERA: Yes.

23 MR. BADAMTCHIAN: So you can get some idea how far
24 residential is from the commercial building.

25 HEARING EXAMINER RIVERA: Okay, thank you.

1 MR. WRIGHT: Okay. Now, there were a couple
2 concerns about street lighting along that corridor, and
3 Jim is going to come up and address those.

4 HEARING EXAMINER RIVERA: Okay, thank you.
5 Good morning.

6 MR. BANKS: Good morning, Madam Hearing Examiner.
7 For the record, my name is Jim Banks. I'm a
8 professional engineer and traffic engineer
9 extraordinaire, 30 plus some years of experience.
10 Don't let my youthful appearance belie that claim, but,
11 yes, 30 some years, and I've been qualified numerous
12 times in this forum as an expert.

13 As it relates to the street lighting along US 41,
14 US 41 is under the jurisdiction of the Florida
15 Department of Transportation, and they determine when
16 and where street lighting is installed. We have no
17 control over that. And as areas become more urbanized,
18 and you have more points of access on a corridor, that
19 is what FDOT uses as part of their criteria to
20 determine when they're going to install streetlights.
21 This development does not trigger the need for
22 streetlights, but it will enhance the process or
23 accelerate the process of when FDOT believes that
24 funding would be necessary to install streetlights in
25 that area. And the Applicant and the owners of the

1 property support the residents' request, if they wanted
2 to make one with the Florida Department of
3 Transportation, to accelerate the consideration of
4 streetlights along that area.

5 HEARING EXAMINER RIVERA: Thank you.

6 MR. BANKS: Thank you.

7 MR. WRIGHT: Okay. And the concerns raised by the
8 residents over increasing the elevation and potential
9 for soil running off onto the Creekside property, along
10 with potential for impact to nearby springs, I'm going
11 to call Barry Jones up here to address those.

12 HEARING EXAMINER RIVERA: Thank you.

13 MR. WRIGHT: Thank you.

14 HEARING EXAMINER RIVERA: Good morning.

15 MR. JONES: Thank you. For the record, Barry
16 Jones, professional engineer licensed in the state of
17 Florida. I've been practicing in this area 25 plus
18 years across a three-county district. I've been
19 recognized in Lee County, Collier County, Estero, and
20 Bonita Springs as an expert in drainage and things
21 civil related.

22 With respect to the drainage, any project like
23 this per South Florida District rules and the County
24 rules has to be elevated to meet certain criteria.
25 Once it's elevated, the project effectively functions

1 as a bowl. In other words, everything drains internal
2 to the site, is captured within the site, is treated
3 for nutrient loading and for discharge requirements.
4 This project will drain into dry detention or retention
5 areas that will do the nutrient removal efficiencies
6 required before it discharges directly out into Mullock
7 Creek. So any current runoff that's kind of even sheet
8 flowing to the south or anything right now will be
9 collected inside the bowl, if you will, before being
10 retained and then discharged to Mullock Creek.

11 How much fill is required? We're trying to
12 minimize the fill. One of the impacts -- or one of the
13 considerations was putting the buildings up on stilts.
14 That's going to cost the owner additional funds to do
15 that, but in doing so the building finished floor
16 automatically goes up so you don't have to bring the
17 ground up. You don't have to park the car above the
18 floodplain, but you do have to put the building above
19 the floodplain. So that was the intent of going to
20 stilts.

21 With respect to the project to the east, there is
22 a stormwater weir on the east side of the road that
23 holds the water back, hence the water being higher on
24 the east side of the road. Water flows east to west.
25 Grounds -- or springs are coming up from groundwater

1 tables, even deeper groundwater tables that are
2 specific flumes typically, and that's what creates the
3 spring.

4 This project will extend potable water into the
5 site. The site will be irrigated from that potable
6 water. There's no groundwater use requirements being
7 created by this project. So it will have no impact to
8 the surficial groundwater, even though the surficial
9 groundwater is usually isolated from the springs. And
10 no impact to the springs --

11 HEARING EXAMINER RIVERA: Was the -- did the ERP
12 already get issued on the site? I recall --

13 MR. JONES: No, ma'am, the ERP has not been
14 requested yet.

15 HEARING EXAMINER RIVERA: Okay.

16 MR. JONES: We're waiting to formalize what the
17 site plan looks like before we put the cart ahead of
18 the horse, if you will.

19 HEARING EXAMINER RIVERA: I just recall -- there
20 was a jurisdictional analysis that was done that's
21 outside the scope of what you would be involved with,
22 but there was an ERP reference -- so that must be for
23 something else. I'll clarify that in the record.

24 MR. JONES: It may have been reference to
25 additional or adjacent properties to determine what --

1 what season water tables were. That's typically how
2 you determine what your wet season water table, your
3 control elevation is, is by looking at the adjacent
4 ERPs. There were some jurisdictional wetland lines
5 agreed to.

6 HEARING EXAMINER RIVERA: But the application for
7 the actual development hasn't been submitted yet to the
8 District?

9 MR. JONES: Correct.

10 MS. EMBLIDGE: The water quality plan may have
11 talked to that.

12 MR. JONES: There's a water quality plan for
13 the --

14 HEARING EXAMINER RIVERA: Okay.

15 MR. JONES: -- testing of upstream and downstream
16 nutrients post development where we would draw water
17 out of Mullock Creek upstream of where we discharge,
18 and draw water out of Mullock Creek downstream of where
19 we discharge, to ensure that the nutrient efficiency
20 removals have been met, and we're not degrading the
21 water. And that will also be a requirement in the ERP.

22 HEARING EXAMINER RIVERA: Okay, thank you.

23 MR. JONES: Thank you.

24 MS. EMBLIDGE: And if I may, if you can't find
25 that water quality plan --

1 HEARING EXAMINER RIVERA: Yeah, I did. I just put
2 my -- yes.

3 MS. EMBLIDGE: Okay.

4 HEARING EXAMINER RIVERA: So I see it was limited
5 to --

6 MS. EMBLIDGE: All right.

7 HEARING EXAMINER RIVERA: -- the determination.

8 MS. EMBLIDGE: Great.

9 HEARING EXAMINER RIVERA: Thank you.

10 MR. WRIGHT: Okay. And our final rebuttal
11 witness, I expect at least, is Paul Owen. And we just
12 want to, as a courtesy mainly to the residents, hit on
13 those concerns they raised about Brazilian peppers,
14 gopher tortoises, and bald eagles.

15 HEARING EXAMINER RIVERA: Thank you.

16 Good morning.

17 MR. OWEN: Good morning, Madam Hearing Examiner.
18 Paul Owen with Owen Environmental Consulting. I have
19 been recognized as a witness in environmental services
20 in the forum many, many times, and my résumé is on
21 record.

22 HEARING EXAMINER RIVERA: Thank you.

23 MR. OWEN: Okay. So regarding the gopher tortoise
24 issue, there were no gopher tortoise burrows or
25 tortoises observed on this site during any listed

1 species survey or while we were on the site. There may
2 be some to the south that could be affected based on
3 the distances; and if it's necessary to relocate them
4 because of the distance and the activities, then we
5 will obtain the proper Game Commission permit and
6 relocate them appropriately.

7 So regarding Brazilian pepper and other exotic
8 vegetation, there is quite a bit of exotic vegetation
9 on the property; and as you know, Lee County requires
10 all exotic vegetation to be removed from the property
11 once it's developed and maintained that way.

12 And lastly the bald eagles, we monitored that nest
13 this last season weekly. We never saw any eagles.
14 That doesn't mean they're not there. But this plan in
15 the Bald Eagle Management Plan was specifically created
16 and designed so that it would accommodate the eagle,
17 considering -- it actually considers that nest to be
18 active. So if that -- if the bird comes back, it's
19 still protected the same by way of the Bald Eagle
20 Management Plan.

21 HEARING EXAMINER RIVERA: So the management plan
22 does require ongoing monitoring that you report --

23 MR. OWEN: And protection of not only the wetlands
24 but the eagle habitat, which is in addition to what is
25 required acreage-wise for indigenous habitat on the

1 site.

2 HEARING EXAMINER RIVERA: And if the nest was
3 destroyed, and they don't return, I recall -- and I
4 want you to confirm it -- is it five years of
5 consecutive --

6 MR. OWEN: It's actually three so we have one more
7 season, but that's -- it's almost irrelevant because
8 what's being proposed is a conservation easement to go
9 with the preservation area. So whether or not there's
10 an eagle there, that's preserved.

11 HEARING EXAMINER RIVERA: Okay, thank you.

12 MR. WRIGHT: We're almost done. I just have one
13 final point, clarification, about the noise ordinance
14 and the potential for noise from the commercial portion
15 of this property.

16 The County's noise ordinance measures from the
17 sound receiving site, and in this case if the residents
18 are concerned about -- it would be the lower
19 residential number for sound measurement. So number
20 one, they're subject to the residential sound limits,
21 and also the -- as Margaret pointed out, the Applicant
22 property owner will comply with the noise ordinance.
23 But when you look at the distance, and you combine that
24 with they're going to be using a residential lower
25 noise level, we don't expect it to be a concern. The

1 distance, and as Staff pointed out, there's some
2 buffering there that will help with the noise, as well.

3 So I think that addresses all the points that were
4 raised by the -- by the public, and if you have any
5 other questions, we're here to answer them. Thank you.

6 HEARING EXAMINER RIVERA: Thank you.

7 Did Staff have any final comments --

8 MR. BADAMTCHIAN: No, ma'am.

9 HEARING EXAMINER RIVERA: -- that they would like
10 to make? Thank you.

11 (Public member raises hand.)

12 HEARING EXAMINER RIVERA: I'm sorry, ma'am,
13 there's one opportunity to speak. So you're welcome to
14 speak to the Applicants or the Staff after we close,
15 but I'm not able to accept more, thank you.

16 Okay. So with that, then we will conclude the
17 hearing for today. I will be issuing a recommendation
18 that goes to the Board in this case, and so if you
19 spoke today or provided a form, then you will receive a
20 copy of the recommendation, as well as the notification
21 of when the item will go before the Board for final
22 hearing.

23 Thank you, everybody, for coming today, and please
24 stay safe.

25 (Proceedings concluded at 10:29 a.m.)

1
2
3 CERTIFICATE OF REPORTER
4

5 STATE OF FLORIDA)

6 COUNTY OF LEE)
7

8 I, Deborah M. 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 58, is a true and correct record of my
13 stenographic notes.
14

15 Dated this 20th day of June, 2023.
16

17 
18 _____
19 Deborah M. Bruns, FPR
20

21 (This transcript was electronically signed.)
22
23
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