

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00037

IN RE: BAYSHORE 31 RPD

PROCEEDINGS: PUBLIC HEARING

BEFORE: Donna Marie Collins
Chief Hearing Examiner

DATE: June 13, 2024

TIME: 9:00 a.m. to 10:28 a.m.

LOCATION: Office of the Hearing Examiner
1500 Monroe Street, Second Floor
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

FORT MYERS COURT REPORTING
2271 McGregor Boulevard, Suite 220
Fort Myers, Florida 33901
(239) 334-1411

ORIGINAL

1 APPEARANCES:

2 For the Applicant: Richard B. Akin, II, Esquire
3 Henderson Franklin Starnes & Holt P.A.
4 1715 Monroe Street
Fort Myers, FL 33901
Email: richard.akin@henlaw.com

5 Tom Sacharski, AICP
6 RVi Planning
1514 Broadway, Suite 201
7 Fort Myers, FL 33901

8 For the Staff: Chahram Badamtchian, Senior Planner
9 Department of Community Development
Zoning Division
10 P.O. Box 398
Fort Myers, FL 33902-0398
11 Email: cbadamtchian@leegov.com

12 ALSO PRESENT:

13 Carl Barraco, Barraco & Associates
14 Barrett Stejskal, BearPaws Environmental Consulting
Ted Treesh, TR Transportation
15 William Hulton, NexMetro
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P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning, my name is Donna Marie Collins. I'm the Hearing Examiner that will be presiding over this morning's hearing. It's an application to rezone property from the agricultural and residential single-family district to a residential planned development, to allow development of up to 180 multi-family units. The details of this case will be described by Applicant's representatives.

I have a quick question. Do we have any members of the public here?

MR. BADAMTCHIAN: Yes, we do.

HEARING EXAMINER COLLINS: Yes, okay. So let me take a few minutes to explain this procedure, if you're not accustomed to these hearings. Typically what happens is the property owner's representatives present the request. They may have one or more witnesses. They'll talk about a number of things, including environmental, transportation, compatibility. They'll discuss their site plan and explain how all those things are consistent with our Land Development regulations.

Following their presentation, the County Planner that reviewed the application and prepared the Staff Report will also make a presentation.

1 Following their presentation, I will open up the
2 floor to members of the public. If you wish to
3 speak -- I'll go through the sheets that you filled out
4 here, public participation forms. I'd like you to come
5 to the podium, state your name. If you wish, we'll put
6 an aerial up on the wall. You can show us where you
7 live in relationship to the project, and you can share
8 with us your support or your concerns regarding the
9 request.

10 Oftentimes I find surrounding property owners are
11 not completely opposed or totally in favor of a
12 request. They have specific concerns. If you share
13 them with us, you allow us the opportunity to clarify
14 whatever the subject matter is and, if necessary,
15 fashion a condition to address those concerns, if
16 they're not already addressed by our permitting
17 regulations.

18 Following public input I will close public input,
19 we'll come back to the parties. They will respond to
20 any questions that were asked by members of the public
21 at that time; and if they have any concluding remarks,
22 they'll give those. Sometimes I leave the record open
23 for updated plans or conditions, if they came up during
24 the hearing. Other than that, at the close of the
25 hearing, I will prepare a recommendation to the Board

1 of County Commissioners. They are the final
2 decision-makers in this case.

3 If you wish to have the opportunity to address the
4 Board of County Commissioners, you must speak on the
5 record in this hearing. So I urge you, if you think
6 you might want to do that, to come to the podium and
7 share some thoughts with us.

8 Typically I issue a recommendation within a week
9 or no more than three weeks; and then if you provide us
10 with your email address, you'll be notified of the
11 final Board hearing via email by the County Staff.
12 That hearing is a little bit different than this one.
13 In this one, when you come to the podium, you can speak
14 as long as you like. You can ask questions. We'll
15 make notes of them and then come back and try to answer
16 them. At the Board hearing you will be permitted only
17 three minutes to speak. So if it gets to that point,
18 and your concerns were not addressed, I urge you to
19 organize your thoughts so that you can present them
20 cohesively in three minutes. And I think that's
21 everything.

22 All testimony and evidence that I take in at this
23 hearing must be accepted under oath, so I will
24 administer the oath to everyone in the room at one
25 time. Please raise your right hand.

1 (Participants sworn en masse.)

2 HEARING EXAMINER COLLINS: Okay, thank you. I'm
3 ready to begin.

4 MR. AKIN: All right. Thank you, and good
5 morning, Madam Hearing Examiner. For your record, my
6 name is Richard Akin. I'm an attorney with Henderson
7 Franklin here in Fort Myers. I'm here this morning
8 representing the Applicant on case number
9 DCI2022-00037, which is the Bayshore 31 RPD.

10 Just a couple of housekeeping matters up front.
11 The Applicant did submit a 48-hour letter in advance of
12 the hearing, and we submitted another one in advance of
13 this continued hearing. We identified only one area of
14 clarification with the Staff Report, and that was that
15 Deviation 3, which is the emergency access deviation.
16 We wanted to clarify that that access will provide
17 emergency access from State Road 78, not just from
18 Hartwig Lane. And so that was the one clarification.
19 I have talked to Staff, Mr. Badamtchian, about that.
20 Staff, my understanding, is in agreement that that is
21 as shown on the master concept plan, how that emergency
22 access will work. So that was the only point of
23 clarification.

24 I would also note that the original hearing in
25 this matter was continued. The reason we continued, I

1 just wanted to make it clear on the record. There were
2 some conditions that were added by Staff in their
3 48-hour letter, specifically one regarding compensatory
4 storage. We just wanted to make sure that we were able
5 to comply with that condition, and that wouldn't result
6 in any necessary changes to the master concept plan.
7 So that was the reason to take a look at that, and we
8 did that. It did not result in any needed changes to
9 the master concept plan. So the master concept plan
10 that you're seeing here today and that we'll provide
11 you is the same one that Staff has already reviewed.
12 There's nothing new about it, but we just needed to
13 confirm that.

14 HEARING EXAMINER COLLINS: Okay. So do you want
15 me to rely on the original one, or you're going to
16 submit one today that's dated?

17 MR. AKIN: I'm going to submit one today that's
18 dated. In fact, I've got that for you right now.
19 So --

20 HEARING EXAMINER COLLINS: Okay.

21 MR. AKIN: -- what I'd like to do now is I have a
22 copy of Applicant's PowerPoint presentation, as well as
23 a master concept plan for you with today's date.

24 HEARING EXAMINER COLLINS: Thank you. That's
25 Applicant Exhibit 1, PowerPoint; 2 is the updated

1 master concept plan.

2 (Applicant Exhibits 1 and 2 submitted.)

3 HEARING EXAMINER COLLINS: Great, thank you, I'll
4 take them both.

5 Okay. I'm ready, thank you.

6 MR. AKIN: Thank you.

7 So good morning again. We have our project team
8 here with us today. We have William Hulton with
9 NexMetro. He's the developer of the case. He does not
10 have an affirmative presentation; but if there are any
11 questions that he can answer, he is available here to
12 do so.

13 We have our land use planner today who is Tom
14 Sacharski. He's an AICP planner with RVi Planning.
15 He's going to do most of the presentation today and
16 tell you a little bit more about the project.

17 Our civil engineer is Carl Barraco with Barraco &
18 Associates. You'll hear from him, as well.

19 Our transportation engineer is Ted Treesh, and our
20 environmental consultant is Bear Stejskal. Each of
21 them has a presentation here for you this morning.

22 The request before you is to rezone the 34.8-acre
23 parcel that's the subject of the rezoning from AG-2 and
24 residential single family, RS-1, to a residential
25 planned development in order to allow for up to 180

1 multi-family residential units.

2 So with that brief introduction, I'm going to turn
3 it over to Mr. Sacharski to walk through the project in
4 more detail. I would note that Mr. Sacharski is an
5 AICP-certified planner. He has never been accepted as
6 an expert in front of the Lee County Hearing Examiner.
7 So I'll turn it over to him to tell you a little bit
8 more about his experience. A copy of his résumé was
9 included with our 48-hour letter, and I do have a copy
10 for you right here if you need it, as well.

11 HEARING EXAMINER COLLINS: Okay, yeah, let me have
12 that.

13 (Applicant Exhibit 3 submitted.)

14 MR. SACHARSKI: Good morning, Madam Hearing
15 Examiner. For the record, Tom Sacharski --

16 HEARING EXAMINER COLLINS: Would you just give me
17 an overview of your --

18 MR. SACHARSKI: Sure.

19 HEARING EXAMINER COLLINS: -- educational or work
20 experience background as it relates to planning and
21 familiarity with the Lee Plan and the Land Development
22 Code?

23 MR. SACHARSKI: Sure. So a certified planner --
24 an AICP-certified planner since August 2022. I have a
25 master's in urban planning and development from

1 Cleveland State University. I previously served as a
2 staff planner for the City of North Port and senior
3 planner for the City of Sarasota.

4 HEARING EXAMINER COLLINS: Slow down, please.

5 MR. SACHARSKI: In the -- of course. In Lee
6 County I have done approximately five projects, ranging
7 from the Kower (phonetic) IPD over on Old U.S. 41 to
8 the Babcock Ranch Lee amendment and Comp Plan
9 amendment, South Seas Resort, Amazing Grace special
10 exception, and 2631 First Street rezone.

11 HEARING EXAMINER COLLINS: Okay, thank you. You
12 may proceed.

13 MR. SACHARSKI: Thank you.

14 So as Mr. Akin stated, the request is to rezone
15 the 34.8-acre subject property from agricultural 2 to
16 residential single-family 1 for a residential planned
17 development to allow for up to 180 multi-family
18 residential units.

19 The project's located on Bayshore Road at 7150
20 Bayshore Road, south of Bayshore, approximately 1.75
21 miles west of I-75, and it's located within the North
22 Fort Myers Planning Community, and it's located in an
23 urban corridor.

24 The project is also located just north of
25 Daughtrey Creek residential subdivision, and it's

1 currently zoned AG-2 and RS-1, future land use of
2 suburban wetlands, as shown on the maps here.

3 AG is the green portion. The RS-1 is the beige
4 portion. The future land use, we have our suburban and
5 our wetlands. I would also note that this project
6 isn't on the edge of the suburban future land use.
7 It's located more towards the core of the suburban land
8 use -- future land use.

9 The request, as I mentioned, is for 180
10 multi-family units. The product character and type,
11 we'll talk about compatibility a little more in the
12 presentation, but it's not -- when you think of
13 multi-family, it's not your typical garden-style units
14 that are three- or four-stories walkup. It's more
15 cottage-style in nature. It's 180 units ranging from
16 one to three bedrooms, more rental home style on a
17 master concept plan 1 lot that will be rented --
18 managed by one group but rented by individuals.

19 We're doing a one-story max building height for
20 the -- for the residential units; 35 feet max for the
21 amenity center. You'll see in the background of this
22 picture, there is the amenity building or recreation
23 office building there. That's the only building that
24 would exceed the one story at 35 feet. And we're also
25 asking for the associated infrastructure and

1 residential amenities.

2 Shown here is the master concept plan that we've
3 presented, and the most -- the video updated there, the
4 main entrance off of Bayshore Road.

5 Secondary access, as we discussed, this would be
6 emergency access only connecting to Bayshore Road, also
7 connecting to Hartwig Lane. This would be emergency
8 access only, and this emergency access would also
9 improve access for the residents on Hartwig,
10 allowing -- if this access is blocked up here, allowing
11 secondary access to Bayshore. So it would serve as
12 emergency access for our community that we're
13 proposing, as well as the existing.

14 We are proposing parking along the middle of the
15 site, with the residential cottages abutting the
16 single-family. And that's purposely done also to help
17 compatibility so the parking isn't adjacent to existing
18 uses.

19 Our preserve areas on the southwest remain. And
20 the amenities will also -- we'll discuss further in the
21 compatibility section, would be more towards Bayshore
22 31.

23 For the open space, we're required to have 40
24 percent open space, and we are providing -- proposing
25 40 percent, and then indigenous space would be 50

1 percent of the open space, which is approximately 6.96
2 acres.

3 So questions that came up in our community
4 meetings were in regards to the Samville Cemetery,
5 which is located where the star is on our property.
6 This is actually located within the FPL easement up
7 here and will remain untouched. It's outside of the
8 proposed access and will not be touched at all.

9 As I mentioned for compatibility, we matched the
10 character of the surrounding properties. Looking out
11 from existing homes, it will be similar to one-story
12 single-family appearing structures. With the buffers,
13 we have our Type B buffer to the south and east;
14 preserve to the southwest; a Type A separating the
15 development and the DOT pond; and a Type D on the
16 right-of-way.

17 And as I mentioned, the amenities are focused
18 along the entrance up in here, which will help keep the
19 amenities and any of the higher structures away from
20 the existing residential; also help cut down on noise
21 as sometimes comes with amenities.

22 And then emergency access, as I mentioned, is
23 proposed on the north along Bayshore and will connect
24 to the existing community.

25 For deviations -- and I apologize for some of the

1 cutting out there. Our Deviation 1, as shown by the
2 orange circles, is to request for a hammerhead design
3 on dead-end streets exceeding 150 feet in length, and
4 we're doing this -- the dead-end streets will be
5 limited to a maximum of 150 feet in length, prohibiting
6 fire hydrants on the dead-end, as well. And the
7 request received no objection from the North Fort Myers
8 Fire District, Lee County Sheriff's Office, and Lee
9 County EMS. Staff had no objection to the proposed
10 deviation.

11 Deviation 2, also shown by the orange circle, is a
12 request to allow a 30-foot excavation setback from the
13 property boundary where a 50-foot setback is required.
14 Justification for this, this is an existing FDOT
15 detention area surrounded by a chain link fence. The
16 deviation allows perimeter -- the minimum necessary for
17 buffering to make that area work and for better
18 stormwater management, our request in the deviation.
19 Staff also approved Deviation 2 subject to an enhanced
20 Type A landscape buffer abutting the FDOT detention
21 pond, which we're in agreement with.

22 Deviation 3 is a request to allow one primary
23 access on Bayshore Road and an emergency stabilized
24 access on Hartwig Lane, also connecting to Bayshore
25 Road. We discussed this. This would be an

1 emergency-only main access at the entrance here.
2 Justification for this one, the property abuts 920
3 feet, approximately, of Bayshore Road frontage, which
4 has a minimum intersection separation of 660 feet. The
5 closest intersection south, which is the Williams
6 Road/Sean Lane, which is more -- let's see if we can
7 get it on the aerial here. I don't know if we have it.
8 Yeah, right here. This is the closest intersection to
9 the south.

10 HEARING EXAMINER COLLINS: So is it customary not
11 to reflect the deviation number for a deviation of this
12 type on the site plan?

13 MR. SACHARSKI: We have the deviation number, I
14 believe, right --

15 HEARING EXAMINER COLLINS: Oh, there it is --

16 MR. SACHARSKI: Yeah.

17 HEARING EXAMINER COLLINS: -- great. Okay, I
18 missed it.

19 MR. SACHARSKI: It's hidden there, and I
20 apologize. There's a lot on there.

21 It's impossible to meet the intersection
22 separation criteria for the Bayshore Road access
23 points. The requested deviation received no objection
24 from the North Fort Myers Fire District, Lee County
25 Sheriff's Office, and Lee County EMS. And Staff had no

1 objection to Deviation 3.

2 HEARING EXAMINER COLLINS: So has FDOT approved
3 the access drive?

4 MR. SACHARSKI: FDOT would be -- that would be
5 handled at the permitting stage.

6 HEARING EXAMINER COLLINS: It seems like your
7 choices are so limited that would be something you'd
8 need to know on the front end.

9 MR. SACHARSKI: I can ask Ted Treesh to speak to
10 that point --

11 HEARING EXAMINER COLLINS: Okay. He can discuss
12 it during his transportation testimony.

13 MR. SACHARSKI: Sure.

14 Deviation Number 4 is a request to allow the
15 existing FDOT drainage easement to encroach within the
16 50-foot natural waterway buffer, and that is shown by
17 the orange circle here. The justification is the
18 proposed deviation only applies to land within the FDOT
19 drainage easement. The plantable width for this --
20 this buffer varies from 17 feet to 26 feet. While the
21 creek undulates, the easement doesn't. The easement is
22 stagnant where the creek shifts through that.

23 Approval of this deviation will benefit the
24 project by preventing future noncompliance should the
25 vegetation be removed by FDOT. That's out of the

1 Applicant's control, if FDOT removes that vegetation.

2 So no -- no detriment to public health, safety,
3 welfare will occur with this. Staff is also in
4 agreement with this deviation, citing also that the
5 condition is outside the property owner's control, and
6 they were in support of Deviation 4.

7 The final deviation is a request to allow less
8 than one-half the natural waterway buffer to be planted
9 instead of the required half-width. This also has to
10 do with the preserve area on-site, which is an existing
11 condition.

12 Justification, the deviation applies only to the
13 land within the FDOT drainage easement where the
14 drainage easement overlaps the 50-foot natural waterway
15 buffer by more than 25 feet. The Applicant is not
16 proposing to remove the indigenous vegetation in this
17 area, but has no control over the FDOT future
18 maintenance of the creek. Approval of the deviation
19 prevents future noncompliance should FDOT remove the
20 vegetation. And, again, Staff is in support of this
21 condition.

22 Utilities and sewer/water.

23 MR. BARRACO: Good morning, Madam Hearing
24 Examiner. For the record, my name is Carl Barraco.
25 I'm with Barraco & Associates, a professional engineer.

1 I have been accepted as an expert in this venue in
2 civil engineering in the past, and I ask for that
3 privilege again this morning.

4 HEARING EXAMINER COLLINS: Yes, please proceed.

5 MR. BARRACO: Thank you.

6 This morning I'm going to review the water
7 management. It's really very straightforward. Potable
8 water will be provided by Lee County Utilities;
9 sanitary sewer service will be provided by FGUA; and
10 both letters of availability are on file.

11 The stormwater management system will be designed
12 in accordance with the South Florida Water Management
13 District handbook. That will consider wetlands, water
14 quality, attenuation of stormwater runoff, and
15 compensating storage. These considerations will
16 require all rainfall on-site to be managed on-site
17 before discharge through a control structure with
18 controlled discharge to the East Branch of Daughtrey
19 Creek. That will ensure that there are no external
20 impacts due to stormwater.

21 That's all I had this morning. If you have any
22 questions, I'd be happy to answer them.

23 HEARING EXAMINER COLLINS: Okay, thank you.

24 MR. SACHARSKI: Next section is -- we'll have
25 Mr. Stejskal come up for environmental.

1 MR. STEJSKAL: Good morning, Madam, Barrett
2 Stejskal with BearPaws Environmental. I've previously
3 been tendered as an expert witness in wetlands and
4 wildlife ecology.

5 HEARING EXAMINER COLLINS: Yes, please proceed.

6 MR. STEJSKAL: Thank you.

7 All right. I did a species survey and assessment
8 on the property. There were no protected species
9 identified. We did have almost six-and-a-half acres of
10 wetlands. Of those six and a half, 4.38 are going to
11 be disturbed -- or 4.3 are going to go into being
12 preserved.

13 The impacts are to the lower quality wetlands
14 on-site. We have 1.30 acres of other surface water,
15 which accompanies Daughtrey Creek that runs through.
16 There will be that 50-foot waterway, as previously
17 discussed, along Daughtrey Creek; and we will receive
18 an ERP permit from the Water Management District.

19 HEARING EXAMINER COLLINS: Okay, thank you.

20 MR. STEJSKAL: Yes, ma'am.

21 MR. AKIN: Mr. Stejskal, I had just a question for
22 you, if you wouldn't mind.

23 MR. STEJSKAL: Yes, sir.

24 MR. AKIN: So I know we got some questions during
25 some of the public information meetings that we had

1 about the protected species and whether they were
2 on-site. Could you just give us a real brief
3 explanation as to what you do to look for that, and how
4 you come to that conclusion?

5 MR. STEJSKAL: We do tight transects, minimal
6 transect requirements for the County, through all and
7 any vegetative communities on-site, and we checked
8 everything. We checked for gopher tortoise, burrowing
9 owls, bald eagles, fox squirrels, anything that's
10 protected within the county is what we go out and
11 survey for, and we did not see anything on there when
12 we were on-site.

13 MR. AKIN: Thank you, sir.

14 MR. STEJSKAL: Yes, sir.

15 HEARING EXAMINER COLLINS: And will you have to go
16 back prior to the development order permitting stage?

17 MR. STEJSKAL: More than likely they'll require
18 another updated survey when we get to that point.

19 HEARING EXAMINER COLLINS: And if something is
20 discovered then, then a management plan would be --

21 MR. STEJSKAL: If there was a gopher tortoise or
22 fox squirrel, we'd have to abide by all the rules and
23 regulations through the State.

24 HEARING EXAMINER COLLINS: Okay, thank you.

25 MR. STEJSKAL: Yes, ma'am.

1 MR. SACHARSKI: Next is Mr. Treesh with TR
2 Transportation, who is going to speak on transportation
3 of the site.

4 MR. TREESH: Ted Treesh with TR Transportation
5 Consultants. I've been accepted as an expert in
6 transportation planning, and ask to be so accepted this
7 morning.

8 HEARING EXAMINER COLLINS: Yes, please proceed.

9 MR. TREESH: Just a quick summary of our analysis.
10 There's also a Staff summary in the Staff Report which
11 we're in agreement with.

12 The analysis shows that there's adequate capacity
13 on Bayshore Road. Our access onto State Route 78 is
14 controlled by the State. That's why we had to ask for
15 the deviation, because the State limits access spacing
16 pursuant to their access management standards. So due
17 to the limited frontage this property had, we were only
18 permitted one access on this property, or our frontage.
19 So this access will be limited to a directional median
20 opening.

21 And we've already met with DOT in a preliminary
22 fashion, so the next step will be a full permitting
23 process through the State once we get to the
24 development order stage for the -- for the access
25 permitting. So the turn lanes will be part of the FDOT

1 process at development order stage so -- if there is
2 adequate level of service on the surrounding and
3 adjacent roads.

4 And I'd be more than happy to answer any
5 questions, if you have any.

6 HEARING EXAMINER COLLINS: Well, I just wanted to
7 confirm that FDOT is approving your access at that
8 location because you don't really have a lot of
9 flexibility there.

10 MR. TREESH: Yes. Yes, we did ask for an access
11 within the utilities further to the north, but they did
12 not approve of that. That's why -- they will approve
13 the emergency access only, but they won't approve an
14 access that's available to the residents.

15 HEARING EXAMINER COLLINS: All right, thank you
16 for clarifying that.

17 MR. SACHARSKI: All right. Consistency with the
18 Lee County Comprehensive Plan:

19 Staff finds the request is consistent with the Lee
20 Plan's policies, goals, objectives, and standards. I'm
21 not going to go through them all, but just some of the
22 ones to point out:

23 Policy 1.1.5, suburban future land use category,
24 the residential planned development proposes 180
25 dwelling units at 5.2 dwelling units per acre where 6

1 dwelling units is permitted. And, again, this is -- we
2 believe that this product really is compatible with the
3 surrounding land use because of its character, and the
4 buffers and amenities center being directed more
5 towards Bayshore Road.

6 Policy 1.5.1, permitted land uses in wetlands
7 consist of very low-density residential uses. The
8 majority of the wetlands on-site are preserved. Where
9 impacts do occur, the proposed density calculation
10 reflects a density of 1 dwelling unit per 20 acres.

11 Objective 2.1.4, development location. The
12 development program proposes an infill multi-family
13 community with clustered buildings to preserve existing
14 wetlands and native vegetation. Infill will reduce
15 sprawl by minimizing the need to extend urban services.
16 This is an area that is slated for development. Rather
17 than pushing development either out east and having to
18 extend services and create more traffic and congestion
19 going out east, this is an area that can handle the
20 development with existing utilities. And as I
21 mentioned before, rather than having a three/four-story
22 garden-style apartment, we think that the product, with
23 the clustered single-story, fits more with the
24 character of the existing neighborhood.

25 Policy 5.1.5, protect existing and future

1 residential areas from any encroachment of uses that
2 are potentially destructive to the character and
3 integrity of the residential environment. The proposed
4 development is similar in character, as I mentioned
5 before, with the surrounding community. All required
6 buffers are provided, and traffic is directed to the
7 arterial roads rather than internal. Even the
8 emergency exit will be emergency only going to Bayshore
9 Road to help keep the traffic off of neighborhood local
10 roadways. As I mentioned, the amenities are planned to
11 be pushed away from the existing residential towards
12 Bayshore Road.

13 And then other notable policies:

14 2.2.1 has to do with capacity of existing
15 infrastructure, which there is existing capacity.

16 Policy 4.1.1 has to do with connection to water
17 and sewer, which we will be achieving.

18 And Policy 124.1.1 is preserving wetlands, which
19 we will be doing to the extent possible. As
20 Mr. Stejskal explained, the wetlands that are being
21 impacted are lower quality wetlands.

22 Decision-making criteria, Staff finds that the
23 request complies with LDC 34-145(4)a.1.b and a.2. I
24 won't go through all of them, but we are in compliance
25 and agree with Staff and the Staff Report.

1 And community outreach, we actually held two
2 community outreach meetings at the North Fort Myers
3 Recreation Center, one on November 27th, 2023, at 5:30
4 p.m. We actually provided additional mailed notices,
5 rather than just those within the distance requirement.
6 We reached out to everyone within the Daughtrey Creek
7 community so that they would all be aware since they
8 will all be having to drive past this or notice this
9 development in their area and be impacted by it in some
10 form.

11 And then, again, we held another meeting in the
12 Fort Myers (sic) Planning Panel area, again, at North
13 Fort Myers Recreation Center, on February 7th, 2024, at
14 6 p.m.

15 In conclusion, we accept Staff's recommendation
16 and the conditions in the Staff Report. The Applicant
17 is in agreement with the conditions. We request
18 support of -- or, I'm sorry, the request supports the
19 goals, objectives, and policies of the Lee County
20 Comprehensive Plan; and we are consistent with the LDC,
21 compatible with the surroundings land uses; and we do
22 request a recommendation of approval for the proposed
23 residential planned development.

24 And we'd be happy to take any questions you may
25 have.

1 HEARING EXAMINER COLLINS: Thank you. I don't
2 have questions at this time.

3 MR. SACHARSKI: Thank you.

4 HEARING EXAMINER COLLINS: Is there any further
5 testimony from the Applicant?

6 MR. AKIN: No, Madam Hearing Examiner, that
7 concludes our presentation. We would request the
8 opportunity to respond to any questions or comments
9 raised by the public, should there be any.

10 HEARING EXAMINER COLLINS: I have this additional
11 page attached to my -- is that an error?

12 MR. AKIN: It was added to the back of the
13 PowerPoint in case --

14 HEARING EXAMINER COLLINS: Yeah.

15 MR. AKIN: -- a question came up, but you can take
16 that off since we didn't go through it.

17 HEARING EXAMINER COLLINS: Chahram?

18 MR. BADAMTCHIAN: Yes, I'm just trying to get my
19 aerial.

20 Good morning, Chahram Badamtchian from Lee County
21 Zoning. My résumé is on file. I was recognized as
22 expert in zoning, and I would like to be recognized at
23 this time.

24 HEARING EXAMINER COLLINS: Yes, please proceed.

25 MR. BADAMTCHIAN: Well, as you heard, they are

1 requesting to rezone from agricultural and residential
2 single-family to planned development for multi-family
3 use. The project they are proposing, it's something
4 that -- we started having this type of project in the
5 past couple of years. They basically propose
6 single-family-type structures but within a multi-family
7 setting. And we review this project as multi-family
8 when it comes for development order, but for building
9 permit purposes they are considered single-family. I
10 just want to let them know that we've had some issues
11 in the past with this.

12 They are -- the density they're proposing is
13 within the range, and we -- we had this -- what's it
14 called -- the 48-hour notice, sorry. I forget the
15 notice that was sent on March 26, which we added a few
16 conditions and a few additional analyses because part
17 of the project is within the coastal high hazard area.

18 And we reviewed this project, and we are
19 recommending approval. They are proposing five
20 deviations, which are mostly because of the site. One
21 of the conditions about emergency access, as you can
22 see in our Staff Report, we are saying, well, hook up
23 to Hartwig Lane. We are not mentioning Bayshore. The
24 reason for it is we are not sure if they will be able
25 to have permission from -- from FDOT to have access to

1 Bayshore for emergency. It's just an emergency
2 entrance, hopefully will never be used, but we need
3 this because the project is more than five acres. And
4 if they can have access to both end -- both sides, it's
5 even better. People living on Hartwig Lane can have
6 additional access in case something happened on their
7 road, but it's just an emergency access.

8 Besides that, there's -- they have utilities, as
9 you heard, available to them. And Staff reviewed --
10 they are in full compliance with all Lee Plan and Land
11 Development Code regulations. Staff recommends
12 approval subject to all the Staff conditions, including
13 the ones included in our 48-hour notice.

14 HEARING EXAMINER COLLINS: Okay, thank you.

15 MR. BADAMTCHIAN: Thank you.

16 HEARING EXAMINER COLLINS: I have a question of
17 the Applicant regarding the emergency access. Is this
18 going to be gated? How are you going to keep people
19 from using it as a cut-through?

20 MR. SACHARSKI: Correct. To answer your
21 question -- again, for the record, Tom Sacharski. The
22 intent is to gate it and also have a gate along Hartwig
23 Lane to keep people from cutting through this way
24 through the development. So the -- through an
25 emergency, the first intent, if you're in the

1 development, would be to utilize Bayshore, and Hartwig
2 Lane would only be opened if these residents on Hartwig
3 have to exit through that, but it would be gated.

4 HEARING EXAMINER COLLINS: And then how will this
5 gate be opened if the folks on Hartwig Lane want to use
6 the access?

7 MR. SACHARSKI: To clarify, I believe it would be
8 through a Knox box typical for opening through an
9 emergency situation.

10 HEARING EXAMINER COLLINS: So you're going to
11 provide a code of some kind to the neighborhood, or
12 would emergency response personnel have to be involved
13 before that access was opened?

14 MR. AKIN: For the record, again, Richard Akin.

15 So, yes, emergency personnel would have to be
16 involved. There would have to be an emergency, and
17 it's specifically for use by emergency services, so an
18 ambulance, something of that nature, in the event that
19 there's a block at the other intersection, the main
20 exit or entrance. So emergency services would have to
21 be involved in order to open the gates. It wouldn't be
22 something that someone could just decide they wanted to
23 use because they were late for work or something like
24 that, only in a state of emergency where emergency
25 services were involved. And when I say "state of

1 emergency," I don't necessarily mean something that was
2 declared a state of emergency, but something where
3 emergency services was involved to open the access. It
4 wouldn't be something that would be a secondary point
5 of ingress and egress during...

6 HEARING EXAMINER COLLINS: All right. So when it
7 is described as a stabilized access, does that mean
8 it's going to be like raised up and stabilized, or is
9 it going to be low-lying? How -- what does this
10 improvement look like?

11 MR. SACHARSKI: It would have to be stabilized to
12 ensure that if the emergency was some sort of flooding
13 issue or anything like that, it wouldn't be flooded.
14 It would also have to support an emergency vehicle if
15 need be.

16 HEARING EXAMINER COLLINS: All right, thank you.
17 Anything further from Staff or the Applicant?

18 All right. I'm going to open up the podium to the
19 members of the public. I'm going to call the names one
20 by one. Just because you filled this out doesn't mean
21 you have to speak, but I remind you, you need to speak
22 today if you'd like an opportunity to speak to the
23 elected officials.

24 Miles Eckert. Good morning, thank you for coming,
25 sir.

1 MR. ECKERT: Good morning, Madam Hearing Examiner,
2 thank you. My name is Miles Eckert, and I am a
3 resident in the Daughtrey's Creek subdivision that will
4 be directly -- located directly adjacent to the planned
5 development. I can show you where we live.

6 HEARING EXAMINER COLLINS: Sure, please do.

7 MR. ECKERT: Our house is located right here, 7484
8 Dana Lin Circle, and we are right up against the
9 planned development.

10 My qualifications are I have a bachelor of science
11 in biology, and I'm also an environmental consultant
12 with -- background with electro hygiene and PRP with
13 FDEP petroleum work. My neighbors, the only
14 qualifications they have are professional engineers,
15 they work for Lee DOT, licensed contractors, and
16 Charlie Krebs is also in our neighborhood. He was
17 formerly on the North Fort Myers Planning Board and, to
18 the best of my knowledge, has expressed concerns for
19 this project.

20 Some of the concerns that we have that I'd like to
21 go through, just for one, it seemed like there was no
22 notification that was given for the continued hearing.
23 I know that there was a previous notification given in
24 March for the other hearing, and I believe it was dated
25 11/27/23 and 2/6/24 that went out, but there was no

1 indication that this was happening today, which is why
2 there's only one other person here with me and no other
3 representatives from the neighborhood.

4 I believe there might be an affidavit process that
5 I can speak on someone's behalf, and I would like to
6 exercise that right, to speak on behalf of my cohorts,
7 neighbors, that were unable to attend. There's Jeff
8 Wasko, who is a PE, who has been accepted by this forum
9 as an expert previously; Jeff Wasko; William Weeks,
10 Ashley Weeks; Ashley Theron; Dave Theron; Amy
11 Jobecroft; Logan Nelson; and Dana Lin Pulte.

12 One of the other -- sorry, excuse me.

13 One of the things that was not brought up that was
14 a major concern is the flood protection plan. There
15 was nothing offered in regards to that, and we were
16 heavily impacted by Hurricane Ian, with that area kind
17 of being a runoff for us.

18 So the flood protection, I have doubts on the
19 riverine -- if there's a riverine flood plan. The
20 Daughtery's Creek East Branch extends to nearly the
21 Charlotte County line. A misuse or blockade, even
22 choosing a wrong Manning's coefficient in the analysis,
23 could have unforeseen impacts upstream. How confident
24 are you that the -- how confident are you, as the
25 Applicant, that your team of experts have chosen the

1 appropriate Manning's coefficient?

2 With the -- if there is a HEC-RAS analysis done,
3 how old is the supporting data for that? Based on my
4 knowledge and belief, FEMA's hydraulic floodplain, the
5 riverine floodplain maps, are based on studies done by
6 Taylor Engineering from 1999. Is the hydrology data
7 represented in those models representative --

8 THE REPORTER: Could you slow down, please?

9 MR. ECKERT: Sorry.

10 Is the hydrology data represented in those models
11 representative of rainfall data for the last 25 years?

12 Will the Applicant state for the record that there
13 will be no adverse impacts to adjacent properties by
14 development of this parcel?

15 Another concern with flooding is the coastal flood
16 hazards. I have doubts that the coastal flood hazards
17 have been properly evaluated. I understand that the
18 South Florida Water Management District in Lee County
19 have taken the position that coastal search scenarios
20 are not regulatory for floodplain compensation
21 scenarios. However, I have reviewed the FEMA flood
22 insurance studies done for the Caloosahatchee River
23 basin, and they include cross-sectional data that
24 appears to undulate relative to the ground surface.
25 Presumably, Bayshore 31 RPD will comply with the

1 Florida Building Code and propose buildings one foot
2 above the floodplain.

3 HEARING EXAMINER COLLINS: Okay. Could you slow
4 down? Sometimes when we read, we tend to --

5 MR. ECKERT: Yes, sorry.

6 HEARING EXAMINER COLLINS: -- go faster than when
7 we speak, and she's trying to get all your words.

8 MR. ECKERT: Understood, yes.

9 HEARING EXAMINER COLLINS: Thanks.

10 MR. ECKERT: I'm new to this, I'm sorry.

11 HEARING EXAMINER COLLINS: That's all right.

12 MR. ECKERT: Presumably, the Bayshore 31 RPD will
13 comply with the Florida Building Code and propose
14 buildings one foot above the FEMA floodplain. Based on
15 my and my neighbor's properties' topography, this
16 essentially creates a hydraulic wall between my
17 property and the proposed development. If we visualize
18 this for a moment, if a wind is blowing waves against a
19 seawall, and the seawall is removed, are the same waves
20 crashing against the seawall? No. This proposed
21 development is like a seawall right behind us and the
22 Caloosahatchee, holding back waves into our back yards.
23 Again, will the Applicant state there will be no
24 adverse impacts to the surrounding properties?

25 Another concern is the compatibility for the

1 current land use, AG, versus the proposed. My
2 neighbors and I all mortgage or own one half --
3 half-an-acre parcels with single-family homes currently
4 worth in the \$400,000 range. The proposed development
5 is offering significantly smaller homes and lots while
6 contesting that there will be no adverse effect to our
7 property values? Essentially, it's tiny homes next to
8 estate lots.

9 Again, with the flood issue of groundwater flow
10 and the finished floor elevation difference. Our
11 elevation sits roughly at, average, 8.6 feet above sea
12 level; and FEMA is, I think, at 10 feet above sea
13 level. So you have to go one foot above that, making
14 it 11, so about a three-and-a-half-foot difference. So
15 with that, where the groundwater flow comes in with the
16 Daughtrey's Creek East Branch, is there going to be no
17 groundwater flow change due to the five-and-a-half or
18 five plus or minus feet of fill?

19 Will you state for the record there will be no
20 adverse effects to the groundwater table by filling
21 this property plus or minus five feet?

22 Will I not have standing water in my yard that
23 currently does not exist?

24 And I'd like to submit for evidence the little
25 diagram drawing that shows the difference in elevation.

1 And just to quickly run through it, this essentially
2 shows the existing versus the proposed elevation, where
3 our finished floor elevation is at 8.6 above, and you
4 have 15 feet -- I'm sorry, you have 11 feet for the
5 finished floor elevation of the proposed development.
6 With the water table down at sea level at zero, the
7 natural ground is approximately 4 feet above.

8 Our buffer to the planned development is
9 approximately 50 feet, and the proposed buffer is 15
10 feet, and there's a stark difference in the elevation.
11 So all of our flooding from the hurricanes and other
12 storms has historically gone into the floodplain, this
13 will now create a buffer, and everything may not
14 possibly drain.

15 (Eckert Exhibit 1 submitted.)

16 HEARING EXAMINER COLLINS: Thank you. This
17 drawing is Eckert Exhibit 1.

18 MR. ECKERT: So as part of the code with the Lee
19 Compliance Plan, are you saying with absolute certainty
20 that there will be zero adverse impacts to my historic
21 level of service and quality of life? In your opinion,
22 this will have zero impact on the health, safety, and
23 welfare of one of the adjacent property owners?

24 And that's all I have to say. Madam Hearing
25 Examiner, I say this not as an expert in engineering,

1 code, and traffic -- I'll leave it with other experts
2 that are present -- but simply as an adjacent property
3 owner that cares about mine, my family's, and my
4 neighbors' health, safety, and welfare. Before making
5 your decision, please consider the issues I have
6 brought forth on the record today: riverine flooding,
7 coastal flooding, the groundwater flow, and the
8 compatibility, and the adverse impacts the issues may
9 pose on mine, my family's, and neighbors'. Thank you.

10 HEARING EXAMINER COLLINS: Thank you, sir.

11 Next speaker, Rachel Morrale? Good morning,
12 ma'am, thank you for coming.

13 MS. MORRALE: Thank you for hearing us, Madam
14 Examiner.

15 I am also located in the same location as Miles
16 Eckert. He is my husband. So I don't think I need to
17 point it out on the map.

18 We do live right behind this proposed development,
19 and I would like to echo his concerns that we did not
20 have appropriate notification. The only reason that we
21 even knew about this meeting was due to a neighbor
22 happening to find out that this was occurring. So I
23 would like to echo that there is not the appropriate
24 representation in this room currently from the
25 neighbors that live in this community.

1 So I also -- this is the first time we're getting
2 to see the proposed development, and I have even
3 greater reservations given this proposed plan. To echo
4 what my husband said regarding the water flow, this is
5 a major concern for us. We had direct impacts from
6 Hurricane Ian, and it was devastating for our entire
7 community, as well as of course Lee County, but the
8 water flow after that storm did directly go into that
9 area that they're proposing to develop. The -- we have
10 pictures of just the debris piled up along the roads
11 through our entire community. It was -- it was really
12 traumatic for all of us.

13 Even in other storms -- we were there for
14 Hurricane Irma. Hurricane Irma, while we didn't have
15 the direct flooding impacts quite so bad, it did raise
16 the water up quite a bit so that the water reached
17 within three -- I believe actually ten feet of our
18 home.

19 So with all of our significant storms, which we
20 believe we'll be getting more and more of with the
21 climate change that is occurring, we have great, great
22 concerns that the water flow is really not correctly
23 addressed with this plan.

24 And with the residences planning to be directly
25 abutting our property, having that greater -- greater

1 rise in elevation will effectively, as my husband said,
2 create a wall for us right there. The water flow that
3 would have gone behind our property has no choice but
4 to further stagnate in our properties and to pile into
5 our neighborhood, as uneloquently (sic) as that is.

6 I have also concerns about the environmental
7 aspects. While there were no species of concern
8 detected at the time, we do have, in our nearby
9 surrounding areas, a very well-known eagle's nest that
10 is very close by, and we have seen the eagles active at
11 that site. We're residents. We get to see these
12 things and have the opportunity to do that. So while
13 the eagles were not directly seen there, we know that
14 they have been active there.

15 Additionally, while it is further away, we do know
16 that there is the Florida bonneted bat that has a
17 colony on the northern proximeter (sic) with Charlotte
18 County. So this could have provided some sort of
19 habitat for them to fly and eat.

20 I really -- my biggest concerns are for that water
21 flow, though, and having such raised residences right
22 behind our property. There's nowhere for that water to
23 go. So I do believe that this creates an undue risk
24 for the residences in our community. Thank you.

25 HEARING EXAMINER COLLINS: Thank you.

1 Ken Shoriak? I'm sorry if I butchered your name.
2 Is there a Ken here?

3 Heidi Shoriak? Also not present.

4 Is there any other member of the public that is
5 present that did not fill out a public participation
6 form that wishes to speak? I will close public input,
7 and we move back to Staff and the Applicant.

8 Applicant's representatives, I believe we need
9 perhaps a more detailed discussion on storage of
10 stormwater and coastal high hazard compensation.

11 MR. AKIN: All right. Mr. Barraco, could you come
12 up and -- I'll ask Mr. Barraco -- for the record,
13 Richard Akin. I'll ask Mr. Barraco to come up and go
14 through a more detailed discussion of the storage and
15 how that will be done.

16 MR. BARRACO: Madam Hearing Examiner, I can do
17 that, but there was so much that I just heard. Could
18 we have five or ten minutes?

19 HEARING EXAMINER COLLINS: Yes, absolutely. Let's
20 take 15 minutes. We'll resume at 10:10.

21 MR. BARRACO: Thank you.

22 (Recess from 9:52 a.m. to 10:10 a.m.)

23 HEARING EXAMINER COLLINS: We are back on the
24 record to talk about stormwater management and flood
25 control.

1 MR. BARRACO: Thank you. For the record, Carl
2 Barraco. I'm going to try to hit this in three points.

3 The project will be designed for a 25-year event,
4 a rainfall event, and then a 100-year rainfall event.
5 The 25-year event is a dynamic event, which means that
6 all the rainfall from a 25-year storm falling on this
7 project will be directed to the lake, and will be
8 stored in the lake and released in a controlled manner
9 into the East Branch of Daughtrey's Creek consistent
10 with predevelopment conditions. So there should not be
11 any adverse impacts off-site.

12 The other storm is a 100-year storm event, and
13 that's a static event -- typically a static event, and
14 it looks at compensating storage. So I'll get into
15 that as my third comment.

16 So in order to address the -- the question, I
17 could say, in my impression, an increase in
18 elevation on the subject site, if designed and
19 permitted properly and approved by Lee County and the
20 South Florida Water Management District, will have no
21 adverse impacts consistent with required design
22 parameters.

23 The last point is there has been a riverine
24 floodplain impact analysis completed which concludes
25 the project will not adversely impact the flood risk

1 associated with riverine flooding from the East Branch
2 of Daughtrey's Creek to adjacent residents with
3 properties. And, again, that is relative to
4 compensating storage. So I think we've addressed the
5 dynamic events and the -- and the static events.

6 HEARING EXAMINER COLLINS: So the last thing you
7 discussed is if there's some kind of event that pushes
8 water up into the area?

9 MR. BARRACO: I'm not quite sure --

10 HEARING EXAMINER COLLINS: When you said riverine,
11 I mean, were you talking about the Caloosahatchee River
12 or --

13 MR. BARRACO: No, the riverine is the
14 rainfall event -- I'm sorry, yes, actually the report
15 concerns both.

16 HEARING EXAMINER COLLINS: Okay. So the first
17 thing I think I understood you to say, that if the site
18 design, as it goes through the permitting process,
19 complies with the Land Development Code and the South
20 Florida Water Management District permit criteria,
21 those regulations require you to demonstrate that there
22 is not going to be an off-site impact by virtue of
23 filling the site and constructing the stormwater
24 management improvements for the site.

25 MR. BARRACO: Correct, for the design parameters,

1 yes.

2 HEARING EXAMINER COLLINS: Okay. And then with
3 regard to the compensatory storage, and that comes into
4 play because the proposed plan of development will
5 impact wetlands that currently serve to hold
6 floodwaters. You are required, through the permitting
7 process, to show that your stormwater management system
8 design can compensate for that loss of storage through
9 the design of your dry and wet detention areas;
10 correct?

11 MR. BARRACO: Correct. And stated another way, if
12 there is any historic storage taken out of the basin,
13 it's replaced in another area. So there's no net loss
14 of storage.

15 HEARING EXAMINER COLLINS: All right. And the
16 conditions that have been proposed for Staff require
17 the Applicant to demonstrate that at the time of
18 development order permitting?

19 MR. BARRACO: Yes, and that condition is
20 acceptable.

21 HEARING EXAMINER COLLINS: Okay. With regard to
22 the height differential and finished grade, for lack of
23 a better word, from the Daughtrey's Creek property to
24 this property, it sounds -- the testimony I heard from
25 the public was they have concerns that this is going to

1 act as some kind of dam and keep water that was flowing
2 that way down in Daughtrey's Creek. Is that -- talk
3 about that.

4 MR. BARRACO: Well, maybe the best way to answer
5 that is there is a -- let me just look at my notes
6 here.

7 FEMA assigned a floodway to this area of
8 Daughtrey's Creek East Branch, and they did that so
9 that there can be no impacts to that floodway. That's
10 the primary reason for FEMA-designated areas as
11 floodways, so that they can't -- you can't encroach
12 that floodway and disturb the flows from a 100-year
13 event.

14 HEARING EXAMINER COLLINS: Okay. So impacts to a
15 floodway are more likely to create the result they're
16 concerned about than the difference in elevation
17 between the sites?

18 MR. BARRACO: Yes, in my opinion, because of the
19 floodway, that FEMA's regulations establish that, that
20 they won't take away from that -- that conveyance.

21 HEARING EXAMINER COLLINS: All right. Anything
22 further?

23 MR. AKIN: Madam Hearing Examiner, I was also
24 going to have Mr. Stejskal come up -- I believe there
25 were a couple of questions about an eagle's nest or

1 something of that nature, and let him address that.

2 MR. STEJSKAL: Good morning, Madam, Barrett
3 Stejskal, BearPaws Environmental, to address the
4 concerns that the couple had regarding the bald eagles
5 and whatnot. There is a management plan, bald eagle
6 management plan, set up through the County that
7 requires any projects within 330 to 660 feet from an
8 active nest to comply with certain rules and
9 regulations. There are no known active eagles' nests
10 at this time within those areas; and if there were, to
11 come -- if there were to be one down the road, we would
12 address that. As I stated previously, we will have to
13 update the species survey at the time of DO issuance
14 anyways. So if there are any species that may appear
15 or come up at that time, they will be addressed per the
16 conditions of the State.

17 HEARING EXAMINER COLLINS: Do the regulations
18 require any protection for, for instance, a perch tree?
19 I mean, assuming what they're saying is they've seen
20 perhaps an eagle maybe not nest on that property but
21 perch.

22 MR. STEJSKAL: For perch trees without -- within
23 the vicinity of an eagle's nest, they like those to try
24 to be preserved. There are none in close proximity
25 here that would require that. So that's basically --

1 HEARING EXAMINER COLLINS: Thank you.

2 MR. STEJSKAL: -- the rest that I have.

3 HEARING EXAMINER COLLINS: All right.

4 Does Applicant -- oh, is there anything else Applicant
5 would like to put on the record?

6 MR. AKIN: Just one more comment, Madam Hearing
7 Examiner. Again, Richard Akin for the record. There
8 were some questions raised about notice. I just wanted
9 to state this matter was continued previously, it was
10 continued on the record, and so notice was provided by
11 the County, probably would be provided to any people
12 who showed up at that hearing, and they're -- they're
13 given notice of that. So that was taken care of so
14 there is no notice issue as far as Applicant is
15 concerned.

16 MR. BADAMTCHIAN: Madam Hearing Examiner, I have a
17 copy of the affidavit for the notice for the original
18 hearing, and we continued the hearing on the record.

19 HEARING EXAMINER COLLINS: On the record.

20 MR. BADAMTCHIAN: So we held a hearing, and we
21 continued on the record.

22 HEARING EXAMINER COLLINS: Okay. So let me just
23 take a few minutes to explain the notice issue for you.
24 The only notice that's required for jurisdiction is a
25 publication notice ten days before the hearing. And so

1 what happened was the last case was continued at the
2 last minute, but it had to happen on the record because
3 the decision to continue it was after that hearing had
4 been published in the newspaper, okay? So at that
5 point any members of the public that came were advised
6 that it was continued, and they would have received
7 notice of the new continuance date in that way.

8 The County regulation provides for a courtesy
9 notice that is mailed prior to the hearing, but it is
10 not jurisdictional, and that courtesy notice would only
11 have been mailed before the original hearing which was
12 scheduled at the end of March, okay? And there are
13 certain guidelines in the Administrative Code on how
14 far they go out to send out that notice. We have
15 testimony on the record that the Applicant actually
16 went beyond that to notify people within all of
17 Daughtrey's Creek -- did I hear that correctly?

18 MR. AKIN: Yes, ma'am.

19 HEARING EXAMINER COLLINS: That would have
20 happened before the first public hearing, okay? So at
21 that point it would have been the duty of the property
22 owners in the area to inquire further if they did not
23 attend that first hearing that was legally noticed in
24 the newspaper. So take comfort in knowing that the
25 notice did, in fact, comply with the regulations. And

1 in addition, you had two meetings before -- in the
2 public? Explain your public information meetings. Why
3 was there a second meeting?

4 MR. AKIN: So we had -- Chahram, can you put our
5 presentation back up so I can get the dates correct?

6 MR. BADAMTCHIAN: (Complies.)

7 MR. AKIN: There we go.

8 All right. So, Madam Hearing Examiner, once
9 again, Richard Akin for the record. We had two
10 meetings. We had a November 27th, 2023, informational
11 meeting that was held at the North Fort Myers
12 Recreation Center. We also had a secondary meeting
13 that was before the North Fort Myers Planning Panel on
14 February 6th of 2024, also held at the North Fort Myers
15 Recreation Center.

16 So what we did as part of the first meeting was we
17 went beyond what would be the notice requirements of
18 the Administrative Code and the Lee County Code. We
19 actually provided notice of that first meeting to
20 everyone in Daughtrey's Creek, mailings to them, and we
21 did that because we thought that they might have an
22 interest in this project, and we wanted to provide them
23 with information and show the copy at that time of the
24 master concept plan to show them what the development
25 would look like, allow them to ask questions. At that

1 meeting, we had all of our consultants present. We had
2 our engineer there; we had our planner there; we also
3 had -- I was there, even though I was just the
4 attorney. We also had our transportation consultant,
5 Mr. Treesh, there. They were all there in order to
6 answer questions that may come up from the community
7 about not only the traffic -- which is a common thing
8 we hear about. We had questions about some of the
9 ecological things, which is why I asked Mr. Stejskal a
10 question about that during his testimony; and we had
11 questions about the storage, the water storage issues
12 that Mr. Barraco addressed here today.

13 And so during that meeting, it became clear that
14 several of those individuals that attended that meeting
15 asked us to come to the North Fort Myers Planning
16 Panel, and I believe we had planned to do that anyway.
17 But in light of that, we decided -- in both of those
18 things -- we had the second meeting in order to, once
19 again, try to let as many people as possible to know
20 what was coming and allow them the opportunity to not
21 only see the master concept plan, but to ask questions
22 and provide input so that we could know what changes or
23 conditions we might need to add in order to satisfy the
24 public's concerns before we got here today, which I
25 think is probably -- if I'm -- I think that's probably

1 a part of the reason why we don't have as much public
2 participation here today, because we have already had
3 these meetings and tried to interact with these
4 individuals and listen to what their concerns were.

5 So we did have those two meetings. We went beyond
6 what the Code would require as far as not only notice
7 for those meetings, but number of meetings that we had.

8 HEARING EXAMINER COLLINS: Thank you.

9 MR. BADAMTCHIAN: Madam Hearing Examiner, if I may
10 add, when we continue a case on the record, we also put
11 a notice online. All people, all they have to do is go
12 to our website and enter the case number, and we pop
13 up.

14 HEARING EXAMINER COLLINS: Okay. So what I'm
15 hearing is there's an additional location to find out
16 about cases on the County website, and there's a public
17 notice tab, is that what you're saying?

18 MR. BADAMTCHIAN: Well, you go to the website,
19 says "search," you just enter the case number.

20 HEARING EXAMINER COLLINS: Enter the case number,
21 okay.

22 All right. Is there any additional information
23 Staff or the Applicant wish to put on the record? I
24 don't believe I received a codified version of the
25 conditions. I have that one extra set of conditions --

1 supplemental conditions that were attached to the prior
2 48-hour, but I never received a codified. So I just
3 want to confirm on the record that Applicant is in
4 accord with those conditions that Staff proposed in
5 their 48-hour memo prior to the March hearing?

6 MR. AKIN: That is correct.

7 HEARING EXAMINER COLLINS: So I should merge those
8 two together for the recommendation to the Board?

9 MR. AKIN: Yes.

10 HEARING EXAMINER COLLINS: Thank you.

11 Thank you, everyone, for coming today. I will not
12 be leaving the record open. I believe I have all the
13 information and documents that I need. I want to thank
14 everyone for a detailed Staff Report and Applicant's
15 narrative and presentation. I felt well prepared for
16 this hearing in advance.

17 I did conduct a site visit prior to the hearing so
18 I'm familiar with the area; but as is my custom, prior
19 to releasing my final recommendation, I will return to
20 the property and the area around it for one last look.
21 And that's all, thank you.

22 (Proceedings concluded at 10:28 a.m.)
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 52, is a true and correct record of my stenographic notes.

Dated this 17th day of June, 2024.



Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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