THE OFFICE OF THE LEE COUNTY

HEARING EXAMINER

CASE NO.: SEZ2025-00001

IN RE: EAST FORK CREEK FARM

_____/

VOLUME 2

PROCEEDINGS:	PUBLIC HEARING
BEFORE:	Amanda Rivera Hearing Examiner
DATE:	October 10, 2025
TIME:	1:00 p.m. to 2:45 p.m.
LOCATION:	Lee County Hearing Examiner Hearing Room, Second Floor 1500 Monroe Street 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

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IN RE: EAST FORK CREEK FARM

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VOLUME 2

PROCEEDINGS:	PUBLIC HEARING
BEFORE:	Amanda Rivera Hearing Examiner
DATE:	October 15, 2025
TIME:	1:00 p.m. to 2:45 p.m.
LOCATION:	Lee County Hearing Examiner Hearing Room, Second Floor 1500 Monroe Street Fort Myers, FL 33901
REPORTER:	Deborah M. Bruns Florida Professional Reporter

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Alexis Crespo, RVi Planning
David Bartley, Applicant
William Lange, Lee County
Elizabeth Workman, Lee County

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P R O C E E D I N G S

HEARING EXAMINER RIVERA: Good afternoon, my name is Amanda Rivera. I'm the Hearing Examiner presiding over today's case. The date is October 10th, 2025, and this is case SEZ2025-00001. It is a special exception request for an agri-tourism operation to get consumption on premises approval.

Because this is a quasi-judicial hearing, all evidence and testimony must be taken under oath; so if you intend to speak, if you could please raise your hand. Do you swear or affirm the testimony you will provide is the truth?

(Participants respond en masse.)

HEARING EXAMINER RIVERA: Okay, thank you.

Do we have members of the public here today? Yes? Okay.

So the way that we'll go through things is first we're going to hear from the Applicant. They're going to present their request in the case and call any witnesses that they may have.

Following that we will hear from the County Staff, who will present their recommendation in the case. They are recommending approval with conditions.

Following that we will go to public comment. So I'll call forward the cards that I have, in the order

that I have them. There is only one opportunity to speak so I would encourage you to take notes as we go through things to make the most of the time that you have at the podium.

After that we'll come back to the Applicant and the Staff for their rebuttal and any closing comments that we have.

So with that we can begin whenever the Applicant is ready.

MR. ARBIOS: Thank you.

HEARING EXAMINER RIVERA: Good afternoon.

MR. ARBIOS: Good afternoon, Madam Hearing Examiner. For the record, Gabriel Arbois with the firm of Hahn Loeser and Parks. I represent the Applicant, JJDaze Holdings, LLC. They are the owners and operators of the East Fork Creek Farm.

Mr. Bartley is one of the principals of the company. He's here today. You'll be hearing from him later this afternoon. Also with me is Patrick Murray and Alexis Crespo of RVi Planning. You will hear from them, as well. They've been in charge of all the planning in this case.

And I apologize for my partner, Michael Whitt, not being available today. He had to deal with some personal matters so I'm stepping in.

This is for East Fork Creek Farm. It's a roughly ten-acre parcel off of Hendry Creek Road. It's just west of US 41. It is bisected by that east fork of Hendry Creek.

What we're seeking is an exception in the AG-2 zoning district pursuant to the LDC for consumption on premises of alcoholic beverages through a caterer's license, 13CT, and a 4COP license in conjunction with an agri-tourism activity.

East Fork Creek Farm is an idyllic location. The Bartleys have been operating it as an agri-tourism activity for several years at this point. They've invested a very large sum into this property, lots of effort. They've weathered through two hurricanes at this point. So this is a very, very important case for them, and this COP license is essential to their ability to continue with their agri-tourism activity. So you'll be hearing from Mr. Bartley on what their vision of the property is and how important this license is for them. It's specifically for consumption on premises for two structures on the property: an open-air pole barn and a fully enclosed event center.

You may recall that last time we were in front of you, about six weeks ago, there was an error in the public notice. It failed to indicate that we were

seeking a 4COP license. We're now back before you.

The conditions that were recommended by the County last go-around, in their Staff Report, we were in agreement with. They were consistent with our application. But since that time, and there's been no indication why, there are some changes in those conditions; and we specifically object to two of those conditions in particular: Condition 4b, which is regarding the relocation of the six-foot opaque wall off of the northern and western boundaries of the property in order to allow the installation of a Type A buffer. That was not in the Staff Report last go-around -- excuse me. And Condition 5, which is regarding the hours of operation. The last time we were in front of you, the hours of operation were to be from 12 p.m. to 10 p.m. on the weekdays and Saturday, and then on Sunday 12 p.m. to 9 p.m. We were in agreement with that. We were fine with that. That, in addition to many of the other conditions which you'll hear about today, were intended to minimize the impact of any noise caused by the new use.

And so we object to those two conditions. They weren't in the report six weeks ago. There's no stated basis for why they were changed during that interim six weeks. It's not stated in the Staff Report. We've not

gotten a meaningful explanation on why those have been added.

HEARING EXAMINER RIVERA: And I can ask this question as we --

MR. ARBIOS: Sure.

HEARING EXAMINER RIVERA: -- go through, but I'm guessing the reason is because the request changed slightly, right? It sounded like you were adding 2COP or 4COP, and there was some discussion about that. It seems like now all of them are kind of in the bucket of the request, and you're just broadly saying consumption on premises in whatever form that may take. But typically, as you know, the 4COP would be a restaurant use, which is a much higher frequency use than what a caterer's event would be, right? Because the caterer's, it's planned, it's usually on the weekends, or it's a more targeted event. So I'm guessing that's where that's coming from.

So does your objection still stand if that's the intended use, or do you know what the intended use is going to be at this point?

MR. ARBIOS: We 100 percent maintain the objection. That is not the intended use, and we've been abundantly clear about that since the beginning of this application and throughout the application

process. We've confirmed to the County that this is not intended to be a daily commercial use. This is not intended to be a restaurant. The 2COP and 4COP is merely to help facilitate their ability and have flexibility in organizing these events, whether it's a caterer or whether it's through the property owner. They've partnered with a catering company, G3 Catering, and they have the exclusive right to serve food and beverage on the property. So not intended to be a daily commercial use, not intended to be a restaurant.

And I would also point out that I don't think that's much of a distinction between what was proposed before and what's proposed now. It was a 13CT/2COP serving food and beverage and alcohol through a catering company. What is the significant difference with the owner holding that license when the use ultimately is going to be exactly the same?

But be that --

HEARING EXAMINER RIVERA: That process with the DPR -- I assume that's who still does the licensing for the alcohol issues -- has that been started? Have you identified with that agency which permit you're going to be pursuing?

MR. ARBIOS: I don't believe that's been commenced -- no, it has not. And, really, the purpose

of us getting the 2COP and 4COP, again, is in order for us to have flexibility on how we plan out how to use this property. If we don't get a 4COP, we'll get a 2COP. It's really just to protect the property owner and be able to have that flexibility.

So there's been no significant change. There's no stated basis for the new conditions. It really doesn't make sense why we would be restricted in this way when Lee County's own noise ordinances allow sound until 10 p.m. This is inconsistent with that. And we've already had conditions and agreed to conditions to minimize the impact of any amplified sound. There's going to be no amplified sound whatsoever in the open-air pole barn. If there is amplified sound, we're required to keep the event center fully enclosed. The event center is the only site where amplified sound will be used. All the windows need to be shut, and all of the speakers within the event center need to be directed towards the north or the east of the property in order to not direct sound toward the adjacent property owners.

So we believe the limitations on hours of operation is unjustified. It's highly prejudicial to my client and their ability to plan events, to have the flexibility for their proposed event center. So it's

very, very important -- and it's also not fair for my client to be limited to 9 p.m. when all the surrounding properties are allowing to go to 10 p.m., per the ordinances. Again, no stated basis for that.

With respect to Condition 4b, again, not included in their Staff Report six weeks ago, and also there's no reason why we should be required to relocate the wall. The western wall is not on the property line. It's sufficiently back from that property line to allow for Type A plantings. There's no need for us to relocate. There's no reason why my client should be burdened with the expense of having to relocate a wall which, in and of itself, is sufficient and far exceeds what's required under the Code.

HEARING EXAMINER RIVERA: And I can ask that again, too, but I did the site visit prior to the last hearing, and at that time the wall only extended along the frontage of Hendry Creek Drive. Now it looks like it does go well beyond where the open-air barn would be.

What is the -- if you can clarify for me, I got a little lost on what's the actual issue with that wall. So they want it to be a higher wall or a closer wall somewhere to the property boundary?

MR. ARBIOS: It's a little bit ambiguous from the

Staff Report; but as I understand, they would like us to move it back away from the property line in order to accommodate a Type A buffer.

HEARING EXAMINER RIVERA: Okay.

MR. ARBIOS: That's my understanding.

HEARING EXAMINER RIVERA: What's been installed at this point? What buffer standard did you erect the wall -- there are some plantings on the exterior of the wall --

MR. ARBOIS: Right.

HEARING EXAMINER RIVERA: -- there just aren't very many, and they're new, obviously; but I'm just trying to figure out what standard is guiding that behavior since that occurred since the prior hearing.

MR. ARBIOS: I can't speak to that directly.

HEARING EXAMINER RIVERA: Okay. We can address it later. You might be addressing it -- I just -- since you mentioned it, I wanted to get the question out.

MR. ARBIOS: Sure.

So, again, this has been a major investment for my client. They've already incurred significant expenses in bringing this property up to operation, to build out the event center, and they've already installed that six-foot wall. There's no reason why we need to go back and start moving things around when what's already

existing is sufficient and far exceeds the Code.

And so based on that, based on what's in the report, based on the testimony you're going to hear today, we're confident that you'll make the correct decision and approve our application without that Condition 4b and without those limitations on hours of operation that are proposed in Condition 5.

And with that I will turn it over to Mr. Bartley.

HEARING EXAMINER RIVERA: Thank you.

Good afternoon.

MR. BARTLEY: Good afternoon, and thank you for the opportunity to speak with you today. My name is David Bartley, and my wife, Alise Bartley -- who I've been married to for 35 years and was unable to be here today -- are the owners of EFC Farms, East Fork Creek Farm, located here in Fort Myers, Florida.

We want to share with you not only what we do as a farm, but also who we are, our values, our vision for the community, and why EFC Farms is more than just a place where food is grown.

EFC Farms was born out of a passion for sustainable farming and community wellness. After Hurricane Ian, when much of Southwest Florida was devastated and our farm was destroyed, we committed ourselves to rebuilding in a way that would not only

provide fresh food for local chefs and the general public, but also serve as a model of resilience and innovation. We are an all-natural farm specializing in aquaponics, an advanced farming system that combines aquaculture, the raising of fish, with hydroponics, the growing of plants in water. This creates a natural ecosystem where fish and plants sustain one another, using up to 90 percent less water than traditional farms and about 10 percent of the property a traditional farm would use.

EFC Farms is more than a growing system. We are -- we view our farm as a sanctuary for our land, our animals, and our people. We've worked intentionally to make it a place where community members can gather, learn, and see sustainable agriculture in action.

At our farm we have three main components:

For food production we produce nutrient-dense, chemical-free produce year-round. Our aquaponic greenhouses allow us to grow fresh lettuce and leafy greens consistently regardless of the weather extremes we have here in Southwest Florida.

Alongside our plants, we raise our tilapia fish. We have honey bees and have had other animals.

We have hosted school field trips, farm tours for

garden clubs, and educational events to show how food can be grown sustainably. Children and families have come to see firsthand the nitrification process, understanding the life cycles of plants and fish, and learn about responsible farming practices. We've also collaborated with local organizations to highlight the importance of healthy food in Southwest Florida.

On our property, after Hurricane Ian destroyed several of our buildings, we designed and built the BEC. That's the Bartley Education/Event Center. It's a beautiful climate-controlled building. It's our hope that this venue will host weddings, community events, educational opportunities, corporate gatherings, and create a space where celebration directly supports sustainable agriculture. The revenue generated will help sustain the farm, creating a farm-to-event model that blends agriculture with hospitality and agritourism.

Our impact goes beyond just our crops or events. It's also about strengthening community resilience. We have food and security. By producing food locally, we help reduce the reliance on long supply chains that can be disrupted by storms or economic challenges.

Through education, we have hundreds -- we've had hundreds of students and families visit our farm,

walking away with a new appreciation for where food comes from and how it is grown.

The local economy. The produce that we grow is sold to local chefs, and the events hosted at the BEC will bring people into Fort Myers, supporting small businesses, caterers, florist, and so many more.

Environmental stewardship. Our aquaponic system conserves water, protects the soil, and creates a closed-loop ecosystem that minimizes waste.

And, finally, our community. Not if but when -- and, thankfully, so far so good this year -- the next hurricane occurs, we want this building to be a resource for our neighbors, as it has backup generators, air conditioning, a full commercial kitchen, a shower, washer, and dryer.

At the heart of EFC Farms are three guiding values:

Sustainability. Every decision we make considers the long-term impact, from hurricane-resistent structures to chemical-free growing practices.

Community. We believe that farming is about people, not just plants. Our farm is designed to welcome neighbors, schools, and families.

Innovation. We embrace forward-thinking solutions, whether it's aquaponics, renewable energy

integration, or new models of farm-to-event partnerships.

When we purchased the farm property in 2021, we discovered that this property had been a farm since the 1950s. It was a nursery tree farm way before any housing development around it.

The farm was totally destroyed by Hurricane Ian. We believed in our vision and chose to rebuild, and we are still in that rebuilding process today.

Farming is difficult in Southwest Florida; and despite our best efforts, our costs have exceeded our revenue. This is not sustainable. We need another revenue resource or source to allow our farm to be financially sustainable.

The BEC, our new education and event center, along with the zoning variance that we are requesting to allow alcohol sales during our agri-tourism events, will make our farm sustainable. We see EFC Farms not only as a successful agricultural project, but as a blueprint for what's possible in Southwest Florida. Imagine more farms like ours, resilient to storms, conserving resources, feeding local families, and offering spaces where the community can gather. That's the vision we've been building toward, and it's the one we want to continue sharing with others.

In closing, EFC Farms is not just a farm. It's a community resource and educational hub and a model for sustainable agriculture in our region. We want EFC Farms and the BEC to be the premier agri-tourism destination in Southwest Florida. We are proud of what we built and excited about how we can continue to inspire others.

Thank you for your time and consideration.

HEARING EXAMINER RIVERA: Thank you.

MR. ARBIOS: And Patrick Murray will be speaking next.

HEARING EXAMINER RIVERA: Okay, thank you.

MR. MURRAY: Good afternoon, Madam Hearing Examiner. For the record, Patrick Murray with RVi Planning and Landscape Architecture. I've previously been qualified as an expert witness by the Lee County Hearing Examiner.

I'd like to present to you our presentation -- a copy of our presentation, and then I also have a slightly revised 48-hour letter that highlights the grammatical error -- or change that we are seeking.

(Applicant Exhibits 5 and 6 submitted.)

HEARING EXAMINER RIVERA: Okay, thank you. So the PowerPoint presentation will be Applicant Exhibit 5, thank you -- we retained the numbering from the first

hearing -- and then the revised letter will be Applicant Exhibit 6, thank you.

Is the substance of the revised letter any different than what I've already reviewed and received?

MR. MURRAY: So our revision includes the specific words "Type A plantings" -- "Type A buffer plantings" as opposed to just Type A buffer.

HEARING EXAMINER RIVERA: Okay, thank you.

MR. MURRAY: To reiterate, the team is made up of Mr. and Mrs. Bartley from East Fork Creek Farm, Mr. Arbois, and myself and Alexis Crespo from RVi Planning.

This request is a special exception request for consumption on premises of alcoholic beverages on an agricultural-designated property subject to 13CT, 2COP, and 4COP licenses.

The subject property is located in a developed area of Lee County, and it is approximately 10 acres in size, south of Hendry Creek Drive, 800 feet west from South Tamiami Trail; and the property does currently have agricultural exemption, and the uses that occur on the property include hydroponics, aquaponics, greenhouse, chickens, goats, and bee productions.

The subject property's future land use is suburban, with central urban to the east. The zoning

category is AG-2, agricultural, with residential properties to the east and commercial zoning district to the -- excuse me, residential designations to the west and commercial to the east.

This is an overall view of the concept plan. It outlines that the property -- I have a more zoomed in location of the subject area we're focusing on, but the entire property is ten acres in size, and we're looking at essentially eight acres in the south and two acres in the north. There is East Fork Creek that divides the two areas, and you'll notice on the eight acres is the agricultural production with the greenhouse/hydroponic production occurring.

This is the area that we're discussing. The consumption on premises is in the hatched -- which is the pole barn on the western side, and then in the center area is the events-based building.

The subject property is accessed from Hendry Creek Drive, with two ingress and egress points.

There is parking for 83 cars or spaces.

And then you'll notice on the western boundary, we do include a Type 5 A (sic) buffer with a six-foot opaque wall, and then a six-foot opaque wall that does go along Hendry Creek Drive.

HEARING EXAMINER RIVERA: With regard to the

parking, where did the number -- how did you derive 83 spaces? I notice the utilities letter estimated 225 people, and there was some mention of 178 somewhere in the documents. I couldn't put my finger on it again from when I took my notes; but I'm just curious, on these events, how many folks are we actually accommodating, and is 83 spaces sufficient to accommodate that?

MR. MURRAY: Yes, this is through Staff's efficiency and review. So we have approximately 8,763 square feet of usable area, which calculated to 87 spaces. Our 83 spaces are the designated striped areas, and then there are other areas throughout the property that could accommodate the remaining parking.

HEARING EXAMINER RIVERA: Okay. So if you have an event that's well attended beyond what the 83 spaces would accommodate, you can accommodate your own traffic -- or your own parking on your site without needing to overflow into the surrounding community?

MR. MURRAY: Yes, that's correct.

HEARING EXAMINER RIVERA: Thank you.

MR. MURRAY: And just to reiterate that the pole barn is 5,000 square feet, but approximately 4,500 square feet would be the area of consumption on premises; and, likewise, the education center is

approximate 2,500 square feet, and about 3,700 square feet would be the area where events would actually take place and the consumption on premises would occur.

So in April we did have a community meeting at the event center. It was attended by approximately between eight and ten people, and we did send out notices to 500 feet of radius. Through that discussion -- it was more of a casual discussion than it was a presentation, which was quite nice, but we did come to a consensus on buffer types. As opposed to doing a six-foot opaque fence, Mr. Bartley agreed to do a six-foot opaque wall aesthetically (unintelligible) and agreed to Type A plantings along the western boundary, which is a residential property that we directly abut.

Additionally, we landed on the hours of operation that coincide with the Lee County ordinance -- noise ordinance -- I'll address this, and it's also in our 48-hour letter -- from Monday through Saturday noon to 10 p.m., and then on Sundays from noon to 9 p.m.

And then we also discussed noise and amplified music, which we landed on that no amplified music would be within the pole barn, and that also the event center would be fully enclosed if there is amplified music.

This is subject to a 13CT, 4COP, and 2COP license. I just wanted to highlight that the 13CT, which was our

initial request, where we were in the August 21st hearing, for beer, wine and liquor; we've since modified that to allow flexibility; and the 4COP also includes beer, wine, and liquor; along with the 2COP, which would be limited to beer and wine. I'll note that the 4COP does require alcoholic beverages to be served in -- simultaneously with food, and there is a 51/49 percent gross food sales requirement.

Next two slides are a few images of the property as it is today. The one in the top left is looking west on Hendry Creek Drive, the one on the bottom is looking east along Hendry Creek Drive, and then internal to the site looking out with the nice plantings. And then on the eastern side we have no buffer, but we have enhanced plantings, as well.

This is, again, looking at the eastern side where there is a vacant property.

And then most recently this is the western boundary along Roberts Lane. This is the Type A plantings. This is the six-foot wall, and it does include 4 trees per 100 feet, which is 16 trees. These are hollies, which they'll grow -- the canopy will grow above the six-foot wall to provide an additional buffer. And they are adequately planted or professionally installed.

This is the event center itself. I just think it's worth acknowledging the aesthetic of it is quite astonishing, and it's the -- the beautification of the actual building itself and -- and where it will be great to host events, which would only further promote the agricultural practices of Lee County.

And then as far as the Lee Plan consistency:

The COP associated with agri-tourism is -- is a permitted nonresidential use within the Suburban Future Land Use category.

Provides compatibility, maintaining the agricultural practices that currently exist on the property.

Promotes the agricultural use and utilizes the land within an area that has existing infrastructure.

As for the Land Development Code, as noted in the environmental report completed by Staff, that it does have no impact to Hendry Creek, and will continue to operate as an agricultural production as it since -- as it has since the 1950s as the Kelly Tree Farm.

HEARING EXAMINER RIVERA: Can you go back for a second? The bottom point on the slide about not being injurious to the neighborhood, conditions managing noise levels, lighting, hours, and guests per event. I did not see all of those addressed. Is there a guest

count limitation to the size of the events, and I just missed it?

MR. MURRAY: We initially did propose that, and it was not included in the conditions.

HEARING EXAMINER RIVERA: Okay. What would the amount have been, if that was included?

MR. MURRAY: I can --

MR. BARTLEY: For serving in the facility, the maximum number of people would be 178.

HEARING EXAMINER RIVERA: Okay. That's the capacity of the indoor --

MR. BARTLEY: That's the capacity --

HEARING EXAMINER RIVERA: -- facility?

MR. BARTLEY: -- of the indoor facility.

HEARING EXAMINER RIVERA: Okay. That's where I -- I saw 178 somewhere --

MR. BARTLEY: Yeah.

HEARING EXAMINER RIVERA: -- so that's probably where that number came from, thank you.

And then the noise levels obviously -- and then the lighting, I guess, that's all combined under that live entertainment condition?

MR. MURRAY: Correct.

HEARING EXAMINER RIVERA: Kind of a catchall. Okay, thank you.

MR. MURRAY: As outlined in the 48-hour letter, we were in agreement with the August 21st Staff Report. We are requesting that the western property boundary abutting the COP area to include five-foot-wide Type A plantings with the six-foot opaque wall, and then maintain the northern buffer with the six-foot opaque wall along Hendry Creek.

And then, additionally, to the initial Staff Report -- from the August 21st Hearing Examiner Staff Report, that we maintain the hours of operation that were previously agreed upon.

To conclude, the Applicant is in agreement with the conditions as outlined in the 48-hour letter. Staff did recommend approval.

The project is consistent with the Lee Plan; it's consistent with the Land Development Code; it's compatible with the existing surrounding land use pattern; and further supports agri-tourism and agricultural uses.

HEARING EXAMINER RIVERA: I have one technical question before we get to Staff. I made a note at the first hearing -- I need to put my hands on it.

The 48-hour letter for the initial hearing, I believe you had submitted an updated site plan --

MR. MURRAY: Yes.

HEARING EXAMINER RIVERA: -- and had asked for that to be substituted. The Staff Report included two pages that were both in the site plan category. Did you want both pages to be updated?

MR. MURRAY: The -- I noticed that in the latest Staff Report, they did include the site plan from the April 14th -- dated April 14th, and that was the one that was --

HEARING EXAMINER RIVERA: Updated.

MR. MURRAY: -- brought for discussion on August 21st.

HEARING EXAMINER RIVERA: For the -- so you want to use the August 21st 48-hour letter as the current site plan?

MR. MURRAY: Correct, in that --

HEARING EXAMINER RIVERA: This page was also included. So are you intending both pages to be appended as the site plan?

MR. MURRAY: Yes, and -- and I'll note that page right there is the layout of the event center. It's not the entire site plan that includes -- this does not include the pole barn.

HEARING EXAMINER RIVERA: Okay, thank you. That's just a technical matter I want to be sure I take care of before we get to Staff, thank you.

MR. MURRAY: Thank you.

HEARING EXAMINER RIVERA: If Staff's ready?

MR. MUHAMMAD: Good afternoon, Madam Hearing Examiner. For the record, my name is Kam Muhammad. I am a Zoning planner with the Zoning section of Lee County's Development Community (sic).

This afternoon we are hearing Special Exception 2025-00001 for the East Fork Creek Farm, a COP request.

The Applicant is requesting a special exception to allow on premises consumption of alcoholic beverages subject to the following license: 13CT, 2COP, and 4COP, as I defined in the Staff Report as an event license specifically in conjunction with the agri-tourism activity, as proposed by the Applicant.

The property's information:

The property is located at 6109 Hendry Creek Drive, is approximately ten acres located in the Suburban Future Land Use category, and is currently zoned agricultural, AG-2.

The parcel's history:

The subject property is zoned AG-2, and is currently utilized for agricultural purposes, as evidenced by an existing agricultural exemption from the Lee County Property Appraiser.

These images depict the current future land use,

as well as the current zoning.

The zoning of the surrounding properties:

To the north of the subject property is agriculturally-zoned parcels.

To the south are additional agriculturally-zoned parcels.

To the east are agriculturally-zoned parcels.

Further east, abutting South Tamiami Trail, are commercially zoned parcels.

And to the west immediately are agricultural parcels, as well further west residential parcels.

This case is reviewed under the criteria of LDC Section 34-145 specific to special exception requests. LDC Section 34-145(c) establishes the review criteria, and I will go through the remainder of this presentation detailing just how this request meets these criteria.

Special exception review criteria letter "a", is this request consistent with the goals, objectives, policies, and intent of the Lee Plan. The analysis of the compliance with the Lee Plan will be discussed in the following slides in this presentation.

Agri-tourism explained as the -- as the Applicant has mentioned, this COP request is in conjunction with an agri-tourism activity. Per Land Development Code

Section 34-2, agri-tourism means any agriculturally-related activity on land classified as agricultural under Florida State Statue 193.461 that is consistent with, and accessory to, a bona fide farm and a ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training, and exhibition, or harvest-your-own activities and attractions.

The Land Development Code allows, under Ordinance 15-11, amended -- which amended Land Development Code Section 34-653 to allow agri-tourism uses within the AG-2, agriculturally-zoned district, and establishes supplemental regulation governing agri-tourism. These uses include passive and active recreational activities, educational activities and classes, demonstrations, events, and tours, produce stands, and sales of unprocessed and processed agricultural products, agriculture-related crafts, cottage food products (as defined by Florida state statute), food and beverage service, limited (as defined), and other activity determined to be substantially similar to the above-mentioned activities.

Lee Plan: The parcel is located within the

Suburban Future Land Use category, and consists -- that Suburban Future Land Use category consists primarily of predominantly residential areas that are either on the fringe of the Central Urban or Urban Community Future Land Use category, or in areas where it is appropriate to protect existing or emerging residential neighborhoods.

Lee Plan for water and sewer: Standard 4.1.1 and Standard 4.1.2 have been addressed, as the Applicant has provided a letter of availability from Lee County Utilities indicating infrastructure and capacity is available to serve the subject property. So fulfilling those standards -- all requirements of the standards of the Lee Plan and LDC will be met at the time of the development order, as stated by the Applicant.

Policy 5.1.5, residential land uses. This policy exists to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. If such uses are proposed in the form of a planned --

THE REPORTER: Okay, slow down, please, Kam.

MR. MUHAMMAD: If such uses are proposed in the form of a planned development or special exception, and generally applicable development regulations are deemed

to be inadequate, conditions will be attached to minimize or eliminate the potential impacts; or where no adequate conditions can be devised, the application will be denied altogether.

A special exception is being sought in this case, and any applicable conditions may be attached to minimize or eliminate any potential negative impacts to the surrounding community. The proposed use is permitted in the underlying AG-2 zoning district. The Land Development Code, Section 34-1264(a)(2)(a) requires a special exception to permit the sale or service of alcoholic beverages for consumption on premises, in conjunction with limited food and beverage accessory to an agri-tourism activity, when located within 500 feet of a dwelling unit under separate ownership.

The Applicant has provided a site plan depicting proposed COP areas, which are limited to the northern two acres of the site, approximately 1,100 feet away from Devonwood Estates to the west and proximate to Hendry Creek Drive and the US 41 commercial corridor, as indicated on the site plan. The property includes five-foot-wide buffers, in addition to opaque walls and landscaping where the property abuts residential lots.

Staff has included additional conditions related

to the hours of operation and noise considerations to ensure compliance with this policy.

HEARING EXAMINER RIVERA: So on that point, is it your position then -- I assume you still maintain that you want these conditions and that they enhance buffering and the relocation of the wall. So did you make a finding that 5.1.5 was not met without the conditions that you proposed --

MR. MUHAMMAD: Yes.

HEARING EXAMINER RIVERA: -- specifically?

MR. MUHAMMAD: Yes.

HEARING EXAMINER RIVERA: Okay. So when you're saying that they need it, you're saying they need it if they comply --

MR. MUHAMMAD: Exactly.

HEARING EXAMINER RIVERA: -- with these deviations that have been included?

MR. MUHAMMAD: Yes, ma'am.

HEARING EXAMINER RIVERA: Absent that, you would have a finding that they have not been consistent with --

MR. MUHAMMAD: Yes.

HEARING EXAMINER RIVERA: -- 5.1.5? Okay.

And what is the -- so I know you gave me the footage between this and Devonwood, which is to the

south; but that western property that's right along whatever that road is, the County-maintained road, do you know what the distance is to the nearest residence --

MR. MUHAMMAD: I do not.

HEARING EXAMINER RIVERA: -- overall from the -- okay. That's a question I can ask of the Applicant, as well, if they know. It's obviously close. Just doing the site visit, you've got the folks that are north of Hendry Creek Drive, and then you've got the folks that are to the west of, again, whatever that local road is. And --

MR. MUHAMMAD: Roberts Lane?

HEARING EXAMINER RIVERA: -- that's going to be closer to the two acres that we're talking about, because the Devonwood folks are separated --

MR. MUHAMMAD: By that agricultural --

HEARING EXAMINER RIVERA: Exactly, by like the last eight acres, essentially, of what they've got going on in the back. Okay.

And will you be talking more about the conditions later in the presentation?

MR. MUHAMMAD: A bit later, yes.

HEARING EXAMINER RIVERA: Okay. Then I will hold questions for then, thank you.

MR. MUHAMMAD: Policy 9.1, agricultural land uses. The subject property is an existing agricultural use on agriculturally-zoned property, with an active agricultural exemption from the Property Appraiser's Office. The property is not located in the agricultural overlay, but is in a future suburban area of the county.

Policy 9.2. The subject property is an existing agricultural use in an area comprised of existing residential uses. Agricultural uses along Hendry Creek Drive, and commercial uses along South Tamiami Trail to the east, emphasize the diverse land uses within the existing neighborhood.

Agricultural land uses continued:

Policy 9.2.1. The subject property is not proposing a rezoning to the agriculture zoning district. The property exists as agriculturally zoned in the Suburban Future Land Use category.

Special exception review criteria continues:

This criteria requires that any proposed special exception will protect, conserve, or preserve environmentally critical and sensitive areas and natural resources where applicable. The special exception site plan does not propose any impact to Hendry Creek or impact environmentally-sensitive areas

of the site.

Special exception review, criteria C:

Will be compatible with existing and planned uses in the surrounding area. The Applicant intends on continuing to maintain and operate the property's current use as an agricultural farm. The proposed special exception use will occur on a limited basis, and as conditioned will remain compatible with the surrounding land use patterns. Landscape buffers, as conditioned, will screen the views of the event space housing COP along the western and northern property line. This includes a six-foot-tall opaque pre-cast wall, as approved through the fence permit FNC2-2004-03232.

Buffers:

To the north, the existing use is a right-of-way, Hendry Creek Drive, the required buffer -- or as Staff recommends, a Type A buffer to ensure compatibility with the existing residential neighborhood.

South is also a right-of-way. There are no required buffers to the south.

West, the property abuts existing single-family residential uses zoned AG-2. The Applicant and Staff both recommend a Type A buffer to ensure compatibility.

To the east is an undeveloped AG-2 zoned parcel,

and there are no required buffers to the east.

HEARING EXAMINER RIVERA: Are they meeting the Type A buffer to the north?

MR. MUHAMMAD: That's part of the condition that's been --

HEARING EXAMINER RIVERA: Okay. So the fence permit that's referenced does -- it runs the entirety of the wall --

MR. MUHAMMAD: Yes, ma'am.

HEARING EXAMINER RIVERA: -- which was north and west. Okay, thank you.

MR. MUHAMMAD: Review criteria letter "D," will not be injurious to the neighborhood or detrimental to the public welfare. The Applicant is proposing limitations to the agri-tourism use so as to not impact the surrounding residential uses. This includes proper management of noise levels, lighting, hours of operation, and numbers of guests per event. Staff has proposed conditions of approval to ensure compatibility.

HEARING EXAMINER RIVERA: And on the issue of the numbers, was the 178 number evaluated by Staff and agreed to, and that condition just got eliminated for some reason?

MR. MUHAMMAD: There wasn't much review based on

the total number. It was more so the overall use that was looked at.

HEARING EXAMINER RIVERA: That last slide that you had included, just as they did, the number of guests, and so I'm curious where that -- because the finding is that it's compatible --

MR. MUHAMMAD: Right.

HEARING EXAMINER RIVERA: -- as conditioned, but there is no condition that caps the guest count. So I'm trying to get to whether that's a requirement, to continue to find compatibility.

MR. MUHAMMAD: So based on what's in the Land Development Code, that's something that's allowed to be limited. It was not limited specifically.

HEARING EXAMINER RIVERA: So Staff did not evaluate a particular guest count --

MR. MUHAMMAD: No, ma'am.

HEARING EXAMINER RIVERA: -- in its conditioning. Okay.

MR. MUHAMMAD: Special exception review criteria letter "E":

This request must be in compliance with zoning regulations pertaining to the use and other applicable regulations. The request allows the Applicant to promote the primary use of the property as an

aquaponic/hydroponic farming activity. The requested special exception is in compliance with zoning regulations pertaining to the uses and will occur on a limited basis.

HEARING EXAMINER RIVERA: To that point, as well, on similar cases that we've had, agri-tourism operations that have COP, there's typically a condition that just requires maintenance of the agricultural exemption. The Code already requires that under the ordinance that you cited that was codified into the LDC. But was a condition of that nature reviewed or suggested at any point?

MR. MUHAMMAD: It was not, no.

HEARING EXAMINER RIVERA: Okay.

MR. MUHAMMAD: So the current conditions, as proposed by Staff, the site plan -- development of the site must be substantially consistent with the site plan reviewed or revised April 14th, 2025, attached as attachment G to the Staff Report. COP is limited to the areas depicted on the site plan.

Special exception approval:

Special exception approval does not establish a right to obtain permits from State or Federal agencies. Further approval does not establish County liability if the Applicant does not obtain the requisite approvals

or fulfill obligations imposed by State or Federal agencies, or undertakes actions that result in violation of State or Federal laws.

Condition 3, COP license: Consumption on premises is limited to either of the following: 13CT, 2COP, or 4COP SFS licenses in conjunction with limited food and beverage services as an accessory to the agri-tourism activity. These -- any change in use for these license types will require separate approval in accordance with the LDC.

HEARING EXAMINER RIVERA: What's the significance of the SFS --

MR. MUHAMMAD: That specifies 49 percent to 51 percent food and beverage sales.

HEARING EXAMINER RIVERA: Is there a 4COP that does not have that SFS?

MR. MUHAMMAD: It's detailed in the Staff Report. I kind of like broke down all of the --

HEARING EXAMINER RIVERA: Right.

MR. MUHAMMAD: -- different requested licenses. I kind of just left it --

HEARING EXAMINER RIVERA: So Staff -- and I'm asking -- the conditions are what they're going to be held to. So if -- I know they were discussed, but the condition that you landed on was the 4COP SFS. So I'm

trying to determine if the 4COP in general is what they requested, if that was found to be not recommended or not compatible, and it's only if it's a 4COP SFS?

MR. MUHAMMAD: So during the conversation with the Applicant, I was informed that SFS was what was being sought.

HEARING EXAMINER RIVERA: Okay.

MR. MUHAMMAD: So I went based on what I was told.

HEARING EXAMINER RIVERA: Okay.

Did Applicant agree with that?

MR. MURRAY: Yes, that is correct. And the difference between the 4COP SFS and the 4COP Quota is primarily the Quota is more associated with package stores and --

HEARING EXAMINER RIVERA: A bar and cocktail lounge typically is where you see that, right?

MR. MURRAY: Correct.

HEARING EXAMINER RIVERA: It gets dicey here -- and I know I'm getting very specific, but because you guys are falling within an agri-tourism operation, as everybody I'm sure is well aware, a lot of uses that would not typically be permitted in these kinds of districts, like an AG district, are permitted because you fall under that umbrella, and the only foothold the local government really has in this context is off-site

impact. So that's what we're really trying to get to, and that's why I was saying a restaurant/bar/lounge clearly operates much differently than a catered event where you're having them, you know, once a month, twice a month, whatever that number might be.

So I'm asking my questions with that lens on of just what protections are we putting in place for the community; and once those are done, you're going to be able to operate with a lot of latitude based on how those statutes are phrased and what the local government can actually regulate. So I just want to be sure that Staff recommended what they recommended based on findings of compliance with an eye towards that, as well.

MR. MUHAMMAD: Yes, ma'am.

HEARING EXAMINER RIVERA: Thank you.

MR. MUHAMMAD: Condition 4, specific to the development order and permitting requirements. Prior to any sign-off of State alcoholic beverage licensing documents by Lee County, the Applicant must amend or pursue a minor change to the LDO that was approved to demonstrate compliance with the following conditions:

Calculation of the total impervious surfaces.

A five-foot-wide enhanced Type A buffer to include a six-foot-tall opaque wall, landscaped on the exterior

side of the wall with 4 trees planted per 100 linear feet, must be depicted along the west -- western property boundary abutting the COP area and along the northern property line abutting Hendry Creek Drive.

Condition b -- or 4b, fence permit FNC2024-03232 must be revised to relocate the six-foot wall off the western and northern property lines to allow for the planting of the required Type A buffer trees along the western boundary abutting the COP area and the northern property line along Hendry Creek Drive.

HEARING EXAMINER RIVERA: Okay. So can you detail for me again, why is what they've done not consistent -- or why would what they have done not be suitable under 5.1.5 for a finding there?

MR. MUHAMMAD: So essentially what's been done to the western property line needs to be mirrored along the northern property line, and that conclusion was -- we've arrived at that conclusion based on the types of uses. So the similar uses along the western property line are what -- are what are occurring across Hendry Creek to the north.

HEARING EXAMINER RIVERA: Okay. So you're not -- that was something I was not understanding from the documents. So you're not saying that they need to relocate the entirety of the western boundary. The

western you're okay with.

MR. MUHAMMAD: Right, I just need those specific --

HEARING EXAMINER RIVERA: Only the -- okay.

MR. MUHAMMAD: -- type of plantings to be there.

HEARING EXAMINER RIVERA: And the wall -- the issue is with the wall, on the northern, is that you're saying there's not sufficient space for them to meet the Type A planting material --

MR. MUHAMMAD: Yes.

HEARING EXAMINER RIVERA: -- requirements that they have and the distance; so they would need to set it back further to provide that --

MR. MUHAMMAD: Exactly that. And that's where the modifications or any types of revisions that may be necessary are mentioned, because those permits have already been issued and site approval most likely has already occurred; so to have that revision completed would then allow for those plantings to be placed.

HEARING EXAMINER RIVERA: Is there any way for them to meet the spirit of the Code without relocating the wall? Because the issue they're going to have is the wall is already there on the western boundary; and if that's sufficient, in order to move the northern one, that's going to mess up -- I'm not sure exact --

you know, the geometry, essentially, of where that connection is occurring. So I don't -- it's not a simple like just pick up and move it kind of --

MR. MUHAMMAD: Right --

HEARING EXAMINER RIVERA: -- direction to them.

MR. MUHAMMAD: -- it definitely isn't.

HEARING EXAMINER RIVERA: So we make allowances a lot of times when the spirit of the Code can be met, even if a strict application of the Code can't. So will there be enhanced screening that they could do, or more plantings that they could do of lesser nature that would meet the same protections? Because it is slightly different because you do have Hendry Creek Drive, which is a much larger and more traveled road than what you've got along the western side, right?

MR. MUHAMMAD: Right.

HEARING EXAMINER RIVERA: So was that considered at all, or it was just a strict application of the Code?

MR. MUHAMMAD: It was pretty much a letter of the law idea. There was not much review for any potential of other ways for this to be addressed.

HEARING EXAMINER RIVERA: Okay.

MR. MUHAMMAD: Would you like to speak?

MR. LANGE: I mean, I think the Code says that the

minimum planting area has to be five feet, and I don't -- I'm not sure what the planting distance is in that area; so I don't know what that would create for the Applicant or for the project.

HEARING EXAMINER RIVERA: Okay. And we may just -- depending on where this goes -- I need to hear from the public and get back to this, as well; but just in terms of where my mind is at, if we can meet that with some other agreed upon manner -- maybe that's something that we can leave the record open, for you to have those discussions. And if at the end of the day the answer is no, you can notify me of that, and I will make the decision based on what I have before me. But if we can provide additional protections to the neighbors, I would like to do that, also recognizing that what's there is there. And that wall along the north was there when I did the site visit back in August.

MR. LANGE: Okay.

HEARING EXAMINER RIVERA: So the addition of the western wall is new, but that was already there. So if that permit was issued -- I do see where there is some -- hardship might not be the right word, but some concerns that they might have that it's not a simple task of just, you know, moving something that might be

a plant or a tree. That's a little more mobile than what we've got with the wall.

Okay. You can continue, thank you.

MR. MUHAMMAD: Condition 5, hours of operation. Events are limited to Sunday through Thursday 12 p.m. to 9 p.m., and Friday 12 p.m. through 10 p.m. Staff has recommended this condition to maintain the harmony of the existing residential neighborhood.

Condition 6, live entertainment. Music and live entertainment are subject to the Lee County Noise Ordinance. Amplified music is prohibited in the open-air pole barn, and is limited to only within the fully enclosed building labeled "Event Space" on the special exception site plan.

All windows must be shut during events with amplified noise. Speakers within the enclosed event building must be oriented to the north and east.

HEARING EXAMINER RIVERA: So going back to number 5, what was the reasoning to change the hours of operation between the two hearing dates?

MR. MUHAMMAD: Essentially just to maintain as much harmony -- or just to protect the overall existing neighborhood. That was a discussion I had with a supervisor, and that ultimately was the recommendation that came out of that conversation.

HEARING EXAMINER RIVERA: So the additional hour -- because it sounds like -- and I did not review the entirety of the Staff Report from the first case since it was revised in its entirety for this case. I didn't want to get the two muddled and be current with what we're asking. But the testimony has been that that was a change from the first zoning when Staff agreed to the 10 p.m. for the majority of the days that we're talking about. So was it something in the request that changed it to 9 p.m., or it was simply that you had more time to think about it? I'm --

MR. MUHAMMAD: I think a longer time frame to review. We felt as if that would be something that would be able to be explained to be less injurious to the overall neighborhood.

HEARING EXAMINER RIVERA: Okay, thank you.

MR. MUHAMMAD: And that is the conclusion of my presentation.

HEARING EXAMINER RIVERA: Okay, thank you.

Did Applicant have any questions of the Staff?

MR. ARBIOS: I do have one question. I just want some clarification on that last point.

Am I to understand that the County -- the basis for the change in the hours of operation is based on having additional time to review the application?

MR. MUHAMMAD: Not necessarily -- not to say that's the sole reason, but the overall idea was making sure that this new request, including the additional COP request for licensing, would maintain a very small impact on the overall neighborhood. So we felt as if shorting an hour and then maintaining those hours for the operation is in our best interest.

MR. ARBIOS: Is it the County's position that the proposed use is a restaurant use?

MR. MUHAMMAD: By the information provided from the Applicant, we reviewed it as 4COP SFS, which would equate to similar restaurant uses that also has that specific license.

MR. ARBIOS: Is that stated in your Staff Report?

MR. MUHAMMAD: It's defined by the license types. The 4COP Quota is included, as well as 4COP SFS.

MR. ARBIOS: And why was that -- strike that.

Is it the County's position that the proposed use and its interpretation of it being a possible restaurant use, is that the basis for imposing the new limitations on hours of operation?

MR. MUHAMMAD: By requesting a potential 4COP SFS license, we have to review it based on the license. So whatever that license would allow you to do is what we felt the conditions would address.

MR. ARBIOS: Are you aware that the event center is not designed to be operated as a restaurant?

MR. MUHAMMAD: Based on the floor plan, I can tell that; but based on what's been requested and the license that you receive, you can -- once you -- like once you acquire that license, then you're able to do whatever the functions of that license would allow you to do. So by us having these conditions, we're able to set limitations as to what is actually done.

MR. ARBIOS: Do you know who on Staff proposed this new condition?

MR. MUHAMMAD: It was a collaboration between myself and the zoning manager.

HEARING EXAMINER RIVERA: Do you just happen to know -- it's a question. Did you look at any of the other COPs for special exceptions on the hours of operation just for consistency to see -- I would guess they impose them, typically we do on a COP, just to see if there was any consistency among those and what the hours were?

MR. MUHAMMAD: That wasn't a part of the review process.

HEARING EXAMINER RIVERA: Okay. Okay, thank you.

MR. MUHAMMAD: I felt this was a little bit more particular to what was being requested.

HEARING EXAMINER RIVERA: Thank you.

MR. MUHAMMAD: Yes, ma'am.

HEARING EXAMINER RIVERA: Okay. So with that I will open up the public comment period, and I'll call the order -- excuse me, the cards in the order that I have them.

So the first one is for Graham Belger. Good afternoon, sir.

MR. BELGER: Good afternoon. How are you?

My name is Graham Belger. I live basically right across the street from this on Hendry Creek Drive, 6990 Hendry Creek Drive.

The letter I'm reading here is from one of our other neighbors that lives down the road. He couldn't make it here today. He was at the previous meeting. So I'm just going to read this for him. His name is David Ciccarello, and I'm reading this in his -- you know, as if he was reading it.

My name is David Ciccarello, and I live in the same neighborhood where the property which is the subject of the hearing is located. My address is 15499 Thory Court, Fort Myers, FL 33908. Unfortunately, I cannot attend the hearing scheduled for October 10th as I am out of town. I did attend the previously scheduled hearing and submitted a request to speak at

that time. I am requesting that Graham Belger be permitted to read this statement in my absence, and if possible, that this statement be admitted into evidence for the Hearing Examiner's consideration.

I am an attorney licensed to practice law in the state of Florida, and have been practicing in Lee County, Florida, since 2009. In fact, I am well-acquainted with counsel for the Applicant, Mr. Whitt. Prior to this hearing, I received a voicemail message from Mr. Whitt asking me if I would be attending the hearing on behalf of my client, who also lives in the neighborhood. To avoid any confusion, I am not acting as legal counsel to any of the residents of the neighborhood other than myself, my wife, and my two young children.

In preparation for this hearing, I researched the law applicable to a request for a special exception such as the one under consideration today. Under Florida's Land Development Code, it is the Applicant seeking the special exception who bears the burden of proof to demonstrate the special exception requested meets the specific requirements of the Land Development Code. This includes, in pertinent part, the following:

1. The Applicant must show that the special exception is consistent with the goals, objectives,

policies, and intent of the Lee Plan;

2. The Applicant must show that the special exception will be compatible with existing and planned uses; and, finally:

3. The variance cannot be detrimental to the public welfare or the character of the neighborhood.

In addition, Policy 5.1.5 of the Lee Plan is as follows: "To protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment." This is the law that the Hearing Examiner must follow in making her decision today.

Make no mistake, the subject property is located well within the single-family neighborhood in which I live. In fact, there are single-family homes located contiguously on all four sides of this property: Three on the east side in the single-family neighborhood of Devonwood; three on the south side, also in the Devonwood neighborhood; seven on the west side, five of which are in Devonwood, and two of which are in my single-family neighborhood of Hendry Creek, and at least two on the north side of the property in my neighborhood.

We drive by this property every day to take my

kids to school. We walk our dogs past this property, and my kids ride their bikes by this property.

At the end of our neighborhood where Hendry Creek Drive ends at US 41, there are properties that are used for commercial purposes. This is not one of those properties. Those properties set directly on US 41, and the people that access those properties do not go past those properties into the single-family neighborhood behind them. Those properties do not sell alcohol at all.

This property is located in a residential neighborhood well beyond those properties. In fact, there are at least four single-family residences between those properties -- this property and those properties which are located directly on US 41.

The subject property is currently zoned for agricultural use and, consistent with its zoning classification, is currently being operated as a farm. The agricultural zoning designation does not permit the Applicants to sell alcohol at their property under a 4COP license and for good, sound policy reasons.

The Applicants have not shown and cannot show that the special exception is consistent with the goals, objectives, policies, and intent of the Lee Plan, specifically Policy 5.1.5 of the Lee Plan, which is to

protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment.

The Applicants have failed to present evidence that this special exception would have a positive impact or even a neutral impact on the surrounding neighborhood. The fact is the special exception can only have a negative impact, a negative impact to the safety of the neighborhood, the traffic within the neighborhood, and the noise within the neighborhood.

The Applicants have attempted to argue that they would incorporate measures or conditions to minimize these impacts; however, their conditions do not eliminate these increased burdens on the neighborhood. One day a week is still one more day a week that my kids cannot safely ride their bikes on the streets of my neighborhood. For this reason alone, the requested special exception should be denied.

The Applicants have not shown and cannot show that the special exception will be compatible with existing and planned uses. On this point, their application simply states the proposed special exception will occur on a limited basis as -- and, as conditioned, will remain compatible with the surrounding land use

pattern. Landscape buffers will screen the views of the event space housing COP along and (sic) western property line. This includes a six-foot-tall opaque pre-cast wall as approved through FNC2024-03232.

Simply stating that the special exception use will remain compatible with the surrounding land use pattern does not make it so. The Applicants do not offer any evidence that the special exception is compatible with the surrounding use pattern, that of a single-family residential neighborhood. That is because the sale of alcohol is inherently not compatible within a single-family residential neighborhood, fence or no fence. Therefore, the Applicants have failed to meet their burden of proof on this point, as well.

Finally, to say that the special exception will be detrimental to the character of the neighborhood would be an understatement. Our neighborhood does not currently have an establishment located within its boundaries that is selling or serving alcohol to the public. In the event one is permitted to do so, it will most definitely degrade the character of our neighborhood. It's simply not possible to argue otherwise.

Thank you for your time and attention. Sincerely, David Ciccarello.

And then just on my behalf, you know, like I said, we live right across the street. We have two small kids; and, you know, it is going to affect us. You know, it's right there. Whether -- you know, I love the fact that -- you know, the farming and all that kind of stuff is really cool and that's good, but the nighttime thing and serving alcohol, and especially weeknights till 10:00, I mean, it's just -- for a residential neighborhood, it's a little over the top, in my opinion.

And I guess that's all I have.

HEARING EXAMINER RIVERA: Thank you. Thank you for coming today.

MR. BELGER: Here's a copy of this.

HEARING EXAMINER RIVERA: Thank you.

(Ciccarello Exhibit 1 submitted.)

HEARING EXAMINER RIVERA: The next card that I have is for Meagan Belger. Good afternoon.

MS. BELGER: Good afternoon. My name is Meagan Belger, and I live at 6990 Hendry Creek Drive. I am northwest of the property, and we are less than 50 feet from their property line.

I'm here today as a concerned resident and parent to express my strong opposition to granting this request. Our neighborhood is a quiet family-oriented

community where children play outside, and families walk and bike daily. Allowing alcohol sales and consumption this close to our homes would create serious safety and quality of life concerns. We worry deeply about intoxicated individuals driving through or leaving onto our residential street. Hendry Creek Drive is not designed to handle that kind of traffic or activity, and it would introduce unnecessary risk to our families, especially our two small children.

We are also very concerned about the noise that would come from gatherings or events held on that property if alcohol is permitted. Even moderate outdoor activity -- music, talking, and vehicles coming and going -- will carry directly into our homes and yards. At only 50 feet away, there is simply no effective buffer for sound. What might be an enjoyable night out for patrons could become a nightly disturbance for my family.

Our community values peace, safety, and family life. A liquor license this close to residential properties would threaten all three.

We are not against local business or responsible development. We simply believe this type of establishment is not appropriate for a location immediately adjacent to homes.

There are many other commercial zones in Fort Myers that could accommodate this type of business without impacting our residential neighborhood.

For the safety of our children, the protection of our property values, and the preservation of the quiet family environment that define Hendry Creek Drive, we respectfully urge you to deny this liquor license request. Thank you.

HEARING EXAMINER RIVERA: Thank you for coming today.

The next card I have is for Linda Parks. Good afternoon.

MS. PARKS: Good afternoon. Linda Parks, 7010 Hendry Creek Drive. I'm their next-door neighbor.

I directly see the property in question. I believe it's a misuse of agricultural classification due to the fact that there is not any agriculture going on at the property. There's also insufficient event controls. The guest capacity, parking is totally inadequate. There are not that many spaces, and there's no other place to park.

The noise is not going to be held back by a wall. It's like a tissue paper, useless.

There's no security -- there's a lack of security.

There's a substantial degradation to the

environment. The creek is right next door to the pole barn.

There is substantial off-site impact. There could be underaged drinking, public intoxication, disorderly conduct, driving under the influence, which poses a threat to the neighborhood.

This is incompatible with the surrounding neighborhood. There's an increase of traffic. There's an increase of noise that substantially interferes with the use and enjoyment of my land.

And these alcohol-fueled events are the primary use of the property, which supersedes any legitimate agricultural classification. There's nothing going on there agricultural.

This is a hardship brought on by the people who purposely designed and built that building for alcohol-fueled events knowing they would have to get some kind of a dispensation. Thank you.

HEARING EXAMINER RIVERA: Thank you. Thank you for coming today.

I believe all the other cards I had were from the last hearing. Richard McConville was the only other card.

Okay. Did the Applicant need more time before we go back to rebuttal or closing comments?

MR. MURRAY: Ten minutes.

HEARING EXAMINER RIVERA: Ten minutes? Okay. We'll take a ten-minute break and reconvene at 2:25.

(Recess from 2:15 p.m. to 2:29 p.m.)

HEARING EXAMINER RIVERA: Okay. We are going on the record, and we can begin with the Applicant's rebuttal whenever you're ready.

MR. MURRAY: Again, for the record, Patrick Murray, RVi Planning.

Not necessarily a rebuttal to any public comments. I do want to go on the record though and clarify that the -- when we discussed parking, and we have the 83 parking spaces striped, and then the remaining four, there is plenty of space to accommodate that. It is a ten-acre site. And I also want to note that the two properties across the street are also owned by Mr. and Mrs. Bartley.

HEARING EXAMINER RIVERA: Can you show me that on the map?

MR. MURRAY: Absolutely. And this kind of notes -- so there's the event center, pole barn, and then these two properties here, which brings me to the 5.1.1 consistency policy, as noted in the Staff Report, that the properties along Hendry Creek Drive frontage to include an additional buffer for those properties

across Hendry Creek Drive. They are the actual property owners across Hendry Creek Drive themselves.

With that, the Applicant is requesting additional time to leave the record open for approximately a week to consider the -- or submit the four new conditions, which would be Type A plantings along the northern boundary similar -- or to mimic the western boundary, so the 4 trees per 100 feet.

And then also to cap the attendees at 178 attendees.

And then also maintain an agricultural exemption.

And then prohibit the restaurants uses, specifically Group I through IV.

HEARING EXAMINER RIVERA: You covered most of the notes that I had on here. The only other condition that I would like to see, that we've done on other COPs for special exceptions of this nature, would be exactly what you said at the outset, which is that any overflow parking that's not accommodated would need to be accommodated on-site. It sounds like you've got the capacity to do that, but just to have a condition that reinforces that.

And I believe otherwise you addressed the other notes I had, thank you.

MR. MURRAY: And regarding the Type A buffer and

Type A planting, is that Land Development Code Section 10-421(a)(2) requires one-half of the required planting buffer distance. So our intent is to meet that -- that requirement and include those Type A plantings.

HEARING EXAMINER RIVERA: So you would do the plantings within a truncated width area? What is the actual, I guess, deviation, for lack of a better word, that would need to be accommodated to provide the buffer that Staff is requesting?

MR. MURRAY: So right now between the -- and this is specifically on the western side, back of curb to the property line is five feet, and between there includes the wall and the tree plantings themselves. So we have two and a half feet is what we have, and five feet is the requirement.

HEARING EXAMINER RIVERA: And they said they believe that you met that on the western side, but on the northern side seems to be where the rub is. So what is provided on the north? You have the wall but no plantings?

MR. MURRAY: Correct, and our Applicant is open to including that as a condition, to add those plantings.

HEARING EXAMINER RIVERA: Could you accommodate the full plantings that are required under --

MR. MURRAY: I believe we are restricted on space

between the wall -- and that may require the relocation of the wall itself.

HEARING EXAMINER RIVERA: So what is the -- again, it's just -- it's confusing, right? So -- because in your 48-hour letter you took great issue and objected to the fact that that wasn't a condition that was there before, which I understand that you just don't like that it's new, but is there a way to accommodate it -- or you physically cannot accommodate it on the site, was my understanding.

MR. MURRAY: Physically we cannot accommodate it as it stands in 10 -- Section 10-421(a)(2).

HEARING EXAMINER RIVERA: Because you don't have sufficient width.

MR. MURRAY: Correct, but we are open to meeting the intent and adding that additional condition to meet the Type A plantings.

HEARING EXAMINER RIVERA: Okay. So you would plant within a truncated width area --

MR. MURRAY: Yes.

HEARING EXAMINER RIVERA: -- but still meet the Type A. Okay, thank you for that clarification.

MR. MURRAY: And, again, just allow us a week to work with Staff on the conditions themselves.

HEARING EXAMINER RIVERA: Thank you. Is there

anything further for rebuttal from the Applicant?

MR. ARBIOS: No, just to reiterate we want to have the limitation on the hours of operation to be what was proposed previously in part in exchange for those additional conditions.

HEARING EXAMINER RIVERA: And Staff?

MR. MUHAMMAD: Again, for the record, Kam Muhammad, zoning planner with Lee County CDD.

The first point that I would like to address would be the max occupants. Within the zoning regulation, there is actually no way to enforce a maximum occupancy. Building permits and other building aspects do list the maximum occupants, but from my standpoint in Zoning, I don't have a way to enforce the maximum occupants so --

HEARING EXAMINER RIVERA: Is the 83 spaces that they provided consistent with Chapter 34 parking requirements? They put testimony on the record --

MR. MUHAMMAD: Right.

HEARING EXAMINER RIVERA: -- but that wasn't in the record so I wanted to know --

MR. MUHAMMAD: Yes. From -- from my calculation, yes. Based on the amount of square footage that's going to be used for COP areas between the two buildings, or the pole barn --

THE REPORTER: Between the what?

MR. MUHAMMAD: Between the pole barn and the event center, the amount of square footage, that calculation does derive 83. And based on what they're providing, I think there's an additional four spots that may be provided.

HEARING EXAMINER RIVERA: Okay.

MR. MUHAMMAD: Second, I would like to speak on the hours of operation. And, specifically, I conducted some research regarding previous consumption on premises approvals in conjunction with limited food and beverage, and I have a record of a specific special exception, Southern Fresh Farms --

HEARING EXAMINER RIVERA: Okay.

MR. MUHAMMAD: -- I'd like to --

(Staff exhibit submitted.)

HEARING EXAMINER RIVERA: Thank you. And what were the hours imposed in this case?

MR. ARBIOS: Is there a copy for me?

MR. MUHAMMAD: Yeah, give me just a second.

MR. ARBOIS: Sure.

MR. MUHAMMAD: So COP hours of operation are detailed here as Thursday through Saturday COP, 12 p.m. until 9 p.m., and Sunday COP, 12 p.m. until 6 p.m.

So this case in particular, which is most similar

to what we're looking at currently, actually provides more restrictive hours of operation than what is being currently proposed in the conditions for this case.

There are four other cases that have special exceptions for COP that also have varying times for consumption on premises, and essentially they're all quite varying times, but the majority of those cases are a lot more restrictive than what's being proposed today.

The Applicant did mention that they are in favor of a condition that states that they will not be performing as a restaurant, Group I through IV. I would like to share the definition of the licensing and illustrate the difference between 4COP SFS, as well as 4COP Quota.

4COP SFS permits beer, wine, and liquor to be sold by the drink for consumption on premises, or in a sealed container meeting the requirements of State Statute 561.22(a)(4) for consumption off premises. 4COP SFS license holder must have 2,000 square feet of service area, be equipped to serve meals to 120 persons at one time, have at least 120 physical seats available for patrons to use during operating hours, holds itself out as a restaurant, and derives at least 51 percent of gross food and beverage revenue from the sale of food

and nonalcoholic beverages; may not operate as a package store, and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. License holders may not operate as a package store and may not sell intoxicating beverages after the hours of serving or consumption of food has elapsed. License may not be moved to a new location.

4COP Quota, defined as -- or allows for the sale of beer, wine, and liquor by the drink or in sealed containers for consumption on or off the premises where sold. A 4COP Quota license holder must maintain the licensed premises in an active manner, in which the licensed premises are open for business to the public for the bona fide retail sale of authorized alcoholic beverages during regular and reasonable business hours, for the minimum hours per day and days per year as specified in the Statute 561.29 (h) or (i), as applicable to the license.

So based on these licenses, there must be some sort of decision made by the Applicant as to which license is sought, and based on their recommendation of a condition to -- to restrict them from any possibility of acting as if they were a restaurant, a 4COP Quota license seems to be the only fitting license.

HEARING EXAMINER RIVERA: Wait, walk me through

what you just said. Because it sounds like -- I thought what you were trying to put into the record is that a 4COP SFS has that nomenclature that holds itself out as a restaurant. So I --

MR. MUHAMMAD: Right.

HEARING EXAMINER RIVERA: -- thought you were saying that it would be incongruent to approve them for a 4COP, while at the same time conditioning them that they cannot be a restaurant.

MR. MUHAMMAD: Right.

HEARING EXAMINER RIVERA: Where does -- how does that relate to the Quota?

MR. MUHAMMAD: So the Quota doesn't specify anything regarding the amount of sales for what would be required, nonalcoholic beverage sales, or the revenue from such.

HEARING EXAMINER RIVERA: Okay. So you would still approve them for a 4COP, but you would remove the SFS --

MR. MUHAMMAD: Exactly.

HEARING EXAMINER RIVERA: -- rider, essentially. Okay, thank you.

MR. MUHAMMAD: And that is all Staff has for rebuttal.

HEARING EXAMINER RIVERA: What is the -- can you

explain for me maybe the nuance of how all these things interrelate? You quoted Ordinance -- I think it's 15-11 -- I'm not finding it in front of me, although I certainly have it -- because there's the identified use as food and beverage service limited, I believe. So is that considered -- is that where you're getting the foothold for the restaurant --

MR. MUHAMMAD: Yes, ma'am.

HEARING EXAMINER RIVERA: -- kind of use? So they would still fall within that, in your professional opinion?

MR. MUHAMMAD: So that ordinance allows for agri-tourism to hold that specific type of use or -- in conjunction with agri-tourism.

HEARING EXAMINER RIVERA: Correct, okay, thank you. I just wanted to be sure I understood that.

Was there any -- I'm sorry, Kam, was there anything that you wanted to put on the record with respect to the plantings on that northern boundary?

MR. MUHAMMAD: I would -- I would have to defer to an environmental planner.

HEARING EXAMINER RIVERA: Okay, thank you.

MS. WORKMAN: I would like to put something into the record because I've been watching the hearing. My name is Beth Workman. I'm a principal planner in the

Zoning section.

The Applicant read a section of the Code, 10-421(a)(2), into the record but did not complete that Code section. The end of that sentence says that no buffer must be less than five feet. So if what we're driving at is a buffer that's less than five feet, then we are not a Type A buffer. We are going to be some other type of enhanced buffer to go with this existing wall to recognize compatibility. So that would have to be worked on.

I just want to make that clear because that Code is specifically -- it says that you can overlap, but you can't have a buffer that's less than five feet. So if we're calling out a buffer that is two feet to put these plants in, that doesn't meet that Code section.

HEARING EXAMINER RIVERA: Okay.

MS. WORKMAN: So we could call out a two-foot plantable area as a two-foot plantable area. It's not going to kill the project, but we've just got to call it -- call a spade a spade to meet that Code section, because they just kind of read the beginning and left off the back end. That's all I wanted to add into the record.

HEARING EXAMINER RIVERA: Okay. So there would still be some -- some room, I guess --

MS. WORKMAN: There's some wiggle room. I don't know if it would be trees or shrubs, but that's something that they'll have to decide on with what we bring -- I think the record is going to be left open to work on that, if I heard correctly.

HEARING EXAMINER RIVERA: Yes --

MS. WORKMAN: Okay.

HEARING EXAMINER RIVERA: -- with an eye towards attenuation. I mean, really, the whole point, right, is the visual screening aspect. You accomplish that to some extent with the wall, but it's really the noise attenuation concern that the neighbors have that we're trying to protect as an off-site impact under the Florida Statutes. This will get to that.

So just as you're working through this, whatever plantings those may be, I would like to see something jointly worked out. If you can agree on what it is, present it to me as a proposed condition; and if you can't agree, if there's alternatives that you're each willing to get to, I would like to see that, as well. Because it is final with me, it's not going to the Board, so this is the -- the shot that we have to try to protect everybody as best we can. Thank you.

MS. WORKMAN: Yes, thank you. That's why I wanted to put it on the record --

HEARING EXAMINER RIVERA: Thank you.

MS. WORKMAN: -- because it does stop here.

HEARING EXAMINER RIVERA: Okay, I appreciate that.

Was there anything else that Staff had to put on the record?

MR. MUHAMMAD: No, ma'am.

HEARING EXAMINER RIVERA: Okay, so then we will leave the record open. I'm going to provide two weeks. If you don't need it, that's great. You can always present it sooner, but you may have more work ahead of you than what it -- you might think so I just want to give time for that. That would be until end of business on October 24th; and, again, the laundry list essentially of the conditions that were identified and what you just said; and, as well, providing for all of the on-site parking for any of the events, thank you.

Thank you, everyone, for coming. For those that spoke, you'll receive a copy of the decision once it's released, and I appreciate everyone coming today. Thank you.

(Proceedings concluded at 2:45 p.m.)

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 18 through 90, is a true and correct record of my stenographic notes.

Dated this 21st day of October, 2025.

Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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