

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
May 26, 2022

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER ANDREW DICKMAN

ALSO PRESENT:

Michael Bosi, Planning and Zoning Manager
Raymond V. Bellows, Zoning Manager
Eric Ortman, Principal Planner
Andrew Youngblood, Operations Analyst

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everyone. Welcome to the May 26th, 2022, Hearing Examiner meeting. We have an agenda. I'm going to get started with the Pledge of Allegiance first.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Let me just make a few announcements before we get started. Good morning. As I indicated, this is the Hearing Examiner meeting. My name is Andrew Dickman, and I'm the appointed Hearing Examiner to hear today's petition. I'm an attorney and have been practicing law in good standing with the Florida Bar for over 20 years. I'm very familiar with the Land Development Code, the County, as well as the applicable ordinances in the administrative codes. I'm not an employee of the County but a contract attorney appointed to this position and granted authority pursuant to Division 3 of the Collier County Code of Ordinances. My role is to fairly and objectively review all testimony, evidence, arguments presented here today. After today, I cannot collect any additional information. I always strive to be unbiased and impartial. I don't consult with either staff or applicants outside of these proceedings in an ex parte manner. I see everything that has been published in the agenda that the public sees. I'm here strictly as an impartial decision maker.

Before we begin, I would like to advise you of certain matters related to today's hearing and proceedings. Today's matters are to be heard in the order that they appear on the agenda. I believe we only have one thing on the agenda today, one item, one petition. Today's matter is to be heard in an effort to hear all -- basically to hear -- in order to hear the agenda, every effort will be made to hear all persons wishing to offer relevant evidence, testimony, comments concerning specific petitions. The County will present their recommendations first. Then the applicant or the applicant's agents will present their petition. If necessary, we'll reserve some time for rebuttal. I will ask some questions during the presentation. And then we will open it up to public for questions.

The formal Rules of Evidence do not apply, but I will do my utmost to ensure that fundamental rules of fairness are afforded to all parties. I have heard -- after I've heard all evidence and been able to ask all necessary questions, I have up to 30 days to render a decision. The decision will be reduced to writing. You will be provided a copy by electronic mail. Please make sure that we have the right e-mail addresses.

If you wish to speak today, you must be sworn in and speak under oath. In the interest of time, I ask that you keep your comments concise, relevant to the proceedings. Additionally, I ask that if anyone has any cell phones, electronics to silence them at this time or if you have -- want to have conversation, go out in the hallway. And with that, if anyone is going to give any testimony today, Madam Court Reporter, will you administer the oath.

(The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER DICKMAN: So we have 3A. What do we have today?

MR. ORTMAN: Good morning. For the record, I'm Eric Ortman, principal planner with the zoning division. This is petition 20220000485, a request for a comparable use determination that a food pantry is comparable, compatible, and consistent with the list of permitted uses in Section 5.3 of the U.S. 41 Wiggins Pass Road Planned Unit Development, Ordinance 97-46, as amended. The proposed use will occupy 13510 Tamiami Trail North, Unit 2, which is a 1,650 square foot commercial bay located within an existing strip mall and part of the U.S. 41 Wiggins Pass Road PUD. The PUD is at the southeast quadrant the intersection of Tamiami Trail North and Wiggins Pass Road in Section 15, Township 48 South, Range 25 East, Collier County, Florida.

The applicant has complied with all hearing notices by our operations staff. The advertisement and mailers went out on May 6, 2021 [sic], per Chapter 3L of the administrative code. No signs were required to be posted at the property. The project complies with the Growth Management Plan and the Collier County Land Development Code. Therefore, staff recommends approval of this petition with two conditions which I can either go into or I'm sure you have read in the staff report.

HEARING EXAMINER DICKMAN: I have read them, so why don't we -- why don't we just go ahead and move onto the applicant or the applicant's representative. And if we need to address those, we will. Thank you very much.

MR. VANASSE: For the record, Patrick Vanasse, representative for the applicant. We are here today for a comparable use determination for Helping Hands food pantry. I've got a very brief presentation. Staff did a great job with their report and their analysis, and we concur with their recommendation for approval.

I just want to forward to the third slide, I believe. The next one, please. Next one. Okay. I guess the only point that I do want to make and it's been identified in the staff report is that the request is for a food pantry. And I just really want to emphasize that this is not a soup kitchen. It's not -- it doesn't provide food preparation on site, no housing, no counseling. It's not a homeless shelter of any kind. It's simply a food pantry. And with regards to the intensity of the use when compared to many other uses with the -- within the PUD, the use is less intense than many of those. Some of those that I've listed there are allowed through the PUD and some of them are existing. So we've got the right for auto dealers, gas stations, automotive repair, drug stores. There's a Walgreens right on the corner, which is a high traffic type of use, eating and drinking places, food stores like a grocery store, hotels and motels. So I think that paints the picture. We are a lot less intense than those uses. And through our application, we've addressed all the evaluation criteria. Staff goes through each of those points in their report. I think that demonstrates that we are comparable/compatible with the other uses within the PUD, allowed uses within the PUD and surrounding uses.

And with that said, I just want to reiterate that we support staff's findings, analysis, and conclusion and recommendation for approval and that we support the recommended conditions. So with that said, if you have any questions, I'd be happy to answer those.

HEARING EXAMINER DICKMAN: I do. Would you just give me, in your own words, a little narrative about the business practice and how the operation, the mission, things like that.

MR. VANASSE: So the applicant, our client, is Abigail Bergquist. It started really -- it was her baby, but she has her husband and some other folks involved in setting up this nonprofit. Her intent is to help families that are need. And she runs the food pantry mostly by herself, but she has one or two employees and volunteers that help. Collects food during the week. And then on Fridays is the pickup day -- or is it Saturday morning? Let me go back and check my notes here. So she's got one day where families come over and pick up the food. Usually most of it is boxed and ready to go. They do have some shelving, and they have extra items there where people can select their preferences. And most people that go there are usually individuals or families that go in there for about five, ten minutes, pick up their food, and then they're on their way.

HEARING EXAMINER DICKMAN: So unlike -- I guess unlike a for-profit retail food store where they get deliveries, commercial deliveries in bulk, and they stock their shelves, your client gets, for lack of a better word, the product from donations; right?

MR. VANASSE: Donations, and some of it is from just people like you and me that want to donate to the food pantry. And sometimes it's from businesses where they have overstock or they've made a conscious decision to try to help and donate some food.

HEARING EXAMINER DICKMAN: And that's going to be brought to the premises how, like in the regular on-site parking spots or delivery area?

MR. VANASSE: They have a commercial delivery in the back. They have an entrance. Most of the deliveries occur in the back. But if individuals like you and me show up and we've got a box of canned food, we can park up front, just go in and deliver that and be on our way.

HEARING EXAMINER DICKMAN: And then as far as -- and then the -- and, you know, this is a great service to the community, obviously. I mean, people are obviously in need of help in this way. So is this -- these folks that would sign up and show up to pick up their boxes, do they call ahead -- because you said they pick up their food -- or do they come in and browse?

MR. VANASSE: Most of them have -- you know, they come in for the first time. Usually they get introduced to the staff. But most of them have a relationship at this point. They've been there

before. They know the staff. And usually they -- you know, they're familiar faces. And they'll just stop by on Fridays and pick up their food; and if they want to select a few extra items, they can do that from the shelves. And then they're on their way. But some of them will call ahead and some of them will just come on in because they've been there before.

HEARING EXAMINER DICKMAN: Okay. And if some of this food has date expirations, you know, obviously you can't give that out. Do you have a place where you dispose of it if necessary?

MR. VANASSE: Yes. And that's --

HEARING EXAMINER DICKMAN: So you have full access to all the delivery and all the regular Dumpsters and things like that --

MR. VANASSE: Correct.

HEARING EXAMINER DICKMAN: -- like the other places do?

MR. VANASSE: Yep.

HEARING EXAMINER DICKMAN: Okay. And you said one day the folks come in?

MR. VANASSE: Yeah. Fridays are the pickup day, and Wednesdays and Saturdays we have drop-off -- set hours for drop-off, which is in the morning.

HEARING EXAMINER DICKMAN: And the rest of the time --

MR. VANASSE: The rest of the time -- like I said, very limited staff. It's not even like there's someone there full time every single day, but they do have some days where they've got volunteers and they've got Abigail in there organizing, packaging, getting everything ready for Friday.

HEARING EXAMINER DICKMAN: Coordinating, all right. And you've read the two conditions here?

MR. VANASSE: Yes.

HEARING EXAMINER DICKMAN: Let me go through these real quick. I'm going to read them. Should parking for the PUD become an issue due to Helping Hands' activities, that the applicant work with the owner of the plaza and businesses within the plaza to address parking needs, including being open to modify and drop off or distribution hours and operation if beneficial. This does not imply a commitment on the part of the applicant. Have you -- I mean, has the space already been rented or is it pending approval?

MR. VANASSE: Space is rented. And just to maybe go into a little detail as to this condition and this issue with the parking, RWA has been involved with this center for many years and helped with the initial design. I think it was during the great recession at some point there was a proliferation of video casinos, gaming redemption spots, and one of them opened in that plaza. And at that time, it was a high volume kind of a use, and there was some parking issues. And there was some complaints by some of the other tenants regarding the parking. At one point we were called by the owner of the plaza to look into possibly adding some parking spaces. And I think within a month or two of the -- that initial call, they called back and they said that use is no longer here; it's gone; we don't have a parking issue; we're fine. So I think staff was being diligent. They were aware of that occurrence years ago. But the character of the plaza has changed quite a bit, and parking has not been an issue. We have been in touch with the owner of the plaza. They provided an affidavit supporting the application. They're fully aware of this use, and they don't have a concern with regards to parking.

HEARING EXAMINER DICKMAN: Okay. Let me ask the County a question on this. To me, when I read this condition, it's really more of an aspiration that you guys will all get together and help out. But I just need to know, do you all feel comfortable, after looking at square footage or activities, that there is sufficient on-site parking to handle this operation?

MR. BOSI: Mike Bosi, zoning director. Staff has looked at the arrangement of uses. The issuance or lack of issuance of any violations or any issues related to parking, as Patrick had said, there was a period of time in '13, '14, sometime around there where it was a regular occurrence where we were dealing with trying to address the lack of parking issues and finding additional spots which we provided with the applicant and provided for. Since that use -- since the Bridge Club left this facility, we have not had -- we have not had any issues brought to our attention related to lack of parking availability. So staff is confident and comfortable with the arrangement, and the availability of parking satisfies the needs

of all the tenants in the facility.

HEARING EXAMINER DICKMAN: Okay. I'm just looking at this condition because usually when you put conditions and those are types of things that if there's a violation, you can actually bring a code enforcement or some type of action here. So the last sentence here says this does not imply a commitment on the part of the applicant. This is just sort of hey, we're hoping you guys fix this. So I'm not sure we have authority under this condition.

MR. BELLOWS: For the record, Ray Bellows. That was kind of the intent. We wanted to make sure to encourage that cooperation with the leasing agent. Going back to the Bonita Bridge Club issue, it ended up being a civil lawsuit in that case and testimony during that meeting. So I just wanted to make sure that that line of communication was open. Because this is a shopping center, the shopping center parking calculation applies and allows for all these different types of businesses to go in and out, and it doesn't change the calculation of parking. But if there is an issue, then we wanted them to work it out.

HEARING EXAMINER DICKMAN: Okay. Just to forewarn you, as a lawyer, I don't like fuzzy language, so I may tighten this up a little bit for the benefit of all parties involved really.

MR. VANASSE: Okay.

HEARING EXAMINER DICKMAN: You need to know what your expectations are and rights are. The County needs to be able to enforce this and -- you know, so I may tighten it up a little bit more than making aspirational -- I'm not quite sure how, but I may.

MR. VANASSE: And we went back and forth --

HEARING EXAMINER DICKMAN: It's not going to be draconian. I'm just telling you I may rewrite this a little bit.

MR. VANASSE: We understand the concern. Our position is this is a shopping center use with a shopping center parking ratio associated with it. Currently the center exceeds that required parking. Also, as part of our discussion, we looked at the uses that are there today. There's a few restaurants. And the restaurants tend to generate more traffic than some of these other uses. And the good thing is those are off hours compared to where the activity for this food pantry is mornings. And restaurants typically open for lunch and dinner. So this overlap of the higher parking demand happens at different peak hours for the uses.

HEARING EXAMINER DICKMAN: Right. Which leads us to condition number two, which is really a key to the combination of parking. So you have -- you have a collection of on-site parking that everyone is sharing. I don't know what your lease looks like, but typically everybody is sharing the on-site parking. So hours for dropping off donations and distributing food shall be limited to those shown below with the caveat that on the set days of drop-offs and distributions, hours may be extended by plus or minus hour -- by plus or minus hour should there be extenuating circumstances. So can you guys clarify that to me, extended by a plus or minus -- like one hour?

MR. ORTMAN: That's my fault. That is a typo. Eric Ortman. It is plus or minus one hour.

HEARING EXAMINER DICKMAN: That's what I thought. So you get one-hour flexibility. So on Wednesday, food drop-off and donations only from 9 a.m. to 1:30 p.m. On Saturday, food drop-off and donations only from 9 a.m. to 1 p.m. And on Friday, food distribution only from 10:00 to 1:00. So those are just really three days when it's open to the public. When I say open to the public, meaning the public can drop off.

MR. VANASSE: Yeah.

HEARING EXAMINER DICKMAN: And then only on Fridays clients can pick up. When you look at the whole week, I mean -- other than that, it's just employees.

MR. VANASSE: Yeah.

HEARING EXAMINER DICKMAN: And approximately how many employees do you see in there?

MR. VANASSE: Most days it Abigail by herself, and then she's got helpers. It's either they are taking care of the food and organizing and packaging or she's making calls. She has a list of donors and folks that she coordinates with during the week.

HEARING EXAMINER DICKMAN: Do you anticipate any events in this space?

MR. VANASSE: No, not at this point.

HEARING EXAMINER DICKMAN: Well, I've got to know a little bit about this. So if you're a nonprofit and you are looking to raise money, are there other places that you raise that money in other ways or would this space be used as a closed event where you have invitations to people that are part of your -- the folks that donate and might want to raise money?

MR. VANASSE: I don't quite know the details. I do know that this is a new nonprofit. They're building it. They have their own network of people that they deal with. Is there a possibility they might do an event on-site at a given time? Possibly. But, again, don't anticipate that this would be a major thing. But I think most of the stuff is done over the phone and through their personal connections.

HEARING EXAMINER DICKMAN: I understand. Would that be a special event?

MR. BELLOWS: For the record, Ray Bellows. The shopping center is eligible to have -- any tenant can have a special event where it might be some indoor/outdoor sales going on, so that is allowed for these centers.

HEARING EXAMINER DICKMAN: Okay. So you understand what I'm saying?

MR. VANASSE: It would be considered a special event, and that would be far and few in between, I would imagine.

HEARING EXAMINER DICKMAN: Well, I mean, it's not unheard of because, you know, nonprofits need to raise money, and it's not -- to continue operating if you're in a new location. So I don't know. All right. So I will -- I understand exactly what you're doing. My compliments to the mission of the organization. I'll take all this -- is there anything else that you want me to know before I close this?

MR. VANASSE: No.

MR. BOSI: We're satisfied. Thank you.

HEARING EXAMINER DICKMAN: I know -- so I have enough information, and I know the information that I need to make a decision. I'll render a decision within 30 days, and best of luck to you.

MR. VANASSE: Thank you.

HEARING EXAMINER DICKMAN: Thanks for being here.

MR. VANASSE: No problem.

MR. YOUNGBLOOD: Hearing Examiner Dickman.

HEARING EXAMINER DICKMAN: Yes, sir.

MR. YOUNGBLOOD: For the record, we don't have any public --

HEARING EXAMINER DICKMAN: Oh, I'm sorry. Public hearing, anybody wants to speak?

MR. YOUNGBLOOD: No, sir.


HEARING EXAMINER DICKMAN: Thank you. Then we're done. Meeting adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:27 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 6/22/22, as presented  or as corrected _____

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING, BY BRIDGET R. STEVENS, CSR AND NOTARY PUBLIC.