

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
August 24, 2023

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 Director  
Sean Sammon, Planner III  
Raymond V. Bellows, Zoning Manager  
Derek Perry, Land Use Attorney  
Ailyn Padron, Management Analyst I

## PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everybody. Good morning. It's 9:00. Today is August 24th, 2023. This is the Collier County Hearing Examiner Meeting. I'm going to call the meeting to order, and we'll start with the Pledge of Allegiance. Please rise.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Thank you very much, everybody, and welcome again.

So we have a -- today what we're -- this is a quasi-judicial hearing. What that means is that we are going to -- I'm going to be taking testimony from the petitioner and from the County and from the public.

This is a hybrid meeting, which means that there's going to be folks here that are in person. We also may have some people online that will be speaking.

If you have a phone or something that's going to make noise, please silence it; and if you want to have a conversation with somebody, step out in the hallway and do so so we can continue the meeting.

If you're going to speak today, you need to fill out a speaker's card and hand it to this young lady over here, and you'll be called on.

What's very -- this is an informal meeting. The rules -- the informal rules of evidence will be applied, but I will give everybody due process.

I want you to relax when you're speaking here.

The most important thing is that I get what information I need from you with regard to the criteria as it applies to the petition. So take your time. You know, we're all -- this is not a big, formal meeting here, but stick to the criteria, please, if you could.

You will be asked in a minute -- we have a court reporter here, obviously. We want to capture the verbatim minutes of the -- or actual verbatim minutes of the meeting. And if anyone is going to speak today, they will be sworn in. We'll do that.

Why don't we go ahead and do that right now. If anyone is going to testify here today, speak, please stand and raise your right hand and be sworn in.

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

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

HEARING EXAMINER DICKMAN: Thank you very much.

So the order that we're going to follow is the County will introduce the item and give me their analysis and any recommendations or conditions.

Then I will have the petitioner or the petitioner's representative come to the larger podium over here, and then we'll open it up to the public. I will let the petitioner or petitioner's representative have some time for rebuttal after I close the public hearing.

Please try to speak clearly so that we can capture everything by the court reporter.

And with that I think we'll get started. We have two items on the agenda today. So let's go ahead and get started with 3A.

MR. SAMMON: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. SAMMON: For the record, Sean Sammon, principal planner in the Zoning Division.

\*\*\* Before you is Agenda Item 3A. This is a request for an insubstantial change to

Ordinance Number 14-12, as amended, the Lord's Way 30-acre Residential Planned Unit Development by modifying Deviation Number 4 to allow the existing five-foot-wide sidewalk instead of an eight-foot-wide sidewalk on one side of Sapphire Cove Drive where adjacent to the preserve area.

The subject PUD is located at the south side of Hacienda Lakes Parkway and approximately .4 miles east of Collier Boulevard in Section 14, Township 50 South, Range 26 East, Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.13.E.1, a through k, and 10.02.13.E.2, a; and staff believes this petition is consistent with the review criteria in the LDC, as well as with the GMP.

The applicant conducted one neighborhood informational meeting on June 27th, 2023. Zero members of the public attended, and details of this meeting are included in the backup package, Attachment A to the staff report.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the County on Friday, August 4th, 2023. And the public hearing signs were placed by the applicant on Friday, August 24th -- August 4th -- excuse me -- 2023.

I have received no calls from the public, and there has been no public opposition pertaining to this petition. Staff recommends that you approve this petition as described in accordance with the attachments to the staff report.

There is one condition in association with staff's recommendation to approve, that the proposed sidewalk PUD insubstantial change is limited to only six of the residential lots. The applicant will clarify the exact location and limits for their request with an additional exhibit to be included in the Hearing Examiner's decision.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Thank you very much. I appreciate it. Petitioner here or their representative?

Hi. It's good to see you again.

MS. MEDINA: I will just let you know when to move on. Thank you. I forgot about that. Sorry.

Hi. I am Josephine Medina. For the record, I am AICP-accredited planner, and I have eight years of experience in planning, four which luckily have been in Collier County as a -- under the Growth Management Department in Zoning, Comprehensive Planning and the Collier County MPO; and I am the representative for the applicant, who is also here, Jason Tomassetti and Mr. Gaines, and so I will just get started.

If you could, next slide. Next slide, please.

So just to give a quick property overview, this is -- the property is outlined in red on the slide in the aerial. It is about 30 acres, has access, as Sean said, from Hacienda Lakes Parkway, is just south of the Milano Lakes Apartments and just west of the Florida Sports Recreational Park.

It is currently a single-family residential subdivision, specifically the Sapphire Cove Subdivision, and it has a zoning designation of residential planned unit development.

It has a future land use designation of urban residential fringe, subdistrict.

Next slide, please.

So the Lord's Way 30-acre residential planned unit development was approved back in 2014 via Ordinance 14.11. Now, this allowed for up to 75 dwelling units, and this

included single-family, single-family detached, townhomes and multifamily units as well.

It does have 2.73-acre of on-site preserve, which is located to the south of the property, as you can tell by Tract P on the south side.

Next slide.

Now, the request itself is pretty simple. It wouldn't change the density, anything outside of -- anything outside, traffic or reduce any of the preserve, and it won't even really change anything in the master plan.

What it is is a request to reduce what was approved back in 2014 in their original application via deviation for -- back in 2014 it did allow for a relief from the requirement of having sidewalks on both sides of the street, and this is specific to the area to the south adjacent to the preserve, and so this is -- so it's -- what's being requested is, instead of requiring an eight-foot sidewalk, it is being requested for this to be reduced to five feet.

Next slide, please.

Now, to give you a better idea of what is existing, so this sidewalk is already built at five feet, and this was done in error, but I just wanted to point out how this isn't something that would create a precedence for, you know, us building it and then asking for forgiveness.

It's more something that is just more in scale with the rest of the development.

As you can see, the rest of the development has five-foot sidewalks on both sides of the street, and this is the section that, per the previous approval, would require an eight-foot sidewalk, which would really not be in scale with the rest of the single-family development.

What I should note is I tried to look back in the history on why exactly an eight-foot sidewalk was required. I couldn't find anything specific.

The best thing I could think of, just in my general planning knowledge, was that there were multiple uses that were allowed, including multifamily, which if they were multifamily, I could understand why an eight-foot sidewalk would be something that would be looked at as to scale compared to these seven single-family homes, as you can see.

HEARING EXAMINER DICKMAN: Where would you get your -- I mean, if you did eight feet, where would you get the additional three feet? Can it go --

MS. MEDINA: It would have to go into --

HEARING EXAMINER DICKMAN: -- into the yard?

MS. MEDINA: -- into the front yard. So that where that little strip of green where the fire hydrant is, actually, we'd have to continue there.

HEARING EXAMINER DICKMAN: Yeah, which would inevitably cause people to park over the sidewalk.

MS. MEDINA: Correct, yeah, and they would not have that boundary between the sidewalk and the actual road.

HEARING EXAMINER DICKMAN: Okay. This is completely built out as single-family?

MS. MEDINA: Yes, it's completely built out as single-family, correct.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. MEDINA: So the next slide, please.

And our -- the staff report and also our narrative indicated we are -- we are in agreement with staff regarding LDC Section 10.02.13.E.1, where the request is not a substantial change based on the criteria a through k.

So there is no change to the PUD boundary or approved uses, no increase to the

approved intensity, traffic generation, storm water retention or discharges, no reduction to the preserve area; and the project is not located within a development of regional impact, as well as we're in agreement with staff's analysis regarding LCD Section 10.02.13.E.1 -- A.2 -- sorry.

The request does not change the findings and criteria and analysis from the original PUD application or staff's analysis, which was also included as part of the application.

Next slide, please.

So staff recommendation is for approval, and, as they have also indicated, it is consistent with the LDC and GMP.

Next slide.

We are requesting a revised staff condition, and I have the exhibits here printed out as well to provide to you, Mr. Dickman.

But so what we were looking at as far as the proposed condition, which is limited to Lots 3681 address through 3701 Sapphire Cove Circle, the existing sidewalk has crosswalks in order for people, once the two-sided sidewalks end, they can cross over.

And a portion of this is within 3707, and then there is another portion that is within 381. So we would prefer for the exhibit to be the condition to show exactly where the sidewalk -- the sidewalk ends.

We think it's more logical since there are portions to each lot at the end that the sidewalk belongs to.

HEARING OFFICER DICKMAN: Let's ask the County about that.

Are you guys okay with that or using a graphic exhibit to --

MR. BELLOWS: For the record, Ray Bellows.

Since some of the sidewalk deviation extends beyond the lots listed in the original review, it is logical that we use some kind of exhibit to show the exact location of the sidewalk, which is -- the deviation is from the crosswalks at either end.

HEARING EXAMINER DICKMAN: Okay. So it's basically going to the extent of where the sidewalk starts on the other side essentially to go directly across, right?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: That's where the terminus is?

MR. BELLOWS: Yes.

HEARING EXAMINER DICKMAN: Okay. All right. No problem.

I think that was no objection, Mr. Bellows?

MR. BELLOWS: Yes, no objection.

MS. MEDINA: Next slide.

Thank you. I'm here to answer any questions you may have.

HEARING OFFICER DICKMAN: No. It's pretty straight forward. Thank you very much for that succinct presentation. I appreciate that.

Let's see if anyone is here to speak.

Oh, wait, I do have one question. It's just nitpicky, but I see that there's a no-objection letter from the president of the HOA, and it says the president says: "I have no objection."

Is that on behalf of the HOA or on behalf of the president of the HOA?

MS. MEDINA: HOA.

HEARING EXAMINER DICKMAN: Okay. All right. Thank you.

Anybody here registered to speak?

MS. PADRON: Good morning, Mr. Dickman. We do not have any registered speakers today.

HEARING EXAMINER DICKMAN: All right. Great. Thanks. Then I will close this matter, and I will get a decision out as quickly as possible. Thank you.

MS. MEDINA: Thank you.

HEARING EXAMINER DICKMAN: All right. Let's go to 3B.

I think the batteries are dead on this or maybe I don't know how to operate it. It could be both.

All right. Sean, how are you?

MR. SAMMON: Good. Nice to see you again.

For the record, Sean Sammon, principal planner, standing in for John Kelly due to unforeseen circumstances.

Before you is Agenda Item 3B. The petitioner requests the Hearing Examiner to approve a nine-foot boat dock extension from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a private multifamily boat docking facility with 42 slips protruding up to 29 feet into a waterway that is approximately 149-feet wide pursuant to LDC Section 5.03.06.E.1. The subject property is located at Sunrise Cay Phase II within Port of the Islands in Section 9, Township 52 South, Range 28 East, Collier County, Florida.

The subject property is located within a Residential Multifamily 16 zoning district. The existing private multifamily docking facility was approved in accordance with a negotiated settlement agreement that allowed for a total of 42 slips.

The petitioner has now redesigned the private multifamily docking facility having obtained an amended settlement agreement subject to the Hearing Examiner's approval of this petition to relocate the slips on Faka Union Canal so that all 42 slips become floating slips located on the Sunrise Cay Canal.

The public notice requirements were complied with as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were taken care of by the County on August 4th, 2023, and the public hearing signs were installed by the applicant's agent on or about August 8th, 2023.

The boat dock extension was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.H in conjunction with the amendment settlement agreement on December 13th, '22.

Of the primary criteria, four of five were satisfied, and of the secondary criteria, five of six were satisfied.

Please note that the Manatee Protection Plan review revealed that the proposed docking facility meets the preferred status and is consistent with the Collier County MPP.

Only two phone calls requesting project information were received. Staff recommends the Hearing Examiner approve Petition Number PL20210002028 in accordance with the proposed dock plans provided with Attachment A, which are consistent with the amended settlement agreement in Attachment B.

That concludes the staff summary.

HEARING EXAMINER DICKMAN: Thank you, Sean.

MR. SAMMON: You're welcome.

HEARING EXAMINER DICKMAN: It's nice to see you.

MR. ROGERS: Good morning.

HEARING EXAMINER DICKMAN: Beginning to think you were mad at me.

MR. ROGERS: Nope, not yet at least.

For the record, Jeff Rogers with Turrell, Hall & Associates representing the applicant today, who is Sunrise Cay. They are, like staff said, located in Port of the Islands, Florida, southeast section of Collier County off U.S. 41.

I do have a PowerPoint. I will run through some of this for you just to give you a location.

So this is on the resort side of Port of the Islands, if you're familiar with it, which is kind of on the north side of the Faka Union Canal.

Moving forward, if you would.

I took some existing condition pictures on the next two slides I will run through. As stated, the facility has 42 slips currently along their shoreline.

So when I first started at Turrell 16, 17 years ago, this was one of the first projects I worked on to get them approval with their settlement agreement to allow for perpendicular mooring where the Manatee Protection Plan for Collier County in this area calls out parallel mooring only for multifamily facilities.

So things were built back in the day without real approval, so things like a settlement agreement were developed and approved by County to allow different mooring angles, so to speak, for the slips.

So that's a little bit of history on how the facility is today.

Moving forward, so like I said, they have 42 slips, and they have slips along their southern shoreline, which is along a manmade canal just off the Faka Union Canal. And then they have six slips out on their eastern shoreline, which is along the Faka Union Canal.

The slips on the south side are the ones that are on an angle to the shoreline, more of a perpendicular angle versus a parallel, and it's -- the ones out -- the six out on the Faka Union side are parallel mooring, just to give you an idea of the existing condition today.

Now, before I get into all the criteria and everything, I do want to talk about what's driving this, just so you understand. It's not really very safe for practical access on and off of the vessels because these boats are basically -- there's no lifts; there's no docks.

There's one common floating dock where people can pull up and load and unload; however, you're basically jumping off the bow of your boat onto the seawall and -- or jumping off the seawall onto the bow of the boat. So there's -- it's not safe, nor practical, especially for any elderly people or, you know, anybody really getting on and off boats. So it's not a common practice. Let's say that.

So they would ultimately like to improve that, which is what's driving this.

And then ultimately part of the request is to relocate the six slips out on the Faka Union Canal to the southern side to isolate and consolidate where all the slips are together. So that helps improve with fire, helps improve with views and kind of gets the slips off the main drag.

So moving forward, here is the proposed exhibits in front of you. Basically we are going to go with a straight perpendicular design, bow to stern, so to speak, north to south mooring, and consolidate the slips and kind of install a floating Polyfloat dock basically.

We're calling it boat lifts, but basically what it is, it's a floating Polyfloat, plastic float, in the water, and it's held in with piles.

And the vessels can pull up onto those, and the weight of the vessel kind of pushes the float down and also provides a platform for the residents to step onto from the seawall

and then get onto the vessel.

It's more of a floating dock, basically, lift concept. It's much more practical. It's cost effective for these people. It's less expensive than putting in an actual boat lift and less impactful.

It does shade. It does create a bigger shaded footprint, which I have permitted this with both the State and federal agencies, and they both have issued their permits for this.

We've designed it to stay inside 25 percent width of the waterway, which is the red dashed line you see just to the south side of the vessels. Basically running through the criteria just to get it on the record, the applicant is requesting a 29-foot overall boat dock extension from the allowed 20 feet, so a nine-foot extension is ultimately our request.

You can see here on this design the actual float itself is only about 26 feet, and the vessel with the float is overall 29. So that's where we're getting the 29-foot protrusion into the waterway.

There is a seawall there. I do want to reiterate that to you, so -- and a little dock walkway just on the landward side.

So that's what's going on here, and to run through all this criteria, Primary Number 1 -- actually, just keep going forward, if you would. I have got it all here.

Okay. So primary criteria, whether the number of dock facilities and/or boat slips proposed is appropriate in relation to the waterfront length location upland land use and zoning, and this criteria has been met.

It is a multifamily residential facility that has 42 units and currently has 42 slips, which are approved for the previous settlement agreement and the previous boat dock extension.

We are maintaining that and keeping that slip count. We are just reconfiguring, relocating and installing some new floating structures for the slips. So that criteria is met.

Primary Number 2, whether the water depth at the proposed site is so shallow that a vessel of the general length, type and draft as described is unable to launch or moor at mean low tide.

This one is not met because the water depths are sufficient in this canal. At the edge of the seawall, we have four-foot mean low water or greater, so, therefore, this criteria is not met.

The driving factor of this petition was the angle of the slips in order to create a safer access to the boats and to the boat lifts.

Number 3, whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel.

This subject waterway just to our south is not a marked channel. It's a manmade canal. We are inside the 25 percent width of waterway. The other docks across the waterway, staff has concurred that none of those have boat dock extensions and are all about the 20 feet out.

So there's -- I think in the staff report it said, like, 60 -- over 60 percent of the waterway was maintained for navigation. So we're -- far and exceeds that.

Number 4, whether the proposed dock facility protrudes no more than 25 percent leaving 50 percent open. I talked about that already. So we need that. We're at 19.46 percent.

Number 5, whether the proposed location and design of the dock facility is such that the facility would not interfere with the use of neighboring docks. If we ran backwards in



the proposed -- we don't need to on the slides, but we do show the setbacks -- keep going back one more, I think. Right there.

So as you can see our property line outlined in the blue bold line on the uplands, it extends down south basically, and we're not proposing anything down there. So technically we show a 42-foot setback from our own seawall, but it's really greater than that to the closest adjacent single-family dwelling.

And then on the other side, we've relocated the slips out on the canal, so we have 200-foot or greater of a setback, so...

HEARING OFFICER DICKMAN: What's the -- how do you get off the float onto the seawall? Because I imagine it floats up and down with the tides?

MR. ROGERS: I believe they're going to -- I'm not 100 percent, but I believe they're just going to put a ladder in.

HEARING OFFICER DICKMAN: Put a ladder in?

MR. ROGERS: Yeah, and then the HOA president -- the previous president is here to verify that, but I believe that's what their practice is going to be, to attach a ladder to the seawall, and then the owner of the slip can climb down that, get onto the float, especially at a low tide. As you know, it's going to be quite a drop.

HEARING EXAMINER DICKMAN: Yeah.

MR. ROGERS: So secondary criteria, Number 1, whether there are special conditions not involving water depths related to the subject property which justify the proposed dock facility and proposed location.

The Manatee Protection Plan was basically the other special criteria because in it it has some design criteria outlined in it that multifamilies are supposed to follow down here, which historically was overlooked in -- not just with Sunrise Cay, some other developments down there that I have helped over the years clean up with County staff.

So that's what drove the settlement agreements and things like that. So we have worked with County staff and the County Attorney's Office. Chris Thorton is here, who worked with Heidi as well to get that all hashed out before we got here today.

So Number 2 of secondary, whether the proposed dock facility would allow reasonable, safe access to the vessel for loading and unloading and routine maintenance. This is a huge improvement, what we're proposing today versus what we did years ago. So that is definitely met and is an improvement for everybody.

Number 3, for single-family dock facilities, that's not applicable here in this case. This is a multifamily development, so that criteria was not applicable.

Number 4, whether the proposed facility would have major a impact on the waterfront view of the neighboring property owners. In this case, you know, we're not exceeding what we already currently have vessel-wise. We're just reconfiguring, relocating, not putting these boats up in the air, so to speak, on boat lifts so the views across the waterway will be consistent.

The boats will be a little bit higher in the air because of the floats that they're on, but ultimately I don't believe staff received any major complaints from anybody across the way. So that criteria was met as well.

Number 5, this pertains to the seagrasses being within 200 feet of the area. I dove this site, the second time I dove the Picayune canal in my career, and I really don't want to do it for a third time. There's more alligators down there than there are manatees.

So there are no seagrasses, too much basically influx of freshwater over the weir in

this case. So they do get some freshwater grasses but no seagrasses in this case.

Number 6, whether the proposed dock facility is subject to the Manatee Protection requirements. This one was very -- subject to it extremely in regards to design, given the history, the settlement agreements, but we have worked through that with staff.

The Environmental Department did review it and gave us a preferred ranking based off the criteria. State and federals have both issued -- FWC/FWS have reviewed this for manatee impacts.

So that basically concludes it, a nine-foot extension.

If you have any questions, happy to do it. Like I said, the applicant is here and Chris if there's questions about the settlement agreement. We are happy to answer.

HEARING EXAMINER DICKMAN: Okay, great.

Did anybody sign up to speak on this item?

MS. PADRON: We have no registered speakers.

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: One more thing, we do have an SDPI going along with this, you know, concurrently, which is an insubstantial change to the original SDP, common practice when we configure docks. So if this were to get approved, that would then follow suit as well.

HEARING EXAMINER DICKMAN: Okay. All right. I don't have any questions. Anything else from the County before I close this item?

MR. BOSI: Michael Bosi, Planning and Zoning director. Nothing from staff.

HEARING EXAMINER DICKMAN: Okay. Great. Pretty straight forward.

Thank you for the presentation.

Sean, thank you, and I will get a decision out as quickly as possible.

MR. BOSI: Thank you.

HEARING EXAMINER DICKMAN: Thanks. All right.

Okay. Anything else before we close the meeting?

MR. BOSI: Nothing from staff.

HEARING EXAMINER DICKMAN: Okay, great. Then the meeting is officially closed. Thank you, everybody. Have a great day and good weekend.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:34 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 8/31/23, as presented  or as corrected .

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING BY  
SUSAN SIMONETTI, COURT REPORTER AND NOTARY PUBLIC.