

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
September 14, 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
Raymond V. Bellows, Zoning Manager
John Kelly, Planner III
Sean Sammon, Principal Planner
Ailyn Padron, Management Analyst I

PROCEEDINGS.

HEARING EXAMINER DICKMAN: Good morning, everybody.

This is September 14th, 2023. Let's start with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Didn't we have a flag there? I swear we used to have a flag there. Just for the record -- for the record, there was a flag there.

Again -- again, good morning. This is the Hearing Examiner meeting for Collier County. My name is Andrew Dickman. I'm the Hearing Examiner appointed by the Board of County Commissioners. I'm not a county employee. I'm a Florida Bar attorney in good standing for over 20 years working in local government, land-use, zoning, and I'm very familiar with the codes and -- related to the petitions that are under the jurisdiction of the Hearing Examiner.

Just a few quick items here. This is a quasi-judicial hearing, but it's also -- the way that I like to conduct it is informal, if possible. So I want everyone who is going to speak here today to be comfortable, to be relaxed, because this is where the record stops. So after today, I have 30 days to render a written decision, but I can't take in any additional information after today.

So it's very important that whoever -- you know, whoever's speaking, that you address the petition and the criteria that applies to the petition, because that's what I'm going to be looking at is the evidence related to that. But everybody relax. Don't be nervous or anything like that.

We do have a court reporter here who is capturing the verbatim conversations that we're having. Frequently, I need to reflect back on those, so I would ask that everybody speak clearly and also not at a rapid pace or talk over anybody. If she has trouble hearing someone, I'm just going to ask her to stop the hearing, and she'll give us a good reminder to go forward in a different manner.

The way that we run the meetings is the County, over here, will present the petition -- we have two petitions on the agenda today -- give me an overview of the petition, their analysis, any recommendations or any conditions associated with that. Then the applicant or the applicant's representative will use the larger brown podium over here, put on their case in chief, and then we'll open it up to the public.

If anyone here in the public wants to speak, fill out a speaker's card and hand it to this young lady over here, yep, raising her hand.

This is also a hybrid meeting, and so there may be some folks that are monitoring this online and may participate online. The County has facilitated that since the COVID-19 pandemic and has continued it because, you know, it's a large county. Sometimes it's hard to get here, and it gives an opportunity for better public participation.

I would ask that anyone who has phones on and things like that, step outside to make your phone calls. If you're going to have conversations, step outside so that we can just efficiently get through the -- through the hearing.

And then -- two things. One, as far as ex parte communications, I have not had any involvement with these two petitions that are on the agenda. I don't meet with anybody ahead of time. I'm here as a neutral, impartial, impassionate decision-marker. And so I have no meetings with staff, with the applicant. I don't do any of that.

And then if you are going to speak today, you do need to be sworn in, and we'll do that -- why don't we go ahead and do that right now. So anybody who's going to testify

today at one of these podiums, or speak, please stand and raise your right hand, and I'm going to ask the court reporter to administer the oath.

THE COURT REPORTER: Do you swear or affirm the testimony you will 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: All right, great. Thanks, everybody.

Why don't we -- unless there's anything else that I need to say, we'll just jump right in and get started with the first petition.

Sean, you're going to handle that one?

MR. SAMMON: Yep.

HEARING EXAMINER DICKMAN: Doesn't everybody love Sean's suit, by the way?

MR. SAMMON: Thank you. Very green.

HEARING EXAMINER DICKMAN: Nice and green.

MR. SAMMON: Thank you.

Good morning, Mr. Dickman. For the record, Sean Sammons, principal planner with the zoning division.

***Before you is Agenda Item 3A. It's for a site plan with deviations for redevelopment, Project No. PL20220006184. This is a request for you to approve a site plan with deviations pursuant to LDC Section 10.02.03.F and seeks four deviations.

One, from LDC Section 4.02.01.A.2 to instead allow a setback between 15 feet and 23 feet, 5 inches, to the south property line for Building 1, and 36 feet, 10 inches, and 49 feet, 10 inches, to the south property line for Building 2. Both buildings identified on Deviations Exhibit B, site plan;

Two, from LDC Section 4.06.06.A.1 to instead allow the existing opaque fence to satisfy the required screening;

Three, from LDC Section 4.06.06.A.2 to instead allow the existing opaque fence to satisfy the required visual screening;

And, four, from LDC Section 4.06.03.B.1 to instead allow a minimum of 3.33 percent of the amount of vehicular area on site to be devoted to interior landscaping for the redevelopment of Outdoor Resorts at Chokoloskee Island, which is for the benefit of the subject property located at 150 Smallwood Drive, Chokoloskee, Florida, 34138, also known as Outdoor Resorts at Chokoloskee Island Condo, along the east side of Smallwood Drive and the northeast quadrant of the intersection of Smallwood Drive and Snook Alley in Section 31, Township 53 South, Range 30 East of Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within LDC Section 10.02.03.F.7, a through j, and staff believes this petition is consistent with the review criteria in the LDC as well as with the GMP.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.R. The property owner notification letter and newspaper ad were taken care of by the County on Monday, August 21st, 2023, and the public hearing signs were placed by the applicant on Thursday, August 3rd, 2023.

I've received two calls regarding more information about this petition, and 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 the recommendation to approve, that the

deviations be limited to what is depicted on the site plan with deviations for redevelopment in Exhibit B.

That concludes staff's summary.

HEARING EXAMINER DICKMAN: Thank you, Sean. Appreciate it.

MR. SAMMON: Thank you.

HEARING EXAMINER DICKMAN: All right. Is the applicant or the applicant's representative here?

Good morning.

MR. SNEED: Good morning. For the record, my name is David Sneed, and I'm a planner and engineer with Kuhlman Engineering.

HEARING EXAMINER DICKMAN: All right.

MR. SNEED: Is that better?

All right. Thank you.

Well, as explained by Sean, the project is on Chokoloskee Island, and it is a deviation for redeveloping a portion of the maintenance area that is in question under PL2022006184 [sic].

Could you give me the next slide, please.

The brief project history -- the project -- the RV park was developed in 1984. Previously, the land was occupied with some mobile homes going all the way back to the 1960s, and the maintenance area is located at the extreme southwest corner of the property at the corner of Smallwood Drive and Snook Alley.

Next, please. Next slide, please.

This is an overview of the entire plat of the RV park that was platted in 1984. And you can see the -- well, I don't know if this is going to work or not -- with the maintenance area located at the extreme -- extreme southwest corner, right in there.

Next slide, please.

This is an aerial photograph of the entire development, again, showing the location of the maintenance area.

Next, please.

And this is an enlarged aerial showing the existing structures that are there now. There's two existing -- actually, three existing structures. There's a shed, there's an existing building, and there's an existing building almost on the property line of Smallwood Drive.

Next, please.

This is a photograph looking to the east if you were standing on Smallwood Drive, and you can see the visual screening that's there now that has been up, and you can, just in the -- just in the background behind the fence there's one existing structure that's going to be proposed to be removed.

Next, please.

This is a view looking to the northeast from -- I'm sorry -- Smallwood Drive and showing the perimeter of the property having the visual barrier that's already in place at this time. The street running to the east -- I'm sorry -- to right and left, that is Smallwood -- I'm sorry -- that is Snook Alley. That's a private access.

Next, please.

And this is a view if you were in Snook Alley looking back toward Smallwood Drive.

Next, please.

This is a picture of the existing building that's being used for the maintenance. As you can see, it's all frame construction, and one of the issues we have is the flooding. Every time they get heavy rains, this building can get up to a foot of water inside of it.

Next, please.

And that's just another shot of that building.

MR. BELLOWS: Is that your cat?

MR. SNEED: Pardon?

MR. BELLOWS: Is that your cat in the photo?

MR. SNEED: No, no. I think that's Gordon's. Yeah, it's Gordon's cat.

MR. FORBES: It's mine. It's Bella.

MR. SNEED: I started to PhotoShop it out.

Next, please.

MR. FORBES: Shop cats.

MR. SNEED: Next, please. Next slide, please.

This is our projected demolition plan. The structures that are hatched, you can see, that are existing now, they're all going to be removed from the site under the proposed site development -- Site Improvement Plan that we've applied for.

Next, please.

This is a slide showing the proposed site. The green area is going to be landscape area. The gray area is actually an access drive for the fire. The fire department wants to have a fire access into the site.

The areas that are in the orange color, those are the two proposed structures. The one that's more on the left, the square one, is going to be a two-story structure, and the one on the right is a single-story structure.

Next, please.

This slide just shows the enhanced landscaping that we're going to place on the site.

Next, please.

And this is a picture of the proposed buildings. The one on the right is the proposed canopy structure, and the one on the left is a two-story structure, which both structures will actually be enhanced with a wall below. It's going to be a four-foot masonry wall with flood vents to allow flooding to pass through in the event of a storm that is planned at this time.

The second floor will be above the finished floor -- the finished will be way above the proposed -- even proposed, proposed FEMA elevations.

Next, please.

This is a rendering of the main proposed Structure No. 1.

Next, please.

This is just another view of it.

Next, please.

And this is the proposed canopy structure with an open area and two areas for the park residents. There's a lot of fishermen down there, and they just want a place, when they're staying there, to put their tackle and so forth and kind of lock it up.

Next please.

All right. In summary, the Site Improvement Plan is going to replace these structures and delete the old structure that's sitting almost right on the right-of-way line of

County Attorney Road 29, or better known as Smallwood Drive. The new structures, they will meet the current building code, and the whole purpose of this is to eliminate the continual flooding that they have. And I'm not speaking of hurricane flooding. This can be just a major -- just a storm event where there's up to a foot of water inside those buildings because they were built so many years ago, and the development around it has kind of put them in a hole.

We are going to provide a dry storage area above the FEMA flood elevation. So the part that's used for paper goods, anything they have -- they have swimming pools; they have recreation area; they have tennis courts. So with that many -- 300 sites on there, there's a lot of materials that are needed just for the operation of the facilities.

We're also going to enhance fire protection not only by adding the fire access drive but, also, we're going to be placing a fire hydrant at that -- at the location of that drive, and we're going to be upgrading the landscape plan.

And with that, I conclude, unless you have any questions for me.

HEARING EXAMINER DICKMAN: No. It was pretty straightforward. Nice job. I appreciate that.

Why don't we just check and see if we've got any public speakers. Anybody signed up to speak?

MS. PADRON: Good morning. We have no registered speakers.

HEARING EXAMINER DICKMAN: No registered speakers. Okay. So there's nothing to rebut, I guess.

MR. SNEED: All right.

HEARING EXAMINER DICKMAN: Anything else from the County? Any last-minute --

(No response.)

HEARING EXAMINER DICKMAN: So you're good with the condition that's in the --

MR. SNEED: Yes.

HEARING EXAMINER DICKMAN: You're fine with that. Okay, great. Thank you for the presentation. Nice job.

MR. SNEED: All right. Thank you.

MR. BOSI: Mr. Dickman, just one question. I was consulting with Ray Bellows. He was wondering, has the -- has the shop cat signed off on the architectural plan?

MR. FORBES: No. She likes the old framing. She likes to crawl around in the room. She won't like this at all.

HEARING EXAMINER DICKMAN: I'm sure the tabby's going to love all the activity.

MR. FORBES: We're going to have to put a cat door in.

HEARING EXAMINER DICKMAN: All right, you guys. Island cat.

All right. Thank you very much. I appreciate it.

I'll get a written decision out within 30 days, so thank you.

***So we're going to move to No. 3B. It looks like -- John, come on up. Thanks.

MR. KELLY: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. KELLY: John Kelly, Planner III, for the record.

This is going to be your Agenda Item 3B. It's PCUD-PL20230004883. It's a

request for a comparable-use decision of the Hearing Examiner that a massage therapy spa business, including foot massage and spa treatments, is compatible in nature to the other permitted uses in Section 5.02.A of the Berkshire Lakes Planned Unit Development adopted by Ordinance No. 83-46, as amended.

The subject location is 7071 Radio Road. It is a 1,200-square-foot unit within a 7,071-square-foot building located just east of Devonshire Boulevard and within the Berkshire Lakes shopping center in Section 32, Township 49 South, Range 26 East, Collier County, Florida.

The subject property is located within the 1,093.9-acre Berkshire Lakes Planned Unit Development, which is a built-out multiuse development located within the corresponding Berkshire Lakes Development of Regional Impact, Ordinance 82-1, as amended. The subject shopping center is located entirely within the commercial multiuse C-1 component of the PUD.

Public notice requirements were satisfied per LDC Section 10.03.06.0. No agent letter, property owner notification letter, or sign were required. The newspaper ad was run by the County on August 25, 2023.

This petition was reviewed by staff based upon the review criteria within LDC Section 10.02.06.K and has been found to be consistent with the Land Development Code and the Growth Management Plan.

As of this date, no public comment has been received, no telephone calls, et cetera.

It's staff's recommendation that -- rather, staff finds the applicant's arguments to have been both convincing and compelling and, therefore, recommends that the Hearing Examiner find that the massage therapy spa business, including foot massage and spa treatments, is comparable and compatible with the commercial multiuse C-1 component of the Berkshire Lakes PUD subject to the following conditions of approval, those being:

One, state license massaged therapists perform the massage and spa treatments;

Two, other than public restrooms, custodial closets, a business office, and an employee break room, there shall be no other private rooms or booths within the confines of the business location; and,

Three, the comparable-use determination shall not negate the requirements to obtain and abide by the requirements of a sexually-orient business permit if it is found to be operating in such a manner that it is determined to be operating as a physical culture establishment as defined within the SOB ordinance.

HEARING EXAMINER DICKMAN: Thank you, John.

MR. KELLY: That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Ms. Passidomo.

Thank you, John.

Good morning.

MS. PASSIDOMO: Good morning. Mr. Dickman, staff. I'm shorter than most.

HEARING EXAMINER DICKMAN: Just bend it around any way you want. It's very -- they're very durable.

MS. PASSIDOMO: Thank you.

Thank you. Ms. Passidomo, for the record, on behalf of the applicant, who is here with me today, Tom Zou, the manager of TZ Dragon, LLC. Also with me today is Norm Trebilcock, president of Trebilcock Consulting. Trebilcock Consulting prepared and presented, with the petition, a Traffic Impact Statement as well as correspondence on

parking, which I will address in my presentation.

Next slide, please.

The proposed uses, as John indicated, is a massage therapy spa to include foot massage and spa treatments. The leasable square footage is 1,200 square feet. The location is 7071 Radio Road. And I will show you in the next slide where that is located in the County.

We're at the hard corner of Santa Barbara and Radio Road. The building, as John indicated, is in the C-1 area of the PUD where the multi -- multipurpose commercial area is located. The specific leasable space is shown there on that Google Earth image. It's on the southern portion of the commercial area. As you skirt around, just for context, it's where the Publix and Starbucks restaurant is located.

Next slide, please.

The Berkshire Lakes PUD offers a mixture of service-oriented retail, general commercial, and medical office uses. Many of the uses -- and I'll show you the permitted as-a-matter-of-right uses on the next slide -- are more intense from a traffic and noise perspective, and so that was part of our argument that this use is less intense than what is permitted as of right.

Our second argument is that this is really a service-oriented business. As you can see here, there are several, in highlight, service-oriented businesses. Most comparable, pardon me, from Mr. Trebilcock's parking study and traffic study is barber and beauty salons.

But you can also see there in underline, there are more intense uses from a traffic and noise perspective, such as restaurants and a new-car dealership with out -- excuse me -- with outdoor display permitted.

The final, No. 22, I highlight only to show you that this PUD did authorize the comparable-use determination process.

Next slide.

To reiterate some of the operational characteristics, the hours of operation are not yet defined, but this PUD does not have a range of hours. It is anticipated that the hours will be consistent with hours of other establishments in the -- in the project.

The service-oriented business is less intense than traditional strip retail, and that's part of the Traffic Impact Study that Trebilcock Consulting prepared and is part of this application.

The parking is expected to be similar to parking for a barbershop, beauty parlor, hair salon, which is permitted as a matter of right.

Massage treatments, as Mr. Kelly indicated, will be in open areas with no private rooms or booths and will be performed by state licensed massage therapists. We do not object to the conditions recommended by staff.

And that concludes my presentation.

HEARING EXAMINER DICKMAN: Okay, great.

So I think I know the -- so these are the -- I think I've seen a lot of, like, the foot massage type. Is this different than, like, a Massage Envy or some of the traditional massages -- is that what we're talking about?

MS. PASSIDOMO: And if there's something very specific, Mr. Zou is here, again.

HEARING EXAMINER DICKMAN: Okay.

MS. PASSIDOMO: But there's a similar concept in Lee County where it's open area, more like foot massage type.

HEARING EXAMINER DICKMAN: Got it.

MS. PASSIDOMO: Not Massage Envy, not go back into a room and have a private area.

HEARING EXAMINER DICKMAN: Okay. I think I -- I'm pretty sure I understand the difference. I've seen -- they're, you know, coming around quite a bit. I mean, I've seen some of them.

Okay. So -- and does the State have any other restrictions on -- I mean, I know they all have to be licensed, but are there any other restrictions with regard to hours of operation or anything like that?

MS. PASSIDOMO: Not to my knowledge, and as staff recommended, to the extent this ultimately qualifies for a sexually-oriented business -- that's not the intention of its operations. But to the extent it would be deemed to fall under that category, all permits would be required at that time, so...

HEARING EXAMINER DICKMAN: Okay, great. Pretty straightforward. Did anybody sign up to speak?

MS. PADRON: We do not have any registered speakers.

HEARING EXAMINER DICKMAN: Really? Three weeks in a row. Anyway. All right. Pretty straightforward. I understand what the request is, and you're in agreement with the staff report and the conditions --

MS. PASSIDOMO: We are.

HEARING EXAMINER DICKMAN: -- and so forth.

MS. PASSIDOMO: (Nods head.)

HEARING EXAMINER DICKMAN: Okay. Great.

Anything else from the County? Sorry there were no cat pictures for you-all.

MS. PASSIDOMO: I have a cat at my home. Next time I'll slide that in at the end of --

HEARING EXAMINER DICKMAN: What is that -- what is that where some people take that gnome and they put it in, like, Mount Everest and stuff like that. I think we should have the cat in every single slide.

MS. PASSIDOMO: See if everyone's paying attention.

HEARING EXAMINER DICKMAN: Okay. If we're done here, I'll get a decision out as quickly as possible.

MS. PASSIDOMO: Thank you.

HEARING EXAMINER DICKMAN: Nice job.

MS. PASSIDOMO: Thank you.

HEARING EXAMINER DICKMAN: Appreciate it. Good luck to the business.

And anything else on the agenda? We're good?

MR. BOSI: I think we're good, Mr. Dickman.

HEARING EXAMINER DICKMAN: Okay. I appreciate everybody being here. Thanks for all your hard work. And see you in two weeks.

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

10/3/23

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

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING, BY TERRI L. LEWIS, REGISTERED PROFESSIONAL REPORTER, FPR-C, AND NOTARY PUBLIC.