

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
October 12, 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, Senior Planner
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Excellent. Good morning, everyone. Today is October 12th, 2023.

Let's stand for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. My name is Andrew Dickman, and this is the Hearing Examiner meeting. Under the code of ordinances, I am an attorney in good standing with the Florida Bar. I was retained by the Board of County Commissioners. I am not a county employee. I was hired specifically to execute the mission and codes and procedures under the Hearing Examiner section in the codes.

I am very familiar with land-use law, environmental law, zoning law, comprehensive planning. I've been doing that for over 20 years.

The purpose of this meeting is for me to hear evidence presented with regard to the advertised petitions that are before us. This is a quasi-judicial hearing which means that in a minute I'll disclose any ex parte communications that I may have had outside of this forum. I'll also ask the court reporter to administer the oath to anyone that's going to testify today.

After this meeting's over with, I have 30 days to render a written decision, and at the same time, I cannot do any other work, investigation, research, I can't talk to other people outside of this forum. The nature of a quasi-judicial hearing is due process and fundamental fairness.

So the speakers here today, whoever's going to speak, what I want you to know is that it's more important for me to get the information that you want to convey to me than it is for you to worry about, you know, public speaking, because this is just -- just relax. This is a small forum. I want to get the information from you. As I said, I can't call you up tomorrow or the day after and say, "What did you mean by this?" and have a conversation. So just take a deep breath, relax. These are informal proceedings, and we'll get through this in an efficient manner.

The way that we handle these meetings is the county, on my right, whoever is the planner that is in charge of writing up the staff report, will come up to the podium here to my far right and present the plans -- or present the petition, any analysis and any recommendations or conditions associated with it.

Then the petitioner or the petitioner's representative will use the podium over here by Madam Court Reporter and present their case in chief.

Then I will open it up for public comment. We have both in-person and online, a hybrid meeting, for people to participate -- public participation, and if anybody is here to speak, you need to fill out a speaker card and hand it over to this young lady over here.

And then what I'll do is allow for a little time for rebuttal, if necessary, if something comes up during the public speaking. Then I'll give the petitioner's representative a chance for -- to rebut those issues. And then we'll close the public hearing, and we'll have a little dialogue, and we'll go from there.

So if you have phones on, turn them off. If you want to have a conversation, do it out in the hallway. Try to speak clearly so the court reporter can capture everything that is being said here today. I have to suppress my southern accent, my cracker accent, for her specifically, which isn't easy. Speak slower.

And with that, I guess what we'll do is anybody who's going to speak here today, stand, raise your right hand, and the court reporter will 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. Awesome. We have two items on the agenda today. Are there any changes to the agenda?

MR. BELLOWS: For the record, Ray Bellows. There are no changes other than I have a reminder that both Items A and B are companion items, and they'll be one presentation.

HEARING EXAMINER DICKMAN: Companion items. One presentation. Okay. Very good.

***All right. So let's have -- let's have the presentation for Items 3A and 3B. The petitioner -- or I guess we'll start with John.

Good morning, John.

MR. KELLY: Good morning, Mr. Dickman.

And in your -- in your start to the program, you forgot to mention y'all spoken here.

So -- okay. Before you is Agenda Item 3A, which is VA-PL20230007656, and Agenda Item 3B is BD-PL20220004574.

With respect to the -- let's see here. With respect to the variance, I do have one correction to read into the record, and that is that the wrong LDC citation was used. Instead of 5.03.06.E.6, it should have been 5.03.06.E.5.

HEARING EXAMINER DICKMAN: Got it. Thank you. Is that in multiple places in the staff report, or do I just --

MR. KELLY: It's in the title.

HEARING EXAMINER DICKMAN: I got it, yep. Thank you.

MR. KELLY: Okay. So this is a request for the Hearing Examiner to approve both a variance from Section 5.03.06.E.5 of the Collier County Land Development Code to reduce the required side-yard setback from 15 feet to 4 feet on the east side and to 11 feet on the west side for a lot with 77 plus-or-minus feet of water frontage, and for a 6-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow a boat-docking facility that will protrude a total of 26 feet into a waterway that is 358 plus-or-minus feet wide pursuant to LDC Section 5.03.06.E.1 of the LDC for the benefit of the subject property which comprises 0.21 acres located at 33 Pelican Street West, also known as Lot 78, Isles of Capri No. 1, in Section 31, Township 51 South, Range 26 East, Collier County, Florida, together with that land lying north of said Lot 78 to the mean high tide line 150 feet MSL in Government Lot 9 in Section 32, Township 51 South, Range 26 East, Collier County, Florida. The property's located within a Residential Single Family 4 zoning district.

Public notice requirements for the variance are -- per Section 5 -- I'm sorry -- per Section 10.03.06.F.2, and the boat dock extension per LDC Section 10.03.06.H.

The agent letter to property owners within 150 feet was sent by the applicant's agent on August 22, 2023, the property owner notification letter newspaper ad were satisfied by the county on September 22, 2023, and the public hearing sign was posted by me on September 26th, 2023.

The variance application was reviewed by staff based upon the criteria contained within LDC Section 9.04.03, a through h, with the findings stated within the staff report.

The boat dock extension was reviewed based upon review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfied five of five. Of the secondary criteria, it satisfies four of six, with the sixth being not applicable. It's the Manatee Protection Plan. And both the variance and the boat dock extension have been found to be consistent with the Growth Management Plan and the Land Development Code.

No public comment has been received by me, and it's staff's recommendation that you approve both the variance and the boat dock extension in accordance with the plans contained within Attachment A of the individual staff reports. Approval of the boat dock extension is dependent upon the approval of the companion variance.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you, John.

MR. KELLY: Let me please add I did add a document to the record, as Nick Pearson has changed firms. So we did get an affidavit of authorization, and that's to be added to the record at this time.

HEARING EXAMINER DICKMAN: All right. Thank you.

MR. KELLY: Nick.

HEARING EXAMINER DICKMAN: Come on up, Nick. Career change.

MR. PEARSON: Yes, sir.

HEARING EXAMINER DICKMAN: All right.

MR. PEARSON: All right. For the record, again, my name is Nick Pearson, formerly of Turrell, Hall & Associates. Now with Bayshore Marine Consulting.

So just to begin the presentation, this is our cover page. This shows roughly where the property is. It's located in Isles of Capri on the southwest, sort of, general area of the island on one of the inland bays.

Next slide, please.

If you can see the red circle there, it's a little bit faint on the slide, but that shows the precise area of the property. As you can see, it's sort of located in -- not technically a corner by what the county would consider, but for our purposes it, essentially, is in a sort of corner of the island.

HEARING EXAMINER DICKMAN: Yeah. It's a very snug little spot there. It looks like there's a lot of accretion; is that what it is? Like, sand buildup?

MR. PEARSON: Yes, and that's part of what we'll get to.

HEARING EXAMINER DICKMAN: Okay. Sorry.

MR. PEARSON: No, no. It's fine. I think it's well known Capri was really a series of islands, historically, and it was basically created by dredging and filling. I think some of the other slides will show it better, but this particular location was kind of partially dredged, so the water depths fluctuate pretty substantially depending on kind of where you are looking.

HEARING EXAMINER DICKMAN: Yep.

MR. PEARSON: Next slide, please.

So this is the existing conditions. As you can see, the seawall is, like I said, on a corner, and then there is one small segment of it that kind of bends around the corner on the eastern side.

So something I want to point out here about the riparian lines. The east riparian line has kind of always has -- it's basically how it always has been, that is it comes perpendicular off of the seawall. The more western riparian line is somewhat more problematic, and I say that because, historically, this dock has been, it's my impression, constructed within the normal bounds of Collier County's Land Development Code. That is, I'm not aware of any other zoning requirement that was needed to build that dock that you see there.

The shoreline directly to the west of the west riparian line --

HEARING EXAMINER DICKMAN: Right here?

MR. PEARSON: -- is not stabilized. There's no mangroves there. It's, essentially, a small sand beach.

HEARING EXAMINER DICKMAN: Is it associated with that property or --

MR. PEARSON: Yes. Well, it's that one and the one next to it.

HEARING EXAMINER DICKMAN: This one.

MR. PEARSON: So the west neighbor has only about two feet of riparian frontage.

HEARING EXAMINER DICKMAN: Gotcha.

MR. PEARSON: So I don't want to call it unbuildable, but it, effectively, is with the frontage that they have.

HEARING EXAMINER DICKMAN: Yeah, that's what I was getting at, I was looking at, because all of these -- I think there's four of them -- they have to get through the mangroves, but then this looks, like, very shallow --

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: -- you know, where the sand is washed up, and they're way out into the -- into waterway.

MR. PEARSON: Parts of it are out of the water at low tide.

HEARING EXAMINER DICKMAN: All right.

MR. PEARSON: But what I was going to get at, by bringing up that riparian line, is that,

historically, the riparian line was about a foot or two further to the north I think as a result of, kind of, the shoreline changing over time.

So in the interim of when that original dock was built, the riparian line has shifted enough so that the existing structure is now slightly encroaching on the 15-foot side setback.

HEARING EXAMINER DICKMAN: Okay. So let's talk about that for a minute. Because it's my understanding that riparian lines are, essentially -- they're an extension of your side yard -- side yard property lines; is that right?

MR. PEARSON: Somewhat.

HEARING EXAMINER DICKMAN: Somewhat. So this one is your classic one --

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: -- where it just goes straight out?

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: This one, you know, because it meets up with other riparian property lines that are not, you know, perpendicular to the -- I mean, so you're saying this particular one, there's an encroachment in here --

MR. PEARSON: It's --

HEARING EXAMINER DICKMAN: -- because of a change on this riparian line?

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: So I'm not a surveyor, I want to disclaim. My understanding, though, in working with surveys and incorporating them into plans like this is that many times riparian lines do function as an extension of the property line. In certain cases, like when you have a nonlinear shoreline, though, they can come out at different angles.

HEARING EXAMINER DICKMAN: Right.

MR. PEARSON: There are several criteria that go into it. I know it's -- my understanding is that it's supposed to go from the extension of the property line to -- wherever that might be to the nearest point of line of deepwater.

And there is a degree of subjectivity that comes along with this as well. So one surveyor might actually not depict the survey line exactly like another. In this case, we had had several surveys over the years and felt the survey -- the riparian lines were not all the same.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: So that's why I say it appears to me that, because of the shoreline shift, that the riparian line also shifted a small amount.

HEARING EXAMINER DICKMAN: Got it.

MR. PEARSON: Next slide, please.

So this is what we are proposing to do. The access walkway that you can see coming off of the seawall is more or less what is there already. We would like to replace what's existing, basically, in the same footprint of what was there originally. The changes come in where the sort of almost triangular terminal platform is.

So we would like to add a flair to give us a better angle of ingress/egress to our proposed lift.

HEARING EXAMINER DICKMAN: And this particular approach, in your opinion, does that help this neighbor -- this particular neighbor?

MR. PEARSON: This is -- it is a difficulty with this neighbor.

HEARING EXAMINER DICKMAN: Yeah.

MR. PEARSON: As you can see, I -- my understanding is that his lot is 60 feet wide, which would require him to have a 15-foot side setback under normal circumstances. As you can see, I only have it about 6. So that, I would think, is a legally nonconforming structure.

HEARING EXAMINER DICKMAN: All right.

MR. PEARSON: The lines of ingress/egress that I have on that, on this configuration -- they're not shown, but I have drawn them out, and it appears that we can clear their

dock without much issue.

HEARING EXAMINER DICKMAN: But I think it's easier to clear the dock with this particular arrangement.

MR. PEARSON: Absolutely.

HEARING EXAMINER DICKMAN: I mean, it's odd-looking with the little triangle there, but I get it.

MR. PEARSON: Exactly. And I will -- I will go further into that in some of the other slides. But, essentially, we're kind of bound to this design because of being in a corner, like I mentioned earlier, having that shallow water to the north, and then also having this neighbor with a nonconforming dock.

It kind of limits us, essentially, to only this angle, there really is no other way without utilizing some kind of, you know, like, an elevator lift, which, in my opinion, is inferior to this design.

And I guess to further with the language in the petition is you can see we're proposing four feet on the east side, 11 feet on the west side setback, and then the protrusion would be to 39 feet.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: So 19 feet beyond the normally allowed 20.

Next slide, please.

So this kind of shows the general overview of the area. I know we're not supposed to use precedence to, you know, depict a need, but it is interesting, most of the docks in this area are quite a bit further out into the water than 20 feet.

HEARING EXAMINER DICKMAN: Yeah. Precedence is not the issue here, but what I'm focused on is the uniqueness of this -- it's almost a cove.

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: And you can see where this -- you know, either this is murky or it's shallow.

MR. PEARSON: It's very shallow.

HEARING EXAMINER DICKMAN: And there's very little for these two. You know, they kind of have to time the tide or be very tricky about getting out. I think it's interesting that they had -- they go all the way out here just to get into navigable water. But it is clearly a tricky, tricky little corner.

And I guess, you know, you see the seawalls done on this side, but it turns into more of a vegetated shoreline on this side, right? Am I wrong?

MR. PEARSON: No, that's correct. And I mentioned earlier about some of the other aerials show the, kind of, dredging a little better.

HEARING EXAMINER DICKMAN: Yeah.

MR. PEARSON: This is one of those.

HEARING EXAMINER DICKMAN: Yeah. So these two folks -- okay. So these two folks have that little sliver of access to the water to maybe launch a kayak or go swimming.

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Gotcha.

MR. PEARSON: Exactly.

HEARING EXAMINER DICKMAN: All right.

MR. PEARSON: Next slide, please.

Like every petition, a submerged resource survey was conducted here. We did find seagrasses -- shoal grass, to be exact -- on basically what that sandbar is. It's somewhat thin, not a -- not what I would call a perfect meadow of grass, but it is still present. It does cut off before we kind of get to the boatlift that we're proposing. So we did provide compliance with the applicable code, Chapter 5.03.06.

HEARING EXAMINER DICKMAN: Well, so these piers are literally out of the water, because you can see the shade on the sand, right?

MR. PEARSON: They are --

HEARING EXAMINER DICKMAN: The shadow on them.

MR. PEARSON: They are out of water for a portion of the tide at least. I have seen them fully submerged but, yes, it is very shallow pretty much at all times.

HEARING EXAMINER DICKMAN: Yeah. I gotcha. Okay.

MR. PEARSON: Next slide, please.

HEARING EXAMINER DICKMAN: No pictures of you diving out there? Next time, right?

MR. PEARSON: There's probably a few, but I did not submit them.

As you can see, we've met all five of the primary criteria and four of the six criteria, the one that we've missed being the vessel-to-shoreline length ratio. With that 34 and then the jet ski, it puts us over the limit, which, I believe, was -- the shoreline was 77 feet, so half of that would be --

HEARING EXAMINER DICKMAN: Come on; you can do the math.

MR. PEARSON: Thirty-eight and a half, I think.

HEARING EXAMINER DICKMAN: A plus.

MR. PEARSON: Putting me on the spot.

And, of course, the Manatee Protection Plan criteria is not applicable, as John mentioned.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: Next slide, please.

And that concludes my presentation. And if you want, that, I think, provides a little bit better of a picture that shows the general area there.

HEARING EXAMINER DICKMAN: So just out of curiosity, I mean, so what's the -- when you're out here, is the water quality -- you said there is some grass here. Is it growing, or is it fading -- is it dying? I mean, is there any oyster? Is there any -- I'm just -- this is kind of off topic, but I'm just curious about the water quality.

MR. PEARSON: So I have dove this site actually multiple times over the years. The first time I dove it was probably five years ago, and I did not see anything out there. The last time we dove it, it was probably a couple years later; I didn't see anything again. And then this most recent time there was some thin shoal grass.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: You know, grass does tend to be ephemeral, especially around our areas. You see it pop up; you see it go away. You know, it goes dormant during the winter as well. So if you really wanted to be scientific about it, I think you'd probably be better off doing it at the same time of year every year and then kind of getting a track record.

HEARING EXAMINER DICKMAN: Right.

MR. PEARSON: You know, has it just come back just because this one dive? Hard to say, but potentially.

HEARING EXAMINER DICKMAN: Okay. Just curious.

Anything else?

MR. PEARSON: That, I think, is pretty much it.

HEARING EXAMINER DICKMAN: Okay. John, you're up, so it means you want to talk.

MR. KELLY: Yes. As a result of the seagrasses, there were conditions of approval, and that is it must meet -- the dock must meet the following design conditions of approval pursuant to LDC Section 5.03.06.J.3. A, the dock shall be at least 2.2 feet NAVD; B, the terminal platform area of the dock shall not exceed 160 square feet; C, the access dock shall not exceed a width of four feet; and, D, the access dock and terminal platform shall be sited to impact the smallest area of the seagrass beds possible. Those were provided to us by our environmental staff.

HEARING EXAMINER DICKMAN: Perfect. Thank you.

Do you agree with those?

MR. PEARSON: Yes. I was just going to add one thing, actually, that I didn't bring up earlier is that this location is part of the Rookery Bay Aquatic Preserve.

HEARING EXAMINER DICKMAN: I was wondering about that.

MR. PEARSON: It essentially -- it effectively doesn't allow you to dredge at all.

HEARING EXAMINER DICKMAN: So the ST overlay?

MR. PEARSON: It's very difficult to permit dredging here, and it is in the ST overlay with the county as well. So, yes, very difficult to get dredging allowed here.

HEARING EXAMINER DICKMAN: No dredging, okay.

MR. PEARSON: So --

HEARING EXAMINER DICKMAN: Why don't we open it up to public comment, if we have any.

MS. PADRON: There are no registered speakers at this time.

HEARING EXAMINER DICKMAN: I told Heather to register. Just kidding. Something's going on here. There's something afoot.

Any other comments from the county?

That was a very nice presentation, by the way, and I wish you well with your new endeavors.

MR. PEARSON: Thank you.

HEARING EXAMINER DICKMAN: You know, change is always a good thing, professionally, sometimes, you know, if you -- for whatever reason, but I'm sure you'll do well.

If no one else has any questions or -- we'll close the public comment. I don't have any questions. I'll get a decision or decisions out -- I have to do two -- on these as quickly as I can, okay.

MR. PEARSON: Appreciate it.

HEARING EXAMINER DICKMAN: All right. No problem. Do we have anything else to discuss before I adjourn?

MR. BOSI: Nothing else from the county.

HEARING EXAMINER DICKMAN: And the Bears are doing better.

MR. BOSI: They won one.

MR. BELLOWS: Let's have two.

HEARING EXAMINER DICKMAN: The Dolphins aren't doing too bad.

MR. BOSI: No, they're not.

HEARING EXAMINER DICKMAN: Okay. Well, I thank everybody for setting up the room, and I appreciate everyone's support. And have a wonderful day, have a wonderful weekend. It looks like we're going to have some rain but then some cooler weather. That should be nice.

MR. BOSI: All weather's coming.

HEARING EXAMINER DICKMAN: All right. We are adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:32 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 10/27/23, 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.