

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida, October 24, 2013

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 MARK STRAIN

ALSO PRESENT:

Raymond V. Bellows, Planning Manager, Zoning  
Mike Sawyer, Project Manager, Zoning  
Heidi Ashton-Cicko, County Attorney's Office  
Judy Puig, Operations Analyst, CDES

PROCEEDINGS

HEARING EXAMINER STRAIN: Okay. Good morning, everyone.

We've got to get used to these long mikes. At the Planning Commission they're much shorter, and they pick up a little easier.

Thank you all for coming. This is the very first meeting of Collier County's Hearing Examiner. It's October 24th, Thursday.

Everybody please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Because this is the first meeting, I'm going to take an opportunity to -- for Bob to sit down.

MR. MULHERE: Okay. You said be ready.

HEARING EXAMINER STRAIN: Yeah. Well, you're moving too fast.

This is a day that is special, and it will be special in Collier County, especially for me.

I've had the good fortune to have lived in Collier County for nearly four decades, and for most of that time I've been involved with county processes either as a property owner or in business. I've seen our community grow, and along with that growth came a dramatic increase in regulation.

In those forever remembered old days, you could enter the building, Department 1, temporary trailer for the roll plan for a multi-story building and wait while it was stamped, approved, and walked out with a permit.

And when I was in business, that occurred many times. That's how we operated back then. And that approval included zoning approval.

So the review that we have and that you'll see today and in the other meetings we have wasn't consistent with the days -- the money days past.

Today that same process takes months. And zoning, well, that's another long process in itself. Too much time spent in regulation is not always productive for anyone, not the property owners, not the business interests, nor the neighborhoods, and it is costly.

The Board of County Commissioners has wisely decided to take steps to reduce the regulatory process, and we are here today to witness the first meeting of a process designed just to do that.

A few months ago the Board of Commissioners initiated this office, the Office of the Collier County Hearing Examiner. Today is the first meeting of this new office.

Thanks to our Board of Commissioners, this office will have the effect of removing six to eight weeks or more from the regulatory process for a variety of land-use actions. There will be cost reductions for advertising, applicant and staff attendance reductions, and the reductions in the volume of paperwork, just to name a few advantages of the new system.

It took more than just the board to say "do it." To get here today, I want to thank the many people in the community who have expressed support for this office, as well as the dozens of county employees within this building who have worked to make this first day functional.

Special thanks to County Attorney Jeff Klatzkow for his extensive legal knowledge that allowed the office to proceed in a manner that will both be user friendly and public friendly, unique to any other such office in this state; also to Nick Casalanguida for his foresight in planning this process; especially to Heidi Ashton and her team who have assembled the many legal processes and documents -- document trails needed to record these proceedings.

There are many others, such as Caroline Cilek and Ellen Summers, who had to painstakingly rewrite all the code and applications to make this office functional; to Tonya Spangler and Marissa Cleveland, who managed the details of setting up the office with electronic and media resources it needs; and the planning and zoning staff of Collier County working with Mike Bosi and Ray Bellows who have had to adapt to a myriad of unprecedented changes in Collier County, just to name a few.

And with every new operation, there's someone who quietly works in the background keeping the wheels lubricated and assuring everything moves forward. For this, I want to especially thank Judy Puig for her hard work and her complete dedication to making sure we could start successfully today.

I believe this is just the beginning of the many new and good things about to happen in Collier

County, and I am personally honored to be part of the team of people here at Developmental Services.

Thank you, everyone, for making today possible, and Collier County is open for business.

So with that, we will move into our regular agenda.

And the first item up -- well, first of all, individual speakers today will be limited to five minutes unless otherwise waived, and that is pretty easily done.

All matters used during the presentation at the hearing will become a permanent part of the record.

Any person who decides to appeal a decision of the hearing examiner will need a record of the proceedings pertaining thereto. Decisions of the hearing examiner are final unless appealed to the Board of County Commissioners.

The hearing examiner will render a written decision within 30 days.

And please turn off your cell phones. I didn't even know it was on. I can't figure out how to turn it off. There it goes.

\*\*\*The first item up is review of the agenda. We only have one hearing today, so we'll move right into that. It's Petition No. CU-PL20130000481, the Wynn Properties, Inc., request a conditional use to allow a food store with greater than 5,000 square feet of gross floor area in the principal structure, and it's a property located at Tamiami Trail East, Section 13, Township 50, Range 25, in Collier County, Florida.

Ex parte disclosures on my behalf, I have met with the applicant, I have met with the applicant's representatives, I have had numerous meetings with staff, I attended -- I believe I attended the preapp. I have had discussions with the assistant county attorney, Heidi Ashton; I have met with Commissioner Fiala, who had no objection to this process today; and I've reviewed the public record to the greatest extent that I could and anything that I could find. I've also talked to the gentleman and lady in the audience who represent the association behind this facility today.

With that, Bob, it's all yours.

MR. MULHERE: Thank you, Mr. Strain. Let me just say at the outset, it is an honor to be the first petition before you. This has been a long time coming. And it's equally an honor to be here representing a family business that has been in Collier County for many, many decades as well, that being Wynn Properties.

Here with me this morning is Jeff Wynn and Bill Clark, both from Wynn Properties; Russell Budd, who is the contractor on the project; and Ted Triesch, who is the transportation engineer and planner who, by the way, up -- I handed out a few documents, one of which is an updated transportation plan. I'll get into the details on that momentarily.

I also handed out an aerial and a conceptual site plan for the conditional use.

HEARING EXAMINER STRAIN: Okay. And before we proceed, let's make sure those are entered into the record. The Exhibit 1 will be the notice of advertisement for this hearing, Exhibit 2 will be the staff report, Exhibit 3 will be the TIS that you previously passed out, Exhibit 4 will be the aerial that you passed out as well, and Exhibit 5 will be the conditional-use exhibit site plan that you passed out along with it, okay.

That's all the exhibits for now.

MR. MULHERE: And I just want to point out -- it was pointed out to me, and I'll put it on the record, that in the aerial, directly behind the subject parcel, that roadway is not Estero Bay Lane. It is Boca Ciega Drive, which is correct in the aerial in your staff report but not correct in the aerial that I just handed out.

So to get to the particulars of the application, this is conditional-use petition. It requests three separate conditional uses in C3 district. Those are Conditional Use No. 10, No. 16, and No. 17, which respectively allow for food stores with greater than 5,000 square feet of gross floor area in the principal structure; permitted food services with more than 6,000 square feet of gross floor area in the principal structure; and permitted personal services, video rental, or retail uses with more than 5,000 square feet in the principal structure.

These uses were permitted on the property directly -- I guess it's basically to the north of the subject property, but in the aerial it's the property with the red roof there.

A conditional use was approved for exactly the same thing that we're asking for here. I think that's important to put on the record.

The desire is to construct -- to take the existing building, put an addition onto it, ultimately, for

22,000 square feet of retail hardware store. And, obviously, that will be Wynn's hardware store.

We've had a neighborhood information meeting. We spent quite a bit of time talking to the neighbors. There were no objections at all raised to this petition.

As I mentioned to you, there was one discrepancy from the original submittal wherein we had, I think -- had a transportation analysis done on about 21,000 square feet, and the subsequent submittal identified 22,000 square feet of total floor area, so that -- Ted Triesch has updated this plan to analyze that additional 1,000 square feet.

There were no issues -- and I know staff also looked at it; John Podczerwinsky also looked at it and did send out an email that I was copied on that said he had looked at it, and there were no issues.

But if you have particular questions, Ted's here, and John just walked in. Good timing.

HEARING EXAMINER STRAIN: Good timing. As soon as -- when you finish your presentation, I'm going to need John to come up and verify that he, for the record -- five minutes, okay. You're going to come back in five minutes? Okay.

MR. MULHERE: I think this is a relatively simple request. I really don't want to prolong the presentation. I'm sure you may have some questions, and I'd rather just go right to that, and I know there's one or two members --

HEARING EXAMINER STRAIN: Well, we had some members of the public here interested in the project, so I wanted to make sure you did a brief presentation so they could be refreshed in whatever the particulars are.

And with that, I -- when John gets back, we'll ask him to verify the TIS. I did get a copy of it. It is in the record.

And as far as any questions or concerns, I believe in talking with you and getting the TIS corrected, we are pretty much -- all the issues that I knew of were addressed.

And so before we go any further then, if you're finished with your presentation, I'll ask for any public comments on it.

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: If anybody in the public wishes to speak, you're more than welcome to come up and use the microphone, and you'll have to be sworn in by the court reporter.

(The speaker was duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: Thank you.

MS. LEVINE: My name is Mary Levine, and I'm a property owner at 3596 Boca Ciega Drive. I'm also the treasurer of our condominium association. I'm here with our president, Fred Rieckelman.

And I guess I had -- the main question that we have is around the regulations for how long the trucks can idle. We have problems already with Texas Tony's and how long the truck's -- both from a noise standpoint, but also from the diesel fumes, it gets quite difficult to deal with the smell coming from the roadway there.

And just wondered if there are regulations or if there's any way we can limit the amount of time that a truck could idle.

HEARING EXAMINER STRAIN: Ray, I don't know of any regulations on the books that address that issue. Do you?

MR. BELLOWS: No, there is nothing in the land development code that I know of.

HEARING EXAMINER STRAIN: Okay. From the perspective of -- I can ask the applicant -- is that the only question you have?

MS. LEVINE: Uh-huh.

MR. RIECKELMAN: Yes.

HEARING EXAMINER STRAIN: Okay. Let me see if we can get to an answer, and hopefully you'll hear that come out.

MS. LEVINE: Thank you. I appreciate it.

HEARING EXAMINER STRAIN: Thank you.

Bob, do you have any suggestions from your team that they might want to consider for regulation?

MR. MULHERE: I'm going to defer to Bill Clark as to what they might be willing to do to address

that issue; however, I agree with Ray, there's no regulation. There is a noise ordinance, so if noise was the issue, that would be relatively easy to deal with. But I think it's noise and diesel fuel.

HEARING EXAMINER STRAIN: Well -- and we had a similar instance occur with the Top Hat project, and I don't believe you -- no, you weren't the planner on that.

MR. MULHERE: No.

HEARING EXAMINER STRAIN: But there were problems there. I can't remember if we ended up regulating -- Ray, on Top Hat, do you remember if we regulated -- if we put any comments in that PUD for that? It was a C4 conditional use concerning the regulation of trucks operating there. I know we moved them to a different location.

MR. BELLOWS: I think that was one of the solutions, was to regulate the location. We also -- or the Planning Commission and board also approved some sound deadening device in the car wash.

My other recollection is, or understanding is that the sound code is the other source of being able to regulate noise impacts.

HEARING EXAMINER STRAIN: Generally what happens, your trucks pull up, they'll back into those loading spaces, and then pull out again?

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: Maybe Mr. Clark can offer something.

(The speaker was duly sworn and indicated in the affirmative.)

MR. CLARK: For the record, my name is Bill Clark. I'm with Wynn Properties, Inc. We also have Jeff Wynn here today.

I bring up Jeff's name because he's the president of Wynn Properties and he was, for a time, the manager of the Sunshine hardware store that is just down the street from us.

So getting back to the noise, the hardware store just down the street took its -- it still does today -- takes its deliveries directly behind the store, which are in very close proximity to the condominiums right behind it, and we've had no problems with noise whatsoever. In fact, the only problem with noise we've had is with the trash pick-up service.

To get to the point of Texas, the rib -- yeah, Texas Tony's. The difference between a restaurant and the operation we're proposing is that restaurants have several deliveries each day, and many of those deliveries are refrigerated trucks, and that's why they leave them running.

On the other hand, we just get two deliveries a week from a truck that actually Ace National is very adamant about they turn it off as soon as they can, you know, for fuel consumption and so forth. So I don't anticipate a problem like that at all.

The residences, in addition, are -- I guess the closest resident is maybe 200 feet from the delivery area? And we will have, of course, the buffer area there.

But, anyway, that is a distinction on the noise basis. Our current existing operation is in a position where close-proximity condominium people would be complaining if there were a problem. It's substantially different from a restaurant that has several deliveries a day and refrigerated trucks.

HEARING EXAMINER STRAIN: Thank you for the clarification, Mr. Clark.

Bob, I need to swear you in. That's one little thing I forgot here today.

MR. MULHERE: I figured we got everybody, yeah.

(The speaker was duly sworn and indicated in the affirmative.)

MR. MULHERE: Everything I have said and will say is the truth, so help me God.

HEARING EXAMINER STRAIN: Thank you, Bob.

Okay. And I think there is a marked difference between the two operations. It's a good point about the refrigeration trucks. I, too, have experienced them, even running down the road. They always have more running than they seem to need. So hopefully that difference will make for better accommodation for the neighborhood behind it.

And from experience, I know the Wynns to be very responsive. I have been in this town 40 years, and all the years they've been here, their businesses have been very responsive to the surrounding neighborhoods. There's one not too far from me.

So I think that you're in good hands with the concern. If you do end up having any, I think you're --

give the Wynns a call, and I'm sure that they'll accommodate you.

And now that John Podczerwinsky is here, John, I need you to go to the microphone, get sworn in, and express to us your total dissatisfaction with this TIS.

MR. PODCZERWINSKY: Good morning. Let me see if I get your proper title down. Is it Hearing Examiner Strain?

HEARING EXAMINER STRAIN: That's it, HEX.

(The speaker was duly sworn and indicated in the affirmative.)

MR. PODCZERWINSKY: John Podczerwinsky, transportation planner, for the record.

HEARING EXAMINER STRAIN: That's my title this year. Next week it changes.

MR. PODCZERWINSKY: I'll make sure to call you something different next week.

HEARING EXAMINER STRAIN: Every day.

MR. PODCZERWINSKY: Okay. And the question specifically about the Wynn Sunshine conditional use, are you asking specifically about the change in the TIS that came about this week?

HEARING EXAMINER STRAIN: Yes. It increased 1,000 feet -- 1,000 square feet, and I want to make sure that that increase didn't change your recommendations in the staff report.

MR. PODCZERWINSKY: That's correct, it does not change my recommendation at all. There is ample capacity on U.S. 41 in this location for this project.

HEARING EXAMINER STRAIN: Okay.

MR. PODCZERWINSKY: Okay.

HEARING EXAMINER STRAIN: Thank you, John.

MR. PODCZERWINSKY: Yes, sir.

HEARING EXAMINER STRAIN: Is there anybody else from the public that wishes to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Bob, do you have anything else you want to add?

MR. MULHERE: No, sir.

HEARING EXAMINER STRAIN: As far as the staff recommendations, I'm assuming you have no problems with those?

MR. MULHERE: We don't.

HEARING EXAMINER STRAIN: Okay. With that, we'll close the public hearing.

And the way this office normally operates, you'll get a written decision within 30 days. I'm going to tell you today that the decision will be affirmative, and it will take a lot less than 30 days to get to you.

So with that, I don't see any other issues.

Heidi, do you have anything you want to add?

MS. ASHTON-CICKO: No, thank you.

HEARING EXAMINER STRAIN: I didn't miss anything, did I?

MS. ASHTON-CICKO: No, I don't think so.

HEARING EXAMINER STRAIN: Okay. That's why I was asking you. I figure if I had missed something, you'd be the first to tell me.

Okay. With that, we are done with Petition CU-PL20130000481.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: Thank you all for attending, and appreciate the time and your interest.

Thank you all for coming to the very first meeting of the hearing examiner. It was short, to the point, and will continue with these next -- our next meeting will be the second Thursday in November.

And with that, this meeting is adjourned.

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There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 9:20 a.m.

COLLIER COUNTY HEARING EXAMINER

  
\_\_\_\_\_  
MARK STRAIN, HEARING EXAMINER

ATTEST  
DWIGHT E. BROCK, CLERK

These minutes approved by the <sup>HEX</sup> Board on 11/14/2013, as presented \_\_\_\_\_ or as corrected X.

TRANSCRIPT PREPARED ON BEHALF OF  
GREGORY COURT REPORTING SERVICES, INC.,  
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.