

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER

Naples, Florida
December 12, 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: Heidi Ashton-Cicko, Managing Assistant County Attorney
Ray Bellows, Zoning Manager
Kay Deselem, Principal Planner

HEARING EXAMINER STRAIN: Good morning, everyone, and welcome to the December 12th meeting of the Collier County Hearing Examiner.

First order of business, please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some housekeeping notes: Individual speakers will be limited to five minutes unless otherwise waived by the Hearing Examiner.

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

Decisions of the Hearing Examiner are final unless appealed to the Board of County Commissioners.

And the Hearing Examiner will render a decision within 30 days.

Review of the agenda: We have one petition under 4.A.

And there's no additions, deletions or any changes, Ray?

MR. BELLOWS: Correct.

HEARING EXAMINER STRAIN: Approval of minutes of the prior meeting. The prior meeting of November 14th, I received the minutes and reviewed them, they're fine to go for recording or whatever the next process is. That's probably the first set we reviewed, so we'll move from there.

The first advertised public hearing is Petition No. PDI-PL20130001715, Lynx Zuckerman at Hamilton Greens, LLC.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Disclosures on my part: I've had numerous meetings with various staff members and meetings with the applicant's representatives and the applicant themselves.

We also had extensive correspondence going back and forth to -- I don't want to use the word correct, because it -- but just catch all the changes that were needed to be made in this document to coincide with the changes made for the primary purpose here today, which is an additional product being introduced into the project.

So with that, because of the changes that were made, we're going to do this a little differently. I'm going to ask Bob to walk through the entire document for the record, making clear whatever change there is.

As he goes through, if I have any questions or comments, I'll interject them. And same with staff.

And after Bob gets done, I'll ask staff to concur that their findings are the same as they were at the time this document was originally submitted.

And with that, Bob, I'll turn it over to you.

MR. MULHERE: Thank you. For the record, Bob Mulhere with Hole-Montes.

Here with me this morning is Andy and Ryan Zuckerman.

And I guess I just want to take one quick minute to express my gratitude. I think staff really worked hard. This is the first time going through this process and it required I think a lot of extra attention and due diligence. And I appreciate Kay and Heidi and also, Mr. Strain, your assistance in this. I think it worked out fine. We learned some things through the process, so thank you.

HEARING EXAMINER STRAIN: We certainly did. Thank you.

MR. MULHERE: I guess we can start right on Page 2 of 28. We don't need to discuss the first change, that's just gratuitously me adding my name to the front page of the document.

But if you start on Page 2, we've just cleaned that page up, struck through the list of exhibits and tables. Because everything will be contained here in the table of contents and added a reference to Exhibit A, which is the PUD master plan.

On Page 3 we struck through that list of exhibits and tables, because it's not necessary.

Turning to the next changes, on Page 6 of 28, throughout the document you'll see strike-throughs of various exhibits such as the boundary survey and other exhibits that were originally referred to on -- under the list of exhibits and tables. And of course we've updated the ownership information on that page.

On Page 7 there -- the design of the project, this PUD had throughout -- in certain areas it had -- it used certain words such as the project will. And in the stormwater design it's likely that it wouldn't be divided into two separate water management basins, but might only be one, so we made that permissive. So that's that

change there.

And just the other two changes are really more we thought an appropriate way to express that rather than saying will have little adverse affect on drainage said will have no adverse affect on draining. And rather than handling water, it accepts stormwater.

Next page, 8 of 28, we won't have a master association if this is developed as single-family. And frankly, even if it was multi-family it's unlikely it would have, it's so small, that it would have more than one association, so we struck through that.

We changed the build-out estimate to seven years, which is consistent with the 2020-2021 build-out date we identified later.

We've corrected -- about three-quarters of the way down the page we've corrected the acreage citations.

And here is the first reference under C, density, of the introduction of up to 48 single-family units, which would --

HEARING EXAMINER STRAIN: Up above, Bob, I didn't mean to interrupt, but you skipped the paragraph that's titled the Hamilton Greens RPUD, you struck out the sizing of the recreational use.

MR. MULHERE: Oh, yes, thank you.

HEARING EXAMINER STRAIN: Okay, and put in there may be a portion of the community that may be devoted to active recreation.

MR. MULHERE: Yes, thank you. And that's referenced elsewhere throughout the document as well.

So anyway, the PUD had a somewhat unique allowance in 1.6.B, which allowed for the introduction of other development types besides the multi-family, and that gave us the ability to introduce the single-family to this project. And we limit that to 48 units. And the reason we limit that is that translates to a no additional traffic impact. And that's why that number is in there.

On Page 9 we've throughout the document again cleaned up the language referring to the master plan as Exhibit A and striking through language that wasn't necessary -- that isn't necessary.

On Page 10 we have a Project Land Use Data Table which now also under the development parcel is introduced as multi or single-family and identifies the density for each. And then the acreages were corrected to reflect the current accurate acreages in total of 29.68 acres.

And then again there's some cleanup language in B and C.

And then in 2.4 the -- again the reference to the existing allowance for multi-family or alternative up to 48 single-family units.

By the way, I should mention that as always the case, this PUD, once -- the client intends to develop it with single-family. Once it commences for development of one product or the other, that's what product gets developed. So obviously right after this approval we'll go through the platting process and then --

HEARING EXAMINER STRAIN: Right.

MR. MULHERE: On Page 11, struck through language that no longer applies in paragraph B.

And in paragraph -- or excuse me, Section 2.6, model homes and sales facilities, we've cleaned that up, struck through the reference to a dry structure and just allow up to three models in the RPUD.

And there's a minor change at the bottom, just strike through again master property owners association.

Then we turn to Page 12. And we've cleaned up this commitment related to the wall and the landscaping on both sides of the wall which will be located on the east and north property lines extending to the preserve tract boundary.

If you look at the master plan and you look at that eastern parcel where it abuts Wilshire Lakes PUD, there was always a commitment to provide the wall and landscape buffer adjacent to Wilshire Lakes on the easternmost boundary.

The PUD did not reference or was silent on that smaller portion to the north. I don't know what that distance is, it might be 50 or 60 feet. But now we've made it clear that the wall will also be extended in that direction as well.

HEARING EXAMINER STRAIN: I think because of the lake being removed, your setbacks now

for your single-family product, which will be as high as your multi-family, will be closer to that boundary line, so I think that warrants a wall.

I want you to consider in the parenthetical, it says, extending the preserve tract boundary. Would it be useful to add the words, extending the preserve tract along the northern boundary, to make sure that we're talking about that particular --

MR. MULHERE: But -- and it goes both ways. The reason I -- and we can do that. But the only reason I left it that way is if you go south, you're also extending to a preserve boundary. So either way. And that was why I didn't --

HEARING EXAMINER STRAIN: Okay, if that works, then that's fine.

MR. MULHERE: And I did want to mention that that -- you know, that landscape buffer will be a separate tract, so the single-family lots will have their setbacks measured from the property line, as is always the case.

HEARING EXAMINER STRAIN: Well, no, they're measured from the property line or the landscape buffer easement or wherever that may fall, right?

MR. MULHERE: If it was included. But this would be a separate tract.

HEARING EXAMINER STRAIN: Okay.

MR. MULHERE: Page 13, we -- paragraph B, development standards, let's just turn back to Page 12 for a minute. Paragraph 2.10 is general permitted uses. And the paragraph says that: Certain uses shall be considered general permitted uses throughout the PUD.

And then it lists those. And some of those are not subject to setbacks, or they're subject to different setbacks than would have otherwise been applied in this PUD. Different setbacks that are set forth in the LDC.

And probably the most obvious example is on Page 13, number six, it says landscape features such as landscape buffers, berms, fences, walls, well, those are right on the property line, they're not subject to setback. But if you read this section as it was written, they would have been subject to a 25-foot setback. So that's why we made those changes. And we refer back to the LDC, so we're not deviating, we're just saying apply the LDC to those things.

And in open space requirements, we cleaned that up to have an accurate reflection of the acreage.

On Page 15 is the Section 3, residential development area. Again, a reference to Exhibit A as the PUD master plan. Again, the introduction of the 48 single-family units in 3.2 and in 3.3 and in 3.4.

On Page 16 we added a reference to table three, which is a new table that is introduced in just a page or two. I think that sets forth the development standards for single-family. And we also added SDP or plat, because going through single-family we wouldn't do an SDP, we'd do a plat.

Next page is 17. On paragraph two, B.2 on Page 17, we again clarify that if the project is to be developed as multi-family, there will be a clubhouse facility centrally located. However, if it is developed as single-family that is permissive, there may be a clubhouse developed. Only 48 single-family units.

HEARING EXAMINER STRAIN: I think you'd have a hard time supporting a clubhouse with 48 units.

MR. MULHERE: Yeah, that's the issue. Yeah, thank you.

Then moving down to 3.7, we just -- the PUD only originally had multi-family development standards, so we add a new title there, multi-family. Because we also on the next page introduce -- or two pages in fact we introduce single-family.

So on Page 18 is still all of the existing language from the PUD as it would apply to multi-family development.

On Page 19 we introduce the development standards for single-family. That's why that entire page is underlined, it's all new language.

And then on Page 3.8 we retain the private roadway standards section, with the exception of number one, and then renumber them accordingly and indicate that they are -- they were already in the PUD, but today those would be considered deviations. When this was approved, they just allowed them in as a PUD, you know, separate standards of the PUD, so we indicate they are deviations.

On Page 21, down at the bottom of the page we struck through 4.4. It's not necessary. I'm not sure

why it was in the PUD. The permit -- state and federal permitting will dictate what it does as far as setbacks, but the county setbacks from wetlands is already provided in the development table, so we don't need to repeat that.

On Page 22 there are just minor changes there. I previously referenced for example in 5.4 the revised or updated or new project build-out, commencement and build-out schedule. 2014 for commencement, 2020 to 2021 for build-out. Hopefully sooner than that.

On Page 23 we struck through the affordable housing commitment, which is now a standard action taken in these PUDs that had that. And added the desired language from the county's perspective as it relates to the responsibility for PUD monitoring.

And on Page 24 of 28, under landscaping there is further language and clarification as it relates to the treatment adjacent to Wilshire Lakes.

Minor change there regarding decorative paving. Stated they shall, it's that they may use it.

And then Page 26 of 28 deals with the potential use of the clubhouse if it's built for any recreational facility for a polling place. Probably wouldn't happen because it's relatively -- if it's 48 single-family units, I doubt that the Supervisor of Elections would be interested in that, but it's in there anyway.

And then there's language that was required by the county utilities department relating to water main interconnection, 5.12.

And then on Page 27 under the RPUD regulation deviations, we struck through paragraph A in its entirety. It no longer applies because we shifted the entrance down to the south of the project from where it previously existed, which was to the north and adjacent to that preserve parcel on the north along Livingston. And we eliminated that second lake. The water management plan is different now. So A.1 and 2 no longer apply; we struck through them and we retained the other two paragraphs and renumbered them.

That, Mr. Strain, concludes all of the changes. The PUD master plan is also attached through a -- I guess some significant effort we've got a table in the PUD master plan that matches the acreage in the PUD document.

HEARING EXAMINER STRAIN: Now we do, yeah.

MR. MULHERE: And mea culpa, mea culpa, mea culpa for the extra work I caused everybody. That's Latin, by the way.

HEARING EXAMINER STRAIN: Well, I'm glad we got it done, though, Bob.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: So it worked out fine.

What I'd like to suggest or request is that the first -- Exhibit A will be the legal description that we usually have with these. Exhibit B will be our staff report. And Exhibit C will be the new document that Bob has read into the record.

You have copies enough for the court reporter, the County Attorney and staff?

MR. MULHERE: Yes.

HEARING EXAMINER STRAIN: Because I've got them electronically.

MR. MULHERE: Yep, I handed them out.

HEARING EXAMINER STRAIN: Okay. And is there anything else you wanted to do in your presentation?

MR. MULHERE: I don't think so.

HEARING EXAMINER STRAIN: Okay. So I'm going to go right into the staff report and then work with Kay for a minute on --

MR. MULHERE: I can --

HEARING EXAMINER STRAIN: -- acknowledgment.

Yeah, you can sit down and relax.

MS. ASHTON-CICKO: Mr. Strain --

HEARING EXAMINER STRAIN: Yes.

MS. ASHTON-CICKO: -- may I ask a question about the first exhibit?

HEARING EXAMINER STRAIN: Yes.

MS. ASHTON-CICKO: Because I think you said legal description. Are you referring to the notice

of the public hearing as Exhibit A?

HEARING EXAMINER STRAIN: Yes.

MS. ASHTON-CICKO: Okay, thank you.

HEARING EXAMINER STRAIN: Sorry, I'll be -- that's got the legal description in it.

MS. ASHTON-CICKO: The legal description is in the PUD.

MS. DESELEM: Yeah, Page 5.

HEARING EXAMINER STRAIN: Okay.

Kay, on the staff report -- well, first of all we're going to require full PUD strike-throughs instead of excerpts like we have at the beginning of this one from now on. I think we're all on agreement in that.

Is that fine with Ray and all you guys?

MR. BELLOWS: Yes.

MS. DESELEM: Yes.

HEARING EXAMINER STRAIN: The issues raised by Bob in the clarifications, do any of them change any of your findings?

MS. DESELEM: No, sir.

I do have a few corrections to make to the staff report, if I may.

HEARING EXAMINER STRAIN: Sure.

MS. DESELEM: For the record, I'm Kay Deselem, Principal Planner with Zoning.

And on -- I just want to clarify that our analysis begins on Page 2 of the staff report that's dated last revised 11-21.

On Page 3, under Item E, we're changing there are no substantial impacts to there are no additional impacts. Therefore the word "substantial" would be replaced by "additional".

We have provided findings of fact in support of our recommendation on Page 5.

And there is a change on Page 7. Under number five we're replacing the language: Develop the land with uses other than what to reflect the following: Add a product consistent with. And then it goes on to the existing zoning district.

HEARING EXAMINER STRAIN: Okay, so that sentence would read: But it is being requested in compliance with an LDC provision to seek such an amendment to allow the owner the opportunity to add a product consistent with what the existing zoning district would allow.

MS. DESELEM: That's correct, sir.

HEARING EXAMINER STRAIN: Okay.

MS. DESELEM: And those are the only changes I have.

Other than that, as noted in the staff report, we are recommending approval of this petition.

HEARING EXAMINER STRAIN: Let me make sure I don't have any other questions. I think you hit on everything.

Oh, I do have one question of the -- could be you, Kay, but maybe the applicant knows the answer. I think he's already told me, but I want to make it for the record.

The neighborhood information meeting. Question number one: All water is reared and temporarily held on site when it outfalls Livingston Road. What's the -- I'm sure you didn't mean the word reared, so --

MR. MULHERE: I didn't. Now I forget what -- all water.

HEARING EXAMINER STRAIN: I thought you said --

MR. MULHERE: Retained.

HEARING EXAMINER STRAIN: -- treated.

MR. BELLOWS: Retained.

HEARING EXAMINER STRAIN: Retained?

MR. MULHERE: Treated. Yeah, probably was retained.

HEARING EXAMINER STRAIN: If it's retained, you've got several words. If it's treated, you've just got to add a T.

MR. MULHERE: Well, treated works. All water is treated and temporarily held. That's probably right. Okay.

HEARING EXAMINER STRAIN: So for the -- I mean, that's just the minutes of the neighborhood

information meeting, so that will be reflected as corrected.

And the rest of my comments were in the document that you just read for the record. Is there -- that will be all.

And anything else from staff?

MS. DESELEM: No, sir.

HEARING EXAMINER STRAIN: Ray, do we have any registered public speakers? Anybody from --

MS. DESELEM: No, sir.

HEARING EXAMINER STRAIN: -- the public wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay, let the record show there are no public speakers, nobody wishes to speak.

And with that, Bob, unless you have any final comments, that's all I've got to ask. You good?

MR. BELLOWS: (Nods head affirmatively.)

HEARING EXAMINER STRAIN: Okay, with that we will close this particular public hearing.

And that is all on our agenda today.

So within 30 days usually, just to let you know, it has been much shorter recently, a decision will be sent to you, it will be recorded with the Clerk's Office. I'll have it all written up with help from staff and we'll be done. So thank you very much for coming. We appreciate it.

And Bob, you have the notoriety of being the first applicant for the Hearing Examiner in October and now the longest one.

MR. MULHERE: And the first PDI.

HEARING EXAMINER STRAIN: The first PDI. Yes, you're doing good with a lot of firsts.

So thank you all for coming, and with that we'll adjourn the meeting.

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



MARK STRAIN, HEARING EXAMINER

ATTEST:

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 1-23-2014 as presented ☒ or as corrected ☐.

TRANSCRIPT PREPARED ON BEHALF OF
GREGORY COURT REPORTING SERVICES, INC.
BY CHERIE' R. NOTTINGHAM, CSR, COURT REPORTER AND NOTARY PUBLIC.