

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
June 12, 2014

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: Scott A. Stone, Assistant County Attorney  
Ray Bellows, Zoning Manager  
Mike Sawyer, Senior Planner

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, June 12th meeting of the Collier County Hearing Examiner.

If everybody will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

A few housekeeping matters. Individual speakers will be limited to five minutes unless otherwise waived.

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

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

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

A review of the agenda: We have one advertised public hearing, and there are no other changes.

As far as approval of the minutes, the May 22nd minutes that were submitted were good to be recorded as presented.

The May 13th minutes had one change that needs to be made on Page 3. It's in the -- about the fourth or fifth paragraph down the word setback is used twice and it only needs to be used once. So it says, setback, setback, side by side. So if we just fix that, that's all that's needed for that.

And with that, we'll move directly into the first advertised public hearing. This is for Petition No. DRD-PL20130002659. The petitioner is CSC Properties, LLC. It's for a project at the corner of 951 and U.S. 41.

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: Now, I saw some speaker slips circulating earlier. If you're going to be speaking on this one pursuant to those speaker slips, you need to be sworn in.

Sir, if you want to rise and be sworn in, just in case you decide to speak.

(Speakers were duly sworn.)

HEARING EXAMINER STRAIN: Thank you.

As far as disclosures, I have met with Mr. Fred Hood, the applicant. We discussed some of the issues involving this particular agenda item, including the enhancement of the buffers and the relocating of some of the material to help further buffer to the Falling Waters project to the north.

Then I also had numerous discussions with staff, and we will have additional items to discuss in relationship to what the parking exemption is here today and being discussed.

And with that, Fred, before you start, first of all we have two exhibits already issued: One will be Exhibit A, will be the legal advertisement. Exhibit B will be the staff report. Before the meeting's over we'll be adding an Exhibit C for the existing parking arrangement. That will be part of deviation number two.

So Fred, you want to make a presentation so everybody here knows what you're talking about?

MR. HOOD: Fred Hood for the record with Mutual of Omaha and CSC Properties, the applicant.

The project -- or the deviations that we're looking for today on Marco 41/Holster (phonetic) SDP, approved SDP, are for the 10-foot buffer requirement on U.S. 41 where it was originally 20 feet. The reduction is due to a taking of land for the adjacent roadway project for U.S. 41.

The secondary deviation that is being sought is along the southeastern edge of the property



that we are looking at here. That requirement is for a Type A 10-foot buffer or shared buffer, if the property were to be developed concurrently with the adjacent project. For a shared buffer, above 15 feet. We're looking to have that buffer removed and the material from that buffer to be relocated on-site to two areas. The first area, primary area, would be to be around water management areas. And the secondary would be to be in the buffer area for Falling Waters, along the Falling Waters property line on the north side. And landscape islands within parking areas to be determined for development.

That's pretty much it.

HEARING EXAMINER STRAIN: Well, your most recent comments about the buffer, according to the documents that were part of the packet, the primary location will be the Falling Waters buffer.

MR. HOOD: I'm sorry, the --

HEARING EXAMINER STRAIN: The secondary will be around the water management. Assuming that all the material can't fit around the Falling Water stuff.

MR. HOOD: I'm sorry, that is correct.

HEARING EXAMINER STRAIN: Okay. So Falling Waters will get the primary benefit from the new vegetation.

MR. HOOD: That is correct.

HEARING EXAMINER STRAIN: And in clarification, the reduction of the buffer along 41, you have an existing easement that interconnects as a requirement to the CVS Pharmacy to the north.

MR. HOOD: That's correct. We have a 27-foot reciprocal easement that goes north -- east and west between the CVS and the remaining Homes Center properties.

HEARING EXAMINER STRAIN: And that easement is the same one that lines up in front of Tractor Supply and the other buildings to the south?

MR. HOOD: That's correct.

HEARING EXAMINER STRAIN: As so when the DOT came in and reduced your -- did some taking as far as the land goes in the front, you -- to move that buffer over right now you'd have to redo the interconnect, the piping that's underneath that easement and the easement itself, I would assume.

MR. HOOD: That is correct.

HEARING EXAMINER STRAIN: Okay. So you're going from 20 feet to 10, but in that 10 feet you put in all the vegetation that was previously required in the 20 foot.

MR. HOOD: That's correct.

HEARING EXAMINER STRAIN: Okay. So from a visual perspective it will be about the same, it's just the width of the buffer that's changing.

MR. HOOD: Correct.

HEARING EXAMINER STRAIN: Okay, I have a couple comments about the deviation number two.

I got your language, and I'm suggesting a change to it. In fact, that will be -- Exhibit C will be the existing parking diagram that you had sent by email. I'll leave a copy with the court reporter.

Fred, I'm assuming you have it?

MR. HOOD: Yes.

HEARING EXAMINER STRAIN: Okay. And staff, did you guys get a copy of it?

MR. SAWYER: Yeah, for the record, Mike Sawyer, Project Manager.

Yes, we did get that.



HEARING EXAMINER STRAIN: Okay. On that particular diagram, it not only shows 22 spaces of parking that the Tractor Supply has over on these new parcels but it also shows a stabilized area for a turn lane.

MR. HOOD: Yes.

HEARING EXAMINER STRAIN: In the language you sent me, that wasn't included, so I'm suggesting that be included in the revised language. And I'll read it to you.

It would say: Deviation number two shall not be effective until a shared parking agreement or easement encompassing the existing parking spaces and stabilized turnaround area located on parcel 0072627007, and shall be recorded prior to the issuance of the first building permit for this parking.

Now, that's a little different than what you wrote. I want to make sure we get it done with the improvements on that parcel.

Does that language have -- do you have any objections to that language?

MR. HOOD: The only thing that I would suggest us changing on that, the original stabilized subgrade area was -- is a lot larger than what Tractor Supply absolutely needs currently to this date.

So I would just say somewhere in that language that a stabilized turnaround area shall be provided, not specifically the one that's shown here on this SDP drawing that we're looking at right now.

HEARING EXAMINER STRAIN: Well, it's kind of hard to do that without Tractor Supply here announcing what you're saying. I didn't know that would be an issue until I got that document from you.

So what we could do is add language to the effect that upon mutual agreement between your client and Tractor Supply, that particular stabilized area may be reduced in size.

MR. HOOD: We can agree to that.

HEARING EXAMINER STRAIN: Okay. I had some other issues; I'll get to those.

We already cleared up the location, that was one of them.

Primary and secondary.

The deviation number two reads as follows: Alternative A landscape buffer which requires a 10-foot wide landscape buffer with trees spaced no more than 30 feet on center, to instead provide the plant material required to areas defined on the Homes Center Plaza SDPI with deviations drawing set. Then it goes into SDP number AR-11210.

The drawing set that was attached to the staff package didn't have that AR number on it. So I'm assuming you're going to be withdrawing -- the drawing set that was attached to the package that I'll be using for exhibits is sufficient for what you're trying to show?

MR. HOOD: Yes, it is.

HEARING EXAMINER STRAIN: It doesn't differ from the AR-112010?

MR. HOOD: Yes, they're actually based on AR-112010.

HEARING EXAMINER STRAIN: Okay. Well then that works.

And that's the remaining questions I have at this time.

I did want to go to staff. There's a couple issues in particular.

Mike, the -- right now this property wouldn't have needed the buffer, wouldn't have had the issue with the shared parking arrangement or any of that because it was put in by one owner as one SDP previously; is that correct?

MR. SAWYER: Correct. Right now there is one single SDP over a number of parcels, including all the parcels that we're talking about.

HEARING EXAMINER STRAIN: And they all used to be owned by one party.



MR. SAWYER: Correct.

HEARING EXAMINER STRAIN: And now that the bank has come in and actually owns three of them, that creates the separation need for the buffer where Tractor Supply currently has their parking spaces.

MR. SAWYER: Actually, because there is an approved SDP, you can still have multiple ownerships subsequent to that original approval. The original approval is based on whoever is the current owner at the time of approval.

If there's subsequent selling off, that doesn't substantially change the validity of the SDP itself. What happens is that if the owners decide to make improvements, they both have to give authorizations, or whoever has ownership has to give authorization to any of those improvements, and those are reviewed by the county.

If -- and my understanding is that the current intention is to separate and actually create two separate SDPs out of the one single SDP.

MR. BELLOWS: And under two separate ownerships.

MR. SAWYER: Correct. Once that happens, when you separate the two SDPs, that's when the code requires you to provide the required perimeter buffers.

HEARING EXAMINER STRAIN: Okay. And so they're being proactive, realizing that that's probably going to happen in the future, and upon that happening this deviation would kick in, the added material will be added to the Falling Waters buffer, and that's probably why we're here today. Would that be a fair statement?

MR. SAWYER: Correct. The process that we would go through would be to do two simultaneous submittals: One for the new SDP being created, and the other would be to modify the existing SDP and reduce that one in size.

HEARING EXAMINER STRAIN: Okay. Now, pursuant to a discussion we had just before we started the meeting today, in looking at the detailed plan that Fred had sent me by recently, and now knowing that the anticipation is to split these SDPs because they are separately owned, or split the one SDP into two, will that trigger the need for the applicant to do an off-site parking exemption to deal with the parking that we're dealing with in regards to just the deviation today?

MR. SAWYER: In all likelihood, yes. Because the two SDP -- or you're creating two SDPs. Each of those SDPs are going to have to be standalone and meet all of the requirements: Parking, stormwater, preserves. And parking, more importantly, and which is what we're principally talking about right now. And if it doesn't, then they're going to have to either provide additional parking within those SDP areas, if they can, or find another method.

HEARING EXAMINER STRAIN: Okay. They would not be allowed to split this original SDP until they address the parking.

What I'm concerned about is I hate to see Tractor Supply left without any parking that they're needed. They got 22 spaces that apparently aren't on their property. How they bought it, why they would buy it without addressing it at the time, I don't know. Maybe they did, but we don't have a record of that here.

So I don't want to put them in a situation where down the road this property gets cut off and they don't use -- the new applicant says well, we just want to go for the deviation, we're just not going to provide them with the parking. But then they wouldn't be allowed to split the SDP, so the parking would still remain with Tractor Supply; is that fair?

MR. BELLOWS: That's correct. We would not -- we cannot approve an SDP that creates a nonconforming of the original SDP.

HEARING EXAMINER STRAIN: Okay. I just want to make sure that under any



circumstances the current property owner is protected. They bought into a situation that has changed, but that's through no fault of theirs.

And that's the last remaining question I have on that.

Oh, one other, Mike. There is some water management piping and obviously preserve calculations and everything else dependent on the unified SDP. And some of it's running through this parcel immediately adjacent to Tractor Supply.

How is that addressed in the future, depending on how they split the SDP?

MR. SAWYER: Yeah, what would happen in that case is that all of those elements, all those site elements, access easements, stormwater, even the turnaround area that we're talking about, all of those elements would have to be shown as easements on the appropriate SDPs. And therefore, and even in the preserve areas that are current and required, there would have to be cross-easements provided by both of those SDPs. So it would be basically reviewing those easements and those elements when we're doing both the SDPs.

HEARING EXAMINER STRAIN: Okay. Do you have anything you want to add as part of your staff report or presentation here this morning?

MR. SAWYER: Not substantially. You do have the revised staff report dated May 27th. We are recommending approval, and certainly here to answer any questions.

HEARING EXAMINER STRAIN: Okay, I think I've asked you all the ones I had at this point.

So with that we'll go to the members of the public. Does anybody in the public wish to speak on this matter? If so please come on up and use the microphone.

Sir, you need just to identify yourself for the record. And if you have a slip. Thank you. Ray?

MR. BASSETT: My name is Donald Bassett. I'm a resident of Falling Waters for 17 years. I'm past president of Association 1 and past president of the master association.

The first meeting I had with county regarding this property was November 2nd, the year 2000. I chaired the first meeting that we held in our clubhouse regarding this property.

We had a memo from Joe Schmitt January 7th of 2003 that no C.O. would be issued until all landscaping, irrigation and maintenance was completed. However, a temporary C.O. was issued and from that day forward we have had problems.

We have waited years for this property to be developed and taken care of. Landscaping and wall is not completed. Lighting on the second building Tractor Supply is not legal. We have noise at late hours from the Tractor Supply business.

Ten feet -- I hope that the buffer for -- against Falling Waters is not the one that's in question here.

HEARING EXAMINER STRAIN: Other than enhancing it with more vegetation, no, it's not.

MR. BASSETT: It needs enhancing with more vegetation.

HEARING EXAMINER STRAIN: That's what's happening, sir.

MR. BASSETT: What is there now is not what was approved by the Board and the county on either side of the wall. And it's a real disaster. I have looked at other neighborhoods within Collier County and we are the only one that has just a real mess on our hands along this wall. And that's why we are so concerned about new people coming in and building and not maintaining.

The old people have not maintained what is there right now. It's not even one continuous wall because they left an opening in the wall, so we get noise. Noise at night. They run their forklifts at 3:00 a.m. in the morning, the beeping sounds that can be heard at Falling Waters. And



we're concerned about odors if the buffer along the wall is not adequate.

HEARING EXAMINER STRAIN: I'm also chairman of the Collier County Planning Commission, and this project, your project next door, as well as the changes that they wanted in this project that go beyond what today's meeting is about, were addressed at that meeting and we did address the timing and the completion of your wall and the finishing of that buffer.

Were you at -- I can't recall if you were at that meeting or not.

MR. BASSETT: I've been at all -- whenever I'm here, I attend the meetings, yes.

HEARING EXAMINER STRAIN: Okay. Because that was a more substantial meeting in regards to the actions on that site. And the Planning Commission made a lot of recommendations to enhance that -- finish the wall and make sure the buffer was completed against your property at the request of property owners from your development.

MR. BASSETT: That's correct.

HEARING EXAMINER STRAIN: And that all got documented and they are tied now to a time table. And when we get back to the applicant, I'll ask them to refresh my memory what that time table is, because I don't remember, sitting here today.

MR. BASSETT: I would appreciate that. Because it's just a real mess. It's not maintained and the wall is not completed and now it's deteriorating along the top also.

HEARING EXAMINER STRAIN: I think on the Planning Commission we shared your concerns and we tried to make sure it was addressed. So hopefully that will still be taken care of. But I'll make sure we get some additional testimony today to address --

MR. BASSETT: There has been several inspections, but that has not taken care of the problem at all.

HEARING EXAMINER STRAIN: And as far as the existing properties that are built, the applicant today really isn't in charge of those --

MR. BASSETT: That's correct.

HEARING EXAMINER STRAIN: But you have an opportunity with any concerns you have to call code enforcement. And you'll find we have a very aggressive code enforcement department. They do an excellent job in checking the conditions of the code against what's there. And if you have lighting issues, noise issues or buffer issues, I would highly suggest you call code enforcement. Because those original properties need to be up to speed.

MR. BASSETT: Yes. Because we understood that there would be no the lighting facing towards our buildings, and there is. And there's noise at 3:00 a.m. in the morning, you can hear the beeping sound of trucks being unloaded.

HEARING EXAMINER STRAIN: I would suggest you get the code enforcement involved in those. Because that's an existing site, it's not the site these gentlemen --

MR. BASSETT: I understand.

HEARING EXAMINER STRAIN: -- are talking about.

MR. BASSETT: And I'd like to speak against the new people moving in, because I don't know, but with so many problems since the year 2000, and this is 2014 and we still have just a mess along there. We've been looking at it for 14 years.

HEARING EXAMINER STRAIN: Well, with the actions that just happened, I would hope that you take a look at -- get a copy of those stipulations. Maybe from staff you could send the gentleman -- we've got your address.

MR. BASSETT: Yes, you do.

HEARING EXAMINER STRAIN: They can send you the new stipulations that were recommended from the Planning Commission. They address I hope a lot of the concerns you're



expressing, especially the one with the wall and the buffer. That was timed. And maybe in a minute when Fred comes back up he can tell us what that timing was, because he was at that meeting.

MR. BASSETT: Thank you, I appreciate that.

HEARING EXAMINER STRAIN: Thank you, sir, appreciate your input.

Anybody else from the public like to speak on this issue?

(No response.)

HEARING EXAMINER STRAIN: Okay, Fred, would you mind taking a moment and refreshing my memory? I have a lot of projects that go through and I don't remember very specific about each one, so maybe you --

MR. HOOD: Sure.

HEARING EXAMINER STRAIN: -- could help us with the buffer and the wall.

MR. HOOD: Sure. Frederick Hood, for the record again, Davidson Engineering.

The timing on the wall and the buffering for the effective properties inside of Homes in our SDP were time sensitive to prior to issuance of the building permit. So before -- way before C.O. they have to do a building permit. Once the building permit is applied for, it will not be approved until the wall, the buffering, anything that has to do with buffering the area is completed.

HEARING EXAMINER STRAIN: That's right. And I just pulled up some notes that I made during that Planning Commission meeting. And sir, we had put 12 stipulations on the applicant, in addition to what was already on record. I'll read those to you so you'll get an indication of some of the things that were recommended.

No outside amplified sound except in front of the buildings, and that sound level will not break the side plain of the building except drive-through speakers between 8:00 a.m. and 10:00 p.m.

Outside lighting is to be shielded and no taller than 15 feet from the front of the building.

The rear wall and buffer along Falling Waters will be completed before the first building permit on any of the proposed buildings.

Building height limited to two stories or 35-foot zoned, 45-foot actual.

The drive-through is limited to one restaurant.

Limited dumpster locations not to be within 100 feet of Falling Waters.

There will be no convenient stores and gas pumps.

Minimum setback for the ordering window for any drive-through will be 100 feet.

And then there's some changes to the language that I don't know what it means and the brief notes I made here.

Subject to staff recommendations and the traffic will be limited to the previous trips.

Those are generally the standards. They were more refined when we actually read them for the record, but that's some rough notes I made during that meeting that I still have, so --

MR. BASSETT: Is it possible to receive a copy of those?

HEARING EXAMINER STRAIN: Staff can send you a copy. When they send you a copy of the information from that -- yeah, in fact, that's the stipulations that you've not put into formal --

MR. BELLOWS: Yeah, after the meeting I'll provide all that information.

MR. BASSETT: Thank you.

HEARING EXAMINER STRAIN: Okay. Thank you, Fred.

Is there anything else you want to add, Fred?

MR. HOOD: That's it.

HEARING EXAMINER STRAIN: Thank you, sir.

Anything else from staff?

MR. SAWYER: No, thank you.



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HEARING EXAMINER STRAIN: Okay, if there is no other input on this one, we've got all the information we need. And we will -- my office will have a decision rendered within 30 days on this matter.

Thank you all for attending and that's the last item on today's agenda so 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 Hearing Examiner at 9:20 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

ATTEST:  
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 7-10-2014 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