

July 10, 2014 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
July 10, 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: Heidi Ashton-Cicko, Managing Assistant County Attorney  
Ray Bellows, Zoning Manager

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the July 10th meeting of the Collier County Hearing Examiner's Office.

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, announcements. Individual speakers will be limited to five minutes unless otherwise waived by the Hearing Examiner.

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

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

The review of the agenda. We have three items on the agenda. There are no changes, I don't believe, Ray. Do you have anything you want to change or add to the agenda?

MR. BELLOWS: No changes.

HEARING EXAMINER STRAIN: Okay. As a side comment, I want to thank Gail Bonham for the reorganization of this room. I think it's a more effective way. Everybody was -- these tables were much, much longer and it put everybody farther away and it's actually better to have us all working closer together, so I think this works out real well. Thank you.

MR. BELLOWS: I thought you were supposed to be in the middle, though.

HEARING EXAMINER STRAIN: Well, interestingly enough, it would be nice if we had -- I think they call them the overhead projector, the ELMO. I don't know where to show it where I'd be able to see things that are put on the board. So we haven't figured that out yet. Some day that's going to happen to get resolved, but we're not there, so --

Approval of minutes. I have reviewed the June 12th minutes. They're accepted as submitted, so they can go to recording.

And then we'll move directly into our first advertised public hearing. It's Petition No. PDI-PL20140000973. The petitioner is Hacienda Lakes -- or Taylor Morrison of Florida, Inc., and it's for Hacienda Lakes Mixed Use Planned Unit Development, which is the development known as Esplanade.

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: As far as disclosures on my part, this actually is probably the most complicated one we'll have today, to whatever extent that is.

I did have meetings with the applicant's representative, Alexis Crespo. I made a site visit on this one yesterday. I have some photographs that will be added to the record.

The staff -- I met with various members of staff, including Diane Compagnone of our sign division, and I also talked to the County Attorney.

To start out, there will be three exhibits: Exhibit A will be a legal ad; Exhibit B will be the staff report; and Exhibit C, and I need to know from the County Attorney if I need to -- I left it across the hall, because I don't normally do hard copies. I'll bring it back and give it to the court reporter. But it's a photo of the sign that is at Esplanade. It was taken yesterday, 7/9, 2014. It's simply the sign that's in place already that was supposed to be subject to today's hearing.

If anybody wants a copy of that, right after this meeting I'll run across the hall and get it and bring it and provide it to the court reporter.

And is that okay, Heidi, to do it that way, since I didn't bring it in with me?

MS. ASHTON-CICKO: That's okay. Unless the applicant wants to see the picture before we proceed.

HEARING EXAMINER STRAIN: And the applicant's represented by Alexis today? Alexis, do you mind coming up?

MS. CRESPO: For the record, Alexis Crespo with Waldrop Engineering.

I don't need to see the photos. I'm aware of its location. And the staff did allow us to place the lettering on the existing sign structure in good faith that we were going through this process. That was approved by Claudine Auclair and Jamie French prior to submitting the DRI.

HEARING EXAMINER STRAIN: After I discovered that the sign was already up, which wasn't

supposed to in my opinion go up until this meeting was over with and some kind of decision was rendered, I came back to try to find out how that happened.

And I concur with your statement. You did submit what was called a Letter of At-Risk. And I've done some research on that which we'll be talking about in a minute. But I wanted to describe the sign -- picture that I took. I just stood at the intersection and took a picture of the sign to show that it was there. And I'll bring it back over and make sure it's recorded with a decision and everything so that you have a copy of it.

If you want to wait, after this meeting I'll be glad to give you a copy.

MS. CRESPO: Okay, great.

HEARING EXAMINER STRAIN: It's on my desk.

But while you're up there, I have read the staff report and I didn't know if you wanted to make any presentation.

Are there any members of the public here to discuss this particular case?

(No response.)

HEARING EXAMINER STRAIN: Then it's up to you on your presentation, whatever you'd like to add to the record. Because I do have some questions.

MS. CRESPO: I would just start by thanking staff, acknowledging we agree with the findings of the staff report.

Per our discussion I think there was a rewording that needed to occur in the deviation language in that this is a ground sign and not a wall sign, as the structure in which the lettering is located on is not structurally connected to the perimeter wall of the project. So that will be the one clarification I'd like to add.

HEARING EXAMINER STRAIN: Okay. And that's what I was asking Diane to be here for, among other reasons.

Diane, do you concur this would be better defined as a ground sign versus a wall sign?

MS. COMPAGNONE: Yes.

HEARING EXAMINER STRAIN: Okay.

Alexis, in the process that evolved to get this sign put up, I notice that when I got back, I asked -- I had to go to the files, or Diane actually helped me to find this what's called an At-Risk letter. And that apparently is what allowed the applicant to proceed without approval. It basically said that if the lettering went up and it wasn't approved, they would take it down.

But prior to that two events occurred that I can't understand why the county staff who reviewed it would have allowed it to happen. Number one is the PPL that came in clearly showed the site sign as being located where this sign is. So it wasn't a matter of their just putting up a wall. And until they put lettering on it it's not a sign. It was culled out as a sign in the original application. I know you probably have nothing to do with any of this. I need to get this on the record because it's an awkward situation, it kind of binds this office ahead of time, which it shouldn't do.

Secondly, the next submittal was a building permit for the wall, the structure itself. And Diane pulled that for me, and that building permit clearly shows that this is a sign -- I think they called it a sign wall. And they actually showed the lettering on the sign.

And after reviewing it, it was determined that they could put the wall up and all the peripheral items that go with it, but they actually couldn't attach the letters until this process supposedly was completed.

Your submittal even indicated that they can't attach letters until this approval's done. Yet the letters are attached, as I found out yesterday. It caught me completely by surprised.

I did talk to staff. It was, why would we do this? And they indicated to me that they thought I knew that it had already been installed.

I don't believe that is a process we should continue to follow or allow in this county. I have talked to the County Attorney's Office about it, as well as the administrator for Growth Management. And there will be some changes hopefully coming down that will correct this error.

In the meantime, Ray, I wanted to ask you, as Zoning Director, do you know of any provisions in the Land Development Code that allow an At-Risk letter to be filed before an approval is issued that basically circumvents the code?

MR. BELLOWS: I did some additional checking before I came up and I did not find anything. It was not my previous experience that there is such language in the LDC that would allow for this from a zoning point. However, there has been a policy I think as part of the Building Department to allow construction to occur at an applicant's risk.

HEARING EXAMINER STRAIN: And that's usually through an early work authorization? Or is it your knowledge that at At-Risk letter is something that is customarily used?

MR. BELLOWS: It's an At-Risk letter.

HEARING EXAMINER STRAIN: Has that been a policy adopted and approved by the Board of County Commissioners?

MR. BELLOWS: Not to my knowledge.

HEARING EXAMINER STRAIN: And Diane, I asked you to attend today because I want to understand what a sign is. I mean, we've got one, two, three, four different definitions, and they range from a sign to a sign area, a sign face and a sign structure. We're being asked today to review the lettering, which obviously is part of the sign. The lettering has a certain feature, size and height to it. It goes up so high on the feature that it's being attached to.

Are any parts of the feature considered part of the sign? Meaning non-lettering.

MS. COMPAGNONE: Yeah, it would be the sign structure.

HEARING EXAMINER STRAIN: Okay. What do you consider the sign structure in relationship to what we're looking at today? You're familiar with the arched structure we're dealing about today?

MS. COMPAGNONE: That would be the top of the arch structure.

HEARING EXAMINER STRAIN: Okay. So when the building permit was issued and it were submitted as a sign and the claim was that you can't put the lettering up until approval, would it have been more appropriate to not issue the building permit until the sign, which has now been determined to be partially the structure, had been approved as well?

MS. COMPAGNONE: That would have been the ideal situation.

HEARING EXAMINER STRAIN: Okay. I would hope that after today's experience we can somehow correct how this goes on in the future.

As far as other issues with the application, Alexis, there were two deviation sets of languages found in the staff report. The latest one was dated June 6th, 2014 which I believe is the one staff -- and I'll ask Kay to confirm that -- and the County Attorney's Office is the one we should be using today versus an earlier one that I think was June 4th.

Are you familiar with the two different sets of language?

MS. CRESPO: Yes.

HEARING EXAMINER STRAIN: The one that I believe we're hearing today that I think is most relevant to the discussion, it reads the following, and it's dated June 6th, 2014: Deviation 9 seeks relief from LDC Section 5.06.02.B.6 which allows two ground or wall signs per entrance to a residential development for the maximum height of eight feet to allow one wall sign with a maximum height of 13 feet at the entrance to Esplanade at Hacienda Lakes as shown in the attached E.2, Esplanade at Hacienda Lakes entry sign location map.

Is that the one that you're supporting today?

MS. CRESPO: Correct. And I would just ask that the reference be to one ground sign or the maximum height of 13 feet.

HEARING EXAMINER STRAIN: I agree with that. That's a good idea.

Kay, do you have any problem using that deviation language versus the other one that's in here of an earlier date?

MS. DESELEM: No, sir, it's perfectly fine.

HEARING EXAMINER STRAIN: And I assume the County Attorney's Office is fine with that?

MS. ASHTON-CICKO: Yes, the language is acceptable.

HEARING EXAMINER STRAIN: Okay. And that is the only questions I had.

Do you have anything else you want to add, Alexis?

MS. CRESPO: No, sir.

HEARING EXAMINER STRAIN: Okay. Ray -- or Kay, is there a staff report?

MS. DESELEM: Yes, sir, there is a staff report dated June 6th, 2014. Goes into the information regarding property owner and the applicant to define who those persons are and notes that they are only one property owner within this overall project.

The staff report also explains the request, the geographic location, and gives you the applicant's proposed description of the request before you today. And we do provide an analysis of that deviation.

And the insubstantial change criteria has been reviewed and we find that this particular petition does meet that criteria, and we are recommending approval.

HEARING EXAMINER STRAIN: Thank you, Kay.

I asked earlier if there's any members of the public wishing to speak on this? Is th -- and I didn't see anybody here that wasn't there when I asked that, so I'm assuming there's no members of the public here.

And with that, we will close the public hearing on this item and a decision will be rendered within 30 days.

\*\*\*Next item up is boat dock extension BDE-PL20144000225, the Markovitz boat dock extension. And it's on Isles of Capri.

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

HEARING EXAMINER STRAIN: Disclosures. On my part, I talked with Jeff yesterday at a pre-app, very brief comment. And I've talked with staff about it.

And with that, I'll turn -- first of all, there's two exhibits. The Exhibit A will be the legal ad. Exhibit B will be the staff report.

Jeff, did you have any -- I have read the staff report.

Are there any members of the public here to -- that are interested in this particular item?

(No response.)

HEARING EXAMINER STRAIN: There are none.

Jeff, do you want to add anything to the record?

MR. ROGERS: Not really. Not unless there's any questions.

For the record, my name's Jeff Rogers, representing the applicant, James Markovitz.

HEARING EXAMINER STRAIN: And the only thing I wanted to know was kind of what I talked to you about yesterday, Jeff. I was surprised at how this was purely limited to a lift that's already attached to a dock that's already been approved for the extension.

MS. RODGERS: Correct.

HEARING EXAMINER STRAIN: Okay. And with that, I'll ask if there's any -- does staff want to add anything to the record?

MR. SAWYER: No, we do not.

HEARING EXAMINER STRAIN: Okay, Jeff, thank you.

With that, we'll close the public hearing and I will -- a decision will be rendered within 30 days.

MR. ROGERS: Thank you.

HEARING EXAMINER STRAIN: Thank you, Jeff.

Oh, Jeff, you mentioned Rocky was coming today. I didn't see him here. He probably thought it would be too boring, huh?

MR. ROGERS: I told him his services weren't going to be needed.

HEARING EXAMINER STRAIN: Tell him his presence is always missed, though.

MR. ROGERS: But he did give me something to give to you, and I can do it later or pass it onto you now.

HEARING EXAMINER STRAIN: As long as it isn't anything that's of monetary value. Sure, I'll take it now.

MR. ROGERS: (Handing.)

HEARING EXAMINER STRAIN: Okay. Thank you. It's an old business card of mine from 30 -- God, 25 or 30 years ago. Yeah, it's been a long time. Tell Rocky I said thank you.

\*\*\*Next item up is Petition No. PDI-PL20140000562. The petitioner is Neal Communities of

Southwest Florida, LLC. It's for the Bristol Pines Planned Unit Development RPUD.

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 have met with the applicant and the owner of the project. I've also talked with staff and I've had emails with the utility department to make sure they were consistent with the use of that easement area.

So with that, Alexis, it's -- I have read the -- I read the staff report. There will be two exhibits for the record. Exhibit A will be the legal ad. Exhibit B will be the staff report.

Is there anything you want to add to the record?

MS. CRESPO: For the record, Alexis Crespo with Waldrop Engineering, representing the applicant.

In followup to some conversations we had, we would proffer an additional condition relating to the removal of the sign following completion of home sales or residential sales, as staff has worded it. We would be amenable to saying: Upon completion of home sales by the developer or January 31st, 2018, whichever should come first, to provide the county with a bit more confirmation of when that sign will come down.

HEARING EXAMINER STRAIN: That's January 21st?

MS. CRESPO: 31st.

HEARING EXAMINER STRAIN: 31st, I'm sorry.

Okay, that does resolve one question.

The other one, let me get to it here in just a minute.

Oh, do you have any concerns over -- and this may be part of a legal question too. I know there's a requirement for your applicant to have an agreement executed with the utility department for that easement, to use basically their easement for the sign. Part of that agreement will be there will be a 60-day demand to remove the sign if they feel they have to go in there and utilize this easement.

But at the same time, until that agreement's completed, it wouldn't be a good idea to put a sign up prior to the execution of that agreement. Do you have any problem with that?

MS. CRESPO: We were hoping to get the sign up as soon as possible following the Hearing Examiner's recommendation is what we're hoping here.

And we are in contact -- I've emailed Chris van Langen this morning to get that agreement in motion and get the language.

We would appreciate the ability to place the sign At-Risk, with the understanding that it would come down if the agreement cannot be reached in a specified time frame. However --

HEARING EXAMINER STRAIN: Boy, oh, boy.

MS. CRESPO: -- we understand this is a hot button issue today and in the future, so we would certainly just defer to your discretion. But we have been waiting patiently to get this sign up and we do appreciate the abbreviated process this provides us. But to the extent we can get rolling, we would appreciate it.

HEARING EXAMINER STRAIN: Well, to tailor some language into a decision that evolves around a solution of this issue might be possible. But I really want to ask the County Attorney's Office if that is an acceptable procedure.

I'm more concerned -- and the only reason I'm asking it is if you put the sign up and for some reason you all don't work an agreement out, what do we have then as recourse? The agreement says it will be taken down within 60 days notice by the utility department, or it's supposed to say something to that effect. But if that agreement never gets inked because there's disagreements between your client and the utility department and they never resolve the issue, we have a sign there that has no boundaries.

And I was just actually going to ask the County Attorney's Office then if there's a way we can structure a solution to this in the decision language.

MS. ASHTON-CICKO: Well, my preference would not be that there be an agreement that's executed by staff. Because most agreements get executed by the Board of County Commissioners, and to do that would delay the project until September. So my preference would be to attach whatever the conditions of the agreement would be as conditions of approval of this petition.

HEARING EXAMINER STRAIN: And I don't know what the conditions of that agreement would

be, because I've not seen it.

Could we condition the decision, the decision that's rendered, timely based on the completion of that agreement? I mean, if the agreement's going to have to go before the Board, they're on vacation until September, it likely may not be able to put that on the first or the busiest agenda they have when they get back from vacation, they could put it off 'til a later part of the year. I don't want to see you held up, if we can help it. I'm trying to find another solution to that.

So is there a way we could structure the decision in a manner that protects the county without the agreement until the agreement's executed?

MS. ASHTON-CICKO: Well, it's unfortunate that a representative from the utility department isn't here. Because did they indicate to you what the issues are? Is it a locational that they have to approve the plans for the location or --

MS. CRESPO: My understanding is that the agreement would be limited to confirming that if they ask the applicant to remove the sign that it would be done so in 60 days really was the -- my understanding of what this agreement would contain.

HEARING EXAMINER STRAIN: We could actually craft that into a decision and then make it further subject to the final agreement with the utility department. Is that acceptable?

MS. ASHTON-CICKO: Yeah. I mean, I would add two conditions: One is that the Utility Department will approve the plans, you know, for the sign location.

And then number two would be that they would remove the sign within 60 days of a written notice by the Utility Department.

HEARING EXAMINER STRAIN: And Alexis, from your perspective then I believe that would work?

MS. CRESPO: Yes, sir. And to the extent it adds further comfort to the Hearing Examiner, Chris van Langen has put in writing as part of our application via email in a formalized agreement that they don't have objections to this, they would just want us to timely remove it upon request, so that's --

HEARING EXAMINER STRAIN: He confirmed that to me too.

MS. ASHTON-CICKO: Without any basis they can request that it be removed.

HEARING EXAMINER STRAIN: Okay. Then I think we can get to a point where you may be able to move it ahead without having to put a restriction to hold it up until it's actually approved, the agreement's actually approved. But you will still be required to work that agreement out.

In the one of the letters you wrote, Alexis, I believe it was from -- yes, you to Michael Sawyer dated April 1st, 2014. You had indicated you had four deviations. Yet in this process we've got five. Just for clarity, can you explain how we got to the fifth deviation?

I'm sorry to spring it on you, but I just happened to find it last night when I was reading this again for the --

MS. CRESPO: It may have been simply a typo in the cover letter. I believe we've consistently had the five deviations.

HEARING EXAMINER STRAIN: Okay, does staff have any --

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

The first -- the application actually came in twice. The first application did have four deviations. On the second, a fifth was added and that one was for height after -- as part of our first review it was suggested because the two faces of the sign need to be the same on both sides of the sign, the original proposal was to have one side of the sign for Bristol Pines and the other side of the sign to be for the other development. And because of our sign code, both faces of that sign need to be the same.

So as a suggestion, I believe from staff, the idea of increasing the height and size of the sign itself was proposed. And I believe that's why we have the fifth deviation being proposed between the first and second reviews.

HEARING EXAMINER STRAIN: Okay. Well, that's a satisfy explanation. Thank you.

Alexis, there's a couple of staff recommendations. Do you have any objection to those?

MS. CRESPO: No, sir.

HEARING EXAMINER STRAIN: Okay. Then that's all I've got. Do you have anything else you

want to add?

MS. CRESPO: No, thank you.

HEARING EXAMINER STRAIN: Make sure you stick around after the meeting and I'll get that copy of that sign just so you have it for your record.

MS. CRESPO: Yes.

HEARING EXAMINER STRAIN: Okay, does staff have anything they'd like to add to the record?

MR. SAWYER: Nothing further.

HEARING EXAMINER STRAIN: Diane, are you fine?

MS. COMPAGNONE: No, thank you.


HEARING EXAMINER STRAIN: Okay, with that we will close the public hearing on this item and a decision will be rendered within 30 days.

All that being said, I believe this is the end of our meeting. The meeting is adjourned. Thank you all for attending.

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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 9:25 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

ATTEST:  
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 8-14-2014 as presented  or as corrected .

TRANSCRIPT PREPARED ON BEHALF OF  
GREGORY COURT REPORTING SERVICES, INC.  
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