

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
December 11, 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 SPECIAL 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

EXHIBITS:

Petition VA-PL20140001160 Mierendorff Variance

A.....Staff Report.....Page 5  
B.....Legal Advertisement,..... 5  
C.....Amended Boundary Survey..... 5  
D.....Email correspondence from B. Saletnig.....5

Petition SV-PL20140001152, Racetrac at Manatee Sign

A.....Staff Report..... 8  
B.....Legal Advertisement..... 8

PROCEEDINGS:

HEARING EXAMINER STRAIN: Okay, good morning, everyone. Welcome to the Thursday, December 11th 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.

Housekeeping matters. The 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 all decisions are issued within 30 days.

In review of the agenda, there are no changes. We have two advertised public hearings today.

And there are -- and then the approval of prior minute meetings. There are two sets of meetings disbursed. November 13th, 2014, I've read those, there are no changes needed.

November 20th, 2014. That was a long package, about 275 pages. In that I found the reference to deed books, it just says the letter D and then book. So wherever that occurs, the word deed should have been there instead of just the letter D.

Other than that, they look fine, so they'll be sent to recording, both sets.

And with that, let's move into the advertised public hearing.

Our first Petition No. is VA-PL20140001160. Niels Mierendorff, Naples Park, Unit 4, Block 45, lot 46.

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: Thank you. Are there any members of the public here for this particular item?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, first of all, the exhibits: Exhibit A will be the staff report; Exhibit B will be the legal advertisement; and Exhibit C, which I provided to the court reporter here, was an amended boundary survey that I received a couple days ago and it's dated 12/9/24 (sic). And it reflects the distance that the property line is from the asphalt of the solid portions of the right-of-way.

HEARING EXAMINER STRAIN: From my disclosures, I've talked to staff, I've reviewed the files, talked to the applicant and his representative this morning, I've reviewed emails from neighbor Barbara Saletnig, and she was in opposition. And I reviewed all the letters from the adjoining neighbors that were in favor.

With that, I advise the applicant, there is no members of the public here to apparently contest this or are interested. I have read all the staff report and all the issues that were provided to me in my own research.

Is there anything that you'd like to add to the record, Steve?

MR. BRACCI: I don't believe so. If there's no opposition here, and we can rest on the staff report and recommendation itself.

HEARING EXAMINER STRAIN: Could you state your name for the record, for the court reporter.

MR. BRACCI: Steve Bracci, on behalf of the applicant.

HEARING EXAMINER STRAIN: And as far as the staff recommendations, there were two. It says this variance is only for the existing carport with no walls, and if the carport is destroyed or damaged by more than 50 percent of the replacement value this variance no longer applies.

Are you in agreement with those recommendations?

MR. BRACCI: Yes.

HEARING EXAMINER STRAIN: Okay. Is there any comments or staff report?

Thank you, Steve.

MR. REISCHL: Fred Reischl, Planning and Zoning.

No additional information. We recommend approval with conditions.

HEARING EXAMINER STRAIN: Okay, with no members of the public here, we'll close the hearing and there will be a decision rendered within 30 days. Usually it's a lot less, within a week to 10 days. But you'll be notified by our office, so a copy will be sent to you electronically.

MR. BRACCI: Thank you.

HEARING EXAMINER STRAIN: Thank you both.

Next item up is Petition No. SV-PL20140001152. It's the RaceTrac Petroleum, Inc. It's for a sign variance for their facility at the corner of Manatee and 951, which is Collier Boulevard.

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: Okay, give me a minute to open up the document.

Okay, I have read the -- for my disclosures, I've read the staff report, I've met with the applicant, I met with the applicant's representatives, I met with staff, I reviewed all the files on the location and the history on the location, I made a site visit and I have had discussions with the commissioner from the district involved.

There are two exhibits so far. Exhibit A will be the staff report and Exhibit B will be the legal advertisement.

And are there any members of the public here for this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. And Mr. Hardy?

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: I notice you don't have your attorney with you today. That's the first time I think I've seen you without him.

MR. HARDY: We can spend some time apart. It's probably better.

HEARING EXAMINER STRAIN: I have read the staff report. I have some questions and comments. You won't need a presentation, because there are no members of the public here, and I think everybody else is very familiar with what you're applying for.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: In our discussions I expressed concern to you over the signage on the canopy.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: And I did go to your facility right out in front and review the signs there that are on the facades, and I found those consistent with what you're asking for here. Is that true?

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: And I know they're a different style and they say different things but they're in general locations and size.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: The signs out front are I believe of the same size you propose here. And the only concern that I have, you have a long canopy in one direction and a short canopy in the two others. And as I suggested to you, I think that the two short sides would be better with less intrusive smaller signs than what you've got. I asked you to take a look at that.

Did you come up with a square footage that those could be reasonably reduced to that would work?

MR. HARDY: I think 37-and-a-half that we talked about.

HEARING EXAMINER STRAIN: We mentioned that, and I know you were going to confirm it.

MR. HARDY: Yes, sir, we can do that. We've actually done that in other locations, so we can do that.

HEARING EXAMINER STRAIN: Okay. The sign that is the window film, the pictures in my document weren't clear. Now I know what you told me they are. I just want to confirm for the record, they're no different than what the application is out front. You basically put a sign on the inside of the window with suction cups and you can see through it and therefore it's considered a sign.

MR. HARDY: Yes, it is. It's an adhesive window clean, so it's static on the inside that we can actually pull off a window if we wanted to. There's two circles. If you notice the one out here, we use it to advertise our yogurt flavors, and we can change out seasonal yogurts in a couple -- with that. So that's what we like to do with that.

It also allows two-way visibility. It gives light into our yogurt room there. And if any employees are in there, they can actually see out to the outside and actually see actions at the pumps, so --

HEARING EXAMINER STRAIN: I did -- when we were talking, you had offered a couple of other let's say enhancements to the property that might be better for the neighborhood, since this particular project that went there was an SDP, there wasn't a lot of neighborhood input. And I'll mention both of those. One was you were going to add two feet to the top of the wall that's along the rear property line.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: Is that still consistent?

MR. HARDY: Yes. So several things we were talking about. Taking the wall on the six foot to eight-foot measured from the eastern property line, so on the neighbor's side there would be an eight-foot wall. Then also live oaks that we have down that rear property line, we're more than happy to change those out to mahogany.

HEARING EXAMINER STRAIN: That would be a good move. And I know that you've had to take down the other trees that were there. Hopefully staff will touch on that during their comments. But I believe for the record those were all exotics, they weren't allowed.

MR. HARDY: Oh invasive species, and those are prohibited.

HEARING EXAMINER STRAIN: And I sure wish you could have asked for a deviation on that because those were huge trees.

MR. HARDY: Yes, they were.

HEARING EXAMINER STRAIN: They did a lot to block the facility. Not that it's a bad looking facility, it's just that commercial and residential is helped by the trees.

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: Also, your application originally had asked for -- it shows the presentations or the graphics to be 57 square feet for the canopy. You asked for 51 and so.

MR. HARDY: 51 is --

HEARING EXAMINER STRAIN: -- I'm assuming 51 is what you're going to utilize on that front canopy --

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: -- on the longer one.

MR. HARDY: Yes, sir, 51 square feet.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. I'll turn it over to staff and I thank you for your time and input today.

MR. HARDY: Thank you, sir.

HEARING EXAMINER STRAIN: Mike?

MR. SAWYER: For the record, Michael Sawyer with Zoning and Planning.

You've got the staff report which was last revised on the 2nd of December. Staff is recommending approval of the petition.

With regard to the existing trees that were along the property line adjacent to the residential development to the east, the staff's understanding is that they are Java Plum, which are a prohibited species and have been for a number of years. And for that reason any time that type of invasive exotic is found on the site, the property owners are always required to remove them.



HEARING EXAMINER STRAIN: Now, there were -- that was probably one of the nicer things to have as a hedge. And I understand it's an exotic. But because it's prohibited, the applicant could not then ask for a deviation?

MR. SAWYER: Correct.

HEARING EXAMINER STRAIN: So they were required to take it down; they couldn't ask for a deviation. The trees they're putting in will be mahoganies. They'll go in at what height; do you know?

MR. SAWYER: Code requires them to go in at 10 foot in height.

HEARING EXAMINER STRAIN: Okay. So the wall now will be at eight feet, which is the maximum they're allowed to go by code. Previously it was going to be six, but they've agreed to go to eight, and then the trees will take the canopy above that. Is that how it's going to --

MR. SAWYER: Correct. And all of the required perimeter buffer plantings are required to be between the fence and the property line adjacent to residential. So in other words, all of the plant material for that particular landscape buffer needs to be on the residential side of the retaining -- or of the masonry wall.

HEARING EXAMINER STRAIN: So the visual benefit of all that landscaping is going to be now to residents.

MR. SAWYER: Correct. The idea is to have the wall itself provide more of an opaque barrier addressing, you know, sound as well as other, you know, elements of the development itself.

The landscaping, the idea there is that the landscaping actually serves to further soften that screen.

HEARING EXAMINER STRAIN: Okay, and I notice two members of the public came in, two ladies. Are you here for the RaceTrac?

UNIDENTIFIED AUDIENCE MEMBER: Yeah.

HEARING EXAMINER STRAIN: Then what I'll do is I'm going to show you what we're talking about today. And if you have any comments after that, I'll be glad to hear what you've got to say.

This is the RaceTrac site which I imagine you're very familiar with or you wouldn't probably be here.

There are signs allowed on projects, normally. And in this particular project they want some additional signs. The three that they wanted to add, C and D, are -- C for example is a sign that goes behind the window on the inside of the facility. But it can be seen from the outside so it's considered a sign.

D is a sign on the wall. And I'll show you pictures of these in just a moment that basically say they sell a swirl ice cream. It's similar to the sign -- almost identical to the situation we have out on RaceTrac as far as the wall signs go.

Number 12 -- or actually that's I2. It took me a while to figure that out, because I couldn't figure out where 10 through one was but then I figured out it was an I. I2 is a sign that would normally be allowed because they're only allowed two canopy signs number I1 and I3. So they're asking, because they're up against commercial and they're on a six-lane road, they think I2 would be useful as far as letting motorists know this is what's here.

The signage for all three, I1, 2, and 3, was asked to be larger than the code allows. In discussions with the applicant, they've agreed to reduce the request from I2 and I3, which are on the short sides of the canopy, down to a size more relative to that smaller size of the canopy. And I1 will be the larger sign in front.

These are the orientation of the signs that they're asking for. Signs C and D will be facing 951 or Collier Boulevard, and I2 will be facing north of the commercial operation to the north.

That's the kind of location and what the signs will look like. The window being black, it's not exactly black, but the black-and-white photo, PFDs don't show up much better.

The swirled word sign is the one that's going to go on the wall on the outside.

The one in front of us, instead of swirl has the words RaceTrac and fresh brewed coffee. This one's going to have the word swirl on it. That's the typical window sign that's blacked out in the previous one, and that's typically what's going to go in here.

These are the canopy signs. Their request was for 51. The pages that they supplied were in error, it says 57. But the only one that's going to have a 51 is the one in the center, which is right here. And then these two will be reduced to 37 feet.

This is the sign on RaceTrac. This would be the I2 location. But this one is the one at 51 feet. Theirs is not going to be this size, it's going to be smaller, more in ratio with the canopy. That size will be what

will be on the front on the very, very long side of the canopy.

UNIDENTIFIED AUDIENCE MEMBER: Inches or feet?

HEARING EXAMINER STRAIN: This is all in feet, square feet and inches.

The back side, this is orientated to the north. The applicant, they didn't have to do this, the code doesn't require it, but they knew that the commissioner was concerned about the residents to the east, so they offered to increase the wall that's in this purple rectangle two more feet, which is not required by code but it's the highest they're allowed to go. And they're willing to do that on their own. And the red box simply says they were putting a six-foot wall in, so now they're going to go to an eight-foot wall.

In addition, the trees that could have gone in are live oaks -- well, live oaks and live oaks. Mahogany or Hackberry.

In talking with the commissioner and the applicant, the applicant has offered to put in mahogany trees, because they're a very dense canopy, they don't shed a lot of leaves and they will get to a higher growth.

So in the end of what comes out of this, even though those trees that are there are exotic and had to be removed, there was no choice on that, the neighborhood is going to come out much better as a result of this request today, based on the applicant's offers.

So with that, I'll ask, is there anybody from the public who would like to comment?

UNIDENTIFIED AUDIENCE MEMBER: I'd just like to say I'm real happy about the eight-foot wall.

HEARING EXAMINER STRAIN: Okay, thank you.

You'll have to come up. First of all, I've got to swear you both in if you want to speak --

UNIDENTIFIED AUDIENCE MEMBER: No.

HEARING EXAMINER STRAIN: -- and you'll have to come in -- okay, thank you. That's just one of the rules for the meeting --

UNIDENTIFIED AUDIENCE MEMBER: I understand.

HEARING EXAMINER STRAIN: -- and that's the only way we can do it.

Okay, with that, we've had staff report, I've asked all the questions I've got on this matter and there are no further public speakers. We will close the public hearing and I'll have this written up, a decision, within 30 days, most likely 10.

And, ma'am, if you have a question, you'll have to be sworn in first and use the microphone.  
(Speaker was duly sworn.)

HEARING EXAMINER STRAIN: You'll have to use the microphone and please state your name for the record.

MS. HILDEN: Hi, Donna Hilden.

My only concern, living directly behind where the wall's going to be and where all the trees were ripped out, is my husband's a general contractor so I'm aware that there was a lot of fill put in there.

I'm a little concerned, I know there's a retention area behind there to take care of the runoff, but I also know that sometimes it's not enough. And I'm just concerned that what used to never pool in my backyard when it rains every day in the summer, is there any chance that I'm going to have a problem now?

HEARING EXAMINER STRAIN: Well, you know, that question comes up from almost every member of the public who comes and speaks at these meetings. And our staff is very well informed of how to respond to that, so I'll let me --

MS. HILDEN: I think my husband would want me to ask that. That's what --

HEARING EXAMINER STRAIN: That's fine. I'm a general contractor too, so --

MS. HILDEN: Are you?

HEARING EXAMINER STRAIN: -- we have some things in common.

MR. SAWYER: Yeah, again for the record, Michael Sawyer with Planning and Zoning.

Actually, I did do the review of this particular Site Development Plan when it came in, and it's gone through a number of reviews. The project actually dates back, I believe, to approximately 2012, at least.

At any rate, there is a requirement for the project to go through both our review but actually in front of that through South Florida Water Management. And that is where principally the stormwater review actually takes place.

And I do the zoning review and usually the landscape review on these projects, so I don't myself do the actual stormwater review. We've got our engineering staff that does that. But my understanding is that prior to even redevelopment projects like this, you're not able to increase the runoff from the site; you're actually required to do better than that. So --

MS. HILDEN: That's nice.

MR. SAWYER: Yeah. Actually, you're not allowed to increase it, you actually are needing to decrease it if anything.

MS. HILDEN: Okay. And I'm assuming the wall's going to help as well.

MR. SAWYER: The wall will help. Again, my understanding is that there's also a retaining wall that is going around a portion of the site itself to further enhance that stormwater retention, which is basically going to be between where the masonry wall is going to be going. Again with the landscape on the residential side.

On the inside of that is where principally this main stormwater retention area is going to be.

MS. HILDEN: Okay.

MR. SAWYER: Between that and then the permitting phase.

MS. HILDEN: Okay. I have gone out and looked and it does look like it's going to be good, but I just had to ask. Thank you.

MR. SAWYER: It's an excellent question.

HEARING EXAMINER STRAIN: Thank you very much.

Anybody else wish to comment or speak?

(No response.)

HEARING EXAMINER STRAIN: Okay, with that, we'll again close the hearing, and a decision will be rendered within 30 days.

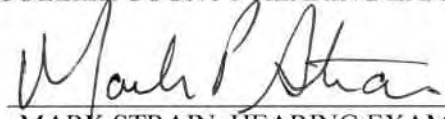
And that will take us to the end of this particular topic, and I'll see if we have anything else on our agenda which I -- I don't believe we do.

Okay, with that, this meeting is adjourned, and I thank you all for your attendance today. See you next time.

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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 1-22-15 as presented ☒ or as corrected ☐.

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