

January 22, 2015 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
January 22, 2015

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 CRU-PL20140000808

A....Staff Report..... 27
B....Legal Advertisement..... 27

PROCEEDINGS:

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, January 22nd 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.

Some housekeeping matters. Individual speakers will be limited to five minutes unless otherwise waived; decisions are final unless appealed to the Board of County Commissioners; and all decisions are rendered within 30 days.

The review of the agenda. We have two cases today: 4.A and 4.B. 4.A, there's a request to continue so we'll be hearing it under the basis of the continuance request.

Then the second one is the Marco Island Congregation of Jehovah Witnesses.

Approval of the prior minutes: I've read the minutes from December 11th, 2014. They're good to record, so we're okay.

And with that we'll move right into the first case. Petition No. CUR-PL20140000808, Maple Leaf Learning Center. This is a request for a hearing on a Conditional Use, but there's some issues staff has -- I shouldn't say resolved -- discovered. And as a result there's going to be a request for a continuance from the staff, so we'll hear that issue today.

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, and disclosures. On my part I have talked repeatedly with various members of staff, I've received some correspondence of I think Mr. Franklin, a letter from him. I said hello to him when he showed up that day. I received another email from a lady, I think her first name was Peggy, concerning some issues of traffic. And I've talked to the applicant a series of time both by email and by personal discussion.

And with that I'm going to turn this to staff first, because I believe staff's going to request a continuance; I'd like them to explain.

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

At this point we are requesting a one-month continuance of the petition. Basically -- I think that would put us at February 26th, approximately.

HEARING EXAMINER STRAIN: 19th?

MR. SAWYER: 19th? Pardon.

MS. BONHAM: It's the 26th.

HEARING EXAMINER STRAIN: Oh, it is the 26th?

MR. SAWYER: I thought it was the 26th.

We can determine what that date is.

HEARING EXAMINER STRAIN: Someone's got the calendar. I thought it was -- it would be the fourth Thursday. So I think you're right, Gail, it's the 22nd?

MS. BONHAM: 26th.

MR. BELLOWS: 26th.

HEARING EXAMINER STRAIN: 26th? Okay.

MR. SAWYER: At any rate, we are also requesting that the staff report be retracted at this point, based on information that's come to our attention subsequent to the writing of the original staff report. We're certainly here to answer any questions that might come up that we can.

HEARING EXAMINER STRAIN: Okay. And I did receive the staff report. And as soon as I was able to read it, I found that it was lacking in the typical information we normally receive. There was not a site plan; the supporting documentation that showed the licensing was not there; and a TIS was not there, which I understand has become an issue of discussion. So I'd like to make clear for the record the issue involving the TIS.

John Podczerwinsky, if you're here, would you mind coming up and addressing the TIS issues.

MR. PODCZERWINSKY: Absolutely. Good morning, Mr. Strain.

Did you have a specific question first or would you like me to --

HEARING EXAMINER STRAIN: Yes, is a TIS required for this Conditional Use review?

MR. PODCZERWINSKY: Yes, it's required for all conditional uses.

HEARING EXAMINER STRAIN: Okay. The issue involving the increase in children, I know the square footage is to remain the same, but the children -- intensity went from 25 students to 60. Does that change any of the configurationS on the project, or in your opinion -- I think you've seen the site plan --

MR. PODCZERWINSKY: I've seen the site plan. I've also seen aerial pictures of the site. I have not been out to the site to investigate, but from the aerial pictures it does look like the driveway access points would not accommodate that number of students. They're not set up for a commercial style of use. Typically a minimum 50-foot throat length is required for commercial style uses. And that would provide insufficient stacking length for the number of trips that are accessing this site. So that presents a problem.

HEARING EXAMINER STRAIN: When the applicant submits the TIS, will those kind of discussions between you and the applicant occur to see how this can work out?

MR. PODCZERWINSKY: Yes.

HEARING EXAMINER STRAIN: Okay. Is there enough time, do you believe, assuming it is responded to quickly, so that we can fit this in on the 26th of February?

MR. PODCZERWINSKY: I think so, yes. Staff can make it a priority.

HEARING EXAMINER STRAIN: Thank you, John.

Anything else from staff?

(No response.)

HEARING EXAMINER STRAIN: Mike, the other thing I want to make sure we're clear on, this application will require a neighborhood information meeting and the mailer, which is a typical advertising scenario for conditional uses; is that right?

MR. SAWYER: Correct.

HEARING EXAMINER STRAIN: Thanks, John, appreciate it.

MR. PODCZERWINSKY: Thank you.

HEARING EXAMINER STRAIN: So is there anybody else like to speak on this issue? Does the applicant have any comments? Please come on up and use the microphone.

MR. ESTES: Good morning. Brad Estes, I live at 3384 Balboa Circle West in Naples, and I have a property, 51st Terrace Southwest.

I'm not opposed to the Conditional Use, but I have great concerns about the traffic impact on Hunter, and I support the delay and the requirement that there be a Traffic Impact Study to understand what that impact will be.

HEARING EXAMINER STRAIN: Thank you very much, sir, appreciate your comment.

Anybody else like to speak.

Michael?

MR. FERNANDEZ: Good morning. Michael Fernandez with Planned Development for the applicant.

Our application was for a Conditional Use rereview, which was the -- one of the provisions that we were told we could work under when we had our pre-application in April of last year.

At that time we were given an application and that application doesn't require a TIS, nor was a TIS requested or made an issue of at the pre-application.

We subsequently submitted the application requirements that were known to us, and we did not receive anything until the issuance of a staff report, which again did not reference a TIS.

Doing a TIS in itself is a hardship in this case. And one thing that I would -- that many of us understand is that the proposal that's being made will not increase actual transportation trips. The facility has been operating at 60 children for some time, for many years, under a state license. And the owner, when found that the limitation, it was a restriction of 25, that was created in 1987 brought it to the attention of the county and said we'd like to get this corrected if at all possible and increase it from the county's repertory zoning from 25 to the existing threshold that the State has approved for the existing facility. There is no proposal for an expansion, there is no proposal for an increase in the building.

The one email that we saw that was submitted through staff referenced that the owners were looking to build a new large building if this was to be approved. Again, that's not the case. So there's a little bit of misinformation out there.

So we would like to see this continue through the current process and not the -- the one that had been -- we were advised of. Again, it's been some time period and it's going to be a significant hardship that we may not be able to overcome if we're required to go through it.

HEARING EXAMINER STRAIN: Okay, just for some clarification, that pre-app that was held, we discussed several options. At your request we were trying to fit you into the option that would be the easiest to process, the quickest, and possibly get you through the process that would reflect how you're operating today.

In reviewing the Conditional Use rereview allowances, the language doesn't necessarily fit what we've now come to learn of the project in regards to the increase intensity not only of the students but through the traffic impacts that John Podczerwinsky has already informed us of.

And also, at the time that you came in there was clearly intentioned by you -- statements by you was the fact that the neighborhood was content, that there were no people upset, you were good neighbors. Well, we're finding out that we have citizens who are concerned from that neighborhood. And this office it is not going to ignore that. We are going to make sure that the things needed to address their concerns are ferreted out.

The idea of a neighborhood information meeting may trigger other processes, as you were clearly told at the original meeting, that if you have to go through a full CU and you had to have a NIM, those neighborhood information meetings may trigger further review by the Planning Commission and the Board of County Commissioners.

So we're not solid yet that we can do everything you want to do on the 26th of February, but I'm willing to continue to that date hoping that everything works out with your further advertising the meetings.

MR. FERNANDEZ: At this point in time I don't think that we'll be able to submit a TIS in that timely manner for your review. So I don't think that that date is realistic for us.

HEARING EXAMINER STRAIN: Well, we can -- if we have to, we'll continue to that date. And if you're not ready at that date, we'll have to end it until you have to readvertise it for a new meeting. That would be the only way to get around that time frame that I know of.

Is there other solutions staff can think of or -- Heidi?

MS. ASHTON-CICKO: No.

HEARING EXAMINER STRAIN: That's the best we can do, Michael. So I'm definitely not going to ignore the public's concerns, we're going to address them. And at least then everybody will be on the same playing field as to what's really happening there.

The fact that you're operating with a State license for 60 students has nothing to do with the zoning in Collier County. The zoning was a 1979 provisional use that required 25 students. And those changes need to be addressed, and that's what we're requiring to have happen. So thank you for your input, appreciate it.

Does anybody else wish to speak on this issue?

MS. HARRIS: Are you going to speak? I will.

HEARING EXAMINER STRAIN: He's actually the director of the department.

MS. HARRIS: Okay. Good morning, ladies and gentlemen. My name's Peggy Harris, and I've spoke to a couple of you recently regarding the situation for the CRU-PL20140000808 regarding Maple Leaf Learning Center.

I am representing several residents of the area and we are asking for a 120-day extension for a hearing because these are some of the concerns. And I'll hand this in as an exhibit today.

Zoning for one. It's a commercial business in a residential zone. It should stop here. Doesn't need to be an investigation, this should no longer be a Conditional Land Use permit and they should be ordered to relocate.

The permitting: Why ever allowed in the beginning in a residential zone for 25 alone, yet go to 45 at another time and now to 60.

The notification request for such a request: Who receives the request? Is it just the immediate landowners? Is it the Golden Gate City area itself or -- and also the public notifications, how is that done? Is there proper sign size? And if so, it is not done correctly and is not posted correctly currently.

The safety: We feel that there's a hazard to the emergency services and access to the roads because the congestion it creates every morning, every afternoon and every evening. Because there's two shifts at this daycare.

They block the roadway, the bicycle pathways and the sidewalks. The current owner allows children and people to park on the property after hours, blocking the right-of-ways, the sidewalks and the bike pathways, once again. And there's also a couple other issues, but that's not important right now.

The traffic is over traveled already. Has there been a road or an auto count lately? And when? I know since I'm on the Golden Gate Community Advisory Committee that we had just put in the medians recently, so I would assume there would have been a road count at that time. And since they've been operating at 60 people ahead within a few years, I would think that would have been done.

The depreciation of property value is the biggest concern I have. Is there going to be a fair market analysis done of our properties after this is done?

And also a gentleman had said, I guess Mr. Fernandez had said that there's no plan to enlarge? My understanding, there is. So there may be contrary communication, as you had said.

And then the expansion fits into the safety.

Sanitary: There's 60 children in this home a day, plus a few more because they have a full-time daycare too for a few other students. It's a small home, it's on a septic service. And also the garbage cans they leave out all weekend long to scatter all over the neighborhood, whether from the wind, the children or animals knocking them over.

We have five adjacent private sitters with well over the capacity they're allowed in their own duplex or homes, and cars once again all over blocking the roadway, bicycle pathways. And Code Enforcement and Commissioner Henning is quite aware of this problem and has been for years. We cannot get an answer from anyone as to why this residential property is a business property.

That is why we're asking for 120-day extension. We would like the county to provide us all reports, inspections, opinions before the next hearing continues to all the homeowners that are entitled or have to be notified.

I thank you for your time.

HEARING EXAMINER STRAIN: Before you leave, let me try to answer some of your questions.

MS. HARRIS: Okay.

HEARING EXAMINER STRAIN: The information you want from the packages that are being submitted and reviewed, you need to make sure you get Michael Sawyer's contact information, because he has that.

I also saw some emails this morning between Michael Sawyer and Michael Fernandez. Mr. Fernandez would like an opportunity to meet with you.

MS. HARRIS: Okay.

HEARING EXAMINER STRAIN: I suggest before you leave you make that contact. The goal here is to find solutions and fix the problems that are there. And if that can be done it would be helpful to know that by the next meeting.

As far as the 120 days goes, we can only continue five weeks. Five weeks come up to about the last week in February. That's why it was continued to then.

At that time if the TIS is not done or if the project gets rerouted, you'll need to watch the agenda, and you may end up seeing a time frame that you're talking about just out of the very fact that the TIS may take longer than that or there may be a rerouting of this process into the Planning Commission or the Board of

County Commissioners.

As far as the distances and notifications for the next advertising, Michael, can you address that?

MR. SAWYER: Yeah. Again for the record, Michael Sawyer.

The advertising that occurs for this type of property is everybody within 500 feet of the property. There is a newspaper ad that was also done with the Naples Daily News. And then there was a -- because the site is under an acre, there is a small what we term a real estate sign that is put out in front of the property.

MS. HARRIS: Okay.

HEARING EXAMINER STRAIN: Now, if --

MR. SAWYER: Which is different than any property that is over an acre are required to do a four-by-eight-foot sign, which is --

MS. HARRIS: Okay. So they can't have the real estate signs -- the stakes signs.

MR. SAWYER: Yes, that's --

MS. HARRIS: It's still posted incorrectly, but okay.

HEARING EXAMINER STRAIN: And before they can come in, again, they've got to do this neighborhood information meeting and the 500-foot mailer. They may look at that as an issue involving the timing of their TIS. If their TIS isn't going to be ready in time to rehear this at the continuance date, then the NIM could be whenever it is closer to the date that we actually rehear it, assuming they come forward with the rehearing.

As far as the density or the intensity of the project, it was approved for 25 students back in 1979. The applicant -- and I don't think they did it maliciously, they went and got a State license, the former applicants. I believe there was a change in parties. They got a State license in I think 1987 to go to 45 students. And apparently they thought that was all they need, and they -- because the building remained the same, same square footage.

The State changed the rules for different levels of students and sizes of -- ages of children. And in 2011 the State approved that facility for the size it is for 60 children. And I believe there's an age limit because of their size.

Well, that's how they got to using the facility to the intensity they're using it today. But that doesn't match the zoning that Collier County provided since 1979. And that's what the issue is, we've got to bring the zoning up to date or find a reason why it's not going to work.

One of the issues that the traffic engineer talked about earlier involving the stacking and the access to the property. They do own a lot next door to them. There's a potential that they could cure some of their problems by utilizing that lot for stacking and getting the traffic off the street. I don't know if that will cure all the neighborhood's problems, but it might be something to consider in talking with the applicant.

So hopefully when the further advertising comes out and you guys have more opportunity to meet, maybe something positive will come out of it. That's a facility -- I understand that's the only one like it in Collier County. There's a need for these kind of facilities, so hopefully this will make it better instead of --

MS. HARRIS: With that being said, the need, there's two other ones within a mile range close to that, so I can't see a need for it. Unfortunately it's been allowed to operate the way it has been.

HEARING EXAMINER STRAIN: Well, the -- by the time we hear this again, the applicant will have to show the need and so we'll be better informed on that.

MS. HARRIS: Okay.

HEARING EXAMINER STRAIN: So thank you for your time.

MS. HARRIS: Thank you. And can I leave this? And I also have a resident that wanted to leave something else. Or does that need to be given individually to Mr. Sawyer?

HEARING EXAMINER STRAIN: Well, I prefer you to -- is it what you read on record or is there more to it than that?

MS. HARRIS: Well, it's a separate homeowner that wanted to have something left off as well.

HEARING EXAMINER STRAIN: Yeah, we can accept that as part of the record.

What I'll do is I'll make copies of it. We'll need that. And I'll make copies for the court reporter to take with her and Michael Sawyer will have to have a copy for distribution to the applicant and everybody else that may need one.

MS. HARRIS: Okay. Well, I have copies of mine but I only have one copy of his.

HEARING EXAMINER STRAIN: Okay, we just -- one copy of each will do. Since I've got to make copies of one, we'll make copies of both.

MS. HARRIS: Okay.

HEARING EXAMINER STRAIN: So if you can leave them with that young lady there. We'll be good to go.

MS. HARRIS: Thank you.

HEARING EXAMINER STRAIN: Thank you, Miss.

Anybody else that wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay, with that, this item will be continued to February 26th. I advise anybody who's looking and watching this in the process to make sure they check the agenda prior to that date to affirm that we are actually going to be able to hear it on the 26th. There's been testimony today that date may not work. But for now we'll continue it to February 26th, it will be the first item up on that date. Thank you.

Okay, the next item up is Petition No. CU-PL20140000921. It's the Marco Island Congregation of Jehovah Witnesses, Naples, Florida.

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: I received one -- I'm going to try to find the gentleman's name for the record.

MR. REISCHL: Mr. Golomb.

HEARING EXAMINER STRAIN: Mr. Golomb.

I received one letter from Mr. Gary Golomb dated January 8th. He was concerned about the use of that area as it was potentially part of the -- he seemed to believe it was part of Fiddler's Creek and it was supposed to be a commercial area. I don't know if -- Mr. Golomb, are you here today?

(No response.)

HEARING EXAMINER STRAIN: Okay. Just for the record, I'll clear up his questions. And before we hear from the applicant, I'll put a short set of slides.

The piece in question today is that odd-shaped piece that's shaded in. The Fiddler's Creek PUD is around it on the south and east sides. It is not part of Fiddler's Creek PUD. That's -- the subject site is an aerial. And you can see the Fiddler's Creek project to the south. And over to the west is Manatee School. They're proposing a 4,556 square foot church.

I did a scale from the aerial. The nearest building in Fiddler's Creek is 825 feet away. And the property in Fiddler's Creek that separates the church from the residence, there's a Fiddler's Creek commercial area to the east that I believe the gentleman was discussing in his letter. Right next door to this facility, Fiddler's Creek has dedicated a site to a future EMS fire station along 41. And between on the south side there's a future library site that's been dedicated by Fiddler's Creek, as well as a small park. All that is in between the residential and the potential church.

So I wanted to make that clear so if anybody has any questions or concerns as a result of this application today, at least that information is provided.

With that, all those wishing to testify on behalf -- oh, we already did that, I'm sorry.

Will the applicant have a presentation to make?

And first of all, I have read the entire package, so we don't need you to repeat the package unless you feel you want to for the record. It is part of the record, or it will be. And since there's nobody in opposition, you can be as brief as you'd like to be. And if you don't mind using the microphone, sir, that would be perfect.

MR. BENNETT: For the record, I'm Larry Bennett with H.L. Bennett & Associates, the agent for the applicant.

I don't really have anything to add so I will be very brief. But I am here to answer any questions that staff or anyone in the audience may have.

HEARING EXAMINER STRAIN: And I went through your application, and there was -- I've got a

couple questions of staff and that's all that I've got.

There are two recommendations by the staff members and the staff report. Do you have any objections to those recommendations?

MR. BENNETT: No, I don't.

HEARING EXAMINER STRAIN: Thank you very much, sir. Appreciate it.

For the record as well, Exhibit A will be the staff report, Exhibit B will be the legal ad.

(Exhibits A and B were marked for identification.)

HEARING EXAMINER STRAIN: My disclosures are I've spoke to staff extensively. In the pre-app I spoke with the applicant; I've reviewed all the files and the history on the project; I have reviewed the letter of opposition from the Fiddler's Creek resident; and I did get a phone call from the attorney for Fiddler's Creek asking what this was about. After I explained it to him, he didn't have any issues.

So with that I'll move into the staff report.

Is there a staff report, Fred?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl with Planning and Zoning.

I have nothing additional that hasn't been covered already. We are recommending approval.

HEARING EXAMINER STRAIN: With stipulations?

MR. REISCHL: With stipulation, yes.

HEARING EXAMINER STRAIN: I would like to clarify the reference to the square footage. Your staff report said it's 10,000 square feet, but it's really 4,556.

MR. REISCHL: That was my typo.

HEARING EXAMINER STRAIN: Okay. And your staff recommendations will hold. And that's the only questions I had of staff for clarifications at this point.

Is there any members of the public that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we will close the hearing on this item and a decision will be rendered within 30 days, most likely seven to 10 days it will be emailed to you. And so hopefully everything looks like it works out fine. Thank you very much for your attendance today.

With that, that takes us to the end of the agenda. There is no other business, so this meeting's adjourned. Thank you all.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:26 a.m.

COLLIER COUNTY HEARING EXAMINER


MARK STRAIN, HEARING EXAMINER

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 2-12-15 as presented or as corrected .