

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
September 10, 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 REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

ALSO PRESENT: Raymond V. Bellows, Zoning Manager  
Fred Reischl, Principal Planner  
Rachel Beasley, Planner  
Heidi Ashton-Cicko, Assistant County Attorney

EXHIBITS

DESCRIPTION	PAGE
VA-PL20150000735	
A - Staff Report	4
B - Legal Advertisement	4
C - Photographs	6

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, September 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.

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

Review of the agenda: We have one petition here today. There are no additions or changes to that.

As far as the minutes from the last meeting of August 13th, 2015, I reviewed those, those are okay as submitted.

That will take us directly into our advertised public hearing. The first and only petition today is Petition Number VA-PL20150000735. It's Michael and Wendy Thomas for a request for a variance on the Sleepy Hollow PUD.

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. Exhibit A will be the staff report. Exhibit B will be the legal advertisement.

(Exhibit A and B were marked for identification.)

HEARING EXAMINER STRAIN: And disclosures on my part, I have talked with staff, I've reviewed all the files, and I spoke to Mr. and Mrs. Thomas and Mr. Markum (sic) before I came in this morning.

And with that, Charles, if you don't mind coming to the microphone. Charles Whittington, I'm sorry. I got you mixed up. I was thinking of something else.

MR. WHITTINGTON: Good morning. My name is Charles Whittington, for the record, Grant Fridkin, Pearson Law Firm. I'm here on behalf of the applicants, Michael and Wendy Thomas.

Which one am I supposed to speak into? This one, okay.

HEARING EXAMINER STRAIN: We do that just so you'll constantly move around.

MR. WHITTINGTON: We are here today on the applicants' petition for a variance. It's a two-part petition. The first part is to permit their existing pool cage enclosure, terminate as built where it's I think 6.89 feet from their rear property line where 10 feet is required. As well as the ability to repair and replace as necessary.

The second part is to permit the applicants to expand their pool cage enclosure to the sides to cover existing paver patios.

I'd like to just for the record submit some photographs that were recently taken just for your consideration to give the second part of the petition some context.

HEARING EXAMINER STRAIN: Are they in addition to what's in the --

MR. WHITTINGTON: Yes.

HEARING EXAMINER STRAIN: -- packet that the staff has prepared.

MR. WHITTINGTON: Yes, Mr. Strain. I have four --

HEARING EXAMINER STRAIN: Okay.

MR. WHITTINGTON: -- copies.

HEARING EXAMINER STRAIN: And how many copies do you have?

MR. WHITTINGTON: I have four.

HEARING EXAMINER STRAIN: Okay.

MR. WHITTINGTON: Is that sufficient?

HEARING EXAMINER STRAIN: We'll -- sure, that's sufficient.

Could I see those --

MR. WHITTINGTON: Yes.

HEARING EXAMINER STRAIN: -- before we submit them?

MR. WHITTINGTON: (Handing.) It's three separate ones. There's four.

HEARING EXAMINER STRAIN: Oh, okay.

Okay, if you could leave a copy with the court reporter and one with Rachel, that would be sufficient.

That will be Exhibit C.

(Exhibit C was marked for identification.)

MR. WHITTINGTON: Some background might be helpful.

The house and the pool cage and the pool were all built in 1989 by the predecessor and titled to the applicants. 25 years later, after the structure had existed for 25 years with no objections, the Petitioners bought the property. They -- unfortunately the closing agent of that transaction did not raise this encroachment to -- did not raise it with the petitioners. They were unaware of it. They closed on the property with this encroachment.

They didn't learn about the encroachment until they contacted a contractor about repairing and potentially replacing the pool cage enclosure. At that point it was brought to their attention. They were unfortunately victims of circumstances. But once they learned out about it, they diligently sought to get it addressed. They engaged our firm, we filed this petition and we've diligently pursued it.

The first part of the petition, we appreciate the staff's recommendation for approval. There's many factors in favor of that portion: It's existed for 25 years without objection; the petitioners did not create the issue; we have letters of support from a neighbor, as well as the HOA to permit the existing structure to remain as built.

The second part of the petition, we understand staff's inability to recommend approval, but we believe there's several factors in favor of granting that part of the petition.

We have letters of approval from the HOA, as well as the neighbor, agreeing with the expansion. The -- excuse me, the new paver patios are already utilized, and the expansion of the pool cage to enclose them will permit greater use and will prevent interactions between the applicants as well as animals coming out of the preserve area, including bufo toads, raccoons, mosquitoes.

In addition, the purpose behind the setbacks, view and access will be maintained. There's more than enough space to allow access in the back, and the side yard setbacks will not be interfered with by the expansion.

So with that, we would request that you grant both parts of the petition to allow the pool cage enclosure to remain as built where it is, as well as the ability to ability to repair and replace, as well as permission to expand the pool cage enclosure.

Do you have any questions?

HEARING EXAMINER STRAIN: No, I do want to make some statements.

I do notice that the HOA has a -- the homeowners association for that area has approved the application, the neighbor next door has not objected to it, I find no objections from the users of the utility easement in the rear, and I've not heard any objections or not received any from the public.

With that, I'd like to hear staff's input. Thank you, Charles, for the presentation.

Rachel?

MS. BEASLEY: Yes, Rachel Beasley for the record.

Staff has submitted a staff report and is recommending approval for the first part, which is the minimum rear yard accessory from 10 feet to 6.11 for the existing pool screen enclosure.

However, for the second part staff recommends denial; however, acknowledges that there are several mitigating factors.

HEARING EXAMINER STRAIN: Okay, would you mind making those noted for the record?

MS. BEASLEY: Yes. In the staff report I acknowledge that it abuts a conservation easement and so there are no neighbors in the rear that it would be affecting, the community association of Mill Run is in support of it, and a neighbor next door has no objections.

HEARING EXAMINER STRAIN: Okay. And staff's position -- basis for their objection to the expansion is?

MS. BEASLEY: Objection is that there was no hardship, related hardship.

HEARING EXAMINER STRAIN: Okay. And the hardship is something that cannot be self-imposed. But in this particular case there are mitigating circumstances, as you noted, and I appreciate your comments for the record. Thank you.

Are there any other members of the pub-- any members of the public here that would like to speak? (No response.)

HEARING EXAMINER STRAIN: Okay, Charles, I don't have any other issues. This is a pretty straightforward request. It will take not 30 days to respond; I should have a decision out within the week or week and a half it takes just more time to record it. And I'll let you know at that point.

Other than that I have no other questions for the process and I do appreciate your time here this morning.

Mr. and Mrs. Thomas, thank you for attending.

Is there anything else that you'd like to add?

MR. WHITTINGTON: Thank you very much for your time.

HEARING EXAMINER STRAIN: Okay, thank you.

And with that, I have one other -- not of the public, I'm done with this case.

We're going to move on to one item of other business and it's of staff, and it's just a follow-up item.

When I reviewed the minutes from the last meeting I did note that the Church of Guadalupe, we were going to do some research as to the P area that was in the southeastern corner of that church and how it may have inadvertently been designated as a P when it was church property. Staff was going to take a look at that and follow up with Church of Guadalupe. There was no time frame for it, but I want to know if we're still looking at that.

MR. BELLOWS: I'll check with Eric today and we'll respond to you what the --

HEARING EXAMINER STRAIN: Yeah, if you could I'd appreciate it. At least we've got to follow up and let them know our results eventually.

Mike?

MR. BOSI: Thank you, Mr. Strain. Mike Bosi, Director of Zoning and Planning.

I did a little preliminary research and it was included in the package that the Board of County Commissioners approved when they approved a number of public sites for parks. But the backup information was not as specific. So there is some additional follow-up that we need on it and we'll touch base with Eric.

So we will most certainly pursue and try to find the specifics of it to grant absolute certainty to make sure that property was intended to be rezoned as part of that action that the board had taken.

HEARING EXAMINER STRAIN: And I remember from last meeting the church didn't recall providing that request to rezone their property, and I think that was part of the issue. And it may have just been an error in the legal description and somehow got on the zoning maps like that. But if we could resolve it eventually and let the church know, that would probably be helpful.

MR. BOSI: Yes, sir.

HEARING EXAMINER STRAIN: Okay, thank you.

Are there any other comments from the public?

(No response.)

HEARING EXAMINER STRAIN: Since there are no public left, this will end the meeting. The meeting is here adjourned. Thank you.

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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 9:11 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

ATTEST:  
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 10-8-15, as presented  or as corrected \_\_\_\_\_.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY  
REPORTING SERVICE, INC., BY  
CHERIE' R. NOTTINGHAM