

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
October 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 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
Eric Johnson, Principal Planner
Heidi Ashton-Cicko, Assistant County Attorney

EXHIBITS

DESCRIPTION	PAGE
PMC-PL20150001668	
A - Staff Report	4
B - Legal Advertisement	4
PDI-PL20140000640	
A - Staff Report	12
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C - Recreational Standards Revision	19
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HEARING OFFICER STRAIN: Good morning, everyone. Welcome to the Thursday, October 22nd, meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for the pledge of allegiance.
(Pledge of allegiance was recited in unison.)

HEARING OFFICER STRAIN: Thank you.

Housekeeping matters: Individual 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.

The first item on the agenda is the review of the agenda. There has been one needed change. We're going to have to continue Item 9C. It's the Geneva Spencer Trust variance request for 1063 Diamond Lake Circle. That item will be continued to November 13th, 2015. The continuation is due to an advertising error. Is anybody here to speak on that matter?

(No response.)

HEARING OFFICER STRAIN: Okay.

Approval of prior minute meetings. There haven't been any issued so there's nothing there, so we'll move directly into our first advertised public hearing.

The first item is 4A, Petition Number PMC-PL20150001668. It's the Lodge/Abbott Associates, LLC, the removal of an affordable housing commitment in their settlement agreement.

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 OFFICER STRAIN: Thank you.

Exhibit A will be the staff report and Exhibit B will be the legal ad.

For my disclosures, I've reviewed extensive files on the project, minutes of meetings going back to the early 2000s. I've also talked to numerous staff members and to the applicant's representative, Wayne Arnold.

And with that, Mr. Arnold, I have reviewed the package. I don't need a formal presentation. There are no members of the public here to -- there's no information needed for them, other than what you may want to put on record, so --

MR. ARNOLD: Thank you. For the record, I'm Wayne Arnold with Q. Grady Minor & Associates, Professional Planner.

Again, this is a fairly simple request, consistent with your Land Development Code provisions for removal of affordable housing commitments. I guess the unique aspect of this one is that those were embodied in a settlement agreement rather than a PUD document. The Land Development Code also references settlement agreements as being applicable for the removal of those commitments.

No dollars were expended but the dollars were requested to be paid upon completion of each

residential building within the project, and we're seeking the removal of the commitment, as others before us have.

HEARING OFFICER STRAIN: Thank you.

And isn't that unique, there has been another settlement agreement in which the same provision was removed. And I'll have testimony on that from staff in just a minute.

MR. ARNOLD: Thanks.

HEARING OFFICER STRAIN: Thank you.

Okay. I would like to ask that some members of staff who are here answer a couple of questions. The first one is the county attorney's office.

And, Heidi, I did receive a series of letters that prompted this to have to be into a public process as required by the code. The letters concerned -- were more concerned about whether or not this opened up the settlement agreement. I don't believe, from this office, we can do that. Can you just acknowledge that?

MS. ASHTON-CICKO: The sole issue before you is the removal of the affordable housing commitment. You are not able, under that section, to open any other provisions of the agreement.

HEARING OFFICER STRAIN: Thank you.

Is Amy Patterson here?

Hi, Amy. You'll have to state your name for the record.

MS. PATTERSON: Good morning. Amy Patterson, Director of Capital Project Planning, Impact Fees and Program Management.

HEARING OFFICER STRAIN: Thank you.

I have a -- I know you and Paula work together on the collections and impact fees and commitments like this, and so I have a series of operational questions for Paula.

I did want to ask you -- since you're the department head, what is your current ability to collect funds for this kind of particular commitment?

MS. PATTERSON: We're unable to collect funds relative to the affordable housing donations because it's been -- the collections have been suspended by the Board of County Commissioners.

HEARING OFFICER STRAIN: So currently this particular project is required to put up funds as each building is moved forward. So if they came in with a check today to pay this, there would be no way that we could accept that check?

MS. PATTERSON: We could not.

HEARING OFFICER STRAIN: Okay, that's all I needed to understand. Thank you very much.

MS. PATTERSON: Thank you.

HEARING OFFICER STRAIN: And Paula, if you don't mind?

MS. FLEISCHMANN: Good morning. Paula Fleischmann with Impact Fees.

HEARING OFFICER STRAIN: And Paula, I've got a few questions for you.

What is the status of the collected fees since this program began?

MS. FLEISCHMANN: Well, we've collected \$604,581, and 499,623 of that has been refunded. We have 105,000 left to be refunded.

HEARING OFFICER STRAIN: Okay. Was any of that money ever spent?

MS. FLEISCHMANN: No.

HEARING OFFICER STRAIN: When was the first payment collected? How many years ago?

MS. FLEISCHMANN: 2006 was the first one and then there was a couple of years in between, and then a lot more came in '08, '09 and '11.

HEARING OFFICER STRAIN: The money has been sitting in the account that it was deposited in, it just sat there all these years, and we're looking at almost 10 years for some of it?

MS. FLEISCHMANN: Uh-huh.

HEARING OFFICER STRAIN: And in the -- in that money that you collected, how many of those were settlement agreements?

MS. FLEISCHMANN: Just two. Sandlewood and Cocohatchee.

HEARING OFFICER STRAIN: Okay. But you haven't collected anything from Cocohatchee yet.

MS. FLEISCHMANN: No. There was never any collected.

HEARING OFFICER STRAIN: What's the status of Sandlewood's contribution?

MS. FLEISCHMANN: Sandlewood paid in 57,000. They've gotten -- I mean, the potential was 57,000. They only paid in 12, and they got that 12 back.

HEARING OFFICER STRAIN: Thank you very much.

MS. FLEISCHMANN: You're welcome.

HEARING OFFICER STRAIN: And Ray Bellows, would you mind answering a few questions?

MR. BELLOWS: Sure, I don't mind.

HEARING OFFICER STRAIN: Have any of these -- has any one or any of the applications that was set by the board, and I don't remember the exact year, but I think it was 2012 when the Board voted to have these commitments -- allowed that these commitments to be removed from PUDs as a text change, and they allowed staff to do it, unless opposed, have you ever had any opposed prior to this one?

MR. BELLOWS: None to my knowledge.

HEARING OFFICER STRAIN: Okay. Have any that you reviewed as the Zoning Manager ever been denied?

MR. BELLOWS: No.

HEARING OFFICER STRAIN: Do you know of any that have ever been denied?

MR. BELLOWS: None have been denied.

HEARING OFFICER STRAIN: Okay. Is the Board's order to release these commitments still valid?

MR. BELLOWS: Yes, they are.

HEARING OFFICER STRAIN: And was there a customary contribution of value ever just generally used?

MR. BELLOWS: A customary value, as requested by the Board during their hearing, but it's not a written code provision.

HEARING OFFICER STRAIN: What was that amount?

MR. BELLOWS: Oh, it was -- do you recall the amount?

MS. ASHTON-CICKO: No.

MR. BELLOWS: I don't recall the amount offhand.

HEARING OFFICER STRAIN: I, being on the Planning Commission and seeing this come through, I remember that we would utilize \$1,000 per unit, it would seem.

And the reason I ask is because the rate on this particular one was well over 5,000.

And that's the only questions I have of you, Ray. Thank you.

Heidi?

MS. ASHTON-CICKO: I'd just like to supplement what Ray said. There was one that was opposed. It went to the Board of County Commissioners, I can't remember the name of the project, and the Board did approve the removal.

HEARING OFFICER STRAIN: Okay. Thank you for that clarification.

And that's all the questions I have, and I do appreciate staff's participation.

Wayne, did you have anything you wanted to comment on before we close this hearing?

MR. ARNOLD: No, nothing further. Just hopeful that you will recommend approval and removal of the condition.

HEARING OFFICER STRAIN: One last time for any public speakers or any members of the public here who wish to speak on this matter?

(No response.)

HEARING OFFICER STRAIN: Okay. Hearing none, this particular item is closed and we'll move on to the next item on the agenda. Thank you.

MR. ARNOLD: Thank you.

HEARING OFFICER STRAIN: The next item on the agenda will not be so simple. It is the Petition No. PDI-PL20140000640, the Landquest Group, LLC, for the Tree Farm MPUD.

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 OFFICER STRAIN: Thank you.

The exhibits: Exhibit A will be the staff report; Exhibit B will be the legal ad.

For disclosures, I've talked with staff, I reviewed the files, and I have talked with the applicant's representatives a couple of times. We had a meeting a day or two ago to go over some of the particulars on this particular -- on this project.

One item that has happened, we had a late review yesterday by the county attorney's office. I'm going to walk through the aspects of this project so we can address them as they've come up.

And Patrick, you are more than welcome to come on up to the speaker -- are there any members of the public here to address -- in fact, I know everybody here, and nobody is a member of the public. That takes care of that.

Patrick, I've reviewed everything in regards to this project. I don't need a formal presentation. We will have to walk through the various issues that have arose -- that have come up over the last couple of days. So I know you are aware of them.

And would you identify yourself for the record, please.

MR. VANASSE: Yes. For the record, Patrick Vanasse, Certified Planner with RWA.

HEARING OFFICER STRAIN: Okay. Location of the Tree Farm PUD is at the northwest corner of Immokalee Road and the future extension of Collier Boulevard, which is 951.

The -- our series of revisions to the master plan and to the text of the PUD: This is the new master plan that resembles somewhat of the old one, but there are some changes that we'll be walking through.

These are some -- this is the deviation page indicating what deviations are. We have a new deviation in the form of two. We'll go over that in a minute.

During the review of some of the text in the staff report, there was a bullet that read as outlined in red on this page. And it seemed to appear that the retail and office was increasing. That has been clarified. And what really happened is when the strike-through occurred, it -- the staff, I guess, didn't catch -- the number one wasn't struck through and so it looked like they were changing the square footage in the office to be greater than what the change is really going to occur.

In actuality they're reducing it from 143-5 down to 100 for office. And maximum is going from 175 down to 120.

And, Nancy, as a staff member, if that's not accurate, make sure you say so, okay?

MS. GUNDLACH: For the record, Nancy Gundlach, Principal Planner.

And it is accurate as Mark has stated.

HEARING OFFICER STRAIN: Thank you.

Again, this is the PUD master plan. This is the old one, the one that we're changing from.

And that takes us to what occurred yesterday. Before I get into my questions that are in the text of the PUD document, I wanted to go over what happened yesterday with a review -- a second review by the county attorney's office.

There were some changes suggested by the county attorney in regards to how this is laid out and how we look at the recreational area. And I need to walk through these to make sure they're understood and that you are in concurrence. And if there's any problem, please let me know.

On this page your table of contents, it's pretty benign. Some of these items have to be changed.

The -- and, Heidi, since you wrote this, your handwritten notes where it says "within R district", is that language that had to be added or was that intended just as a note that you crossed out by that little swirly thing you got there?

MS. ASHTON-CICKO: Yeah, the whole line is to be deleted.

HEARING OFFICER STRAIN: Okay.

On this particular page the recreational area is supposed to move up underneath the residential and be indented so it becomes part of the residential area.

Development standards, and this is -- I think, Heidi, you wanted to add four residential units?

What's the verbiage? Right here.

MS. ASHTON-CICKO: It can either say development standards or it can say for residential units, either way.

HEARING OFFICER STRAIN: Okay. If they add the standards for the recreational area, that will be a second section paragraph anyway.

MS. ASHTON-CICKO: Correct.

HEARING OFFICER STRAIN: Okay. Your last note is where that new paragraph would come into play. It would be --

MS. ASHTON-CICKO: Permitted uses.

HEARING OFFICER STRAIN: What's the -- does this --

MS. ASHTON-CICKO: Yeah, just permitted uses.

HEARING OFFICER STRAIN: Okay. Permitted uses for recreational RA within the R District.

On the next page, this gets into the separate, previous section. I think your intention is to see that section and purpose crossed out?

MS. ASHTON-CICKO: Yes.

HEARING OFFICER STRAIN: And then we move into a new 4.5, and that would continue with the language that's here with this new language: "for recreational area (RA) labeled RA on master plan."

MS. ASHTON-CICKO: R.

HEARING OFFICER STRAIN: This would remain or be added to that paragraph.

And then there are two other -- two sections that have to be renumbered to coincide with the dropping of the RA section.

That takes care of the changes that came in yesterday from the county attorney's office.

Do you have any concerns with those?

MR. VANASSE: No concerns. We concur and will make those changes.

HEARING OFFICER STRAIN: Okay. The -- this morning I found this, and I found it a little before the meeting started, so I tossed it on here. And this is an issue for Mike Sawyer.

Mike, if you'll come up and advise, from the traffic -- your traffic department's review, which way should this -- how should this be labeled in regards to the addition to the PUD?

MR. SAWYER: For the record, Mike Sawyer, Transportation Planning.

The second paragraph is the one that should be inserted into the development -- developer commitment section for transportation. It basically limits the overall project trip generation to 580 PM peak trips.

HEARING OFFICER STRAIN: Okay. Patrick, is that something you can take care of when this comes back in cleaned up?

MR. VANASSE: We'll do that. No problem.

HEARING OFFICER STRAIN: Okay. That's the last item of new issues that we have.

Patrick, if we go back to the PUD itself and our discussions on whether -- Tuesday or Wednesday, whenever we got today, on Page 3 of the PUD under the list of exhibits and tables, there were some changes to change the exhibit numbers, drop a couple of them that were redundant because they're part of the PUD, and then modify that table accordingly.

I believe you were in agreement with that?

MR. VANASSE: Yes.

HEARING OFFICER STRAIN: That will be done.

There was a series of notations made in the PUD document that were strike-throughs but they weren't not consistent with the colorations. You were going to make all that one consistent color as it goes forward.

I think most everything else has been -- oh, the additions to the recreational standards. We discussed the fact that the other projects, in a similar nature to yours, when they're up against residential there will be a buffer with a minimum of 15 feet. Do you have any problem with that?

MR. VANASSE: No. I've got some language that I can show you, if it's agreeable.

HEARING OFFICER STRAIN: Yeah, that's fine, if you don't mind. I'll have to add it as part of the record.

Good. You've taken into consideration both. What this proposed is a note on the bottom that says, "Where the recreational abuts residential lots the required 15-foot Type B buffer shall include a six-foot wall." That's the notations that we talked about the other day, so that works for me.

I'll enter this as Exhibit C and provide it to the court reporter at the end of the meeting.
And that's the only comments I had left. So thank you.

And are you clear on all the different changes and issues that have come up at the meeting --

MR. VANASSE: Yes, we are. I spoke with Scott and we will make all of the changes; run that by him to make sure that we haven't missed a thing, and get that back to you.

HEARING OFFICER STRAIN: Thank you, Patrick.

MR. VANASSE: Thank you very much.

HEARING OFFICER STRAIN: I need a staff report.

MS. GUNDLACH: Good morning. Staff has recommended approval of the Tree Farm PDI.

HEARING OFFICER STRAIN: That's as -- that's as short as it can get, Nancy.

MS. GUNDLACH: I'm going to add a little more to it: Subject to the changes discussed this morning.

HEARING OFFICER STRAIN: Okay. Nancy, thank you. Your work is always thorough so that does require a minimum amount of input, so I appreciate it.

Patrick, I don't think there's anything else.

Is there any members of the public wish to speak on this issue?

(No response.)

HEARING OFFICER STRAIN: Hearing none, we'll close that public hearing and move on to the next item for today.

The next item was the Silver Lakes PUD, just in case anybody came in late. That has been continued to November 13th.

That takes us to the last item, which is 4(D), the City Gate PUD.

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 OFFICER STRAIN: Thank you.

Exhibits will be: Exhibit A the staff report, and Exhibit B will be the legal ad.

For my disclosures, I've spoke with staff, reviewed the files and City Gate had a long history, so there's a lot of files.

I talked to the owner, Mr. Roger Rice, and this morning I talked to the applicant's representative.

So with that, Fred, did you want to make a presentation?

Are there any members of the public here for this one?

(No response.)

HEARING OFFICER STRAIN: Seeing none, we don't need a formal presentation, Fred. I know there's a few things that have to be changed.

MR. HOOD: For the record, Frederick Hood with Davidson Engineering, Certified Planner.

I don't need to make a formal presentation but I would like to go through the changes that we made.

HEARING OFFICER STRAIN: Certainly.

MR. HOOD: Okay. As I'm aware we were just taking out the non-climate controlled section that we were asking to be listed as comparable in the comparable use determination.

Outside of that, there was a question about --

HEARING OFFICER STRAIN: Well, actually, there were two substantial changes, and I talked to Mr. Rice about it on the phone as late as yesterday.

MR. HOOD: Okay.

HEARING OFFICER STRAIN: One was, he had requested and authorized the change to the comparable compatible request for only Lots 10, 11 and 12.

MR. HOOD: That's correct.

HEARING OFFICER STRAIN: He would like to request that that stay, 10, 11 and 12, in contrast to the zoning verification letter that had 14 various lots.

MR. HOOD: Correct.

HEARING OFFICER STRAIN: And I concur with you on the statement about the open air accessible units. He told me yesterday that he met with you or talked with you and that he wanted to drop that

as a use, comparable use, and leave it the with air conditioned indoor storage.

Is that your understanding of --

MR. HOOD: That is my understanding.

HEARING OFFICER STRAIN: Okay. So we get into the zoning verification letter, it says, "Air conditioned enclosed mini and self-storage warehouse, SIC Code 4225," that would remain. And then it said, "Non-air conditioned" -- I'm trying to read -- "outdoor accessible mini and self-storage 4225." And it was the "non-air conditioned outdoor accessible mini and self-storage" that he said he really did not need that use.

MR. HOOD: Yeah, that will be stricken.

HEARING OFFICER STRAIN: Okay.

And, Ray, I need to ask, what do you see as the methodology to accomplish this? Since the zoning verification letter is in front of me today for confirmation, I really can't confirm the way it's written, but I want to make sure that we don't enter it into our database and staff finds the zoning verification fails to realize there was something further changed on that.

MR. BELLOWS: Yeah, based on the discussion today, we will revise the zoning confirmation letter that was previously issued with a letter that will supercede it with the corrected language from today.

HEARING OFFICER STRAIN: Okay.

MR. BELLOWS: And that could be used as part of the HEX determination.

HEARING OFFICER STRAIN: That's what I was going to ask the county attorney's office. For the HEX decision on this, we usually have an exhibit as an attachment. Would I attach both the old and the new or just the new revised? That would be consistent.

MS. ASHTON-CICKO: Just the new.

HEARING OFFICER STRAIN: Okay. Good.

Some other points in this project: The three parcels that are going to be finalized for this are the three circled on the bottom. On the plat they show up as Parcels 10, 11 and 12.

And, Fred, if you disagree with any of this, let me know --

MR. HOOD: I will.

HEARING OFFICER STRAIN: -- because this is what I thought had been discussed.

This is the attorney's affidavit in which those lots were the ones that were being requested. And that's the language that's underlined in red that would be removed, and the reference to 14 parcels would be dropped to 3.

MR. HOOD: That's correct.

HEARING OFFICER STRAIN: And that takes care of it. Thank you.

MR. HOOD: Thank you.

HEARING OFFICER STRAIN: Is there any further staff comments or report?

(No response.)

HEARING OFFICER STRAIN: None?

Rachel, nothing?

MS. BEASLEY: Rachel Beasley, for the record.

Yes, the staff report was provided. I'm not really sure if you -- I mean, how you want me to say the recommendation because it's kind of changing now, but --

HEARING OFFICER STRAIN: You concur with the --

MS. BEASLEY: Yes, I do. Yes.

HEARING OFFICER STRAIN: -- recommendations asked on record today that are in another ZBL?

MS. BEASLEY: Yes, I do concur with the changes to the ZBL and attaching the new updated version with the outcome of today.

HEARING OFFICER STRAIN: Okay. Are there any members of the -- anybody else like to comment on this project?

(No response.)

HEARING OFFICER STRAIN: Okay. Hearing none, Fred, I don't think you need a rebuttal. Thank you for your time today and appreciate your cooperation. We'll have it within 30 days, we'll have a response.

MR. HOOD: Thank you all.

HEARING OFFICER STRAIN: Okay. Thank you.

With that we'll close that item on today's agenda.

And that takes us down to the very end of the agenda which is Other Business. There is none.

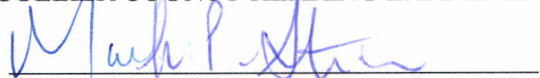
Is there any public comment?

(No response.)

HEARING OFFICER STRAIN: Hearing none, we'll -- this meeting is 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 9:25 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 12-10-15 as presented ✓
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY
REPORTING SERVICE, INC., BY LYNN BROOKS