

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
November 13, 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: Rachel Beasley, Planner  
Michael Bosi, Director  
Scott Stone, Assistant County Attorney

EXHIBITS

DESCRIPTION	PAGE
VA-PL20140001970	
A - Staff Report	4
B - Legal Advertisement	4

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PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Friday, November 13th meeting of the Collier County Hearing Examiner's Office. And I did not coordinate the date and the day to be Friday the 13th, so hopefully it turns out to be an okay day.

Would everybody please rise for the Pledge of Allegiance.

(The 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. All decisions are final unless appealed to the Board of County Commissioners. And a decision will be rendered within 30 days.

With that, a review of the agenda. We have one item on the agenda. There are no changes to the agenda at this time.

Approval of prior minute meetings of October 8, 2015. Those have been read, and those are okay to record.

\*\*\*That takes us to the first and only public hearing for today. It's Petition No. VA-PL20140001970, and it's the Geneva B. Spencer Trustee of the Geneva B. Spencer Revocable Trust Agreement for 1063 Diamond Lake Circle, as the screen shows.

With that, all those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. If you intend to speak on this item, you need to be sworn in.

(All speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: Thank you. And with that, first we'll start out with the exhibits. Exhibit A will be the staff report. And there have been two staff reports in this particular case. One was changed and recently reissued, and it's for the hearing date of 11/13/2015. That will be the staff report for Exhibit A. Exhibit B will be the legal ad.

Disclosures on my part. I reviewed the files. This is an older PUD. It had files going back into the early '90s. I've talked with staff. I've met with several representatives of the applicant from Mr. Carlo Zampogna's office, including himself today, and that's all the disclosures I have at this time.

And with that, because members of the public are here -- I have read the entire package. It's 95 pages. I normally don't need a formal presentation, but for the benefit of those in the public, the applicant's going to need to put on a presentation for us and state your case.

You need to introduce yourself for the record.

MS. SEIDLER: Good morning. My name is Ashley Seidler. I am the legal clerk at Zampogna law firm representing Ms. Geneva Spencer.

Today we are here to request a variance to reduce the front-yard setback from 10 feet to 2.9 feet for the existing mobile home with a front-yard balcony located at 1063 Diamond Lake Circle.

I'll give you a little bit of history. In 1999 the mobile home was placed on the property, sited with proper setbacks, and issued a certificate of completion. Subsequently, that certificate of completion was canceled; however, the tax assessor's office missed that cancellation because we've been taxed on the square footage since approximately 2000.

She lived on the property without any problems and has since moved out of Florida. At 87 years old, she attempted to sell the property where we became aware of these two permitting issues that have existed for the past 16 years.

Originally, the back of the mobile home encroached into the rear setback, but we have since brought

that into compliance and now only have the front remaining.

A literal interpretation of the code leaves a portion of the home encroaching into the front-yard setback; however, we can't shift it back because it will then encroach into the rear setback. Similarly, it's not feasible to remove a piece of the property because it would affect the structural integrity rendering it structurally impossible, which is stated in the affidavit by Kosinski Engineering.

In addition, the mobile home and balcony encroach into the utility easement. We have three letters of no objection from ComCast, CenturyLink, and Florida Power & Light regarding this encroachment.

Again, today we are seeking a minimum variance to put the mobile home and balcony into compliance with the front-yard setback. If granted, this variance will still make possible the land, building, and structures that promote health, safety, and welfare.

HEARING EXAMINER STRAIN: Let me run through some pictures I've put on the overhead. First of all, that's the general location of the property. And then the aerial, this shows it in relationship to the rest of the neighborhood. And one of the questions I have here is from this line to this line, I believe, is about 60 feet. Do you know that? Do you know exactly what that is, or have you checked that at all?

MS. SEIDLER: I do not know the exact.

HEARING EXAMINER STRAIN: Okay. And the reason that's important is I notice this road is pushed much to the north side of the property, and these homes over here are much closer to the edge of the road. Likewise, these are sitting back because it looks like the right-of-way was wider than was needed for a road of this style.

Generally we allow deviations for road widths, and they can either be done by the Engineering Department or through the PUD process to drop the width down to usually 40 or 42 feet. So there is an excess amount of width in that particular location on this site. That's a little bit more of a blowup of the aerial for the property in question. It's in line with some of the other properties on the block, so there may be other issues there that eventually have to be addressed.

The survey of the property, this is the area that is in question where the building extends right here, and then the front balcony goes out a little bit right here. In the back there was a covered lanai, and I believe it went out to here. And then based on the photographs, what I've seen, you have restructured that lanai and moved it back already.

MS. SEIDLER: Correct.

HEARING EXAMINER STRAIN: Okay. So that section has been taken out; is that correct?

MS. SEIDLER: That's correct.

HEARING EXAMINER STRAIN: This is a blowup of the front condition, so there's still -- from the center line of the road there's 30 feet. That road width is 12 feet. You've got a 2-foot valley gutter. So you're still looking at 15 feet plus this distance set back from the back of curb, which is the measurement used in most planned unit developments in Collier County.

And I think that's the extent of the overheads I have. I don't know if there was anything you wanted in addition to that. That's what we're dealing with right now.

I have a few questions from the documentation you submitted. First of all, the easement in the front, this area right here is subject to various utilities being underground. You've got letters of no objection to your setback from all the utilities --

MS. SEIDLER: We do.

HEARING EXAMINER STRAIN: -- that were available?

MS. SEIDLER: We do.

HEARING EXAMINER STRAIN: And I think it was CenturyLink, ComCast --

MS. SEIDLER: And Florida Power & Light.

HEARING EXAMINER STRAIN: -- and Florida Power & Light.

I also notice a letter from the structural engineer confirming your statement about it would be structurally impossible to cut this building up and move it back to the line.

The narrative that you provided had a discrepancy I want to clear up, and it's on -- it says, the nature of the petition is -- in my electronic version, it's on Page 24 of the packet. It says -- I can read it to you. It says, detailed explanation, then the fourth paragraph down, or the fifth, reads, that same day, Dig-M-Installers

obtained an occupancy permit but never called for a final inspection.

And then in the next paragraph it said, she did not have a final occupancy permit or final inspection. I understand the final inspection comment from the paragraph above. So an occupancy permit was issued and then canceled?

MS. SEIDLER: I believe it was -- it was canceled, yes.

HEARING EXAMINER STRAIN: Okay. In order to be issued, would it have had an expectation that the positioning of that mobile home met the requirements of the county at the time it was issued?

MS. SEIDLER: That's correct.

HEARING EXAMINER STRAIN: And then apparently after it was canceled, there was never another one sought because your client didn't know that one was -- at that point the situation?

MS. SEIDLER: Correct. She had no idea that it had even been canceled.

HEARING EXAMINER STRAIN: And there's a statement in a paragraph up from the bottom of that page, and I'll read it to you. It said, the contractors were in violation of the original plan approved by Collier County and did so without any intention of calling for a final inspection. How did you -- how did you realize that?

MS. SEIDLER: This was prior to when we had started working on the case, but from what we have been told from the owners, they believe that they never were going to call for it.

HEARING EXAMINER STRAIN: The reason is that statement would indicate that the contractors were very deceitful in the way they managed this particular project. And if that's the case, I think it would be more something of a licensing issue that may be needed to be followed up. And I wasn't sure how that statement got there, whether it was testimony or just a comment made by your client, which it appears it is. She has no proof that they intentionally --

MS. SEIDLER: Dig-M-Installers is no longer active in Florida.

HEARING EXAMINER STRAIN: Yeah, I saw the information on that, too.

Okay. And that's the only issue -- only questions I have at this time, so --

MS. SEIDLER: Thank you.

HEARING EXAMINER STRAIN: -- thank you very much.

And with that I'll ask for a staff report.

MS. BEASLEY: Rachel Beasley, for the record.

A staff report was submitted, and it is recommending approval with the stipulation that any permit that has not received a certificate of occupancy will be required to obtain one.

HEARING EXAMINER STRAIN: And I have read your recommendation. I'm in disagreement with it, so that will not be part of the decision. A permit issued in, potentially 1999, a facility paying taxes since that time on the improvements, and it being left without a problem for 15 years would be more of a problem to try to obtain a permit 15 years later for something that was built at a prior code and prior time with the county, so I don't see the necessity of forcing the client to go through the effort on that permit. That's something that they can handle however they see fit with your department. That won't be part of something I'll be considering at this time.

And with that, are there any members of the public that would like to speak? Please come on up and identify yourself for the record.

MS. KEENE: Good morning. My name is Margaret Keene, and I reside at Silver Lakes RV and Golf Resort. Thank you. I live at 1350 Silver Lakes Boulevard, and I also happen to be a member of the POA board of directors.

My only question is, is if this variance is granted, what effect does that have on our governing documents that are based on the Collier County Land Development Code going forward?

HEARING EXAMINER STRAIN: Your governing documents I have not read. I would assume they are partly to be consistent with the Land Development Code.

The process this applicant has gone through is to obtain consistency through a variance, so this would have -- should have no effect on the application of the Land Development Code, because the process they went through got them consistent based on the variance request applied through the Land Development Code.

MS. KEENE: Okay. Would that mean that going forward that people could place their homes in the

same place, or they would have to acquire a variance in order to do that?

HEARING EXAMINER STRAIN: No. Well, they would have to acquire a variance, but if you're going to do it proactively, meaning you're going to come in with the intention of doing this, you'd be turned down.

MS. KEENE: Okay.

HEARING EXAMINER STRAIN: You'd be told no. This is a reasonable error. It looks like it's through no fault of the applicant or the property owner in this case. It's a situation that's existed for approximately 15 years with no harmful effect on the neighborhood. Someone else would have to meet all those criteria, and they wouldn't be given a permit in the first place if this was a known condition. Today's inspections and follow-through by the county staff is much more intense than it was in 1999. I cannot imagine how this could have happened today.

MS. KEENE: Okay.

HEARING EXAMINER STRAIN: Thank you for your input.

Anybody else that would like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. I don't have anything else. Are there any staff -- Scott, are you fine?

(No verbal response.)

HEARING EXAMINER STRAIN: Okay. With that, we will close this public hearing. And a decision will be rendered on this within 30 days. Just so you know, my office will probably have this completed within about 10 days, but we do have 30 as far as the record goes.

But thank you for your time, everybody. Appreciate your time here today. Thank you very much.

That takes us to the balance of our agenda, which is other business. There is none.

Any other public comments?

(No response.)

HEARING EXAMINER STRAIN: There are none.

With that, we'll adjourn. 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 9:14 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  
COURT REPORTING SERVICE, INC., BY  
TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.