

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
February 11, 2016

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
Eric Johnson, Principal Planner
Scott Stone, Assistant County Attorney

EXHIBITS

DESCRIPTION	PAGE
BD-PL20150001119	
A - Staff Report	4
B - Legal Advertisement	4
C - Aerial Distance Measurement	10

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, February 11th meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.
(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Okay. We have a few housekeeping announcements.
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.

Review of the agenda: We have one item on today's agenda. It's Item 4A for a boat dock extension. There are no prior meeting minutes supplied from our last meeting yet, so we'll move directly into that first advertised public hearing.

***It's Petition No. BD-PL20150001119. It's the Beth Murphy and John Morrissey-Pumo 67-boat dock extension on the Isles of Capri.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.
(The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: Okay. My disclosures: I spoke with Jeff Rogers representing the applicant, I've talked with staff, and I've reviewed all the files as well as some historic files.

Exhibit A will be the staff report, Exhibit B will be the legal ad, and there will probably be an Exhibit C added here as we get into the situation.

This particular location is on the southern part of the Isles of Capri. That's the location on an aerial provided in the staff report.

The proposed dock is 87 feet out to the end of the boats that are there. It's got a 4-foot gangway and a 158 terminal platform -- 158-square-foot terminal platform. It's set up for two boats. This is a blowup of that. This shows the depths going out and where the boats are, the depths needed to anchor the boats.

These are the seagrass beds that were shown in the area. When there are seagrass beds, there are specific requirements in the LDC that have to be met.

This is a cross-section of the heights of the docks, and one of the questions that I'll be having is an explanation of the NAVD height.

Staff recommendation: And I guess, Jeff, the first thing I want to ask, do you have any problems with the staff recommendations?

MR. ROGERS: No, sir, we do not.

HEARING EXAMINER STRAIN: Okay. There is a member of the public here, or two, and I believe it's the applicant. Seeing no other members of the public, I don't need a formal presentation. I've read the entire document. I do have some questions. I didn't know if you wanted to add anything to your -- to the staff report, to the material that's been supplied.

MR. ROGERS: No, not really. You know, this is the -- the only special condition that we have here is, you know, the state aquatic preserve, so we have to abide by those rules that the state has for this area, and that relates to the dock design and elevation of the dock, referring back to your question.

HEARING EXAMINER STRAIN: And I did check out your maximum, and we'll -- I think there's a -- I wanted to get to that.

There are four items when there's -- seagrass beds are present. The first one is that the dock height

shall be at least 3.5 feet, and it's NGVD. You submitted everything in NAVD as required now by the county but, unfortunately, the LDC has not been updated. And I just wanted acknowledgment that the NAVD calculations that are shown on that cross-section are equivalent or greater than the minimum 3.5 NGVD that was required in the LDC.

MR. ROGERS: They are. It's greater.

HEARING EXAMINER STRAIN: Okay. So your testimony is it's greater?

MR. ROGERS: Yes, sir.

HEARING EXAMINER STRAIN: Eric or Ray, are you guys in agreement with that since you wrote the staff report?

MR. BELLOWS: For the record, Ray Bellows. We're not the experts on that. We were trying to get a crash course just a few minutes before the meeting started. But we have one of our county experts here, so if you could try to address what is --

HEARING EXAMINER STRAIN: You have to come up to the microphone, Brett, and identify yourself for the record.

MR. ROSENBLUM: Brett Rosenblum.

HEARING EXAMINER STRAIN: I bet you didn't know you were an expert in conversion of NAVD.

MR. ROSENBLUM: I did not know I was an expert. All right. So the question, it was -- everything was supposed to be at 3.5 NGVD; is that correct?

HEARING EXAMINER STRAIN: First of all, this is the plan that was submitted, and it's calling for a height of the access walkway, five feet above mean high water. Mean high water is .42 NAVD. They're going to be five feet above that. The concern was, since it's in NAVD and the planning -- and the LDC references NGVD, my only question is -- to make sure we're consistent with the code is that the 3.5 feet NGVD is equal to or exceeded by the NAVD references they have.

MR. ROSENBLUM: Yeah. 3.5 NGVD is approximately 2.3 NAVD. So it's about a 1.2 give-or-take conversion, so --

HEARING EXAMINER STRAIN: Okay, so --

MR. ROGERS: -- if they're higher than the 2.3 NAVD, then they should be fine.

HEARING EXAMINER STRAIN: I certainly appreciate your clarification. Thank you.

MR. ROSENBLUM: Okay.

HEARING EXAMINER STRAIN: And now that you're an expert in NAVD and NGVD, I'm sure you'll be readily used.

MR. BELLOWS: We'll call on you again.

MR. ROSENBLUM: Oh, great. We do have a county surveyor who could have handled this as well, so...

HEARING EXAMINER STRAIN: Excellent. Thank you, Brett.

MR. ROSENBLUM: All right. Sure.

HEARING EXAMINER STRAIN: Appreciate it.

I did check, and the terminal platform appears to be 158.4 square feet, which is less than the 160 as the not-to-exceed. The access dock width is four feet. And based on the way -- the layout of the dock, they've done, I think, the best that they can in regards to not intruding on the seagrass beds.

Some of the criteria for the dock -- and this particular one is that the facility will protrude more than 25 percent of the width of the waterway. And we relied, apparently, on the criterion to be met by visual estimate.

I had talked with Jeff and suggested that since we have the benefit -- and, by the way, this code was written a long time ago, and we didn't have the benefit of Google maps and the county appraiser's site with the measurement tool necessarily that we have today. And since we have that, I would suggest to staff that that's a better document or a better measurement tool to use than someone's visual estimate, especially since Jeff's not been qualified as an expert in visually estimating distance.

So, Jeff, did you bring up a document I asked about yesterday?

MR. ROGERS: Per our conversation, I created an aerial for the record. I can give it to the court reporter.

Basically, it shows the approximate width of the waterway from mean high to mean high being about 1,024 feet. You've got right there 1,019 feet, so a small discrepancy.

HEARING EXAMINER STRAIN: Pretty close.

MR. ROGERS: Yeah.

HEARING EXAMINER STRAIN: Either way, you're going to be less than the required distance.

MR. ROGERS: We're going to be less than what's -- what we're -- what's called for, or restricted to; 25 percent. So we're about 10 percent.

HEARING EXAMINER STRAIN: That's all I was trying to confirm by a graphic.

So what we'll do is, if you could provide the court reporter with that graphic, it will be Exhibit C, and it will be titled the "aerial distance measurement."

And then that takes us back to this, and this question is more a total -- a question of staff. The criteria that's not been met is the one about the length of the vessel or vessels, and it does request that the length be the discussed item or the item that is used for measurement, yet staff provided an argument concerning the width of the two vessels. And I'm trying to understand the correlation between the need to do that when the criterion is not met and it's strictly supposed to be length.

MR. JOHNSON: Sure. For the record, Eric Johnson, principal planner.

With respect to Criteria No. 3, it is, in fact, criteria not met because of the language that you see on the screen. Really, the second sentence where it starts, however, it should be noted that according to the drawing labeled proposed site plan -- proposed site with dimensions, I was just really trying to demonstrate that the 29.9 feet is very -- it's slightly less than half the linear water frontage of the platted lot.

Again, the two vessels combined length-wise doesn't meet the criterion. It was really just a -- it was just an explanation of if you were to look at it from the point of the width of a vessel, the dock, and then the width of a -- the width of the vessel, the two vessels, that the 29.9 feet is slightly less than half the linear water frontage of the platted lot.

In the future what I could do, Mr. Hearing Examiner, is if the criterion is not met, I shouldn't write anything above and beyond something that would be contrary to staff opinion.

HEARING EXAMINER STRAIN: And I think the argument you made here might be fine in a text of the staff report or as a testimony here at this hearing, but I wouldn't want to see it under the criteria anymore only because it might be utilized by someone else trying to justify how they meet or don't have such a problem with their argument in regards to this criteria. So I don't want to set up a standard that we shouldn't be using, so...

MR. JOHNSON: That's fine, and we'll change accordingly in the future.

HEARING EXAMINER STRAIN: I think this has been resolved. It was the question that originated my NAVD versus my NGVD question.

I have no issue with the bottom. I think we already -- I already talked about that. And those are all the questions I have at this time.

Jeff, is there anything else that you have?

MR. ROGERS: No, sir.

HEARING EXAMINER STRAIN: Okay. Thank you very much.

MR. ROGERS: Thank you.

HEARING EXAMINER STRAIN: And, Eric, do you have anything you want to add to the staff report?

MR. JOHNSON: No, I have nothing more to add. Staff is recommending approval contingent upon the three conditions of approval.

HEARING EXAMINER STRAIN: Okay. Any members of the public wish to comment on this particular case? Yes, sir, please -- oh, you weren't sworn in, so please raise your hand to be sworn in.

MR. HUGHES: No, I stood up.

HEARING EXAMINER STRAIN: Oh, did you? Okay, please come up and address your -- use the microphone and state your name for the record, please.

MR. HUGHES: My name is Jim Hughes. I live at 94 Dolphin Circle. If the map was there, I could point to it. To the left of their dock -- close back in again there. To the left of their dock, a group of five

docks, and I'm the second one from the bottom there. Right there, yes.

HEARING EXAMINER STRAIN: Okay.

MR. HUGHES: Yeah. And, in fact, I was the first to put in an extended dock, and I realized the problems that people could have or are having. And over the years, I'm happy to see the county helping people get their docks, and I realize we have to stick by codes and ordinances, but it's good that everybody can get access during a -- getting our dock, I read a lot of articles, and I read one that Doc Loach said, and Doc Loach was the developer of the island. And Doc Loach said that everybody doesn't have equal access, but everybody should have access to the water, and that's the purpose of the island, to be a fishing village.

And some people have sandbars, as this bay does, and other people have narrow canals where they have some problems there. But I'm happy to see everybody getting access to the water.

HEARING EXAMINER STRAIN: You have no objection to this application?

MR. HUGHES: That's what I was just going to say here. I totally approve this project.

HEARING EXAMINER STRAIN: I do notice that you have quite a sandbar over there.

MR. HUGHES: Yes. Our lot size doubles twice a day.

HEARING EXAMINER STRAIN: Too bad you didn't own all the way out in the water.

MR. HUGHES: That's right.

HEARING EXAMINER STRAIN: Well, I sure appreciate your testimony, sir. Thank you very much.

MR. HUGHES: Well, thank you for your help.

HEARING EXAMINER STRAIN: Is there anybody else that has any comments on this issue?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we'll close the public hearing, and a decision will be rendered within 30 days, most likely within 10 days, and you'll have a decision by email.

With that, I thank you all for coming, especially your testimony today. Appreciate it.

That brings us to other business. There isn't any.

Is there any other public comment?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this meeting's adjourned. Thank you.

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 3-10-16, as presented ✓
or as corrected _____.

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