

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
April 14, 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
Nancy Gundlach, Principal Planner
Eric Johnson, Principal Planner
Fred Reischl, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

EXHIBITS

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HEARING OFFICER STRAIN: Good morning. Welcome to the Thursday, April 14th, meeting of the Collier County Hearing Examiner's Office.

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

HEARING OFFICER STRAIN: Thank you.

A couple of housekeeping matters. Individual speakers will be limited to five minutes unless otherwise waived. Decisions are final unless appealed to the Board of County Commissioners. A decision will be rendered within 30 days, and, based on the workload, it may be less for the cases today, maybe ten days, but we'll do our best.

After that, anybody that is asked to speak today I will need you to come up and identify yourself for the record. I would like to have your address, and we'll move from there.

With that, review the agenda. There are no changes to the agenda.

We have three items up today. They are listed on the screen above you. Crystal Lake Property Owner's Association is the first one. Terracina, LLC, which is Bretonne Park Planned Unit Development, is the next one. And then Lely Barefoot Beach Property Owners Association for a boat dock extension is the third.

Approval of the prior meeting minutes. I have reviewed the minutes from February 25th, 2016, and March 10th, 2016. I find that they are acceptable as presented and will be recorded that way.

Which takes us to our first advertised public hearing. That is Petition No. PUDA-PL20140000928, Crystal Lake Property Owner's Association Two, Inc.

All of 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 OFFICER STRAIN: Exhibit A will be the staff report. Exhibit B will be the legal ad.
(Exhibits A and B were marked for identification.)

HEARING OFFICER STRAIN: Disclosures on my part. I have reviewed the files. I've talked to a couple of the applicant's representatives, some of which are here today.

And with that we'll move directly into the hearing and the representative of the applicant, Ms. Green. Would you mind going to the microphone, identifying yourself for the record?

MS. GREEN: Good morning. My name is Gina Green, engineer for the project.

HEARING OFFICER STRAIN: Okay. Ms. Green, I have reviewed the entire staff report. I have a few, couple comments or questions. I don't need a formal presentation. But first let me find out if there are any members of the public here in opposition to this particular request?

Okay. So with that I will move into my questions.

The first one is that this is basically an accessory structure request. You currently have a requirement to have both a screen enclosure at a maximum of I think it's 500 feet and a shed at 100. You are expanding this to a 600 feet combination for utility shed or structure not to exceed 300, but if you make your screen enclosure larger than, say, 400, you would be limited to about 200 on our petition.

Is that a basic assumption.

MS. GREEN: Yes. The total accessory use is 600 square feet and the allocation will be up to 300 for enclosed with total 600. So, you know, if they want to do 200 and 400, 150/450, however they want to do it, as long as they don't go over the 300 enclosed and 600 total.

HEARING OFFICER STRAIN: And I did go back and check from the beginning of this PUD, which is, I believe, back in the nineties.

MS. GREEN: Yes.

HEARING OFFICER STRAIN: There was the requirement of a maximum 600 square feet. You are consistent with that. You are not going beyond that amount?

MS. GREEN: No.

HEARING OFFICER STRAIN: Just wanted to make sure. I appreciate it.

I don't have any other questions at this time. After any speakers and maybe the staff report, if there is anything that you may need to address, we'll call you back.

MS. GREEN: Thank you.

HEARING OFFICER STRAIN: Thank you.

With that is there a staff report, Nancy?

MS. GUNDLACH: Good morning, Mr. Hearing Examiner.

Staff recommends approval.

HEARING OFFICER STRAIN: As short as it can get. Thank you, Nancy. Did you have any objections received by your department?

MS. GUNDLACH: We did not receive any objections.

HEARING OFFICER STRAIN: And I have not received any as well.

I do have a question for the county attorney's office. Under the effective date of this ordinance, is that going to have a date actually plugged in or are we just going to leave it as referenced like that?

MS. ASHTON: My recommendation it would be after any -- insert the date of your decision, date specific.

HEARING OFFICER STRAIN: Okay. So that will be the only change that will occur to this language here. That's in the fourth line down where it says, "After the effective date of this ordinance," we will have a reference to the date that the decision is actually finalized.

And with that are there any members of the public that wish to speak on this issue?

Okay. I have no other questions.

I believe, from staff's perspective, or from the applicant's perspective, there is really nothing to rebut. So that will close the hearing on this matter and a decision will be rendered within 30 days, most likely about a third that time.

Thank you all for attending. Appreciate it.

Next item up is Petition No. PDI-PL20150002353. It's the Terracina II, LLC, also known as Bretonne Park.

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

HEARING OFFICER STRAIN: Okay. We have two exhibits already provided, which is -- Exhibit A will be the staff report. Exhibit B will be the legal ad. And during the course of the meeting Eric Johnson has brought with him some documentation concerning e-mails received and responded to. Those will be admitted as Exhibit C.

(Exhibits A, B and C were marked for identification.)

HEARING OFFICER STRAIN: Disclosures. I have talked to the applicant. Some of the applicant's representatives are here. I've reviewed the files and I've also had discussions with the county

attorney's office in regards to the procedure to go -- the reference to the Rural South Regional Planning Council that hopefully Mr. Mulhere is going to address.

And, Bob, I have reviewed the entire staff report and all of the exhibits. I don't have any questions other than whether or not you agree with the staff recommendations.

MR. MULHERE: Yes, we do.

HEARING OFFICER STRAIN: Okay. And if you don't mind basically describing the paragraph, I believe that is -- the only paragraph referencing this particular issue is right here.

MR. MULHERE: Correct. And I guess I should say for the record, Bob Mulhere with Hole Montes here on behalf of the applicant.

HEARING OFFICER STRAIN: Thank you.

MR. MULHERE: The one very minor change, at the outset the -- this is a DRI and a PUD, Development of Regional Impact, Planned Unit Development. Watch those acronyms. And it has always allowed a maximum of 270 units but it was restricting in that it allowed 210 ALF units plus 60 skilled nursing facility units.

The operator and owner was in the process of applying for the certificate of -- I guess it's called a certificate of need for the skilled nursing beds, and has received the same for, at the present time, 30 of those skilled nursing beds. They want to go in and construct the facility and they want to construct it ultimately such that it would be -- could accommodate the full 60 skilled nursing beds, but they don't have a certificate of need at this point in time. So obviously they are not going to build something and then have to add a second floor or do something, you know, down the road when they get the additional beds, if they get the additional beds.

So this proposal would allow them not to exceed what was previously allowed but to allow them to utilize that building for additional ALF units while they wait for the additional 30 units to be approved, or permanently if they never get that certificate of the need.

There is really no traffic impact associated with it. And because it was a DRI we submitted a notice of proposed change to a Development of Regional Impact to the Regional Planning Council.

In dealing with the Regional Planning Council, Dan Prescott, who used to work for the council and now is a consultant for them, who handles DRIs, indicated that this did not require, actually, although we had submitted it, did not require the notice of proposed change because there is a portion of the statute, the DRI statute, that, that doesn't require a notice of proposed change for a minor change in an essentially built-out Development of Regional Impact.

This qualifies as being essentially built out and therefore Dan wrote a staff report, brought it to the Regional Planning Council on February 18th, indicating that no NOPC was required and that, regardless, in his professional opinion, this did not constitute a substantial deviation. And there was a motion made by Commissioner Nance to approve the staff recommendation at the RPC and that motion was seconded by Commissioner Mann and passed unanimously with -- I also sit on the Regional Planning Council. I abstained from that vote.

HEARING OFFICER STRAIN: I noticed that on the record that you provided or staff provided in the staff report the RPC staff report.

MR. MULHERE: Yes.

HEARING OFFICER STRAIN: So the 270 units are not being exceeded. That is the amount that this was previously approved for in combination. Today such an application would most likely come through as a CCRC reference instead of an ALF, which, from past history CCRCs do include nursing facilities.

So I'm not sure that's any -- what you are asking for is inconsistent with the way we would have looked at it in today's standards.

MR. MULHERE: And we did do a traffic analysis and there is no impact. It's completely insignificant. A couple trips.

HEARING OFFICER STRAIN: Other than, I believe there was a question by some people who received the notification concerning the location of an arrow on an advertisement, and that led some to question the project, but I haven't seen, after that was explained and corrected, any final objections to the project.

Do you know of any?

MR. MULHERE: No. I'm unaware of any. I think the arrow confused people because it pointed to

a location within Bretonne Park. People assumed that's where this project was going but the purpose of the arrow was to point to the entire DRI because we are amending the entire PUD and DRI, and so it probably was confusing.

HEARING OFFICER STRAIN: Thank you. And then some of the documentation that Eric has reflects that kind of scenario, so -- have you received a copy of what Eric's got for the exhibit that's coming up, which would basically be those e-mails involving that question?

MR. MULHERE: I've seen them. I've seen them. I don't think I've received them but we had talked about it yesterday.

HEARING OFFICER STRAIN: Okay. I'll make sure you get a copy of them for the record.

MR. MULHERE: Thank you.

HEARING OFFICER STRAIN: That's all of the questions I have.

MR. MULHERE: My pleasure.

HEARING OFFICER STRAIN: Staff report?

Heidi?

MS. ASHTON: I just need to correct something Mr. Mulhere said because we are not amending the DRI, we are accepting the Regional Council's --

MR. MULHERE: Thank you.

MS. ASHTON: -- agreement that it's not needed.

HEARING OFFICER STRAIN: Agreed.

MR. JOHNSON: Eric Johnson, Principal Planner. Staff is recommending approval of the petition.

HEARING OFFICER STRAIN: And, Eric, how many copies of Exhibit C, which are going in the record regarding the e-mails that you received to clarify that issue for advertising?

MR. JOHNSON: I have provided two copies, one to the hearing examiner and one to the court reporter.

HEARING OFFICER STRAIN: Okay. The one to the hearing examiner, I have it electronically.

So, Bob, before you leave, grab this, and that will be your copy for the record. And the court reporter has already got the copy so that has been noted and marked as Exhibit C.

Are there any members of public who wish to address this issue?

Yes, sir. Come on up.

MR. GRECO: Do I have to be sworn in?

HEARING OFFICER STRAIN: If you weren't sworn in earlier, yes?

(The speaker was duly sworn.)

HEARING OFFICER STRAIN: Please come on up and address -- state your name for the record and your address and we'll move forward.

MR. GRECO: My name is Alexander J. Greco. I live at 6809 Sterling Greens Drive, Unit 102, in Glen Eagle Golf Community.

Mr. Strain, I just would like -- I'm not opposed of this expansion but I would just like to have the opportunity to discuss the Glen Eagle Bridge.

HEARING OFFICER STRAIN: That isn't a matter for discussion here today. Is there something related directly to the case?

MR. GRECO: Yes.

HEARING OFFICER STRAIN: The change of --

MR. GRECO: Well --

HEARING OFFICER STRAIN: -- nursing facilities to senior living facilities; is that part of your concern?

MR. GRECO: Yes.

HEARING OFFICER STRAIN: Okay. We'll indulge you. Go ahead.

MR. GRECO: A few years ago Glen Eagle allowed Terracina to use the entrance for construction vehicles on a building prior to this one. I don't have the amount or how many years it was, and they had removed the fence. We let -- the community let them use their construction paths. They went around. Okay.

Now that they are -- and that's because their new bridge wasn't built yet on Davis Boulevard.

Now that their new bridge has been completed and they are using it for -- they are using, still, our bridge for commercial vehicles, any construction, beverages, supplies, everything is going through there, Waste Management. What we would like to suggest, being that -- that bridge was designed by Bretonne 25 years ago, it wasn't designed for all of this traffic that's going through there now, to all of these facilities.

So what I'm suggesting is that, being that this expansion -- that's our road, Glen Eagle's road going in. Okay. So if the bridge was to collapse or -- due to any kind of weather condition or a pole coming down, we are not able to -- we're -- the exit that we have on Radio Road, only for residents. Guests or somebody is leasing a place, they don't get UPC or a USB, whatever it is to get in. Okay?

HEARING OFFICER STRAIN: I understand.

MR. GRECO: So we would just like to have them share any kind of responsibility or maintenance that has to be done, because, like I said, that was made 30, 25 to 30 years ago, but it was under the condition of the structure, the original structure. Now that it has been an additional structure and that is going to be another construction going up, if -- are they going to use their new bridge or are they going to keep going with the construction trucks into our entrance?

HEARING OFFICER STRAIN: Well, everything you just brought up has no bearing on the issue that they brought here today, so I'm certainly unprepared to respond to your questions, and I know staff wouldn't be in any better position than I am. I don't know if any of the things you have said are accurate with regard to the documentation or there are some issues out there in the documentation I could address. I certainly don't mind spending the time to find that out for you.

MR. GRECO: Thank you.

HEARING OFFICER STRAIN: But I'm not going to be able to do that today.

MR. GRECO: Okay.

HEARING OFFICER STRAIN: As soon as we finish this case I will take a few, couple-minute break. Come up, I'll give you my business card. You can e-mail me your issues. I will research those and I will get back to you. And if there is an issue, you can take it to the appropriate department.

But this case today is nothing relevant to that issue. So I'll certainly offer to help you out but I can't do any more than that today.

MR. GRECO: Thank you.

HEARING OFFICER STRAIN: Okay. Thank you.

Are there any other members of the public that wish to speak on this issue?

Is there any -- Bob, do you have anything you want to add?

MR. MULHERE: No. I think that covers it. Thank you.

HEARING OFFICER STRAIN: Okay. With that we will close the hearing on this matter. A decision will be rendered within 30 days, most likely within ten.

We're going to take a two-minute break so both of you gentlemen can come up and get some information and then we'll resume.

(A recess was taken.)

HEARING OFFICER STRAIN: If everybody will return to their seats.

Next item up is for the Lely Barefoot Beach Karvellas boat dock lift. It's Petition No. BD-PL20150000256.

All those wishing to testify on behalf of this item please rise and be sworn in by the court reporter.

(The speakers were duly sworn.)

HEARING OFFICER STRAIN: Are there any members of the public here involved in this particular case? No.

Okay. With that we'll look at the -- oh, disclosures. On my part I briefly talked to the applicant's representatives here this morning. I talked to the staff and read the file.

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

(Exhibits A and B were marked for identification.)

HEARING OFFICER STRAIN: And, Jeff, if -- you have to identify yourself for the record. And

it's good to see you again.

I have read the staff report. I find nothing that needs to be -- that I have any questions on.

MR. ROGERS: Okay.

HEARING OFFICER STRAIN: Although I did that before I noticed you brought Rocky Scofield with you. Every time Rocky comes into a room I know there must a problem, so I may have to look at it more closely.

So with that, Jeff, do you have anything you want to add to the staff report?

MR. ROGERS: No. Again, my name is Jeff Rogers with Turrell, Hall representing the applicant today for the the boat dock extension.

HEARING OFFICER STRAIN: And this an existing boat dock and all you're adding is a lift? And this lift happens to go out seven more feet than the allowed 20 feet for such facilities.

MR. ROGERS: Correct.

HEARING OFFICER STRAIN: Is there a staff report?

MR. REISCHL: Fred Reischl with Zoning Division. I did receive a phone call. I e-mailed a gentleman the graphics that Jeff had provided, and he called back and said he had no issues.

Staff recommends approval.

HEARING OFFICER STRAIN: You have no, then, acknowledged or received objections?

MR. REISCHL: No objections.

HEARING OFFICER STRAIN: Okay. I don't have any other questions.

Are there any members of the public who wish to speak?

Hearing none, we'll close the hearing on this. A decision will be rendered within thirty days, most likely within ten.

MR. ROGERS: Thank you very much.

HEARING OFFICER STRAIN: Thank you very much for the time.

And with that we have no other business or other -- are there any members of the public here who would like to comment?

Hearing none, the meeting is 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 9:25 a.m

COLLIER COUNTY HEARING EXAMINER

MARK STRAIN, Hearing Examiner

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 5-26-16 as presented or as corrected _____.

Transcript prepared on behalf of U.S. Legal Support
by Elizabeth Brooks, RPR, FPR.