

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
April 28, 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  
Fred Reischl, Principal Planner  
Daniel Smith, Principal Planner  
Rachel Beasley, Planner  
Heidi Ashton-Cicko, Managing Assistant County Attorney

EXHIBITS

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VA-PL20150000886	
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PDI-PL20160000467	
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PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, April 28th 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: Thank you.

A few 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. Just for those of you who are not familiar with the process, 30 days is what's allowed. Usually we have the decisions out within a week to 10 days.

With that, we'll move into the review of the agenda. As seen on the overhead above us here, Item 4A was Petition PL20150002562. It was the Luke Vidor Revocable Trust. It was for a coastal construction setback line variance in Vanderbilt Beach.

Because of the public concern that has been expressed as of yesterday morning and through the day yesterday, we have moved that, as required by the ordinance, to the Board of County Commissioners at some future date. A schedule will be set up through staff.

And staff has already acknowledged to the people who have voiced a concern over this one that they will be notified in the future when the revised date comes to reality.

So I don't believe I see anybody here that I -- that would be connected with this project. If anybody is, that's what's going to happen, so we won't be hearing that this morning.

Approval of the prior meeting minutes; there are no minutes to be discussed today, so we'll move right into the advertised public hearings.

\*\*\*The first one that has not been rescheduled will be 4B. It's the Larry and Bonnie Lauffer front yard variance.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. Sir, if you're going to be testifying --

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

HEARING EXAMINER STRAIN: Thank you. This is Petition No. VA-PL20150000886. It is for a front yard variance. There's two segments of this particular project that are in question.

That's the general location off of Manatee Road. That's the subject property. The two points that go beyond the front setback are highlighted in green on this survey. That's the last piece of information I have on the overheads.

I have reviewed the entire staff packet. There is -- is anybody here to speak in opposition of this case?  
(No response.)

CHAIRMAN NANCE: Okay. Since there isn't, is the applicant here? Sir, if you don't mind coming up to the microphone and identifying yourself for the record.

MR. LAUFFER: My name's Larry Lauffer. I live on 226 Rookery Road, Manatee.

HEARING EXAMINER STRAIN: Thank you.

And I have reviewed the staff report, so I don't need a lot of detail for you. I have a few questions --

MR. LAUFFER: Okay.

HEARING EXAMINER STRAIN: -- that I need some clarification on. First of all, staff had recommended -- had one recommendation/stipulation. It says the owner/applicant shall apply for a building permit for the improvements and receive a CO within six months of the date of variance if/when approved. Did you have any objections to that?

MR. LAUFFER: No, sir.

HEARING EXAMINER STRAIN: Okay. I did notice that you had, from what I could count, 14 letters of approval -- recommendations of approval from your neighbors.

MR. LAUFFER: Yes, sir.

HEARING EXAMINER STRAIN: And I see no opposition.

MR. LAUFFER: I haven't heard of any.

HEARING EXAMINER STRAIN: I did check with Code Enforcement, because I thought it was odd that you were even in here and a Code Enforcement case developed, because Code Enforcement is only supposed to respond when there's a complaint, and it has to be -- it can't be anonymous. It's got to be a bonified complaint.

And in the documentation supplied, I did not see any opposition, so I couldn't understand where the complaint came from.

Apparently they did have a complaint, but the -- whoever was complaining apparently did not maybe feel the need to follow through. And I know there's no one here today other than those we've already spoke to involving your case. So I don't think there's any issues with opposition.

And let me make sure I've got all my -- it also says that a permit was issued in error, and I did check. That -- your facility's been like it was prior to sometime in '85, the best I could tell by the aerials. Is that your understanding?

MR. LAUFFER: Yes. It was put there in 1973 as far as my papers go, then there was a permit there, I believe, in 1982.

HEARING EXAMINER STRAIN: Okay.

MR. LAUFFER: That's as far as I --

HEARING EXAMINER STRAIN: Well -- and I did go back and check the codes. Both in the '60s, '70s and '80s the mobile home sub -- actually it was the '72 code I think was the earliest one I checked.

MR. LAUFFER: Okay.

HEARING EXAMINER STRAIN: But those codes did still require a front yard setback. In '82 I think it was 20 feet. In the earlier years it was 25 feet, then it went back to 25. So from that perspective, I can see why it would have been posted as an error then.

And that's the only -- only questions I have, sir.

MR. LAUFFER: Thank you.

HEARING EXAMINER STRAIN: So I do appreciate your time, and thank you.

I'm going to be going to staff next --

MR. LAUFFER: Okay.

HEARING EXAMINER STRAIN: -- so you can have a seat if you'd like.

By the way, I forgot to mention at the beginning, Exhibit A will be the staff report, and Exhibit B will be the legal ad. For disclosures, I have spoke with staff, and I have reviewed the files.

With that, Dan, do you have anything you want to add to the presentation?

MR. SMITH: Just one thing. I did receive a letter yesterday from the -- David Elhoff (phonetic), president of the Riverwood Estates Homeowners, who is in support of this petition.

HEARING EXAMINER STRAIN: Great. Would you mind forwarding that on to me when you get the chance.

MR. SMITH: Sure, sure. Okay.

HEARING EXAMINER STRAIN: Any other notes you want to add from the staff report?

MR. SMITH: No. Staff recommends approval of this variance with the conditions.

HEARING EXAMINER STRAIN: And the applicant has agreed to the conditions.

Are there any other members of the public here that would like to address this particular application? (No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we'll close this portion of the hearing, and a decision will be rendered within 30 days, most likely a lot less.

Thank you for your participation.

\*\*\*The next item up is Petition No. VA-PL201500008 -- I'm sorry. I skipped one. Actually it's Petition No. PDI-PL20160000467, BC Naples Investments, LLP. It's for a planned unit development insubstantial change for the East Gateway mixed-use planned unit development at Davis and 951.

For those wishing to testify on 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: As far as exhibits go, Exhibit A will be the staff report; Exhibit B will be the legal ad.

Disclosures on my part; I have talked with staff, reviewed the files, and I've talked to Mr. Arnold prior to this on the phone.

And with that, are there any members of the public here that will be wanting to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Wayne, since I have reviewed the staff report, I don't need a presentation.

MR. ARNOLD: Okay.

HEARING EXAMINER STRAIN: I do have a couple of questions. First of all, the staff recommendation, what is your position on that?

MR. ARNOLD: We disagree with their condition that they've imposed on the minor change.

HEARING EXAMINER STRAIN: I reviewed it, too, and Mr. Sawyer's here. I don't know if he wants to address that at staff report time or not. You'd be able to.

I didn't see the relationship between that condition and what you were asking to be changed today, so we'll have to see if there's anything additional that staff wants to talk about in that regard.

And I noticed -- and I'm going to move into the document change itself. You're reducing the minimum lot area, but you're leaving all the other standards the same. And when I went through and took a look at some of the other standards, the minimum unit size -- and I guess this is a question of Ray Bellows.

In the Development Standards Table -- let me see if I can get that up on the overhead. Ray, this is the Development Standards Table, and this is for the principal structures. And what it says is, down on the second line from the bottom, floor area minimum per unit, 1,500 square feet.

Would that floor area minimum per unit include accessory or exclude accessory?

MR. BELLOWS: I think it would typically exclude.

HEARING EXAMINER STRAIN: Exclude. You might want to make sure the mike picks you up. Do you mind saying that again?

MR. BELLOWS: I think it would exclude.

HEARING EXAMINER STRAIN: Okay. And I just wanted to point out, if it excludes the accessory, if you take the 31 and the 80 and you go and fit that to the -- when you remove the setbacks that are required, I think it would end up being you could go to 14 feet in the front with a side entry garage, and in the rear you could go to zero on your LPEs, other platted elements. Your side is going to take off 10 feet. You end up with about 1,384 square feet to fit into the building envelope.

My question -- I have two questions in that regard. That would force you into a two-story structure. Not that you can't do that. I just wanted to make sure that that's going to -- that's where you're planning to go, because you only asked for one change, and I don't know how far forward you took a look at some of the

footprints in the product you proposed here.

So then the other element is -- well, first of all, did you have any comment on that? Are you comfortable with that?

MR. ARNOLD: Well, I do think that that's a good point that you raised. I think that the applicant had been including the attached garage as part of their square footage, so we might need to make an adjustment down for the minimum building square feet per unit.

HEARING EXAMINER STRAIN: And I -- and we have a lot of smaller facilities allowed, so going from 1,500 to a smaller number is not necessarily a problem, but the concern is the way this project was advertised and brought forward to today's meeting.

And I did not, Wayne, get into this calculation until I re-read everything last night. I would have otherwise called you ahead of time for consideration.

Heidi, is this -- is a change like that an additional item they'd have to advertise for and come forward, or can it be amended through a request today?

MS. ASHTON-CICKO: They'd have to come back and readvertise.

HEARING EXAMINER STRAIN: Okay.

MR. ARNOLD: May I make a suggestion that instead of changing the square footage that we could add a footnote simply noting that the accessory structure could be included in that calculation?

HEARING EXAMINER STRAIN: Is that something that we can do at this meeting, Heidi, or does that have to be advertised?

MS. ASHTON-CICKO: So they're saying for the 1,500 square feet, you're going to say that it includes?

HEARING EXAMINER STRAIN: Includes the accessory structure square footage, so they --

MR. REISCHL: Well, just a point of clarification -- Fred Reischl with planning and zoning.

When you asked the question about accessory structures, I immediately thought of sheds and things like that. An attached garage, I think, is a little -- is different, at least the way Ray and I are looking at it.

HEARING EXAMINER STRAIN: That's fine. I need someone to opine that -- on the record, and at some point it would have to be the zoning department. So if, Ray, your conclusion is the 1,500 already includes an attached garage, then that takes care of the issue.

MR. BELLOWS: Yeah, an attached garage, definitely.

HEARING EXAMINER STRAIN: Okay. And for clarification, and whatever decision comes out of this, I will include a reference to that comment so we have it clear.

MS. ASHTON-CICKO: It would be acceptable to add a footnote that says "includes attached garage."

HEARING EXAMINER STRAIN: And we could add that footnote at the line which would be -- I'm not sure if this pointer works, but it would be down --

MR. ARNOLD: Under the floor area minimum square footage.

HEARING EXAMINER STRAIN: Yeah. Down where it says 1,500 square feet, we'd add a footnote to that line?

MS. ASHTON-CICKO: Correct.

HEARING EXAMINER STRAIN: Okay.

MS. ASHTON-CICKO: Are you talking about just for the single-family zero lot line?

HEARING EXAMINER STRAIN: Yes.

MS. ASHTON-CICKO: Okay.

HEARING EXAMINER STRAIN: For the record, I pointed to the line in the matrix where that would have been -- where the footnote will be added.

So, Wayne, if you could draft up that language and send it in.

MR. ARNOLD: I'll get that back to you later this morning. Thank you.

HEARING EXAMINER STRAIN: Okay. You're welcome.

And then I had a second question. This can't be done necessarily by footnote, but I just wanted to remind you that we still have a minimum trees -- tree requirements, and one of them is a canopy tree.

Now, if those go out by the roadway, which is a lot of times preferred because it does help shade

sidewalks, just make sure that you can accommodate that tree. We've been having some sites come in that are too tight, and I don't want to see you come back in with a problem on that. I think those trees are important. It would help your project, so if you can look at that.

MR. ARNOLD: Understood.

HEARING EXAMINER STRAIN: Then I did notice the only other thing that has changed is the strikethrough on the word "environmental." I don't even know if I put that on there. No, I didn't.

That's all the questions I have. Wayne, did you have anything you wanted to add?

MR. ARNOLD: No, nothing further, just to reaffirm that we disagreed with the staff comment regarding the limitation on certificates of occupancy.

HEARING EXAMINER STRAIN: Okay. And I'll be -- we'll be talking to staff about it. If there's something that you need to readdress after we hear from staff, you're more than welcome to come back up.

MR. ARNOLD: Thank you.

HEARING EXAMINER STRAIN: Okay. Mr. Reischl, any staff report?

MR. REISCHL: Thank you, Mr. Strain.

I've been asked to read this into the record. This petition does not change the analysis of the findings and criteria used for the original PUD application, and staff is recommending approval with the -- with the condition.

HEARING EXAMINER STRAIN: Okay. The condition involving the traffic --

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: -- how does staff tie that to this particular application since this application isn't looking for any changes involving density?

MR. REISCHL: Mr. Sawyer and I discussed that, and I will defer to him.

HEARING EXAMINER STRAIN: Okay.

MR. SAWYER: For the record, Mike Sawyer, transportation planning.

As far as this particular condition is concerned, staff is in agreement that we can remove it at this point.

The reason that we originally had it there was because of our concerns with that particular intersection, the failing condition that we've already got it in currently. It was more of a safeguard to ensure that we would not have additional traffic through there.

My understanding from management is that that is going to be taken care of in a different manner, so we no longer need to have that condition.

HEARING EXAMINER STRAIN: I appreciate that. Thank you, Mike.

Okay. Based on that, I can't imagine, Wayne, that you have any rebuttal.

So with that, we will close this particular public hearing, and a decision will be rendered within 30 days, most likely less.

MR. ARNOLD: Thank you.

HEARING EXAMINER STRAIN: \*\*\*The next item up is Petition No. BD-PL20150002551. It's Mark and Nicole Scudillo, and it's for a boat dock extension and boathouse in Vanderbilt Beach.

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: For the exhibits, Exhibit A will be the staff report, Exhibit B will be the legal ad, and Exhibit C will be a series of revised drawings that I have spoke to the applicant about.

Disclosure; I have talked with staff; I reviewed the files; and I've talked to the applicant's representative, which is Jeff Rogers, and I believe Josh is representing the firm today. Jeff couldn't be here.

So with that, is there any members of the public here wishing to testify on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Josh, if you could come up and identify yourself for the record.

MR. MAXWELL: Josh Maxwell, Turrell, Hall & Associates.

HEARING EXAMINER STRAIN: Thank you.

I've read the staff report. I do not have -- do not need (sic) the need for you to reiterate the staff report. I do have a couple of questions. They may have all been resolved by the revisions, and I'll walk

through those in a minute.

This is the location of the subject property in Vanderbilt Beach; this property, the blowup. The yellow area, of course, is the cul-de-sac lot that's in question.

The original proposal was for the dock as shown here. It's -- because of the measurement from the seawall instead of the property line, it takes it out for a need for a five-foot -- a little over five-foot extension.

It has a boathouse that is larger than the boat and a deck that was going to be next to a kayak launch.

This is a blowup of that particular structure and how it was originally laid out.

In talking with the applicant, reviewing the staff report, it was highlighted by staff and noticed by myself that this is excessive docking area typically to what we normally see. Having been on the Planning Commission for 15 years, and we normally review docks, at that level we have many times discussed this kind of a scenario and requested reductions to bring the dock more in line with what was needed versus what could be considered excessive.

This is the criterion that was not met, as provided by staff. While the criteria guidelines doesn't mean that if any one of them is not met it's to be ignored. On that basis, I asked the applicant to consider reducing the dock. They have sent the revised application -- the revised detail, I'm sorry, on the right-hand side of the screen, as noted above, as submitted, and shows the 10-foot area next to a kayak launch. That area has been reduced to the size of the boathouse.

I discussed with the applicant why the boathouse was as large as it is. Obviously, it's bigger than the 30-foot boat needs. And I'll let the applicant's representative tell us what they intend to do with that boathouse in the future.

MR. MAXWELL: Yeah. Currently, the owner has a 30-foot boat that he plans to moor in the structure, but he's looking to expanding to a 40- to 45-foot boat, so the plan is to frame the dock appropriately so we could expand it without modifying the boathouse in the future.

HEARING EXAMINER STRAIN: And economically that makes sense. I wouldn't make -- it would be somewhat of a hardship to come in now and ask for a smaller facility only to need to come back in to do it longer. So I don't see any excessive nature in regards to the ultimate use of that boathouse; but by taking off that -- the area that was going to have the kayaks, when and if you do the boathouse in the future, the kayak area could be addressed at that time. You may not even need a dock extension to get a platform there that would stay within the 20 foot required from a building permit perspective.

And in talking with Jeff, I understand that that was acceptable to your applicant, and that will be the way, hopefully, we'll finish reviewing this today.

That's a plan showing the relationship of the revised dock and landing area to the property, and I think that's the last one.

There are a series of staff recommendations. Did you have any objections to those?

MR. MAXWELL: No.

HEARING EXAMINER STRAIN: Okay. And that is the last comment I have on this. So thank you, Josh. Did you bring copies of the changed drawings with you?

MR. MAXWELL: Yeah. I've got one copy.

HEARING EXAMINER STRAIN: Okay. I'll -- if you could leave that with the court reporter, and what I'll do is I'll make sure staff has a copy after. I think I already sent -- Rachel, didn't I already send this revised drawing to you?

MS. BEASLEY: Oh, yeah, actually; yes, you did; email.

HEARING EXAMINER STRAIN: Then if you could leave that one copy with the court reporter, and that will be Exhibit C.

Thank you, Josh.

MR. MAXWELL: Thank you.

HEARING EXAMINER STRAIN: Rachel, do you have a staff report?

MS. BEASLEY: Yes. Rachel Beasley, for the record. A staff report was supplied and is recommending approval with the conditions outlined in the staff report.

HEARING EXAMINER STRAIN: Does the revised drawings that you were previously sent and the ones that are now on record have any -- make any changes or cause any changes to your staff report?

MS. BEASLEY: No, it does not.

HEARING EXAMINER STRAIN: Would that change the criterion that's not met to criterion met?

MS. BEASLEY: It would.

HEARING EXAMINER STRAIN: Okay. Thank you.

Is there anybody else here that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we will close the hearing on this matter, and a decision will be rendered within 30 days.

With that, is there any other -- there's no other business. Is there any members of the public that wish to speak?

(No response.)

HEARING EXAMINER STRAIN: Seeing none, this meeting is adjourned. Thank you-all.

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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 9:22 a.m.

COLLIER COUNTY HEARING EXAMINER

*Mark Strain*

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 GREGORY  
COURT REPORTING SERVICE, INC.,  
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.