

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
May 26, 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
Heidi Ashton-Cicko, Managing Assistant County Attorney
Rachel Beasley, Planner

EXHIBITS

DESCRIPTION	PAGE
ZVL(CUD) -- PL2016000588	
A - Staff Report	4
B - Legal Advertisement	4
VA-PL-2016000178	
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PDI-PL20150002870	
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HEARING OFFICER STRAIN: Good morning, everyone. Welcome to the Thursday, May 26 meeting of the Collier County Hearing Examiner's Office.

We have a green light up here and it wasn't on.

Welcome to the Thursday, May 26th meeting of the Collier County Hearing Examiner's Office.

Please rise for the Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING OFFICER STRAIN: Thank you. In view of the agenda there are four items on today's agenda. They are listed on the panel we have in front of us. We'll take them in the order as shown. Item 3 is approval of prior meeting minutes, the April 14th and the April 28th. They are okay to record as written.

And that takes us to first advertised public hearings.

The first item up is Petition Number ZVL(CUD)-PL2016000588, and it's 2800 Immokalee Road, LLC.

All 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: Okay, on my part I've had -- my disclosures: I've reviewed the files, talked with staff and talked with the applicant's representative that is here this morning.

I've also -- we have two exhibits. Exhibit A will be the staff report, Exhibit B will be the legal ad.

(Exhibit A was marked for identification.)

(Exhibit B was marked for identification.)

HEARING OFFICER STRAIN: This particular project is located on Immokalee Road and Airport Road in the area that -- in the shopping center that's highlighted in yellow.

The issue at hand is the addition of a kidney dialysis center to the Health Services Group that's also allowed in the PUD. It didn't specifically include the reference to the dialysis center, so that's been clarified by a zoning clarification letter and it's here for affirmation today.

Are there any members of the public here to speak on this item?

(No response.)

HEARING OFFICER STRAIN: Okay, with that we won't need a formal presentation.

I have reviewed the 44 pages of the staff report. I found that one page was missing a portion of it, and that is the PUD itself, item -- Section 3.3, paragraph D and E were missing. I have asked Rachel to provide that for the record to supplement the staff report so the staff report is then complete. It won't be an exhibit, we'll just add it to the record.

And Rachel, did you bring an extra copy of that?

MS. BEASLEY: I did.

HEARING OFFICER STRAIN: I don't have any questions. There is no public opposition. I don't need a formal -- I don't need a formal presentation unless the applicant has something they'd like to add to the

record. If so, please approach the mic and figure out what you've got to have. If you don't have anything, we'll just move on.

MR. BRUGGER: Just here to answer questions.

HEARING OFFICER STRAIN: Rachel, did you have any staff report?

MS. BEASLEY: Yes, the staff report --

HEARING OFFICER STRAIN: These mics are responding slowly this morning.

MS. BEASLEY: Yes.

Yes, a staff report was submitted and staff is recommending affirmation.

HEARING OFFICER STRAIN: And I have nothing else to add.

Hearing no members of the public here wishing to speak, then we'll close this particular hearing and a decision will be rendered within 30 days, probably within -- usually within seven to 10 days. I appreciate your time this morning; thank you for coming.

MR. BRUGGER: Thank you.

HEARING OFFICER STRAIN: Next item up is Petition Number VA-PL20160000178, the Eric and Kelly Manring request for a variance.

All 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: Disclosures on my part: I've reviewed the files and I've talked with staff on this matter.

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

(Exhibit A was marked for identification.)

(Exhibit B was marked for identification.)

HEARING OFFICER STRAIN: Are there any members of the public here other than the applicant for this item?

(No response.)

HEARING OFFICER STRAIN: Okay. Is the applicant here?

Sir, would you mind coming up and identifying yourself for the record.

MR. MANRING: Microphone?

HEARING OFFICER STRAIN: Yeah, that that mic right there. It should pick up your voice and turn itself on, but it's not been working right this morning.

MR. MANRING: My name is -- hello? Testing.

HEARING OFFICER STRAIN: There we go.

MR. MANRING: My name is Eric Manring and I am the owner of 6130 Standing Oaks Lane, Naples, Florida, 34119.

HEARING OFFICER STRAIN: Okay, Mr. Manring, that's your location. And the question or the point for this meeting today are the setbacks. Instead of 75 feet I understand your surveyor staked them out at 70 feet and they ended up being less than 75, and you're in here for the difference; is that --

MR. MANRING: That is absolutely correct, sir.

HEARING OFFICER STRAIN: Okay. In a couple of your -- let me see if I -- this is just a verification from staff. You had a -- on this survey on the left side there's encroachments on both sides and I just wanted to make staff acknowledge on the record that those are because of the earlier permitting of the main structure. I had asked staff that privately before the meeting to -- I couldn't understand why if this was an encroachment that was being addressed why wasn't these?

And if I'm not mistaken, Rachel, your response?

MS. BEASLEY: Was that the home was built under the LDC 82-2, which stated that side -- setbacks were 10 percent of the lot width at the time, which would have made it 15 feet.

HEARING OFFICER STRAIN: Okay, that's what I needed to confirm.

Other than that I don't have any questions. I'm fine with your application. There's no members of the public here in opposition to your issue, so we don't need a formal presentation. And that's all I needed from you today, so thank you very much.

MR. MANRING: Thank you. Appreciate it.

HEARING OFFICER STRAIN: Rachel, is there anything you wanted to add for the record?

MS. BEASLEY: Just that a staff report was submitted and staff is recommending approval.

HEARING OFFICER STRAIN: Okay, thank you.

MR. MANRING: It will be the same thing, seven to 10 business days or 30 days?

HEARING OFFICER STRAIN: Yes.

MR. MANRING: Okay, thank you, sir. Appreciate it.

HEARING OFFICER STRAIN: Thank you.

Okay, and as the gentleman just stated, we will close this hearing and a decision will be rendered within 30 days, most likely a lot less, within seven to 10.

So with that we will close this case and move on to the next one.

Since this one is with Alex, we'll make it a much longer discussion.

Petition Number PDI-PL20150002870. The petitioner is Toll Brothers, requesting an insubstantial change to the Hacienda PUD, which is a PUD Ordinance No. 11-41.

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: And Alexis, I'm definitely going to have some questions and clarifications.

First of all, disclosures on my part: I've reviewed the files, I've talked with staff and I have talked a couple of times with Alex. We've had some e-mail correspondence over some clarifications that will be discussed on record today.

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

(Exhibit A was marked for identification.)

(Exhibit B was marked for identification.)

HEARING OFFICER STRAIN: The Hacienda Lakes PUD in the section that's involved in this discussion today are the ones that are highlighted in the left in green and the right -- and most of the yellow part from here down, so it would be this piece right here.

These are the issues that are being requested: Front setback; reduction on the corner lots; increase the minimum distance between multi-family parcels for certain heights; and there's several deviations that are being asked. Deviations involve signage and parking for the most part and a dead end street.

In review of this and talking with Alexis under III at the top, it's indicated they are matching what the Esplanade has done in regards to that particular issue, and they at the time called themselves the Cay of Naples. I think you indicated the name is changing?

MS. CRESPO: Yes, sir. The name has been changed to Azure at Hacienda Lakes.

HEARING OFFICER STRAIN: Will you be sending me a new electronic file with the corrected name on this --

MS. CRESPO: Yes, sir.

HEARING OFFICER STRAIN: -- paragraph?

THE COURT REPORTER: May I have your name?

HEARING OFFICER STRAIN: I know you provided me with a copy of some corrections this morning but that wasn't one of them, so --

MS. CRESPO: Alexis Crespo.

HEARING OFFICER STRAIN: It still says the Cay of Naples on the one you provided this morning, so I assume you will make that correction and send it in?

MS. CRESPO: Yes, sir. And it does impact many of the deviation areas and many of the items submitted, but will only change the Cay as Azure of Hacienda Lakes.

HEARING OFFICER STRAIN: Right. But you'll change it on all related references.

MS. CRESPO: Correct.

HEARING OFFICER STRAIN: Okay.

The second item is the reference to the separation between the multi-family product and at what heights they kick in.

You had indicate-- or in our discussion I mentioned what would happen if you had two varying

buildings, one was above 35 and one was below. You have provided some corrective language. Basically it says minimum distance between principal structures for multi-family dwellings shall be 20 feet for multi-family buildings where both buildings have been zoned height less than 35 feet.

So that means if any one of those were greater than 35, you go back to the computation value for half of the sum of the building height; is that correct?

MS. CRESPO: Correct.

HEARING OFFICER STRAIN: And I wasn't sure if any members of the public are here. And I want to just put the sign that you're asking for up on the overhead. The sign also, the copy will have to change to Azure so you'll need to send that in as well.

MS. CRESPO: Yes.

HEARING OFFICER STRAIN: When we get to -- one of the deviations requested was to allow the parking stalls for the multi-fam-- I guess it's technically a multi-family product, even though it could have gone either way. I think you could have had done it fee simple.

MS. CRESPO: Correct.

HEARING OFFICER STRAIN: But you chose to go multi-family.

MS. CRESPO: Yes.

HEARING OFFICER STRAIN: For that product, because it's not single-family and fee simple, the code doesn't allow you to back out of the spaces.

In this particular case you've provided information to show that you done a single-family project it would have been 72 units, and daily trips would have been 776. Whereas, if you're doing the multi-family you're asking for it's 599. As the multi-family you actually would have less trips and so the backing out condition would be comparable to the situation of a single-family. Is that -- that seems to summarize what your application is.

MS. CRESPO: Yes, sir.

HEARING OFFICER STRAIN: That mic's not picking you up, unfortunately.

It looks like all of the questions and issues that I had have already been addressed. Your references to the name change and all that will have to be sent in on clarified sheets.

Is there anything you want to add?

MS. CRESPO: The only other item I'd like to add is the exhibit demonstrating the location of the dead end street is mislabeled and we'd like to be able to submit a corrected exhibit. That is not a -- it demonstrates the future interconnection to the Benfield extension and it demonstrates actually on the same street on the east side where you're pointing. So I'd like to correct that.

And it's still just one dead end, and the analysis and findings should not be altered by that change.

HEARING OFFICER STRAIN: Okay, thank you.

I don't have any other questions, Alexis. Thank you very much.

MS. CRESPO: Thank you.

HEARING OFFICER STRAIN: Staff, are there any comments, changes on the staff report?

MS. BEASLEY: Staff report, and recommending approval.

HEARING OFFICER STRAIN: In review of the changes that have been requested or noted this morning, does that change anything in your staff report?

MS. BEASLEY: It does not.

HEARING OFFICER STRAIN: Okay. I noticed Mr. Sawyer is here from transportation. And I hate to see him sitting in the audience and never being asked to come up and speak.

Mike, would you mind coming up to the podium.

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

HEARING OFFICER STRAIN: Mike, it's always good working with you. I miss you over on the other side, because I don't see enough of you. And I understand you're actually moving to another building, so that's going to make it a little more difficult for you to be here.

But while you're here today, do you see any concerns from your department's review of the situation involving the parking backing out into this roadway?

MR. SAWYER: Honestly we don't necessarily encourage that type of thing because it can cause

problems internally, but it is an internal roadway, and the applicant has the ability to manage that themselves. It's their responsibility. You know, when it comes to public roadways we do not.

HEARING OFFICER STRAIN: The traffic analysis they provided, you believe that is an accurate portrayal of the trip generations for the two different subjects?

MR. SAWYER: Yes. We have had no problems with that.

HEARING OFFICER STRAIN: Okay. Thank you very much, Mike.

With that, are there any members of the public here that would like to speak on this matter?

(No response.)

HEARING OFFICER STRAIN: Okay, we'll close the public hearing on this. A decision will be rendered within 30 days, most likely seven to 10 days. Thank you.

And please, Alexis, get me, and copy the county staff as well, with all of the corrected documents that are made as are relevant to what we discussed today.

MS. CRESPO: Will do. Thank you.

HEARING OFFICER STRAIN: Thank you.

Next item up is Petition VA-PL-20150000388. It's the Kenney Florida Residence Trust requesting a variance on a lot on Vanderbilt Beach.

All 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: Okay, disclosures: On my part I reviewed the files, talked with staff, I've talked with the applicant's representative, Blair Foley.

There are two exhibits. Exhibit A will be the staff report and Exhibit B will be the legal ad.

(Exhibit A was marked for identification.)

(Exhibit B was marked for identification.)

HEARING OFFICER STRAIN: This particular project is on a canal and has a double frontage on both Vanderbilt Drive and Lagoon Ave., which is part of why we're here to discuss this today.

They have a home on the property that was built in 1984. They had a pool and a cage at one time. The cage apparently was lost in the -- one of the hurricanes in approximately 2005.

At the time that this pool and cage were added, the setbacks were different than they are in today's code. The require-- minimum requirements for a side yard at the time was seven and a half feet. Even though this is a rear appearing yard, but because of the rear yard exceptions I believe staff has looked at this as a side yard; is that correct?

MS. BEASLEY: That is correct.

HEARING OFFICER STRAIN: Okay. So the correct setback in the 82-2 LDC as is stated here, it would have been seven and a half feet, so the location they built it to now would have been permissible in 82-2. I mean, it was permitted in '84, so they met the code when it was originally built; is that a fair statement?

MS. BEASLEY: That's is fair statement.

HEARING OFFICER STRAIN: Now, the reason it's two side yards is because they've got frontage on both Vanderbilt Drive and Lagoon Ave. Okay.

Blair, I don't have any questions. I've got a couple of questions for staff. I don't have any of you.

Is there any members of public here to discuss this item?

(No response.)

HEARING OFFICER STRAIN: Okay. And I had originally talked with Blair about verifying the minimum deck distance around the pool. That's not quite as necessary now that we've reviewed the '82 code. But because you used that as an argument in one of the findings, did you provide -- did you find the information on that?

MR. FOLEY: For the record, Blair Foley, representing the petitioner. Good morning.

HEARING OFFICER STRAIN: Morning.

MR. FOLEY: Yes, I did. I do have some things I'd like to read into the record if I could, please, in regards to that.

HEARING OFFICER STRAIN: Absolutely.

MR. FOLEY: Florida Building Code 2007(4)4.1.3.1.3, specifically for commercial pools states:

Pool at deck shall have a minimum unobstructed width of four feet.

The 2007 Florida Building Code R4101.23 for residential pools under the accessibility and clearance talks about, quote, ready accessibility, but is rather silent with a specific distance.

Also referencing a document titled Design Aid For Residential Swimming Pools by Jason Hughes. It's stated in there, quote, pathways and other traffic areas should be a minimum of three foot wide at all points.

Our subject pool and residents use the north side of that particular pool deck as a secondary access. Therefore, based on the previously cited codes and professional opinion the proposed three and a half foot clear area appears appropriate in that regard.

HEARING OFFICER STRAIN: Appreciate the additional information. Thank you, Blair.

MR. FOLEY: Thank you.

HEARING OFFICER STRAIN: And with that I don't have any questions of the applicant at this point. So I appreciate your time. And I'll need to move to the staff report.

Do you have any staff report? Anything you'd like to add, Rachel?

MS. BEASLEY: Nothing additional, just that the staff report was submitted and recommending approval.

HEARING OFFICER STRAIN: In your findings it was acknowledged that this home was built in '83 or '84. I think it was CO'd in '84 by that, but '83 is when it was permitted. And that the side yards for waterfront weren't specifically addressed any different than standard side yards as we saw in that scenario there.

Today's code has different standards for side yards for water and non-waterfront, which is where the problem originated.

But I also notice that in our minor after-the-fact encroachments under the administrative ability, C4 says: Where a structure was lawfully permitted within a residential zoning district under a previous code and where said structure is considered non-conforming under the current Land Development Code, due to changes in the required yards the County Manager or designee may administratively approve a variance for an amount equal to or less than the existing yard encroachment.

This would have allowed up to 25 percent. So theoretically staff could have accepted this down from 10 feet in the current code down to 7.5 feet under an administrative variance. But it wasn't done administratively. I was just curious as to why.

MS. BEASLEY: To that I'd have to defer to Ray. I'm not exactly -- I'm still learning a little bit of their nuances sometimes, so --

HEARING OFFICER STRAIN: Well, we are right now changing and clarifying this section of the code. And it actually came up in front of the Planning Commission last night. And this paragraph Item 4 actually becomes Item D in the new code. Same language.

And again it was done to be able to allow staff to have some more flexibility with issues like this. So I was hoping that in the future if this came up we could read it in a manner that I'm asking, unless there's a reason that it shouldn't be.

MS. ASHTON-CICKO: I think that in reviewing it this way provides protection for the property owner if somebody should later state that that's improper delegation. So, you know, it's going to be up to the applicant if they want to get the, you know, formal approval.

HEARING OFFICER STRAIN: Okay. So what you're saying is that all of the administrative variances then are in jeopardy if they don't come into a formal public process like this?

MS. ASHTON-CICKO: Well, the section that you cite doesn't have any thresholds. The other sections all have five percent, one percent, three percent.

HEARING OFFICER STRAIN: It says right here 25 percent.

MS. ASHTON-CICKO: Oh, okay. I'm sorry, I didn't realize you were under that provision.

HEARING OFFICER STRAIN: So what I was suggesting is that this possibly could have been done by -- administratively, which is some flexibility staff has been seeking. And I was hoping in the future that you would look to that as a possibility.

MR. BELLOWS: For the record, Ray --

HEARING OFFICER STRAIN: I'm sorry. I don't know what's wrong with these mics today.

MR. BELLOWS: For the record, Ray Bellows. There we go.

Well, one of the reasons maybe, we got the application as a regular variance and there might have been other issues, so I don't know if we necessarily went into that detail to compare the language to the administrative issues. And maybe we have a pre-app. I don't know if a pre-app was held?

MR. FOLEY: Yeah, if I could speak to that point for --

HEARING OFFICER STRAIN: Sure.

MR. FOLEY: -- a moment.

I was not part of the pre-app. I was engaged after the pre-app but I did have a follow-up phone conversation with staff just to verify the issues that were brought up and that this was the right step moving forward. But, you know, I agree, I think in the future maybe this is a good option for us, especially with the rewrite of the code, I think that gives us some additional options for small encroachments such as this.

HEARING OFFICER STRAIN: Well, and the code was brought forward to have this section rewritten last night to the Planning Commission purposely to address the inconsistencies that could have resulted from the various paragraphs written here.

So I'm not trying to suggest that staff has -- that something was done wrong. I'm suggesting that there might be a better way to approach this in the future, based on the clarified language.

MR. BELLOWS: And I wholeheartedly agree. I think that's an issue we talk about in our staff meeting when we're at pre-apps, to make sure we're looking at all the options.

HEARING OFFICER STRAIN: Thank you, Blair, I appreciate it. And members of staff, thank you. I think that wraps everything up that I had to discuss.

With that I will close the public hearing on this matter and a decision will be rendered within 30 days, most likely within seven to 10.

That takes us to the end of our public hearings today. There's no other business.

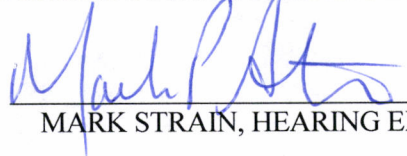
Is anybody here from the public wish to speak?

(No response.)

HEARING OFFICER STRAIN: Hearing none, this 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 6-23-16 as presented or as corrected _____.

Transcript Prepared on behalf of U.S. Legal Support
By Elizabeth Brooks, RPR, FPR.