

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
NAPLES, FLORIDA
SEPTEMBER 22, 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
Daniel Smith, Principal Planner
Fred Reischl, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

--- PROCEEDINGS ---

HEARING EXAMINER STRAIN: Good morning. Welcome to Thursday, September 22nd meeting of the Collier County Hearing Examiner's Office. In spite of my early morning about three-and-a-half hours ago cutting and pasting, the meeting date on that is supposed to be September 22, 2016. So other than that, that's the agenda for today.

If everybody will please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

Some housekeeping matters this morning. Individual speakers may be limited to five minutes unless otherwise waived. Decisions are final unless appealed to the Board of County Commissioners. And a decision will be rendered within 30 days.

Move into the review of the agenda. There is no items to be added or deleted. We'll continue at this time for the agenda. We have those four items on today's agenda. I have electronically sent the prior meeting minutes for August 11, 2016 and August 25, 2016. They're approved as provided and can be recorded as such.

That takes us into our first advertised public hearing. This is an item that's been continued since August 25th at a prior scheduled meeting and then again on September 8th. It's petition number BD-PL20150002584. It's the Gordon and Barbara Kellam request for a 26-foot boat dock extension over the minimum 20 feet.

As I move into this, you'll see it's less than that, but at this point that's what it was advertised for. And with that we'll move into the action itself. And before we go too far, I want to show everybody a few orientation slides I put out early this morning so that in case members of the public are here, they can see what the issue is about.

It's located in the area of Bear's Paw south of Golden Gate Parkway. This is the general location of it. A little more broad. It's an approved planned unit development. It's a total of 23 units that are going to be potentially developed there. This application is for one of the docks that would propose along here.

This is the specific dock in question. It's the lineage in where we measure docks from is sometimes confusing. Because it's the most restrictive of a series of different points. Generally the mean high water is what most people understand to be the waterline. But in this particular case, the developer, when they platted the properties, this is the property line way back here. So even though there's no water here, the dock measurement technically is measured from there out to the very end of where the boatlift is. And in this case, that's the 44 feet. So it's a little less than what was originally advertised for. The dock, if it was measured from the mean high waterline, would be about 30 feet to here.

This is a cross section of the dock area shown where the riprap is and the mean high waterline relationship and the depths, which is why the applicant is asking to go out further. Is one of the reasons is to make sure they got adequate coverage for the boat proposal.

This is in relationship to the area, how the dock sits in relationship to other docks across the way. There is another dock down here. And there's some community docks up here. That's the last slide that I used for today. That's kind of an orientation to the project. Fred?

MR. BELLOWS: Swear in.

HEARING EXAMINER STRAIN: Oh, thank you. All those wish to testify on behalf of this item, please rise and be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: There's penalties for getting up at 4:30 in the morning and coming in early. I have talked with staff on this matter. I have reviewed the various files. I've talked with the applicant numerous times. I've talked with some of the neighbors. Received emails from some of the neighbors. There's been some emails received for the original application. And this modified reapplication I have as well received an email, so has staff. Everything I received is in staff's possession.

This morning staff provided to the court reporter some backup material. An email from Brad Boez, who is one of the neighbors across the waterway. He didn't have any opposition at this point to this project. And an email from the landings at Bear Paw's HOA acknowledging they have no opposition or objection to this. So with that, Jeff, I'll turn it over to you. I have read everything, but there are members of the public here to

address this. I'll need a brief presentation.

MR. ROGERS: As Mark said, I'm Jeff Rogers representing the applicant Barbara and Gordon Kellam. I'm a representative of Turrell, Hall & Associates. And as Mark has stated, we are here requesting a boat dock extension from the allowed 20 feet for an approximate protrusion of 44 feet from the top of the bank, about 30 feet from the mean high waterline. The width of the waterway is approximately 120 feet wide from mean high to mean high, so therefore 25 percent width of the waterway is 30 feet. And as proposed, we are right at the 30-foot protrusion mark. And one of the reasons for that, the biggest reason is in order to reach adequate water depths to obviously float the boat onto the lift and off of the lift, you need approximately three feet of water to do so. And the inside piles are, the landward side piles of the lift are approximately right at like 2.8, 2.5 feet of water at mean low tide.

So, that's where the boat needs to go and that's obviously the furthest out we can go. Setbacks provided are seven-and-a-half feet on both sides. The upland development did some deviation from the LDC and we're allowed to do seven-and-a-half foot setbacks if we design a dock to be parallel to the shore, which we have in this case.

That being said, we do have a little platform that stores some kayaks and paddle boards as well as provide a recreational value for the family. They have two young kids. Young boys. They want to do recreational activities on the dock, like fishing, paddle boarding, things like that. So all in all, that's what that platform is proposed.

We do have some staircase access proposed as well on the west side, which is if you're looking at the exhibit, it's on your left-hand side. That was added later on as a second point of access. Which I believe there's talk that, you know, it was open for discussion. Those stairs. So, we've got the access point with the ramp on the right side, which is the main access point down to the dock. The dock is approximately six feet wide and the walkway is also six feet wide. So with that being said, the dock has been permitted by the state and federal agencies and we are here asking for the variance of the protrusion.

HEARING EXAMINER STRAIN: Jeff, thank you. As I spoke to you and we talked, I am reluctant to think this is a needed access way. Number one, it's going to be blocked by the facilities in items you have here. But generally we only have one ramp, or one access to these docks. There is a concern over excessive docking. I would consider that something that probably isn't necessary. So we'll see if there's any comments on it, but I suggest to you that should not be there.

MR. ROGERS: Ultimately the applicant would like it, but we are open to whatever -- we want this thing ultimately approved. They want to build it. So if that's something that we have to get rid of, then we are open to that. Would like to have it, but if we can't, then, you know, we totally understand.

HEARING EXAMINER STRAIN: The issue of measuring from the mean high waterline and the property line, I know that's been an issue of concern here because it puts you out considerably more than where the waterline is. And the water, if I am not mistaken, is the mean high waterline is right there. And on the opposite shore, that's where your width of your waterway is measured to, from mean high water to mean high water?

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: But for a boat dock extension, the code has several references and the most restricted one happens to be the property line, which is way back here, which added about 14 feet to your request even though only 30 -- only 10 feet of it would be above the 20 feet in the water?

MR. ROGERS: Correct. Yes, sir.

HEARING EXAMINER STRAIN: Thank you. I don't have any other questions. And we'll go to staff report and then public speakers. Staff report again?

MR. SMITH: Yes. Based on the findings, staff recommends to the hearing examiner approve petition BD-PL20150002584 filed a condition that only one access is provided to the dock. That the dock length be reduced from 51 to 36 feet. Staff's position is the applicant has communicated that he is applying for a 33-foot boat. We thought 51 may be excessive considering it's only a 33-foot boat, so that's --

HEARING EXAMINER STRAIN: Does staff have any concerns over removal of this --

MR. SMITH: Yes, staff would like just to have one.

HEARING EXAMINER STRAIN: Okay. If this particular ramp was located anywhere within the

area, say in here, does that have -- does staff have any problem with that?

MR. SMITH: No. I don't think staff has a problem with that at all.

HEARING EXAMINER STRAIN: Okay. I spoke with the applicant about it and he said that if they didn't have this, they may want to centralize that. I don't believe that's an issue of concern. And I just want to make sure it wasn't.

MR. ROGERS: I mentioned it to the applicant, and if that's something we have to do in order to get the dock, then obviously we're open to that.

HEARING EXAMINER STRAIN: I wasn't looking at it as a condition necessarily. I was more concerned that if there was an issue with staff's review in regards to where that singular ramp was located, I wanted to hear it today.

MR. ROGERS: Okay.

HEARING EXAMINER STRAIN: Okay. We'll, I'm hearing none so we'll move to public speakers. First we'll go to registered public speakers. Are there any registered public speakers for this action?

MR. BELLOWS: Yes, we have one registered speaker, J. Dean Mann.

HEARING EXAMINER STRAIN: Mr. Mann, if you'll identify yourself for the record on the microphone and address. And also acknowledge that you were sworn in when we started, I'd appreciate it.

MR. MANN: My name is Dean Mann. I live at 2233 Long Boat Drive in Naples, Florida, which is approximately two-tenths of a mile east of the subject property on the Golden Gate canal. My concern here is that there's a tremendous amount of debris that washes down that canal. Weeds -- I call them weeds. They have long stems on them and they seem to accumulate around the piers of the boat docks. And if you aren't out there every day cleaning these weeds off, they sink to the bottom and form a dam that collects all the sand and silt and wash down the canal.

My opinion of this as I read it is if the dock would extend approximately halfway up into the canal, if this wasn't maintained regularly, it would form a dam that would completely change the flow of water coming down the canal and around into the Gordon River.

Some years ago there was enough silt buildup in the canal that is on the south side of Long Boat Drive that they had to have the whole area dredged out because of people living in that area could not get their boats out of the canal.

It's also a hazard in navigation that it stands out that far, especially as there are several people that use that canal at nighttime. And, of course, we have the conservancy having their rides up and down the canal for the tourist and the locals.

As I get back to the dam that could be formed by these weeds accumulating around the piers, since Bear's Paw Country Club has removed almost all the vegetation from behind their country club, I would imagine there would be a tremendous amount of debris and sand washed away from that. As that bank erodes and of course the trees, what are left, will fall into the canal. But there will be a lot more erosion and accumulation of silt and sand on docks down through that area. Especially on that side.

There are currently at least one boat dock that seems to meet the county code that's already been built. And I cannot see why they, the people in question, would not be happy with a dock like that, such as we all have. Because once you build a dock like that and extend out into the canal, more and more people will want one similar to that. And you will not be able to deny them the ability to build another dock similar, which would aggravate the situation. Thank you.

HEARING EXAMINER STRAIN: Thank you, Mr. Mann. Appreciate it.

Are there any other members of the public registered, Ray?

MR. BELLOWS: No other speakers have registered.

HEARING EXAMINER STRAIN: Is there anybody here who would wish to speak on this matter who may not have registered to speak? Good morning, sir. Were you sworn in?

MR. WATERBURG: Yes, I was.

HEARING EXAMINER STRAIN: Would you state your name and address for the record?

MR. WATERBURG: Sure. I'm Greg Waterburg. I live at 2123 Sevilla Way. I'm the project manager for Ed Waters Development, the developer of this project. I would just like to speak in favor of the

proposed dock extension. It was never the developer's intent to change the mean high watermark or where this was measured from. We actually own out to the center of the canal. So we could have, you know, actually made that part of the plat, but that was not considered at the time it was done. So, we're definitely in favor of this. I've talked to the developers about it and they're in favor of it, so I just wanted to state that to the board.

HEARING EXAMINER STRAIN: And you represent the developer?

MR. WATERBURG: Yes, I do.

HEARING EXAMINER STRAIN: I think Scott Stone, I believe, you needed some assurance that the individual representing the developer is truly representing the developer. Can you confirm that?

MR. STONE: For purposes of this petition, that is correct.

HEARING EXAMINER STRAIN: Okay. Thank you. Thank you, sir.

Anybody else who would like to address this issue? Okay.

Jeff, you have an opportunity for any rebuttal if you'd like.

MR. ROGERS: In regards to the comments in the waterflow and things coming down the waterway, there is plenty of hydrilla as we all know coming down the waterways at this time of year. It's mostly during rainy season. And yes, vegetation or the grass does wrap around the pilings. And it's a known thing of this area. It's like a local knowledge thing. If you live in this area, you have to understand that you have to clean the pilings off this time of the year. It's just something that has to happen. People do it right now with their existing docks. Gordon is aware of it and so is the developer. They currently clean the docks on their side. It's just something that's going to always happen, unfortunately.

HEARING EXAMINER STRAIN: Now, I notice that from the mean high waterline you're 30 feet.

MR. ROGERS: Uh-huh.

HEARING EXAMINER STRAIN: These docks down here, this is shown. And it looks like, best I can tell, measurements from mean high water to the edge of the dock, it looks like that one is 34 feet?

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: The one up here is kind of matching yours. It looks like it's 30 feet.

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: This one is a little bit 26 and this one was within the 20 feet.

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: So, I mean, I understand there are other docks in the area that protrude greater than the protrusion you're asking for based on mean high water. This area along here, your shoreline, or your bank line, you modified that, I believe. I happen to be on the planning commission when this project in itself came through for approval.

MR. ROGERS: Right.

HEARING EXAMINER STRAIN: I remember the circumstances and I saw some pictures at that time. I believe this was all vegetated along here. Was that accurate?

MR. ROGERS: Yes, sir. Basically the whole side that you see where the home is being developed was all vegetated. There was a giant soil berm that ran parallel to the canal that, historically when they dredged this canal was approximately 10 feet landward of the old top of bank. The developers came in and basically riprapped that shoreline. And when they did, when they put riprap down, the location of the mean high waterline was altered on that side of the shoreline due to the bank change and elevation changes.

So, you know, it's just -- you have more of a straight wall like shoreline and now the shoreline is more laid down so the mean high waterline has moved. And with that, we spoke to the county and you guys were allowing us to utilize the original mean high waterline elevation as our point of protrusion. Due to the fact of Florida statute, it hadn't been established for 19 years along that shoreline. So, in order to have a mean high water elevation along a particular shoreline, you have to have evidence over a 19-year period that that elevation was approximately consistent over those 19 years.

In this case, the shoreline was altered. I want to say we're going on four years now approximately. Could be maybe five or three. Somewhere in there. So at the most five year it was altered. And because of that, we don't have a 19-year history of mean high waterline elevation along the new shoreline. So we applied the historic mean high waterline elevation on the shoreline, which is what you see here. And that's why the

blue line, as you go to the right doesn't even touch the shoreline because the developer took away some of their own lands to bring the docks inside the 20-foot measurement. They didn't do that where the single family homes are, so we're stuck developing something with inside 20 feet.

But if you go back to the proposed exhibit showing where you take your measurement from, there's rock. There's riprap there. So you cannot safely access a dock within that 20 feet of a vessel this size. They want to approximately get 28- to 33-foot boat. You need about three foot of water to float at low tide.

So this dock has been designed to be right at the three foot contour line at low tide. So at a high tide, low tide, they can come and go.

In regards to the 51-foot measurement, the length of the dock, it's necessary in our minds because pulling up to these -- pulling up to your dock, you can't always -- you don't always have your lift down so you can't just always pull onto your lift. You go out for the day and you come back and the tide has changed. So you go out at high tide and you come home low tide, your lift, once again, is above the waterline. So you have to wait to lower the lift down. And the dock is 51 feet. They can pull up to it and unload their kids and things, put the lift down safely and then pull the boat onto the lift and lift it up.

Because these lifts are also not designed for people to ride in the vessel up and down. People do it all the time, but they are not designed for that. It's a safety issue. So you have to -- not have to. You should back the boat off, load your kids, load the coolers and everything there and then go on your day. So this design offers them the ability and safety of that to do that.

So, with that being said, we're 30 feet out from the mean high waterline. The waterway is 120 feet. We're right at the 25 percent width of the waterway. Without the right across the waterway, closely right across is about 26 feet. So there's more than 50 percent width of that waterway open for navigation in this particular area.

Yes. There are some docks that stick out a little bit further than we do. I don't know if those have -- to my knowledge, none of those do have BDE's. They were not -- they did not go through this process. So you guys did not see them. Collier County did not see them through boat dock extension process.

HEARING EXAMINER STRAIN: This line to this line, is that where the mean high waterline is measured according to your 120 foot width or is it a different location?

MR. ROGERS: Yes, sir. It was -- the survey that we have had the new mean high water elevation. But we went back to the old survey, and it also reflected 120.

HEARING EXAMINER STRAIN: The reason I know is this line isn't always on the waterline.

MR. ROGERS: Right.

HEARING EXAMINER STRAIN: But you did utilize -- wherever the -- I mean, everything is a little bit on a scale due to the size of these plans?

MR. ROGERS: Right.

HEARING EXAMINER STRAIN: But the actual waterline to waterline is 120 feet?

MR. ROGERS: Yes, sir.

HEARING EXAMINER STRAIN: This particular line here represents what?

MR. ROGERS: That's the center of navigation. So that's about the 60-foot mark for the width of the waterline.

HEARING EXAMINER STRAIN: So that line would be about half the waterway width?

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: And as far as ownership of this property underlying this area here, that is owned by the landowner HOA.

MR. ROGERS: On our side of this, but it's also a drainage -- it's also part of a drainage easement that is deeded, I believe, to Collier County. So the actual drainage easement itself is approximately 160 feet wide. So it's actually wider than the waterway width is now currently. But it's been designed to accommodate a flood, obviously, or stream storm surges and absorb the water.

So, the actual drainage easement that overlays this is approximately 160 feet wide.

HEARING EXAMINER STRAIN: Okay. Jeff, that's all the questions I have. If you have any more, a final statement, you're more than welcome to make them, other than that, we're finished here.

MR. ROGERS: Thank you.

HEARING EXAMINER STRAIN: Thank you. And that will end the discussion on this case. A decision will be rendered within 30 days. And thank you all for coming and attending here for today.

The next item up is the Pavilion Club wall height increase. 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 and indicated in the affirmative.)

HEARING EXAMINER STRAIN: The disclosures by the parties, I talked with staff, talked with the applicant -- applicant's representatives at least. I've reviewed the various files and I received one email in opposition. With that, let me show you what I've got on the overhead.

The location of the project is just north of Vanderbilt Beach Road and -- or Drive. I'm not sure which it's called. West of U.S. 41. Across from Mercato. Everybody knows where Mercato is. That's the general layout of the property. It's a PUD. Quite an old one. I think it was in the eighties, if I am not mistaken when this was first brought forward.

The orange lines on this particular map represent -- and I've got to get clarity on this. I just received this early this morning when I got in. I believe these orange lines represent where the wall is proposed to go. Is that correct, Mr. Arnold?

MR. ARNOLD: For the record, I'm Wayne Arnold with Grady, Minor & Associates. And I'm here representing Pavilion Club. And yes, this is an exhibit that was presented at the neighborhood information meeting. It's noted as the general potential location for the proposed eight-foot wall.

HEARING EXAMINER STRAIN: Okay. The other thing I wanted to point out, this is an older PUD. As a result it's got language in it that is the law currently in Collier County. If you have a PUD made into an ordinance, it becomes source of how you build according to the land development code. And then where something is lacking in the PUD, it falls back to the current code, or the code that's defined in this document.

First of all, in general provisions of this PUD, it's basically subject to the Collier County zoning ordinance in effect at the time of adoption of this ordinance. And since this is an 87 PUD, we have to go back to the older codes and look at that.

But in the PUD they addressed some issues that I had received in an email that seemed to be concerning. That the wall couldn't go on the property line. Well, the perimeter privacy wall setback, according to B, has none from the property line. So the fact that the wall is on the property line is in exception to the current land development code could still be considered in today's. I didn't verify that, but it's allowed because of that language that's in the existing active ordinance.

The buffers. The buffer requirements were here with the exception -- when you look at that adding a wall, the buffer requirements go away and they're not necessarily restricted to Section 8.37 of the earlier code. That earlier code has section A and E. And E says substitution for landscape buffer when otherwise specifically provided by these regulations, you're going to have a six foot high opaque structure set in a five-foot-wide landscape buffer may be substituted for plan and buffer A above. Here's the plan and buffer requirement and that code at that time.

What the applicant has done is put a five foot wide landscape buffer around the property and they're asking to put the six foot high opaque structure within that buffer.

That's how we got to where I believe we are today with this request. The difference is, instead of the six foot height noted here, they want to go to an eight foot height because PUD also picked up that six foot height.

Now, with that, and the reason I put that on the overhead, Mr. Arnold, as you know, we don't have one of those slide projectors that you could do that so I try to anticipate ahead of time things that might be needed to explain the situation today.

I have read the full staff report. There is a member of the public here to address this issue. So with that in mind, I'll need a brief presentation by you.

MR. ARNOLD: I didn't see anybody stand to be sworn other than the two people that are with me.

HEARING EXAMINER STRAIN: Is anybody here today in opposition of this particular project? Just raise your hand. You are, sir? Then I'll --

MR. ARNOLD: I'm sorry. I didn't see that. I apologize. With me today is Mike Vickers, who is

the manager for the association and Glenn O'Donnell who is the president and can answer any other specific questions.

But as you mentioned, Mr. Strain the request itself is fairly simple. We have a request increase to allow the fence height to six feet to eight feet. A good portion of this site, as you noted on your overhead in the aerial, abuts the Pavilion Shopping Center. And that shopping center is allowed to have an eight foot high wall by right because it's a commercial property. Residential properties were limited to six feet in height.

The association voted sometime earlier to go through a major renovation project and install better security measures, including desire to have an eight foot high wall. They'd like to build a consistent wall height and talked to their contractor about that. So the request was to increase and invoke areas of the buffer standards to have an eight foot high wall that would be allowed.

Also, just for the record, I'd ask for a deviation. Just really only to cover ourselves in the event that you or the County Attorney's Office determined that we really needed a deviation from the land development code. So there's a deviation that is also tracking in the PUD document that was added.

With that, I'll be happy to answer any questions.

HEARING EXAMINER STRAIN: Your alignment for the fence is this orange line, is that what you're --

MR. ARNOLD: Generally, yes. I don't think that they've physically been out there to site it. But that's generally where we're proposing that eight foot high wall to be.

HEARING EXAMINER STRAIN: The word generally. In your mind, would generally mean you could move the wall all along this portion of your property?

MR. ARNOLD: No.

HEARING EXAMINER STRAIN: That's good to hear. I notice there's not one here. Would generally mean you could add it to this area here?

MR. ARNOLD: No, sir. There's an existing wall and buffer that's part of the neighboring project. That you can see on the northwest side of our property, we've turned the wall just to connect to their wall, but it would not propose to be located on the western boundary other than as noted on that exhibit.

HEARING EXAMINER STRAIN: Okay. So the defined boundary limitations of the wall would be generally where the orange area is subject to discussion, which is what you said you look at generally?

MR. ARNOLD: Well, I would say generally because I think once the contractor actually gets out there and surveys it, there may be some minor modifications. You can see I've got notations on that exhibit to the references access gates and things of that nature that may need to be modified slightly. So that's why I use the term generally.

HEARING EXAMINER STRAIN: Why don't you have a wall going across this area? Is that an access way? Because I notice the orange stops here and picks up here. Was it your intention to --

MR. ARNOLD: That's the entrance to the project. There's a gated access point there.

HEARING EXAMINER STRAIN: Okay. I just wanted to make sure if it wasn't on here that there wasn't a reason for it, so --

Is there another access off 91st up here?

MR. ARNOLD: No, sir, there's not.

HEARING EXAMINER STRAIN: Okay. I don't think I have -- let me run through my notes. I think my notes really mirror everything I put on the overhead. They do. Okay. I don't have any other questions at this time. I'll go to staff report and then public speakers. Fred.

MR. REISCHL: Fred Reischl with planning and zoning. Staff with the stipulations supports their request. I did receive a voice mail from a resident inside Pavilion Club who was unhappy with the procedure of going forward with the wall increase, which is not land related as far as I can tell. And I did receive a phone call and follow-up email from a gentleman in Naples Park who I forwarded to you and you had addressed those comments of the additional landscaping.

HEARING EXAMINER STRAIN: Yes. And that's why I did the research to make sure that his concerns were addressed. They were based on the code at the time and the approved PUD, so. Those points I hope they were addressed.

Okay. That's the staff report. Sir, I think you were the only public speaker. You're more than

welcome to come up to the microphone. Identify yourself and your address. Just please say your name. State your name and address.

MR. LOWERY: I'm Scott Lowery. I've lived on 91st Avenue for 36 years. Owned a home there for 20 years. I was there before Beachwalk was built and all that. When they were building Beachwalk, they got a six-foot wall put in. And they were going to install English Ivy, which we don't grow down here. And I told them to put in ficus creeping fig. The whole beach walkway is covered in creeping fig. My concern is -- I don't have a problem with the height of the wall, I think there should be a continuance of a vine on the pavilion wall. I'm not sure how that deals with the landscape code or whatever. I'm not sure where that wall falls regarding to where the ficus hedge is, and we're not planting ficus anymore because of white fly and other insects. I just would like -- the eight-foot wall I don't have a problem with. I drive that street daily a dozen times. I just like to see that continuance of green from Beachwalk right up to where the pavilion ends where the wall is going to go. That's all I have to say.

HEARING EXAMINER STRAIN: Thank you very much for your time, sir. I appreciate it. Mr. Arnold -- is there any other speakers here on this matter?

MR. BELLOWS: No speakers have registered.

HEARING EXAMINER STRAIN: Are there any other people that would like to speak on this matter? Okay.

Wayne -- first of all, where are you going to place the wall in relationship to 91st Street and your property line?

MR. ARNOLD: Well, as you pointed out, we're allowed to put it on the property line. And that's why I said the contractor, really he's going to have to figure that out when they get down to the design of the supports for the wall. It's intended to be a precast masonry wall drop-in panel. So I can't tell you that it's going to be set specifically on the property line. It may vary.

HEARING EXAMINER STRAIN: You said something that struck me. Precast masonry. You mean precast concrete? Because precast masonry, how do you precast masonry and drop it in place?

MR. ARNOLD: I mean precast concrete.

HEARING EXAMINER STRAIN: Okay. Is it going to be a decorative wall? And the reason I'm asking this is if you're going to place it on the property line, as you are allowed to do by the code, or by your planning development, then to put landscaping outside that wall would mean you're putting it on somebody else's property. Whether it be the county's right of way or not, it's still not your property. So, the consideration of putting the landscaping on this particular wall would have to be if the wall had room on the opposite side of it to apply. And I don't know if you all had thought that out or what your inclinations were there. But if you had done so, if you have a plan for that, it might be good to tell us what that is. It's something that not necessarily would bind you because you're not obligated to do it. It would be something that it might be nice to show concerns to the public that you have plans for that, if you do.

MR. ARNOLD: Well, Mr. Strain I'm sure you've made a site visit. I have photographs of the existing chain link fence that exist there with not very well maintained shrubs. But that fence appears to be built on the property line. The landscaping is forward of the chain link fence on the property owner's side of the fence.

And I think as the gentleman spoke mentioned that maybe the only option if you set this on the property line is to have some sort of creeping vine planted at the base of the wall and let it creep up.

HEARING EXAMINER STRAIN: Your precast panels, are they going to be of a cedar creek nature, just out of curiosity. But that in itself is a decorative wall. I wasn't sure what you were meaning by precast panels.

MR. ARNOLD: You're correct. And I don't believe the association has settled on a final design for the panels. I have seen several images that their contractor provided, and I don't believe the association has voted to build one on the other.

HEARING EXAMINER STRAIN: Would you -- are you in a position of knowledge it would be a decorative precast panel?

MR. ARNOLD: Maybe I'll let Mike mention that. Mike Vickers.

MR. VICKERS: Yes. My name is Mike Vickers of the property managers association. And it is

going to be a decorative wall. What they call a ledgerstone look. And as Mr. Arnold pointed out, we do have some photographs from the contractor.

HEARING EXAMINER STRAIN: Okay. Because I would like to know that is supporting your position. And as far as decorative wall goes, that would be beneficial.

MR. VICKERS: And if the county requires us to put a vine, or train a vine on it, then we'd be more than happy to consider that.

HEARING EXAMINER STRAIN: The purpose of the vine, I mean, the vine would then defeat the purpose of the decorative wall. You're spending money on a decorative wall, and if you're willing to commit to that, that would outlive the purpose of the vine. It would probably be instant where a vine is going to take years to mature. While one is-- and that would be dependent on how the frost go and whatever it would live through. I know you don't get many frost in the Naples Park area because you're too close to the water. But still, that's why the decorative nature of the wall is an important factor.

MR. ARNOLD: Mr. Strain, if I might. I do have a photograph that was supplied by their fence contractor of a design that I believe they're looking to achieve. I think we would consider that to be decorative.

HEARING EXAMINER STRAIN: That's a nice looking wall. Would you mind including this as part of -- part of the record?

MR. ARNOLD: I would only ask that there be some flexibility in final design and color and things of that nature.

HEARING EXAMINER STRAIN: A decorative wall similar to that provided at the meeting.

MR. ARNOLD: I think that would be fine.

HEARING EXAMINER STRAIN: Okay. John, if you don't mind giving that to the court reporter. That would be fine. Thank you. Okay. I don't have anymore questions. I think staff and everybody has addressed the issue that is here for that. And with that, we would close this hearing and a decision will be rendered within 30 days.

MR. ARNOLD: Thank you.

HEARING EXAMINER STRAIN: Thank you all for your attendance on this matter. We'll move to our last item up today. This is -- I'll read it as it's in the agenda. Petition number ZVL(CUD)PL-20160001881. It's a Naples 2.0 LLC. It's for a confirmation of a comparable compatible use analysis. 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: By disclosures I have talked with staff numerous times. I've been in various meetings with this with staff and the applicant. I've read all of the files. If talked to some of the county commissioners involving this issue. I've talked with some of the CRA representatives and I've also talked with the applicant's representative privately on phone calls and emails.

With that in mind, I have reviewed this item completely. Is there any members of the public here -- well, first of all, everybody rise who wish to address this, please rise and be sworn in by the court reporter.

MR. REISCHL: We just did that.

HEARING EXAMINER STRAIN: I'm sorry. I didn't look. Is there any members of the public here who wish to address this issue. Okay. With that in mind, would the applicant's rep please come up for the record.

MS. DEJOHN: Good morning. For the record Laura DeJohn, principal planner with Johnson Engineering. Here today on behalf of the applicant who is Naples 2.0 LLC property owner.

HEARING EXAMINER STRAIN: Thank you, Laura. As I mentioned to you, and I have spoken with staff about this matter. This is subject site. The two plans that were provided in the package that show the comparable compatible uses are right here. There isn't really much else to this. I did look at staff recommendations and I spoke to staff, and previously just before the meeting to you the two recommendations. One is that a food truck will be on site for a minimum of 30 consecutive days. In further discussions, that is an item that is not necessary for the comparable compatible determination was something that I believe the applicant provided in part of their narrative. It will be included as a discussion item, but I don't necessarily

think it needs to be a staff recommendation. I believe staff is in agreement with that position.

MR. REISCHL: Agreed.

HEARING EXAMINER STRAIN: Second item is that there's an issue if the bars remain open and the trucks leave, it becomes a concern over the distance waiver provisions of the alcohol beverage waiver requirement. Again, that's an existing code. It really doesn't need to be as a staff recommendation. Staff has agreed it can be addressed as a discussion matter and we'll -- so between the two recommendations that are made here, those won't be moved forward at this point. We'll just include those in discussion items in the final decision.

MS. DEJOHN: We appreciate that. Thanks.

HEARING EXAMINER STRAIN: Is there anything that you'd like to add? I don't need a presentation. There's no members of the public here for this item, so we can expedite this. I'm fine. I've asked you and mentioned to you all the issues that I had with this. I have nothing else. Do you have anything you want to add to the record?

MS. DEJOHN: No. We believe the application we provided is complete. We appreciate staff's analysis. Appreciate the thoughts you've given this morning and removing those conditions as part of the recommendation and finding of compatible use for the site.

HEARING EXAMINER STRAIN: Thank you. And Fred, do you have a staff report?

MR. REISCHL: Nothing additional. Thanks.

HEARING EXAMINER STRAIN: Okay. And the last I want to ask again, is there any members of the public here that would like to speak on this matter? Okay. Hearing none, we'll close the hearing on this item and our decision will be rendered within 30 days. Thank you for your time.

MS. DEJOHN: Thank you.

HEARING EXAMINER STRAIN: That takes us to the last couple items on the agenda. One is other business. There is none listed. And the last would be public comments. Is there anybody here that would like to comment on anything that has not been one of the topics of discussion for today? With that we'll -- oh, ma'am, come on up. Identify yourself for the record.

MS. BEATTY: Hi. I'm Karen Beatty and I live on Haldeman Creek, east of it. I'm also on the community redevelopment advisory board. I just think this is one of the best proposals for the area that I've heard of in a long time. I'm in complete support of it and I don't see that anything that they're asking for is so unusual. And I just want to let you know that even though we didn't take a formal vote, I know my fellow board members are also in favor of it. I'm not speaking for the whole board, but I do know that we're all very excited about it.

HEARING EXAMINER STRAIN: Other members of your organization I've spoken with and they've expressed the same interest. Thank you very much. Appreciate it.

MS. BEATTY: Thank you.

HEARING EXAMINER STRAIN: Any other public comments? Sir, come on up.

MR. DVORAK: Yes. I'm Peter Dvorak. I'm a resident of the area as well as I do serve on the CRA advisory board with Karen. I just wanted to say both as a private citizen, especially as a private citizen, I'm very supportive of this plan. I think it's exactly the kind of thing that we are looking for in redeveloping our neighborhood. And Rebecca has done a great job with 360. And I'm sure this will be as high quality as that venture is as well.

HEARING EXAMINER STRAIN: Thank you. I guess it's a good opportunity to thank the entire CRA board for what they do. Your area has blossomed tremendously. I have been here 40 years and I remember what Kelly Road used to be. And I compare your CRA to the other CRA in the county. You're making leaps and bounds and strives doing what a CRA should do. So thank you all for the good work you do.

I do hope that some projects as they come through come to you early on so we can get your voice as a board. I appreciate the comments individually, but as a board it would be very helpful to know where we stand on these. At times I had assumed this was happening. I'll try to be more cognizant of your board's position and ask applicants to come to you before their meetings and maybe we have a voice then of your board as a whole. Your board is very important to Collier County. You do a great job. I am honored to be part of

seeing Bayshore change like it has. It's excellent. So Thank you all.

MR. DVORAK: Thank you very much.

HEARING EXAMINER STRAIN: With that, anybody else like to address any topics today? Okay. This meeting is adjourned and we'll see you all next time. Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:47 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 10-27-17, as presented ✓
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
U.S. LEGAL SUPPORT, INC.,
BY DANIELLE AHREN, COURT REPORTER AND NOTARY PUBLIC.