

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
February 23, 2017

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
Scott Stone, Assistant County Attorney

HEARING EXAMINER STRAIN: Everybody, can I have your attention, please. If you're going to need an audio for this meeting, you're not going to be able to have one. But the transcript will be ready probably by tomorrow morning. Now that Cherie's back, welcome back, Cherie', it's good to see you.

I was being facetious about that, I'm not sure how long the transcript will take, but we will probably not have audio today.

So with that, would everybody please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Review of the agenda, we have two items on today's agenda. There are no other changes.

The approval of meeting minutes from January 26th, 2017 are fine to be recorded as submitted.

And that takes us into our first advertised public hearing. It's Petition No. CUR-PL20160002071, Aggregate Specialties, Inc. And this is in the industrial park, north of Pine Ridge Road.

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 EXAMINER STRAIN: And my microphone is going off and on, which means the batteries are probably bad, so I'll try to talk loud anyway. It's not being recorded, so we'll get through it.

As far as disclosures on my part for this one, I have talked to the applicant's representative, Mr. Hood, and I believe way back from before it all started another gentleman from Davidson Engineering, and maybe the owners of the company and I spoke; I can't remember all the number of people at that particular meeting.

I've also talked to staff and I've reviewed the files for this particular project.

Are there any members of the public here concerning this item?

(No response.)

HEARING EXAMINER STRAIN: Okay, Fred, we won't need a presentation.

I've read the documents, I talked to you yesterday about one item I thought needed to be changed.

And since then, last night, even though it was a long evening, I did get to look at some more questions which I want to walk you through on the panel here.

MR. HOOD: Sure.

HEARING EXAMINER STRAIN: Okay, the first item that you've got is the changes to condition number one. You're cleaning it up in relationship to the master plan.

Now, that's the master plan that was previously supplied as Exhibit C to the original conditional use. And this is the one that you're proposing to use that was in the packet.

Another one was sent around separately, and the other one took out the references to these buffers.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: In looking at the previous one in this, I don't see any reason to take those out.

MR. HOOD: Okay.

HEARING EXAMINER STRAIN: I think it's to your benefit just to leave them in in case the code ever changes. So from that perspective I think they ought to stay. So the new one that you sent won't necessarily be used and I'll go back to this one. But this one needs a change; you and I spoke about it.

When this project originally came in to take out this area here because on the previous plan it was a preserve.

I had talked to Andrew Rath, I think it is, with your company. At that time the discussion was if they could get this taken out they would put a wall along here.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: Are you now changing the position on that, or is it going to be a solid wall at eight feet or on the berm and a wall combination to reach eight feet?

MR. HOOD: It will be exactly that wall combination or just the wall. And I've actually created that change here, so I'll give that to Cherie'. (Handing.)

MR. HOOD: So just for -- so we can have it on the record, I can just read it off to you how I wrote that.

It will now say in the second sentence, a five-foot wide Type A landscape buffer with an eight-foot

high wall and/or opaque fence and/or wall and opaque fence with berm combination shall be provided along the site's southern boundary at the interface of abutting uses.

HEARING EXAMINER STRAIN: Okay, and let's back up again. I don't have that language in front of me and there's no overhead here. Do you have an extra copy?

MR. HOOD: Yes.

HEARING EXAMINER STRAIN: Yesterday when we walked I thought you indicated that your applicant had agreed to a wall. But you're not saying that now. You're saying an eight-foot high wall or an opaque fence or a high wall and an opaque fence with a berm combination. That's different than a wall with a berm combination.

MR. HOOD: It is. And what I did was I put in the option there. The wall is what they are going to be building. I just thought that that I would put the option in there for -- you know, if they sold the property, if they had to pull it down, whatever the case may be, to do an opaque fence or wall to be consistent with the LDC. We can take it out -- I can take out the opaque fence --

HEARING EXAMINER STRAIN: All I --

MR. HOOD: -- of the wall --

HEARING EXAMINER STRAIN: When this started --

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: -- they all came to me to talk, and I can't -- again, Andrew was there but I don't remember who else. It was quite a while ago. And they were going to put a wall in; they weren't going to fool around with anything else. And it seemed logical then, because the wall with the intensity of this particular project at that location will be a good thing.

MR. HOOD: Yes.

HEARING EXAMINER STRAIN: A fence wouldn't be.

MR. HOOD: I will scratch the language related to the fence and we will be good on the wall.

HEARING EXAMINER STRAIN: Also, let me show you how that works out on your aerials. That's an aerial of the property. Now, this is where the preserve was supposed to be.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: And the wall would go along here, which against these businesses that would be a real good thing, and I can understand why they're in favor of it. So I think that needs to be -- we need to stick to that original plan and go that way.

MR. HOOD: That's fine.

HEARING EXAMINER STRAIN: Now, that brings back a couple of other things.

I saw some trailers on the site. Did you guys ever come in for an SDP?

MR. HOOD: The SDP I don't think was ever completed.

HEARING EXAMINER STRAIN: Okay. Because there's no structures on the site.

MR. MIGLIAZZO: The only --

HEARING EXAMINER STRAIN: You can't talk from the audience, sir. You're welcome to come up and testify.

MR. MIGLIAZZO: Oh, sorry.

HEARING EXAMINER STRAIN: I do have some questions about the original petition.

MR. HOOD: Sure.

HEARING EXAMINER STRAIN: You triggered an SDP if there were any structures on the site.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: And from what I can see there are trailers. I'm not sure if staff looked at those as an SDP application or not. Does staff know?

MR. REISCHL: I did not even look at anything related to an SDP. I didn't research it, put it that way.

HEARING EXAMINER STRAIN: Okay. The reason I'm asking is I don't think based on the plans that I -- they look like they're all trailers and mobile units. And if that's the case you may not have had an SDP.

MR. HOOD: Yeah, there's no permanent building there yet, there's only trailers.

HEARING EXAMINER STRAIN: Then the other thing that is interesting here is that number three,

one crushing machine will be allowed to operate on the site and shall not be located within 200 feet of any property's southern or eastern boundaries.

Looks like that's a crushing machine, or at least I believe it is. What's that; do you know? Maybe your applicant would come up and testify. You're supposed to have only one crushing machine on that site, and looks like there may be two, but I'm not sure unless I go out to the site and figure out what that is. Do you have any way of finding that out?

MR. MIGLIAZZO: Do you want me to point up there?

HEARING EXAMINER STRAIN: No. First I need you to --

THE COURT REPORTER: Were you sworn in?

MR. MIGLIAZZO: No.

(Speaker was duly sworn.)

THE COURT REPORTER: May I have your full name? Rocco, R-O-C-C-O, Migliazzo, M-I-G-L-I-A-Z-Z-O.

I go by Tony.

HEARING EXAMINER STRAIN: Well, Tony, thank you for coming up and helping to clarify. What is that machine?

MR. MIGLIAZZO: That's a screener. That just -- it separates the dirt once it's been --

HEARING EXAMINER STRAIN: That's a crusher?

MR. MIGLIAZZO: No, it's another screener. We have two different types because we make a couple different products just so we can get it where it's a saleable material again out the door.

So there's one crusher that runs at all times to crush the material, and then we run it into a strainer.

HEARING EXAMINER STRAIN: Okay.

MR. MIGLIAZZO: So we do that just to minimize the processing on the property.

And they're portable, so as we clean the property up when we took it over, we're moving into the furthest corner away from all of our neighbors.

And just to reiterate on the wall, it's a wall. It's a solid 7,000-pound block wall. And my neighbors are -- they're happy that we took over and bought the property and are bringing the neighborhood up to speed.

HEARING EXAMINER STRAIN: I'm glad to hear it.

MR. MIGLIAZZO: Oh, yeah, we don't have any enemies around there. I mean, we're in -- we're doing something that nobody likes to do or wants to do, but we're managing to keep our neighbors happy while we're there.

HEARING EXAMINER STRAIN: Well, since you bought the site over, this original plan required buffers to be on the property. I don't know if there's buffers there, based on these two aerials. Doesn't look like it. Did you ever install those?

MR. MIGLIAZZO: No, we're -- when we took it over we modified the SDP to accommodate a scale, we added more parking in the front. And we're going to finish it. We're in progress right now. You know, that's what we're saying, we're doing the SDP now.

HEARING EXAMINER STRAIN: Okay. If you needed extra time to get this work done, how much time would you need to get the buffers installed?

MR. MIGLIAZZO: Currently -- I mean, we -- I greatly appreciate the offer. We have like about two years left to finish under the approval to do it. We're on schedule to do that. We're paving parking now, and I really don't think we need it. And plus we have the opportunity to file for an extension also if we needed another 18 months. So we're trying to button this project up as fast as we can.

We've come in to do a few changes, like where the storage area is there -- it was approved to put in scales. So we had to come back and -- you know, we've come back across everybody's desk a few times just to get the place right, functioning the way it should be.

HEARING EXAMINER STRAIN: And I tend to agree that you've been working to clean it up, so I'm not trying to pick on you for that reason. I'm trying to understand how these conditions that I can't -- I'm not sure they've been met what their time frame is.

MR. MIGLIAZZO: Oh, no, we haven't planted around the perimeter or anything like that yet. We're working our way into the site. Like I say, the first thing was to clean up, get this wall situated, straightened

out.

Everything that you see on the front of the property right now has been moved back. The parking lot was surveyed, layed out, it's ready to be paved. And then as soon as we get done -- on the right-hand side of the property, if you notice there's a ditch. That was a county project that took over a year to do. It's now been filled in with culvert, two 36-inch culvert pipes. They did that whole drainage project all the way north to J&C. And we're actually still waiting for the contractor to come back and clean up the rest of the project.

But there was some delays, wrong size pipe. It took over a year to do that. So we've been kind of working on it with the county.

But if we needed an extension, I would say a one-year extension, if we could add it on to anything.

HEARING EXAMINER STRAIN: That's a separate application. But what I really wanted to find out from staff is, from the perspective of this conditional use was a I think a -- yeah, 2008 conditional use.

Ray, when was staff expecting to see the required buffers installed? Or do you have a time frame in your mind for that?

MR. BELLOWS: For the record, Ray Bellows.

If there are no time lines listed in the CU, then it's incumbent upon the time of SDP that they show those things. And the SDP has a certain time limit to accomplish that, and then you have to extend the SDP. Otherwise then you would be in violation of the conditional use.

HEARING EXAMINER STRAIN: But there may not be an SDP on this site.

MR. BELLOWS: I thought one of the conditions of the original conditions was for an SDP.

HEARING EXAMINER STRAIN: Only if -- if you read the condition number two: No structures, including the existing structures, shall be permitted on the site unless an SDP has been reviewed and approved by the Collier County Land Development Review staff. An SDP application shall be submitted to the county within 90 days of conditional use approval or the existing structures shall be removed.

The only structures on here appear to be trailers.

MR. MIGLIAZZO: There used to be something there, and it got torn down. And I think that's where that language may have come from back in '07.

HEARING EXAMINER STRAIN: So instead of getting a building permit and doing all the work to get that structure legalized, you just tore it down so it wouldn't be --

MR. MIGLIAZZO: No, it was a trailer. It was a trailer that had concrete poured around it.

HEARING EXAMINER STRAIN: Do you see anything on this site that in your opinion would trigger an SDP?

MR. BELLOWS: My recollection, this was an ongoing business and operating somewhat similar to what we see now. And if they weren't putting any structure or there wasn't a requirement specifically to do an SDP, then they may not have been required to do one. But if the landscape buffers were a requirement, then they should have done an SDP for that.

HEARING EXAMINER STRAIN: Okay. And that goes back to what my original questioning was on these other conditions that were instituted in 2008.

I think what you're asking to do for now is an improvement, so I'm not against the wall and the removal of the preserve. The preserve wasn't practical to begin with. And based on this particular aerial it wasn't something you could do anyway, based on the activities on the site.

That's a very logical thing, it's nothing that really bothers me. But when you -- not you, but when your predecessor came in and made commitments to get this facility at that location, those are the commitments he committed to. And by you buying the property you basically inherited these commitments.

MR. MIGLIAZZO: Right.

HEARING EXAMINER STRAIN: Now that we know some of these have not been done, I need staff to tell me if they have a time frame that they can account for. If they don't, I need a commitment on a time frame.

MR. HOOD: I'll just -- that SDP has been filed.

HEARING EXAMINER STRAIN: Are you growing a beard?

MR. HOOD: Yeah, a little bit.

HEARING EXAMINER STRAIN: I just noticed. Well, I hope it turns gray.

MR. HOOD: It's already gray down here.

HEARING EXAMINER STRAIN: Yeah, mine is too.

MR. HOOD: The SDP has been filed, it's been approved by the county. So as Tony already discussed, we're still in that time period where we have time to complete all of those landscaping requirements. And if we're going to put a building on there, the same would ring true. We're just in that phase right now getting things cleaned up.

HEARING EXAMINER STRAIN: Okay. So your SDP is in.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: And it does include the buffers.

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: And you're going to do an amendment to that to add the wall. Okay, when will the wall be added?

MR. HOOD: I think in the SDP, and I don't have it in front of me right now, I think the wall is on the SDP already. So it has actually started construction on the wall and I think it's almost complete. So that requirement that we have in this current conditions is substantially complete already.

HEARING EXAMINER STRAIN: Okay, I'd like to tie this improvement -- because of the -- especially because you've already gone out to your neighbors with it and you committed to do it -- to a time frame. So when is convenient for you to acknowledge that the wall will be completed?

MR. HOOD: I'll say in the next --

MR. MIGLIAZZO: 30 days.

MR. HOOD: -- 30 days.

HEARING EXAMINER STRAIN: Okay. So by let's say June it will be completed.

MR. HOOD: Yes, sir.

MR. MIGLIAZZO: Yeah.

HEARING EXAMINER STRAIN: Okay. So let's work towards that date. And that way it will give something to Ray's people to review to make sure it stays intact for the benefit of removing that preserve area.

MR. HOOD: Yes, sir.

MR. BELLOWS: Mr. Hex, one of the things we can do with the CUR process is give a time limit for them to come back before you in this as a Hearing Examiner to see if they've implemented all these conditions.

HEARING EXAMINER STRAIN: I'd rather not do that. I'd rather staff review it in June, and if the conditions are not satisfactorily at least continue to be ongoing and completed, then they come back in at that point.

Do you have any problem with that?

MR. BELLOWS: No, I just wanted to make sure you knew that that was another option.

HEARING EXAMINER STRAIN: The less we can force people into public process and these hearings, the less money it costs them. I have all the confidence in staff to be able to monitor this.

If you run into something by the summertime that is not consistent with what we've talked about today, then staff needs to get in touch with me and we'll initiate a rereview this.

MR. BELLOWS: Very good.

HEARING EXAMINER STRAIN: Is that okay with you all?

MR. HOOD: That's fine by us.

MR. MIGLIAZZO: Works for me.

HEARING EXAMINER STRAIN: Okay. And I don't believe I have -- let me check and make sure, but I think we've just wrapped up -- oh, there is one other.

This particular reference.

MR. HOOD: I was just going to discuss that. When I come back in with that new NCP probably today, I will update it to today's date.

HEARING EXAMINER STRAIN: Well, you've got to do it a little bit different. You've got to update that --

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: -- you're going to have to update this. But this is the plan that you've submitted, and there's no dates over here.

MR. HOOD: Yeah, there will be.

HEARING EXAMINER STRAIN: Okay. So if you're going to update it to a date, put the date on a plan.

MR. HOOD: It will be there in two spaces, one for the revisions and one for the date of the actual plan.

HEARING EXAMINER STRAIN: Mr. Stone?

MR. STONE: If I may, the note relating to the visual barrier --

MR. HOOD: Yes.

MR. STONE: -- also needs to be revised.

MR. HOOD: Correct. And actually, I have that written down here.

HEARING EXAMINER STRAIN: Okay, I think that takes care of the issues.

A decision will be rendered within 30 days, most likely a lot less. I may need to expedite the transcript for reference to make sure everything's done accurately because we lost audio today. Normally I listen to that and I make notes off of it after the meeting.

So is there anything else that you want to add to the process?

MR. HOOD: No.

HEARING EXAMINER STRAIN: Great, thank you.

Fred, is there a staff report?

MR. REISCHL: Thank you, Mr. Strain.

Fred Reischl with planning and zoning.

Staff's in agreement with the proposed changes, and just wanted to mention that we did include it in the packet. We did receive letters of no objection from neighbors.

HEARING EXAMINER STRAIN: Okay. And I did see those and I want to thank the applicant for going to the trouble to get those. Those help a lot in these kind of conditions, so it was very useful. Appreciate it.

And other than that, I have nothing else.

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

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing on this matter and a decision will be rendered as quickly as possible within 30 days.

MR. HOOD: Thank you.

HEARING EXAMINER STRAIN: Thank you both. Appreciate it.

***That takes us to our next petition, 4.B. It's Petition No. NUA-PL20160002595. The petitioner is Gargiulo, Inc. It's for a trailer -- labor camp or trailer park at Camp Sandy it's called, which is hard to find in our files, but there was some references to it. It's off of old 41 in North Naples.

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 EXAMINER STRAIN: Disclosures. On my part I've talked to the applicant's representatives, I've actually talked to the applicant, several members of the Gargiulo company, I talked to Commissioner Nance when he was here about it, and I've also reviewed things with staff and gone back and looked at a multitude of historical files.

And with that, Wayne -- is anybody here may have come in late for this particular item, members of the public?

(No response.)

HEARING EXAMINER STRAIN: Okay. As you know, Wayne, I've read everything, and all I will need today is for you to answer a couple questions. Actually, the questions will be of Mr. Reischl, so I don't need anything. I have no questions of you at this time.

Did you have anything?

MR. ARNOLD: For the record, I'm Wayne Arnold with Grady Minor and Associates. With me

today is Chris Davis with Gargiulo, if you have any questions of he or his operation.

And the only comment I would have as part of my presentation, Mr. Strain, is I would hope that we could modify the recommended condition number two.

HEARING EXAMINER STRAIN: Well, I was going to suggest we change both conditions. First of all, the recommendation number one says a maximum building height of the structure shall be 30 feet. But on your master plan, and I know you can't see it too well right here, it's 25 feet. Is 25 feet still what you wish?

MR. ARNOLD: 25 feet is ample.

HEARING EXAMINER STRAIN: Okay. Also the second item refers to the standards that are to apply to this. The standards are all right here as well. And I will ask staff in a minute, but I have no -- I would rather we stay with what's on the document than a separate recommendation, for lack of -- keep it clear.

MR. ARNOLD: Well, Mr. Strain, what I was going to offer is simply in some manner reference that development shall occur consistent with our conceptual site plan that has been developed for the site.

HEARING EXAMINER STRAIN: And that's what I was referring to.

MR. ARNOLD: Okay.

HEARING EXAMINER STRAIN: And the decision, generally I try to refer to exhibits. And in this particular case, we referred it as one of the exhibits to the decision. And those standards will work consistent with staff's acknowledgment after I finish talking to you.

MR. ARNOLD: Thank you.

HEARING EXAMINER STRAIN: I have nothing else, so thank you. Clean application. I'm glad it went through.

Fred, staff report?

MR. REISCHL: Fred Reischl, planning, zoning.

I have no objection to the changes in the conditions. They were put in there for emphasis more than anything. So no objection at this time.

HEARING EXAMINER STRAIN: Okay.

And is there any members of the public here that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing.

And in your particular case, since I won't have to refer to a tape or minutes, I should have a decision on it, it will be within 30 days but most likely within 10.

MR. ANDREA: Thank you.

HEARING EXAMINER STRAIN: Thank you. Appreciate it.

And that takes us back to our long agenda. Cherie' said she wanted to stay here all morning.

So there's no other business.

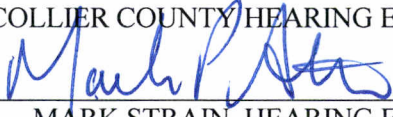
Are there any public comments?

(No response.)

HEARING EXAMINER 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 3-9-17 as presented ✓
or as corrected _____.

Transcript prepared on behalf of
U.S. Legal Support, Inc.,
by Cherie' R. Nottingham.