

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
August 24, 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: Fred Reischl, Principal Planner
Eric Johnson, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, August 24th meeting of the Collier County Hearing Examiner's Office.

Please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some announcements. Individual speakers will be limited to five minutes unless otherwise waived. Decisions of the Hearing Examiner are final unless appealed to the Board of County Commissioners. And the Hearing Examiner will render a decision within 30 days.

And then we'll move into the review of the agenda. We have three items on today's agenda. There are no changes. There are no additions or deletions, so we will remain with those three, and we'll move right into our first advertised public hearing.

***The first one up is Petition No. SV-PL20170001510. It's for the Granada Shoppes Associates, Limited. It's for a sign variance at the intersection of Immokalee Road and U.S. 41.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. If you're going to speak on this item -- and the applicant should be here to speak -- you need to rise.

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part: I have talked with staff. I've reviewed the files, both what staff provided in the staff report as well as ones I looked at myself online. And that's the extent of my disclosure. I have not talked to the applicant in this particular case.

Are there any members of the public here for this case?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, then from the benefit of the applicant, we won't need a presentation. I've read the entire report, so I'll save you the effort of having to talk about it. The only other person that's of interest here is the staff member, and I know that he's well aware of what the report says.

I would like the applicant to come up and identify themselves for the record.

MR. LAI: My name is Tony Lai with Adart Sign Company, located in San Francisco, California.

HEARING EXAMINER STRAIN: Did you fly in from San Francisco --

MR. LAI: I did.

HEARING EXAMINER STRAIN: -- all the way from California today?

MR. LAI: I did. It was very important to Orchard and to our team that we have representation here today. We feel very strongly to be part of this community.

And I wanted to thank staff and Eric here for the time, dedication, and energy that he put into this to help us see this through.

HEARING EXAMINER STRAIN: Well, I'm glad you did attend the meeting, because we did need a representative here. So I didn't -- I'm glad you made the effort to get here. I'm sorry it had to be 3,000 miles or so. In fact, if you had asked, we probably could have attended the meeting in California. Maybe that would have helped.

MR. LAI: After being here in Florida for a while, I tend to like it a little bit here more than California so far.

HEARING EXAMINER STRAIN: I have some questions of staff. They don't directly relate to you at this point. It's basically questions about the findings and some other information.

I do note that you have -- I had asked for floor plans to make sure that there was an entrance where the garden center is. I know that you indicated there was. The elevations didn't clearly show the door system. Your floor plans do show that, so I know that there is an entrance there. It helps make the sign request more logical, so I appreciate that.

MR. LAI: Okay.

HEARING EXAMINER STRAIN: And other than that, I don't have any other questions of you at

this point. But I appreciate you coming in to help us today.

MR. LAI: Okay. Perfect. Again, thank you again, you guys, for the time and energy to help us out throughout this process. Again, if there are any questions, I'll be more than happy to answer.

HEARING EXAMINER STRAIN: Okay. I think we're done. Thank you.

MR. LAI: Perfect. Thank you.

HEARING EXAMINER STRAIN: Eric, and as far as staff report goes, when we get into the findings and conditions that -- I know this is just a small sign in relationship to what it could be. I did some calculations on this building, and they are leasing 37,000 square feet, and the sign code allows them at that size to go up to about 200 square feet for sign face.

Collectively, they're below that for the two signs, the main sign and this accessory sign. But if they had split that store front up into multiple store fronts, then they would have ended up being able to put up a 150-square-foot sign for each store front, and the outcome of that would have been much more intense than the two signs they're asking for.

And the reason I'm articulating this to you is that should or could possibly have factored into some of the reasoning in the findings.

Also, the fact that this particular unit is 821 feet back from U.S. 41 based on aerial measurement on Google and they also have this site surrounded in many parts, especially along the 41 corridor, which is where these signs face, by out-parcels and outbuildings that are heavily vegetated, and our vegetation between 41 and these buildings where the signs are going, and there's several rows, almost six or seven rows of oak trees and other canopy trees that further block any signage, the next time we do these findings, I would hope that maybe we could look at that as reasoning as far as some of the concerns.

While it's peculiar to the land, this is unique. I don't know how many projects are identical to this. I do know that a lot of other projects will attempt to remove all the trees and put in newer specimens that are much smaller in their canopies. So from that perspective we're better off with the sign, and that might help with the arguments if it's needed in the future.

And other than that, did you have any clarifications or things you want to add through a staff report?

MR. JOHNSON: Yes, sir, Mr. Strain. For the record, Eric Johnson.

I just wanted to go to Page 6 of 9 of the staff report and strike out the last sentence that I wrote in response to C. The sentence is, it should be noted that the applicant is not the property owner and did not have any input into the design of the shopping plaza when it was originally planned; so I'd like to have that struck out.

And then on Page 8 of 9 of the staff report, on the overhead projector I indicate the word "does." It should be inserted prior to the word -- or preceding the word "not."

So the summary finding -- and staff recognizes the challenges provided by the mature landscaping in the center to the visibility of the signage from the roadway system and does not anticipate that the approval of this request would detract, diminish, or undermine the purpose and intent of the sign code if the variance were to be granted.

Staff's recommending approval of the petition. I'm not aware of any objections, at least as I've been a part of being the project coordinator. This -- the beginning of this project -- Rachel Beasley is no longer with the county. She was the project coordinator.

That's all I have to say.

HEARING EXAMINER STRAIN: Okay. I appreciate your clarifications and changes.

And, with that, I'll ask is there -- I previously asked if there's any members of the public here. I'll ask one more time. Are any members of the public here wanting to address this particular issue?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we will close the public hearing, and a decision will be rendered within 30 days, and normally a lot less; usually within 10 days.

Thank you very much.

MR. LAI: Thank you.

HEARING EXAMINER STRAIN: ***That will take us to the second item on today's agenda, which is Petition No. BD-PL20160003640. It's the GLG Waterfront Builders, LLC. It's for a Lot 31 at

Bayfront Garden subdivision.

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: Okay. Disclosures on my part: I have communicated with staff. I have reviewed files. There's a lot of files on the Lely Barefoot Beach area. I reviewed a lot of different files on that, studied the aerials, and I talked to our environmental people; Summer. Summer's here. I asked her to attend for some testimony today. And that's the extent of my disclosure.

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

(No response.)

HEARING EXAMINER STRAIN: Okay. I will not need a presentation from the applicant. There are a lot of issues that we're going to have to discuss regarding this because of the cleanup issues that occurred over the last few days involving the reading of the staff report.

So, with that, at the same time I've asked Kay Deselem to attend. Kay, are you here?

(No response.)

HEARING EXAMINER STRAIN: I wasn't able to contact her this morning, but I'll catch up with her when she gets in.

The applicant's representative, would you mind coming and identifying yourself for the record.

The batteries are going dead on this or something, so...

MR. NELSON: Hello. My name's Bill Nelson, and I'm representing the owners as the agent in this matter. I work for Greg Orick Marine Construction located in Naples, Florida.

HEARING EXAMINER STRAIN: Okay. Thank you.

MS. LINDSLY: I'm Holly Lindsly, and I also work for Greg Orick Marine Construction.

HEARING EXAMINER STRAIN: I haven't had a lot of interaction with your company before, so some of the things that were problematic in the staff report, I think -- I know you're aware of because you've sent corrected documents. In the future, that will become more of a standard request.

Let's start out with the mangrove-to-mangrove measurement. I know that at my request you had submitted that now. And the distance from the docks back to the nearest mangroves on the other side is important. The importance of that is noted because, basically, that will be the remainder of the navigable area.

So even though the waterfront or the water's edge of mean-high water is one measurement, if it's covered with mangroves, it doesn't really allow boat traffic. I needed that on record to be assured that we had the distance there.

And I'm pulling up the document that you all submitted recently to -- it looks like we have 53 feet from the outermost point of the BDE, boat dock extension, to the mangroves on either side, which provides ample room.

I also would note that the fact that you're putting your boats at the edge of the mangroves is more of a need to have the boat dock extension than any other issues, and it should have been something that we should consider in the future.

It is helpful when that is a need. And the aerials work for this particular case, but you might want to have the edges of those mangroves surveyed on your side of the particular water body so you can justify the length more than just an aerial.

There will be one -- Eric added a condition that the boat dock cannot be CO'ed till the house is CO'ed. Are you comfortable with that?

MR. NELSON: I'm not fully comfortable with that mostly because that is not really a requirement for a regular boat dock permit.

We also already have pulled a boat dock permit for this property, and that's how we pretty much found out that it was too shallow to build. And on top of that, due to changes in the staff with the county, this petition sat idle for a few months, and I just would really hate to delay the property owner any further.

HEARING EXAMINER STRAIN: We don't allow docks to be utilized without the principal structure being built. We're only -- we're telling you that, basically, the dock cannot be used and CO'ed until the house is. You can build it.

MR. NELSON: Oh, okay. I understand. Yeah, that's fine. He's about two months away from

CO'ing himself on the house, so I understand that. Sorry for the misunderstanding.

HEARING EXAMINER STRAIN: There was an inconsistency with your shoreline length. I know that's now been fixed. Another stipulation would be to limit the boat length to 50 percent of that shoreline length. And I know you've already agreed to that, but I just wanted to make a note it will be stipulated.

MR. NELSON: Yes.

HEARING EXAMINER STRAIN: The seagrass survey, I'll talk to the environmentalist about that in a minute. I understand it was waived and, generally, in this area it is. I just want to make sure the Environmental Department acknowledges that, because there was no acknowledgment in the staff report.

There was a couple pages I couldn't read; you provided those. And that's the -- I think that's all the information I have of you at this time.

Let me -- I didn't see any objections. I saw letters of no objection, actually, from most of your neighbors. That was a good process to get those back, and I'm glad to see you did it that way.

Let me make sure I've got everything resolved that I need to ask you about. Okay. Are you aware that if this -- if your client uses Wiggins Pass, the Wiggins Pass dredging done by the Corps of Engineers was dredged with the intention of a 3-foot draft?

MR. NELSON: I was not aware of that, but I know he does have another option to go north out of Little Hickory and New Pass and Big Carlos.

HEARING EXAMINER STRAIN: We didn't incorporate that into a code, but it is referenced in our Manatee Protection Plan. And it is recommended that people in the area be aware of that draft requirement, so I'm making you aware of it.

So that's all I need to ask you about at this time. Thank you very much.

MR. NELSON: All right. Thank you for your consideration.

HEARING EXAMINER STRAIN: Eric?

MR. JOHNSON: For the record, Eric Johnson, Principal Planner.

Mr. Strain, I emailed you changes that I requested to my staff report. The -- as far as -- our consideration with this is that staff finds that the request complies with four of the five primary criteria and five of the six secondary criteria.

Staff is recommending approval of the project with the stipulation that we spoke about earlier, and I have the changes to my staff report and also the applicant's changes that were made post printing of the staff report.

Staff's recommending approval. I'm not aware of any objections to this petition.

HEARING EXAMINER STRAIN: Okay. The changes involve primary -- Primary Criteria No. 1, reduction of the -- correction of the waterfront --

MR. JOHNSON: That's correct.

HEARING EXAMINER STRAIN: -- frontage.

And then when we move into secondary criteria, you're modifying where the Criteria No. 1 was previously not met is now being found to be met because of the mangrove situation.

And then in No. 3 of the secondary you corrected the maximum length of the combined boats that could be on that site.

And the final staff analysis corrected the secondary criteria; instead of four of six, it meets five of six. Is that consistent on what you've got?

MR. JOHNSON: That's correct. I was speaking with Heidi for a second.

On the secondary criteria, the changes that were made to Secondary Criteria No. 1, Secondary Criteria No. 3, and then the four of the five secondary criteria, the bottom-line analysis.

HEARING EXAMINER STRAIN: Okay. Thank you.

Are there any members of the public here to discuss this particular item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the hearing, and a decision will be rendered within 30 days, most likely a couple weeks or 10 days. Thank you.

Is there anything else that you -- you're welcome to stay, but I notice you seem to have something. Is there any questions we missed or something --

MR. NELSON: No, I'm on the next one, too.

HEARING EXAMINER STRAIN: Okay. Lucky you. You got two of them today.

***The next item up is Petition No. BD-PL20160002974, John Gagne --

MR. NELSON: Gagne.

HEARING EXAMINER STRAIN: Gagne? Is that how you pronounce it? Thank you -- for a Lot 13, Block U of Conner's at Vanderbilt Beach Estates concerning the addition of a boathouse.

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: Disclosures on my part: I've only talked with this one on staff, with staff members, and that's the extent of it.

I had a couple pages that were illegible. Fred Reischl, our staff planner, had gotten ahold of those two pages. The corrections -- or the clarity works out. It verifies everything that needs to be verified.

So, with that, I don't have any other questions. I've reviewed the entire staff report.

Just so that the record's clear that the applicant was here represented, would the representative of the applicant come and identify yourself. I know you just did this, but do it again for this one, if you don't mind.

MR. NELSON: Hello. My name's Bill Nelson. I work with Greg Orick Marine Construction, and I'm representing the owner of this property as an agent in this matter.

HEARING EXAMINER STRAIN: Thank you. And I have read the staff report. I do not have any questions. I just wanted your name and attendance here for the record. Thank you.

MR. NELSON: Thank you for your consideration.

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

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl.

Since this is -- this was originally Rachel's report, I'll follow in her footsteps and say that, yes, there is a staff report, and it was presented to you, but there have been no objections that I've received, and we did receive a letter of no objection from one neighbor which was included in the package.

HEARING EXAMINER STRAIN: Okay. Fred, thank you.

I don't have any other questions. Are there any members of the public here that would like to address this particular issue?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we'll close the public hearing, and a decision will be rendered within 30 days, most likely 10 to 14.

Thank you very much for your time today. Appreciate it.

Before we adjourn, I have another question under -- we'll move into other business, and I have a question of our Environmental Department. I notice Summer is here.

Summer, would you mind just addressing one issue for me. You shouldn't need your computer.

MS. ARAQUE: You never know.

HEARING EXAMINER STRAIN: When a seagrass survey is not needed, can you, from now on, make sure that something from your office is acknowledged or inserted into the staff report as to the reasoning behind that so we have a good record as to why the seagrass survey wasn't particularly required.

MS. ARAQUE: Yes. In the petition today we actually -- a seagrass survey was provided. They just didn't go out 200 feet.

So I sent Eric some language just now on another petition that's coming up in the same area, and so if you want to take a look at that language and see if that meets what you're looking for on addressing that, then we can --

HEARING EXAMINER STRAIN: I just want someone who is involved on the environmental issues on staff to acknowledge that because of whatever conditions there are in this particular area, the seagrass surveys aren't necessary to go to the length that is indicated initially in the code.

MS. ARAQUE: Okay.

HEARING EXAMINER STRAIN: And the -- I believe the admin code gives you that flexibility. I just would like to see that it's acknowledged with each one that we don't have that full survey as a reference.

MS. ARAQUE: Okay. Take a look at the language in the next one coming up on Topanga, and if

you have any issues or questions with how I provided that language, or suggestions, let me know.

HEARING EXAMINER STRAIN: Okay. And I think Terri probably wants you to identify yourself for the record.

MS. ARAQUE: Summer Araque, Environmental Planning, for the record.

HEARING EXAMINER STRAIN: Thank you. And also, when Kay does get in today or tomorrow when I meet with her, I was going to go over, for the benefit of staff and you, some things that we ought to be looking at as standards when we ask for backup support for boat docks, and it would include this acknowledgment from your office but also things like mangrove to mangrove or other obstructions that are in the waterway.

There was a few others that you and I talked about in the course of this one. And I think if we just get those down on a checkoff list, the reports can come in much more comprehensive than they are now.

So, thank you, Summer.

MS. ARAQUE: Okay.

HEARING EXAMINER STRAIN: Appreciate it.


With that, there's no other business. Any public comments?

(No response.)

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

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:21 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 9-19-17, as presented ✓
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
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