

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
December 14, 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
Summer Araque, Principal Environmental Specialist
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the December 14th meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Some housekeeping items. The first one is, for those of you that know me, I don't sound like me today. I had a long meeting presentation last night, and on my way home I noticed my throat wasn't working very well. So hopefully, maybe to the benefit of some of you, I won't be able to talk as much today. But we'll try to get through everything.

First of all, the speakers are limited to five minutes unless otherwise waived, all decisions are final unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days. With the holidays coming up, we'll hopefully try to get that done before the holidays.

Which takes us to the review of the agenda. We have three items on the agenda, two have been continued from prior dates, or one at least has. One is Foxfire. It's been in the system for quite a while, and we're looking at a CCSL concerning a coastal construction setback line variance.

***With that, we'll move right into our advertised public hearings. The first one up today, originally it was scheduled in September, it had to be readvertised, scheduled for November, and now -- then November 30th, and then it ended up today. It's for Petition No. DB-PL20170000541. It's the David Bautsch boat dock extension, and that is in Little Hickory Shores.

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. As we start out, is there any members of the public here for this one?

(No response.)

HEARING EXAMINER STRAIN: No.

My disclosures on this: I have talked with staff, I did meet with the applicant after one of the previous continuances, and I don't believe I have had any other conversations with people about this. It's been lingering far too long, and I'm glad to see that the paperwork that came in answers all the questions I had last time.

Since there's no member of the public here, I have read everything; I don't need a formal presentation.

If the applicant wouldn't mind coming to the microphone just for a minute for a couple questions, and hopefully this will be short and painless.

Good morning.

MR. NELSON: Hi. Good morning. I'm Bill Nelson, and I'm representing the owner as an agent in this matter. I work with Greg Orick Marine Construction.

HEARING EXAMINER STRAIN: Okay. There is no one here to hear this, so I don't think there's any opposition on that basis.

I have one clarification. Your paperwork came through, like we had talked, with all the corrections and the different changes needed to make the documents consistent, and I appreciate that because now they're accurately portrayed.

But on the staff report on the first page, the requested action is for a total extension of 56.46. And I know you didn't write the staff report, but elsewhere in the document submitted by you everything is 53.16. I did check your graphics. They all match up to 53.16. So is it 53.16 that you're looking for today?

MR. NELSON: Yes. I believe the old number was before we moved it in to get the shallower depth.

HEARING EXAMINER STRAIN: That's what I thought. I wanted to make sure.

I don't have any other questions. As I said, it looks good. Your changes were -- everything reflected what we talked about. I appreciate that. Thank you.

MR. NELSON: Thank you.

HEARING EXAMINER STRAIN: We'll turn to a staff report. Fred, you heard my first comment

concerning the correction to the extension. Do you have any problem with that?

MR. REISCHL: No, no problem at all.

HEARING EXAMINER STRAIN: Okay. Is there anything you want to add to the staff report or comments?

MR. REISCHL: As I mentioned before, I believe that there was one objection from a property owner to the north because of view. I explained to him that we were well within the setbacks and view shed, and I see he's not here today.

HEARING EXAMINER STRAIN: Okay. Had you received anything in writing from anybody objecting?

MR. REISCHL: No.

HEARING EXAMINER STRAIN: Okay. And I think, with the clarifications to the documents that we have, it does make this application much easier to understand what's being applied for. Previously, for example, the setbacks didn't match up. The overlays out to the survey and the depths didn't match up. Now everything does match up, and I have no other questions on it.

Just one last time, is there any members of the public here for the Bautsch boat dock extension that wishes to speak?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the meeting on that item, and a decision will be rendered within 30 days; hopefully before the holidays. That's the goal.

Okay. Thank you.

***With that, the next advertised public hearing is Petition No. PDI-PL20160003062, Foxfire Community Association of Collier County. It's for establishment of standards and location for the golf maintenance facility.

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: Thank you.

Disclosures on my part: I have talked with staff, I had also met with the applicant various times. Interestingly enough, we did not meet before today's meeting. We met before other meetings. There are needing some -- yesterday I did meet with staff. There are some needed changes to the document because there were some discrepancies that needed to be resolved.

Staff's prepared today to put those on the overhead, and they have submitted copies for the record and for us to review. Everybody will see those in just a few minutes.

And, with that, I ask if there's members of the public here for this one mostly so that, if the members of the public that are here oppose this, they can see what's happening when you talk about it. Is anybody here in opposition of this? Okay. My --

MR. HARRIS: I wouldn't necessarily --

HEARING EXAMINER STRAIN: Oh, you'll have to come up to the microphone and identify yourself, sir. And you'll need to be sworn in as well. I notice you didn't rise.

(The speaker was duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: Okay.

MR. HARRIS: My name's Wayne Harris. I'm a resident of Timberlake, which is the little community right next to Foxfire.

I'm not in opposition to it. I just -- in terms of setbacks and so on, it's certainly something that, since Irma, has become much more obvious. There's a buffer between Timberlake and Foxfire, and I just was hoping that we might be able to do something to reinforce that in terms of -- since the setback is going to be moved; something, some evergreens or some visual screens or something of that nature that would be of a practical nature for us.

HEARING EXAMINER STRAIN: Well, actually, I'll have a presentation, then, from the applicant so you can understand what they're doing, and then you'll have an opportunity to talk and address the issues after they get done, if you'd like.

MR. HARRIS: Thank you.

HEARING EXAMINER STRAIN: With that, Fred, I'm assuming you're representing the applicant?

MR. HOOD: Yes, sir.

HEARING EXAMINER STRAIN: Okay. You're going to have to provide some explanation and detail as to what you're doing so this gentleman can understand how this project may fit into this, so I'll leave it to you at this point.

MR. HOOD: I'm just going to put up an aerial of the area that is affected so we can kind of get an idea of what we're talking about here.

HEARING EXAMINER STRAIN: Are you familiar with what location of the Timberlake project?

MR. HOOD: Yes. South and west.

So, as I recall, the Timberlake property is south and west of the maintenance facility that is here at the intersection of Livingston and Radio Road.

This property that's being proposed to be redeveloped and have those development standards provided for that -- for that proposed redevelopment is not within any close proximity to Timberlake. It's -- it is in proximity to the car wash that is next door and that storage facility that you see to the southwest of this property, of the subject site. It's that oddly not rectangular property at that very corner of --

HEARING EXAMINER STRAIN: You need to talk a little closer to mike. You're not picking up.

MR. HOOD: It's that corner piece that is oddly not rectangular at the corner of Livingston and Radio Road at the northwest corner of Foxfire PUD.

HEARING EXAMINER STRAIN: So the gentleman earlier may want to speak again. And I want to outline the exact area that we're dealing with today. So it's not the entire Foxfire PUD.

It's down here, up to the corner, over, back down, and back to here. That is the only portion that I just outlined with my finger on the overhead that is subject to today's discussion. If there are other issues with buffers that were blown down and they're not sufficient any longer, at least to what the code required, that would be something that Foxfire is supposed to bring back up to code. If there's a problem with that, then the Code Enforcement Department could be called, and they could check it out, just to let you know, so...

Other than that, Fred, could you also -- you had said something earlier. This discussion today is not for an issue involving rebuilding or expanding the clubhouse.

MR. HOOD: No.

HEARING EXAMINER STRAIN: My understanding of this action today -- because I keep seeing staff write about that. This is merely to document where the clubhouse is and the outline of the property to which the clubhouse was built on by the SDP in 2000 and the standards created in order for that clubhouse to be where it's at.

MR. HOOD: Really quickly. It's not the clubhouse.

HEARING EXAMINER STRAIN: I'm sorry. It's the maintenance facility.

MR. HOOD: Right. Just the maintenance facility, and it's been there forever, and we're just memorializing that it is there and it is allowed to be there. And it just was not in the language of the PUD document. It was on the master plan with a note attached showing that the maintenance facility was here.

HEARING EXAMINER STRAIN: I reviewed all the documentation that you provided, and I'm very familiar with it. So I think with that, let's just move through the questions I have --

MR. HOOD: Sure.

HEARING EXAMINER STRAIN: -- and then that may help anybody else who has any interest to understand what we're doing here.

First of all, in reviewing the staff report, this indicated that you have a nonconforming use. And when I looked at the section of the code or the PUD that you were changing for the maintenance facility, you weren't adding another principal use to that section.

MR. HOOD: That's correct.

HEARING EXAMINER STRAIN: So even if we had accomplished today's meeting, you still would have had a nonconforming use. I suggested to staff that may not be the approach that was intended, because after I read the staff report I realized you may want to make changes to that facility, and if it never changes from

a nonconforming use, you wouldn't be able to do that.

Staff assured me that wasn't their intention; that they were trying to do exactly what we said and memorialize boundaries of the parcel and then provide setbacks from those boundaries. In regards to that, staff has changed the language in the staff report. If somebody could put that on the overhead. It will be on Page 3, the top of Page 3.

Why don't we go -- just pull that down. We'll get to the top of it. That will probably accomplish the goal. Oh, that's the old language.

MR. REISCHL: Yeah.

HEARING EXAMINER STRAIN: There it is. So instead of classifying it as a nonconforming use, which that wasn't what it is nor what it was intended, this language is being proposed by staff to clarify it. Do you have any objections to that language in the staff report?

MR. HOOD: No, we don't.

HEARING EXAMINER STRAIN: Okay.

MS. ASHTON-CICKO: For purposes of clarifying the procedure, I'd like to ask Mr. Bellows, the zoning director, a question.

Is the golf maintenance facility that's the subject of the hearing today a permitted use?

MR. BELLOWS: For the record, Ray Bellows, manager with zoning services section.

And the PUD lists the use as a permitted use, and the purpose of this petition is to reinstall the parcel boundary lines and development standards. So it is a permitted use and deemed to be a conforming use.

MS. ASHTON-CICKO: But it's not expressly listed as a permitted use?

MR. BELLOWS: That's correct, other than it's being depicted on the currently approved master plan.

HEARING EXAMINER STRAIN: Well, that takes us to the changes that are being requested to the Tract B section of the PUD.

Fred, could you put your changes on the overhead. We had talked about these yesterday. Either Fred. You've both got the same name, so whoever moves first, that's great.

I think that needs to be slid down a bit. Right there. Now over a little bit to your left, if you can. There.

On the top of this, this was -- the language was added referencing the same reference as in A1. They recorded plat book pages and the correct name. And we talked about -- staff and I talked about that yesterday for clarification.

On the second part of it, if you look at A, little i, the third line it talks about current locations, which is an attempt to create your setback standards. As surveyed and approved by SDP 2000-23, the difference there is -- did staff tell you what I had discovered yesterday?

MR. HOOD: No. That one I didn't specifically hear.

HEARING EXAMINER STRAIN: Okay. If you look at your SDP, your setbacks for both the soil bins and the other building, metal buildings to the south, were all 15 feet.

MR. HOOD: Yes.

HEARING EXAMINER STRAIN: If you look at your survey, your points of distance is -- the closest, you're down to 11.7 feet in one location. So you've got a conflict by that language --

MR. HOOD: Right.

HEARING EXAMINER STRAIN: -- because the survey and the SDP don't match up.

MR. HOOD: Match.

HEARING EXAMINER STRAIN: I suggested to staff, if we didn't change this you'd have to come back in for a variance because it's too much to do administratively, and I sure don't think you want to be in this process again.

So I asked that we state the setbacks that we're looking at for those southern buildings. And you'll be looking at the setbacks as existing on the survey between the western boundary and the first group of soil bins, and then the ones along that south boundary and those other buildings, those outbuildings that are there. And you'll see at least four different numbers on the survey that don't match up to the SDP.

MR. HOOD: Okay.

HEARING EXAMINER STRAIN: So at some point I will need a corrective document referencing those. I'll need Fred to verify that the references match up, as we've just discussed, and then we can enter that into any discussion or decision that comes out of this.

MR. HOOD: Sounds good.

HEARING EXAMINER STRAIN: If you look at the last, most bottom paragraph, I know you mimicked the language or used parts of the language, and Heidi corrected some of it, from the original document, 93-31, I believe; however, that could have been written a little bit better, that original document that is. And the bottom line and where it says, "whichever is," it used to say "whichever is greater," and it really left a problem for staff trying to interpret what that means. So we just said "whichever is most restrictive." It will be the same. Do you have any objection to any of those changes on this page?

MR. HOOD: We don't have any problems with those.

HEARING EXAMINER STRAIN: Okay. And let me make sure I have all of my issues discussed with you. And I do. So, Fred, that's all I've got. Do you have anything else you want to add?

MR. HOOD: I do not.

HEARING EXAMINER STRAIN: Okay. I've got to check one more issue on staff recommendations. There are none, so I don't have to ask you about those. Thank you.

MR. HOOD: Thank you.

HEARING EXAMINER STRAIN: Fred Reischl, do you want to provide a staff report?

MR. REISCHL: Thank you, Mr. Strain.

Staff agrees with all the changes that were discussed, and we recommend approval.

HEARING EXAMINER STRAIN: That's a nice, safe way to conserve my voice, Fred. Thank you.

That takes us to our public, members of the public. Are there any members of the public here who wish to speak on this issue? If you have any issues at all, just please come up to the microphone. Yes, sir. You'll need to come up and be sworn in and identify yourself.

(The speaker was duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: You'll need to talk close to the mike.

MR. SULMASY: Better?

HEARING EXAMINER STRAIN: Yes, sir. Thank you.

MR. SULMASY: My name is Warren Sulmasy. I'm a resident of Davis Boulevard. And I'm here to really -- and I know this is going to upset a lot of people. I'm here speaking against the development by Foxfire. Foxfire, going back about 15 years ago, shut down all the opportunities for everybody who lives on Davis Boulevard from Santa Barbara all the way up to --

HEARING EXAMINER STRAIN: You're talking about the internal road that was shut down between Davis --

MR. SULMASY: Yeah. Right, right.

HEARING EXAMINER STRAIN: Okay. I've been here 40 years. I remember. I used to use that road.

MR. SULMASY: You remember that one?

HEARING EXAMINER STRAIN: Yes, absolutely.

MR. SULMASY: I think instead of talking about developing land in that area there for Foxfire, we should be talking about extending Livingston Road. Livingston Road --

HEARING EXAMINER STRAIN: No. Unfortunately, that's way, way outside of the discussion here today. And you can have an opportunity to talk about that subject, but there's a public comment section later in our agenda.

MR. SULMASY: Yes.

HEARING EXAMINER STRAIN: As soon as I finish with these people, we can go into that public comment, and that would be more appropriate. If you have anything relative to this maintenance facility's positioning on the property or anything like that, that's the only thing that this portion of the meeting's about.

MR. SULMASY: Well, if there is an extension, if it was -- if it does come up and we hit the area where there is talk about extending Livingston Road all the way down to Davis Boulevard, will I be correct in

speaking at this forum?

HEARING EXAMINER STRAIN: If you just wanted to get it off your chest but, to be honest with you, there's nothing I can do about it. That has no relevance to anything that I do or this particular board. That would be something that the Board of County Commissioners would have to decide on because it would involve a lot of eminent domain takings and things like that, the cost of that from a budget perspective, and the Transportation Department would want to be involved in order to even decide if they want to pursue it. For me to hear it, there's no value in my understanding of it at this point, so...

MR. SULMASY: Okay. I know I'm late into the game. I guess what was said, I guess -- all of a sudden I have this mailed to me, and I said, wait a minute, this is something that really affects us, everybody who lives on Davis Boulevard. So this is not the place. I should go to the Board of County Commissioners?

HEARING EXAMINER STRAIN: You could -- yes, you can petition or you can request of the County Manager an opportunity to talk under public comment, and I think they allow up to 10 minutes, or I'm not sure the details. Then you'll have to tell them what subject matter you want to talk about. They'll probably make sure the right staff people are there to hear you. Then, should the Board want to pursue it, they'll then direct staff to pursue it, or they'll have staff respond to your question as to why we can or cannot do it, and it may end there. There's nothing I can do about that issue.

MR. SULMASY: Okay. All right.

HEARING EXAMINER STRAIN: All right. Okay.

MR. SULMASY: So there's no point in me speaking at all here today?

HEARING EXAMINER STRAIN: No. I mean --

MR. SULMASY: Okay.

HEARING EXAMINER STRAIN: -- it's a nice background, sir, but there's nothing I can help you with today.

MR. SULMASY: Okay. Thanks so much.

HEARING EXAMINER STRAIN: Thank you. Is there anybody else from the public that would like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we will close the public hearing on this matter, a decision will be rendered within 30 days, and I'll do my best to get it out before the holidays. Thank you all for attending.

MR. HOOD: Thank you.

HEARING EXAMINER STRAIN: ***The last item on today's agenda is Item 3C. It's Petition No. CCSV-PL20170002036, and it's for the Rob Longwell and Pamela Gibson Longwell request for a variance to the coastal construction setback line. It's up in Vanderbilt Beach.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

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

HEARING EXAMINER STRAIN: Thank you.

With that, my -- first of all, are there any members of the public hearing other than the applicant to hear this item, participate in this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. My disclosures on this: I have talked with staff, County Attorney's Office, I'm familiar with the site, and I've read all the files. And with that, we'll move directly into the case itself.

Since there's no members of the public here other than the applicant, is the representative of the applicant -- sir, do you mind coming up, identifying yourself for the record.

MR. MOORE: Certainly. My name is Brett Moore of Humiston & Moore Engineers.

HEARING EXAMINER STRAIN: You know, I guess, with my voice, I lost my memory. I remember you now; sorry.

MR. MOORE: That's okay.

HEARING EXAMINER STRAIN: I shouldn't have asked you to come up.

First of all, I don't need a formal presentation; I've read everything. There were a series of recommendations made by staff. Do you have any objections to those recommendations?

MR. MOORE: No objections at all.

HEARING EXAMINER STRAIN: Okay. I'm going to move through this real quick to make sure I don't have any questions. You're reducing the intrusion of the variance by about 20 feet; is that correct?

MR. MOORE: Approximately, yes.

HEARING EXAMINER STRAIN: And I notice that there's a letter of no objection from the neighbor to the north.

MR. MOORE: That's correct.

HEARING EXAMINER STRAIN: And we'll keep this simple; that's all I have. What you're doing is reducing the intensity of the variance, so that's obviously better than what we've got today, so thank you.

MR. MOORE: You're welcome.

HEARING EXAMINER STRAIN: Okay. Summer, first of all, I want to tell you you did an excellent staff report. It was one of the most thorough and comprehensive as far as questions go I've had come in, so I want to thank you for that.

I did ask if you could bring a couple documents for the record. Can you provide those either -- to the court reporter especially.

MS. ARAQUE: Yes. Mr. Moore has those documents.

HEARING EXAMINER STRAIN: Okay.

MS. ARAQUE: The letter of no objection and also the letters that were sent to the adjacent property owners.

HEARING EXAMINER STRAIN: If you could provide copies of those to the court reporter, that would help, and that would make it part of the record then.

And, Summer, did you have any staff report, any formal staff report you'd like to discuss?

MS. ARAQUE: Staff recommends approval with the conditions in the staff report.

HEARING EXAMINER STRAIN: You know, you guys must be getting together and coming back with ways to make staff reports simple, so I appreciate that.

I don't have any questions. Like I said, you did a really good job --

MS. ARAQUE: Thank you.

HEARING EXAMINER STRAIN: -- in the staff report, so there's nothing there I have concerns over.

Are there members of the public that would like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we will close the public hearing on that. A decision will be rendered within 30 days. I'll try to get it out before the holidays. Thank you for your attendance.

MR. MOORE: Thank you.

HEARING EXAMINER STRAIN: The next item up is other business; there is none.

The last item is public comments. Is there any members of the public here who would like to comment on anything in particular today?


(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we are adjourned. Thank you all for attending today.

December 14, 2017 HEX Meeting

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:27 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 12-21-17, as presented _____
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
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