

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida,  
January 11, 2018

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: Welcome to the Thursday, January 11th meeting of the Hearing Examiner's Office. If everybody will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you. We have a few housekeeping matters.

Speakers will 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.

The first item up is the review of the agenda. We are announcing one change to the agenda today, and that is for Item 3.B. Item 3.B is for the Pezzettino RPUD -- or maybe the Pezzettino Di Cielo RPUD -- by the applicant, Distinctive Residential Development at Livingston, LLC.

At the 11th hour yesterday afternoon we were notified of a procedural issue involving a legal concern by one of the property owners. We need time to research that before we proceed with that hearing, so that particular advertised public hearing, Item 3.B, is continued until January 25th. Same time, same place, but that's our next regular meeting.

And so that one, if you're here for that one today, we will not be discussing that one today because of the issue raised late yesterday. Sorry for the short notice.

Ray?

MR. BELLOWS: We did have one registered speaker on that. Kathy Potts. She's here.

HEARING EXAMINER STRAIN: Ms. Potts, I hope you could just nod -- I hope you can -- otherwise you'll have to come up to the mic and identify yourself if you want to speak on this matter. Although it would be better if you could wait till we --

MS. POTTS: Well, the only problem, sir --

HEARING EXAMINER STRAIN: You'll have to come up, address -- tell us your name for the record, and you'll need to be sworn in by the court reporter.

(Witness was duly sworn.)

HEARING EXAMINER STRAIN: Sorry for the inconvenience.

MS. POTTS: Well, I would love to be here on the 25th, but Collier County is expecting me at jury duty that entire week. So unless I get lucky and don't have to go to jury duty.

But I think -- I'm a Mediterra resident and I live on the east side of Mediterra.

HEARING EXAMINER STRAIN: Nancy, whoever is talking in the audience, would you please stop talking now? We've got someone speaking and we cannot hear over your discussion.

I'm sorry, Miss.

MS. POTTS: And there has been a negotiation between the Mediterra MCA, Mediterra Community Association, with Distinctive Homes, who is the developer and/or owner. And many of the residents, particularly on the east side, we have no real representation on the MCA board from the east side of Mediterra.

So we would just like an opportunity -- and I did make contact with Mr. Arnold, who is a planner for Distinctive. So we would -- you know, I engaged with him and said I would like to express some of the things that the residents are interested in.

So as a follow-up to the delay, that was legally appropriate, we would like some of the east side residents just to have a conversation and try to smooth this out so that it's a win/win for everyone. So...

HEARING EXAMINER STRAIN: I think that's a good point. And I'm -- it's fortunate that we had the delay, it will give Mr. Arnold time.

And I know, I've worked with Mr. Arnold in the past, he's always responded to requests like this, so my assumption is he will do so before the next two weeks is over. So hopefully we'll have a positive report from you and your organization. So thank you.

MS. POTTS: Thank you. And if I'm lucky, I'll be here on the 25th.

HEARING EXAMINER STRAIN: I hope you are. Thank you very much.

MS. POTTS: Thank you. I appreciate it very much.

HEARING EXAMINER STRAIN: Is there anybody else on this particular item that cannot be here on the 25th that would like to speak today?

(No response.)

HEARING EXAMINER STRAIN: Okay, this item, Petition No. PDI-PL201600003482, Pezzettino Di Cielo RPUD, is continued to January 25th.

With that -- thank you all. And with that we'll move on to the remaining advertised public hearing. It's 3.A, Petition No. PDI-PL20170002544. It's the Livingston Pro Center, LLC for an insubstantial change to the Hiwassee PUD. It's on Livingston Road just south of Pine Ridge.

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: Thank you.

Now, members of the public here for this, I see two or three people. And I wasn't looking up while everybody stood.

THE COURT REPORTER: Not everyone was sworn in.

HEARING EXAMINER STRAIN: Okay. If you intend to speak today, if you're here to address this matter, you need to be sworn in. So I'll ask one more time if anybody is here to speak and has not been sworn in, please rise.

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, I have some disclosures. I have received some correspondence, a letter of no objection from the homeowners association of Kensington. I've talked to staff; I've talked to the applicant a couple of times. And we're here today to clarify some matters that were again found late yesterday. And I met with the applicant early this morning so we would have a more productive meeting.

Bob, since there are members of the public here, regardless of whether or not they may speak, can you at least offer us some narrative in regards to this project, and then we'll get into the fine points you and I talked about earlier?

MR. MULHERE: Yes, sir. I guess I could use the visualizer and locate the project for everybody. I'm sorry I have my back to you, but I've got to look forward.

So on the visualizer -- maybe if I stand over this way -- is an exhibit, Exhibit A-1, which shows a portion of the Hiwassee PUD, the portion where most of these changes are effective that we're proposing.

And I want to give you a little bit of background. My client, Tom Taylor, who is here with me, owns this property.

The northern portion of the PUD was sold and is under development, has an approved SDP for self storage. So this is the southern portion and it's under review for SDP.

And during that process at some point it was discovered that there was a county force main located at various depths on the property off of Livingston Road, I think as deep as around 20 feet into the property, without virtue of an easement. I guess apparently this happens from time to time.

And once that was discovered, the county was anxious to correct that. And my client has entered into agreements with the county to provide easements at no cost to the county, to relocate that easement. At the same time the county wanted a few other easements for some additional infrastructure and those easements have also been granted.

So the property -- we had to resolve these issues. And as we began to look at these issues, a few other issues arose. For example, the southerly most building closest to Kensington and Edenwood Lane have an issue relative to the setback and some buffering issues, landscape buffer issues. And we've addressed those in this insubstantial change.

We met with the Kensington Park Master Association. And as, Mr. Strain, you indicated, they provided a letter of support. And we have entered into a private agreement with them to provide financial assistance in sharing the cost of improving the landscape buffer adjacent to Edenwood Lane.

I'll show you a picture. Let's see which one best shows. Well, this one does pretty well. There's a little glare on there.

HEARING EXAMINER STRAIN: You're upside down, Bob. Just flip it around 180 degrees would be good.

MR. MULHERE: There we go.

So the buffer that I am referring to is right -- get my bearings -- right here. And I'm assuming that photo may have been pre-Irma. It doesn't show justice in there but I did provide some pictures when I submitted the PDI. It was a very substantial landscape buffer, nicely landscaped with the thick hedge and some royal palms and some other canopy trees. I think there was some damage as a result of the storm.

But as it turns out, the Kensington Park Master Association was already looking at replacing some of the vegetation and improving that buffer. So it was kind of a natural tie-in for us to support them in that effort. And of course we are not providing, as part of this PDI, a landscape buffer on our property, so we'll have a shared buffer there.

There was some other clean-up language which was required relative to transportation requirements, relative to utility requirements, relative to the dedication of these new easements that I referenced.

And two deviations: One amending an existing deviation, and one providing for a new deviation. They both deal with landscaping. The existing deviation had allowed improvements to the existing FP&L service road by constructing a bike path. We've struck through that. We've struck through the requirement for the bike path because the county has agreed to cover the cost of construction of that bike path.

And as I know you're aware, Mr. Strain, there was a valuation of the value of construction of the bike path and the value of the easements, and they were within \$500 in that easement, so they're obviously very close.

HEARING EXAMINER STRAIN: That information -- yes, that information was just finalized by Toni Mott's office over at Real Property about a week or so ago, at least I got the information, so...

MR. MULHERE: Great. So we've asked for a deviation, as I indicated, for the southerly buffer, and then a deviation related to the foundation plantings.

And you and I had a discussion the other day relative to that second deviation which was for foundation plantings so that we would be able to locate those anywhere on the site due to the unique nature of this development and the type of use. And I think you had a suggestion for an additional sentence there that would limit this deviation to the development of the storage facility.

HEARING EXAMINER STRAIN: Your justification for the deviation raised, the proposed buildings will function as automobile garages with the site generally functioning as a vehicular use area, the foundation plants to be located on-site and not eliminated.

So the purpose of moving the foundation plantings is because they are being used as automobile garages, functioning with vehicular use area, so -- and if that use changes then the deviation shouldn't apply.

So as long as you're using the use you've shown on the overhead, that fits the deviation request. But the deviation doesn't have that limitation on it, so I just suggest that that needs to be added.

And I'm not sure we're going to complete today, so by the time we do finish this, you should have the language solid and solidified by that time.

MR. MULHERE: I was thinking -- I mean, I can finalize it before, but I was thinking something that this deviation is limited in its application to the auto storage and self-storage use.

HEARING EXAMINER STRAIN: Well, auto storage and self storage aren't the same.

MR. MULHERE: They're --

HEARING EXAMINER STRAIN: Self-storage buildings are not vehicular use buildings, they're 100,000 square feet air conditioned mini storage facilities. I don't think we want to go there --

MR. MULHERE: That's fine. Then it's limited to the auto storage use.

HEARING EXAMINER STRAIN: Yeah.

MR. MULHERE: Okay. So that summarizes the changes.

Now, we've realized that another issue has come up. It's -- I think there was some improper labeling on the master plan. And staff brought this to our attention actually this morning, so I want to go over to the visualizer and try to explain that and then we'll go from there.

HEARING EXAMINER STRAIN: That did come up late yesterday, thanks to the institutional knowledge of Heidi Ashton, our assistant county -- one of the county attorneys. She remembered this was an eminent domain case and -- partially in years past, and that Livingston Road was actually an easement, not a deeded right-of-way. As a result, the language that you see here that's highlighted would be problematic with that --

MR. MULHERE: So I'll read that.

So the language that we had under C-1, front yard, was Livingston Road, 25 feet measured from the property line, exclusive of any easements.

The fact is that as it turns out, where we thought the property or what we labeled the property line may not in fact actually be the property line. Because what we found out -- or I found out this morning is that Livingston Road is an easement. So it wasn't granted fee simple to the county, it's an easement.

And what we want to verify or make sure is that the location of the western boundary of that easement is the same line that we have identified as a property line.

We would propose to change this language to read: Livingston Road, 25 feet measured from the western boundary of the Livingston Road easement, and then provide the OR book and page.

HEARING EXAMINER STRAIN: Subject to you verifying a survey that matches up to that point.

MR. MULHERE: Correct.

HEARING EXAMINER STRAIN: Because the last thing you need is to find out the lan- -- because if the easement shifts a foot or two and you're back again into this whole system again, we would close this -- we would end up closing this hearing today if that was not the case.

You also have text on pages -- Exhibits A and A-1 that will need to be modified.

MR. MULHERE: Correct.

MS. ASHTON-CICKO: Mr. Chair, for the record, he's going to have to refer to the road right-of-way, because there's a slope easement as well which is an additional 10 feet, which may overlap with one of the easements.

MR. MULHERE: Maybe that --

MS. ASHTON-CICKO: You want to make sure that it's the road easement.

HEARING EXAMINER STRAIN: Thank you.

MR. STONE: I think as long as we reference the OR book and page, that should clear it up.

MR. MULHERE: Okay. That's the intent. We'll lay it out. We'll have our surveyors lay it out between now and two weeks from now, make sure that we don't have any issues. Assuming we don't, we will make those changes and provide them to you.

HEARING EXAMINER STRAIN: I believe the intent is there's a red line on the western side of Livingston Road there, and that's the red line that you're trying to locate to make sure the measurement will start from there based on the A-1 reflection graphic that has been provided.

MR. MULHERE: Correct. And I think was this one from the property appraiser?

HEARING EXAMINER STRAIN: Right. They're looking at a different line, a different location. They are known to be off by several feet in different parts of the county. So that's the piece that I think you may want to clear up.

MR. MULHERE: Yeah, we want to make sure. I'm thinking that's really defining the taxable boundaries of the parcel. Because if this has really no use as it's part of the slope easement or a compensated right-of-way easement, they may not be taxed. I don't know the answer to that. But we'll actually use the OR book and page and the legal description there to locate the line.

HEARING EXAMINER STRAIN: Well, just as a point of clarification, if they are looking at a taxable portion, your compensating right-of-way and your turn lane doesn't extend the full length of Livingston Road out to Pine Ridge. And your property goes out further than --

MR. MULHERE: Yeah, that's --

HEARING EXAMINER STRAIN: -- that turn lane is. So maybe --

MR. MULHERE: That's something we'll --

HEARING EXAMINER STRAIN: -- there's another piece that has --

MR. MULHERE: Yeah, that's something -- yes, you're right, you're right.

Unless there are other questions that you have, sir, I think that adequately explains the proposed changes, as well as the revisions that are necessary to address the easement versus property line issue.

HEARING EXAMINER STRAIN: I'm looking at my notes and the issues you've just pointed out as needing correction were the ones that we had discussed and the ones I remember, the only ones I know of.

There is a clarification. I just want to make sure that it's understood that there is a provision in the PUD that requires a developer to construct the pathway in the FP&L easements at eight or 10 foot wide -- I think it's 10 foot wide bike pathway.

That pathway's value and the construction of that value is equivalent within a few hundred dollars to the easements that you're now providing that the county did not have before. And for that reason that provision in the PUD is going to be rewritten so that it becomes the county's responsibility now to construct that pathway.

I understand that and I've read the appraisals, they're fine, and I just wanted to make that clarification very clear for the record.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: And other than that, I don't have anything else on this issue. You've answered all my questions.

We'll turn to any public speakers. Thank you.

MR. MULHERE: Thank you.

HEARING EXAMINER STRAIN: Are there any members of the public here wishing to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Is there a staff report?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl, Planning and Zoning.

Staff was supportive of the PDI prior to these changes and sees no reason why the changes would make that -- would alter that decision.

HEARING EXAMINER STRAIN: Okay, so staff is still in support.

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: I don't have any questions of staff; everything came out fairly self-explanatory.

The corrections that the applicant has agreed to make will be provided between now and when we finish this.

Normally what would happen, we would close the hearing today and I would have a decision within 30 days, usually within a week or 10 days. Because of the discrepancy or potential concern over that location of Livingston Road, and you're going to confirm with your surveyors that the lines match up or if they don't we'll have to readdress that, so we're going to continue this item for two weeks to resume on January 25th to revolve that issue. You'll be one of the first people up.

Do you have any -- do you agree to that continuance?

MR. MULHERE: Yes. That's great. I think we need to verify that line.

HEARING EXAMINER STRAIN: Any problems with staff on that?

MR. REISCHL: No problem.

HEARING EXAMINER STRAIN: Okay. Do any members of the public have any comments on this action?

(No response.)

HEARING EXAMINER STRAIN: Just so -- I don't have a calendar in front of me, I just want to make sure our days are right. I actually continued something one time and we had to correct it before the

meeting was over.

Yes, it is the 25th, that is the next meeting. Okay, so we're good.

With that, we will close this hearing and we'll continue it to the January -- we won't close it, we'll just continue to the January 25th meeting.

MR. MULHERE: Thank you, I appreciate everyone's help. Thank you.

HEARING EXAMINER STRAIN: Thank you.

That takes us to the -- back to the agenda.

The other item, and I know some people came in during the discussion, the Pezzettino Di Cielo RPUD was previously continued to January 25th as well.

There is no other business.

Any members of the public here that wish to comment on anything?

(No response.)

HEARING EXAMINER STRAIN: Okay, with that we'll adjourn this public hearing. Thank you.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:20 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, Hearing Examiner

ATTEST:

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 1-30-18 as presented  or as corrected \_\_\_\_\_.

Transcript prepared on behalf of  
U.S. Legal Support, Inc., by  
Cherie' R. Nottingham, Court Reporter and Notary Public.