

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 14, 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
John Kelly, Senior Planner
Scott Stone, Assistant County Attorney

PROCEEDINGS

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

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

A couple of announcements: 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 review of the agenda: We have scheduled four items for today; two of those are being continued. I'll read those off and announce their continuing date.

First one is 3A. It's Petition No. VA-PL20160002427, and that's for the Florida Power & Light Company's request for a variance on an existing easement area that they have for a communications tower, and the second one is 3B, Petition No. VA-PL2016002426. Again, it's for Florida Power & Light for the same reason, a communications tower variance on a different location. Those two are being continued to the June 12th meeting in this room.

And are there any members of the public here for the Florida Power & Light issues?

(No response.)

HEARING EXAMINER STRAIN: Okay. So with that, there's no other addenda to the agenda. We'll move right into our two advertised public hearings.

***The first one is 3C. It's Petition No. VA-PL20140001930, Angelo and Gail Lucarelli, and it's for a side yard variance for a property located at 500 Euclid Avenue.

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 talk -- if you want to talk on this item, anybody in the audience, you have to be sworn in first.

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part: I've had meetings with staff, I've not talked to any representatives of the applicant, but I have spoke to a gentleman from the neighborhood this morning. And other than that, we'll move right into it.

Before we go too far, I know that no members of the public except -- sir, are you the applicant?

MR. SHEEHAN: No, I'm a neighbor.

HEARING EXAMINER STRAIN: Okay. Thank you.

We have one neighbor, and there's other members of the public here. Are any of you others here for this item? And I see heads nodding yes, okay.

Based on that, I normally have read -- I've always read everything before the meeting starts and, generally, I just ask my questions and we move on, but when there's members of the public here, for their sake, I ask the applicant to make a presentation as to exactly the parameters of the case.

So who is -- are you representing the applicant? Please come on up, identify yourself and, if you don't mind providing a short presentation explaining what's going on, we'd appreciate it.

MR. GRABINSKI: Certainly. Thank you for your time.

Matt Grabinski, an attorney with Coleman, Yovanovich & Koester representing Angelo and Gail Lucarelli.

Mr. and Mrs. Lucarelli are the aunt and uncle of my wife. I've known them for about 10 to 15 years now. They've lived at the subject property since 1989, 1990'ish. It's in the back of Willoughby Acres.

The variance that they are seeking pertains to a large brick fireplace that Uncle Angelo built approximately 15 to 20 years ago. From a practical standpoint it's used once a year. For Easter he has a large cookout and invites a very, very large extended family of rowdy Italians and all of their friends over for fellowship and enjoyment.

It may be used one or two other times during the year for graduation parties and the like. It is not something that is used daily or even weekly.

Up until 2013, 2014, they had never received any complaints from the county or anybody else. It wasn't until, I believe, in 2014, four years ago, that a code enforcement notice was sent to them, and we started this process of pursuing relief for them that we feel is equitable under the circumstances.

I think the application materials speak for themselves. There's pictures and diagrams in the application materials of this brick fireplace.

I'm not going to waste more time than is necessary for this unless you have questions. I would just simply like to respectfully point out that if the brick fireplace was a few feet further north, making the variance unnecessary, I don't think that any objections that a neighbor may raise, no matter how reasonable or unreasonable they might be, would be affected by a change in the location of the fireplace in that regard.

And so with that, I appreciate your time, and I'll take any questions that you might have for me.

HEARING EXAMINER STRAIN: I do have a couple of questions. In the discussions that were part of the staff report under the description, at one point it talks about it as a brick fireplace and the other times a brick fire pit. Is there a difference? I mean, a fire pit seems to be more of an open operation. And the pictures that were included in the staff report seem to indicate it's more of an enclosed fireplace with a central area for barbecuing or whatever you would use it for.

MR. GRABINSKI: That's correct. It is not an open pit. It has several stations for cooking. All of those stations were built and designed so that whether it's wood or charcoal that's used for fuel would be in an enclosed area so that the heat is simply rising up just like a portable Weber grill only on a much larger scale, and it's brick instead of steel.

HEARING EXAMINER STRAIN: Okay. And in the staff report, there was a recommendation. I spoke to staff about it yesterday because I was concerned about the way it was phrased. First of all, it's basically suggesting a recommendation for approval -- it is suggesting a recommendation for approval from 7.5 feet to 4.5 feet.

But the last part of the sentence -- I've asked staff that if this is to be part of the decision, that I don't believe the last part of it should be supported by that decision because it has nothing to do with today's action. It basically says it should be stipulated that approval is conditioned upon the applicant applying for and obtaining building permits for said fireplace to include satisfaction of all inspections in issuance of the certificate of occupancy and/or completion, whichever is applicable.

Now, those items are going to occur regardless of how we -- I mean, if this is decided affirmatively today, then those will occur automatically. They don't need to be part of the additional recommendation. And the reason I'm concerned about it is I don't know if they need a building permit. That's outside of the purview of this office. That's the Building Department's office.

And I don't want to put something here that may be impossible to attain if it's not needed. So do you have any objection to that change, should this be approved?

MR. GRABINSKI: No objection whatsoever.

When this first came up, that was our initial argument to the county was that it wasn't a structure. At the end of the day, we wanted to just get to an equitable resolution for the Lucarellis. And so the discussion with county staff has always been, if we can get a variance, if you will support this on the condition that we come in for an after-the-fact permit or the like, we're happy to support and comply with whatever reasonable requests, you know --

HEARING EXAMINER STRAIN: Well, if you come in for an after-the-fact permit, part of that process may include looking at the time frame in which this was built. Do you know when it was built, since you may have participated on that property? Because the Code Enforcement said around -- they thought it was around 2002 to 2003. One of the entries in the staff report said around the early to late '90s. I'm not sure which it is.

MR. GRABINSKI: There's a letter that Angelo and Gail wrote for the variance application where they indicated that the approximate year for the barbecue pit was 1998.

HEARING EXAMINER STRAIN: That may have a bearing on how you try to obtain or need to

obtain a building permit. Our codes have changed over time, and we at one time had the Southern Building Code versus the Florida Building Code. Those time frames may have different applications for the type of structure you have here or whether it is even a structure under the building code.

So I'd suggest you look into that as you go through with whatever further permitting you need, so...

Other than that, I don't have any other questions, and I will have a couple comments or questions from staff, so thank you.

MR. GRABINSKI: And to be clear, if the variance can be granted without the need to get a permit for the fire -- for the fireplace structure, we would be --

HEARING EXAMINER STRAIN: The variance will be independent of the building code issues. We're not -- I'm not here to review building codes --

MR. GRABINSKI: Thank you.

HEARING EXAMINER STRAIN: -- so thank you. Appreciate it.

And we'll -- if you want -- if there's any comments from the audience that may require rebuttal, you're more than welcome to have rebuttal afterwards.

MR. GRABINSKI: Okay.

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

MR. KELLY: I basically agree with what was just said. The only addition, I had contact from one person on Erie Drive indicating that there might be a problem with easements. I did check with our Engineering Department, and the only easement of record attached to the property is a private utility easement over the north and south five feet of 350 Euclid Avenue. Other than that, I have nothing to add.

HEARING EXAMINER STRAIN: Well, I did notice that the surrounding subdivided properties, most of them have easements on the ones that did show up, so that may have been the reference in thinking it applied over to that property, because I didn't see any of those properties either, so...

Okay. Are there any members of the public here who would like to speak? Okay. Hearing none, there's no reason for --

MR. BELLOWS: He raised his hand.

HEARING EXAMINER STRAIN: Oh, I'm sorry. I didn't see you. Sir, do you want to come up and identify yourself for the record.

MR. SHEEHAN: Good morning. My name is Patrick Sheehan (phonetic). I reside in Erie Boulevard.

The fireplace that I'm hearing about is probably 20 feet from my master bedroom window. I'm in big favor of whatever they want to do in the property. I didn't quite know what this hearing was thoroughly about, so I'm just trying to understand. It's basically just a movement of that fireplace, which has not bothered me whatsoever for that two years I've been there.

So the meaning of this hearing, if I could ask, is mainly just the relocation of that, and it's not necessarily to build structures closer together; is that correct?

HEARING EXAMINER STRAIN: No. What's happening is where that barbecue fireplace was built is three feet closer to the property line because it's a fixed fireplace.

MR. SHEEHAN: Right.

HEARING EXAMINER STRAIN: Now, if it was on wheels --

MR. SHEEHAN: Right.

HEARING EXAMINER STRAIN: -- it would be no problem. But because it's fixed, it comes into our code as considered a structure.

MR. SHEEHAN: Okay.

HEARING EXAMINER STRAIN: And it's three feet closer than it's supposed to be to the property line. So the request by the applicant is let me leave it where it is and not make me move it three feet. From the applicant's perspective, it doesn't make a lot of sense; the 3-foot difference won't make much difference.

MR. SHEEHAN: Very good.

HEARING EXAMINER STRAIN: And it sounds like, from your perspective, you haven't had a problem with this either?

MR. SHEEHAN: Currently I have not, for the two years I have resided there. I just wanted to make sure it wasn't more homes being built in a tighter location, which brought me here.

HEARING EXAMINER STRAIN: I had another gentleman today thinking the notice was about density, and he was rather concerned about it. You can't blame him. Density is an issue across the board in the county right now.

MR. SHEEHAN: Thank you for your time.

HEARING EXAMINER STRAIN: But there is no density issue on this. It's just strictly this three feet.

MR. SHEEHAN: Thank you.

HEARING EXAMINER STRAIN: You're very welcome. Thank you.

Anybody else that wishes to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we'll close the public hearing, and a decision will be rendered within 30 days. Thank you-all for attending. Appreciate it.

***Next item up is Petition No. BDE-PL20170003371. It's for the Kevin Hale boat dock extension at the Landings at Bear's Paw development.

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 to Mr. Hale; talked to Jeff on the phone a couple of times; I've met and talked with staff.

And is there any members of the public here for this particular item, whether you're going to speak or not?

(No response.)

HEARING EXAMINER STRAIN: Okay. Well, Jeff, this is going to be easy. We've done this many times at this location. This boat dock seems to be consistent with all the others that you've processed at the location. I had hoped at one time they'd all be processed at once. That would probably save time and money, but it doesn't seem to be coming out that way.

MR. ROGERS: I agree.

HEARING EXAMINER STRAIN: I have no questions on the application. It follows the pattern that's been utilized along that entire frontage.

So with that, Jeff. Unless you want to add something to the record, I don't have anything else.

MR. ROGERS: No, Mark. Thank you very much. Appreciate your time.

HEARING EXAMINER STRAIN: Okay. John, did you have anything you wanted to add to the record?

MR. KELLY: No.

HEARING EXAMINER STRAIN: Okay.

MR. KELLY: Hold on just one second. I did receive email from our Stormwater Department that they had no issues with the facility.

HEARING EXAMINER STRAIN: Okay. Thank you.

Jeff, thank you.

MR. ROGERS: Thank you.

HEARING EXAMINER STRAIN: Are there any members of the public that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing, and a decision will be rendered in 30 days.

And the last item on the agenda is adjournment. And we are -- oh, first of all, is there any public -- members of the public here that would like to speak?


(No response.)

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HEARING EXAMINER STRAIN: Hearing none, this meeting's 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 9:15 a.m.

COLLIER COUNTY HEARING EXAMINER


MARK STRAIN, HEARING EXAMINER

ATTEST
CRYSTAL K. KINZEL, INTERIM CLERK

These minutes approved by the Hearing Examiner on 6-26-18, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
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