

November 8, 2018 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
November 8, 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
Tim Finn, Principal Planner
John Kelly, Senior Planner
Scott Stone, Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, November 8th, 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: If you feel like you're up north this morning because it's so cold in this room, so do I. But our air-conditioning system seems to never get fixed properly.

With that, a few announcements this morning. 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.

And that takes us into review of the agenda. We have a couple changes. The agenda has been advertised with four hearings this morning. The middle two, Item 3B and 3C, the Mitchell and Karen Cooper dock extension and the Mitchell and Karen Cooper variance have been moved to the Planning Commission. I don't know a date yet as to when the Planning Commission's going to hear that, but those two items will not be up for discussion today. It will not be part of this meeting.

And that leaves us with two remaining advertised public hearings, and I'll call out the first one, and that's the one we'll start with.

***It's 3A, Petition No. VA-PL20180001716, the Southpointe at Windstar Marina Association, Inc., and Windstar on the Bay -- Naples Bay Master Association, Inc. It's for a variance to raise a wall -- to allow a wall to go up to eight feet on the south property line.

All those wishing to testify on behalf of this item, please rise and be sworn in by the court reporter. If you intend to speak on this item, please stand up and be sworn in.

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

HEARING EXAMINER STRAIN: Okay. Disclosures on my part: I've had some correspondence and a phone call with the applicant, the applicant's representative, and various calls and discussions with staff. I have reviewed all the documents relating to the case.

And with that, I'll move to have the applicant now provide a presentation.

And, John, if you don't mind coming up to the microphone, identify yourself. I'm assuming you're prepared to discuss.

MR. RIBES: I'll spend less than five minutes.

HEARING EXAMINER STRAIN: That's fine. He's got to --

MR. BENOIT: I'll give him a mike.

HEARING EXAMINER STRAIN: Okay, that's fine. If you'll move the mike down, that's great.

MR. RIBES: I didn't have this the last time we saw each other.

HEARING EXAMINER STRAIN: I was going to ask you. I noticed that, yeah. I didn't have my beard this long last time we saw each other either.

MR. RIBES: It has something to do with age.

HEARING EXAMINER STRAIN: Could you identify yourself for the record, please.

MR. RIBES: Pardon me?

HEARING EXAMINER STRAIN: Could you identify yourself for the record, please.

MR. RIBES: I'm John Ribes, president of JRL Design Studios, and I'm here representing Windstar on this variance.

HEARING EXAMINER STRAIN: And, John, I've read the entire package. And normally

I don't need presentations on the package that I've read unless there's members of the public here, and we do have quite a few members of the public.

So for their benefit I've asked staff to have a hard copy of the diagram showing what you're intending to do.

And, Tim, in your packet, is there a location so -- a location map. And maybe we can put both of those on the overhead to help explain what's going on.

Well, John, I'll kind of move it along. The site location is on the properties -- behind the properties on the north that face Danford Street on the south, and it's on the south side of the Southpointe Yacht Club PUD, which is, I guess, part of Windstar as well.

MR. RIBES: That's correct, yes.

HEARING EXAMINER STRAIN: Okay. Then, John, would you mind putting the next one up.

Do you have a -- yeah, that will -- that's the aerial. But there was one with a red dotted line showing the tract that's involved with this, with the lots platted to the south.

For those of you not familiar with the project, we'll just orientate you to what's going on and that way, if you have questions we can certainly try to answer them.

That's the property -- south property line, the red line there. The red dotted line is where the wall is proposed to go in the new landscape buffer. The street to the south is Danford Street.

Then, John, could you put the cross-section of the wall, the wall cut. No, that will be the -- Does he have the wall cut, Tim?

And that's the wall sections that are proposed to go at that location, so...

And, John, I don't know if you wanted to add anything to the record. I mean, you're obviously -- with the public here, if you want to make any kind of comments or discussion about your application so they can get the benefit of that, and they may not have seen the staff report.

MR. RIBES: I would like to make a few key points, Mark.

The wall is approximately 1,208 feet in distance, in length. The whole purpose of asking for the wall is thanks to Mother Nature via Hurricane Irma who came through and wiped out just about 80 percent of that entire buffer along that south boundary.

What we want to do, or what Windstar wants to do, is all about restoring the security and the privacy both for the Windstar residents and for the people living along that Danford, because they're wide open to each other. There's one road between them, and that's Gulfstar Drive. The open space, the green space that's there, is about 1.2 acres.

We're asking for the 2-foot height basically to assist in dealing with the fact that the finished floor elevations now, based on FEMA, are creating higher elevations for the finished floor; therefore, to gain the privacy, we think the extra two feet is certainly a very valid request.

Another point is that this entire wall is interior to both Danford and Windstar. It has no public imagery whatsoever. I think that's important because it will not have any impact on the public if they drive by.

There's been no alterations to the topography. From what we've seen so far, it's a very flat piece of property. The drainage will be retained intact. We will meet a landscape Type B buffer that the staff has required between the two pieces of property.

And, basically, I think the variance provides an improvement enhancement solution for everybody involved. And other than that, I'm here to answer any questions anybody might have.

HEARING EXAMINER STRAIN: Okay. And I have read the entire document. There are a few points I'd like to clarify. This particular plan -- and I don't have a pointer with me, so I'm

going to try to show you where the points are that I've asked -- I would need a little bit cleaned up so that this can be attached to any decision or correspondence that goes back.

MR. RIBES: Okay.

HEARING EXAMINER STRAIN: There's a note there, and there's a note way up on top. I'll say it again for the record.

There's a note about the right-hand side, about the middle, and there's one way at the top, and those two notes refer to a swale and drainage aspects, which are not really part of the request. That's something that has to be handled through the process. So those aren't something we would want as an attachment to any decision that comes out of this office.

So could you send me a new -- it's an LA-103 page without those two notes on it?

MR. RIBES: Certainly can, yes.

HEARING EXAMINER STRAIN: Okay. The proposed wall, including any impacts, do you have any opposition to having it reviewed as a Site Development Plan application?

MR. RIBES: No. We're submitting for permit or site development?

HEARING EXAMINER STRAIN: Well, there's a couple ways to go, and staff will be coming up here in a minute to talk about that. Because of the drainage characteristics of this wall -- in fact, you had -- that's one of the pages I'm not using simply because the wall cut shows it elevated up a couple inches. That's not something of discussion for here today, but staff needs to review that for making sure the capacity enhancements and all that are adequate.

But that is not part of today's discussion. I just want to make sure staff has the opportunity to take a look at it under that premise.

MR. RIBES: Absolutely.

HEARING EXAMINER STRAIN: So they can do that through a site plan application.

MR. RIBES: Yes.

HEARING EXAMINER STRAIN: Okay. Then the -- you have agreed to a Type B buffer, so that would be another condition. And I don't -- do you have any objection to that?

MR. RIBES: We do not have any objections to Type B. It was discussed, and I think we had the wall -- the existing fence that -- what was there is nonexistent anymore. It was two feet in, north of the property line, and we had originally planned to put the wall back in that location.

Because of the wall, there was some discussion with staff that they would prefer the wall to be six feet north of the property line, and the Type B buffer code requires that 50 percent of that buffer would be on the Danford Street side of the wall.

We find -- we don't object to that. We're not sure that that logistically makes sense, that this wall is basically the back of the neighboring property, and they might have something to say about what is on that side of the wall, and we'd be happy to work with them in that case. Regardless of that point, we will be putting a Type B buffer in the way that the county wants it.

HEARING EXAMINER STRAIN: That's the part I've been trying to focus on. If you have arrangements with the neighbors to the south on how that maintenance is done, that's between you and them. If you wanted some relief from the requirements of the Type B buffer, the only one that you've asked for is the height of the wall. So the plantings will still have to occur like the buffer is required to have those occur, and anything -- whatever you do, though, as far as working with the neighborhood, that's -- we're not involved in that. We're strictly involved in the additional two feet today.

MR. RIBES: That's fine.

HEARING EXAMINER STRAIN: Also you have said repeatedly in the correspondence

that I've received in the staff report that this will be a precast concrete wall, so I would stipulate that. Do you have any --

MR. RIBES: That's correct, yes.

HEARING EXAMINER STRAIN: Those four points, with the cleanup of this page and those other three are basically the issues I came away with after reading the presentation, so -- and you've answered those question for me, so I don't have any other questions, John.

So we're -- unless you've got anything else to add, we're going to go to the --

MR. RIBES: I have nothing else to add.

HEARING EXAMINER STRAIN: Okay. Thank you very much. I'm going to go to the other speakers. I have to have staff come up and talk for a bit.

Tim, is there anything that you've heard in this discussion that changes anything in your staff report?

MR. FINN: No.

HEARING EXAMINER STRAIN: Okay. You're still recommending approval?

MR. FINN: Yes, I am.

HEARING EXAMINER STRAIN: Any problems with the conditions that I've outlined?

MR. FINN: No, I don't.

HEARING EXAMINER STRAIN: Okay. There is members of staff here, I think. I asked Jack McKenna to attend.

Jack, I'd just like to get your concurrence that you will be able to review the site drainage through the Site Plan Application, if that's consistent.

MR. McKENNA: Good morning. For the record, Jack McKenna.

Yes, the Site Plan Application would be reviewed by staff. It wouldn't be myself personally, although I'd probably have the opportunity to see it. But when this application's made, it would be reviewed and checked for the drainage aspects and the buffering aspects and so forth.

HEARING EXAMINER STRAIN: Because this is a variance for a 2-foot additional height to a wall, I don't believe anybody's reviewed it pursuant to the drainage issue, which is one of the reasons I wanted that not part of this application.

MR. McKENNA: Absolutely, yeah.

HEARING EXAMINER STRAIN: Okay. Well, that's the only question I have, so thank you.

MR. McKENNA: Thank you.

HEARING EXAMINER STRAIN: Are there any members of the public here who would like to speak on this item? First of all, are there any registered public speakers, Ray?

MR. BELLOWS: The only one that registered is the applicant, John Ribes.

HEARING EXAMINER STRAIN: And John's already made his comment.

So anybody else here that would like to address any issues on this particular application? Whether you've been sworn or not, I'll be glad to hear you.

Yes, sir. Come on up.

And have you been sworn in?

MR. OWENS: Yes.

HEARING EXAMINER STRAIN: Could you please state your name for the record.

MR. OWENS: Mark Owens.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. OWENS: Usually whenever you talk about open space, you know, usually a neighbor

expects that you see beyond your own property line. But when a wall is put and then it even gets higher, you expect that the open space will somehow be still respected. So the distance -- I didn't know about the distance you were putting -- I'm sorry. Where are you? There you are.

HEARING EXAMINER STRAIN: Well, no. You've got to address your questions to me, not to the audience.

MR. OWENS: Okay. I'm glad to hear about the distance that they're putting it back. I'm supposing that it's six feet now.

HEARING EXAMINER STRAIN: I believe so, but hang on a second. I'll let you know if the cross-section shows -- unless, Tim, do you know the answer offhand?

MR. FINN: Right now I believe the fence is situated about a foot away from the property line.

HEARING EXAMINER STRAIN: Right. And the new sketch on LA-104 shows it back six feet from the property line. So that's how it will be reviewed by staff when it comes in for a permit.

MR. OWENS: All those lots on Danford are only 80 feet. So when you start encroaching and you get higher, there's a principle in architect that Naples -- the City of Naples uses whereby, you know, you set -- if you want to go higher, then you set it back further.

So I appreciate that, and I would hope that that would be enforced. I love the idea of the wall there, but it's really going to close us in and make us feel much more closed in. So that distance away from the property line, I would really hope that -- that's why I'm here is to make sure that that distance is maximized.

I mean, open space, yeah, but that's only on the Windstar side. That landscape buffer seems to be only there. So it's like -- I would like to have half of that landscape buffer on our side of the structure.

HEARING EXAMINER STRAIN: That's part of the requirement.

MR. OWENS: Right. Good. And I'm here to -- just to learn about that. I've not had the opportunity to see the setbacks, so I'm in a learning process here, too. And I'm happy to hear that they're being set back and that some landscaping is put on our side.

HEARING EXAMINER STRAIN: Okay. That's how it's supposed to be, so...

MR. OWENS: That's what I had to talk about.

HEARING EXAMINER STRAIN: Thank you.

MR. OWENS: Thank you.

HEARING EXAMINER STRAIN: And, Tim, just for confirmation, the landscaping is required to be on both sides of the wall; is that affirmative?

MR. FINN: Fifty percent on both sides.

HEARING EXAMINER STRAIN: Okay. As far as the 6-foot setback from the property line, in fact, is that a requirement of the LDC, or is that just a voluntary --

MR. FINN: That's a requirement of the LDC.

HEARING EXAMINER STRAIN: Okay. So we don't need to restate it.

MR. FINN: No.

HEARING EXAMINER STRAIN: Those two items are a given; they're going to happen?

MR. FINN: Yes.

HEARING EXAMINER STRAIN: Okay. As far as individual lots and working out how that -- that landscaping is addressed from the neighbors, that's between the applicant and the neighbors to the extent they want to. But as long as the landscaping's there, that's the requirement of

the code.

MR. FINN: Yes.

HEARING EXAMINER STRAIN: Does anybody else have any comments they'd like to make on this application, any member of the public, whether they're registered or not?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, we've concluded everything on this particular case. And so this particular case is closed, and I will issue a decision within 30 days, most likely within a week, week and a half.

So thank you all for attending. That's all there is to it, folks, so thank you.

***Next item up is Item 3D, Petition No. BDE-PL20160001029, Steven Bergeson and Cynthia Mueller, for a request of a 27-foot boat dock extension on Lakeview Drive.

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: I notice -- thank you. John's leaving. John, please remember to get that LA-103 back to me with those two omissions.

MR. RIBES: I certainly will.

HEARING EXAMINER STRAIN: With that, my disclosures: I've talked to the applicant's representative and reviewed the package and met with staff.

And with that, are there any members of the public here specifically for this hearing, for this particular case?

(No response.)

HEARING EXAMINER STRAIN: Okay. Jeff, I think -- I've read the entire package. I've seen it. I have a couple questions and clarifications.

MR. ROGERS: Yes, sir.

HEARING EXAMINER STRAIN: Some are staffs and some are yours.

The issue of the criteria not met, No. 5, and it involves the dock next door and the accessway to that dock, I believe you're designing a new dock for the house to south next to it?

MR. ROGERS: Yeah, that's correct.

For the record, Jeff Rogers, Turrell, Hall & Associates.

Yes, Mark, to answer your question. Currently, up on the screen I have the proposed dock and the existing adjacent dock to our immediate south. That dock was built a while back. I don't know the exact date; early '90s.

I'm currently working with them to reconfigure that dock configuration to provide ingress/egress to their dock due to the fact that it was built outside of the original permitted footprint. And we're trying to make it usable for both property owners at this point.

HEARING EXAMINER STRAIN: Okay. And based on some past history on the dock to the south, I believe it never got a final CO --

MR. ROGERS: Correct.

HEARING EXAMINER STRAIN: -- for the dock.

MR. ROGERS: Yes, sir.

HEARING EXAMINER STRAIN: I remember the extension of the dock in its location. From a BDE perspective, it's not consistent with the plan that was submitted, and the plan that was submitted had riparian lines that were apparently not appropriate, and they ended up not having the setbacks that they proposed in the permit.

The permit setbacks were eight feet, although seven and a half was all that's required. And I believe the point to the very left of the plan up there on the south dock is 1.1 foot or something like that.

MR. ROGERS: Correct. It's about a foot off of the line.

HEARING EXAMINER STRAIN: So part of the reason that there's a problem with accessibility is because the dock wasn't built appropriate to the drawings that were submitted.

MR. ROGERS: Unfortunately, that's correct; yes, sir.

HEARING EXAMINER STRAIN: Okay. You're cleaning it up. And just out of curiosity, how are you orientating the access to that dock to the south?

MR. ROGERS: We're trying to be more consistent with the other docks on the existing bay. As you can see, there's -- these properties don't have a ton of shoreline to work with. I'll put this on the screen.

This just kind of shows you the docks on the existing waterway. They're pretty much what we're proposing: The finger dock straight out with a vessel stored on either side. We're going to be more consistent with that design for that particular property, as they're more perpendicular to the -- parallel to the shoreline, excuse me.

So that's what we're trying to do for them and straighten it out. The concept has been approved by the neighbor, and we're moving forward with the application with staff. I'm getting ready to submit it next week.

HEARING EXAMINER STRAIN: Okay. So in your professional opinion, then, the approval of the dock that you're representing today would be consistent with accessibility for the dock -- the new dock that's going to be permitted purportedly for the dock to the south?

MR. ROGERS: One hundred percent, yes, sir; yep.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. Let me just double-check everything.

The staff recommendation is simply you can't put the dock until you have a house permit.

MR. ROGERS: Correct, correct.

HEARING EXAMINER STRAIN: Okay. That's all I've got. Thank you, Jeff.

MR. ROGERS: Thanks, Mark.

HEARING EXAMINER STRAIN: John, have you heard any comments that are inconsistent with your understanding of this?

MR. KELLY: No. John Kelly, for the record.

I've received no correspondence or telephone calls in response to this project.

HEARING EXAMINER STRAIN: Okay. Do you have any objection to anything you heard in regards to the dock to the south?

MR. KELLY: No.

HEARING EXAMINER STRAIN: Okay. Do you have anything you want to add to the staff report?

MR. KELLY: Just that there was an extraneous Page 2 to the staff report that's unnumbered. It's of a map. That doesn't belong.

HEARING EXAMINER STRAIN: Okay. Good. Thank you for that clarification. I looked -- I saw that and couldn't figure it out, but I realized it must have slipped in by mistake.

Okay. Is there any other member of the public here that would like to speak on this matter? (No response.)

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

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and a decision will be rendered within 30 days; most likely within a week to 10 days.

And that takes us to the end of today's agenda. There are no other business items.

Is there any public comments?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this meeting's 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 9:24 a.m.

COLLIER COUNTY HEARING EXAMINER


MARK STRAIN, HEARING EXAMINER

ATTEST
CRYSTAL K. KINZEL, CLERK

These minutes approved by the Hearing Examiner on 11-29-18, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
U.S. LEGAL SUPPORT, INC.,
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