

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
September 12, 2019

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  
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, September 12th 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: Some procedural announcements: Speakers are 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.

We have only one item on today's agenda. It's Petition 3A. We'll move right into that petition. It's No. VA-PL20170001152, Bonnie Baker Jones requesting a variance from a minimum side-yard setback in the Wyndemere Planned Unit Development.

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 -- you need to stand up, please, if you're going to speak.

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part: This issue's been around for a while. I know that the realtor who was involved in it years ago got in touch with staff who got in touch with me, and we tried to figure out what process or what was wrong and how many things were wrong. Then it was subsequently, I think, purchased. I did meet -- I believe I met the person that purchased it. I'm not sure if that was Ms. Jones or not. I'm not good with remembering names sometimes. So -- and I just noticed she signaled yes, it is.

MR. LAZARCHIK: Excuse me. Could you speak up. My wife has a hard time hearing.

HEARING EXAMINER STRAIN: I'm sorry. Does this microphone work better?

MR. LAZARCHIK: Yes.

HEARING EXAMINER STRAIN: Our mics sometimes are hard to pick up.

Okay. Anyway, disclosures, I did speak with the applicant and some people prior to the applicant involved with this property.

And with that, we'll move right into the hearing at hand. And the representative of the owner, if Ms. Baker -- or Ms. Jones, is it? If you'll come up to the speaker and identify your -- identify yourself for the record.

MS. JONES: Good morning. I'm Bonnie Baker Jones.

HEARING EXAMINER STRAIN: Thank you.

You didn't have a -- you have a survey, or I noticed, because the surveys are all done. You don't have a -- you're representing yourself. You don't have an engineering firm or planner associated with this?

MS. BAKER: That is correct, sir.

HEARING EXAMINER STRAIN: Okay. Then I will try to focus most of my questions that can be answered by staff to them, and I'll do the best to get the information I may need from you.

Most of my questions may be staff's as it is.

I'm very familiar with your property. I have not been out there, but I've seen the photographs. At the time there was an easement -- drainage easement on the property. An agreement has been provided on that. I understand by the staff report there's a private easement as well, a 3-foot easement. That is not part of today's hearing. It's not something the county is involved in.

So we will focus basically on the setback variance based on the seven-and-a-half feet it

should have been, and then the impacts on the drainage easement, to whatever extent they are. From my understanding there's an agreement reached -- let me adjust this mic again -- an agreement reached with the county, who is one of the holders of the easement, and the association that they have no objection to it.

And I don't really have any other things -- I'm going to be talking to staff about some of their comments, and that's about all I have.

I may ask you to come back up. There's two people here that may want to -- one of them rose to speak, so there may be something there that I need to question you on after they speak.

Okay. Anything you want to add to the record, ma'am?

MS. JONES: No. I've been just very fairly treated by everybody here.

HEARING EXAMINER STRAIN: Good. Thank you.

MS. JONES: Thank you.

HEARING EXAMINER STRAIN: Okay. That moves us to the staff. And is it Tim's, or are you filling in for Tim?

MR. BELLOWS: For the record, Ray Bellows. And I'm filling in for Tim today.

HEARING EXAMINER STRAIN: Okay. Tim had mentioned in his staff report about the 3-foot private easement that's -- or that's there. Just so that -- just so you understand, he provided the document that supposedly addressed that easement.

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: And if you notice on that document he provided in the staff report, Page 20 is missing. Page 20 -- John's trying to fix my mic. That's a nice trick. Thank you, John.

Page 20 was the page that actually had the section involving the easements. Page -- it was Section 9.4. I did download it. I thought it was odd that the easement only pertained to the overhang. Technically, I don't know how that works.

Thankfully it's not something we have to address, but because it was in the staff report, I just wanted to point it out that the entire document wasn't attached as it, I think, was intended to be attached. So if you could let Tim know that. He's pretty good at trying to follow up, and he may want to know that that was missing.

MR. BELLOWS: I will do. I'm making a note right now.

HEARING EXAMINER STRAIN: Okay. And I don't have any other questions. Like I said, I'm familiar with the project. Most of the staff's information and the information supplied was consistent with what we normally see, so I'll move on to public speakers.

Sir, if you want to come up to the microphone, identify yourself for the record, I'd sure like to hear what you've got to say.

MR. LAZARCHIK: Hello. My name is Robert Lazarchik.

HEARING EXAMINER STRAIN: Could you spell your last name for the court reporter.

MR. LAZARCHIK: L-a-z-a-r-c-h-i-k.

HEARING EXAMINER STRAIN: Thank you.

MR. LAZARCHIK: And I reside at 26 Golf Cottage Drive, Naples.

HEARING EXAMINER STRAIN: Is that next door?

MR. LAZARCHIK: That is the residence next door.

HEARING EXAMINER STRAIN: Okay. And are you the resident on the side that has the -- or had the attached deck?

MR. LAZARCHIK: Correct.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. LAZARCHIK: In 2015 we filed our complaint with the county where the deck, pool,

and spa encroached on our 5-foot repair and maintenance easement. Our survey shows that it is recorded with the county, a 5-foot repair and maintenance easement.

HEARING EXAMINER STRAIN: Okay. Now, this document that staff provided said three, but you're saying five.

MR. LAZARCHIK: Yes. I provided a document to you for today's hearing that shows on record that there is a 5-foot repair and maintenance easement.

HEARING EXAMINER STRAIN: Okay. Now, that's a private easement, and that's not a matter for the county, just so you know. It's nothing that I can weigh in on today.

MR. LAZARCHIK: Okay. Well, then that's where we are, so...

We are not able to access our home.

MS. ASHTON-CICKO: Do you want me to put it on the visualizer?

HEARING EXAMINER STRAIN: No, that's fine. He says it's five.

MS. ASHTON-CICKO: No, it's three.

HEARING EXAMINER STRAIN: Oh, it's three.

MR. LAZARCHIK: Here's a recorded deed with the county that shows 5-foot, and I did provide you with this deed today.

(Simultaneous crosstalk.)

MR. LAZARCHIK: So maybe -- is my deed wrong?

HEARING EXAMINER STRAIN: I don't know about your deed. It looks like you've got a survey --

MR. LAZARCHIK: Well --

HEARING EXAMINER STRAIN: -- and the survey --

MR. LAZARCHIK: -- the survey that is here with the county on record, so that --

HEARING EXAMINER STRAIN: The recorded document may take precedent over the survey --

MR. LAZARCHIK: Okay. I got you.

HEARING EXAMINER STRAIN: -- that's all I'm -- and, again, it's a matter that's not relevant for today's hearing for my review, just so you know. I've got to go by what our code says, not what your private deed restrictions say.

MR. LAZARCHIK: Got it.

HEARING EXAMINER STRAIN: Okay.

MR. LAZARCHIK: All right. We are unable to access our home to perform maintenance, and we feel that we should be able to access our home and perform maintenance at any time.

The deck is a quarter inch from our home, the spa is three-foot from our home, and the pool is four-and-a-half foot from our home.

We're opposed to the variance, and our concern is that we be able to access our home at any time without an appointment. We shouldn't have to call to make an appointment to access the side of my home to perform any maintenance. And that's where we feel -- and that's the reason we filed the complaint.

HEARING EXAMINER STRAIN: And I was -- I didn't notice it was on there. The requirement for the easement to be used, even though it's nothing we're going to be utilizing today as far as this decision goes, just for your information, though, it says the maintenance and repairs to be conducted in a reasonable manner and during reasonable hours.

So I would suggest you consider that when -- whatever time frame you're asking about unimpeded access to that side. I think you have to have some requirements based on that language that's there. You might want to consider that. But, again, that's not going to be a matter for

today's hearing.

You've lived in the house next door since 19 what?

MR. LAZARCHIK: 2011.

HEARING EXAMINER STRAIN: So you bought the house with the deck in its former condition, which was attached to the house?

MR. LAZARCHIK: Yes.

HEARING EXAMINER STRAIN: Okay. Because that's been there since 1986, I believe; almost 30 years. I was just wondering if you -- have you encountered any problems with the deck next door? I understand it's removable.

MR. LAZARCHIK: Well, I did when I, in turn, to go to paint my home and do maintenance on my home. And at the time my neighbor had passed away, and it was in the hands of his executrix or power of attorney. And at that time, I questioned her access to the property, and she stated, well, the deck was going to stay there, so you can do whatever you want.

So that was the reason the next day I filed the complaint, based on the survey, so that we could have access to our home.

So for three years and 10 months I've had the house painted, but I have no access to the side of my home to prepare -- to replace or repair any damaged woodwork from the deck being there or even get to my foundation.

I did send -- I did drop off pictures here two weeks ago on Tuesday to show you exactly what my complaint is and why I filed the complaint.

HEARING EXAMINER STRAIN: Is the -- I believe Ms. Jones -- well, I know by the record she submitted she's now owner of the house. I don't know how long --

MR. LAZARCHIK: Correct.

HEARING EXAMINER STRAIN: -- exactly that's been. Was she involved in not letting you access the property when you were painting your home previously?

MR. LAZARCHIK: At that time Ms. Jones did not own the home.

HEARING EXAMINER STRAIN: Oh, that's why I'm asking.

MR. LAZARCHIK: Yes, correct.

HEARING EXAMINER STRAIN: So you've had no experience with her about refusing to let you on to do any kind of maintenance work you wanted to do?

MR. LAZARCHIK: I have not discussed the complaint in question with Ms. Jones -- Mrs. Jones, and the reason being, I was told by your county code officer that it's public record, and until then you cannot discuss the situation.

Probably about two months ago I had a conversation with your county employee, and he stated maybe I should -- maybe I should hire a real estate attorney to come in and discuss the situation about the 5-foot repair and maintenance easement. I don't feel I need to get into that situation right now.

I'm asking that I be able to access my home at any time, any day of the week, and any hour.

HEARING EXAMINER STRAIN: Well, and --

MR. LAZARCHIK: That's all I'm asking.

HEARING EXAMINER STRAIN: -- I have no code provision that's going to be able to help you in that regard, although I do think your deed restrictions provide you an opportunity to go forward. And until you maybe approach Ms. Jones and try it on your own -- you may not find there's a problem, but that's outside the purview of what I've got to review today. I'm basically stuck on the Land Development Code, and that's the piece that I have to review toward.

MR. LAZARCHIK: Well, I would appreciate if you would explain to me what -- the setback easement that she's requesting, because I have no clue what that is.

HEARING EXAMINER STRAIN: It means that the spa and the pool -- the deck has nothing to do with the need for a setback variance at all. The deck doesn't need a variance. It's in a place that's allowed by our code. The spa is three inches into -- or the spa is three inches into your 3-foot maintenance setback or maintenance easement.

But I'll tell you the exact dimensions that we're dealing with here. Let me get down to the --

MR. LAZARCHIK: Probably like two foot and 15/16 inches.

HEARING EXAMINER STRAIN: The spa is two foot, nine inches into the required minimum seven-and-a-half-foot setback. So that means you've got about three feet off seven-and-a-half feet. You've got about five-and-a-half feet left.

And the pool is -- I'm sorry. It's --

MR. BELLOWS: It's a 7-foot side yard, and this is --

HEARING EXAMINER STRAIN: Seven-foot, yeah.

So you're supposed to be seven feet, and one of them is -- you need a 5-foot-4 variance for the pool and 2-foot-9 -- 2.9 feet for the spa.

MR. LAZARCHIK: Yeah. The pool was probably four-and-a-half feet, and the spa is, like, two foot and -- it's not quite three foot. It might be three foot to the middle of the spa.

HEARING EXAMINER STRAIN: According to the survey, the spa is 2.9 feet off the property line, and the pool is 5.4 feet off the line. So the difference between that and seven feet is what the variance is.

MR. LAZARCHIK: Okay.

HEARING EXAMINER STRAIN: And that's the way they've been since 19 -- one of them, at least, the pool, since '86.

MR. LAZARCHIK: Well, I appreciate the opportunity to speak here today. It has been a long and enduring process, and I'm hopeful that it -- that we can resolve it and -- but I am opposed to the variance.

HEARING EXAMINER STRAIN: Your initial reason to get into this sounds valid, and it sounds like you had trouble getting the access that your documents seem to allow. I don't blame you for being frustrated with it. I hope that maybe you give it a new try with your new neighbor and, who knows, this may all work out just well. So hopefully it will work for the best.

MR. LAZARCHIK: My question to the county is, with the wood deck there -- so I have no right or say to have them remove the deck three foot back is what you're telling me at this stage?

HEARING EXAMINER STRAIN: I think I read in the staff report that the deck is -- they have removable planks on the staff report, and if you have a deed restriction, a private one, you would pursue that either informally, I would suggest, with the homeowner, see if there's a cooperation. If not, you may -- your HAO may be able to intervene, or however they would suggest to you to proceed. I don't know how their procedures are.

MR. LAZARCHIK: Well, our HOA, I'm sure, would not address the issue, as 90 percent -- 95 percent of our homes you're able to walk around your home at any time -- time of the day. There are probably two homes in the community that have this situation, ours and Mrs. Jones' neighbor.

Yes, the boards can be removed, but that doesn't remove the studs or the posts to walk around to get to my home. So that's -- that is my reasoning here today and the reasoning for my complaint.

HEARING EXAMINER STRAIN: Even if we denied the variance --

MR. LAZARCHIK: Uh-huh.

HEARING EXAMINER STRAIN: -- that wouldn't change the ability to leave that deck

where it is.

MR. LAZARCHIK: Okay.

HEARING EXAMINER STRAIN: That doesn't have anything to do about today's meeting.

MR. LAZARCHIK: Would that change the spa and the pool?

HEARING EXAMINER STRAIN: And I'll ask staff to verify it, because staff already went out and checked the decking, and they've found it to be not needing a variance because it was consistent with the code.

Now, the spa and the pool intrude a little bit into -- or one's more than the other into the 7-foot setback requirement. Those two things, if they didn't get the variance today, they would have to modify those locations.

MR. LAZARCHIK: Gotcha.

HEARING EXAMINER STRAIN: Okay. And that still wouldn't affect the area that you seem concerned about in regards to your ability to use that 3-foot space. And that's the deck that's there, and that deck isn't governed by our codes at this point as something that needs to be changed.

And, Ray, could you comment on that?

MR. BELLOWS: Yeah. For the record, Ray Bellows.

That's exactly right. The deck is allowed to be at the distance it is. It's on the property owner's property. Their setback requirement would only be triggered if that deck was raised over 30 inches above grade. It's below 30 inches, so it can be where it is.

MR. LAZARCHIK: So my problem is I've got a quarter inch from my side boards that's part of my home that I can't get access to or repair.

MR. BELLOWS: That's one of the unique things about a zero-lot-line development.

MR. LAZARCHIK: Yeah. Well, I know. I agree. That was the problem -- when the community was set at the zero lot line was the problem.

MR. BELLOWS: Yeah.

MR. LAZARCHIK: And it's causing a lot of problems to this day.

MR. BELLOWS: Yeah. And it is a unique situation, but that's where this maintenance easement comes in. All these zero lot lines are required to provide this easement. You do have access to that prop -- or to the side to maintain your dwelling.

But it's -- I believe Mr. Strain pointed out that there's some time-limit restrictions about reasonable use of doing the maintenance work. But I think there's no prohibition that I know of that you can't try to work that out with the property owner to remove some of the planks to help get access to maintain any of the foundations or anything else with the side of the building.

MR. LAZARCHIK: My next question would be -- my last question would be, so the survey that states a 5-foot repair and maintenance easement that's on record with the county really does not mean anything about a 5-foot repair and maintenance easement.

HEARING EXAMINER STRAIN: Well, it depends on where the surveyor pulled that five foot. Now, he may have another document that's been subsequently recorded that says it's five feet, but what I've got in front of me says three, and what was supplied to the staff was -- through the staff review was three feet.

So if there's another document out there, it's not one that we currently have, and it wouldn't be one that we could enforce because that's, again, back to the private side of the issue.

MR. LAZARCHIK: Well, I'm confused. If -- when I purchased the home, I was presented a survey for the property --

HEARING EXAMINER STRAIN: Right.

MR. LAZARCHIK: -- which would have been filed to the county on the sale of the

home, I'm sure. What good is my survey? Is my survey invalid? You know, I don't know what to --

HEARING EXAMINER STRAIN: We don't look at necessarily the private easements. We make sure that the property lines are right, that they match the plat, that any platted easements show up. Platted easements are the drainage easement. That's why we knew about that. That's why it was one of ours to handle. We may not see all -- you know, some of those we just don't get into. It's not part of the county's purview, so...

MR. LAZARCHIK: Well, thank you for your time.

HEARING EXAMINER STRAIN: Thank you, sir.

MR. LAZARCHIK: And I appreciate the opportunity to speak, and hopefully this will get resolved.

HEARING EXAMINER STRAIN: I hope so, too.

MR. LAZARCHIK: Thank you.

HEARING EXAMINER STRAIN: Unless Ms. Baker -- if she wants -- if you have anything you want to address, you can come up. If not, I'll move forward. Ms. Jones, I'm sorry.

MS. JONES: I just want to -- for the record, I do want to say I did approach our neighbor, and I tried -- I said, let me just take the wood off, et cetera, et cetera, and he said he couldn't talk to me because of what was said to him by the county.

Now, I would gladly, at any time at his request, have him get to his house, because the planks are removable and -- that's all.

HEARING EXAMINER STRAIN: Okay. Thank you. And that was the first time I've heard this situation where the county told neighbors they can't communicate after a code enforcement issue's been filed, so that's news to me. And I'm --

MR. LAZARCHIK: He said it was a public record. Your employee stated it was on a public record. And probably before the hearing was set, I did talk with him, and he said that I should meet and maybe discuss it with Ms. Jones. And at that point it had been three years and eight months, seven months, and I said, I'll just wait for the hearing, you know. I mean, at this point there was a hearing going to be scheduled. I figured that would be the best time for me to approach this situation, so...

HEARING EXAMINER STRAIN: Well, I think from what Ms. Jones just said, you may end up finding it's a very cooperative situation. So at least you might be on the better footing now.

MR. LAZARCHIK: We'll see. Thank you.

HEARING EXAMINER STRAIN: Thank you. Appreciate it.

Ray, do you have anything -- no other -- there's no other speakers in the room, so there can't be anybody registered.

With that, we'll close the public hearing. A decision will be rendered within 30 days, most likely a lot shorter.

And I appreciate everybody's attendance today, so thank you very much. This meeting is adjourned.

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September 12, 2019 HEX Meeting

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:22 a.m.

COLLIER COUNTY HEARING EXAMINER

  
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MARK STRAIN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 9-18-19, as presented  or as corrected \_\_\_\_\_.

TRANSCRIPT PREPARED ON BEHALF OF  
U.S. LEGAL SUPPORT, INC., BY  
TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.