

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
October 24, 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  
John Kelly, Senior Planner  
Sally Ashkar, Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, October 24th 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 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.

In review of the agenda, we have three items listed for today's agenda; however, Item 3C, which is the Walker's Coon Key Marina, is continued until November 14th. So if you're here for the Walker's Marina, we will not be hearing that today.

\*\*\*That takes us to our first advertised public hearing. It's Petition No. VA-PL20180003557 for the Jo Anne Lewis variance in Golden Gate Estates.

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

Ms. Lewis, you'll have to stand up.

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

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part: I briefly met Ms. Lewis before the meeting started, I reviewed the documents, and we didn't even have a staff meeting on it. Everything was pretty straightforward.

So with that, are there any members of the public other than the applicant's representatives who are here for this?

(No response.)

HEARING EXAMINER STRAIN: And I can see there isn't. Makes it even easier.

Ms. Lewis, would you mind coming up, identifying yourself for the record. You need to pull that mic down closer to you. There you go. Thank you. And your name?

MS. LEWIS: Jo Anne Lewis.

HEARING EXAMINER STRAIN: Okay. Ms. Lewis, I've read your documents in your package. There's no members here of the public interested in this particular issue, so I don't need a presentation.

I just wanted to get an acknowledgement on the record that you were here, and I will be asking staff a couple questions. That should be all there is to it.

MS. LEWIS: Thank you.

HEARING EXAMINER STRAIN: Thank you.

Which takes me to the staff report.

Ray, I know you're filling in for Gilbert.

MR. BELLOWS: Correct.

HEARING EXAMINER STRAIN: I do want a clarification on -- not an item of concern but an item that might help make this -- put this in a different perspective.

The lot -- the buildable area of the lot, it's about a 3.03-acre lot, and it's 193 feet wide, but 120 feet of that includes a canal. By the time you end up, it ends up at about 73.75 feet of buildable area. The house that's there now has a western side setback of 11.86. And the garage they're proposing will meet that setback as well, and that's the variance that's being requested today.

But what I wanted to just comment on for the record that's helpful to understand, in Golden Gate Estates we have five-acre lots that can -- are routinely split into two-and-a-half but no less than two-and-a-quarter acres.

Prior to 1974, if you recall, we had those other size lots where people would take an acre -- a two-and-a-half acre lot and divide it into two one-and-a-quarter acres lots; do you remember those?

MR. BELLOWS: Correct.

HEARING EXAMINER STRAIN: And that was stopped in '74, I believe, and, as a result, all of those acre-and-a-quarter lots became non-conforming lots of record. So we added a provision in the code that said the following -- and they were 75 feet, because they took 150-foot-wide frontage and split it in half: Nonconforming lots of record which are nonconforming due to inadequate lot width, in which case the required side yard shall be computed at the rate of 10 percent of the width of the lot.

Now, those 150-foot-wide lots dropped down to 75 for the grandfathered acre-and-a-quarters that are nonconforming. They then would have 10 percent of the 75-foot width, which is 7.5 feet; is that a fair interpretation?

MR. BELLOWS: I believe so.

HEARING EXAMINER STRAIN: Okay. What we've ended up with on the 73-foot lot -- even though it's nonconforming because they've -- they have the entire canal easement, which makes no sense, that they necessarily have to have that as part of their lot. They really have a non -- they're less than a nonconforming size lot.

So, theoretically, they could argue a 7-and-a-half-foot setback on that size lot would be consistent with a lot of those nonconforming lots in Golden Gate Estates.

MR. BELLOWS: Very good logic.

HEARING EXAMINER STRAIN: Okay. Well, I just wanted to make sure, because their 11-and-a-half is well beyond the 10 percent, so they're -- that would work well.

MR. BELLOWS: Yeah. And when you mention it in regards to how we would treat a nonconforming lot, this is roughly the same size of the developable area that's way -- meeting the current setback required for a nonconforming lot, so it's a good way to look at it.

HEARING EXAMINER STRAIN: Okay. I just wanted to make sure my reasoning was right. I saw staff did recommend approval. I have no reason not to support the project.

So with that, if there's any other staff comments; since you're the staff representative, do you have anything else you want to add?

MR. BELLOWS: Oh.

HEARING EXAMINER STRAIN: You're looking around for staff. That's you.

MR. BELLOWS: I was thinking that we will want a cleaned-up exhibit. It has a spelling typo in there. So prior to you issuing a determination, we'll clear up the typo.

HEARING EXAMINER STRAIN: Right. And I think the County Attorney's Office caught that.

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: That was -- I think the gentleman here brought one -- is it -- brought one for the record today.

MR. BELLOWS: There still seems to be an issue, though.

HEARING EXAMINER STRAIN: Okay. Let's get it cleared up and to my office as soon as you can, because I won't be able to move on this until I have that issue cleared up.

MR. BELLOWS: Yeah.

HEARING EXAMINER STRAIN: Okay. I don't have anything else to request. Does

anybody here wish to speak on this issue?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this item -- the hearing is closed on this matter, and a decision will be rendered within 30 days, most likely a lot -- shortly after I get the revised survey and that's cleaned up, I'll be able to process it rather fast.

\*\*\*With that, we'll move on to the next item, and the last item on today's agenda, which is Petition No. VA-PL20180002576, Kristine Mary Stewart Rattray and John Peacock, trustees of the Hulburt Trust. It's for a variance in Pelican Bay.

All those wishing to testify on 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 met the representative for the trust this morning here seated in the front row, and we didn't even have a staff meeting on this. I think it was just -- everything was self-explanatory.

So with that, will the representative from the Hulburt Trust please acknowledge your presence here today, and hopefully we'll be good to go.

MR. MOREY: All right. Good morning. For the record, Attorney James Morey representing the Hulburt Trust, and good morning to you all. Thank you for your time.

So the primary purpose here is to ask for a variance on two items. One is the setback for a pool cage, the replacement of a pool cage, and the second is the location of the residence on the property.

The home was built under a permit in 1993. Three permits associated with that residence include the residence itself, a pool, and the pool cage at the time.

That pool cage remained until 2017 when Irma hit, and it was damaged, so it needs to be -- it needs to be removed and replaced.

In conjunction with the permit application process for the replacement cage, it was discovered, when a new survey was commissioned, that the existing pool cage was set approximately 20, 20.5 feet from the side property line instead of the required 25 feet. So that was discovered.

The current owners purchased in 2011 well after the home was CO'ed.

Also discovered on that survey was a very minor setback variance. Instead of 25 feet, the residence itself is 24.9. So we thought it would be prudent to apply for a variance in both cases.

The reason we're asking for 19 feet and no less than 19 feet is that pool cage is going to have to be replaced in nearly the exact or exact location that it was before but to allow some leeway for the construction process.

It could be 20.6, you know, 20 feet, it could be 19-and-a-half feet, but it certainly won't be any less than -- any closer than 19 feet. And if it goes right to the edge of the brick paver, it's probably more like 20 feet. But, again, we wanted to be conservative and say no less than 19 feet.

That side yard that we're speaking of where the variance is being requested, the abutting property is the golf course, a preserve area, and the subject lot, the owner's property, and that golf course and preserve is separated by a wall. So there's nothing on that particular side. There's no other residence to be impacted.

I do understand that there's concerns or at least a couple of letters from members of the public concerning it. One of the letters was more of a general comment about variances in general; that -- why should someone be given an exception. And I understand that sentiment, of course. You know, people work very hard to comply and follow all the rules, and I understand, but our Land Development Code allows for a variance under certain circumstances if certain

criteria are met, and we feel that we meet the criteria in this case.

The other comment discussed replacing the pool cage and it impacting someone's view of the golf course, I think a neighbor, perhaps, a second-story neighbor. Again, completely understand and respect their concerns. We're not putting something completely new. We're simply swapping out what already exists that has existed for a number of years.

So, again, understanding their concern, we're putting no more impact than had already existed since 1993.

So we would respectfully request that the variance be granted on those two issues.

HEARING EXAMINER STRAIN: Thank you.

MR. MOREY: Thank you.

HEARING EXAMINER STRAIN: I had a couple questions. You've answered everything in the statements you just made, so I understand all your issues, and I appreciate your time.

MR. MOREY: All right. Thank you, sir.

HEARING EXAMINER STRAIN: And with that, we'll go to John, staff member.

MR. KELLY: John Kelly, senior planner.

I wanted to add the two letters of objection to the record. They have been handed out this morning.

And just in addition to the testimony presented, this is going to be a cluster housing project in Pelican Bay, so the setbacks were atypical. They were on a site plan that is part of the record. And staff recommends approval.

HEARING EXAMINER STRAIN: I do notice that the two letters of objections were from people not contiguous or abutting the particular property. In fact, they're probably as far from this particular unit in question that they could be from any of the units on the property, it looks like; is that true?

MR. KELLY: That is correct. I prepared the photo exhibit with each letter.

HEARING EXAMINER STRAIN: Thank you. And, also, the distance of the change from 25 to 24.9, had the applicant decided, they could have done that by administrative variance?

MR. KELLY: Correct. I'm not even sure they would be required to do a variance at this point. The code has changed to allow for minor encroachments.

HEARING EXAMINER STRAIN: Okay. But, I mean, it's fine that it's here. I just wanted to point that out.

MR. KELLY: Yes.

HEARING EXAMINER STRAIN: There was an alternative to that if they didn't want to come in for that.

MR. KELLY: Correct.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. The package was well put together. Thank you, John. And I appreciate especially the backup you provided with the letters of objection. That does help.

Is there any member of the public here wishing to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this matter is closed, and a decision will be rendered within 30 days. I don't believe I'm waiting for any paperwork, so it will probably be processed as quickly as I possibly can get to it.

MR. MOREY: Thank you.

HEARING EXAMINER STRAIN: And with that, there are no other items on today's agenda. That brings us to the end of the meeting, and this meeting's adjourned. 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 9:13 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 10-28-19, as presented ✓  
or as corrected \_\_\_\_\_.

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