

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER  
Naples, Florida  
November 14, 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  
Tim Finn, Principal Planner  
James Sabo, Principal Planner  
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, November 14th, 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: Thank you.

Some housekeeping notes: 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 five items scheduled for today's agenda; two of those are going to be continued. The first item is 3A. It's the Petition DR-PL20180002114. It's for W.R. Real Estate, LLP, which is the Coon Key Marina on Goodland Island. That one is going to be continued to December 12th. It will be the first item at 9:00 in the morning on December 12th. So that one is continued as of now.

And then Item 3D is Petition No. BDE-PL20190000307, Michael Korchmar. It's for a boat dock facility. That one will -- is continued to December 12th as well. It will be the second one on the December 12th agenda.

So if anybody's here for either one of those today, we will not be hearing those items today. They're being continued to the December 12th meeting.

Those are the changes to the agenda. We'll move right into our remaining three items for today's hearing.

\*\*\*The first one now is 3B. It's Petition No. DR-PL20180002034. The petitioner is 7-Eleven. It's for some front yard setbacks along the western property line on Pine Ridge and U.S. 41.

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: Discussions on my part: I've read the files, I've gone to the site, took a look at it. I'm actually very familiar with it. I pass that location all the time. And that's -- I didn't have any other discussions with anybody else that I can recall.

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

(No response.)

HEARING EXAMINER STRAIN: Okay. Whoever's representing the applicant, would you mind coming to the microphone.

MR. PADILLA: Good morning. I'm George Padilla with AEC Services. We're the design consultant.

HEARING EXAMINER STRAIN: I'm going to make your time here today very simple.

MR. PADILLA: Yes.

HEARING EXAMINER STRAIN: I've read your report. I don't have any questions. It's pretty straightforward. Because I've read it, I don't need a presentation.

MR. PADILLA: Good.

HEARING EXAMINER STRAIN: And because there's no members of the audience here other than your team, you don't need to present to them. They should exactly know what's going on with your efforts.

MR. PADILLA: Thank you.

HEARING EXAMINER STRAIN: With that, I don't have anything else to add it. This is just a requirement to come to these meetings and make sure if there's any concerns by the public and others, as well as myself, that can be expressed. It's pretty straightforward. Staff did a good job in the way they wrote it up. So that's all I need from you today. I appreciate it.

MR. PADILLA: Thank you very much. I appreciate it.

HEARING EXAMINER STRAIN: Tim, do you have anything you want to add to your staff report?

MR. FINN: No. The project is compliant with the GMP and LDC; therefore, staff recommends approval.

HEARING EXAMINER STRAIN: Thank you, Tim. You did a great job. Rarely is there one where there's not something that I find as a mistake. I didn't even find any simple mistakes. You did a pretty good job in writing it up, so thank you. I appreciate it.

MR. FINN: Thank you. Appreciate it.

HEARING EXAMINER STRAIN: On that particular item, we'll close the hearing on that, and a decision will be rendered within 30 days, most likely -- I'll try to get it out next week. But as fast as it can be done, it will be done. Thank you all for your attendance today.

MR. PADILLA: Thank you.

HEARING EXAMINER STRAIN: \*\*\*That takes us to the next item and the second item on today's agenda, and it's Item 3C, Petition No. PDI-PL2018000897, Walmart Stores East LP requesting an insubstantial change to their PUD.

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. I have read the staff report, actually gone -- I know where -- I've been to the site many times, and I've spoke to the County Attorney's Office about an issue concerning the resolution this morning.

And with that, is there any member of the public here who is not part of the applicant's team for this particular issue?

(No response.)

HEARING EXAMINER STRAIN: Okay. Hearing none, if a representative of the applicant's team would come up. Please identify yourself for the record.

MR. ALMONOR: Good morning. I am Clarence Almonor, and I have along with me...

MR. BOHORQUEZ: Edward Bohorquez.

HEARING EXAMINER STRAIN: Okay. You're the authorized representatives of the Walmart Corporation for this application for the sign variance?

MR. ALMONOR: Correct.

HEARING EXAMINER STRAIN: Okay. I have some -- just some clarifications. There's no members of the public here, so I don't need you to provide a formal presentation. I have read everything, so I don't need one. I'm just going to go right into the questions.

And I guess -- and, Tim, this is yours as well, if I'm not mistaken, right?

MR. FINN: Yes, it is.

HEARING EXAMINER STRAIN: Did you inherit this one?

MR. FINN: Yes, I did, from Gil.

HEARING EXAMINER STRAIN: I thought it was something like that.

There's a variance -- there's a resolution out there that allows you to have additional signs. It's specific on the types of signs you can have. And there's also an existing Walmart sign on the building.

MR. ALMONOR: Correct.

HEARING EXAMINER STRAIN: Now, according to Page 4 of the staff report, that Walmart sign is 222.12 square feet, and the pickup sign that you want to add is 66.68 square feet, for a total of 288.8. I just need confirmation on -- I noticed that in some of the staff report I couldn't quite figure out how the existing sign and square footage was allocated and how the new sign square footage was added to it. And, Tim, you can -- between you and the applicant -- because you're asking for 317 square feet. But the numbers don't seem to add up to that.

MR. FINN: How it was described to me when I talked with this project was their -- per the code, they have allotted to them a maximum of 250.

HEARING EXAMINER STRAIN: Right.

MR. FINN: And because they're going over that with this new signage, they have requested the PDI.

HEARING EXAMINER STRAIN: Oh, I understand all that. But the two signs that they are now going to have on the building -- and you guys correct me if I'm wrong. There's the existing Walmart sign, right?

MR. ALMONOR: Correct.

HEARING EXAMINER STRAIN: According to the sheet that was submitted to -- staff must have got it from your firm, and it's on Page 4 of the staff report, it has -- it says, existing Walmart sign, 222.12 square feet; is that accurate?

MR. ALMONOR: Yes.

HEARING EXAMINER STRAIN: Okay. Then it says on that same page, the proposed pickup sign, which is what we're here for today --

MR. FINN: Yes.

HEARING EXAMINER STRAIN: -- is 66.68 square feet. So a total of those two comes to 288.8, but they're asking for 317; is that right?

MR. FINN: Right. So --

HEARING EXAMINER STRAIN: Okay. How -- that's what I'm trying -- how do -- I'm not concerned about the amount. I just want to understand how we got there. How did we get to 317?

MR. FINN: So there's --

MR. BOHORQUEZ: There's an auto center sign also, so that's what's taking the number up.

HEARING EXAMINER STRAIN: It doesn't show up on that page. Okay. Well, then we've got to check one other thing, because I looked at your auto center sign. Now I --

MR. BOHORQUEZ: That's the other side.

MR. ALMONOR: That's on the side of the building. It's not on that main --

HEARING EXAMINER STRAIN: Facing south?

MR. BOHORQUEZ: Which direction is it?

HEARING EXAMINER STRAIN: Or is it -- do you have a location as to where that shows auto center signage -- there it is. So it's another 53.77 square feet?

MR. ALMONOR: Yes.

HEARING EXAMINER STRAIN: Because that comes up to 342.57 if you included that.

MR. ALMONOR: Yes.

HEARING EXAMINER STRAIN: Fellows, just so you know, I have no problem with the square footage of the signs or the signs you're asking about, so I'm not coming from that angle. I just want the documents correct so you haven't got to come back for another process. I want this

done today. So I'm trying to make sure we're all on the same page as to what's being asked, what's being covered, and how we got there.

MR. BOHORQUEZ: Right. So here --

HEARING EXAMINER STRAIN: There's your Walmart sign.

MR. BOHORQUEZ: Yes, that is correct.

HEARING EXAMINER STRAIN: And over to the right, I think - I looked at the pages --

MR. BOHORQUEZ: That is our pickup sign that we're trying to get.

MR. ALMONOR: The proposed.

MR. BOHORQUEZ: The proposed pickup sign.

HEARING EXAMINER STRAIN: Right.

MR. BOHORQUEZ: And then on -- I mean, here is the current auto center sign, but it's in the actual side elevation.

HEARING EXAMINER STRAIN: Okay. And, Tim, I know Diana probably was involved in reviewing this.

MR. FINN: Yeah. When --

HEARING EXAMINER STRAIN: Is there a separate square footage allowed for the side elevation? I would have checked this had I known that's where that sign -- where that mount was coming from before today.

MR. FINN: I didn't check that either.

HEARING EXAMINER STRAIN: Okay.

MR. FINN: I thought we were -- it was just for the front.

HEARING EXAMINER STRAIN: And that's fine if it is, but if it's for the front, it doesn't add up to 317. That's what caused the problem. So I guess the total signs on the project add up to 317, but -- well, they don't, depending on what you call the auto center sign.

See the 53.77 on the -- on your page there --

MR. BOHORQUEZ: Yes, sir.

HEARING EXAMINER STRAIN: -- in your column?

MR. BOHORQUEZ: Uh-huh.

HEARING EXAMINER STRAIN: What does the 36.02 represent?

MR. BOHORQUEZ: It represents lube and auto center signage, which is on the side.

HEARING EXAMINER STRAIN: So you have a sign that says lube, and you have a sign that says auto center.

MR. BOHORQUEZ: Right. And this is part of the auto center. We don't count this as part of the front total signage, so that's why we have it divided here into subcategories, but here is where we have all combined of the total, and that's what brings us to the -- to this number here.

HEARING EXAMINER STRAIN: Okay. Now, that doesn't get us, though, to the 317 that you're asking -- you're asking for -- what's the total square footage you're asking for on this -- I thought it was -- well, combined area of no more than 317 square feet. You have three wall signs on the western building facade, but you only have two that I can see, because this is on the north or south facade.

So how are we getting to the 317 if the two you show on Page 4 of the staff report shows a Walmart sign at 222.12 square feet and a pickup sign at 66.68? Does anybody have that answer?

(No response.)

HEARING EXAMINER STRAIN: Okay.

MR. ALMONOR: Now, is this accounting for -- but I know --

HEARING EXAMINER STRAIN: This is what?

MR. ALMONOR: Is this accounting for --

MR. BOHORQUEZ: Monuments.

MR. ALMONOR: -- the previous signs that were approved from the variance?

HEARING EXAMINER STRAIN: No, but that's another point of discussion I was going to have next, because basically you're waiving your rights to the signs on the variance as the representative of Walmart. Is that what you're doing today?

MR. ALMONOR: Well, those signs are actually not installed. They're -- those are old branding signs that Walmart no longer utilizes.

HEARING EXAMINER STRAIN: Okay. But the point of my question is, are you formally waiving the right to install those signs? Because the resolution gives you the right to put those signs up, and you're saying that you don't need them. They weren't taken --

MR. ALMONOR: Correct.

HEARING EXAMINER STRAIN: -- into consideration in the calculations that are here today. So unless you're waiving the right to use that resolution, that resolution would still stand, and the calculations that have to change, we'd have to probably figure out how that fits in.

MR. BELLOWS: For the record, Ray Bellows.

In previous discussions when Gil was here, there was a note from one of the persons on the applicant's team that they were going to not utilize that existing variance --

HEARING EXAMINER STRAIN: Right.

MR. BELLOWS: -- or resolution.

HEARING EXAMINER STRAIN: And for staff to stipulate a resolution -- thank you, John -- to be undone by -- that the Board of County Commissioners put in place, I need the applicant to verify that. But Diana is here, and she's our sign expert, so maybe she can lend some help into the calculations.

I tell you what, everybody, let's just -- I know this is -- we'll still get done in time for Pat to have his issue over. Let's take a five-minute break while we try to figure this out. We'll resume at about 9:20.

(A brief recess was had from 9:13 a.m. to 9:17 a.m.)

HEARING EXAMINER STRAIN: Okay. We're back on record.

During the few minutes we had, Diana Compagnone was nice enough to stop by and explain how this could be worked -- or how it was intended to be worked out, and basically what she said is we're allowing up to 317 feet of signage on this facade of the building.

And for the -- currently, it's comprised of a Walmart sign with a pickup sign. My understanding is we're just going to look at the total. We're not going to break it down, necessarily, for type of sign. So that gives some flexibility in case the Walmart sign grows or the details change for the pickup sign as well.

MR. ALMONOR: Yes.

HEARING EXAMINER STRAIN: Are you in agreement with that -- basically, all 317 square feet of signage on that facade of the building?

MR. ALMONOR: Yes.

HEARING EXAMINER STRAIN: Okay. The next critical question that we need to resolve is what you're going to do about this, because the resolution was not factored into that square footage.

So staff has requested that the applicant not utilize the signage approved by Resolution 07-37. But I need the applicant to acknowledge that they agree to that stipulation and also -- if that's --

MS. ASHTON-CICKO: So this would be the language; something like that.

HEARING EXAMINER STRAIN: I'll read to you what the County Attorney's Office has

suggested. They have agreed -- you have agreed to forego the square footage in Resolution 07-37, and those square footages are not available if this signage in this decision are in place on the building.

MR. ALMONOR: Okay. So that, ultimately, would mean if we, I guess, withdraw that, whatever --

HEARING EXAMINER STRAIN: You've got to get closer to the mike.

MR. ALMONOR: Sorry.

HEARING EXAMINER STRAIN: Sorry. They take a bit to -- sometimes they go on and off, so -- that one went off that time.

MR. ALMONOR: All right. Thank you.

So, ultimately, if we withdraw the previous resolution, is that stating that the square footage we were granted in that previous approval could not be -- is not going to be applied to this current --

HEARING EXAMINER STRAIN: Correct, because the total square footage you'll have for all the signs on that facade is 317 square feet, and right now that takes -- that fills -- that's filled by the Walmart sign and the pickup sign you're proposing, for the most part.

MR. ALMONOR: Correct.

HEARING EXAMINER STRAIN: And the reason the Walmart sign, from what Diana was telling me, needed some flexibility is you've got this emblem, like an asterisk or something --

MR. ALMONOR: Yeah. We call it a spark.

HEARING EXAMINER STRAIN: Okay. Well, we weren't sure if that was -- staff was not sure if that was included in the words "Walmart" or not, so...

MR. ALMONOR: No. It's separate and its own symbol.

HEARING EXAMINER STRAIN: That's why it was rounded to 317, allowing 250 for the Walmart sign, and the other 67 feet, roughly, for the rest of it, and that's how we got to 317.

MR. ALMONOR: Okay.

HEARING EXAMINER STRAIN: It's a mysterious way to get there, but it's what we did.

So let's go back to, then, do you have any problem, then, with the language to basically forego the square footage allocated by 07-37 for the square footage you're getting through the decision that would be issued as a result of today?

MR. ALMONOR: No objection.

HEARING EXAMINER STRAIN: Okay. And then that's -- that will take care of most of my questions. I want to turn to staff and see if the staff has anything further they want to try to help with this. Tim?

MR. FINN: No, I don't.

HEARING EXAMINER STRAIN: Okay. You know the first one worked out great. Something happened here in this one, but we'll get through it.

So with that, I don't have any other questions of you, and we'll close the public hearing, and a decision will be rendered within 30 days. It will be along the lines that we just talked about for the stipulations, okay.

MR. ALMONOR: Thank you.

HEARING EXAMINER STRAIN: Thank you very much.

Thank you, Diana, for your time this morning. I'm glad you were available.

MS. COMPAGNONE: No problem.

HEARING EXAMINER STRAIN: I know how busy you are.

\*\*\*That will take us to the next item on the agenda, which is 3E. It's Petition No.

VA-PL20190000964. It's the Donald Viehmann and Philippa A. Viehmann, a request for a variance from a side yard and a rear yard setback.

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 -- or email correspondence, and we talked briefly, at the beginning of the meeting, with a representative of the applicant, Patrick Neale, and I don't believe I've had any conversations with staff on this one that I can recall. I did look at the history that was provided in the staff report, as well as whatever docket -- plats and other things I found online.

So with that, before we go forward, is there any member of the public here for this particular item other than the applicant's team?

(No response.)

HEARING EXAMINER STRAIN: Okay. Whoever's representing the applicant, if you'd go to the microphone. Pat, if that's you.

MR. NEALE: Good morning, Patrick Neale representing the applicant.

HEARING EXAMINER STRAIN: Good morning, sir. How are you today?

MR. NEALE: Just fine.

HEARING EXAMINER STRAIN: I haven't seen you for a while. Good to see you again, Pat.

I did -- when I went through this, I took a look at the prior approval that was provided for the setbacks and for the permitting. And, you know, I know that the issue today is you've gone into the easement -- lake maintenance easement. You've got sign-offs, from what I could tell, from the neighbors --

MR. NEALE: Yes.

HEARING EXAMINER STRAIN: -- and from the HOA --

MR. NEALE: Yes.

HEARING EXAMINER STRAIN: -- and from the county.

MR. NEALE: Yes.

HEARING EXAMINER STRAIN: So I'm not raising concerns of a problem. I'm just trying to seek some clarification.

On the original site plan that was provided to the county or actually that -- it appears that the easement lines were there, and the pool is actually shown beyond the easement lines with the exception of that five-foot piece. And I just -- so I don't know how that happened, but it looked like it was -- the document I'm looking at shows it.

MR. NEALE: Sir, you know, this was all done back -- the construction was done in 1995 --

HEARING EXAMINER STRAIN: Right.

MR. NEALE: -- well before my client purchased the property. We have no way of knowing how that got through here or how it got past the original builder who built the pool.

HEARING EXAMINER STRAIN: It just was -- because a lot of the language seemed to indicate this was done without the staff's realizing it was past the line, but it shows it past the line on the application document. So, anyway, this was back many years ago. It's been trouble free all these years. No one's complaining, and the neighbors are in conjunction. It certainly wasn't the fault of your client; that's recognized.

And I don't have any other questions. I just wanted to make sure I was reading this



correctly, and I'm glad to see you had seen the same thing, so...

MR. NEALE: Yes, sir.

HEARING EXAMINER STRAIN: With that, Pat, I don't have anything else of you.

Thank you.

And is there anybody here in the audience that has any questions on this one?

(No response.)

HEARING EXAMINER STRAIN: And staff? James?

MR. SABO: Yes. For the record, James Sabo, planner for the county.

The Zoning Division recommends approval for the Variance Petition 2019....0964, 4760 Oberon Court.

MR. NEALE: And the applicant concurs with the recommendations and the staff.

HEARING EXAMINER STRAIN: I was going to ask you that next. Thank you very much.

And, James, I noticed that the Board's already seen this in the form -- it must have been on consent. They've signed off on the easement use.

MR. SABO: Correct.

MR. NEALE: Yes, sir.

HEARING EXAMINER STRAIN: Okay. I don't have any other questions. Thank you very much, sir.

MR. NEALE: Thank you, sir.

HEARING EXAMINER STRAIN: Are there any members of the public who'd like to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we'll close the public hearing. A decision will be rendered within 30 days, most likely a lot less. So thank you.

And as a surprise as it might be to me with what we had scheduled, today is a lot shorter than we intended. There is no other business. Any public comments?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, this meeting's adjourned. Thank you, all.

MR. NEALE: 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 9:25 a.m.

COLLIER COUNTY HEARING EXAMINER

  
MARK STRAIN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 12-2-19, as presented  or as corrected \_\_\_\_\_.

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