

September 10, 2020 HEX Meeting

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
September 10, 2020

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 ANDREW DICKMAN

ALSO PRESENT: Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner
Nancy Gundlach, Principal Planner

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everyone. My name's Andrew Dickman and today is September 10th, 2020. I am the Hearing Examiner for this hearing, and why don't we start with the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right. Thank you very much. Just a few quick items before we get started. This particular hearing, because of the COVID pandemic is being not only in person, but it's being done virtually. So we, not me, the County has done a great job of arranging the room as you can see, trying to respect everybody's distances and protect everybody's health. And for the public that chooses not to be in here in public, there were instructions on how to get online and have comments.

This is a quasi-judicial hearing. The process is the applicant will go first. Is that right Ray, and then the County?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: The County and then we'll open it up for public comment. We are -- I'm going to take every opportunity to be patient, because if we have any technical issues or any issues because of just wearing masks and so forth, just take your time. It's more important for me that the record be clean and clear than to be rushed. And the other, we try to keep everything to five minutes if we can, and we have four items on the agenda. Are there any changes to the agenda before we get started?

MR. BELLOWS: We have no changes.

HEARING EXAMINER DICKMAN: No changes to the agenda, okay. And do we want to just swear everyone in at once or at the beginning of each?

MR. BELLOWS: I think it's best to do it at the beginning of each in case somebody walks in in the middle of the meeting and they didn't get sworn in.

HEARING EXAMINER DICKMAN: Okay, all right. So why don't we go ahead and take up the first item and swear everyone in that's going to speak on this item. Anyone who's going to testify and give testimony to this application.

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

HEARING EXAMINER DICKMAN: Great. Thank you very much. I appreciate that. So this is Petition No. BDE-PL20190001536, Item No. A on the agenda, Michael -- I'm going to pronounce this badly -- Michael Doheny, Trustee of Michael Doheny Trust. So applicant, if you want to come on up. You can -- County is going to use the center podium?

SENIOR PLANNER KELLY: We'll use the center one.

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

MR. HOCHIN: Good morning, how are you guys doing?

HEARING EXAMINER DICKMAN: Fine, thank you.

MR. HOCHIN: I'm Eric Hochin with Greg Orick Marine Construction, speaking on -- it's Doheny Trust.

HEARING EXAMINER DICKMAN: Didn't even get close.

MR. HOCHIN: It was pretty close. That's how I pronounced it the first time.

HEARING EXAMINER DICKMAN: I got the Michael right.

MR. HOCHIN: That's how you sound it out.

HEARING EXAMINER DICKMAN: All right.

MR. HOCHIN: So yeah. On this project we're just proposing to install a boat house over an existing docking facility. And through the process we realized the dock extended out past the 20-foot mark, because when the dock was originally built, the surveyor measured from the seawall instead of the property line. It's a little askew. So we threw in the DBE for the extra foot that it protruded out past the point, in order to bring it into compliance to be able to install this boathouse. That pretty much sums it up.

HEARING EXAMINER DICKMAN: Okay. So you're basically retrofitting a dock with -- an existing dock with a cover?

MR. HOCHIN: Yes, sir.

HEARING EXAMINER DICKMAN: Correct?

MR. HOCHIN: Um-hm.

HEARING EXAMINER DICKMAN: Okay. County, do you have anything?

MR. KELLY: For the record, John Kelly, Senior Planner. The County reviewed the dock using the dock extension criteria. The boathouse, using the boathouse criteria. And we are recommending approval for the dock facility and boathouse, which is PL20190001536.

HEARING EXAMINER DICKMAN: Great. Thank you very much. I have read all of the documents that are associated with this, your application, staff report, everything that's in the packet. I've also noticed that there was a sign posted out in the yard so your neighbors, the neighbors would have had a chance to know about this. Are there any neighbors or any other members of the public that would like to speak to this item?

Hearing none, I --

MR. BELLOWS: We have no registered online speakers, either.

HEARING EXAMINER DICKMAN: No registered online speakers, nobody here in the house. Okay. Well, we're going to close the public hearing. Do you have anything, any last final comments other than you've had a wonderful time here today?

MR. HOCHIN: That is it. Yeah. That was it.

HEARING EXAMINER DICKMAN: So what I'm required to do is put together a decision and render it, and you will be getting a copy as well as the County and everyone else. So I'll do that as quickly as possible.

MR. HOCHIN: Sounds good, appreciate it.

HEARING EXAMINER DICKMAN: All right. So we're going on to No. B, Petition No. BDE-PL20180002398, Daniel L. Koelsch and Connie Sofo-Koelsch. You're going to have to correct me when you get up there. So let's swear everybody in on this one.

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

HEARING EXAMINER DICKMAN: Great. Thank you very much. How are you, sir? Go ahead and correct my pronunciation of your name. Everyone seems to do that.

MR. MCNEAL: Thank you for having us, Mr. Dickman. My name is Randy McNeal. I'm with Naples Marine Construction. We're here on behalf of the Koelsch's, Daniel and Connie Koelsch at 129 Pago Pago West, down in Isle of Capri. They're requesting a dock extension past the normal 20 feet to 25 feet. We've provided a

proposed drawing that shows it with a lift. Makes it a little bit more convenient with a lift to have it out a little bit further. We've provided all the documents.

HEARING EXAMINER DICKMAN: If you need to go ahead and take your mask off, that's fine.

MR. MCNEAL: Did everybody hear everything I said?

HEARING EXAMINER DICKMAN: No.

MR. MCNEAL: No?

HEARING EXAMINER DICKMAN: Yes, yes. Saying yes. Most importantly, the court reporter is saying yes.

MR. MCNEAL: Okay, good. So that's our request.

HEARING EXAMINER DICKMAN: Okay. All right. Who's the planner for the County on this one?

MR. KELLY: John Kelly, Senior Planner. Once again, the staff reviewed this in accord with Section 50306 of the Land Development Code and the results are contained within the staff report. Staff is recommending approval for BDE-PL20180002398.

HEARING EXAMINER DICKMAN: Okay, thank you. And I did read all the materials that were provided in the package, including the application, the staff report. Are there any members of the public that -- I know there was a sign posted. I saw the photographs of the signs that were posted. Is there any members of the public signed up to speak here?

MR. BELLOWS: No one has registered in person or online.

HEARING EXAMINER DICKMAN: Okay. And I do not see a line out the door. I don't see anybody rushing to get to the podium. I'm starting to feel a little offended that this isn't fun enough for people, but anyway, anything else you would like to put into the record?

MR. MCNEAL: No, that pretty much explains it.

HEARING EXAMINER DICKMAN: That pretty much explains it, okay. Well, I'm going to close the public hearing and as I said earlier to the other applicant, I will be rendering my decision and you and others will get a copy of that.

MR. MCNEAL: Thank you very much for having us.

HEARING EXAMINER DICKMAN: Thanks for being here. I appreciate it. Don't forget to put your mask back on.

MR. MCNEAL: Thank you.

HEARING EXAMINER DICKMAN: All right. Moving right along. Item No. C on the agenda. Petition No. CU-PL202, a whole bunch of zeros, and 698 at the end. This is, why don't we go ahead and swear everybody in on this item.

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

HEARING EXAMINER DICKMAN: Thank you very much. Who do we have here?

MR. ARNOLD: Good morning. I'm Wayne Arnold of Q. Grady Minor and Associates, Certified Planner handling the petition. This is a fairly simple conditional use request. It's for a dialysis center to replace existing medical space in a building out on the East Trail. It's zoned C3 and for whatever reason the C3 zoning district requires a dialysis center to be in conditional use.

The criteria that are applicable, obviously it's all renovation of an interior space

that's already been utilized for medical space. There's no external impact whatsoever. There's -- we held a neighborhood information meeting, for which nobody attended. So a fairly straightforward request. Representatives from U.S. Renal, who are developing the facility are online and able to answer any specific questions if you have any. Again, that's a pretty benign request and hope you can render a fairly quick decision in our favor.

HEARING EXAMINER DICKMAN: Okay. Thank you very much. I appreciate that.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: Nancy, is the planner here. All right. Come on up, Nancy.

MS. GUNDLACH: Good morning, Mr. Hearing Examiner. It's my pleasure to answer any questions you have this morning. Staff has recommended approval of the conditional use petition.

HEARING EXAMINER DICKMAN: Okay, great. I did read everything that was submitted here. Not only the application and other materials, as well as the very thorough staff report that was prepared. And unless you or either one of you have any other questions, I'll open it up to the public. Is anyone here that would like to speak to this? Okay. Just about as exciting as your neighborhood information meeting.

MR. BELLOWS: And there are no online registered.

HEARING EXAMINER DICKMAN: Okay. So pretty soon we're going to have to figure out what I have to do to get more people interested in this. All right. Then I will close the public hearing and I appreciate everything that both of you have done and I will render an opinion as soon as possible.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: Okay. We've got the last item, Item No. D on the agenda, Petition DR-PL20190001386. Would everyone please get sworn in.

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

HEARING EXAMINER DICKMAN: All right. Let's get started with the applicant. Come on up.

MR. WRIGHT: Good morning.

HEARING EXAMINER DICKMAN: Hi, how's it going?

MR. WRIGHT: Good. Try to keep things going at a steady clip here.

HEARING EXAMINER DICKMAN: Yeah, I'm going to slow it down for you.

MR. WRIGHT: Okay. Good morning. I'm Jeff Wright with the Henderson Franklin Law Firm. I'm appearing on behalf of the applicant today. With our team, we have Lauren Evans with Creighton Construction and we also have Michael Herrera with Grady Minor, our engineer.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: We're seeking a site plan with deviations for redevelopment. To redevelop an old gas station, convenience store with fueling stations at the corner of, the northwest corner of Airport Road and Pine Ridge Road, just up the road a couple miles from here.

We have -- the site's just under an acre in size and Michael will go on with some of the location and site information in detail. We've reviewed the staff report. We agree with staff's recommendation of approval. There's a total of four deviations, three

of which are landscape related and one is setback related. And mainly due to the existing site's conditions and configuration.

Staff's recommending approval of all four of those deviations.

HEARING EXAMINER DICKMAN: Okay.

MR. WRIGHT: As I mentioned, Michael's here. He's going to give the bulk of the testimony. He has been recognized as an expert before you, and I would ask that he be recognized this morning as well. Thank you.

Obviously, we're going to make our presentation via PowerPoint. And staff has a digital copy. We appreciate the chance to present our case, and at this point I'll turn it over to Michael. If you could move it to Slide No. 3, I'd appreciate it. Thank you.

HEARING EXAMINER DICKMAN: All right. Michael, how are you?

MR. HERRERA: Good. Again, thank you. Thanks for having me, Mr. Dickman. All right. Similar to last time I was here a couple of weeks ago.

HEARING EXAMINER DICKMAN: Yeah, didn't we have a 7-11 last time?

MR. HERRERA: Yeah.

HEARING EXAMINER DICKMAN: Oh, thank heaven. They're going to be coming in like hundreds.

MR. HERRERA: Hopefully. So this project is located on the corner of Pine Ridge Road and Airport Road in the northwest corner. It's an existing facility. It's zoned C5. It has an existing fuel station, convenience store and car wash. The proposed development has a convenience store, fueling station and no car wash.

That's the difference between existing and proposed. If we could -- as we mentioned earlier, we are requesting four deviations, three landscaping and one setback. We can go to the next slide, please. That's the location. Everyone's familiar with it. Next slide. So that's a little aerial. What you'll notice, there's a couple interesting things about the existing facility. There's an immediate right turn as you're going westbound on Pine Ridge Road that's relatively unsafe. I've been going to that gas station for 20 years and I can testify it's not a safe turning movement.

There is five existing access points on that facility. You can see it. You can see the existing car wash that's pretty much on the north side on the property line. There's a dumpster in the northwest corner that also doesn't meet, either of those meet current setback requirements. It did at the time, but not under the current regulations.

So next slide, please. This is a little bit of the existing facility as you're looking south. It's not exactly south. It's more southeast, but you can see there, the location on the right picture, the location of the car wash right up against the property line. You can see that there's a single hedge going around the project with some limited trees. Next slide, please.

This is looking north basically, northwest again. Right on the left one that's on the corner of Airport and Pine Ridge. The orientation, you'll notice that there isn't any building foundation landscaping, which we are proposing underneath the proposed development. You'll see that in a second. Next slide, please.

We're looking east here, so that's kind of like where Einstein Bagels is. Looking towards the Mobil station, there is a little bit of green open space there with some limited landscaping. Next slide.

This was the plan that was originally permitted and I forget the date when it was originally permitted, but it's been there as far as I can remember. So probably around

'75, maybe '80. I'm not sure. But what's important on this site plan is on the, along the frontage of Airport Road, that's where the existing fueling stations are located, and we're not proposing to change those fueling stations, the actual underground tanks. Sorry, not the fueling station but the underground tanks. The underground tanks we're not proposing to change. So that's along the frontage and pretty much the rest of everything else is complete redevelopment. Next slide, please.

That was the existing, what you're looking at now is the existing landscaping. Six trees and a single hedge row are on the property. Very limited due to the amount of ingress and egress to this site. It's very limited on perimeter landscaping. You'll notice that there isn't any building foundation landscaping. So underneath the proposed conditions, you'll see a large improvement. If you can go to the next slide, please.

And this is the proposed site. So one of the main things that we're doing to improve the safety of pedestrians and vehicular traffic is installing a new turn lane on Pine Ridge Road. We're removing that existing unsafe ingress egress and adding a turn lane. So it won't have direct access to the site from Pine Ridge Road. They actually will enter into the shopping center and then from the shopping center they'll have access. So really focusing on getting vehicles into this site in a safe manner and then the other location is going to be, on the north side of the property across from where the old Toys-R-Us was located.

HEARING EXAMINER DICKMAN: Michael, quick question on that. So definitely understood the danger of the existing. I knew that pretty quickly. So when you say existing, are you proposing a deceleration lane and then turn into the existing driveway; is that what it is?

MR. HERRERA: Yeah. There's an existing driveway that goes into that shopping center that it's not on our property. It's just to the west of our property where that driveway that goes through. Right there, right now, there's that access and there's one more to the east, the one that's dangerous. So that gets removed and a right decel lane, turn lane, gets built so that you can pull into the shopping center. Then you make another right.

HEARING EXAMINER DICKMAN: So you'll be able to get out of traffic and pull to your right?

MR. HERRERA: Right.

HEARING EXAMINER DICKMAN: Appreciate that.

MR. HERRERA: Yep. And leaving the site as well. I mean, people -- I mean, that was supposed to be right in only, that first access. But people were always leaving at that location as well, which was even more unsafe. So that's being eliminated as well. That access is.

That, along with the location of the underground tanks and then just the constraints of trying to fit what's required to make this project successful on .9, I think it's .97 acres, whatever. It's just under an acre. There's a lot of constraints on it and that's why we're requesting four deviations. Next slide, please.

This is our landscaping plan what you're seeing on the screen now and what you can see is there's a significant number of trees compared to the six that are there today. So -- and we also have foundation landscaping and we're required to have a double hedge row around the perimeter as opposed to what's there today, which is a single hedge row. Next slide, please.

So we're going into the deviations. Deviation No. 1 is a deviation from a 25-foot perimeter, landscape buffer along the right of way. And as we spoke about, we're requesting a 25 to a ten and a five. The ten is on Pine Ridge Road, I'm sorry, the Airport Road and a five -- and it's just for a small little area -- on Pine Ridge Road. And the reasons for that, the one on Pine Ridge Road is just for a small section. The majority of it is -- not the majority, but a significant amount of it is 25 feet. But the one area that's five feet is due to the turn lane that we're proposing, plus we have to install the sidewalk. There's a lot of existing infrastructure in there, power poles and so on and so forth. So we had to meander that sidewalk around those, and that really squeezes in. You can see that on the slide on the south buffer, how that sidewalk gets close to our drive aisle, which limits the buffer to five feet.

The one on the east buffer again, it's just an existing condition. We're not encroaching any further into or towards the right-of-way. It's ten feet today, we're proposing to have it ten feet. The reason why is because of the underground fuel tanks. So that area, there's a small area and again, that one ranges between ten and 25 feet. But at that little pinch point we're requesting a deviation down to ten feet. So those two are just on the south and the east. We are providing the required buffers that meets code on the north and the west. Next slide, please.

Actually, can you go back one. I didn't realize there was a second deviation on this slide as well. So deviation No. 2 is a deviation request for the height of a berm. The height of a berm, by code, is required to be three feet in meandering. What we have, due to the same constraints that we just spoke about, we're not able to get up to that three foot height with the slopes. So we're able to get up to 1.5 feet in those tight constrained areas, but the areas where we have the 15 and 25 foot buffer, those areas we meet code. So it's really just in those areas where we're constrained on width, we're requesting a deviation from a three foot berm to a 1.5 foot berm. That's in height. Okay. Now we can go to deviation No. 3, please.

Deviation No. 3 is a setback. Deviation, there's a lot. You can see they're highlighted on the screen. There's four that are on the west side. Two are related to the building and one to the dumpster enclosure and then two to the canopy. We'll go over those now. Code requires, for the rear and side setbacks to be 40 feet. We really have two side yards and two fronts because it's a corner lot. So the front yard setbacks are required to be 50 feet. The building itself is located on the northwest part of the project and the setback to the building is 16 feet. The landscape buffers in those areas are ten feet. We're not requesting any deviation to the landscape buffers. So we've accommodated the landscape buffers and we're requesting a setback requirement from 40 down to 16 feet.

The dumpster enclosure it's also required to be located at 40 feet and we're requesting the dumpster to be located at 20 feet. The existing dumpster is, if I remember correctly, it's something like five or six feet from the property line.

And then the last is the canopy, the fueling station canopy. On the north side, the required setback is 40 feet. We have it at 36 feet. And then on the south side, because it's a primary facade or frontage road, it goes from 50 feet to 45 feet. So those are the setback requirements that we're requesting on this project. Again, we're kind of limited on how the site lays out. We reduced the ingress egress from five to two. We've got a turn lane constraint. We've got an existing fuel tank constraint and just ensuring that the

truck route that comes through is maintained kind of dictates how everything was laid out. When sites get really tight like this, there's not a whole lot of options. Next deviation, please.

The last deviation is a deviation from the vehicular use area landscape requirements, which is required to be ten percent of the site and we're requesting it down to 5.34 percent. So the original permit basically has six trees on site. We're proposing significant number more trees than that. But that ten percent equates to about -- on the site equates to about 2,324 square feet. That requires nine trees and we're providing that. So we are providing the number of trees, just where the existing has six, by the calculations, we are requesting that deviation from ten percent down the 5.34 percent in terms of square footage.

So the approval of these deviations will improve vehicular movements, separates pedestrian traffic from the truck route better that it currently does. Obviously, aesthetically this is a huge improvement architecturally and landscaping. Also in terms of storm water. And just for the record, I have reviewed the LDC criteria that applied to this request and in my professional opinion the requested deviations meet these criteria. That's about it. So thanks for your consideration.

HEARING EXAMINER DICKMAN: So I guess car washes are no longer desirable enough?

MR. HERRERA: I know.

HEARING EXAMINER DICKMAN: This one is going out, right?

MR. HERRERA: This one's going out and so was the other ones.

HEARING EXAMINER DICKMAN: Interesting. I wouldn't put my car through one of those. Counselor, anything else?

MR. WRIGHT: That concludes our presentation and we request your approval. Thank you.

HEARING EXAMINER DICKMAN: All right, thank you very much. So, John, how are you today?

MR. KELLY: Good morning. John Kelly, Senior Planner. This project was initially -- when I was reviewing it -- headed towards the Planning Commission. As such, we recognized a scrivener's error for which we've provided correction to be geared towards yourself. This site was initially developed in 1986. The project managers with their staff worked closely with our transportation and landscaping staff. We find the project to be favorable and recommend approval.

HEARING EXAMINER DICKMAN: Okay. Thank you very much. So great, I'm going to take that as a compliment that it's being rerouted to me and not the -- all right. So anybody here from the public to speak for, on behalf or just neutrally?

MR. BELLOWS: No one has registered or online registration.

HEARING EXAMINER DICKMAN: This is really starting to bother me. You sure the public knows we're here? I saw all the signs. I read the staff reports, I read all of the applications, everything, listened to the testimony here. I appreciate all the hard work that's been put into this and I will close the public hearing and render my decision as quick as possible. Thank you.

Is that it for everything? Any other business we need to take care of? Anybody have anything? We've got plenty of time. Want to talk about something?

MR. BELLOWS: I did have a question to ask from Wayne Arnold.

HEARING EXAMINER DICKMAN: Okay.

MR. BELLOWS: He was wondering about the timing of last meetings decisions. I think he was wondering if it's going to be closer to the 30 days?

HEARING EXAMINER DICKMAN: No, I think -- yeah, those are going -- those decisions should be prepared I would say by the end of this week, I'm hoping. But I would expect that since that was the first round of them that they'll be going significantly faster.

MR. BELLOWS: Okay. I'll let him know that.

HEARING EXAMINER DICKMAN: Yeah. I think, in general, things will be speeding up a little more now that this is the second hearing that I've had and we had some of the -- there's some submittal requirements and some other things that we had to get ironed out.

MR. BELLOWS: I'll send you the list of those particular petitions that were requesting NIM waivers and the language that grants the authority for the --

HEARING EXAMINER DICKMAN: Thank you. Send that to me in writing and that way I can look at it and make sure I have the proper authority. Appreciate it. Anything else, anybody? All right. County staff, you've done a wonderful job. Sorry I didn't take up more of your time. All right. We're going to close the Hearing Examiner Meeting as of right now. 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 9:35 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER.

These minutes approved by the Hearing Examiner on 10/2/20, as presented

X or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
U.S. LEGAL SUPPORT, INC.,
BY REBECCA GREEN, REPORTER AND NOTARY PUBLIC