

COLLIER COUNTY
QUASI-JUDICIAL PUBLIC HEARING
PETITION No. BDE-PL20200001959

Thursday, March 25, 2021
9:14 a.m. - 9:36 a.m.

2800 North Horseshoe Drive
Naples, Florida

Andrew Dickman, Hearing Examiner

John Kelly, Senior Planner
Ray Bellows
Jeremy Frantz

On behalf of the Petitioner:
TURRELL, HALL & ASSOCIATES, INC.
Exchange Avenue #B
Naples, FL
BY: JEFF ROGERS

PROCEEDINGS

MR. DICKMAN: Okay. I apologize for the delay. Today is March 25, 2021. My name is Andrew Dickman. I'm the hearing examiner and we will get started with the pledge of allegiance on the agenda, so everyone rise, please. (Whereupon pledge of allegiance was recited.)

MR. DICKMAN: Okay. Thank you very much. As I mentioned, I am the hearing examiner. I was retained by the Board of County Commissioners. I'm a Florida Bar attorney, been practicing for over 20 years in the area of land use, zoning, local government. I'm also a certified planner with a master's in urban regional planning. I am not a county employee. I am here as an independent decision-maker hearing examiner. What I'd like everyone to do is silence all your phones, anything that makes noise so that we can concentrate on the matters that are before us. This is a hybrid meeting. Due to the unfortunate pandemic that we are in, the county has established rules and regulations for everyone's public safety to allow for in-person meetings behind all these plastic walls that we're in and also, online, so that ask everyone in the building, in the room, keep your mask on; use the sanitation, so forth. We do have a court reporter, I believe. Is she: or he with us, Jeremy?

MR. FRANTZ: I do not see them in Zoom right now. I'm going to start recording the Zoom meeting. Okay. We're recording now and we'll be able to use this recording to get minutes created. I'm not sure the reason for the absence today.

MR. DICKMAN: Okay. Thank you very much. To that point, it's very important that everyone speak clearly, slowly. It's being recorded. All the public meetings are being recorded here. It's necessary for that to have a record of this hearing. Once again, for social distancing purposes and your own public health here at the meeting, we are going to follow the following process that I'm going to listen to the county first to briefly introduce the item, go through their staff report, so on, at the gray podium to my right. Then the applicant will come up and speak at the brown podium, sort of 1:00 o'clock -- to my 1:00 o'clock. And then we'll open it up for public comments at the gray podium. You may take your mask off at the podium only when you're speaking into the microphone, but after that, I'd ask that you do put your mask back on. We are wiping down the podiums during that process, so be aware of that. For everyone's education here, the purpose for having this quasi-judicial hearing is for me to hear out the various applications, and what I'm looking for is information -- testimony, information dealing with due process, dealing with competent substantial evidence in relation to the criteria that's published in the county code of ordinances and the county land development code, as well as administrative code. And competent substantial evidence is from experts and it can also come from laypersons who have factual knowledge of the issue. That being said, obviously, members of the public can speak; this is a public hearing, but I would ask that members of the public who are speaking, try to keep to the issue at hand, and we will do that. Everything that you say will be said under oath and I'm going to administer the oath in one minute but understand that this is the -- the testimony is going to be under oath at risk of perjury. I have not had any contact on either item. We have two items on the agenda today. I have not had any -- any outside ex parte contact. What I have and have reviewed is the county staff report, which includes information from the applicant, and I have also reviewed the criteria from -- of which it is being applied, so I have -- no one has contacted me; no one -- I have not spoken with anybody about the application. My goal here is to try to remain as neutral and impartial as possible so that when you're here, you feel comfortable that I'm not -- I have no additional information that -- that you don't know about. So, this is why this hearing is so important. So, at that time -- at this time, what I'm going to be accepting today is not only testimony, but also record -- documents that will be put into the record. So, at this time, let me go ahead and anyone who's going to speak today --

MR. FRANTZ: Can I interrupt for just one moment? I'm sorry. I do see someone who might be.

our minute taker in Zoom.

MR. DICKMAN: A stenographer. Okay. Who do we have here?

MR. FRANTZ: Joelle, I'm allowing you to unmute yourself now. If you can unmute and let us know.

Are you -- are you taking minutes for us today?

THE COURT REPORTER: This is Jane Petersen. I am your court reporter.

MR. DICKMAN: How much of this have you heard and taken down?

THE COURT REPORTER: I have heard everything and taken everything down.

MR. DICKMAN: Awesome. Great.

MR. FRANTZ: Sorry about that. I didn't recognize the name.

MR. DICKMAN: At this time, I think it's probably better if I administer the oath. Ray, are you raising your hand?

MR. BELLOWS: Just a point of clarification on review of the agenda. Agenda item 3B, this is the one we discussed at the last meeting. There was opposition, so we rescinded the NIM waiver and they are now scheduling them, so 3B has to be continued.

MR. DICKMAN: Okay. Let me get to that. Then we have one item on this, and let's go ahead and administer the oath. I'll do that. Anyone here speaking today to give testimony, please rise and raise your right hand. Under penalty of perjury do you swear to tell the truth and only the truth? Say yes if it's in the affirmative.

UNIDENTIFIED MEN: Yes.

MR. DICKMAN: All right. Great. So, reviewing the agenda, as we have just noted, that item B has been withdrawn. I had previously issued a NIM, neighborhood information meeting waiver at the recommendation of staff. I always ask for their recommendation, and it's always subject to if there's opposition, then we circle back and we have that NIM waiver, so I'm glad that that's happening.

MR. FRANTZ: We have one registered speaker for that item.

MR. DICKMAN: Okay. For that registered speaker, the NIM is going to be scheduled when? So we can put that in the record. Come on up. I want to let this individual know when will be the neighborhood information meeting.

MR. KELLY: For the record, John Kelly, senior planner. The applicant is still trying to schedule their NIM. They're having difficulty finding a venue.

MR. DICKMAN: Are we continuing this item to a date certain or is it all going to have to be re-advertised?

MR. KELLY: At this time, they're within their five-week window; however, it may need to be re-advertised.

MR. BELLOWS: For the record, Ray Bellows. I prefer we just discontinue it to the next HEX meeting. Hopefully, they can work something out; if not, then -- well, we'll address it at the next meeting.

MR. DICKMAN: So why don't we just put it on the agenda for the next meeting. Hopefully, they can have their NIM meeting by then. For anyone here or listen outside, the item is not going to be heard. This happens from time to time, but there will be a community meeting and it will be advertised, so you can attend that community meeting, ask questions, find out more about it, and then, of course, be -- you know, participate in the public hearing when it's put back on the agenda. So, we'll have it on the agenda at the next meeting and if it hasn't -- the neighborhood information meeting has not taken place, then we'll reconsider whether or not we need to re-advertise it from that point. Okay?

MR. KELLY: Great.

MR. DICKMAN: Okay. Great. All right. So, let's go on and take up item number A, 3A. County.

MR. KELLY: For the record, John Kelly, senior planner. This is going to be item BDE-PL20200001959.

for Pelican Street West. The petitioner requests an eight-foot boat dock extension over the maximum 20 feet allowed by Section 5.03.06 E1 of the land development code for waterways greater than 100 feet in width for a total protrusion of 28 feet into a waterway that is plus or minus 830 feet wide to accommodate a boat dock facility with two boat lifts: one for a 30-foot vessel and the other for two personal watercraft. This dock is replacing one that was previously approved by the boat dock extension process. The staff analysis finds that the request complies with four of the five primary criteria and five of the six secondary criteria with one of those being not applicable. It's the Manatee Protection Plan. Notice requirements for a BDE apply in – or appear in LDC Section 10.03.036 H. The required mailing and advertisement were satisfied on March 5, 2021 and the sign was posted to the front of the property by me on March 8, 2021. This petition was reviewed by the LDC criteria contained within LDC Section 5.03.06 H. As I – I already provided you the findings, so staff recommends that the hearing examiner approve this petition with the condition that an ST, special treatment permit must be sought and approved prior to the issuance of any permits to construct the subject dock facility. And this would be in accord with attachment A, the proposed dock dimensions, shape three of nine. That concludes staff's presentation.

MR. DICKMAN: For clarification, if I may. On page 1 of 8, your introduction indicates it's a 30 -foot vessel, but then later on it refers to a 30 -foot vessel on primary criteria one. So, is it a 30 -foot vessel or 33-foot vessel.

MR. KELLY: I believe it's 30, but I'll defer to the applicant.

MR. DICKMAN: Very good. And it's my understanding, in short, that there is a 20-foot permitted maximum length and they are asking for an eight-foot extension beyond that, so that's the reason why we're here; is that correct?

MR. KELLY: 20 feet is allowable by code.

MR. DICKMAN: Great. Thank you very much. We'll go to the applicant's representative. How are you, sir?

MR. ROGERS: Good, thank you. For the record, Jeff Rogers with Turrell, Hall and Associates representing the applicants Tina and Alexandra Simulus (phonetic). As John just went through, he pretty much hit all of the topics, but I'll just follow through on this. The existing dock was, as John mentioned, previously approved by the county; however, it was not approved by the state and Federal Governments, and the state has sent the owners a letter to comply with the code. That is what is driving this request. So based off that request, we have to design a dock within the state's criteria and ended up with what is presented today in front of you for a 28 -foot dock extended out from the property line into the waterway for a 30 -foot vessel; that is the correct size, and two personal watercrafts. Both setbacks on either side also required to be 15 feet per county's code and as proposed, we're at 51 feet and 25 feet. The 25 feet is what the state requires. The width of waterway is 830 feet wide here. It's on the Marco River, very wide river, so we are well within the 25 percent width of the waterway. The dock is actually protruding less than what is existing, so therefore, any visual interference with neighbors' views of the waterway will actually improve, just because the dock is going to be brought in closer to shore. There are numerous other docks along this side of the river. This is on Aisles of Capri side. Jeremy, if you want to go forward a couple. There's the proposed dock. There's the water depths. There's the extension. So, at the top, you see our 28-foot protrusion from the property line, so the most restricted point in this case is the property line, not the face of the seawall. So technically, we're 25 feet into the waterway from the mean high waterline, but per county code, it's the most restrictive point, so we take it from the property line.

MR. DICKMAN: Let me stop you right there for a second.

MR. ROGERS: Yes, sir.

MR. DICKMAN: You mentioned that the state regulations are driving this. Can you explain that? I'd

like. -- that graphic, I think, helps a little bit.

MR. ROGERS: So basically, what the state -- this side of the river is aquatic preserve, and on the Aisles of Capri side, aquatic preserve rules are a lot to restrictive. Decking was the driving force here. The existing dock is well over what's allowed for the square footage of over water structure, and has been added on to over the years, come to find out. So, because of the amount of decking and because they changed a grandfathered noncompliant dock, because it was grandfathered with the state, but they changed the structure of it; therefore, losing the non -- or losing the grandfatheredness. So had to, basically, work with the state to meet their rules. They, basically, let you have 160-square foot terminal platform, which is -- they consider it a terminal platform where the vessel is moored up to the dock, so that's why we only ended up with a four-foot-wide dock, because of the most -- you know, most restrictive criteria is the 160 square feet. So as proposed, the total over water structure is 232, but that includes a portion of the walkway that the vessel is not tied to that they let you get out to depths -- adequate depths to store your boat, which is shown here on the cross-section up on your screen. The vessels will be stored in the four-foot contour area, which is also part of the states. criteria. If you look - Go ahead, Jeremy. Go one more forward, please. If you look here, these - - this is examples of the shoreline and other docks on the waterway. We are the minimum protruding into the waterway as proposed. This -- again, a lot of these docks are grandfathered. And let me make this clear. These dimensions on this aerial are approximate. They're taken from the aerial; they're not surveyed, so these dimensions could be off a little bit. I don't want anyone to get upset about that. So, with that being said, it just shows you that we are not going to be intruding into navigation, impacting it whatsoever. We're well inside any other existing docks that have all been previously approved. State is just really restrictive on this one and is driving the lift to be even on the landward side of the dock, where we would like it to be on the outside for navigational safety purposes but could not win that battle. So happy answering any other questions. ST permit is required, and as soon as we get the, hopefully, approval from today, my office will do the ST submittal and hand it off to a contractor to build. So, any questions? Happy to take them.

MR. DICKMAN: I appreciate that explanation. So, in other words, the decking square footage is going to be greatly reduced per state rules, and -- in order to replace the dock and have the vessel that they want. And it is a 30-foot vessel, correct?

MR. ROGERS: Yes.

MR. DICKMAN: Because I measured from the outboard --

MR. ROGERS: It's LOA. That's length overall. Yes, sir. So, we did start with a 33-footer, just so you know; that's where that came from and then we had to reduce it down. So that's where the confusion, I believe, came from. But yes, we are well --

MR. DICKMAN: The seawall is getting replaced?

MR. ROGERS: Yes, sir. So that's also part of the state permit. We didn't really include that in our narrative here for the boat dock extension, but yes, it's -- seawall will be replaced with a new one placed in front of it. 18 inches is what the state will give you to put a wall in front of a wall.

MR. DICKMAN: Thank you for now. Thank you. Jeremy, anybody here from the public or online from the public?

MR. FRANTZ: I don't believe there's anyone for this item.

MR. KELLY: John Kelly, senior planner for the record. I have had no contact from the public on this petition.

MR. DICKMAN: Nobody has written in in proponent or opponent.

MR. KELLY: Correct.

MR. DICKMAN: All right. Great. And it sounds like the applicant's representative is in agreement with the staff report. Do you want to come on up and just say yes or no or maybe?

MR. ROGERS: Sir, we are. 100 percent.

MR. DICKMAN: All right. Great. Well, that seems to be pretty straightforward. Thank you for that. I don't have any other questions, other than the fact that I want to make sure that what I take with me back to my office is everything that I need. I have, obviously, the staff report and what I have are diagrams prepared by Turrell, Hall and Associates, Inc. and it looks like everything that was presented here, Section 5, surveys. I believe I have all your submittals as far as graphics. And those are the -- those are the exhibits you would like for me to have, John?

MR. KELLY: Correct. All of the applicable exhibits are in Attachment A; however, most specifically, that should be included in your decision is sheet 03 of 09 of the proposed dock dimensions.

MR. DICKMAN: Perfect. Thank you. And under the rules here at the county, I have 30 days to render a decision; however, I will do my very best to do something a little quicker than that if I can. Okay? Anything else? Then we'll close the public hearing. Sounds like nobody else wants to speak. Forever hold your peace. I have no other questions. Thank you very much, everyone. And that's it. Okay. So, since we've continued item B, then any other business? Anybody have any other business here?

MR. BELLOWS: Not for me.

MR. DICKMAN: Okay. Then the meeting is officially adjourned. Thank you.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

5/26/21



These minutes approved by the Hearing Examiner on _____, as presented _____ or as corrected _____

Stenographically Reported By:
Jane Petersen, FPR
Florida Professional Reporter
Appearing remotely from Lee County, Florida

CERTIFICATE OF REPORTER
I, Jane Petersen, Florida Professional
Reporter, certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript, pages 1 through 19, is a true and
complete record of my stenographic notes.
Dated this May 12, 2021
Jane Petersen
Florida Professional Reporter