

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
June 9, 2016

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
Eric Johnson, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

EXHIBITS

DESCRIPTION	PAGE
BD-PL20140002462/BD-PL20150000467	
A - Staff Report	4
B - Legal Advertisement	4

* * * * *

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everybody. Welcome to the Thursday, June 9th 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: Housekeeping matters. Individual 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. Usually we can get it out a little bit quicker than that.

Review of the agenda. There is -- as you see on the overhead, there's been two -- three items scheduled for today. One of them, 9 -- or 4A, San Marino PDI, has been withdrawn. It's being readvertised, and it's been rescheduled, I believe, for the 23rd, first up in the morning on the 23rd.

And that takes us to the approval of prior minutes. There's been none submitted, so we're not going to -- we'll dispense with that, and we'll move directly into the remaining advertised public hearings.

***The first -- actually, we're going to hear both. The two that are left are 4B and 4A (sic). 4B is Petition No. BD-PL20140002462. It's the Paul and Lois -- I can't -- Georgeadis request for a 42-foot boat dock extension; and Petition No. BD-PL20150000467, the same individuals but for a boathouse within that same dock.

Because these are similar, we're going to hear both petitions at the same time, and I'll even be issuing a decision -- one decision that will incorporate both of them.

So with that, 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: Okay. The Exhibit A will be the staff report; Exhibit B will be the legal ad.

For disclosures on my part, I've reviewed the files, and I may have had a passing comment with some members of staff, but we really haven't gotten any detail on it that I recall.

I do have some questions. And there's no members of the -- is there any members of the public here wishing to testify on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none and seeing none, Kris, if you -- we won't need a formal presentation, but if you want to state your name for the record, I do have some questions from the application.

MR. THOEMPKE: My name is Kris Thoempke. I'm representing the agents, Paul and Lois Georgeadis.

HEARING EXAMINER STRAIN: Okay.

MR. THOEMPKE: And I can take your questions.

HEARING EXAMINER STRAIN: I've got a series of slides, and I'll move through them. When I get to my questions, I'll simply ask them.

And the location of the property is in Isles of Capri, Pelican Street. There's your locational maps. This fits in with the other docks in the area. You have a dock next door that's almost at the same length, and you've got several around the neighborhood that are even longer going out past sand shoals and other activity

there.

The dock -- this is an overhead of the dock showing where the existing dock is. It's being removed and a new dock and a longer extension is being added with a -- what do they call that at the end? A terminal platform.

MR. THOEMPKE: Terminal platform, yeah.

HEARING EXAMINER STRAIN: As well as your lift and boathouse.

MR. THOEMPKE: Yep.

HEARING EXAMINER STRAIN: This is another interesting -- I'm going to be asking questions about the contour in a minute because the four -- negative four mean low water contour is different than the indication of where the four on the elevation occurs on the bottom.

One thing I did want to note is on this particular cross-section that came from the application, there's a 12'9" indicated for the height of the overall boathouse, and that's something that has to be addressed in relationship to the seawall, which this does. But why does this one have a different height on the bottom than -- and also shown on the top, but yet there's a red note there? This was in the packet. Can you explain that?

MR. THOEMPKE: Yeah. That's the elevation from the dock, and there's a 9-inch difference because we had to elevate the dock to get it to plus five feet to meet a DEP requirement. So there's a 9-inch difference between the elevation of the dock and the elevation measured from the seawall.

HEARING EXAMINER STRAIN: Okay. And so the requirement is the measurement from the seawall. And you're still -- you're not exceeding -- your 12'9" is where you're at from the seawall?

MR. THOEMPKE: Yes, uh-huh.

HEARING EXAMINER STRAIN: Okay. So this one is -- I don't know --

MR. THOEMPKE: That one's to the dock elevation there, and that's why it says 12 feet.

HEARING EXAMINER STRAIN: Okay. Yeah.

MR. THOEMPKE: And then the note is just to note that it's 12'9" above the seawall.

HEARING EXAMINER STRAIN: Okay. On this particular plan it's not too clear. The bottom one is, I believe, from a snapshot from one of the site plans, and the top one is from the application to the ERP. And the ERP language calls out 38 feet walkway, and a 5-foot terminal width-wise, yet your application's for 40. Are you going to be redoing your DEP --

MR. THOEMPKE: DEP's going to have to get a permit mod to go out the two additional feet. And we've been in touch with DEP about that. We wanted to get this one approved first, then we'll go to DEP and get that done. That shouldn't be a problem.

HEARING EXAMINER STRAIN: Okay. Did you have any problem with the staff recommendations?

MR. THOEMPKE: No.

HEARING EXAMINER STRAIN: This particular issue came from the specialist, I believe, at DEP. I needed some explanation on what she was getting at. It involves that contour line I showed earlier on the graphic. I'm sure it involves that.

It's talking about a negative 4-foot mean low water contour line, but I notice you -- then it says in the third line, the dock can't be allowed past the negative 4-foot contour, yet on these maps here you have a 4-foot mean low water contour line in the orange color.

MR. THOEMPKE: Right. That's --

HEARING EXAMINER STRAIN: Then you have a 4-foot contour line apparently based on standard topographical review. What's the difference, or why is there a difference?

MR. THOEMPKE: The 4-foot mean low water contour line, the one that's kind of the orangish color, that's measured in mean low water. The other data that you see there is referenced to NAVD.

HEARING EXAMINER STRAIN: Okay.

MR. THOEMPKE: And that's the difference. The correction's up there in the upper right-hand corner. So those aren't -- those aren't mean low water values. Those are -- they are NAVD, which is the standard that we use.

HEARING EXAMINER STRAIN: So when you read -- or that paragraph that talks about that issue,

why did you see that as a need to differentiate between a mean low water measurement and an NAVD? What dictates that?

MR. THOEMPKE: Well, they're not the same number. We did the mean low water because that's what the county wants to see, and also DEP uses that as well. And we -- we did not get the DEP permit for the client. He came to us with that. So we had that there to begin with.

But we put -- we put the minus four mean low water numbers on there so that everybody can see that we are meeting that DEP criteria and also the county's.

HEARING EXAMINER STRAIN: One of the things in that paragraph I notice, it says that the dock can't be allowed past the negative 4-foot contour. Now, let's assume, then, that all these references are to the mean low water contour, the one in orange.

MR. THOEMPKE: Yeah.

HEARING EXAMINER STRAIN: When you get to this map here, you do have the terminal platform past the 4-foot contour.

MR. THOEMPKE: Right.

HEARING EXAMINER STRAIN: How is that -- is that why the DEP said 38 feet and this one says 40? Because it looks like it's a couple feet into that contour.

MR. THOEMPKE: I can't tell you for sure, but that certainly is a logical explanation. We did speak to DEP about this and also on another one that's nearby that will be coming up in the future. They are not rigidly held to that minus 4-foot line in terms of exceeding it. They do allow some exceedance of it if it meets the other criteria that they're dealing with. So we don't anticipate that this will be an issue.

HEARING EXAMINER STRAIN: I guess I'll have to find out what staff's situation is in relationship to that DEP permitting.

MR. THOEMPKE: Yeah. Patricia Clune is the DEP staff person. I've had numerous conversations with her about this. And, you know, she said what we have to do is stake it out, and they'll go out and check it.

HEARING EXAMINER STRAIN: When you drew this plan up, were you not aware of the paragraph that we just spoke about that she had written previously about intruding in that negative four?

MR. THOEMPKE: Yeah.

HEARING EXAMINER STRAIN: And has DEP seen this plan?

MR. THOEMPKE: Yes; oh, yeah.

HEARING EXAMINER STRAIN: Because the plan that I found attached to the DEP permit was this one on the upper left, and I didn't know --

MR. THOEMPKE: Right. That was done much earlier. Like I said, that -- the client came to us with this. And in order to meet the county's criteria, we had to move it out a couple of feet. And we've been talking to DEP about this. If, you know, for some reason they don't approve it, then the client will have to work out another solution and come back here, I guess, if we have to change it, but I don't anticipate we will.

HEARING EXAMINER STRAIN: I think the change would be necessary if you were to be more intense than what you're asking for. You're asking for 40 feet, so if you drop back to 38, I'm not sure that staff's going to see that as necessarily something that has to be reapplied for, but I'll ask staff that, so...

MR. THOEMPKE: Okay.

HEARING EXAMINER STRAIN: And that's the extent, I believe, of the questions. Let me double-check real quick here, Kris.

MR. THOEMPKE: Okay.

HEARING EXAMINER STRAIN: I think that's everything. Yes, that's all the questions I have, so thank you very much for your time.

MR. THOEMPKE: All right, thanks.

HEARING EXAMINER STRAIN: Staff report from, I guess, Eric, this is yours.

MR. JOHNSON: Yep, that's correct.

For the record, Eric Johnson, principal planner, zoning.

Staff reviewed both applications and notes that there's three conditions of approval associated with the boat dock extension -- I'm sorry. Two conditions of approval associated with the boat dock extension and

three that are associated with the boathouse. Obviously, if the boat dock extension isn't approved, then the boathouse wouldn't be approved.

When I went out to the site, I did not verify if there are any markers out there, but based on the -- I don't believe that there are any markers based on the photograph that I provided inside the packet. It wouldn't have mattered anyway. Well, I shouldn't say that.

The boat dock extension meets five of five of the primary criteria and, actually, five of six of the secondary criteria, so...

But -- so staff is recommending approval of that. I just wanted to, you know, say that I didn't see any -- I wasn't looking for the markers when I went out there, so -- but based on the photograph that I have in the packet, I don't believe that there are any markers, and that's related to Criterion No. 3 of the primary criteria.

HEARING EXAMINER STRAIN: Would the applicant -- if the DEP insists on the 38 feet, does that have any bearing on your report?

MR. JOHNSON: Well, I don't think it will have a bearing; however, I would really have to have a conversation with Summer, who also reviewed this, making sure that, you know, the facility doesn't intrude into the seagrass area.

HEARING EXAMINER STRAIN: But already, by this diagram here, it appears to intrude into the seagrass area. And I'm not sure why these mikes aren't work, but -- sorry, Terri. That's going to be hard for you to pick up.

That document -- that photograph right there, or that overhead, shows the seagrass area in the green line. It looks like the left-hand side of the terminal platform already intrudes on the seagrass area. So that's not a problem, apparently?

MR. JOHNSON: Apparently it's not a problem.

HEARING EXAMINER STRAIN: Okay. If it goes back two more feet, it will be a little bit further in that to avoid that negative 4-foot contour line. Does the county have any issue in regards -- in the utilization of that line by DEP? I don't know where the county's criteria enters into that reference line. I didn't see any. Do you know of any?

MR. BELLOWS: For the record, Ray Bellows.

I don't recall any bearing on that either.

CHAIRMAN STRAIN: That's why I'm just trying to make sure in the exchange that the applicant may have to coordinate these points on the two permits, ours and DEP's, if that line comes into play with DEP, it doesn't necessarily mean a change for Collier County.

MR. BELLOWS: That's my understanding.

HEARING EXAMINER STRAIN: Okay. And the next thing I have to ask is -- and I notice you're having trouble, too, with these mikes. I don't know what's wrong. They've been difficult lately.

Why did we have two applications for the same issue? I mean, why -- we have a boat dock and a boathouse. In the past they've come through as one application. Why are they two on this one?

MR. BELLOWS: Again, Ray Bellows.

My understanding is there may have been some inconsistencies in applying the boathouse application when in conjunction with the boat dock extension. That was my call that it should become (sic) under two based on some past practices. But I see we have been inconsistent. And we discussed it with our director, and in the future they'll all come in as one application.

HEARING EXAMINER STRAIN: All right. I think that's a better way to proceed --

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: -- in the future.

Okay. That's all the questions I have of staff.

Have you got anything else, Eric?

MR. JOHNSON: I have nothing else, thanks.

HEARING EXAMINER STRAIN: Okay. I don't see any members of the public here. Does anybody else have anything else they'd like to say, since quite a few staff are here?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we'll close this public hearing, and I will

render a decision most likely, Kris, within a week to 10 days. We have up to 30 days, but it shouldn't take that long.

MR. THOEMPKE: Okay.

HEARING EXAMINER STRAIN: And that takes us to the end of today's business. There are no public -- members here for public comment, so this meeting's adjourned. Thank you-all.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:15 a.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 7-14-16, as presented _____
or as corrected ✓.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY
COURT REPORTING SERVICE, INC.,
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.