TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
July 28, 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
                Daniel Smith, Principal Planner
                Eric Johnson, Principal Planner
                Scott Stone, Assistant County Attorney
HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, July 28th meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Announcements: 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.

Approval of the agenda. We have three items on the agenda. They're on the board above. Items one and two, which are 4.A and 4.B on the agenda will be heard today unopposed.

Item three, which is DR-PL20130002268, previously was deemed to be withdrawn. Now I understand two seconds ago it's now considered to be continued. It's the Wal-Mart Store renovations for architectural deviations on the East Trail.

And continued is the proper terminology now?

MR. STONE: I'll let Dan answer that.

MR. SMITH: Thank you. Daniel Smith, Principal Planner.

The applicant has asked that the application for Wal-Mart be continued in -- for the August 25th -- and I'll read it into the record from an email from Jeffrey Saffield. On behalf of the applicant we are requesting to extend our scheduled hearing date from Thursday, the 28th, to August 25th. And at that point in time we'll -- I'll have a staff report for the Hearing Examiner.

HEARING EXAMINER STRAIN: Okay, is there any members of the public here that had come to speak on this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay, it was my understanding up until two minutes ago that the advertising had to be redone. Is that still the case or not the case? Just out of curiosity.

MR. STONE: Scott Stone, Assistant County Attorney.

The reason why it has been continued rather than withdrawn is because the advertisement ran for today's date, and the 25th of August is less than five weeks after today's date, so within policies it is acceptable to continue it.

HEARING EXAMINER STRAIN: We didn't know that up until this morning?

MR. STONE: Yes, just moments ago, actually. We found the original advertisement. Apologies.

HEARING EXAMINER STRAIN: And that item will be considered continued. Agenda item number three, Petition DR-PL20130002268, will be continued to the -- what was that date in August?

MR. SMITH: August 25th.

HEARING EXAMINER STRAIN: August 25th meeting. It will be the first item on the agenda on that date.

That takes us to approval of the prior meeting minutes. I've reviewed those, they're fine to be recorded the way they're written.

***And our first advertised public hearing is Petition Number PDI-PL2015000425 and it's the -- for the Salvation Army. This item has been continued from the July 14th, 2016 meeting. Till now we had some cleanup items to discuss on it.

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

If you are here to talk on this item, please rise.

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Any members of the public here for this particular item?

(No response.)

HEARING EXAMINER STRAIN: Fred, since no members of the public are here, I have read the packet, I had no revisions. I have some questions but we won't need a formal presentation because I have read it all, so you don't need to tell me anything I've already read.

MR. HOOD: Okay.

HEARING EXAMINER STRAIN: This is the location of the subject site, Salvation Army on Estey
and Airport Road. 
This is the current site plan as approved by the PUD. 
This is the site plan being proposed. 
There were a couple of questions about it, Fred. First one is the zoning under parcel 17, 18 and 19 weren't properly noted. They should be noted as C5GTMDMXD.
MR. HOOD: Okay.
HEARING EXAMINER STRAIN: So I'll need a revised exhibit reflecting those three sites having that change.
I also noted that this particular reference right here --
MR. HOOD: Yes.
HEARING EXAMINER STRAIN: -- is in error. It should be 4.3(L) or (I)(1). And you have a (2) there. 
So that's -- if you want to check that, I believe that's the wrong citation.
MR. HOOD: That 1 I believe is correct because 2 goes to -- sorry, Fred Hood for the record, Davidson Engineering.
2 is supposed to be between the commercial area and the residential community facility area, so that would be the one on the south side. The one -- sorry, on the west side. The one on the south side is supposed to be taken care of by 4.3(I)(1).
HEARING EXAMINER STRAIN: Fred, I'm -- this is the citation I'm concerned about.
MR. HOOD: Correct.
HEARING EXAMINER STRAIN: This says 4.3(I)(2). And you're saying that's correct?
MR. HOOD: I'm saying that this is not correct because --
HEARING EXAMINER STRAIN: That's what I'm saying.
MR. HOOD: That's what you are saying, okay. You're saying this should be (1). That's correct.
I'm sorry.
HEARING EXAMINER STRAIN: That's correct, meaning I'm correct?
MR. HOOD: That's correct meaning you're correct and I need to change that to (1) and not (2).
HEARING EXAMINER STRAIN: Okay, so that will have to be made as well.
On the same plan you have a section that is titled 3.4(I)(1) that talks about the landscape buffer and a six-foot high fence is required around the remaining PUD boundaries. Now, if that's true then you would potentially have to have fencing on three locations. You'd have to have fencing there, there and there. 
I confirmed that with Ray Bellows who's our zoning director, and he indicated that you can have an administrative fence waiver to get those pieces of fences if you don't intend to use them. Well, that's a cost that is -- those aren't issued for free, are they, Ray?
MR. BELLOWS: No, they're not.
HEARING EXAMINER STRAIN: And they take a process.
MR. HOOD: Yes, they do.
HEARING EXAMINER STRAIN: I would suggest that you add the same unified development language to that particular paragraph so that you're covered for that issue, if that's what your intentions are. It would clean it up and make it a little easier for staff to find it uniformly then.
So basically the unified plan language you would want to add to (I)(1) under the residential community facility area is plan.
MR. HOOD: Okay.
HEARING EXAMINER STRAIN: Then the last question I have is based on the consistent use of the language of the unified plan of development between the commercial area and the residential development. 
I asked Ray what -- I asked Fred originally, Fred's not here, so I asked Ray what the standards were for that. And I'm going to read what I got this morning. And Ray, this is for your benefit as well as Fred's. Because at some point when you come in with a plan that's for the PUD and the adjoining C-5 and they're supposed to be considered unified plan of development the standards that Ray provided wouldn't work.
And it says: In regards to the definition of unified plan of development Section 163-32 of the Code of Laws and Ordinances defines a unified plan of development as follows:

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One: An approved planned unit development, PUD, except that the residential and commercial elements of the planned unit development shall be considered separately for purposes of consistency determinations.

Now that works for the commercial here to here, but not for the commercial here to here.

Number two: A final residential subdivision plat, except that each different zoning district of the final subdivision plat shall be considered separately for purposes of consistency determinations.

Now, that says final residential subdivision plat. This property isn't residential, neither is that one, and these two are both being considered for a unified plan of development in order to reduce some buffers and setbacks on these parcels here.

In addition I've always interpreted a unified plan of development to be consistent with Section 4.0.7.01 of the LDC that requires all land intended to be rezoned to be under unified control of the applicant and that PUD master plan of development also serves as a unified plan of development.

Again, that keeps referring to the PUD master plan and rezoning. I'm trying to understand how we're going to determine that this plan, whatever it turns out to be, is considered a unified plan of development between either of these parcels and this potential parcel, maybe. And since that phraseology is used consistently throughout the request, and I mentioned this at the last meeting, Ray, what are you -- how are we going to resolve this? How do we know if the unified plan of development -- now, my suggestion would be if you look under cluster development there's a common architectural theme item there. Now, that common architectural theme language has been used before to consider projects unified.

I think there's three standards. Two of those -- one of those wouldn't apply because it's for residential; the other two probably would be. That may be an opportunity to consider as a unified plan of development criteria. But I would really need both the zoning director and the applicant to take a look at that and determine if you agree or not. Because I don't want to see your project not fit the needs that you're looking for. And I'm not concerned necessarily about the fact that you're developing these with two different zoning districts, I'm just more concerned about what criteria staff has in order to determine they're unified.

MR. HOOD: I think the last time that we discussed this we were discussing the unified plan of development would occur when we did a site development plan on two or three of the total properties, meaning the main PUD, number 9 and number 17, so that when we came in for that SDP the PUD parcel would be the main SDP and the amendments would be lots 17 or number 19, bring that together into a unified plan of development. I think that was the last thing that Ray and/or Fred had said at the last hearing. And that's kind of what we were going on for the unified plan of development outside of the clustering information that you were just discussing.

HEARING EXAMINER STRAIN: And Ray, if you've got any -- how is your department going to look at that terminology to determine if it's a unified plan of development? Is what Fred's articulating going to be acceptable?

MR. BELLOWS: For the record, Ray Bellows.

Collier County has historically allowed PUD projects to include adjacent property of a different zoning district to be unified through a site development plan. Unfortunately the definition that we have doesn't seem to reference that development plan as one way of having --

HEARING EXAMINER STRAIN: But during our zoning revaluation process back in the Nineties, and Ordinance 92-43 actually did that in relationship to multiple lots having common access, it made them a unified plan so they would have singular access and things like that.

I don't mind if that's the standard you're going to use. I just wanted to understand that that's how you're going to look at this. Because that terminology is not well defined in applications such as you're trying to do here.

And Ray, if it's the SDP that works for the staff, I'm fine with that, I just wanted an answer for it. So thank you, that will work.

Let me see if I have anything else, Fred. I think that's it.

That is all. I will need a revised site plan sent as soon as possible reflecting that change in the citation --
MR. HOOD:  Okay.
HEARING EXAMINER STRAIN: -- the language to the fence paragraph, and the corrections to the zoning sections.
MR. HOOD:  You will have those this afternoon.
HEARING EXAMINER STRAIN:  Okay.  Anything else?
MR. HOOD:  Nope.
HEARING EXAMINER STRAIN:  Okay, is there a staff report?
MR. BELLOWS:  Yes.  Ray Bellows for the record, I'm filling in for Fred Reischl who prepared the staff report presented to you today, dated July 14th.
Staff is recommending approval of these changes, and I support the corrections made on the record today.
HEARING EXAMINER STRAIN:  Thank you.
Are there any members of the public here or anybody else wishing to speak on this item?
(No response.)
HEARING EXAMINER STRAIN:  Okay, hearing none we will close the public hearing and a decision will be rendered within 30 days, most likely a lot less.
MR. HOOD:  Thank you all.
HEARING EXAMINER STRAIN:  Thank you.
***Next item up is Petition No. PDI-PL20160000837.  It's the Bay House Campus LLC.  It's a request for an unsubstantial change to that PUD.
All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.
(All speakers were duly sworn.)
HEARING EXAMINER STRAIN:  I've got to clean up some open files I have here and then I'll move right into it.
One item from the last notation, usually I start out with my disclosures; they're the same as they were the first time so I didn't repeat them, but I will just now.
My disclosures for Salvation Army were with staff, the applicant, the files and the previous email that was announced at the last meeting.
Which takes us to Bay House.  My disclosures for that are both the same as staff.  I've talked to the applicant a couple of times on the phone, or the applicant's representatives, and I've reviewed all the files.
Okay, members -- there is a member of the public here other than the applicant.  Sir, are you with the applicant's team or?
MR. PAULL:  No.
HEARING EXAMINER STRAIN:  Okay.  So Lindsay, we'll have to have a brief presentation.  I'll walk through some of the things I have on record.  You can supplement it when I'm finished.  At least that way any members of the public here will be orientated to the project.
Project location is north of Immokalee Road on the west side of Tamiami Trail.  That's the general location site.  It's up against the Cocohatchee River.  There's an aerial of the site off of Walkerbilt Road, I think it is just to the south.
The applicant's asking for one change.  Currently the development standards table says it will be a 30-foot setback between buildings.  Buildings were to be 50 feet high with 75 feet actual.  They're saying they only want to go to 30 feet with the buildings, and as a result of that they want to have a 10-foot setback.
And Lindsay, correct me if any of this is in error.  I believe that's what you're trying to do.
We've also -- I've also asked for them to consider a change to the actual height because at a 30 -- at a 10-foot setback, leaving actual at 75 is kind of extreme.  I asked the applicant to provide an alternative to that.  I'm assuming that you have come up with something?
MS. RODRIGUEZ:  Yes.
HEARING EXAMINER STRAIN:  And what is the actual that would be workable for your situation?
MS. RODRIGUEZ:  35 feet.
HEARING EXAMINER STRAIN: 35 feet, okay. So there should be language added here to that, and 35 feet in actual height. This 75 should have a slash 35 to correspond with the 30 intent up here.

MR. STONE: If I may, Mr. Hex -- Sir Hex.

HEARING EXAMINER STRAIN: No, just --

MR. HOOD: I don't believe that we need to add anything to the actual column, because the minimum distance between structures' footnote will cover both the zoned and the actual height. Just as there is no, slash on the zoned column, there should be no slash on the actual column.

HEARING EXAMINER STRAIN: How do we differentiate the need to reduce the actual height if the setback is 10 feet?

MR. STONE: The footnote should cover that.

HEARING EXAMINER STRAIN: I'm fine with that. Does that work for your --

MR. HOOD: Unless there's something missing that you see.

MS. RODRIGUEZ: No, that works for us.

HEARING EXAMINER STRAIN: It didn't matter to me, I just wanted to make sure that that got clarified on the record and in the final documentation.

That's all this particular case is about.

I looked at a couple of cleanup items. And Ray, for the record, you needed a revised Exhibit A indicating where those findings of fact actually originated?

MR. BELLOWS: Yes.

HEARING EXAMINER STRAIN: Okay, and we'll provide one to the court reporter. Thank you.

THE COURT REPORTER: Did you want to put this on the record?

HEARING EXAMINER STRAIN: Yes, those are -- customarily on the other boards we don't announce those exhibits because they're part of the record, and so we stopped doing that here. Same as the Planning Commission.

MR. BELLOWS: For the record, Ray Bellows.

I handed out revised Exhibit A, first page that has the ordinance number that implemented those -- what those changes were based on, the PUD findings of fact notes.

HEARING EXAMINER STRAIN: Thank you.

And Lindsay, is there anything you wanted to add to the presentation or any comments that you want to add in regards to this?

MS. RODRIGUEZ: (Shakes head negatively.)

HEARING EXAMINER STRAIN: I have no -- that's all the questions I had was the clarification of the actual height.

MS. RODRIGUEZ: We agree with the actual height clarification. I have revised Exhibit B.

HEARING EXAMINER STRAIN: Okay.

MS. RODRIGUEZ: Thank you, sir.

HEARING EXAMINER STRAIN: There is a member of the public here to speak, so after he speaks, if you want to have opportunity for rebuttal, you'd be more than welcome to.

Okay, and is there a staff report?

MR. BELLOWS: Yes. For the record, Ray Bellows. I'm filling in for Fred Reischl again on this petition as well. It's dated July 14th. And staff recommendation is for approval.

HEARING EXAMINER STRAIN: Okay, thank you.

Those people -- those members of the public wishing to speak -- is anybody registered? (No response.)

HEARING EXAMINER STRAIN: If not, sir, do you want to address -- if you --

MR. PAULL: Yeah, I --

HEARING EXAMINER STRAIN: You'll have to come up to the microphone and identify yourself for the record.

MS. RODRIGUEZ: Should I pass these out now?

HEARING EXAMINER STRAIN: Yes. If you could give one to the court reporter and one to me
and staff.

And sir, the microphone's over here.

MR. PAULL: Good morning. Kenneth Paull. Two L's. LL. Yes, I'm one of the residents of Palm Shores, which is across East Trail. And just one of our concerns was the traffic. The tragedy that happened with Zac years ago created U-turns. We all make U-turns to go everywhere from Palm Shores. And with this coming in there's a possibility of Walkerbilt Road possibly having, if that's going to be the main entrance and exit, possibly a traffic light.

And also our other concern is Palm Shores is very dark. There's no streetlights in it. And we're still getting people that try to make U-turns and cannot. And what they end up doing is coming into our two cul-de-sac areas and getting very confused. It's very dark and confusing. So if Walkerbilt Road is going to be the main entrance and exit, that's fine. We're just a little bit concerned about the traffic flow, that was our concern.

HEARING EXAMINER STRAIN: Okay. And if you -- when this meeting will be over shortly, if you could stay for a minute I'd like to get some contact information from you.

MR. PAULL: Sure.

HEARING EXAMINER STRAIN: I can contact our transportation department and find out what the future plans are for the intersection of Walkerbilt Road and 41. Today's meeting has no bearing on traffic and doesn't bring in those kind of issues. This is an internal setback issue. If anything it may lessen, not increase traffic by the mere fact they might end up with less density than they're already allowed to provide there.

MR. PAULL: Okay. I speak for myself only, not the neighborhood, but I am not against development. I think it's an excellent idea. I have no problems with it. I use the Coccobate River with my boat all the time. I'm hoping it just improves the area. I have no problems with it.

HEARING EXAMINER STRAIN: Well, this project's intensities were approved a long time ago. Today's just --

MR. PAULL: I understand.

HEARING EXAMINER STRAIN: -- a small correction to an internal setback.

MR. PAULL: That's fine.

HEARING EXAMINER STRAIN: But that answer to your traffic, if I can forward to you by email once I get it from Transportation Department. I'm not sure it will satisfy your needs, but --

MR. PAULL: No, that would be excellent. As long as it's addressed that would be fine, Mark.

HEARING EXAMINER STRAIN: And I agree with you with the U-turns. We've shifted to U-turns as the basis in Collier County quite a few years back. And when it happened I was shocked, because to me they seem more dangerous --

MR. PAULL: They are.

HEARING EXAMINER STRAIN: -- than just regular left turns. But I guess from operational characteristics U-turns are less restrictive on operations than multiple left turns. So I'm not necessarily -- I don't like it but that's the way the Transportation Department --

MR. PAULL: Most of the people, when they make that U-turn, they turn and go into the new Imagine store that's there, go into their parking lot and make a U-turn and come back out, because you have to, like, shoot across. But that's okay. Thank you, I will hang around.

HEARING EXAMINER STRAIN: Yeah, please stay around, I'll get your information and I'll make sure we get back with you.

MR. PAULL: Thank you, Mark.

HEARING EXAMINER STRAIN: Thank you, sir.

Okay, anybody else here wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Lindsay, I don't think there's any issue for you to rebut on that, and hearing none -- go ahead, Ray.

MR. BELLOWS: One other issue I'd like to address on the Exhibit B development standards table under where it says minimum distance between structures where the 30-foot height limit has the slash 10. I
think we'd prefer that that be removed, the additional -- the underlying 10, 10 foot. And we'll let the footnote address it all.

HEARING EXAMINER STRAIN: I don't have a problem if the applicant doesn't have an objection to it.

Basically what he's saying, Lindsay, is the double asterisks under minimum distance between structures will explain that if you're at 30 feet you go down to 10 feet. Does that work for you?

MS. RODRIGUEZ: Yes, we agree with that as well.

HEARING EXAMINER STRAIN: Okay. You'll have to send a new revised email with this corrected attachment then.

Thank you.

MS. RODRIGUEZ: Thank you.

HEARING EXAMINER STRAIN: Ray, I think that's a fine suggestion. I'm fine with it.

With that, I will close the public hearing and that takes us to the last item on today's agenda which is adjournment. This meeting is adjourned. Thank you all.

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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 9:30 a.m.


COLLIER COUNTY HEARING EXAMINER

MARK STRAIN, Hearing Examiner

ATTEST

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 8-25-16 as presented or as corrected

Transcript prepared on behalf of

U.S. Legal Support,

by Cherie' R. Nottingham.