

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2010-00027

IN RE: Jons Lindquist in reference to Gulf
Seafood Commercial Planned Development

Partial Transcript of Proceedings

Before Richard Gescheidt, Hearing Examiner, held
at the Hearing Examiner's Hearing Room, 1500
Monroe Street, Fort Myers, Florida, on February
23, 2011.

PRESENT:

Ms. Shellie Johnson, Attorney for the Applicant
Ms. Nettie Richardson, Principal Planner
Mr. John Fredyma, Assistant County Attorney

MARTINA REPORTING SERVICES
Courtney Building, Suite 201
2069 First Street
Fort Myers, Florida 33901
(239) 334-6545
FAX (239) 332-2913

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1 HEARING OFFICER: We're back on the record.

2 What have we decided?

3 MS. JOHNSON: The applicant is proposing to move
4 the cooler that's currently in the northeastern corner of
5 the property to this area that's called out as an optional
6 service area, and then what we'll do is we'll have to
7 recalculate the open space.

8 I don't believe there's going to be a problem
9 meeting the 20 percent open space since there's 48 percent
10 proposed right now.

11 And then we'll also have to amend Condition 3.a
12 just to adjust the percentage of open space.

13 HEARING OFFICER: Okay. We'll take care of all
14 those amendments at the end of the hearing.

15 Thank you for bringing this to our attention.

16 MR. MOGISKI: I have one more item.

17 HEARING OFFICER: Okay. Go ahead.

18 MR. MOGISKI: What happened was last summer a
19 gentleman brought in a backhoe on our property, dug a hole
20 and brought some stone in to use it I think as a dry route
21 to take out the draining water from the cooling system.
22 And what we'd like to do is, we'd like to have him come
23 back in and restore that area, just fill that hole back
24 in. Right now the dirt is piled up on our property and
25 it's a hole right behind the cooler. So we would like to

1 have that restored.

2 HEARING OFFICER: Wouldn't they have to restore
3 it as part of the buffer program?

4 MR. MOGISKI: It's on our property. When he came
5 and doing it without our knowledge and then when we seen
6 it, we stopped him to do any more, if he was going to do
7 any more, and then what happened was that it just stayed
8 as is then.

9 HEARING OFFICER: The problem I have is I don't
10 know that I can authorize a condition for the landowner to
11 do something to somebody else's property.

12 MR. MOGISKI: Well, I just brought that up to
13 find out what I can do or we can do.

14 HEARING OFFICER: Let me ask the applicant
15 something. Would they consent as part -- to restoring the
16 adjacent property owner's property to its original
17 condition?

18 MS. JOHNSON: Yes.

19 MR. LINDQUIST: I didn't know that we was
20 encroaching at that time. There's a pile of dirt like two
21 foot high, we can level it down. That's the only damage I
22 can see. I thought that was our property.

23 HEARING OFFICER: I'll put something in the
24 recommendation with respect to that then, acknowledge that
25 the applicant has consented to that.

1 Anything else, sir?

2 MR. MOGISKI: One more question. The rest of the
3 owners that talked to me were wondering because -- rather
4 than a buffer, if a fence were able to put out. I said,
5 well, it's not considered fenceable material. It's
6 supposed to be an F buffer so no fence is required I take
7 it, right?

8 HEARING OFFICER: Yes.

9 MR. MOGISKI: Okay.

10 HEARING OFFICER: My comment, and I'll turn it
11 over to the applicant, is I think you'd rather look at an
12 F buffer than a fence, I mean, as far as aesthetic.

13 MR. MOGISKI: What I'm suggesting is something
14 that I can bring back to the membership.

15 HEARING OFFICER: Applicant want to respond to
16 that?

17 MS. JOHNSON: Yes. I mean, I would agree that a
18 Type F buffer with the level of plantings that are
19 required is going to be prettier to look at than the back
20 of a fence.

21 MR. MOGISKI: Well, that's fine.

22 MS. JOHNSON: But with regard to the applicant,
23 there's a significant cost associated with fence and we're
24 trying to keep the cost of the improvements, you know,
25 within control. Because the existing buffering is already

1 there, it's one less improvement that needs to be made to
2 the property. So we would really prefer to stay with the
3 Type F buffer.

4 MR. MOGISKI: That answers my question. Thank
5 you.

6 HEARING OFFICER: Thank you for coming in, sir.
7 We appreciate it.

8 Next one, the next individual, I have Fred
9 Jasinski.

10 MR. JASINSKI: Another Irishman.

11 HEARING OFFICER: You certainly are, aren't you.
12 Okay, sir, go ahead.

13 Thereupon,

14 FRED JASINSKI,
15 called as a witness, having been previously duly sworn,
16 was examined and testified as follows:

17 MR. JASINSKI: My name is Fred Jasinski, and I'm
18 the secretary/treasurer for Davis Woods Condo Association
19 and, yes, I have taken the oath.

20 I guess Stanley has covered most everything that
21 everybody in our association has had the concern over.
22 We're in favor of this particular rezoning. I do have one
23 or two other areas that I'm concerned about.

24 In that buffer area, the F buffer area, there are
25 currently trees. Are those trees, if they are on his

1 property, going to be remaining or are they going to be
2 removed to put the new plantings in?

3 HEARING OFFICER: Applicant want to respond to
4 that?

5 MS. JOHNSON: We're proposing to maybe keep the
6 remaining vegetation as part of the Type F buffer, to
7 satisfy the Type F buffer.

8 MR. JASINSKI: Okay. The other concern that I
9 have, currently that back area has become a dumping
10 ground, and we are concerned that when they put in that
11 buffer, we don't want to have dumping again occur back in
12 that area like it has. I have a couple of pictures, if
13 you'd like to see them, of that particular area. I don't
14 know if they're pertinent at this time.

15 HEARING OFFICER: Let me give you a suggestion.
16 I really don't care what it looks like now because I'm
17 dealing with what it's going -- approving something for
18 the future. But in the future, after they put in the
19 buffer, if you continue to have a problem, okay, with
20 dumping, call Code Enforcement.

21 MR. JASINSKI: Okay.

22 HEARING OFFICER: They'll go down there and
23 they'll cite them. Okay. And so that's the way you would
24 handle it. And if they don't eliminate the problem, Code
25 Enforcement brings them back before this office and we

1 impose fines.

2 MR. JASINSKI: Very well.

3 HEARING OFFICER: Okay?

4 MR. JASINSKI: Okay. One last thing, and again a
5 little bit about the sewer situation. Right now I'm just
6 wondering where that sewer, not the sewer, but the
7 drainage is going to go from the cooler, and so on.
8 Currently we have a pipe that is coming from his property
9 onto our property that apparently is somewhere he's
10 draining something over there because you can see puddles
11 that have occurred here in the last couple of days and
12 this used to be an ongoing situation. We just don't want
13 to have drainage again coming back onto our property.

14 HEARING OFFICER: Yeah. I'm going to ask the
15 applicant to address that, but I think where they're
16 proposing to put the cooler is almost dead center in their
17 property now, so it's going to be well removed from where
18 it is currently. Go ahead.

19 MS. JOHNSON: I would agree that the relocation
20 of the ice cooler should really alleviate that problem.
21 It's moving towards the front half of the property, and so
22 whatever drainage system there is now for the ice is going
23 to have to be relocated as well.

24 MR. JASINSKI: Again, pending all these hopeful
25 changes, we as Davis Woods and myself as an owner there,

1 I'm saying that I'm for the rezoning if you will.

2 HEARING OFFICER: Okay. Thank you, sir.

3 MS. JOHNSON: I have one question.

4 HEARING OFFICER: Hold on, sir.

5 MS. JOHNSON: And I meant to ask the other
6 speaker as well. But are you here representing the
7 homeowners association or just yourself?

8 MR. JASINSKI: No, we're representing -- Stanley
9 and I have been appointed by our association to represent
10 the entire complex, the condominium association.

11 HEARING OFFICER: Did they have a meeting and
12 tell you that?

13 MR. JASINSKI: Yes. We have the minutes of the
14 meeting showing that if you'd like to see those.

15 HEARING OFFICER: I don't need them. I'll take
16 your representation that they had a meeting.

17 MR. JASINSKI: It was a board meeting doing that
18 appointment if you will.

19 HEARING OFFICER: Okay. Thank you.

20 Drew Drake. Is it Drew Drake.

21 MR. DRAKE: Yes, sir.

22 Thereupon,

23 DREW DRAKE,

24 called as a witness, having been previously sworn, was
25 examined and testified as follows:

1 MR. DRAKE: Good morning. My name is Drew Drake.
2 I live at 5260 South Landings Drive in Fort Myers, and I
3 have been sworn to oath.

4 I represent the property owner to the west. I'm
5 one of three partners in that project, MacGregor Land
6 Associates. It's a vacant piece of ground that continues
7 west to Davis Road. I'm here in support of the rezoning
8 request. I know the applicant personally, and I like the
9 fact that he's upgrading his property. I like his new
10 site plan.

11 I also like the fact that I like for him to
12 maintain his business as is, his ability to sell his
13 vegetables and his flowers and obviously his fish. The
14 seafood is fantastic. It's a very valuable asset to that
15 part of Fort Myers or Lee County.

16 I'm a long time Lee County resident, lived on
17 Fort Myers Beach most of my life, and it's really nice to
18 be able to see the old Florida elements still able to --
19 still around and still able to conduct business that way.

20 So, again, I'm here in support of the
21 application, and I hope the Hearing Examiner will follow
22 through and grant his approval, too.

23 Thank you.

24 HEARING OFFICER: Thank you, sir. Hold on a
25 second.

1 Any questions by the applicant?

2 MS. JOHNSON: No.

3 HEARING OFFICER: Questions by County Attorney,
4 staff?

5 MR. FREDYMA: No, sir.

6 HEARING OFFICER: Thank you for coming in, sir.

7 I doubt -- is there any other members of the
8 public present who wish to speak?

9 Hearing none, I'll conclude the public session.

10 I don't know that anybody needs to say anything
11 by way of rebuttal because I think we've taken care of all
12 of the public's issues. But I think we have a bit of
13 housekeeping here.

14 First the easy part. Any objection to the
15 introduction of the large aerial photo of the property as
16 Staff Exhibit 1? Any objection to the aerial -- the two
17 aerial photographs on a 8 1/2 x 11 sheet? Hearing none,
18 we'll admit the large aerial as Staff Exhibit 1 and the
19 smaller photos as Staff Composite Exhibit 2.

20 (Staff's Exhibits Nos. 1 and 2 were received in
21 evidence.)

22 HEARING OFFICER: Okay. Now, I'm going to leave
23 the record open in this case. Shellie, tell me how long
24 you need.

25 MS. JOHNSON: Probably just a week is fine.

1 HEARING OFFICER: Okay. Let's make it -- I'll
2 make it a week from this Friday or --

3 MS. RICHARDSON: That would be March 4th, not
4 this Friday but the following Friday.

5 HEARING OFFICER: Following Friday. I'll leave
6 the record open till the close of business on March 4th
7 for the applicant to submit an amended Master Concept Plan
8 designating the location of the ice cooler or whatever you
9 want to call it, and proposed changes to the conditions
10 with regard to open space. Okay?

11 Any others changes that have to be made on that?

12 MR. FREDYMA: Maybe both the applicant and staff
13 and you, any objection if they show -- for instance, if
14 they were to pick the area, as an example, behind the
15 existing building, an area such as like a 15 x 20 foot
16 area as an area for that equipment to be located, in other
17 words, as opposed to the actual dimension of what the ice
18 machine or cooler might be?

19 HEARING OFFICER: That's fine with me.

20 MR. FREDYMA: Okay. So it give's them a service
21 area for it.

22 HEARING OFFICER: That's fine with me, because I
23 really wouldn't want them to have to get a surveyor to go
24 out there and --

25 MR. FREDYMA: I wouldn't either.

1 HEARING OFFICER: -- place it. They don't need
2 that expense.

3 Okay. Anything else?

4 MR. FREDYMA: In that vein, if we could insert
5 the word "substantially" in the first condition to "the
6 project must be substantially consistent with the MCP" as
7 we normally do.

8 HEARING OFFICER: I take it the applicant has no
9 objection to that?

10 MS. JOHNSON: No, that's fine.

11 MR. FREDYMA: Thank you.

12 HEARING OFFICER: Okay. I don't think there's
13 any other changes I have to make. I'll issue an order and
14 if the staff has any objection to that Master Concept Plan
15 or the amended condition, let me know.

16 MS. RICHARDSON: We will.

17 HEARING OFFICER: If you want, you can also
18 submit some language with regard to perhaps the applicant
19 attempting to -- the applicant will bring the property in
20 -- is that -- that would be the north boundary of the
21 property back into its original condition and with the
22 consent of the adjacent landowner, any modifications that
23 they've made to the adjacent landowner's property. Let me
24 submit some sort of condition.

25 MR. FREDYMA: Some of it, as you know, would

1 occur when the DO is ultimately issued because they would
2 be required to remove that -- the cooler or whatever is
3 there from that area and then that become buffer area.

4 HEARING OFFICER: Yes. But my concern is more
5 the other property owner. I don't have the authority to
6 do it, but since that property owner is here and has
7 consented to it, we'll put some language in there.

8 The final thing I have is I've got a bunch of
9 faxes on my desk.

10 MS. JOHNSON: Yes, I forgot to mention those.
11 I'm sorry. Those are petitions that the applicant was
12 able to obtain. They've been categorized into those that
13 fall within the affected property area and those that are
14 I think primarily customers of their business.

15 HEARING OFFICER: Okay. I take it they're all in
16 favor, otherwise you wouldn't have --

17 MS. JOHNSON: I think you can assume that.

18 HEARING OFFICER: Okay. Then I will accept these
19 petitions or faxes as Applicant Composite Exhibit 3.

20 (Applicant's Exhibit 3 was marked for
21 identification and received in evidence.)

22 HEARING OFFICER: Anything else? Any other
23 matters with regard to this case that have to come before
24 me this morning?

25 Okay. Hearing none, I'll conclude these hearings

1 and thank you all for attending.

2 (Hearing concluded.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

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4 I, Roberta June Bishop, Registered Professional
5 Reporter, do certify that I was authorized to and did
6 stenographically report the foregoing proceedings, and
7 that the typewritten transcript, consisting of pages
8 numbered 1 through 16, is a true record.

9 Dated this 10th day of March, 2011.

10
11 
12 Roberta June Bishop, RPR, FPR