

**MINUTES OF THE HEARINGS OF
THE CITY OF CAPE CORAL
HEARING EXAMINER**

TUESDAY, May 7, 2019

COUNCIL CHAMBERS

9:00 A.M.

Madam Hearing Examiner Dalton called the hearings to order at 9:01 a.m.

ALSO PRESENT: Robert Pederson, Planning Manager
Mike Struve, Planning Team Coordinator
Wyatt Daltry, Planning Team Coordinator
Chad Boyko, Principal Planner
Katherine Woellner, Planner
Persides Zambrano, Public Works Planning Manager
John Naclerio, Assistant City Attorney

HEARINGS

Hearing Examiner Dalton requested Principal Planner Boyko provide an update on Case # VA18-0021.

Principal Planner Boyko stated the applicant Michael and Julie Kayatta had withdrawn their application for case # VA18-0021.

Case #VP18-0008; Address: 5088 and 5095 Sorrento Court; Applicants: Wilhelm Vullriede and Jerome and Catherine Lievre

Recording Secretary Sorrels read the case into the record and administered the oath.

Planning Team Coordinator Struve confirmed the notice requirements had been met.

Hearing Examiner Dalton stated she found proper notice was given.

Scott Hertz, Intelligent Solutions Law Firm, PLLC representing the applicants, presented the following slides:

- Aerial View
- Location of Parcel

Mr. Hertz noted he worked with the City departments to get this accomplished. He explained the applicant is willing to either relocate the catch basin or provide easements for, this is to

provide a proper stormwater flow. He is going to deed a portion of the vacation right-of-way to the City. The drawings have been provided to the City, they are included in the packet.

Hearing Examiner Dalton asked if the applicant accepted the City's discretion on the either-or scenario?

Mr. Hertz replied in the affirmative.

Mr. Hertz agreed with the staff's recommendation and the applicant agreed with the proposed conditions as set forth by the City.

Hearing Examiner Dalton asked the applicant if he would like to incorporate staff's report into his presentation.

Mr. Hertz replied in the affirmative.

Planning Team Coordinator Struve asked to be recognized as an expert.

Hearing Examiner Dalton stated she would do so.

Mr. Struve presented a power point titled Case # VP18-0008 with the following slides:

- VP18-0008
- Aerial Map Areas to vacate
- Subject Parcels
- Background
- Aerial of Site
- Request to Vacate
- ROW Analysis (LUDR, Section 8.11)
- Request to Vacate Underlying & Adjacent Easements
- Easement Analysis (LUDR, Section 8.11)
- Request to Vacate Sorrento Court ROW
- Easement Analysis (LUDR, Section 8.11)
- ROW Analysis (LUDR, Section 8.11)
- Comprehensive Plan Policy 1.15.a of the Future Land Use Element
- Recommendation Approval with Conditions
- Conditions of Approval as noted 1-8

Hearing Examiner Dalton expressed concern about the verbiage regarding condition number Seven.

Mr. Struve stated staff would not want anything to limit the conditions. We could clarify this more if needed.

Hearing Examiner Dalton questioned the relocation of the catch basin. She expressed concern for the surrounding properties.

Public Works Planning Manager Zambrano stated staff met on site and have worked together extensively to cover the conditions for this site.

Hearing Examiner Dalton asked if Ms. Zambrano agreed with the modification she suggested for condition number seven?

Ms. Zambrano replied in the affirmative.

Public hearing opened.

No speakers.

Public hearing closed.

Hearing Examiner Dalton asked the applicant if he was comfortable with condition number seven to delete the words, "if required".

Mr. Hertz noted this could create confusion about the applicant not meeting the condition.

Hearing Examiner Dalton expressed concern about taking away the discretion of the City.

Case #VP18-0008 to be continue at the end of the next case

Case #VP18-0010; Address: 1713 Savona Parkway West; Applicant: JBH Holdings, LLC:

Recording Secretary Sorrels read the case into the record and administered the oath.

Planning Team Coordinator Struve confirmed the notice requirements had been met.

Hearing Examiner Dalton stated she found proper notice was given.

Jacob Ben Haim, applicant, explained the benefits of putting a seawall was to beautify the City. This would be done at his expense. He noted all the properties located in this area have been granted this improvement. The seawall construction will support the safety and the construction of the bridge.

Planning Team Coordinator Struve asked to be recognized as an expert.

Hearing Examiner Dalton responded she would do so.

Planning Team Coordinator Struve presented a power point titled Case # VP18-0010 with the following slides:

- VP18-0010
- Request to vacate
- Subject Site Perch Canal
- Subject Parcel
- Sketch: Vacate Row and Vacate underlying easements.
- Vacate platted easements in lot 41
- Analysis-Section 8.11 LUDR
- Vacation of ROW
- Analysis: Vacation of Easements
- Comprehensive Plan Policy 1.15a
- Recommend denial of all three vacation requests
- Correspondence One phone call.

Hearing Examiner Dalton asked if it is possible for the applicant to give back an easement?

Public Works Planning Manager Zambrano noted in the past the City would quit claim deed and this would allow the property owner to use the land. This vacation request for this property does not have a Quit Claim. We do not foresee this being used in the future. The bridges are 50 years old and will need to be replaced. The canal may need to be widened. We do support building a seawall at that location. We are exploring other procedures to grant an easement in the right-of-way to build a seawall.

Hearing Examiner Dalton questioned whether it was possible for them to give back the easements.

Ms. Zambrano noted this is not possible because if we need the property, we will have to do eminent domain, if the City needs to widen the canal.

Hearing Examiner Dalton questioned why staff would suggest the property owner to spend a large amount of money to construct a seawall that is not on his property.

Ms. Zambrano stated this would be the applicant's choice. We have not asked him to construct a seawall.

Traffic Engineer Corbett stated it is critical for the City to maintain control to further expand the Bridge. At some point this will need to be reconstructed. The desire to construct a seawall is commendable if the applicant would like to do so. On the other Quit Claim Deeds there will be a point in time when the City will have to reevaluate the bridges. This is the first time using this methodology.

Hearing Examiner Dalton asked Mr. Corbett if he would recommend to City Council to give back the easement to the homeowner if there is no structure built on it.

Mr. Corbett noted the City would maintain control of the parcel. This would allow the homeowner to construct a seawall but not require them.

Planning Manager Pederson stated in the past the Quit Claim has caused issues with the title. Public Works is looking at all the bridge triangles in the City for future repairs. The easement issues have not been resolved. Building the seawall could be problematic.

Hearing Examiner Dalton questioned the changes that have occurred since the last vacation like this?

Mr. Pederson stated the process for vacations changed two years ago. This has taken place since the last vacation like this one. The properties will need to be vacated and not be done by Quit Claim Deed.

Hearing Examiner Dalton noted staff has testified that the applicant could build a seawall on City property. She questioned if the seawall is built on City property, would this be problematic?

Mr. Pederson noted the individual may not want to go to that expense. The City would not require the property owner to build a seawall.

Mr. Struve noted there were a couple issues involved since the last vacation. One is the quit claim deed was done. He explained there are differences between the last request and this request. He said the right-of-way needs to be protected. When this bridge is replaced it is going to need a larger footprint.

Hearing Examiner Dalton asked if the expansion of the bridge is on the Capital Budget for the bridge to be replaced in the future.

Ms. Zambrano stated this specific bridge is not on schedule to be replaced. There is a bridge replacement account. The inspections are done every two years.

Mr. Corbett noted the bridge construction is acceptable. The bridge could be too low or narrow. Staff also looks at flood elevation.

Assistant City Attorney Naclerio noted staff analyzed the applications and have determined there is no foreseeable public use for the ROW. The City Attorney's office agrees with staff.

Hearing Examiner Dalton asked Mr. Naclerio if he had a perspective on the City granting an easement to the property owner to construct a seawall on City property.

Mr. Naclerio stated the City is looking for options to offer property owners.

Public hearing opened.

Mr. Hertz stated there was some discussion regarding easements. The Quit Claim property allowed the City to use the property to stage for construction. We all need clarification on the two types of easements for a right-of-way.

Hearing Examiner Dalton stated you will need a permit to build a seawall. There is a need to repair and maintain the seawall.

Brian Gomer explained this issue is going to come up in the future. These properties are not buildable for the property owners without having a seawall. There will be multiple cases coming forward as we continue building out the City.

Public hearing closed.

Mr. Ben-Haim requested the opportunity to engage in further discussions with staff.

Mr. Pederson noted the lot is buildable. If the applicant would like to withdraw the request regarding the vacation, staff will continue to work with him.

Hearing Examiner Dalton asked staff how much time they needed to possibly find a solution.

Ms. Zambrano noted 90 days would be a reasonable amount of time.

Hearing Examiner Dalton stated this case will be continued on August 6, 2019 in Council Chambers.

Hearing Examiner Dalton stated she gave a recess for ½ hour but due to the requirements of the intervening hearing, that discussion has not occurred. She granted a second recess in the first case # VP18-0008 for an additional ½ and then we will reconvene that first case at that time.

Case #ZA19-0004; Address: 244 Santa Barbara Blvd. South; Applicant: Cape Coral Lodge, No. 367

Recording Secretary Sorrels read the case into the record and administered the oath.

Planning Team Coordinator Daltry confirmed the notice requirements had been met.

Hearing Examiner Dalton stated she found proper notice was given.

Robin Dawn Ryan, Owner of Robin Dawn Academy of Performing Arts, stated she is purchasing this property this building and it is residential and not commercial. The bank requires the building to be rezoned as commercial. She has a pending deadline.

Hearing Examiner Dalton asked Ms. Ryan to read the staff report before giving her presentation.

Bill Counts stated he is a member of the lodge. He is in favor of this property to be rezoned. They have been waiting for the Master Plan rezoning to be completed by the Department of Community Development. He noted staff helped with the rezone.

Ms. Ryan noted the report states that staff recommends approval. She noted she has a positive effect on the Community.

Planning Team Coordinator Daltry asked to be recognized as an expert.

Hearing Examiner Dalton responded she would do so.

Mr. Daltry presented a power point titled Case # ZA19-0004 with the following slides:

- ZA19-0004
- Background
- Subject Parcels
- Analysis
- Analysis (cont.)
- Comprehensive Plan/LUDR
- Conclusion Recommends approval with conditions
- No correspondence

Mr. Daltry explained the conditions and requirements needed. The staff finds the request is suitable for this location. The effect will slightly increase the commercial use in the community. This will have a positive effect on the community.

Public hearing opened.

No speakers

Public hearing closed.

Hearing Examiner Dalton asked the applicant if she would like to incorporate the staff's report into her presentation.

Ms. Ryan replied in the affirmative.

Hearing Examiner Dalton stated she recommends the rezone goes forward. She will get the Order out as soon as possible.

Case #VP18-0008 Reconvened at 10:56 a.m.

Case #VP18-0008; Address: 5088 and 5095 Sorrento Court; Applicants: Wilhelm Vullriede and Jerome and Catherine Lievre

Mr. Struve noted on condition seven reads at the sole discretion of the City the applicant shall grant any necessary easements for any new or modified system. Strike out (if required at the end of the sentence). He would like to incorporate the staff's report into his presentation.

Hearing Examiner Dalton asked Ms. Zambrano if staff agreed with the change.

Ms. Zambrano replied in the affirmative.

Hearing Examiner Dalton asked Mr. Hertz if they agreed with the change.

Ms. Hertz replied in the affirmative.

Hearing Examiner Dalton stated she will recommend approval of the proposed vacation with the modification to paragraph seven.

Case #VA19-0002*; Address: 3724/3726 SE 10th Ave; Applicant: Kenneth D. Gill and Karen L. Gill

Recording Secretary Sorrels read the case into the record and administered the oath.

Planner Woellner confirmed the notice requirements had been met.

Hearing Examiner Dalton stated she found proper notice was given.

Kenneth Gill, property owner/applicant, noted he would like to have a pool on the side yard. The shape of the property and the power lines are in the back yard. This will not allow for the pool to be in the back yard. He put up a fence around the pool. There are two requirements that cannot be met.

Ms. Woellner presented a power point titled Case #VA19-0002 with the following slides:

- Contents
- Property Location
- Zoning Map

- Background
- Request
- Definitions Portable Swimming Pool/Yards
- Analysis; Special Conditions/No Special Privilege/Hardship/Minimum Variance Purpose and Intent; Public Interest
- Recommendation Denial
- Correspondence 2 Letters in opposition

Hearing Examiner Dalton noted the applicant needs a copy of the letters.

Public hearing opened.

Amy Markzart, neighbor, appeared in favor of the variance.

Margaret McMann, neighbor, appeared in favor of the variance.

Hearing Examiner Dalton asked Ms. Woellner if she had an opportunity to look at the previous case #VA18-0021 which is similar to this one?

Planner Woellner noted the prior case was to retain the trees in the back yard.

Hearing Examiner Dalton agreed. She was wondering if there is a creative solution using similar options.

Planner Woellner stated the property in front of the pool is buildable.

Assistant City Attorney Naclerio stated the property owner had two adjoining lots, they had a four-lot site in the previous case.

Hearing Examiner Dalton noted there was another case like this. However, they were requesting an inground pool. She is suggesting coming back another day and for the applicant to work with staff.

Mr. Gill explained the experience he had getting the pool permitted, and he expressed his desire to keep the pool.

Hearing Examiner Dalton asked Ms. Woellner if she would like to incorporate the staff's report into her presentation.

Ms. Woellner replied in the affirmative.

Hearing Examiner Dalton asked Ms. Woellner if she is okay to have another discussion with the applicant.

Assistant City Attorney Naclerio questioned the life safety issue.

Ms. Woellner stated all the safety concerns have been addressed.

Hearing Examiner Dalton requested further discussion between the applicant and staff to possibly modify the application for the variance. She requested a continuous until June 4, 2019.

DATE AND TIME OF NEXT HEARING

A hearing of the Hearing Examiner was scheduled for Friday, May 24, 2019, at 9:00 a.m. in Council Chambers.

ADJOURNMENT

There being no further business, the hearing adjourned at 11:40 a.m.

Submitted by,

A handwritten signature in cursive script that reads "Patricia Sorrels".

Patricia Sorrels
Recording Secretary