

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, STATE OF FLORIDA

IN RE:

LEE COUNTY,

Petitioner, ZONING HEARING

vs.

CLUB AT RENAISSANCE,,

Respondent

_____ /

Transcript of stenographically-reported
proceedings held before Donna Marie Collins, Lee
County Hearing Examiner, at the Lee County Hearing
Examiner's Office, 1500 Monroe Street, Fort Myers,
Florida 33901, on February 24, 2025 at 9:41 a.m.

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES:</p> <p>DAVID W. HALVERSON, ESQ.</p> <p>Lee County Attorney's Office</p> <p>PO Box 398</p> <p>2115 Second St</p> <p>Fort Myers, FL 33901-3012</p> <p>dhalverson@leegov.com</p> <p>On behalf of Lee County</p> <p>ZACHARY W. LOMBARDO, ESQ.</p> <p>ANTHONY P. PIRES, JR., ESQ.</p> <p>Woodward, Pires & Lombardo, P.A.</p> <p>3200 Tamiami Trl N Ste 200</p> <p>Naples, FL 34103-4108</p> <p>zlombardo@wpl-legal.com</p>	<p style="text-align: right;">Page 4</p> <p>1 how to defend itself.</p> <p>2 EXAMINER COLLINS: Right. Okay.</p> <p>3 I remember I continued the case because you</p> <p>4 were waiting on some determination from the</p> <p>5 County.</p> <p>6 What happened with that?</p> <p>7 MR. LOMBARDO: What happened was that it</p> <p>8 was not forthcoming, so it was slated to be</p> <p>9 provided three days after the hearing.</p> <p>10 And in the transcript, you were</p> <p>11 deliberating between four weeks and two weeks, in</p> <p>12 large part, based on that. Three days after the</p> <p>13 hearing, it did not get produced.</p> <p>14 On Friday, a statement was provided by</p> <p>15 community development that it will just not be</p> <p>16 provided because, according to community</p> <p>17 development, it does not fit in the categories and</p> <p>18 interpretations.</p> <p>19 I'll note that one of those categories is:</p> <p>20 The manner in which a particular code provision is</p> <p>21 to be applied. I fail to see how we do not fit</p> <p>22 into that category, but what is more concerning to</p> <p>23 my client is that, if it never applied, why then,</p> <p>24 at the hearing, was it not brought up because,</p> <p>25 even at the hearing, we were more than 30 days</p>
<p style="text-align: right;">Page 3</p> <p>On behalf of the Respondent</p> <p>1 P R O C E E D I N G S</p> <p>2 EXAMINER COLLINS: Good morning. My name</p> <p>3 is Donna Marie Collins. The date is February</p> <p>4 24th, 2025.</p> <p>5 It's a full morning agenda of Lee County</p> <p>6 Code Enforcement cases. I understand the first</p> <p>7 case we're going to hear is one that's been</p> <p>8 continued.</p> <p>9 I have some thoughts on this case.</p> <p>10 Is there a motion for me to consider?</p> <p>11 What's going on?</p> <p>12 MR. LOMBARDO: Your Honor, there are three</p> <p>13 filed motions pending, there was a motion to</p> <p>14 continue, motion to strike, and motion to dismiss.</p> <p>15 Your office requested the town county</p> <p>16 attorney's office respond. County Attorney's</p> <p>17 Office did not respond. We would like the</p> <p>18 opportunity to argue these motions first because</p> <p>19 they all go to a procedural due process issue</p> <p>20 before we get into the actual case.</p> <p>21 I think what we'll see, looking back at the</p> <p>22 transcript and looking back at what was provided</p> <p>23 by the county attorney's office, is that the</p> <p>24 instructions were not followed, and my client is,</p> <p>25 again, in jeopardy of not being able to understand</p>	<p style="text-align: right;">Page 5</p> <p>1 from submission of that application.</p> <p>2 Where we are today, for clarity, on Monday,</p> <p>3 you asked for a more detailed statement of the</p> <p>4 violations, and, instead, what you got was a</p> <p>5 four-page legal argument about what the word</p> <p>6 "private club" means.</p> <p>7 In the transcript, you indicated that you</p> <p>8 felt that this should not be a forum where we do</p> <p>9 interpretive work, but that is what we have to do</p> <p>10 today. We have to figure out what private club</p> <p>11 means.</p> <p>12 And if we do that and you make a ruling</p> <p>13 today as to what private club means, today will be</p> <p>14 the first day in which my client is on notice what</p> <p>15 the rules of the game are here, which is why we</p> <p>16 filed the motion to dismiss.</p> <p>17 Because, on the screen here, this</p> <p>18 essentially remains the violation. There is no</p> <p>19 clarification to this provided, and as we can get</p> <p>20 into with our planner and testimony and argument,</p> <p>21 the definition the county attorney is arguing for,</p> <p>22 and I'll note it didn't come from the community</p> <p>23 development, it came from the county attorney's</p> <p>24 office, which is important because I can't</p> <p>25 cross-examine the county attorney.</p>

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1 Just making a legal argument, that
 2 definition paints, with a wide brush, and when we
 3 look at the other types of private clubs, which
 4 aren't golf courses, for example, the Captiva
 5 Island Yacht Club, that's a zone private club,
 6 it's not sitting inside of a gate house somewhere,
 7 and it doesn't have a common ownership.
 8 So is that entire club also a legal? We
 9 have big zoning questions here.
 10 And I want to be clear, we are prepared to
 11 have that discussion here today. We thought very
 12 carefully about the county attorney's argument.
 13 We've done a lot of research. We do not want to
 14 be seen as coming here to ask for more time.
 15 But what is concerning is how can we be
 16 forced to stand trial for violations that were --
 17 the rules were written down a week ago and we're
 18 going to figure out today whether those are the
 19 right rules?
 20 EXAMINER COLLINS: I'm extremely
 21 dissatisfied with how this is going. There is no
 22 way I'm going to be able to make any kind of
 23 determination on the fly.
 24 I asked for a more definitive description
 25 of what the violation was. From what I can tell,

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1 I did not receive that. I wanted to wait for this
 2 determination to come from the County regarding
 3 how they were interpreting their own resolution.
 4 That didn't happen.
 5 So I'm very close to dismissing this case,
 6 but in any event, I'm going to have to be prepared
 7 when we actually do have a hearing on this case,
 8 and I feel as though it's appropriate that the
 9 County and the Respondent brief -- provide me with
 10 briefs of what their position is, what they're
 11 advocating for, and/or the interpretation that
 12 they want me to find because, you know, everything
 13 here seems too broad, and I don't have examples
 14 that would distinguish this particular case from
 15 another community that has a golf club and a
 16 country club.
 17 I need more information to find that this
 18 is explained in a manner that the Respondent knows
 19 exactly what the problem is. Like, yeah,
 20 conceptionally, they may know what the problem is.
 21 I have to be able to rely on the actual
 22 code provision in order to find them in violation.
 23 And I don't feel confident that I have that
 24 information.
 25 I understand there's a lot of interest in

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1 this case, and I want to get it right. My
 2 inclination is to dismiss the case, but I'm going
 3 to give the County another opportunity to try to
 4 provide me with a description of what the actual
 5 violation is and, please, by all mean, share it
 6 with the respondent, and the basis for your
 7 interpretation with support, other examples of
 8 zoning approvals or whatever.
 9 I'm not clear from this case, they're
 10 approved for a country club, they're approved for
 11 a golf course, if one is private and the other
 12 isn't, what will prevent the public from coming on
 13 the grounds?
 14 This has to be provided to me in advance of
 15 the hearing so that I have an opportunity to
 16 review and consider. There's no way for me to
 17 take all this in and then make it -- if you're
 18 ready to go forward with that today, we can go
 19 today, but what I'm hearing is Respondent still
 20 isn't entirely clear on what exactly the provision
 21 is in terms of the issue and why.
 22 MR. HALVERSON: Madam Hearing Examiner, may
 23 I just say something?
 24 EXAMINER COLLINS: Yes.
 25 MR. HALVERSON: For the record, David

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1 Halverson, County Attorney's Office.
 2 Two weeks ago, we are looking at the notice
 3 of code violation that's on the screen, and based
 4 on that description, counsel argued, and you
 5 agreed, that that was not sufficient. They didn't
 6 tell us what the violation was. They didn't
 7 outline a clear path for abatement.
 8 So the direction was for my office to work
 9 with Department of Community Development staff to
 10 come up with a more detailed description of what
 11 the violation is in a path toward abatement.
 12 We believe that was provided, but if you
 13 would want more detail in the form of a brief, we
 14 --
 15 EXAMINER COLLINS: Yeah, I would because
 16 we're going to have a hearing, right, and if you
 17 have not prepared full-blown legal argument with
 18 examples and exhibits of what supports your
 19 interpretation that there is a violation here, the
 20 County is going to be at a big disadvantage at
 21 this hearing, and I need to be prepared in
 22 advance.
 23 I have an idea of what the issue may be
 24 with this case, that events are being held that's
 25 resulting in a lot of people coming to the

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1 community, and that's objected to by the
 2 association. I don't know if this entity is owned
 3 -- the golf club, did they own the country club?
 4 I don't have any of this information, and
 5 it needs to be provided to me in advance, so I
 6 feel as though I'm prepared for the case.
 7 MR. LOMBARDO: Your Honor, trying to think
 8 through what the next step would be, one option
 9 is, there's certainly no -- if this case were to
 10 be dismissed, they can file a new notice of code
 11 violation that has the requisite detail.
 12 EXAMINER COLLINS: I'm not ruling that out.
 13 MR. LOMBARDO: Because it's not signed and
 14 this particular one cites to the wrong zoning
 15 list. 02008 is not the operative zoning list.
 16 EXAMINER COLLINS: It's the 01 because the
 17 golf course is on the north.
 18 MR. LOMBARDO: That's as to the second
 19 notice.
 20 As to this notice, there was an amended
 21 zoning resolution that was put in place. I mean,
 22 that's a small issue.
 23 My point is: We can clean all this up.
 24 This can be dismissed. They can issue a new
 25 notice of code violation that provides the detail

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1 that we need. We can have a briefing scheduled.
 2 One thing I want to note is we have tried
 3 to exhaust every possible opportunity to work with
 4 the County to get answers.
 5 And so, for example, I did have a phone
 6 conversation with the County Attorney's Office, in
 7 which I understood we would be given an
 8 opportunity to review to clarify statements so we
 9 can provide comment and address this.
 10 We were never provided that. Instead, it
 11 was filed directly with your office, which is what
 12 forced me to file a motion to strike.
 13 EXAMINER COLLINS: I'm going to give the
 14 County leave to amend their notices of violation
 15 and state with specificity what exactly the
 16 violations are, and then provide me -- do that,
 17 provide it to the Respondent, provide it to me,
 18 and then I will issue -- we can do to two ways.
 19 We can do that and go forward, but I'm
 20 going to need something before we have a hearing,
 21 so I'm going to give leave to the County to amend
 22 with specificity of what the violation is and the
 23 path to abatement.
 24 Please have it signed, make sure it's
 25 referencing all the proper zoning resolutions or

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1 development orders. I don't want any infirmity in
 2 the notice of violations.
 3 MR. HALVERSON: Madam hearing examiner, do
 4 you want the briefs you were discussing earlier in
 5 conjunction with an updated notice?
 6 EXAMINER COLLINS: Yeah, I think that would
 7 be helpful. I think it will be helpful to the
 8 Respondent. Maybe there is a path that that they
 9 can abate this without a hearing. But none of us
 10 really know what exactly is going on and what the
 11 violation is under the code.
 12 MR. LOMBARDO: From a timeframe
 13 perspective, are we going to be given an
 14 opportunity to file a responsive brief?
 15 EXAMINER COLLINS: Yes, I think that's
 16 appropriate.
 17 I feel as though the County needs to
 18 provide notice to the Respondent in a meaningful
 19 way that outlines exactly what the issue is and
 20 why and how they abate it -- they can abate it, so
 21 that they have the opportunity to do so.
 22 Barring that, if the decision is to go
 23 forward with hearing, I would like the briefs.
 24 I'm going to ask the County to prepare theirs
 25 in advance. I don't think they're at any

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1 disadvantage having the respondent see that so
 2 they know how to abate the violation or defend.
 3 MR. HALVERSON: Understood.
 4 And I wanted to address something that
 5 counsel said about -- we did have a phone
 6 conversation where I said, "Yeah, I can share with
 7 you."
 8 I did not have time to do that. In
 9 addition, I went back and listened to the record
 10 and the direction was for my office to work with
 11 staff on this. I didn't see why it was really
 12 necessary to confer with counsel on what our
 13 position is.
 14 And just minor things that he hit on with
 15 this NOV --
 16 EXAMINER COLLINS: Well, do you understand
 17 what I'm asking for?
 18 MR. HALVERSON: I do.
 19 EXAMINER COLLINS: Okay. I don't need to
 20 get into the weeds about everything that's
 21 happened before. I want to keep this moving
 22 forward so we can resolve it one way or the other.
 23 I understand the nature of the dispute only
 24 cursorily. Judging from all the people in the
 25 audience, it sounds like activities are happening

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1 on the golf course or the country club that is
 2 creating attacks that are not being addressed.
 3 If they are not approved to do what they're
 4 asking for, show me why and how. Compare it to
 5 the other zoning resolutions, if necessary.
 6 Because, if you don't, the Respondent certainly
 7 will, so the case needs to be as air tight as its
 8 ever going to be to support the situation.
 9 If there's any ambiguity as to what is
 10 considered public versus private, I would turn to
 11 the parking they provided on the grounds, perhaps,
 12 as an indication that it was not intended to be a
 13 public use or what have you.
 14 But you have to make your case and, until
 15 that happens, I can't have a hearing. And I'm
 16 going need to be prepared in advance. I wouldn't
 17 normally ask this of a typical code enforcement
 18 case because there is enough specificity for me to
 19 glean what the violation is and the path to
 20 correct it. I don't have that here.
 21 MR. HALVERSON: Can we agree on a timeline
 22 for these briefs?
 23 EXAMINER COLLINS: I'm willing to give you
 24 two weeks. You can amend the notice of violation
 25 notices because I believe there is two things.

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1 MR. HALVERSON: Correct.
 2 EXAMINER COLLINS: And that would include
 3 the specific code provisions or zoning resolutions
 4 if you find those to be in violation of, and the
 5 method by which it can be corrected, whether it's
 6 cease the activity and amend the zoning approvals,
 7 whether it's something else. Specify that.
 8 And then I would like a supporting
 9 memorandum of law explaining the County's position
 10 and support for the violation as cited.
 11 Because it sounds like this case is going
 12 to turn on the language in the land development
 13 code and the zoning resolution and maybe common
 14 definitions and land use and the dictionary. And
 15 I feel as though these prehearing memoranda of law
 16 will help me to be as prepared as I can when we
 17 actually have the hearing.
 18 I will allow each party 15 minutes to say
 19 their peace, and then, if I can, I'll rule right
 20 then; if I can't, I'll take it under advisement
 21 and get you a ruling.
 22 I hope you understand that legally any
 23 ambiguity in the code or in the zoning resolution
 24 will have to be resolved in favor of the
 25 Respondent. That's why I urge you to prepare your

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1 documents with that understanding and guide your
 2 future actions in connection with this case
 3 accordingly.
 4 Following their submittal of this
 5 information, I will give the Respondent --
 6 Is two weeks going to be sufficient or is
 7 there going to be --
 8 MR. LOMBARDO: Without the benefit of
 9 seeing their statement, it's hard to say. I think
 10 it will be fair to be given two weeks with them
 11 being given two weeks, but I think there's a
 12 substantial amount of argument here, so I think --
 13 I wouldn't have an objection to them having three
 14 and us having three.
 15 MR. HALVERSON: I'll say two and two.
 16 EXAMINER COLLINS: I'm sorry?
 17 MR. HALVERSON: I'll say two weeks for our
 18 brief and two weeks to file a response.
 19 EXAMINER COLLINS: So you have until
 20 March 10, the County has until March 10.
 21 And then the Respondent has until March 24.
 22 The other alternative is for the County to
 23 withdraw the case and re-cite it.
 24 Do you want to take a break and consult
 25 with the office, the County Attorney's Office,

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1 before you make that decision? We can take a
 2 five-minute break.
 3 MR. HALVERSON: That will be great,
 4 your Honor.
 5 EXAMINER COLLINS: Okay.
 6 (A RECESS WAS TAKEN FROM 9:58 A.M. TO 10:06 A.M.)
 7 EXAMINER COLLINS: We are back on the
 8 record.
 9 MR. HALVERSON: Madam Hearing Examiner,
 10 based on the issues and comments that were raised
 11 with respect to the notice of code violation, we
 12 would request that we withdraw and re-cite the
 13 violations.
 14 I spoke with opposing counsel. He has no
 15 objection to that.
 16 MR. LOMBARDO: Certainly no objection to
 17 withdrawal.
 18 The only comment I made is we still expect
 19 there to be a briefing schedule after the re-cite,
 20 and if it were to follow the pattern that you
 21 suggested, four weeks before the hearing, County's
 22 two weeks, and then our's two weeks before the
 23 hearing would be our preference, if that's
 24 agreeable.
 25 EXAMINER COLLINS: Say that again louder.

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1 I don't know why I'm not hearing you well.

2 MR. LOMBARDO: I don't know if this

3 microphone is on.

4 We have no objection to withdraw and

5 re-citing the case. We would still like to have a

6 briefing cycle, and based on the prior provided

7 guidelines, my suggestion was four weeks before

8 whichever hearing date is selected will be the

9 County's brief and two weeks before the hearing

10 would be our brief.

11 EXAMINER COLLINS: What will happen is the

12 notice of violation, if it's re-cited, my

13 understanding of the code enforcement procedure is

14 it will be re-cited, there will be a time period

15 given for correction.

16 If that doesn't happen within the time

17 period, then a hearing date is set. Once the

18 hearing date is set, if you can notify my office

19 in a memo or -- just a short memo saying we're

20 going to schedule this for hearing on this

21 particular date. Then I will issue an order

22 setting up a briefing schedule.

23 MR. LOMBARDO: Thank you.

24 EXAMINER COLLINS: In that, I may continue

25 the case because they're going to set a date and

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1 that's what's going to trigger everything. If

2 there is enough time to set up the briefing

3 schedule, I'll do it; otherwise, I'll have to push

4 that date.

5 MR. LOMBARDO: Thank you, your Honor. We

6 just request that we be given at least two weeks

7 to respond to their brief, whatever it looks like.

8 EXAMINER COLLINS: You know, maybe what you

9 do is, if it gets to this point, because I hope

10 you guys continue to work together to resolve

11 this, when you issue your notice to appear and you

12 copy me on that, you can attach your brief to

13 that.

14 MR. HALVERSON: Okay.

15 EXAMINER COLLINS: And then I can give

16 three -- you'll know what the hearing date is, and

17 we'll back it up three weeks, and ask that you

18 provide that.

19 MR. LOMBARDO: Thank you, your Honor.

20 EXAMINER COLLINS: Push it forward three

21 weeks.

22 Thank you, Mr. Halverson.

23 MR. HALVERSON: Thank you.

24 EXAMINER COLLINS: Thank you, Mr. Lombardo.

25 (THE PROCEEDINGS CONCLUDED AT 10:09 A.M.)

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CERTIFICATE OF REPORTER

THE STATE OF FLORIDA)

COUNTY OF LEE)

I, MICHAEL A. SCIRÉ, RPR, CMRS, FPR-C,

certify that I was authorized to and did stenographically

report the proceedings and that the transcript is a true

and complete record of my stenographic notes.

I further certify that I am not a relative,

employee, attorney, or counsel of any of the parties, nor

am I a relative or employee of any of the parties'

attorney or counsel connected with the action, nor am I

financially interested in the action.

Dated this 24th day of February, 2025.

Michael A. Scire

MICHAEL A. SCIRÉ, RPR, CMRS, FPR-C