



TRANSCRIPTS
FOR
CASE #:

DCI 2005-00095

LEE COUNTY
HEARING EXAMINER

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LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2005-00095

IN RE: Marine Holdings, LLC in ref to Caloosa
Isle Yacht Club

Transcript of Proceedings

Before Richard Gescheidt, Hearing Examiner, held
at the Hearing Examiner's Hearing Room, 1500
Monroe Street, Fort Myers, Florida, on July 26,
2006.

PRESENT:

Ms. Katherine R. English, Attorney for the Applicant
Mr. Josh Philpott, Senior Planner
Mr. Rick Joyce, Director of Environmental Sciences
Mr. John Fredyma, Assistant County Attorney

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ORIGINAL

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1 HEARING EXAMINER: All right. Good afternoon.

2 Ladies and gentlemen, my name is Richard
3 Gescheidt. I'm a Lee County Hearing Examiner.

4 We're here this afternoon for Case No.
5 DCI2005-00095. It's an application by Marine Holdings,
6 LLC in regard to the Caloosa Isle Yacht Club. It's an
7 application to rezone 5.77 acres from Commercial Planned
8 Development to another Commercial Planned Development.
9 The property is located at 1687 Inlet Drive, Lee County,
10 Florida.

11 Before we begin, I'm going to have the County
12 Attorney make a statement to the members of the public.

13 MR. FREDYMA: Thank you.

14 Good afternoon. My name is John Fredyma. I'm an
15 Assistant County Attorney. I represent the Board of
16 County Commissioners. I'm also here to assist county
17 staff, the applicant and the Hearing Examiner to ensure
18 that the record in this case is complete.

19 I mentioned, I think to some of you before we
20 went on the record this afternoon, if you want to
21 participate in today's hearing or you simply want to
22 obtain a copy of the Hearing Examiner's recommendation, we
23 ask that you fill out one of the white sheets that's at
24 the small table right there in front of the bi-fold
25 doors. Once it's completed, you can leave that up here on

1 the table next to the Hearing Examiner.

2 At the conclusion of the staff's presentation,
3 the Hearing Examiner will then open the floor to public
4 participation. It's at this time that you will have an
5 opportunity to address the Hearing Examiner and offer your
6 comments, your concerns or your questions. All public
7 comment will be taken from the podium up here, and when
8 you approach, we ask that you state your name and address
9 for the record, whether you reside or own property in the
10 area, and then explain to the Hearing Examiner where you
11 live in relation to the property and then your concerns or
12 questions.

13 This is a rezoning and this is not the final
14 action on this matter. The Hearing Examiner, as a result
15 of today's hearing and the collection of the testimony
16 that's presented, will be preparing a recommendation.
17 That recommendation will then be considered by the Board
18 of County Commissioners at another hearing after
19 this, probably a month or month and a half or so from now.

20 However, it's really important that if you'd like
21 to have your thoughts considered on this matter, you must
22 speak here today for the Hearing Examiner to hear them so
23 he can incorporate them into his resolution -- or, excuse
24 me, his recommendation.

25 Additionally, if you want to speak before the

1 Board of County Commissioners, you must speak here to
2 preserve your right to address the Board. That's very
3 important.

4 At this time we're simply just going to go around
5 the table up here. I'll have folks introduce themselves
6 so you'll know who the different parties are.

7 Once again, I'm John Fredyma. I'm an Assistant
8 County Attorney.

9 Rick.

10 MR. JOYCE: Rick Joyce, I'm Director of
11 Environmental Sciences for the county.

12 MR. PHILPOTT: Josh Philpott, I'm a Senior
13 Planner with Lee County Zoning.

14 MR. HOFFACKER: Allen Hoffacker, I'm president of
15 Dexter Bender & Associates. I'm a marine
16 consultant, scientist.

17 MS. BIELERT: Rachel Bielert, owner of Marine
18 Holdings.

19 MS. ENGLISH: Katherine English, I'm the attorney
20 with Pavese Law Firm here on behalf of the applicant.

21 MR. FREDYMA: And with that set of introductions
22 completed, we'll go back to the Hearing Examiner.

23 HEARING EXAMINER: Ladies and gentlemen, how
24 these hearings progress are simply that the applicant will
25 be making their presentation through their witnesses and

1 exhibits. They will be subject to examination by the
2 county staff and County Attorney.

3 Following the applicant's presentation, the staff
4 will make a similar presentation through their witnesses
5 and exhibits and be subject to examination by the
6 applicant or the applicant's attorney.

7 Following that I will open it up to the public
8 portion of the hearing at which time members of the public
9 can come forward, ask questions of any of the witnesses
10 and make any statements that they desire.

11 That's the only time the public participates in
12 this proceeding. And after the close of the public
13 proceeding, there may be some rebuttal. Perhaps they'll
14 clarify answers to your questions and the hearing will
15 conclude.

16 Before we begin, I'd like to remind everybody if
17 they have cell phones or pagers, please turn them off so
18 we're not disrupted during the proceedings. I'm going to
19 ask that you have no food or drink in the hearing room
20 except for water.

21 And, finally, everything that's said before me
22 today must be under oath, so I'm going to put everybody
23 under oath who's going to testify, including members of
24 the public. So at this point in time I would ask
25 everybody who's going to testify or make statements, this

1 includes attorneys who are testifying to factual matters,
2 please raise their right hands.

3 (All witnesses were sworn.)

4 HEARING EXAMINER: Okay. When you first come up
5 to the podium to speak, I would request that you give me
6 your name, your address and indicate that you have taken
7 an oath.

8 And with that I will turn it over to the
9 applicant.

10 MS. ENGLISH: Thank you, Mr. Hearing Examiner.

11 Good afternoon. For the record, my name is
12 Katherine English. I'm an attorney with Pavese Law Firm.
13 I'm here on behalf of the applicant, Marine Holdings, LLC
14 in reference to the Caloosa Isle Yacht Club. We are
15 requesting a rezoning from CPD to CPD to change the
16 character of the project that currently exists on the
17 property.

18 Our first witness is Rachel Bielert.

19 Thereupon,

20 RACHEL BIELERT,

21 called as a witness by the Applicant, having been
22 previously duly sworn, was examined and testified as
23 follows:

24 MS. ENGLISH: Ms. Bielert, could you state your
25 name and occupation for the record, please?

1 MS. BIELERT: My name is Rachel Bielert and I am
2 the owner/agent for Marine Holdings 2, LLC.

3 I'd like to thank the Hearing Examiner and Lee
4 County staff and the neighbors of Waterway Estates for
5 helping us to redevelop this plan in a way that's
6 hopefully amicable for everyone.

7 A brief history. We have -- Marine Holdings put
8 the property under contract in April of 2005. During that
9 due diligence period it was brought to my attention that
10 there were numerous issues with the existing development
11 in relation to the adjacent residential properties.

12 Because of that, I held informal neighborhood
13 informational meetings to try and get feedback from the
14 public as well as to present what our proposed development
15 is. The proposed development is to convert this
16 industrial and commercial marina to a higher end equity
17 yacht club facility with a private yacht club operation
18 and public restaurant.

19 During the due diligence of meeting with these
20 neighbors, it was brought to my attention that the primary
21 concerns of the neighborhood had to do with the noxious
22 uses that are the essence of a boatyard operation, the
23 proximity to the residential single-family home units.

24 There was a buffer wall that had been part of
25 previous zoning that had not been installed. The

1 neighbors were very concerned and they wanted this wall to
2 be installed to help buffer the noxious use from their
3 single-family homes.

4 In response to that, Marine Holdings, after
5 closing, terminated the boatyard operation and installed
6 not only the buffer wall but also increased landscaping to
7 help enhance the facility's appearance from the
8 residential units.

9 Also part of the problem with the boatyard
10 operations with the essence of the noxious uses, we
11 decided to in the redevelopment work to become a clean
12 marina under the status designated by the Department of
13 Environmental Protection. We've been working with Ms.
14 Laura Comer to obtain that status. We are in process
15 right now.

16 We also relocated the uses and are requesting as
17 our proposed development to relocate the restaurant use to
18 the farthest point of the island from the residential
19 units.

20 MS. ENGLISH: Ms. Bielert, could you identify
21 that on the aerial photo, the current location of the
22 permitted restaurant use versus the location that you are
23 going to move the restaurant to?

24 MS. BIELERT: Yes, ma'am. Currently the
25 restaurant sits on the northeast corner.

1 HEARING EXAMINER: Could you move that out just a
2 little because the podium is covering and obstructing my
3 view.

4 MS. BIELERT: Is that better?

5 HEARING EXAMINER: Yes, that's fine. Thank you
6 very much.

7 MS. BIELERT: Currently the restaurant operation
8 and building is located on the northeast corner of the
9 island. This is directly across the basin canal to the
10 single-family home units on the north side.

11 There are parking spaces along the northern
12 perimeter so people who were visiting the restaurant were
13 primarily on this location.

14 MS. ENGLISH: Where would you like to move the
15 restaurant to?

16 MS. BIELERT: We'd like to relocate the
17 restaurant to the southeast corner, which is furthest away
18 from the residential single-family homes, as well as
19 buffered by the dry storage building and what we intend to
20 install as landscape buffers.

21 We also found that, in the due diligence, that
22 one of the concerns with the residential neighbors are the
23 parking because the previous uses had a variance on their
24 parking that reduced the requirement to only 50 spaces.
25 Because of the boatyard operation taking up the west side

1 of the island, these spaces were not utilized properly and
2 parking had been occurring down the streets of these
3 neighborhoods. In response to that, we have more than
4 tripled the parking availability on the site.

5 Another one of the issues was security. We are
6 assuring that we will be providing 24-hour security, not
7 only to provide our members with the best possible
8 assurance and protection on their investment, but also to
9 be respectful of the neighbors to ensure that we don't
10 have unnecessary noise and those types of things.

11 MS. ENGLISH: Just to clarify that, Ms. Bielert,
12 I understand that property may have had after hours uses
13 that have disturbed the neighborhood prior to this point,
14 particularly people who weren't necessarily authorized to
15 be on the property.

16 MS. BIELERT: Yes. Yes. And what we've tried --
17 within a few months of purchasing the property, the owner
18 has hired a security group so that way when employees are
19 not at the marina, the security is to do their best to
20 ensure that nobody is unlawfully doing anything on the
21 property that could cause a problem, not only for the
22 marina but also the neighborhood.

23 MS. ENGLISH: Thank you.

24 HEARING EXAMINER: Hold on a minute.

25 MS. BIELERT: Oh, I beg your pardon.

1 HEARING EXAMINER: That's okay.

2 Does staff have any questions or the County
3 Attorney have any questions?

4 MR. FREDYMA: I don't at this point.

5 MR. PHILPOTT: No, sir.

6 HEARING EXAMINER: I just have a few.

7 MS. BIELERT: Okay.

8 HEARING EXAMINER: Those buildings that are
9 depicted on that aerial photograph I take it will not --
10 will be removed?

11 MS. BIELERT: Correct.

12 HEARING EXAMINER: Okay. And they will be
13 essentially replaced by a single building?

14 MS. BIELERT: No, sir. We will be -- our
15 intention is to demolish the existing structures on the
16 property and construct within the parameters of Lee County
17 Code the building for the -- to facilitate the dry storage
18 for the boat rack.

19 HEARING EXAMINER: That's what I was talking
20 about.

21 MS. BIELERT: And then a new restaurant building.
22 And then we'll also be providing an amenity of a pool and
23 a little fitness center which will be for the members only
24 of the club.

25 HEARING EXAMINER: But those two warehouses will

1 be -- it looks like two anyway from the aerial photograph.

2 MS. ENGLISH: I think that's actually the roof
3 line ridge.

4 MS. BIELERT: Yes. This is one continuous
5 building. That is a ridge that they have venting for
6 fire.

7 HEARING EXAMINER: Okay. That building will be
8 removed?

9 MS. BIELERT: It will be demolished, yes. And in
10 approximately the same location we'll reconstruct a new
11 building.

12 HEARING EXAMINER: Okay. So the members of the
13 public know, is this going to be a public restaurant or is
14 this going to be a private club?

15 MS. BIELERT: It is a public restaurant facility.

16 HEARING EXAMINER: Okay. What about the rest of
17 the facility?

18 MS. BIELERT: In order to have equity ownership
19 of the dry dock, you must be a member of the yacht club.
20 In order to utilize the pool and fitness center, you also
21 must be an equity member of the yacht club.

22 However, there are going to be 200 social
23 memberships available to the general public for those --
24 mostly for the neighbors because they have sea walls and
25 docks and they don't necessarily need the dockage but

1 would like to have part in the club, so we've provided
2 that.

3 HEARING EXAMINER: Okay. But the restaurant will
4 also be open to the public?

5 MS. BIELERT: Correct.

6 MS. ENGLISH: How about the gazebo, Ms. Bielert?

7 MS. BIELERT: The gazebo, we are anticipating
8 utilizing the gazebo for the restaurant and club. We have
9 worked with our architect to design it in a way that would
10 enable the ground level around the gazebo to be accessible
11 by the public because in a meeting with the neighbors,
12 there are a few neighbors who get up very early in the
13 morning to go watch the sunrise over at the river, and so
14 we wanted to be able to still provide that availability
15 for those people.

16 HEARING EXAMINER: Okay. What about access to
17 the site during the day and at night, is there going to be
18 guards or a gate or --

19 MS. BIELERT: Well, we had initially proposed
20 installing a gate at the entry. However, due to the Lee
21 County Code, you must have forward motion ability to turn
22 around. We were not able to facilitate that by blocking
23 the entry. We had bounced around the idea of moving a
24 gate back to the other parking aisles and it just really
25 doesn't restrict access.

1 We also have the Lee County Utilities plant to
2 contend with, so we didn't want to cause any problems for
3 their transportation to facilitate that but -- that waste
4 water treatment plant.

5 HEARING EXAMINER: Okay. I don't have any
6 further questions.

7 MS. ENGLISH: Thank you.

8 MR. PHILPOTT: Actually I do have one question,
9 and this may come up later, and, if so, that's fine. I
10 just wanted to have somebody outline the Master Concept
11 Plan and some of the changes that have been made recently.

12 MS. ENGLISH: And that will be Mr. Myer with
13 Vanasse Daylor. He's been our planner involved in this
14 and I thought he would go through that for you.

15 MR. PHILPOTT: Thank you.

16 HEARING EXAMINER: Any other questions for this
17 witness? Okay. Thank you very much.

18 MS. BIELERT: Thank you.

19 HEARING EXAMINER: Next witness.

20 MS. ENGLISH: Robin Myer with Vanasse Daylor.

21 HEARING EXAMINER: Before we go any further, for
22 some housekeeping, let's admit that aerial photograph,
23 unless anyone has any objection, as Applicant Exhibit 1.
24 Hearing no objection, it's so admitted.

25 (Applicant's Exhibit No. 1 was marked for

1 identification.)

2 HEARING EXAMINER: Okay, sir, you can go ahead.
3 Thereupon,

4 ROBIN MEYER,
5 called as a witness by the Applicant, having been
6 previously duly sworn, was examined and testified as
7 follows:

8 MR. MEYER: Mr. Examiner, my name is Robin Meyer.
9 I'm an AICP and Director in Planning and Design for
10 Vanasse Daylor.

11 MR. ENGLISH: Mr. Hearing Examiner, Mr. Meyer has
12 not yet been recognized by the Hearing Examiner's office
13 in Lee County as an expert witness. We can provide you
14 with a copy of his resume, and, also, if it pleases the
15 County Attorney's office, we can voir dire his
16 qualifications to have him recognized as an expert.

17 HEARING EXAMINER: Okay. Why don't you provide
18 me and the County Attorney with a copy of Mr. Meyer's
19 resume. Unless there's any objection, I'm going to admit
20 Mr. Meyer's resume as Applicant Exhibit 2.

21 (Applicant's Exhibit No. 2 was marked for
22 identification.)

23 John, I'll give you some time to look it over,
24 you and the staff have time to look it over.

25 Let me begin by -- sir, first of all, what is

1 your office address?

2 MR. MEYER: It's 12730 New Brittany Boulevard,
3 Fort Myers.

4 HEARING EXAMINER: And you took an oath?

5 MR. MEYER: Yes, I did.

6 HEARING EXAMINER: Okay. Can you just give me an
7 overview of your educational experience, please?

8 MR. MEYER: Educational experience, I received a
9 Bachelor of Arts in urban and regional planning from
10 Western Washington University. I earned my AICP and I
11 also have taken other courses over the years in the
12 planning field.

13 HEARING EXAMINER: Okay. And your professional
14 experience is set forth in your resume, but can you just
15 give me an overview if you would, please?

16 MR. MEYER: Absolutely. I worked a little over
17 28 years for the City of Tacoma in the state of
18 Washington where I retired as supervisor of neighborhood
19 and transportation planning.

20 The next years after that I spent as a principal
21 planner with Collier County and in I believe it was May of
22 2005, I was hired on with Vanasse Daylor as Director of
23 Planning and Design and I have been in that position since
24 then.

25 HEARING EXAMINER: Okay. Have you authored any

1 professional papers or publications?

2 MR. MEYER: No.

3 HEARING EXAMINER: Okay. Have you been qualified
4 as an expert witness in any other forum?

5 MR. MEYER: With Collier County and with the City
6 of Tacoma, yes.

7 HEARING EXAMINER: Okay. And were those before
8 planning and zoning boards or what?

9 MR. MEYER: City of Tacoma has a Hearing Examiner
10 system and you also make presentations to the City
11 Council. With Collier County, you make presentations to
12 the Planning Commission and to the Board of County
13 Commissioners.

14 HEARING EXAMINER: Okay. And in all those
15 forums, were you declared an expert witness?

16 MR. MEYER: Yes, I was.

17 HEARING EXAMINER: Does the county staff or
18 County Attorney have any questions of the witness?

19 MR. FREDYMA: A couple of questions if we might.

20 Mr. Meyer, with regard to your experience here in
21 southwest Florida, any particular projects that you have
22 worked on since I guess, what, since '03 either in Collier
23 County or in Lee County, any particular projects that come
24 to mind?

25 MR. MEYER: I have done a couple of PUDs in

1 Collier County, residential PUDs and commercial PUDs,
2 conditional uses, general run of the mill, a myriad of
3 different permitting type situations.

4 MR. FREDYMA: What about in Lee County?

5 MR. MEYER: Lee County, this would be the first
6 project I've worked on in Lee County.

7 MR. FREDYMA: Okay. Understanding that Lee
8 County encompasses a lot of different jurisdictions, and
9 we have the City of Fort Myers, have you worked on
10 anything for the City of Fort Myers?

11 MR. MEYER: Not Fort Myers, no. Fort Myers
12 Beach, they did some work on a marina in Fort Myers Beach
13 for a while.

14 MR. FREDYMA: What was the marina?

15 MR. MEYER: Slip Lake Marina.

16 MR. FREDYMA: Okay. Any other certifications?

17 MR. MEYER: Well, AICP. I might also point out
18 that the State of Washington in 1990 passed a Growth
19 Management Act which was verbatim the Florida State Growth
20 Management Act with the name of the state obviously
21 changed, so I'm very familiar with the rules and
22 regulations that are obviously the same.

23 MR. FREDYMA: Josh or Rick, do you have any other
24 questions?

25 If I may, my concern as an AICP planner, I

1 understand that, and he has many, many years of experience
2 in Tacoma, my concern is general precepts of planning are
3 one thing but whether or not he's going to be talking
4 about Lee County specifically, I would have some concerns
5 about him being accepted as an expert in that regard.

6 General planning is one thing but if you want him
7 qualified I think for something more specific, I would --

8 HEARING EXAMINER: I'm going to ask the
9 applicant's attorney, what areas do you want him qualified
10 as an expert witness in?

11 MS. ENGLISH: I'd like him qualified as an expert
12 witness in the area of planning. To the extent --

13 HEARING EXAMINER: What kind?

14 MS. ENGLISH: -- to address the County Attorney's
15 concern, frankly, we all have qualifications that began in
16 other places and it is normal that a professional who has
17 professional certifications come into a jurisdiction and
18 familiarize themselves with it, but certainly I believe he
19 is an expert in the field of general planning and the
20 application of Land Development Codes and regulations to
21 specific projects.

22 HEARING EXAMINER: Okay. What kind of planning
23 now -- are you talking about land planning?

24 MS. ENGLISH: Land planning.

25 HEARING EXAMINER: Okay. Do I hear any objection

1 to declaring the witness an expert witness in land
2 planning matters?

3 MR. FREDYMA: No objection in the more general
4 category.

5 HEARING EXAMINER: Well, I understand your
6 concern, but I think maybe that is also within the scope
7 of cross-examination to determine how familiar he is with
8 our ordinances. Okay. I think it appropriate to declare
9 the witness an expert witness and to the extent you have
10 any problems with his testimony, he's there to be
11 cross-examined.

12 MR. FREDYMA: Okay.

13 HEARING EXAMINER: Okay. I'm going to declare
14 the witness an expert witness in land planning matters and
15 the applicant can go forward.

16 MS. ENGLISH: Thank you, Mr. Hearing Examiner.

17 Mr. Meyer, could you outline the previous
18 approval that authorizes the existing use on the property,
19 please?

20 MR. MEYER: Absolutely. If I may use the map,
21 the aerial photo to do so, but as you can see, there's a
22 number of uses that were previously approved here. We
23 have boat repair, we have boat maintenance. This is a
24 maintenance building that's been subsequently torn down.
25 And boat sales. And obviously all those uses are being

1 carried out outdoors.

2 The boat repair and maintenance would appear
3 right across from single-family neighborhoods, and that
4 was one of the causes of a lot of the complaints and
5 enforcement actions by the county.

6 As Rachel -- or Ms. Bielert has said, those uses
7 have been done away with, and I will go to the site plan
8 we're proposing in a moment and explain how we're trying
9 to deal with and address issues such as that.

10 Also, you have the restaurant in the corner down
11 across -- they had outdoor seating and they had entertain-
12 ment, so we had some noise issues because of that.

13 This site was also granted an administrative
14 amendment to only provide 50 parking stalls. As you can
15 see from the number of boats from the boats sales, the
16 maintenance, the repair, this site did not have adequate
17 parking and so that was creating issues with parking out
18 in the neighborhood.

19 And then there is just the general unsightliness.
20 We have issues with the boat repair and maintenance.
21 You've got blasting of the boats, you've got sanding of
22 the boats, you've got fiberglassing which creates fumes
23 and odors. You've got the dirt and the silt blowing off
24 the boats. So we generally had a use that was an
25 industrial use that was highly incompatible with a

1 single-family neighborhood.

2 What we are proposing is to do away with all
3 those uses and is go to the site plan and you can see
4 along this frontage which is next across from the single-
5 family homes, we have put up a wall already and
6 landscaped. Staff has asked us to substantially increase
7 landscaping beyond the Lee County code. We agree to that.

8 They have also asked us to put additional
9 landscaping along this frontage over here (indicating), we
10 agree to that. We are providing all the code required
11 open space on this site. We are providing actually more
12 landscaping than is required by Code.

13 And then more importantly I believe is we are
14 providing right now in our site plan 164 parking stalls,
15 and our traffic engineer will address that as regards to
16 parking. We feel that's more than adequate number of
17 parking stalls. Again, the parking lots will be paved.
18 They'll all be landscaped. All water management has been
19 figured into the site plan.

20 And then more importantly, we have taken the one
21 use that caused problems, which was the restaurant, and we
22 have moved it as far away from the residential area as we
23 can. It will be behind the boat barn, so any noise
24 generated is really going to be buffered.

25 We're asking that -- because of the physical

1 limitations of the site, we're also asking for a deviation
2 so the boat -- to allow the boat barn to be a little bit
3 higher so that will create more of a barrier for noise and
4 any light glare or anything like that from this.

5 So really what we're looking at here is a site
6 that goes from industrial, very intensive site, to a yacht
7 club where the biggest activity is going to be people
8 coming and going in their cars. And we think that is a
9 substantial reduction in the impacts and traffic -- well,
10 traffic we're calling it a wash. We won't take our
11 engineer's thunder. But as far as noise and dust and
12 fumes and general nuisances to the neighborhood, we are
13 trying to do away with all of those impacts, and we feel
14 the site plan is successful in doing that.

15 MS. ENGLISH: Mr. Meyer, in your opinion as a
16 general planning expert, does the plan as proposed comply
17 with the requirements of the Lee County Comprehensive Plan
18 and the Land Development Code?

19 MR. MEYER: Yes. There are five policies
20 actually that the staff has highlighted. I'd like to go
21 over those.

22 We have Policy 1.1.5 which refers to the suburban
23 land use, and it does state that the other uses are
24 permitted. This marina or the original use was approved
25 as a CPD in 1988. I would like to point out also that

1 when it was approved in 1988, it was approved for 44 wet
2 slips and 239 dry slips, which is the same number we're
3 requesting today, so we are not looking to intensify the
4 use in that regard.

5 The other policies that are identified are Policy
6 6.1.4, which is commercial development. It can only be
7 approved when compatible. As I stated, we're
8 substantially increasing the buffering and the landscaping
9 and protecting the single-family residences and we're
10 doing away with the uses that previously had impacted
11 them.

12 The next policy at 6.1.6 requires that there will
13 be adequate landscaping, open space and buffering. And,
14 again, we are going to be providing more than code
15 required, substantially more, and we are being asked to
16 provide larger trees, shrubs and whatnot to provide
17 additional buffering.

18 The next one is Objective 8.1 which has to do
19 with maintaining existing fish houses and marinas and
20 things of that nature, and this use obviously is
21 maintaining a marina.

22 And, finally, there is Policy 2.2.1 which talks
23 about rezonings and that there be adequate public
24 facilities available. And there is adequate water, sewer,
25 fire protection will be provided and we have testimony in

1 a TIS to demonstrate the traffic and parking will be
2 adequate.

3 MS. ENGLISH: Mr. Meyer, in addition, the Hearing
4 Examiner has already identified the issue, but could you
5 go into a little bit of the proposed structure that's
6 going to replace the existing boat storage structure? Is
7 it going to be the same kind of barn facility or is it
8 going to look a little different?

9 MR. MEYER: Very good point. The new boat house
10 facility or boat storage facility will meet all of the
11 county's design standards as will the restaurant, and so
12 this is also going to be an improvement in aesthetics on
13 the site and dramatically improve how that structure looks
14 to the abutting residents where they can see it.

15 MS. ENGLISH: Is there anything I haven't asked
16 you about that you'd like to put on the record?

17 MR. MEYER: Nothing I can think of. Like I say,
18 I think I've covered it. It's a substantial improvement
19 to the site, and I think it will be a benefit to the
20 neighbors and to the county.

21 MS. ENGLISH: I have nothing further for this
22 witness at this time, but I'd like to retain the ability
23 to recall him in the event I need him as a rebuttal
24 witness.

25 HEARING EXAMINER: Absolutely. Any questions by

1 staff?

2 MR. PHILPOTT: Mr. Meyer, could you just describe
3 not only the development of the subject property as it
4 exists today but also the development on that peninsula
5 encompassing both the Lee County property as well as the
6 subject property and the types of uses?

7 MR. MEYER: You want me to discuss as it exists
8 now?

9 MR. PHILPOTT: Yes.

10 MR. MEYER: Okay. As I said, currently the boat
11 repair is gone, boat maintenance is gone, so right now we
12 just have general construction activity going on.

13 We have the sewage treatment plant which is in
14 the center of this site and dominates all the uses.

15 We have a boat washing facility on site, fuel
16 sales and pumping and then the existing restaurant
17 building is still on site but has been too badly damaged
18 to be reused, so that's the reason we're tearing it down.

19 MR. PHILPOTT: Would you classify those uses as
20 industrial uses, generally?

21 MR. MEYER: I would say that the utilities use is
22 an industrial use. The uses that we have terminated but
23 we still have the rights to were definitely, I think,
24 industrial uses in nature from the fact of the fumes,
25 odors, the dust, the noise and the activities, the impacts

1 were substantially beyond most commercial uses.

2 MR. PHILPOTT: One other question relating to --
3 well, actually, could you go through the deviations that
4 are requested? I know you've touched on them briefly
5 regarding the parking for instance. I know you discussed
6 that. But some of the water body setbacks and why those
7 are needed and some of the background information on those
8 deviations.

9 MR. MEYER: Absolutely. The first deviation we
10 are requesting is a deviation on parking. The Lee County
11 Code strictly enforced requires that this site provide 236
12 stalls. We, as I said, are providing 164 which is three
13 times the parking that was previously provided, but I
14 think more importantly is that the mix of uses is such
15 that we feel it is reasonable to request a deviation.

16 The boat barn itself and the launching of boats
17 ceases at 6:00 p.m. and closes down, which is normally the
18 time that a restaurant really just starts to get going,
19 and so we have what's classically known in planning as a
20 daytime/nighttime use and there really isn't a conflict
21 between them. And the parking required for the daytime
22 use is substantially less than the 164 and this parking
23 required for the restaurant is, I believe, 130 some at
24 maximum. Plus we have the ability, if necessary, and this
25 is one of the requests we have is that we not be required

1 to provide valet parking all the time, but only when
2 necessary and the owners are more than willing to do so,
3 but we feel it would be ridiculous to have somebody
4 standing around most of the time with nothing to do if
5 you're required to have valet parking all of the time.
6 And that's the first deviation we're requesting.

7 The second deviation is a 25-foot water setback
8 is required. We're requesting that the restaurant and the
9 gazebo be allowed to go within five feet. The actual
10 property line for this property, actually if you look at
11 the site plan, you can see that this line over here, the
12 line that's out there is actually the property line, the
13 outer edge of the boat slips, so the property line is
14 actually 25 feet out in the water from the edge of the
15 property. And so we will be set back 30 feet from the
16 property line but only five feet from the edge of the
17 water. And this also helps us move the restaurant further
18 away from the residential district and protect the
19 abutting uses.

20 The next one is the height deviation, and Code
21 allows 45 feet above flood. We're requesting to go 55
22 feet in order to keep all of the uses inside. We feel
23 it's necessary and it structurally will work better for
24 us, and we really don't want to see that picture we had
25 before with boats outdoors. And this way we'll be allowed

1 to keep them in and we'll also be able to do minor
2 maintenance and the like from inside.

3 The next one is a deviation for making the Type D
4 buffer a ten foot wide buffer. Again, this is a very
5 tight site. We're more than willing to provide additional
6 landscaping to make up for the width with quality and size
7 of landscaping materials, and so we feel that would be a
8 reasonable tradeoff.

9 The fifth one is for the Tiki Bar restaurant. We
10 are going to utilize the actual foundation for the
11 existing Shucker's Restaurant that you can see on the
12 site.. It's already out into the water 25 feet. We simply
13 want to use that existing structure to put a tiki bar and
14 attach the health club and the pool deck and whatnot will
15 run off of that. And so it's just really a deviation that
16 would allow us to maintain the existing structures on the
17 site.

18 And then finally we're requesting a deviation
19 next to the sewage treatment plant which is for these
20 three structures here which I might point out we've
21 changed the order of the original plan we've submitted to
22 the county. In dealing with our actual project and site
23 engineers we realized that it would work better to juggle
24 them around. We still would like to have them within five
25 feet of the property line because it will allow us to

1 again maximize the site. And one of those is the main
2 fuel tank. We want to keep that as far away from traffic
3 as possible.

4 And those are the six deviations we are
5 requesting.

6 MR. PHILPOTT: Can you discuss again, maybe this
7 is a point that will come up later, some of the revisions
8 to the Staff Report that were specifically relating to the
9 boardwalk and some of the requirements of that? I believe
10 it's outlined in the letter to the Hearing Examiner.

11 MR. MEYER: You know, I'm going to have to defer
12 to Kate English, our attorney, because she wrote the
13 letter and she has more expertise on that one than I do.

14 MS. ENGLISH: But I think to follow up on Mr.
15 Philpott's question, we did add a use to the schedule of
16 uses, did we not?

17 MR. MEYER: We did, that's correct. We added the
18 boat dock as a permitted use --

19 MS. ENGLISH: Boardwalk.

20 MR. MEYER: Oh, we went back to boardwalk?

21 MS. ENGLISH: Yes, we're back under boardwalk,
22 based on the discussion.

23 MR. MEYER: Last time I had boat dock, so we'll
24 go back to boardwalk. This has been a major issue behind
25 the sewage treatment plant. We have added that back in.

1 We'll have to change the title of it because I've got it
2 as a dock. But that was the issue that has been worked
3 out with the County Attorney's office, and we will have to
4 get a license from the Board of County Commissioners and
5 an administrative amendment from staff in order to be
6 allowed to put that boardwalk in.

7 MR. PHILPOTT: And one final question relates to
8 the Land Development Code and the findings and conclusions
9 that are required for approval of a rezoning. And one of
10 the findings that must be found is that it's compatible
11 with the surrounding uses. The question is, does the Land
12 Development Code in those findings and conclusions
13 distinguish existing uses versus planned uses or permitted
14 uses? And it's outlined on Page 6 of 13 of my Staff
15 Report, the findings and conclusions, Sub c. It's at the
16 top of the page.

17 MR. MEYER: Okay.

18 MR. PHILPOTT: And, again, this is taken out of
19 the Land Development Code.

20 MS. ENGLISH: What page?

21 MR. PHILPOTT: 6 of 13 of my Staff Report, 2.c.

22 MR. MEYER: So your question is, you want the
23 answer is it compatible with the existing uses?

24 MR. PHILPOTT: No, the question is not
25 compatibility, but in that compatibility determination,

1 does -- is there any difference between existing uses that
2 are constructed or uses that are planned or permitted
3 which may not be constructed at the current time?

4 MS. ENGLISH: What point are you trying to
5 elicit?

6 MR. PHILPOTT: There's some discussion that will
7 probably ensue after we get through some of the conditions
8 relating to compatibility and issues relating specifically
9 to the restaurant and hours of operation and locational
10 type uses -- locational type issues of the proposed
11 restaurant versus the existing restaurant and the
12 relocation of that restaurant away from the existing uses
13 but also in a similar distance to what may be permitted
14 uses, residential uses. And I just wanted to make -- put
15 it on the record that there's no difference as outlined in
16 the Land Development Code versus existing and planned
17 uses.

18 MR. MEYER: You know, I'd say that's true.
19 Notification is the same. I mean, they have been
20 notified, they are on notice of what we're proposing to do
21 and have the right to participate in these hearings and
22 make comment.

23 MR. PHILPOTT: Absolutely.

24 MR. MEYER: And I think we've taken every effort
25 to condition and protect the neighborhood. The main

1 viewing area will be the gazebo, but it does that pointing
2 out towards the river as is that whole frontage of the
3 restaurant, which is the best we could do as far as
4 location or not to mitigate any of the surrounding uses.

5 MR. PHILPOTT: So to answer the question, is
6 there any differentiation between existing or planned uses
7 in the Land Development Code, in the findings that must be
8 outlined -- or that are outlined in the Land Development
9 Code?

10 MR. MEYER: I really can't answer that question.
11 I mean, that's something that would have to be -- in my
12 experience, that's something that staff is going to make
13 their own call on. That's not something -- from my
14 perspective, no. If you have residential zoning over
15 there, you have residential zoning there, you have to
16 address it accordingly.

17 MR. PHILPOTT: That's fine. Thank you.

18 HEARING EXAMINER: Do you have any more
19 questions?

20 MR. PHILPOTT: Not at this time.

21 HEARING EXAMINER: Okay. John.

22 MR. FREDYMA: I had a couple if I may. John
23 Fredyma, Assistant County Attorney.

24 Once again I represent the Board of County
25 Commissioners, so I'm not advocating for staff nor am I

1 opposing the applicant. But if you would, if you're
2 familiar with the site, its current history?

3 MR. MEYER: Yes.

4 MR. FREDYMA: Past history. Presently there's a
5 boat wash on the site that's sort of in the, I guess the
6 southwest corner near the waste water treatment plant.
7 Are you familiar with that?

8 MR. MEYER: Yes.

9 MS. ENGLISH: Mr. Fredyma, that may be a question
10 that's better asked of the project manager, Ms. Bielert.
11 I'm happy to recall her if you'd like to ask that
12 question.

13 MR. FREDYMA: Okay. Or let me --

14 MR. MEYER: Are you talking about the one that's
15 over here right now?

16 MR. FREDYMA: Yes.

17 MR. MEYER: Okay. That is shown on the site plan
18 as being relocated on the other side of the waste water
19 treatment plant.

20 MR. FREDYMA: Okay.

21 MR. MEYER: So it will be shielded and be behind
22 the boat barn by and large.

23 MR. FREDYMA: And that's fine. That's part of
24 what I was trying to elicit. The boat wash in the past
25 has been a rather large source of irritation to the

1 neighbors.

2 So the boat wash is going to be relocated as it's
3 now shown on the current Master Concept Plan.

4 With the exception of, I guess according to the
5 Staff Report and I believe your testimony, repairs,
6 service, maintenance of boats and the like, that's all
7 going to take place inside the building; is that correct?

8 MR. MEYER: If it's done, it's been stipulated or
9 conditioned by staff to be inside the building, then we
10 agree with that.

11 MR. FREDYMA: With the notable exception of --
12 I'm going to say perhaps the boat wash because --

13 MS. ENGLISH: The boat wash, yes, but we're not
14 requesting maintenance activities on our schedule of uses.

15 MR. FREDYMA: But repair?

16 MS. ENGLISH: But repair.

17 MR. FREDYMA: Condition 11, I think, I don't know
18 if it's been revised.

19 MS. ENGLISH: And the issue there is part of this
20 equity membership is that you don't have to take care of
21 your own boat, we essentially get it ready -- the
22 applicant will get it ready and get it dropped in the
23 water when you want to use it. Some of that we can't do
24 inside the building.

25 MR. FREDYMA: I understand that, and that's the

1 distinction I was drawing is recognizing that boat
2 service, repair and maintenance is going to be done inside
3 the building. The only exception appears to be the boat
4 wash, which is now being relocated to I'll say the
5 southeasterly corner of the waste water treatment plant,
6 to that side as opposed to where it is now.

7 MS. ENGLISH: I think that question may better be
8 posed to Ms. Bielert. As I said, I'm happy to recall --
9 since that's operational, I'm more than happy to recall
10 her for purposes of --

11 MR. FREDYMA: If you would and perhaps then have
12 her describe that.

13 MS. ENGLISH: Certainly. Would you like to
14 finish with this witness first?

15 MR. FREDYMA: Yes, please.

16 Let's see here. A question with regard to the
17 launching of boats. There is, and again maybe you're not
18 the person to ask --

19 MR. MEYER: That's again operational.

20 MS. ENGLISH: Anything that's operational, I'm
21 happy for you to discuss with Ms. Bielert.

22 MR. MEYER: One thing I will say that I think is
23 important is that the only opening in this building is on
24 this side, so there are no other openings to allow noise
25 or anything to escape from the building except out that

1 direction, so that is another improvement. There use to
2 be -- there are openings on both sides right now, I
3 believe.

4 MR. FREDYMA: I guess my questions probably are
5 better suited to be addressed to Ms. Bielert then.

6 HEARING EXAMINER: Okay. You don't have any
7 other questions?

8 MR. FREDYMA: I don't believe so at this point,
9 no, sir.

10 HEARING EXAMINER: I just have a few. The waste
11 water treatment plant, is that owned by Lee County
12 Utilities?

13 MR. MEYER: Yes, it is.

14 HEARING EXAMINER: Okay. How is that building
15 going to be constructed, I mean, what's it -- is it going
16 to be a steel building?

17 MR. MEYER: Yes. It will be a steel building
18 with concrete foundation.

19 HEARING EXAMINER: Okay.

20 MR. MEYER: More detail you'll have to ask Ms.
21 Bielert, she is actually going to be the one responsible
22 for building it.

23 HEARING EXAMINER: Okay. And there is an item, a
24 20 foot diameter fire suppression storage tank.

25 MR. MEYER: Yes, sir.

1 HEARING EXAMINER: What does that contain,
2 halogen, gas or --

3 MR. MEYER: No. Actually, it's going to contain
4 20,000 gallons of water, 50,000 gallons of water. We do
5 not have adequate water pressure for fighting fires at
6 that location. Therefore, the solution is to actually
7 build a 50,000 gallon tank on site and use that water for
8 any fire. And that is more than adequate, according to
9 all the fire people, to handle anything that will ever
10 occur on the site. Everything will be sprinkled as well
11 from that tank. It's just the way of mitigating
12 inadequate pressures.

13 HEARING EXAMINER: I take it there's a pump that
14 goes along with it to provide pressure?

15 MR. MEYER: Yes.

16 HEARING EXAMINER: Okay. Did you testify as to
17 when the members -- is there a time element in when the
18 members have access to their boats?

19 MR. MEYER: I know it's from -- it stops at 6:00
20 p.m. I believe it's 8:00 a.m. 8:00 a.m. to 6:00 p.m.

21 MS. ENGLISH: That's operational.

22 MR. MEYER: Ask the boss.

23 HEARING EXAMINER: Okay. I've got some more
24 questions. Let me -- one question just very generally.
25 You're familiar with the current site and the prior use of

1 the current site. Is it your professional opinion that
2 the proposed site would be less intensive than the prior
3 use?

4 MR. MEYER: Oh, absolutely. I think that's --
5 it's very safe to make that statement.

6 HEARING EXAMINER: Okay.

7 MR. MEYER: The maintenance and repair business
8 alone was hugely more impactful than anything we're
9 doing. As I said, really all you're going to have in the
10 way of impacts are people driving to the site and getting
11 on their boat.

12 Other than that, you have a restaurant, that
13 outdoor seating area is as far away from --

14 HEARING EXAMINER: There's no use in there that's
15 more intensive than the prior?

16 MR. MEYER: No. Quite honestly, we're dropping
17 off.

18 HEARING EXAMINER: Uses, not adding uses.

19 MR. MEYER: And the uses we would be dropping off
20 are very intensive type uses, maintenance, repair, both of
21 those are just -- they're dirty businesses unfortunately.

22 HEARING EXAMINER: I have no further questions.
23 Anyone else?

24 MS. ENGLISH: There are a couple rebuttal
25 questions or redirect I'd like to ask. In terms of

1 Deviation No. 1 in regard to parking, while Mr. Spradling
2 will explain that in a little greater detail, does that
3 number exceed what's currently authorized on the site?

4 MR. MEYER: Oh, yes. Currently the parking
5 authorized on the site is 50 stalls, so it's over three
6 times.

7 MS. ENGLISH: And in regard to Deviation No. 2
8 regarding the setback for the water body, what was the
9 previous setback authorizations for the structures that
10 are currently existing on the site?

11 MR. MEYER: Well, the existing restaurant is --
12 Shucker's was right on the water as well. The gazebo
13 that's existing is located on the water. So we're really
14 asking to replicate the locations of the existing
15 buildings as they were approved originally.

16 MS. ENGLISH: In regard to the hours of operation
17 for the restaurant, the applicant is suggesting expanded
18 hours of operation compared to the existing
19 authorization.

20 MR. MEYER: Yes.

21 MS. ENGLISH: Could you expound on the reasons
22 that would be compatible with the adjacent neighborhood?

23 MR. MEYER: Again, it goes back to our locational
24 situation, the fact that we have moved the restaurant as
25 far away as possible. It's behind the boat barn now. So

1 if there were noise, it's going to be screened and blocked
2 by the -- number one, the boat barn is going to block it,
3 and, number two, it's on the far side of the restaurant so
4 it's going to be further blocked by the restaurant. And
5 so unlike the existing Shucker's restaurant where it's set
6 out in the open and had almost direct access as far as its
7 open area to the abutting residential, we won't have that
8 situation.

9 MS. ENGLISH: In terms of the outdoor
10 entertainment, what would be your opinion as to the impact
11 on adjacent property along with the expanded hours of
12 operation?

13 MR. MEYER : I think it will be minimal. Even the
14 residential that's across the way that has not been
15 developed that Mr. Philpott is talking about, they do not
16 have direct access and they will not have direct
17 visibility to the site because of mangroves that are not
18 supposed to be cut down. I can't say they won't do that,
19 but they don't own that property. I believe the marina
20 owns that property, and they have no desire to have those
21 mangroves cut down. So there will be additional buffer
22 even in that direction. So, again, I feel it's a
23 substantially improved situation from what existed before.

24 MS. ENGLISH: In your professional opinion, is it
25 compatible with the adjacent residential uses?

1 MR. MEYER: I believe it is in this situation,
2 yes.

3 MS. ENGLISH: Thank you.

4 HEARING EXAMINER: Any other questions from
5 staff? County Attorney?

6 MR. FREDYMA: Kate, will you have somebody talk
7 about Tract B?

8 MS. ENGLISH: Yes.

9 MR. FREDYMA: Okay, I'll wait.

10 MS. ENGLISH: Thank you, Mr. Meyer.

11 MR. MEYER: You bet.

12 MS. ENGLISH: At this time I'd like to recall Ms.
13 Bielert to address operational issues.

14 HEARING EXAMINER: Ms. Bielert, you're still
15 under oath.

16 MS. BIELERT: Yes, sir.

17 Thereupon,

18 RACHEL BIELERT,
19 called as a witness by the Applicant, having been
20 previously duly sworn, was examined and testified further
21 as follows:

22 MR. FREDYMA: Thank you. Once again John
23 Fredyma, Assistant County Attorney.

24 Ms. Bielert, a couple of questions if I may for
25 you to elaborate on. The existing boat wash is going to

1 be relocated, correct?

2 MS. BIELERT: Yes, sir. We are relocating the
3 boat wash for two purposes. Number one, for efficient
4 operations. The launching and loading of boats from the
5 dry storage facility necessitates that when the boats are
6 loaded up to be put back into the barn, they need to be
7 washed down and the fuel and oil and those types of things
8 need to be properly cared for. They do have water
9 recycling equipment out there that we are going to be
10 reusing. It is one of the most state of the art pieces of
11 equipment. It will keep the runoff from the bilge and
12 whatnot from the boats from getting back into the canal
13 systems. So we've moved it to the location which suits
14 the operations most efficiently.

15 MR. FREDYMA: That's really the only activity
16 that's going to occur outside the building; is that
17 correct?

18 MS. BIELERT: For the most part, yes. There will
19 be detailing. There will be minor maintenance things that
20 could occur on the southern side. By Lee County Code it's
21 my understanding that standard rigging is what it's called
22 in the industry, but when you have props and, you know,
23 switch a motor, an outboard motor from the back of the
24 boat, those are not technically considered maintenance
25 operations, but they are necessities of a boatyard

1 operation. So those types of minor things will be
2 occurring on the south side of the dry storage building.

3 MR. FREDYMA: Okay.

4 MS. BIELERT: Safety issues primarily and
5 cleanliness have to do with not actually doing those
6 things inside the drive aisle.

7 MR. FREDYMA: I guess as a follow up to that, let
8 me ask it this way. Where and how will boats be launched?

9 MS. BIELERT: If I may, I'll refer to the site
10 plan. What will happen is that this center aisle here is
11 the drive aisle for the forklift which will either take a
12 boat from inside the building, come down here to the south
13 launch pad and will launch the boat into the canal by
14 literally dropping it with a forklift into the canal.

15 The yacht club employees will then secure the
16 boat, tie them temporarily up into the mooring locations
17 so that way the boater can enter or exit his boat.

18 Same thing when someone comes in, they
19 temporarily moor their boat here until the operational
20 employees come out, bring the boat over to the proper
21 location, be loaded back onto the forklift, brought up,
22 cleaned and cared for for proper storage and for
23 maintenance.

24 MR. FREDYMA: Over on the -- along the
25 northwesterly boundary of the site, there's a small cut-in

1 in the sea wall.

2 MS. BIELERT: Yes. That was for a travel lift
3 that operated with the boatyard operation. After
4 reviewing the hurricane preparedness plans and all those
5 kinds of things, we decided to leave that for emergency
6 purposes only. If there's a sinking ship or something to
7 that nature, it's easily facilitated. But on a daily
8 basis it will not be operated primarily because the
9 forklifts are extremely heavy. They require, in this
10 instance, a 13 1/2 reinforced slab. It would be
11 extraordinarily expensive to do five acres of that slab.

12 MR. FREDYMA: I guess one of the concerns I need
13 described, I think one of the problems which we've had in
14 the past -- so that particular location could be used for
15 a travel lift, but you're saying the travel lift would not
16 be in use.

17 MS. BIELERT: No. If there was actually a
18 sinking boat, they actually sold the travel lift from the
19 marina that they had operated with the boatyard over there
20 when it does not operate. What would happen is they would
21 have to bring the forklift around and do the same type of
22 loading or unloading. It's highly unlikely we would have
23 to use it, but we've kept it there in the rare event
24 there's an emergency.

25 MR. FREDYMA: Would there be any objection, and I

1 may have to ask the applicant's attorney or the applicant,
2 would there be any objection to a condition that said that
3 that particular location is not to be used for everyday or
4 routine launchings?

5 MS. BIELERT: That would be acceptable.

6 MS. ENGLISH: I have no objection.

7 MR. FREDYMA: We could probably amend --

8 MS. ENGLISH: We're addition Condition 16?

9 MR. FREDYMA: Either adding or amending maybe 11
10 in one way or another to indicate that the launching of
11 the boats is going to occur, for the most part, on the --
12 was it the south side of the dry storage building?

13 MS. BIELERT: On daily operations.

14 MR. FREDYMA: Daily operations, that's right.

15 MS. BIELERT: Yes. The travel lift in this area
16 will not be daily operated.

17 MR. FREDYMA: And you said, in the past it's been
18 problematic?

19 MS. BIELERT: Well, yes. That's the most minor
20 of the problems on that side. It's my experience from
21 meeting with the neighbors, I've had, I believe, five
22 informal neighborhood meetings.

23 MR. FREDYMA: I've had more.

24 MS. BIELERT: Yes. I've been lucky to have very
25 good turnout and their primary problems over there were.

1 more to do with the grinding and blasting and painting
2 than actually having boats over there.

3 MR. FREDYMA: Right. And I appreciate your
4 response. I guess the final question that I have at least
5 was with regard to live aboards, whether live aboards be
6 present on the site or not?

7 MS. BIELERT: The operation is not going to have
8 the type of facility where live aboards -- where someone
9 can come and stay for weeks or years or whatnot. If
10 someone comes for the weekend and they are acting
11 appropriately, they're not objecting to that.

12 MR. FREDYMA: Any objections again to a condition
13 that said that there will be no live aboards?

14 MS. BIELERT: I'd prefer that we do not have that
15 condition on the zoning.

16 MR. FREDYMA: The concern I have is not knowing
17 enough about live aboards, I would want to have staff look
18 at that issue if there's a concern about them being
19 present.

20 MS. BIELERT: Our primary issues that I found
21 with live aboards is there were not adequate facilities
22 for bathrooms and those types of things. We are
23 constructing showers, lockers and those types of things as
24 well as the pump-out facility. We did just get approval
25 from the state for our grant to do a proper pump-out

1 system and fueling, so we will have more than adequate
2 facilities to allow for the weekender live aboard.

3 MR. FREDYMA: Okay.

4 MS. ENGLISH: And we'll also be calling Mr.
5 Hoffacker as our next witness who can address some of
6 those issues as well.

7 MR. FREDYMA: Okay. All right. Thank you. I
8 don't have any other questions.

9 HEARING EXAMINER: Okay. I just have -- sorry.
10 Go on.

11 MR. PHILPOTT: Resulting from some of those
12 discussions that happened with Mr. Fredyma's questions, I
13 wanted to revisit Condition 11 again. It reads in the
14 Staff Report, "No outdoor storage of boats or equipment is
15 permitted. All boat service, repair, and maintenance must
16 be done completely within the dry storage building." I
17 wanted to get in the record and have you read it to ensure
18 there's understanding of what qualifies as boat repair and
19 maintenance under the Land Development Code. And, Ms.
20 Bielert, if you could -- this is Land Development Code,
21 Chapter 34, Section 2, the definition of boat repair and
22 service.

23 MS. BIELERT: "The definition of boat repair and
24 service means establishments primarily engaged in minor
25 repair service to small watercraft including the sale and

1 installation of accessories. "

2 MR. PHILPOTT: Thank you. That's all.

3 MS. ENGLISH: Does staff have any objections to
4 what Ms. Bielert has described as the work that's going to
5 be needed to get boats ready to launch and store?

6 MR. PHILPOTT: Basic rigging of boats would not
7 be objectionable for storing or preparing boats from
8 storage to launch. However, more in-depth processes such
9 as rigging of new boats with equipment may need to be done
10 or repair of existing equipment may need to be done inside
11 or needs to be done inside.

12 HEARING EXAMINER: Any other questions, staff?

13 MR. PHILPOTT: No, sir.

14 HEARING EXAMINER: Okay. Thank you.

15 HEARING EXAMINER: I have a couple. Your
16 proposed dry storage building, that's going to be steel?

17 MS. BIELERT: It's a prefabricated steel
18 structure, galvanized members, and the exterior has a
19 metal sheeting and then there would be a facade
20 application onto that.

21 HEARING EXAMINER: What's the facade made of?

22 MS. BIELERT: It will be -- there's different
23 components that prefab storage building companies have
24 available in order to comply with architectural codes.
25 There's faux windows, you know. We're going with an old

1 Florida style, so the architectural elements will be
2 pulled from the restaurant building and the pool house
3 building and that will also work very nicely with the
4 exterior of the boat barn so that way it doesn't
5 necessarily look like one big long shed of corrugated
6 steel. Currently that's what it looks like. Currently it
7 is not --

8 HEARING EXAMINER: It's an old sea plane hangar?

9 MS. BIELERT: Correct. That's exactly the same
10 type of structure.

11 HEARING EXAMINER: I take it it's going to look a
12 little different from that and --

13 MS. BIELERT: Yes. Lee County Code requires that
14 they look much different than those.

15 HEARING EXAMINER: Get back to the hours of
16 operation here. What are the hours of operation for the
17 boat slips and marina?

18 MS. BIELERT: We have 8:00 a.m. to 6:00 p.m.

19 HEARING EXAMINER: Okay. Now, does that mean
20 from 8:00 a.m. to 6:00 p.m. they'll put boats in the water
21 or take them out?

22 MS. BIELERT: Yes, sir.

23 HEARING EXAMINER: What happens if I arrive at
24 10:00 p.m. with my boat?

25 MS. BIELERT: Well, I believe that you would have

1 to dock at the temporary mooring locations. There will be
2 security guard there to ensure you're not there to create
3 any problems for the marina or the neighbors. And in the
4 morning they would be logged in with the marina staff and
5 their boat would be put away into the boat barn.

6 HEARING EXAMINER: Okay. So if I --

7 MS. BIELERT: If the tide didn't permit you to
8 come back and you got stuck, they're not going to just let
9 you float out. You will be helped to your boat --

10 HEARING EXAMINER: What if I was in
11 Margaritaville and didn't get back? I mean, what I'm
12 driving at is, is there going to be a substantial pile up
13 of boats here?

14 MS. BIELERT: No, sir. No, sir. I believe that
15 the daily operations of boats are extremely minimal.
16 There's -- I think on the busiest days, and this is not
17 a hard fact, but I believe in my findings, it's
18 approximately on your busiest days 30 percent of your
19 entire dry storage would ever be out of the barn at one
20 time. So it's very minimal.

21 HEARING EXAMINER: Okay. Now, the other folks
22 that are in the actual boat slips --

23 MS. BIELERT: The wet slips?

24 HEARING EXAMINER: Pardon me?

25 MS. BIELERT: The wet slips?

1 HEARING EXAMINER: Yes.

2 MS. BIELERT: Yes. Okay.

3 HEARING EXAMINER: Is there any restriction on
4 their use as far as time goes?

5 MS. BIELERT: No, sir. There is, however, for
6 noise and they would not be allowed to come in late at
7 night and throw a big party on their boat, that is not
8 going to be acceptable behavior at this yacht club.

9 HEARING EXAMINER: One other question. There was
10 testimony to the fact that there is only -- there's going
11 to be one door to this dry storage facility.

12 MS. BIELERT: The main door. That would allow
13 the lift to go in and out.

14 HEARING EXAMINER: I take it that's going to be
15 like a hangar --

16 MS. BIELERT: It is very much like a hangar
17 door --

18 HEARING EXAMINER: But there will be other
19 entrance and exit?

20 MS. BIELERT: Of course. There's fire code
21 requirements that you must be able to have man doors to
22 allow people in and out for fire emergency.

23 HEARING EXAMINER: That doesn't concern me.

24 MS. BIELERT: Right. By allowing the parking to
25 run the entire length of the north side of the building,

1 it does not facilitate having an access door for the
2 lift. Therefore -- not to mention in order to meet wind
3 codes, a 40 x 30 door is very heavy and very expensive and
4 if there's no need for one, there's no need to purchase
5 one.

6 HEARING EXAMINER: I have no further questions.

7 MR. FREDYMA: A couple of follow-ups. Back to
8 Condition 11 for a moment. Based on what's been testified
9 to, it would seem appropriate to modify maybe Condition 11
10 to indicate that equipment access or forklift access will
11 be from the south side of the building; is that a correct
12 statement?

13 MS. BIELERT: The south and southwest side. If
14 they have a boat trailer delivery, for example, if a boat
15 was brought to the marina, they would be brought around
16 the building and then most likely on the southwest side
17 there. You can --

18 MS. ENGLISH: Could you approach and --

19 MS. BIELERT: What would happen is if the trailer
20 would come around, they would bring up -- the truck would
21 park on the asphalt and the forklift would come over and
22 take it off of the boat trailer over here. So this
23 southwest area and the south area behind the dry storage
24 barn would be the primary area of operations.

25 MR. FREDYMA: But the access into the building

1 itself --

2 MS. BIELERT: Is only on the south side.

3 MR. FREDYMA: Only from the south side. That
4 would be the concern I guess that I would have.

5 The second question relates, would you describe
6 the locations that are delineated on the Master Concept
7 Plan as 1 through 44, which are small squares and then 30
8 through 42 which appear to be boat slips also, I assume?

9 MS. BIELERT: We have a vesting by the Department
10 of Community Affairs for 44 wet slips. We were requested
11 by staff to show them on the Master Concept Plan with the
12 understanding that proper permitting through either the
13 South Florida Water Management District or the DEP would
14 be required to ensure compliance with Codes.

15 MS. ENGLISH: And those may shift minimally based
16 on those permits.

17 MR. FREDYMA: I understand that. And I think the
18 way the condition is drafted it calls for substantial
19 compliance with the MCP.

20 MS. ENGLISH: Yes.

21 MR. FREDYMA: I don't have any more questions.

22 HEARING EXAMINER: Anybody else have any
23 questions?

24 I just have one housekeeping matter. I don't
25 think I've introduced the Master Concept Plan. If nobody

1 has any objection, I believe the Master Concept Plan
2 should be admitted as Applicant Exhibit 2.

3 MR. FREDYMA: I believe this is a revised one.
4 It's not the one that's attached to the Staff Report.

5 MS. ENGLISH: That's correct.

6 HEARING EXAMINER: Okay. What is the date --

7 MR. PHILPOTT: Last revised.

8 MS. ENGLISH: 7-25.

9 HEARING EXAMINER: Okay. I will accept the
10 Master Concept Plan last revised on July 25th --

11 MR. PHILPOTT: I'm not sure if that one has the
12 last revised date, but the last revised date on this one
13 is 4-11-06.

14 MS. ENGLISH: That needs to be revised because
15 that last modification was yesterday on discussions with
16 staff.

17 HEARING EXAMINER: Where is the last one?

18 MR. PHILPOTT: This is the most up-to-date
19 version. However, a note was not added to include the
20 last revised date.

21 MS. ENGLISH: And in addition to that, we may
22 need to submit a revised one since based on discussions
23 between the attorneys we were having some difficulty
24 deciding where to put the boardwalk in the schedule of
25 uses that Environmental Sciences clarified for us today

1 and that Master Concept Plan incorrectly puts the
2 boardwalk under dock and it should not be.

3 HEARING EXAMINER: I'm going to have to leave the
4 record open for submissions.

5 MS. ENGLISH: We can submit that tomorrow, sir.

6 HEARING EXAMINER: Okay. For today I'm going to
7 admit as Applicant Exhibit B the Master Concept Plan, last
8 revised August 11, 2006, since we've been referring to
9 that all along. But I will leave the record open for the
10 applicant to submit a new revised Master Concept Plan.

11 (Applicant Exhibit B was marked for
12 identification.)

13 HEARING EXAMINER: Okay. I don't believe there's
14 any further questions. Thank you.

15 MS. BIELERT: Thank you.

16 MR. FREDYMA: Related to that if I may as
17 procedure, Kate English submitted the 24-hour letter to
18 your office, I believe, and it included a strike through
19 underlined version of the Staff Report with its
20 conditions. I don't know if we've been operating off of
21 that or if you've seen that or not. I know you've seen
22 it, but I don't know if you're working with that.

23 HEARING EXAMINER: I have seen it.

24 MR. FREDYMA: I guess the question is whether,
25 Kate, if you wanted the Hearing Examiner to operate off of

1 that Staff Report and then have staff as well make their
2 comments with regard to the suggested revisions.

3 HEARING EXAMINER: Why don't we do that when
4 staff puts on their presentation, they can refer to those
5 revisions.

6 MR. FREDYMA: Okay.

7 MS. ENGLISH: And just --

8 HEARING EXAMINER: I've got that. That's your
9 letter dated yesterday.

10 MS. ENGLISH: And did you also get the revised
11 Staff Report that went with it with the strikes for No. 1
12 from --

13 MR. FREDYMA: It should be attached.

14 HEARING EXAMINER: Yes.

15 MR. FREDYMA: Thank you.

16 MS. ENGLISH: Because I think when we're both
17 done with our cases, we may need to go through that
18 language and make sure that what we've agreed to is
19 actually what the Staff Report reflects.

20 HEARING EXAMINER: Okay. Who is the next
21 witness?

22 MS. ENGLISH: For its next witness the applicant
23 calls Allen Hoffacker.

24 Thereupon,

25 ALLEN HOFFACKER,

1 called as a witness by the Applicant, having been
2 previously duly sworn, was examined and testified as
3 follows:

4 HEARING EXAMINER: Okay, sir, can I have your
5 address, please?

6 MR. HOFFACKER: Office is 2052 Virginia Avenue,
7 that would be Dexter Bender & Associates.

8 HEARING EXAMINER: And that is where?

9 MR. HOFFACKER: That is in downtown Fort Myers.

10 HEARING EXAMINER: And did you take an oath?

11 MR. HOFFACKER: Yes, I did.

12 MR. ENGLISH: Mr. Hoffacker, have you been
13 recognized by the Hearing Examiner's office as an expert
14 in regard to marine permitting and land use planning?

15 MR. HOFFACKER: I have by the Commission, by DEP,
16 the Corps of Engineers, et cetera. I've been doing this
17 for 26 years.

18 MS. ENGLISH: And your resume is on file with the
19 Hearing Examiner's office?

20 MR. HOFFACKER: It is.

21 MS. ENGLISH: We would request at this time that
22 Mr. Hoffacker be recognized again as a witness in marine
23 permitting and land use issues.

24 HEARING EXAMINER: Marine permitting and land --

25 MS. ENGLISH: Related to marinas, limited to

1 marinas.

2 HEARING EXAMINER: Any objection to the
3 applicant's request to declare the witness an expert
4 witness? There being no objection, the witness is
5 declared an expert witness in marine planning and land use
6 issues related to marine planning.

7 MS. ENGLISH: Thank you. Mr. Hoffacker, you've
8 been listening to the testimony. Maybe the best way to
9 start is to address operations for this type of marina and
10 also to talk about the kind of boats that would be
11 docking here and using this facility.

12 MR. HOFFACKER: From what I've been listening to,
13 it sounds like Rachel does everything. She built the
14 buildings, she -- this is actually an incredible
15 improvement. I have been in this area a long time and
16 fished it and guided out of it and have studied the river
17 for many years. I'm proud to say, before I jump into
18 that, that one of the papers that I have authored is the
19 Lee County Caloosahatchee River Sea Grass Study. I did it
20 as a gratis process back in 1996 because I was afraid of
21 what was going to happen to the river. So Lee County
22 environmental staff and water management district,
23 everybody now knows there was sea grass here before it all
24 disappeared because of the dumping.

25 But this is just going to be a standard marina on

1 -- the operation is about 500 percent better than what was
2 there. I don't know how the residents put up with it as
3 far as the noise and stuff because I used to go to
4 Shucker's and I'd fish there in the evenings in those
5 canals in the winter because it was very good fishing.
6 But what's going to be done is -- I've worked on a number
7 of marinas, probably over 40 or so in all the years I've
8 done these, this one I would say is probably going to be
9 in the top 10 percent with the effort that they've made to
10 have, for example, the access all to the south, the
11 restaurant all to the south. If I was a neighbor in here,
12 I mean, compared to anything else, I'd say this is really
13 a tremendous improvement.

14 More importantly from my standpoint is that the
15 water chemistry is going to be 500 percent better. What
16 had happened for years in any type of facility such as
17 this is you get heavy metals in the soils from the bottom
18 paints, the mechanical procedures that occurred basically
19 caused Os and Gs into the water quality, all of that's
20 going to stop now.

21 I think it's important to note that the boat
22 washing area, that all of that water will be retained into
23 the storm water management system in regards to that.

24 The boats are going to range anywhere from 25 up
25 to 35, 45 feet, depending on what the owner has.

1 Basically, it's just -- it's a very low impact
2 marina operation is what you would call it as.

3 Is there anything else you want me to elaborate
4 on in particular?

5 MS. ENGLISH: Specifically, I believe Mr. Fredyma
6 had some questions about live aboards.

7 MR. HOFFACKER: A weekend doesn't qualify as a
8 live aboard under state law. So if you're concerned about
9 a weekend, under state law it's not a live aboard.

10 MR. FREDYMA: I'm concerned about live aboards in
11 general, not just weekends. Thank you.

12 MR. HOFFACKER: They'll all be generated, the
13 electrical they have 30 and 50 amp power. I happen to
14 live at a 53-foot boat at a marina, so it's very -- it's a
15 very low key operation. If you stay on the boat, there
16 won't be any generators running at night because all the
17 boats will be hooked up to 30 or 50 amp power. So I
18 don't think anybody would notice any difference between
19 that and, you know, a neighborhood in the evening, quite
20 frankly. It would probably be a lot quieter.

21 MR. ENGLISH: You're aware that we're requesting
22 to add a boardwalk to the schedule of uses and add a
23 boardwalk back to the property lying adjacent to the Lee
24 County Utilities property?

25 MR. HOFFACKER: Correct.

1 MS. ENGLISH: Is there any dockage contemplated
2 on that boardwalk?

3 MR. HOFFACKER: Basically, none at this time.
4 And I was encouraged in the adding of that boardwalk, too,
5 because if there's an accident or something on any boat,
6 it's easier, instead of running all the way around the
7 facility, workers can get to that westerly side quicker.
8 I think it's a great safety reason, that's why they added
9 it.

10 Just real quick, there was one question -- no,
11 your turn.

12 MS. ENGLISH: In the environmental conditions in
13 the Staff Report, specifically 3.b.

14 MR. HOFFACKER: We have talked with staff, and we
15 want to try to achieve, and I'm in favor of this for
16 habitat, rip rap in areas where sea walls are and we
17 cannot quite reach the required lineal footage that the
18 staff wants. We're about 100 feet short, so we decided
19 that the Tract -- I believe it's called Tract D.

20 MS. ENGLISH: That's correct.

21 MR. HOFFACKER: Okay. That would be the entire
22 mangrove system across the canal would be basically put
23 into a conservation easement.

24 Should there be any, down the road, ability for
25 somebody to want to put docks through it, that easement

1 does not preclude access walkway for docking facilities.
2 Is that going to happen? I would doubt it. But just
3 something that may come up, so it's a win-win. The
4 mangroves will now be preserved. It just fits with the
5 overall, you know, idea of trying to make this a nice
6 project.

7 MS. ENGLISH: So the applicant's proffer which
8 has been accepted by staff at this point is to add a
9 minimum of 260 feet of environmental enhancement along the
10 shoreline?

11 MR. HOFFACKER: That's correct.

12 MS. ENGLISH: And the re-creation of a
13 conservation easement reserving the riparian rights for
14 Tract D?

15 MR. HOFFACKER: That's correct.

16 And one neighborhood person had a question that
17 was a real good question, and it was sent to Josh Philpott
18 in writing regarding dredging.

19 There will be no dredging in these canal systems.
20 We're under a maintenance dredging application. It's an
21 exemption from DEP, which means it's a fairly simple thing
22 to get, but we're in the process of dealing with the state
23 submerged lands which you have to deal with as far as
24 purchasing them. But there will be no dredging near or
25 adjacent, I mean, real close to any residential sea walls

1 in this area.

2 No dredgers do do that because they're afraid of
3 a wall failing. It's a liability issue. So, typically,
4 the rule of thumb by most marine contractors is no closer
5 than 15 to 20 feet.

6 MS. ENGLISH: Thank you.

7 MR. HOFFACKER: You're welcome.

8 MS. ENGLISH: Any questions?

9 MR. PHILPOTT: Yes.

10 MR. HOFFACKER: Quick one?

11 MR. PHILPOTT: Yes, sir. Mr. Hoffacker,
12 currently as the Master Concept has been proposed, does
13 the development comply with the manatee protection plan?

14 MR. HOFFACKER: Absolutely it does. It meets the
15 manatee plan for the Caloosahatchee River at this
16 location. And that is precluded, though, Josh, by the
17 vesting that was already existing. But, yes, it's covered
18 under the vesting that was previously there, so,
19 therefore, it does comply with the plan.

20 MR. PHILPOTT: That's what I wanted to make sure.

21 HEARING EXAMINER: Rick.

22 MR. JOYCE: Just a question regarding the clean
23 marina designation through the Board of Department of
24 Environmental Protection. If you could just describe a
25 little bit about what that -- what is that.⁷

1 MR. HOFFACKER: I'm going to let Rachel do that
2 because she's real proud of it or would you like me to?
3 She did that upon herself. I mean, I'll be glad to -- it
4 just has to do with, you know, you come up with plans and
5 these plans are a marina management plan. And it says
6 batteries are recycled such as the -- it's just an overall
7 plan complying with water quality, meeting all of these
8 different state plans that they want you to comply to meet
9 water quality, all of the above. All marinas that I'm
10 doing right now are basically in the process of
11 retrofitting to the clean marina plan.

12 It just should be done. You know, marinas for
13 years have had a bad reputation, which they've earned,
14 all of the boat areas. The areas they worked on, they all
15 came and looked at it. The slope was right down into our
16 waters. Marinas typically in the past have been a source
17 of pollution. But new marinas that are coming in,
18 frankly, they're state of the art.

19 MS. ENGLISH: Is the clean marina program
20 essentially a series of best management practices and good
21 housekeeping practices?

22 MR. HOFFACKER: That's what it is. Anything you
23 could think of, just like at your home, you know, doing
24 your oil, recycling. You know, I could go into a litany
25 of it, but I don't need to do that. I'd be here for ten

1 minutes. It's a state certified, state has to approve
2 that you meet all of these criteria before you can be
3 labeled as a clean marina.

4 MS. ENGLISH: Thank you.

5 HEARING EXAMINER: Josh, do you have any more
6 questions?

7 MR. PHILPOTT: No, sir.

8 HEARING EXAMINER: I'm sorry, Rick, do you have
9 any more questions?

10 MR. JOYCE: No, sir.

11 HEARING EXAMINER: John, do you have any
12 questions?

13 MR. FREDYMA: Quick procedural question for Kate.
14 Will you submit the text of the changes you referenced?

15 MS. ENGLISH: Actually, I will do that. I don't
16 know if you want us to do that digitally tomorrow or if
17 you'd like a hard copy that we've agreed to prior to
18 leaving the hearing today.

19 MR. FREDYMA: Whatever works best for the Hearing
20 Examiner.

21 HEARING EXAMINER: We'll take care of that in the
22 housekeeping matters after the conclusion of testimony.
23 Some other stuff may come up during that.

24 MR. HOFFACKER: Do you have any questions, sir?

25 HEARING EXAMINER: No, I don't. Thank you very

1 much.

2 MR. HOFFACKER: You're more than welcome.

3 HEARING EXAMINER: Next witness.

4 MS. ENGLISH: The applicant calls Randy Spradling
5 of Vanasse Daylor.

6 Thereupon,

7 RANDY SPRADLING,

8 called as a witness by the Applicant, having been
9 previously duly sworn, was examined and testified as
10 follows:

11 MR. SPRADLING: Good afternoon, Mr. Examiner.
12 For the record, my name is Randy Spradling. I am the
13 Director of Transportation for Vanasse & Daylor. Office
14 address, 12730 New Brittany Boulevard, Fort Myers,
15 Florida.

16 I'm a registered professional engineer with the
17 State of Florida, as well as several other states, and
18 have been accepted at the Hearing Examiner hearings in Lee
19 County and Board of County Commissioners' meetings as well
20 as other -- in this county as well as other jurisdictions
21 in Florida and other states.

22 HEARING EXAMINER: Did you take an oath, sir?

23 MR. SPRADLING: I took an oath.

24 HEARING EXAMINER: And your resume is on file
25 with this office?

1 MR. SPRADLING: Yes, sir, it is.

2 HEARING EXAMINER: Okay. Anybody have any
3 objection to declaring the witness an expert witness?

4 MR. FREDYMA: No, sir.

5 HEARING EXAMINER: Hearing no objection, the
6 witness is declared an expert witness.

7 MR. PHILPOTT: Could you outline what he was
8 tendered as an expert in again?

9 MS. ENGLISH: Traffic. Mr. Spradling did our
10 traffic and parking analysis.

11 MR. PHILPOTT: All right. Thank you.

12 HEARING EXAMINER: Any objection?

13 MR. PHILPOTT: No, sir.

14 HEARING EXAMINER: Okay. Go on, sir.

15 MR. SPRADLING: I'm sorry.

16 MS. ENGLISH: Mr. Spradling, could you explain
17 the parking and traffic studies you've performed for
18 Marine Holdings 2, LLC in regard to this project?

19 MR. SPRADLING: Yes, Ms. English, I will. We
20 were commissioned to do two different studies for this
21 development. One of them being a Traffic Impact Study and
22 the other being a parking study. I would like to get to
23 the easy one first which is the Traffic Impact Study.

24 What we did with this Traffic Impact Study was to
25 compare the trip generation estimates between what the

1 existing conditions were, assuming that the development
2 was fully operational and the proposed conditions under
3 the -- and the conditions under the proposed land use
4 plan.

5 We studied these two conditions, making our
6 estimations using ITE rates as applicable according to Lee
7 County zoning traffic impact study guidelines.

8 What we found was that the site itself between
9 the existing and proposed uses, there was very little
10 difference between the estimated trips generated by this
11 site, whether it be with the industrial type uses that
12 were on here versus the marina type -- the yacht club type
13 uses that are being contemplated.

14 According to the reviews that I had seen, staff
15 apparently did not disagree with us because it was
16 approved without comment.

17 Like I said, that was the easy one first. Now
18 comes the fun one.

19 We also completed a parking study. The intent of
20 this was to determine the optimal number of lots needed
21 based on the proposed uses and in order to better match
22 supply of parking spaces to the demands anticipated from
23 the contemplated uses.

24 As stated earlier by several witnesses, there was
25 an administrative amendment for only 50 stalls. This was

1 a deviation from the 122 spaces that was required in
2 the -- I believe it was the old 1988 zoning, if I recall
3 correctly.

4 Under the regulations, if every land use was
5 treated as a unique use without regard to utilization
6 of -- or without regard to overlap and utilization of
7 rates that vary throughout the day for the different types
8 of uses, the Land Development Code requires 236 parking
9 spaces.

10 I compared this with the Institute of
11 Transportation Engineers parking generation rates and
12 found that the site would operate with 181 parking
13 spaces.

14 The utilization study which was based on a
15 similar use in Lee County found that in taking into
16 account different times of day operations for the dominant
17 uses, which are the proposed restaurant and the marina
18 uses, the peak period would require 128 parking stalls.

19 Lee County DCD had requested that we look at
20 providing five parking stalls for the office uses and 17
21 parking stalls for the health club, which totals 122.
22 Adding the 128 to the 22 -- or 22 to the 128 yielded 150
23 stalls.

24 This site is proposing to construct 164 parking
25 stalls which is in excess of what our estimated needs were

1 based on the uses and utilization rates.

2 The peak overlap period of these dominant uses
3 was around 6:00 p.m. which was about -- that's about the
4 time that the restaurant gets started going with its uses
5 or with its business and about the time that the marina is
6 closing and everybody -- all the boaters were getting
7 ready to leave.

8 Based on this information, it is my professional
9 opinion that a requirement for valet parking is not
10 necessary in this case.

11 MS. ENGLISH: Mr. Spradling, you're aware of the
12 circumstances for parking on this property prior to the
13 acquisition by Marine Holdings, are you not?

14 MR. SPRADLING: Excuse me?

15 MS. ENGLISH: You're aware that there were 50
16 parking spaces available on the site and that one of the
17 complaints in regard to the homeowners who live near the
18 project was that in many instances when the restaurant was
19 busy, they had cars on their road right-of-ways and in
20 their front yards for all practical intents and purposes?

21 MR. SPRADLING: Right. Yes, I was aware of
22 that. And with this I don't -- it is very improbable that
23 that's going to occur in the future. I believe that with
24 the excess number of spaces, that that's not going to be a
25 concern.

1 MS. ENGLISH: In your opinion, does the
2 applicant's proffer to provide valet parking on an as-
3 needed basis for special events or high season and provide
4 those parking in areas of the project other than those
5 currently providing parking sufficient to address the
6 overflow concerns?

7 MR. SPRADLING: In my opinion, yes.

8 MS. ENGLISH: Thank you.

9 HEARING EXAMINER: Questions by staff, County
10 Attorney?

11 MR. FREDYMA: No, sir.

12 HEARING EXAMINER: I don't have any. Thank you
13 very much.

14 MR. SPRADLING: Thank you, Mr. Examiner.

15 MS. ENGLISH: That concludes the applicant's case
16 in chief, but we reserve the right to call rebuttal
17 witnesses.

18 HEARING EXAMINER: Okay. At this point in time,
19 I think I'm going to declare our afternoon recess and come
20 back at three o'clock. Before I do so, Josh, just give me
21 an idea how much time you need.

22 MR. PHILPOTT: Oh, for my presentation,
23 approximately 30 minutes.

24 HEARING EXAMINER: Rick.

25 MR. JOYCE: Ten minutes.

1 HEARING EXAMINER: Okay. Ladies and gentlemen,
2 if you would, we'll reconvene at 3:00 p.m. Thank you.

3 (A recess was taken.)

4 HEARING EXAMINER: All right, ladies and
5 gentlemen, let's go back on the record.

6 Okay. You can start.

7 Thereupon,

8 JOSH PHILPOTT,

9 called as a witness by Staff, having been previously duly
10 sworn, was examined and testified as follows:

11 MR. PHILPOTT: For the record, Josh Philpott on
12 behalf of staff. My resume is on file with the Hearing
13 Examiner's office. I've previously been tendered as an
14 expert witness in planning and zoning and would ask to be
15 considered an expert today.

16 HEARING EXAMINER: Any objection?

17 MS. ENGLISH: None.

18 HEARING EXAMINER: Witness is declared an expert
19 in planning and zoning.

20 MR. PHILPOTT: The requested rezoning is to
21 rezone 5.77 acres from Commercial Planned Development to
22 Commercial Planned Development to permit the redevelopment
23 of 239 wet slips and 7,500 square feet of ancillary uses
24 with a 7,000 square foot restaurant with deviations.

25 On the subject property, the subject property is

1 highlighted in red on the aerial that's provided by
2 staff. It's currently developed with a marina. It was
3 approved in 1988 as Commercial Planned Development which
4 permitted several uses, marina related uses, light
5 industrial type as well as some commercial dry storage,
6 wet slips. There was a restaurant that was located on the
7 northeastern portion of the property.

8 Outdoor storage and repair happened to the
9 southwest portion of the property west of the waste water
10 treatment plant.

11 The surrounding area to the northwest of the
12 property is zoned RS-1. It's the Waterway Estates
13 development, single-family homes. To the east of the
14 subject property is a preserve area that was developed as
15 part of the residential project to the north of the
16 preserve area, and that is zoned RM-2 even though it does
17 have that conservation easement across it and that is
18 recorded in the plat of that subdivision.

19 To the south of the subject property, both on
20 the -- excuse me, on the peninsula is a waste water
21 treatment facility that is owned and operated by Lee
22 County utilities. Across the residential canal to the
23 south is a vacant undeveloped tract of land zoned RS-2
24 which permits single-family residences.

25 To the south of that tract is single-family

1 residences along Seafan Circle.

2 One of the things that I do want to make clear as
3 part of this request is Tract D as outlined in the
4 Waterway Estates plat, it's also part of the legal
5 description. This is subject to a condition which the
6 applicant indicated earlier, I believe it's Condition 4,
7 part of the Environmental Sciences conditions.

8 MS. BIELERT: 3.b.

9 MR. PHILPOTT: Condition 3. And we will probably
10 discuss that in detail later.

11 The surrounding area, both the peninsula as well
12 as the residential neighborhood surrounding it is in the
13 suburban future land use category which allows development
14 of up to six units an acre.

15 On the proposed Master Concept Plan which has
16 been submitted today to the Hearing Examiner's -- excuse
17 me, during this hearing, outlines the development of a 55
18 foot dry storage barn which will house 239 dry slips.

19 To the north, east and west of this building will
20 be parking. The parking will then extend to the southwest
21 portion of the property.

22 Along the eastern portion of the property there
23 will be a fitness center as well as a pool. There will
24 also be a tiki bar which will have some service from --
25 which will have some use for the members of the fitness

1 center and marina. To the southeast portion of the
2 property is a restaurant with a gazebo, a two-story
3 gazebo. One story, from my understanding, will be open to
4 the public with the other story being used as outdoor
5 seating area for the restaurant.

6 As has been discussed earlier, access to the
7 interior portion of the dry storage building will be to
8 the south of the building with the staging area for
9 loading and unloading vessels to the south of the sea
10 wall.

11 Several accessory structures will be located to
12 the east of the sewage treatment plant.

13 One of the things that's outlined on the Staff --
14 excuse me, the Master Concept Plan that hasn't been
15 discussed as of yet is an access easement which will be
16 granted to Lee County Utilities. As part of the
17 development of this waste water treatment plant, there has
18 never been a recorded easement that staff has been able to
19 find or the applicant has been able to find that granted
20 access to the waste water treatment facility from Inlet
21 Drive.

22 As part of the requested rezoning, the applicant
23 has provided an access easement as outlined in a dashed
24 line which will allow for access to the waste water
25 facility as well as the turn around for the vehicles which

1 will use that facility.

2 Staff has outlined the previous zoning history on
3 Page 7 of 13 of the Staff Report, and in 1976 in
4 Resolution Z-76-123 a rezoning was permitted from an
5 industrial zoning category to a commercial zoning category
6 which has since been changed into a current zoning
7 category. However, in 1988, a rezoning from that
8 commercial category to a Commercial Planned Development to
9 allow for a marina, as well as the other industrial type
10 uses on the property for the outdoor storage, the outdoor
11 repair, light industrial type marina uses, with the
12 manufacturing of aluminum fittings for boats as well as
13 sandblasting was permitted on the southwest portion of the
14 property adjacent to or across the canal from the
15 residential uses.

16 The applicant is proposing to eliminate those and
17 has stopped those uses on the property currently.
18 However, they are still permitted as uses. If this
19 rezoning was withdrawn, they could redevelop the property
20 in compliance with that Master Concept Plan.

21 Several administrative actions were done relating
22 to the consumption on premises, and the location of the
23 restaurant and outdoor seating area. An amendment to the
24 -- and that was done in Resolution No. COP-92-004. There
25 was amendment done after that in Lee County Resolution

1 Z-99-067 and approved an outdoor seating area to the east
2 of the Shucker's Restaurant or the restaurant that was
3 located on the northeast portion of the property. In this
4 area today they are proposing to have the tiki bar and
5 fitness center.

6 In the year 2000, administrative action was done
7 that allowed for the relocation of an existing building on
8 site as well as the inclusion of buffer requirements along
9 the eastern portion of the property that would help reduce
10 the negative impacts to the adjacent residential uses
11 across the canal.

12 Just going through the Lee Plan considerations,
13 those are outlined on Page 10 of 13 of the Staff Report.
14 Staff has included several policies that are outlined on
15 those pages and has found that the rezoning is consistent
16 with the Lee Plan.

17 Water and sewer will be provided to the site by
18 Lee County Utilities. Also access to the subject property
19 will be provided to Inlet Drive.

20 A brief discussion on transportation is located
21 on Page 13 of 13. Orange River Boulevard, according to
22 Lee County, the most recent Lee County Concurrency Report,
23 excuse me, Orange Grove Boulevard, currently operates at a
24 level of service B and based on the applicant's Traffic
25 Impact Statement, no additional trips will be generated

1 due to the elimination of some of the industrial
2 uses, also the reduction in commercial square footage, and
3 I guess reallocation of some of those into restaurant
4 uses. Due to the less intense site, no additional trips
5 will be generated by the proposed development and the
6 current level of service will remain as level of service B
7 after the development.

8 No concurrency issues were raised at the time of
9 rezoning. However, at a time of Development Order they
10 will be required to comply with concurrency issues.

11 One of the issues that was raised by the public
12 while we're on the subject of transportation, through a
13 letter that was submitted by a member of the public, I
14 believe I gave a copy or I left a copy at your desk before
15 you arrived, and if you didn't get it, was a concern of
16 traffic safety at the intersection of Inlet Drive at the
17 access point to this site.

18 MS. ENGLISH: Excuse me. I'm going to object to
19 the letter being entered into the record. The person who
20 wrote the letter had the ability to appear today and raise
21 her issues.

22 MR. PHILPOTT: And that's fine. I just -- that's
23 fine to object to the letter. However, I want to discuss
24 the issue of traffic at this intersection. At a time of
25 local Development Order approval, they will have

1 to address transportation safety and at that time if
2 traffic signaling, either with a stop sign or a yield sign
3 is required, they will be required to install that prior
4 to Development Order approval.

5 HEARING EXAMINER: Okay. Josh, before you
6 continue, County Attorney want to respond on the issue of
7 admissibility of the letter?

8 MR. FREDYMA: We don't have any objection to the
9 admission of it. I think it's appropriate to admit it,
10 but I do believe it's appropriate to give it the kind of
11 weight that it deserves which is hearsay evidence at best.
12 I don't know whether -- it's Marcella Perry, I don't know
13 whether she's here today.

14 HEARING EXAMINER: Is Marcella Perry present?

15 MS. BIELERT: She's not. She's an immediate
16 neighbor.

17 MR. FREDYMA: It's appropriate to admit it, but
18 as I said, I think that the weight that you're giving I
19 think is going to be limited significantly.

20 HEARING EXAMINER: Yes. We have typically
21 admitted these things, but, frankly, I understand the
22 hearsay problem and everything else that goes along with
23 it.

24 MR. FREDYMA: The lack of opportunity to
25 cross-examine her as to those issues.

1 HEARING EXAMINER: Yes, I'll admit this. First,
2 let me just get another housekeeping item out of the way.
3 I will admit, unless anybody has any objection, staff's
4 aerial photograph as Staff Exhibit 1 and then I will admit
5 the letter of Marcella Perry as Staff Exhibit 2, subject
6 to all the standard objections that the applicant has.

7 (Staff's Exhibits Nos. 1 and 2 were marked for
8 identification.)

9 HEARING EXAMINER: All right. You can go on,
10 Josh, I'm sorry.

11 MR. PHILPOTT: Now I'd like to briefly go through
12 the deviations. Staff has outlined again the deviation
13 discussions on Page 8 of 13. Just going briefly through
14 those, staff has recommended approval of the requested
15 deviations.

16 Deviation 1 is to reduce the amount of parking
17 from 236 required parking spaces to 164 defined parking
18 spaces. Staff has recommended approval of this deviation
19 along with a condition that outlines valet parking being
20 provided. There was some discussion with the applicant
21 and staff altering the wording of that. However, we may
22 want to discuss that final wording at a future point in
23 this hearing.

24 HEARING EXAMINER: Yeah, we'll get to the
25 conditions.

1 MR. PHILPOTT: Sure. Deviation 2 was requesting
2 a reduced setback for the restaurant. Staff again has
3 recommended approval of that deviation.

4 A similar water body setback for structures is
5 also outlined in Condition 5.

6 Deviation 3, maximum height. Staff recommended
7 approval of this deviation. One of the reasons -- some of
8 the concern was the increased height, obviously, but given
9 the existing height that's permitted, 45 feet, and the
10 development that's currently on the site, an additional
11 ten feet will not basically block views. With 45 feet
12 plus, this building will be -- will have to meet
13 architectural standards which the existing building does
14 not meet.

15 This will provide for increased storage of the
16 boats indoors, eliminating any outdoor repair that
17 currently operates on site. So staff saw this as an
18 improvement from the existing development that is
19 permitted.

20 Deviation No. 4 is a requested deviation to
21 reduce the buffer width. However, they do plan to
22 maintain the required Type B plantings around the
23 perimeter of the -- or adjacent to the industrial water --
24 waste water treatment plant. Staff has recommended
25 approval of that deviation.

1 And Deviation 6 is to allow for a zero foot
2 setback for the accessory structures which will serve for
3 fire safety, a fuel storage tank and a storage shed, and
4 this is along the eastern portion -- eastern property line
5 of the waste water treatment facility.

6 The proposed plans were submitted to Lee County
7 Utilities. They did review the requested rezoning and did
8 not have any objections to the rezoning. An e-mail from
9 Mr. Howard Wegis of Lee County Utilities has been attached
10 and they have -- indicating they have no comments on the
11 rezoning.

12 One of the things that was really a concern of
13 staff was the relocation of the existing restaurant to the
14 southeast portion of the property and the hours of
15 operation for consumption on premises, outdoor seating and
16 outdoor entertainment. Staff did recommend approval of
17 the relocation. However, because of the existing and
18 planned residential uses of the area, we limited the hours
19 of operation to be fairly conservative. The existing
20 restaurant is located on the northeastern portion of the
21 property, and the applicant proposes to locate it on the
22 southeast portion of the property. Now, this does take
23 the existing restaurant away from the Waterway Estates
24 development.

25 However, it relocates it in a manner to be closer

1 to those residential uses which are permitted on Seafan
2 Circle. And based on the canal and the existing land on
3 the southern portion of the canal, the residences could be
4 approximately 25 feet from the water and with limited to
5 no vegetation between them.

6 There's little or no vegetation that is planned
7 on that portion of the property, and buffering really
8 wouldn't provide a good sound buffer between those
9 residential uses. So staff really had some compatibility
10 concerns relating to those residential uses and wanted to
11 make sure that by limiting the hours of operation and the
12 outdoor seating area, that those compatibility issues
13 wouldn't be a big problem in the future.

14 Staff has recommended approval with conditions.
15 We find that the proposed development is consistent with
16 the Lee County Comprehensive Plan, it is compatible with
17 the surrounding area as we have conditioned, and will be a
18 great improvement over the existing permitted
19 development.

20 With that, Rick Joyce is here, but I guess I'll
21 answer questions before you have him.

22 HEARING EXAMINER: County Attorney have any
23 questions?

24 MR. FREDYMA: Just one and that was with regard
25 to the proposed boardwalk as far as setback. Any need for

1 a deviation for that or is it, in fact, a given that its
2 -- I guess its functionally dependent waterfront location
3 wouldn't otherwise require the deviation?

4 MR. PHILPOTT: Setbacks are -- excuse me,
5 boardwalks and boat docks and the like are reviewed by Lee
6 County Environmental Sciences and will require a dock and
7 shoreline permit which is reviewed by Mr. Joyce's staff,
8 and I would defer to him on that.

9 MR. FREDYMA: Okay.

10 HEARING EXAMINER: Applicant?

11 MS. ENGLISH: Yes. Mr. Philpott, are you aware
12 that the consumption on premises permit that you cited
13 from 1992 in your Staff Report was superseded by Case No.
14 94-10-13-SP-02 that was heard and decided by the Hearing
15 Examiner on October 13th, 1994?

16 MR. PHILPOTT: I do not have it in my analysis.
17 I may have overlooked that case.

18 MS. ENGLISH: If you would show it to Mr. Fredyma
19 first before you -- if you would take a look at the
20 brackets, would you read the nature of the request?

21 MR. PHILPOTT: Sure. "For a special permit in a
22 Commercial Planned Development district for consumption on
23 premises with outdoor seating, the applicant -- Land
24 Development Code, Section 34-1264, the applicant intends
25 to increase their existing consumption on premises for

1 beer and wine to include liquor and expand the service to
2 an outdoor seating area."

3 MS. ENGLISH: And in your opinion, would that
4 address essentially the 4-COP and -- or 4-COP SRX that we
5 talked about in the current application? Isn't that a
6 full service liquor license in terms related to
7 restaurants and limited to restaurants?

8 MR. PHILPOTT: The service of liquor -- a 4-COP
9 does allow for the service of liquor. However, these
10 are -- the references are to state permit issues, state
11 permits for alcoholic service. The difference between a
12 4-COP and a 4-COP SRX is a 4-COP is an unlimited quota
13 license and allows for the service of alcohol only without
14 any food being served. The 4-COP SRX has a requirement
15 that it be served with 51 percent of the sales coming from
16 food. And that's a standard restaurant license. That's
17 where the SRX comes from.

18 MS. ENGLISH: My point was the 1992 COP was
19 limited to beer and wine?

20 MR. PHILPOTT: Correct.

21 MS. ENGLISH: This special permit supersedes that
22 and allows the service of liquor on the premises. So what
23 we're asking for now is consistent with that 1994
24 authorization, would you agree?

25 MR. PHILPOTT: With the service of liquor, I mean

1 -- let me get to the --

2 MS. ENGLISH: Actually, if you go down to -- the
3 third bracket on that page is actually the Hearing
4 Examiner's recommendation.

5 MR. PHILPOTT: Here we go.

6 MS. ENGLISH: And if you'd read that for the
7 record.

8 MR. PHILPOTT: The recommendation?

9 MS. ENGLISH: Yes, please. Or the Hearing
10 Examiner's decision. The special permit didn't go to the
11 Board, that was issued by the --

12 MR. PHILPOTT: Right. "The undersigned Lee
13 County Hearing Examiner approves the applicant's request
14 and grants a special permit in the Commercial Planned
15 Development district for consumption on premises, with
16 outdoor seating, Land Development Code, Section 34-1264,
17 for the real estate described in Section 8, legal
18 description with the following conditions."

19 MS. ENGLISH: In addition, there's a bracket in
20 between those two that talked about the hours for
21 consumption. The hours listed for consumption in the
22 Staff Report originally were limited from 10:00 a.m. --
23 I'm sorry, for outdoor seating were limited from 10:00
24 a.m. to 11:00 p.m. -- I'm sorry, 10:00 a.m. to 8:00 p.m.
25 in your recommendation, Sunday through Thursday and on

1 Friday and Saturday from 10:00 a.m. to 9:00 p.m. Could
2 you read the second bracket and let me know what the
3 authorization for the hours of operation were there?

4 MR. PHILPOTT: Condition 4 of this case, the '94
5 COP case, states that use of the outdoor seating area or
6 outside seating area shall be limited to the following
7 hours: 11:00 a.m. to 9:00 p.m. Sunday through Thursday,
8 and 11:00 a.m. to 10:00 p.m. Friday and Saturday.

9 MS. ENGLISH: I simply wanted to bring that
10 current authorization to the Hearing Examiner's attention.

11 MR. PHILPOTT: If you don't mind, could I have a
12 second to read the whole -- not the whole discussion
13 but --

14 MS. ENGLISH: I was going to say, if you want to
15 read the whole discussion --

16 HEARING EXAMINER: I'll just take judicial notice
17 of that. What's the case number on it?

18 MR. PHILPOTT: It's Case No. 94-10-13-SP-02.

19 HEARING EXAMINER: 94-10-13-SP-02.

20 MR. PHILPOTT: Do you have any other questions?

21 MS. ENGLISH: Actually, I did. Do you have a
22 current application pending for the property immediately
23 south of Shucker's for residential development? I'm
24 sorry, I just flashed back to my '99 case. The property
25 south of Caloosa Isle Marina, yes.

1 MR. PHILPOTT: I did research this.

2 MS. ENGLISH: Of all the things I've lost in my
3 pregnancy, I miss my mind the most.

4 MR. PHILPOTT: I do not believe that there's an
5 application in at this current time.

6 MR. FREDYMA: There are others who may have
7 knowledge of it but you might not?

8 MR. PHILPOTT: Yes, sir, considering that it's a
9 Development Order issue, we don't look at Development
10 Orders. However, I did look in our system and to my
11 knowledge at this point, there's not one.

12 MS. ENGLISH: Thank you.

13 Would you agree that buffering is generally
14 considered for the uses that are in existence and not
15 those that will have potential to come into existence;
16 wouldn't those residences be coming to the approved uses
17 on the adjacent properties?

18 MR. PHILPOTT: Yes, ma'am. However, our Land
19 Development Code requires that any buffering, required
20 buffering be installed for the planned uses existing or
21 planned uses, and that is outlined in Section 10-416 of
22 the Land Development Code, the buffering requirements, and
23 it does state that planned or existing uses.

24 However, in this general instance, because it is
25 adjacent to water and not the residential, no required

1 buffer -- no buffer is required through the Land
2 Development Code.

3 MS. ENGLISH: Thank you. I have nothing further
4 for this witness at this time.

5 MR. PHILPOTT: Can I elaborate a little bit on
6 the -- and you made a mention of the 4-COP versus the SRX
7 license.

8 MS. ENGLISH: Actually, the point was to identify
9 that there had been a subsequent approval that allowed
10 service of liquor on the property and also identified
11 hours of operation for outside seating.

12 MR. PHILPOTT: Okay.

13 HEARING EXAMINER: Anybody else have any
14 questions? Do you want to say something else?

15 MR. PHILPOTT: Yes. I just wanted to talk about
16 this approval briefly. Because we are going to have some
17 discussion, I'm sure, when we go through the condition
18 portion that talks about 4-COP SRX versus 4-COP license
19 and a 51 percent rule that we have outlined in our
20 conditions.

21 Condition 1 of the '94 case outlines that the
22 liquor in conjunction with a restaurant, so it may be
23 permitted to have a 4-COP quota type license as it's
24 referred to. However, it has to be in conjunction with a
25 restaurant.

1 MS. ENGLISH: And the applicant has no objection
2 to that restriction.

3 MR. PHILPOTT: I also want to state on the record
4 that Condition 2, that no loud music or entertainment and
5 no sound system or speakers shall be allowed in the
6 outdoor seating area.

7 MS. ENGLISH: Which was amended by the '99
8 authorization.

9 MR. PHILPOTT: Which did I have?

10 MS. ENGLISH: That you have listed that allow
11 outdoor entertainment.

12 MR. PHILPOTT: Okay.

13 HEARING EXAMINER: So the old use --

14 MS. ENGLISH: Yes, but it was a restaurant with
15 an outside seating area.

16 HEARING EXAMINER: Okay. Let me ask you this.
17 Josh, are you finished with your presentation because I
18 don't want to interrupt you?

19 MR. PHILPOTT: Just briefly. I mean, the
20 concern, the general concern is compatibility with the
21 restaurant and the relocation of it. The way the
22 restaurant is currently, the outdoor seating area is
23 directed toward the preserve area. It's not directed
24 towards -- it's not located on the north side where it --
25 however, it does have a north face. The restaurant is

1 facing towards the water and it's going to be the same
2 situation on the southeast.

3 However, on the southeast portion, you do have
4 that -- the residences are -- the planned residences as
5 outlined in the Land Development Code, the findings and
6 conclusions that are required for approval of a rezoning
7 do provide the same benefit for planned uses as existing
8 uses.

9 HEARING EXAMINER: Let me ask you a couple of
10 questions, Josh. First, how tall -- what's the height of
11 the structures that comprise the waste water treatment
12 plant, if you know?

13 MR. PHILPOTT: To give you an exact number, I
14 couldn't tell you off the top of my head. We did have the
15 discussion, I don't remember the exact number.

16 HEARING EXAMINER: Okay. With regard to these
17 conditions in general, and let's leave out Condition 3
18 because I'll ask Rick this later on, so I'll ignore in my
19 questions environmental conditions. The applicant has
20 submitted that 24-hour letter. Realistically, how far
21 apart are you folks on the conditions or do you agree
22 with --

23 MR. PHILPOTT: For reference, I believe the
24 letter to the Hearing Examiner's office authored by Ms.
25 English pretty distinctly outlines the differences.

1 However, on most cases we have come to an
2 agreement, at least an understanding of what we intend.
3 However, I don't know that the final wording has been
4 agreed to.

5 The one issue that we do have a disagreement on
6 is relating to Condition 7 of the Staff Report, which
7 outlines the consumption on premises with the outdoor
8 seating, the restaurant, the serving of alcohol, those are
9 the issues -- that's the one issue that we really haven't
10 come to an agreement on.

11 HEARING EXAMINER: Would it be fair if I left the
12 record open for a week for applicant and staff to submit
13 revised conditions and noting therein what conditions you
14 have a disagreement to or disagreement with?

15 MR. PHILPOTT: I believe that we could work out
16 many of the wordings on the differences except for that
17 one condition.

18 HEARING EXAMINER: Except for that one condition.

19 MS. ENGLISH: I think we're very close. I don't
20 see any trouble with us coming to a --

21 HEARING EXAMINER: What I'm saying is, and I'll
22 get to this at the end, but I'll leave the record open for
23 submission of revised conditions by applicant and staff,
24 and those conditions that you do not have an agreement on,
25 please note and I will impose the appropriate conditions.

1 MR. PHILPOTT: Just for the record, the
2 discussion of the boardwalk, that has been ongoing
3 discussion. Originally when the application was
4 submitted, it was submitted with a boardwalk. However,
5 there were many legal issues that related to that because
6 of the boardwalk crossing the waste water treatment plant,
7 the southern portion of that property. And there is
8 licensing and things that have to be done and Ms. English
9 has included --

10 HEARING EXAMINER: I think that's beyond the
11 scope of this hearing, isn't it?

12 MR. FREDYMA: Not entirely.

13 HEARING EXAMINER: Isn't it property over which I
14 don't have jurisdiction?

15 MR. FREDYMA: If I may, we've kind of come full
16 circle from no to yes but.

17 HEARING EXAMINER: If that's full circle but.

18 MR. FREDYMA: Well --

19 MS. ENGLISH: Actually, we started out yes but
20 and we went to no and then we got back to yes but.

21 HEARING EXAMINER: Oh, okay.

22 MR. FREDYMA: If you look at Kate English's
23 letter, and attached to it is a copy of the Staff Report
24 with some strike through underlined text of suggested
25 changes to the conditions, there's a new Condition 15 that

1 I would say you do have jurisdiction over which is to
2 provide for the eventuality of the use even though the
3 ability to have that use of the boardwalk is going to be
4 up to the Board of County Commissioners in a separate
5 determination. They're going to have to license or
6 authorize the use at that location.

7 But we felt that it was appropriate for the
8 applicant to make the request and would require them to do
9 two things if they were going to ultimately get that,
10 actually three things. One is to have this condition
11 approved as part of the final resolution. Two is a
12 Development Order -- or excuse me, Development Order and
13 administrative approval, all predicated upon the Board
14 granting them the ability to do so. And that is clearly,
15 I think, within your jurisdiction and I think that's
16 appropriate for you to look at as part of the
17 recommendation that you will prepare.

18 MS. ENGLISH: The rationale there was the
19 judicial efficiency of not bringing this back through a
20 public hearing for that one item.

21 HEARING EXAMINER: I understand.

22 MR. FREDYMA: Part of it was exactly, whether or
23 not is it a large enough issue that the staff would
24 otherwise require that it comes back to a full public
25 hearing or is it such that it can be discussed at this

1 level at this hearing, decided upon and then simply
2 require the administrative approval to put it in place.
3 And I believe the testimony from staff would be, and Josh
4 can correct me if I'm wrong, would be that this is an
5 appropriate condition to move forward with as I suggested
6 for your recommendation.

7 HEARING EXAMINER: Okay. Okay. Anything else,
8 Josh?

9 MR. PHILPOTT: No, sir.

10 HEARING EXAMINER: Anybody else have any
11 questions?

12 MR. FREDYMA: If I may, the only other question
13 really relates to a couple of the other, again, the strike
14 through underlined version, and I don't know how you want
15 to deal with that. I don't know if there's anything in
16 here that is terribly different from what's been presented
17 thus far, so that the public who are here would not be
18 surprised if any one of these was adopted because I don't
19 know that the public -- the public hasn't seen this, the
20 strike through underlined version, but I think they had
21 enough discussion on the record to know what the issues
22 are.

23 HEARING EXAMINER: I think we've discussed most
24 of these on the record, and I don't -- as a matter of
25 fact, I don't see any that haven't been discussed except

1 maybe the environmental which we will get to, waiting in
2 the wings.

3 MR. FREDYMA: And, again, forgive me, but are you
4 going to then hold the record open for the final submittal
5 of this?

6 HEARING EXAMINER: Yes.

7 MR. FREDYMA: Thank you.

8 HEARING EXAMINER: But I'll do that right at the
9 end in case there's any other issues that come up.

10 MR. FREDYMA: That's fine. Thank you very much.

11 HEARING EXAMINER: Okay. Okay, Josh, thank you.
12 I don't think anybody else has anything. Do you?

13 MR. PHILPOTT: No, sir.

14 HEARING EXAMINER: Rick.

15 Thereupon,

16 RICK JOYCE,
17 called as a witness by Staff, having been previously duly
18 sworn, was examined and testified as follows:

19 MR. JOYCE: Good afternoon. My name is Rick
20 Joyce. I'm Director of the county's Environmental
21 Sciences Division. I have taken the oath, and I have been
22 considered an expert witness on dock and shoreline and
23 environmental issues in this forum many times.

24 HEARING EXAMINER: Any objection to declaring the
25 witness an expert witness in the areas he's indicated?

1 MS. ENGLISH: No.

2 HEARING EXAMINER: There being no objection, the
3 witness is declared an expert witness in those areas.

4 MR. JOYCE: Thank you.

5 Caloosa Isle Yacht Club, of course, has been in
6 existence for a long time as a marina site. I have been
7 dealing with permits on that site for 18 years as a county
8 employee, dealing with sea wall repairs and dock redesign,
9 and so forth.

10 We've looked pretty critically at the new
11 proposed design, and really feel pretty strongly that it's
12 an improvement substantially over what is there now.

13 The site has 1,891 feet, by my measurements, not
14 including the access way, of sea walls on the site. You
15 know, obviously, we strive to try to have enhanced
16 environmental shorelines over the 1960s or '50s designs of
17 vertical bulkheads. But other than that, you know, we're
18 looking at a redevelopment of this site and looking at the
19 issues that are -- that we can deal with without
20 addressing the shoreline to that length.

21 The open space requirements for the site are 30
22 percent as any commercial site. That is what is actually
23 required and being proposed by the applicant. We see that
24 as just an improvement in itself. There's going to be
25 more green space.

1 The site has not had adequate surface water
2 management in the past. It was before surface water
3 requirements were required or implemented, and so what
4 we'll be seeing is storm water on the site being
5 addressed, and that's a good thing.

6 Josh has outlined the wet slips and dry slips
7 basically. We did confirm through our natural resources
8 folks that -- staff, that that is in compliance with the
9 Lee County's manatee protection plan, which it is based on
10 what's existed and been outlined by the applicant.

11 The applicant had committed to participation in
12 that clean marina program, and we've discussed that a
13 little bit. It's a voluntary program, so it's not
14 something they have to do, at least, and they have already
15 been in process of participating in that.

16 Of course, we've added that as a condition, No.
17 1, to continue that active pursuit and really it is a good
18 thing. I mean, it's a good thing holistically to how that
19 site is operated and ultimately how the site is managed,
20 and it is a very long laundry list of items pertaining to
21 marine operations and it's a real good thing.

22 Ultimately, I think Allen Hoffacker's testimony
23 is correct, that we really need to see all marinas
24 ultimately operated under those clean marina standards.

25 There are a number of Lee Plan policies specific

1 to marina siteing and design. I have listed the
2 objectives. I didn't list out all the policies. You're
3 dealing with an existing site so many of the things
4 regarding siteing and design really aren't applicable.
5 But, you know, overall the environmental staff's feeling
6 is that these -- our belief is that these policies are
7 being met by the redesign, and, in fact, if anything,
8 they're being brought more in compliance with the Lee Plan
9 by the proposed redevelopment.

10 The staff, the environmental staff has proposed
11 four conditions. We're essentially in agreement. We've
12 tweaked Condition 3. The first one I mentioned is the
13 clean marina one which we're in agreement with. 3.b deals
14 with compliance with two particular policies dealing with
15 environmental design of marinas.

16 We looked at options to do that. The staff's
17 proposal was basically to add enhancements to the
18 shoreline over -- our minimum was 20 percent of the sea
19 walled shoreline which was 378 feet.

20 In our negotiations right before the hearing, in
21 fact, to finalize that, we've come to an agreement of 260
22 feet of shoreline enhancements. Those shoreline
23 enhancements, I think the proposal would be rip rap rock,
24 rock placed along the front of the sea wall, which creates
25 habitat, adds places for filter feeders to attach to,

1 overall helps water quality. It also helps protect the
2 structures that it's backed up to, and it's become a
3 pretty common way to deal with old sea walls is to put
4 rock in front of them and they stay up even when the tides
5 are way out. We have had some other options that would be
6 available to the applicant.

7 The other condition at 3.b will be that the
8 applicant had agreed to put Tract D, which is across the
9 canal, that thin strip of land that wasn't actually part
10 of the marina design into a conservation easement. But we
11 also agreed with retaining the ability to have riparian
12 rights off of that tract.

13 They could use those slips somewhere in the
14 marina or something and in the future, I mean, it at least
15 wouldn't prohibit that.

16 3.c of our conditions deals with just bilge water
17 coming from watercraft. And it's something they're doing
18 now, it's something we want to ensure happens. It's
19 really tied with their boat wash. It's basically that the
20 water that comes out of the bilges of boats when they're
21 being put in the dry storage, you know, have to be treated
22 on the upland and directly into the canal. That was the
23 historic design for dry storage marinas. You pulled the
24 bilge and the water went back into the water body they
25 were being pulled out of.

1 HEARING EXAMINER: One minute, please.

2 MR. JOYCE: So Condition 3.c just deals with
3 that and then they're in agreement with that.

4 Our last one as far as our submitted conditions
5 involved 3.d which is that a marina hurricane plan. I
6 have no doubt they have one of some sort now. There have
7 been some evolution in some -- you know, there have been
8 some lessons learned from these past hurricanes, and I'd
9 just encourage them to work with our Department of Public
10 Safety. It's Dave Saniter (ph) and the emergency
11 management folks over some changes that might be
12 beneficial to them in operations of the marina during
13 hurricane and hurricane preparedness.

14 The last item I had to mention is, and it was
15 brought up today, and that is the addition of the
16 boardwalk along the Lee County Utilities site. I was
17 involved with -- I'm not sure if it -- I think it was a --
18 it was either a special exception or an amendment to the
19 special exception or part of the zoning when Florida
20 Cities' Utilities owned that site prior to Lee County
21 Utilities. The mangroves that exist along that canal
22 shoreline were actually a requirement of that approval for
23 the expansion of the plant to help provide a little bit of
24 the buffering against the canal.

25 I would just look, and we can certainly do two

1 things as I see it as part of what we work on in
2 conditions if given some time in the next week to do that,
3 is to ensure that those mangroves are retained along that
4 canal both for buffering of the plant but not precluding
5 the boardwalk. And then also that the Master Concept Plan
6 that will be revised to show boardwalk, proposed boardwalk
7 to show mangroves to be retained and actually labeled on
8 that plan, make clear the intent of the boardwalk is not
9 to remove the mangroves, which I'm not implying that it
10 has been, but certainly we want to make sure that that
11 occurs. That concludes my presentation.

12 HEARING EXAMINER: Okay. County Attorney have
13 any questions?

14 MR. FREDYMA: The only question I had which I
15 asked Josh and I'll just ask you for the benefit of the
16 record is, if the boardwalk is approved at the location,
17 substantial location or substantially in the location that
18 is depicted, would they require any kind of a deviation
19 for a setback or anything else from property lines?

20 MR. JOYCE: No.

21 MR. FREDYMA: Thank you.

22 HEARING EXAMINER: Okay. Katherine, it's your
23 witness.

24 MS. ENGLISH: My question in regard to the
25 boardwalk is, more as we work through the condition is,

1 can we address what we need to do to protect mangroves
2 adequately as part of the license in the Development Order
3 or do you believe it needs to be in the zoning conditions?

4 MR. JOYCE: Both, I believe. I think it's
5 appropriate to have it as part of this, particularly that
6 it was a condition of another approval not involving Lee
7 County Utilities but Florida Cities at the time.

8 MS. ENGLISH; That's fine. I just wanted to
9 clarify that.

10 HEARING EXAMINER: Any conditions you want should
11 be a condition of this approval. I don't want anybody to
12 think we're relying on something that happened in the
13 past.

14 Rick, I've just got a few short questions. One,
15 do you believe given time you can submit, you and the
16 applicant can agree on a revised Condition 3?

17 MR. JOYCE: Yes, I think we could do it in a
18 relatively short time. I mean, in a couple of days we
19 could have it.

20 HEARING EXAMINER: I just want to make sure that
21 they're -- okay. And I take it you don't have any
22 objection to Condition 15 that was submitted by the
23 applicant in their 24-hour letter? That's the condition
24 with the boardwalk along the boundary line of the waste
25 water treatment plant.

1 MR. JOYCE: No. I think that -- you know, the
2 ultimate decision for that structure will be with Lee
3 County Utilities and the Board of County Commissioners,
4 so --

5 MS. ENGLISH: And that's where I would imagine we
6 would also provide the language for the protection of the
7 mangroves that you're concerned about.

8 MR. JOYCE: Sure.

9 HEARING EXAMINER: I don't have anything else.
10 Anyone else have any questions?

11 Thank you, Rick.

12 Does staff have any other witnesses?

13 MR. PHILPOTT: No, sir.

14 HEARING EXAMINER: Okay. Ladies and gentlemen,
15 at this point in time I'm going to open this up to public
16 participation. I'm just going to remind you of a couple
17 of things. Number one, when this matter goes -- when my
18 recommendation goes before the Board of County
19 Commissioners, if you want to speak at that time, you must
20 have made some sort of presentation before me today.

21 If you want to speak, please fill out one of
22 these public participation forms and I have to have the
23 information that's on there.

24 When you come forward, please give me your name,
25 your address and indicate whether or not you've taken an

1 oath. And please confine your comments and questions to
2 the issue before me, that is the rezoning of this
3 property. Any other properties, you know, what about such
4 and such, I can't comment upon and I will not comment
5 upon.

6 Likewise, I would appreciate it if you'd leave
7 any personalities out of it. If you don't like the
8 applicant for any reason, I don't care. I just want to
9 hear about the rezoning.

10 Okay. And, please, if you would, keep your
11 comments concise. When you go before the Board of County
12 Commissioners, you are limited to three or five minutes.

13 MR. FREDYMA: I think it's five.

14 HEARING EXAMINER: Five minutes. You may want to
15 practice here, but I don't have any such limitations.

16 Okay. The first person I'm going to call is
17 Brian Burke. Mr. Burke present. Does Mr. Burke want to
18 speak?

19 UNIDENTIFIED SPEAKER: He left.

20 HEARING EXAMINER: He left. Okay. Tim Vaught.

21 UNIDENTIFIED SPEAKER: He left.

22 HEARING EXAMINER: He left. David Merrill.

23 MR. MERRILL: Present, doesn't want to speak.

24 HEARING EXAMINER: Okay. Realizing you can't
25 speak before the Board of County Commissioners.

1 Tina Preston.

2 MS. PRESTON: Present.

3 HEARING EXAMINER: And I take it you wish to
4 speak? Come forward, please.

5 UNIDENTIFIED SPEAKER: Sir, I didn't know you
6 were -- I didn't fill out --

7 HEARING EXAMINER: At the end I'll ask if there's
8 anybody else, so don't worry, I won't miss you.

9 MR. FREDYMA: If you just want a copy of the
10 Hearing Examiner's recommendation, you can fill one of
11 those out and there's a box to check for that, too.

12 HEARING EXAMINER: Okay. Ms. Preston, thank you.
13 Come forward, please.

14 Thereupon,

15 TINA LYN PRESTON,
16 called as a witness, having been previously duly sworn,
17 was examined and testified as follows:

18 MS. PRESTON: Thank you very much. My name is
19 Tina Preston. I have taken the oath. I live at 4298
20 Harbour Lane and very quickly I'll move to this map.

21 HEARING EXAMINER: Yes. Show me where you live,
22 please.

23 MS. PRESTON: I live in this residence
24 (indicating). This is the area and then I'm right here,
25 across the canal (indicating).

1 HEARING EXAMINER: Thank you, ma'am.

2 MS. PRESTON: Let me say first I appreciate the
3 opportunity to be heard at this forum, and I am grateful
4 to staff for considering the property owners at this
5 time.

6 I do have some concerns. As a result of past Lee
7 County Commission failures with regard to enforcing
8 previous regulations relevant not only to the marina,
9 yacht club and the waste water treatment plant, Lee County
10 credibility is at an all time low.

11 Many people I spoke with in the past week asking
12 them to come today rolled their eyes when asked if they
13 would participate and many said, what's the point. A sad
14 commentary.

15 I would like assurances that the final conditions
16 will not be ignored by the county and that any possible
17 future owners of the yacht club will be made aware, prior
18 to purchase, if that ever takes place, that they also will
19 be held accountable to the issued site development
20 regulations.

21 Concerning the Zoning Division's most recent
22 Staff Report, I find that staff's recommendations for
23 Deviations Nos. 1 through 6 on Pages 4 through 5 of the
24 report to be reasonable, and I fully support the yacht
25 club's request for those deviations.

1 I do have some concerns. Number one would be
2 navigation around this particular area -- I'm backwards,
3 this corner. Maybe I should come to this, this would be
4 better. Around this particular corner, and I think this
5 is the southwestern corner. The yacht club had suggested
6 they would like to have a walkway around that side. I
7 concur with that request. However, slips Nos. 40, 41 and
8 42, which are recorded, if you would point to that for the
9 audience, please, are on a section of the canal which at
10 this time is very narrow in passage, and I'm requesting
11 that those slips be disallowed as boats parked there would
12 create a passage hazard.

13 At present two boats in that canal area without
14 the slips can pass each other very slowly, very carefully.
15 With added docking for those slips, one boat would pass
16 with difficulty, and I think that section of the canal
17 also has a problem because even at high tide, the water
18 depths sometimes at best are only four feet and the closer
19 we would have to go to the mangroves, the depths are even
20 less. At this time when we traverse that area of the
21 canal, we have to stay fairly close to that dock line for
22 water depths.

23 My second concern is site Regulation No. 7, which
24 is on Page 4 of the report. "Hours of operation for
25 consumption on premises in conjunction with indoor seating

1 are limited to 10:00 a.m. to 12:00 p.m. Monday through
2 Sunday. Hours of operation for consumption on premises in
3 conjunction with outdoor seating are limited to Sunday
4 through Thursday, 10:00 a.m. until 8:00 p.m. and Friday
5 through Saturday, 10:00 a.m. till 9:00 p.m. No outdoor
6 entertainment is permitted," unquote.

7 The yacht club representatives held an informal
8 meeting with the neighborhood on Sunday, July 16th, which
9 we all very much appreciated. The meeting attendees were
10 informed that the yacht club is requesting, number one,
11 the restaurant be allowed to open at 8:00 a.m. for
12 breakfast, and, number two, be allowed to serve beverages
13 to outdoor seating guests during the same hours as indoor
14 seating guests. I do not object to those requests.

15 I do, however, wish to reiterate that no outdoor
16 entertainment be permitted on premises at any time for any
17 reason, inclusive of special occasions.

18 I also have a concern about the tiki bar. There
19 is no outdoor entertainment planned, however I don't know
20 of any bar that does not have a CD player or electronic
21 music that's being played in the background, and I was
22 concerned about that, if there was going to be music at
23 the tiki bar for the guests and how long and how late that
24 music would continue.

25 Number three, on Page 6 of the report, 3 and 6

1 concern regulations providing sufficient safeguards to
2 public interest. With that in mind, and I'm going to
3 point over here, I know this is very small, the larger map
4 was better, this area, this Harbour Lane inlet, this cross
5 section right now is a two-way stop and I understand that
6 a four-way stop is being requested because right now what
7 happens is as soon as cars leave this area, ba-boom, they
8 just zoom through here and this has -- even now is
9 dangerous with minimal traffic. I'm glad to hear that a
10 four-way stop has been requested. And I really feel that
11 if a four-way stop is not implemented, the intersection
12 will no doubt become hazardous with a potential for
13 serious, perhaps disastrous traffic-related accidents.

14 Construction impact to the community, which I did
15 not hear anything addressed. One of my concerns is the
16 impact demolition and rebuilding will have on air quality
17 and expenses neighboring families may incur to repair
18 damages resulting from that activity.

19 Demolition will no doubt create considerable
20 particulate matter in the air which will then be delivered
21 to neighboring heating, air conditioning systems, pool and
22 water filtration systems, roofing, walls, windows as well
23 as parked vehicles.

24 Is it possible to request that during the most
25 noxious times of those operations that some sort of

1 barrier such as a sheeting barrier traditionally used by
2 shipyards be put into place to protect the community from
3 having to incur undue reparation expenses?

4 And I also have some questions on zoning
5 history. Mr. -- Robin, I remember your first name and not
6 your -- Mr. Meyer, I apologize.

7 MR. MEYER: No problem.

8 MS. PRESTON: Suggested that the buffer that was
9 to be placed that was required has been put in place.
10 However, we were told this buffer that is there, the wall
11 that is there, is temporary, and I would also like to note
12 that the wall does not extend all the way to protect all
13 of the property owners. The wall comes to a point and
14 stops right about here (indicating), and that's
15 unacceptable.

16 The approval for this wall -- on Page 7 of the
17 report actually, and I quote, "An administrative approval
18 relocating one of the existing buildings and adding a
19 buffer with a wall along the west portion of the property
20 was approved in August 2000 in case number ADD2000-00112."
21 This approval was issued six years ago and to date no
22 action has been applied to the resolution with regard to
23 the wall along that portion of the property leading me to
24 wonder is Lee County not enforcing its own resolutions.

25 I would like to know why the wall was never

1 built. I would also like to know why it is not part of
2 the present development plans in accordance with this
3 resolution.

4 A buffer zone of plantings has been clarified
5 under Condition 4 of the report recommendations. However,
6 the regulated wall does not appear as part of that
7 condition. Why is the wall not a part of the present
8 development plan if a resolution requiring the wall is
9 still in place?

10 I personally believe the wall and the plantings
11 are necessary to minimize the related commercial and
12 construction impacts on the residential community.

13 Landscaping as the buffer zone was described is
14 not adequate. True, it must include an aesthetically
15 appropriate wall behind the foliage as is the case in
16 every yacht club I visited this past week in Lee County.
17 Foliage, no matter how dense, will not displace noise,
18 vehicle headlights and lack of privacy from the yacht
19 club, and it behooves the Commission not to disregard
20 previous regulations that were designed for the benefit of
21 its constituents so as not to create an atmosphere of
22 public mistrust.

23 It is important to note that the present positive
24 relations between the community, the yacht club and the
25 Lee County Commission will continue only if future

1 regulations are considerate to the community and past
2 regulations are not ignored.

3 It is also worth noting that with a wary eye, the
4 community feeling seems to be positive to the development
5 of the yacht club in the hopes that the yacht club proves
6 to be an asset to the community, and at this juncture we
7 have no reason to believe otherwise.

8 HEARING EXAMINER: Thank you. Any questions of
9 this witness? Do you have any questions?

10 MS. ENGLISH: No questions.

11 HEARING EXAMINER: Ma'am, I'm going to have the
12 applicant respond to your questions, but I'm going to make
13 one comment to you so you understand something. The
14 Master Concept Plan that you see there is what the
15 applicant is asking me to -- and the Board of County
16 Commissioners to approve, okay? What happened in the
17 past, okay, whatever was required in the past is in the
18 past. This application and all of the amenities and items
19 that go with it and conditions are the conditions that I'm
20 hearing here. So when you get back to your issue with
21 regard to the wall that was approved in August of 2002,
22 why it was built I don't know. I just don't and it's
23 really not relevant.

24 All I'm saying is I don't want to get hung up on
25 you thinking that that wall is an additional requirement.

1 It is not. What they are asking is exactly what's in the
2 Master Concept Plan and that's it. So sort of ignore what
3 may have been approved in the past.

4 MS. PRESTON: So that resolution then is being
5 ignored?

6 HEARING EXAMINER: I'm not saying it's ignored.
7 I'm saying it's not before me for approval. The site when
8 it's developed will comply with this Master Concept Plan.
9 I don't know whether it was built or not.

10 MS. PRESTON: It was not.

11 HEARING EXAMINER: Okay. Then it wasn't. But
12 what I'm saying is that's not the issue before me. The
13 issue before me is approval of this plan.

14 MS. PRESTON: Then the approval of this plan is
15 disallowing those regulations in the past?

16 HEARING EXAMINER: It's superseding them if it
17 gets approved, okay. This will stand on its own, so to
18 speak, with its own conditions and deviations. Okay. Not
19 what may be on the property in the past. I mean, if you
20 go back far enough, they may have approved this for goat
21 farms.

22 MS. PRESTON: But they did not.

23 HEARING EXAMINER: I understand. But I'm just
24 using that as an example. I'm saying we can't farm goats
25 anymore. I mean, what happened in the past is in the past

1 and so I'm just trying to let you understand that the
2 project that's proposed is as you see it, not as you see
3 it, plus any other resolutions in the past. That's all
4 I'm trying to bring --

5 MS. PRESTON: Will the property owners that
6 purchased this owner then not held accountable to what was
7 on --

8 MR. PHILPOTT: Mr. Hearing Examiner, I can
9 respond to some of the --

10 HEARING EXAMINER: I don't know if respond is
11 appropriate.

12 MR. PHILPOTT: I think it will clarify the
13 understanding as to where we are versus what was.

14 HEARING EXAMINER: Okay, if you can do it.

15 MR. PHILPOTT: Would you like me to do it now?

16 HEARING EXAMINER: Let's do it now while we have
17 the witness here before we forget.

18 MR. PHILPOTT: I got my notes. The wall, the
19 temporary wall. Part of the requirements of that wall was
20 because of the relocation of a building outlined in the
21 ADD2000-112. Any time a development comes in for any type
22 of redevelopment of a site, of an existing site, pre-
23 approved site, we try and bring it up into compliance as
24 much as possible.

25 One of the things that had changed from the

1 original approval date in 1988, or actually predating
2 that, but for outdoor storage of boats that was occurring
3 on the southwest portion of the site was that any time
4 that those outdoor storage type facilities and repair were
5 located or were able to be seen from residential areas,
6 they had to be screened by an eight-foot wall or similar
7 screen, and that's outlined in Land Development Code, I
8 believe again it's Section 10-416.

9 So when it came in in 2000 to do some
10 redevelopment, relocating of a structure, and I believe
11 there were some other minor things that were taken care of
12 in that ADD, staff tried to bring the site into
13 compliance. And during that, one of the conditions was to
14 require that this wall be installed.

15 At the time of approval, the applicant began to
16 install a wall and stopped, was issued a code violation,
17 and there was a resolution to that agreeing to not require
18 that wall due to some concerns of the residents across the
19 residential canal because of the waterfront view that was
20 being obstructed with the construction of the wall.

21 However, that did go through a code enforcement
22 hearing and was addressed at the time, and that's where
23 we're at.

24 With the new plan, why the wall is not there is
25 due to the fact that no longer are they going to have the

1 outdoor storage of boats and equipment and repair
2 facilities that has occurred in the past, so, therefore,
3 it doesn't have to comply, and I misstated earlier, it's
4 Section 34-3001 that outlines the buffers for the
5 storage. However, because they're not doing that storage
6 anymore, they aren't required to have that wall there.

7 Another thing that you mentioned was the buffers
8 and the screening that we have proposed in Condition I
9 believe 4 of the Staff Report. The way the development is
10 currently or proposed, the Land Development Code doesn't
11 require a buffer adjacent to the waterway.

12 Even because the way our Land Development Code is
13 written it's adjacent to residential uses, however, this
14 is adjacent to waterfront and, therefore, the buffer does
15 not have to be constructed along that waterfront.

16 However, staff did include a condition, Condition
17 4, that would require a pretty substantial buffer to be
18 planted along that -- both along the north and the western
19 portion of the site to help with the reduction of visual
20 impacts with the cars, the cars being parked there, the
21 headlights, those types of uses.

22 So I believe that adequately addresses why the
23 wall wasn't constructed or finished constructing, why it
24 was originally required and why it's not required now.

25 MS. PRESTON: When this is approved, if this land

1 is ever sold to another owner, will they be held
2 accountable to the same -- will they have to be held in
3 compliance?

4 HEARING EXAMINER: Yes. These conditions, what
5 we call, run with the land. In other words, if this
6 rezoning is approved and the property is sold, the new
7 owner takes it subject to this Master Concept Plan and all
8 the conditions contained in it.

9 MS. PRESTON: I think that's an assurance that we
10 all are concerned about is that compliance continues.

11 Thank you.

12 MR. FREDYMA: Could I offer a couple items very
13 quickly? With regard to demolition, they will be required
14 to obtain a demolition permit from the county. There are
15 a number of conditions that relate to that in terms of
16 what they do when they take the building down as far as,
17 you know, the particulate matter, they can't just smash it
18 and let the dust blow where it wants to.

19 MS. PRESTON: That was a concern.

20 MR. FREDYMA: There are a number of specific
21 requirements about what they have to do to contain debris
22 both in the air and on the ground and how they do that and
23 they have to obtain that permit before they actually
24 demolish it.

25 HEARING EXAMINER: But that's not going to be a

1 condition of this approval. They are subject to that
2 anyway.

3 MR. FREDYMA: That's already in place.

4 MS. PRESTON: I see.

5 MR. FREDYMA: So he doesn't need to make a
6 recommendation for that condition. That will happen as
7 the development on the site moves forward if it's
8 approved.

9 The conditions, as they indicated, are binding,
10 not only on this property if it's approved but all future
11 owners. But I think one of the other things that's sort
12 of important to note which is one of the reasons why I
13 asked about two items, one was the travel lift and second
14 was the access in and out of the building with the
15 forklift.

16 Unless we make those a condition of this project,
17 there's no guarantee that they would not be precluded from
18 changing those uses in some degree in the future without a
19 public hearing.

20 MS. PRESTON: As well as live aboards?

21 MR. FREDYMA: Well, live aboards is actually a
22 county ordinance that relates to that as well, but that
23 may be an issue, too, about whether or not they will have
24 live aboards or not. But the travel lift, I know from my
25 past experience, in part was a source of irritation for

1 the neighbors because it was almost impossible to buffer
2 the effect of the travel lift when they're moving boats in
3 and out all day long.

4 The same thing was a concern about the boat wash,
5 and that's now been moved and -- or proposed to be moved,
6 and the same is true with respect to access in and out of
7 this building with a large forklift both for putting boats
8 in, taking them out, moving them for repairs, that's the
9 kind of marine activity that you probably don't want
10 facing the residential area. And if the condition is
11 there, then that won't happen, at least not without
12 another public hearing.

13 Similar to that, oftentimes in hearings like this
14 it's not uncommon to see an elevation, you know, a graphic
15 depiction of what the boat --

16 HEARING EXAMINER: John, I think you've gone --

17 MR. FREDYMA: Have I gone too far?

18 HEARING EXAMINER: -- far beyond --

19 MR. FREDYMA: Okay.

20 HEARING EXAMINER: -- applicant's question.

21 MR. FREDYMA: I'm sorry. I know that there's
22 been a lot of history in this case that has been rather
23 unpleasant.

24 HEARING EXAMINER: I understand that. I want to
25 confine myself to the applicant's questions, okay.

1 MR. FREDYMA: That's fine then.

2 HEARING EXAMINER: That's okay. Let me ask the
3 applicant one question related to what this witness just
4 said. Do you have any objection when it comes to the
5 issue of entertainment, including within the definition of
6 entertainment some language with regard to the outdoor
7 playing of music or electronic --

8 MS. PRESTON: At the tiki bar.

9 MS. BIELERT: We aren't far enough in the design
10 of the building to actually say yes or no that I'm going
11 to have a CD player or stereo, but at the same time I can
12 say that the operations won't facilitate loud thumping,
13 crazy noise.

14 HEARING EXAMINER: Lee County has ordinances that
15 take care of that anyway.

16 MR. FREDYMA: We've had specific conditions, COPs
17 that allowed -- that prohibited outdoor music or bands but
18 allowed electronic Muzac type to be piped in, but the
19 level was required to be confined to something less than
20 ordinary conversation.

21 MS. ENGLISH: In some instances they also allow
22 acoustic without amplification.

23 MR. FREDYMA: That may be a condition that --

24 HEARING EXAMINER: I'm going to ask the witness,
25 have we answered all your questions?

1 MS. PRESTON: Yes, you have.

2 HEARING EXAMINER: Okay.

3 MS. ENGLISH: Would you like us to contribute
4 anything?

5 HEARING EXAMINER: Well, if you think you've got
6 something.

7 MS. ENGLISH: Specifically in regard to the
8 construction demolition, staff -- Mr. Fredyma's point was
9 the one that we were going to make. Do you have any other
10 comments you'd like to make on the buffering and traffic?

11 MS. BIELERT: Well, I want to clarify for you
12 about, I may have misspoke at the meeting about having the
13 wall being temporary. The landscape that was installed,
14 we were actually when we purchased the property on \$100 a
15 day fine situation because it was not installed. What we
16 did was come in -- initially the wall was supposed to be
17 installed right up against the sea wall and because I
18 thought that would frankly be ugly from your guys'
19 perspective, we amended that to increase landscape.
20 However, the approval -- we installed the wall per the
21 approved plan at the time.

22 There's an attachment to that exhibit that shows
23 where the wall was supposed to be. So we installed the
24 wall per that plan and then the landscaping that is north
25 of that right now is only temporary in the aspect that I'm

1 going to have to -- when doing the sea wall repairs, we're
2 going to have to rip it out to do the sea wall but then
3 we're going to replace it with what the county has
4 requested which is actually I believe, what, three times
5 what the basic buffer is. I mean, it's pretty extensive.
6 So compared to what you have now, it will be almost double
7 in height as well as in density.

8 MS. PRESTON: In density to prevent the lights --

9 MS. BIELERT: To help prevent the lights, because
10 what I was trying to accomplish was not having the ugly
11 wall because access to those boats would be difficult by
12 having that wall there as well as stabilizing that sea
13 wall from the upland is very difficult.

14 So the landscape being very dense at that
15 location is our effort to try and buffer those things from
16 the neighbors. But we were being fined from Lee County to
17 the extent -- we were in a position to be fined \$100 per
18 day until that wall was up. They gave me the approval to
19 not pay \$100 per day because I was amending the
20 Development Order to have the landscaping.

21 MS. PRESTON: So, in other words, they were
22 holding you accountable to the wall --

23 MS. BIELERT: Absolutely. And Code Enforcement
24 Officer Paul Smith was very helpful in helping us know
25 what our requirements were and enforcing them.

1 HEARING EXAMINER: Okay.

2 MS. ENGLISH: The other issue was to address the
3 navigational concerns that she raised, although that's not
4 a zoning issue, it is a question she asked.

5 MR. HOFFACKER: I would also, Ms. Preston, like
6 to assure you even some more items. It's important. I
7 had a discussion with a gentleman, his friend had left and
8 I had the same discussion with him and that's a good point
9 you brought up. But I have dealt with the county for 26
10 years. If you have any problems anywhere, call because
11 it's different and they react. They're tough on projects,
12 I'm just saying that. But this area here is approximately
13 80 feet across, okay. Under state and federal law and the
14 county law, you cannot exceed any more than 25 percent
15 into the water body. The reason that this is tight at
16 this time which it will not exceed 25 percent if it's done
17 properly is that it has to be dredged. We have a permit
18 in with DEP and we're waiting, as I mentioned earlier, to
19 get it permitted any time now, it's through the Surveying
20 Department, to dredge this area.

21 Secondly, as I mentioned to this gentleman, we're
22 going to be turning in a mangrove trim for navigation
23 access.

24 MS. PRESTON: That was my question.

25 MR. HOFFACKER: Yes. Under the law you take the

1 property, the red mangrove, which it's mostly reds along
2 the shore, and if you take a vertical plane up, you're
3 allowed to cut the limb off that location because it
4 causes no damage to the tree. So your navigation will be
5 better there than it ever has been when we get done.

6 MS. PRESTON: Thank you.

7 MR. HOFFACKER: Yes, ma'am.

8 HEARING EXAMINER: Okay. Robert McCormick,
9 please. Well, one of the McCormicks. Now, Mr. McCormick,
10 unless you come after her, she will be the only person
11 allowed to speak before the Board of County Commissioners.

12 MR. McCORMICK: That's all right.

13 HEARING EXAMINER: You may disagree with what
14 she's got to say. You may not want to admit that in
15 public either.

16 MR. McCORMICK: I'm not going to disagree with
17 her.

18 MR. FREDYMA: Can we have him on the
19 record, please?

20 HEARING EXAMINER: Mrs. McCormick, at the end of
21 this hearing, if you want, we'll advise you as to an
22 attorney.

23 MRS. McCORMICK: Thank you.
24 Thereupon,

25 JOANNE McCORMICK,

1 called as a witness, having been previously duly sworn,
2 was examined and testified as follows:

3 HEARING EXAMINER: Please, your name, address and
4 whether you've taken an oath.

5 MRS. McCORMICK: My name is JoAnne McCormick.
6 Yes, I have taken the oath. I live at 4310 Harbour Lane,
7 directly across from the old Shucker's building, and I'll
8 show you where I live.

9 HEARING EXAMINER: Please.

10 MRS. McCORMICK: I live right here (indicating).

11 HEARING EXAMINER: Okay, thank you, ma'am.

12 MRS. McCORMICK: I thought I won the lottery a
13 year ago when I was asked to meet with Rachel because we
14 were having such difficulties with the marina. So we are
15 glad to see the change. But my main concerns, even though
16 I have heard talk about the restaurant hours, the
17 restaurant is being moved to the farthest end, I have
18 experienced some very bad times, and I do believe that
19 outdoor entertainment should be not allowed, that it
20 should be enclosed inside the building. Noise travels on
21 the water and as far away as they want to put the
22 restaurant, it's still going to come down the channel and
23 it's going to be in my back yard.

24 The hours of operation for consumption listed on
25 page 4 of 13, No. 7, are requesting indoor seating be

1 limited to 10:00 a.m. until 12:00 a.m. Monday through
2 Sunday. Hours of operation of consumption on premises in
3 conjunction with outdoor seating are limited to Sunday
4 through Thursday, 10:00 a.m. to 8:00 p.m., Friday and
5 Saturday, 10:00 to 9:00. No outdoor entertainment is
6 permitted.

7 HEARING EXAMINER: Are you aware that the
8 applicant has requested indoor seating -- the hours of
9 operation for consumption on premises in conjunction with
10 indoor seating from 8:00 a.m. until midnight Monday
11 through Sunday. Hours of operation for consumption on
12 premises in conjunction with outdoor seating limited to
13 Sunday through Thursday, 8:00 a.m. to 11:00 p.m. and
14 Friday and Saturday, 8:00 a.m. until 12 midnight.

15 MRS. McCORMICK: I see that, and I -- excuse me.

16 HEARING EXAMINER: I just want to finish this.
17 They are requesting outdoor entertainment be permitted but
18 restricted to the hours of the operation for the outdoor
19 seating.

20 MRS. McCORMICK: My question is, they want to
21 stay open until midnight on the weekends. The amount of
22 the traffic that is going to be coming -- if the kitchen
23 closes at nine o'clock and you give people an hour to
24 consume their meal and have a drink, the remainder of that
25 time is going to be bar time and that's where the problem

1 begins. The after hours in the restaurant when no one is
2 consuming food, that it's going to be sit down at the bar
3 or at tables and then the DUIs driving down Inlet Drive
4 going to Orange Grove and leaving the property.

5 Because you know that you only have to have one
6 or two drinks to be illegal on the highway, and there's no
7 need to have the restaurant hours be lengthened to consume
8 alcohol on the property after the kitchen has been closed
9 for an hour.

10 I did a survey. May I speak on that? I called
11 Pinchers Crab Shack. They're open until ten o'clock at
12 night on Monday through Thursday. They do have
13 entertainment and it closes 30 minutes before they close.
14 Friday and Saturday they are open till 11:00 and Sunday
15 9:00 p.m.

16 I called Wally's Waterfront. They open at 11:00,
17 they close at 10:00 p.m. Monday through Saturday, or
18 excuse me, Monday through Sunday. They will stay later
19 depending on bar volume. So it could be midnight, one
20 o'clock in the morning. I spoke to the manager.

21 Waterfront, Pine Island, it's at the end of St.
22 James City, they have no entertainment, they are strictly
23 residential in that area, there's no other form of
24 business. They're open 11:00 to 9:00 p.m.

25 The Bridge Restaurant, which is right there in

1 Fort Myers Beach, closes at 9:00 p.m. Monday through
2 Thursday, Friday through Sunday it closes at 9:00 p.m.
3 They do have outdoor entertainment, but it closes at
4 11:00.

5 Rum Runners, highly residential, expensive area.
6 Their kitchen closes at 9:00 p.m. Depending on the
7 customers, they may stay open till 11:00. Outside
8 entertainment is Sundays only and it closes at 6:00.

9 So my question is, why would our small Waterway
10 Estate community want to stay open till midnight when we
11 have several restaurants in the area that close at a
12 reasonable time?

13 I want to see a restaurant there, and it's very
14 nice to have our company come, go to the restaurant, but
15 the hours, I believe, that they're requesting exceed
16 acceptance in my behalf.

17 HEARING EXAMINER: Anybody have any questions of
18 this witness? You want to respond or wait?

19 MS. ENGLISH: Wait.

20 HEARING EXAMINER: They're going to wait till
21 their rebuttal to discuss that issue.

22 One thing I want to make you aware of is whatever
23 the hours that are approved, that doesn't -- those are the
24 maximum hours they can be open. That doesn't necessarily
25 mandate they have to be open.

1 MRS. McCORMICK: Correct. I understand that.

2 HEARING EXAMINER: Okay. I mean, business can --
3 the operation of the business --

4 MRS. McCORMICK: Okay. I have another issue.

5 HEARING EXAMINER: What's that?

6 MRS. McCORMICK: The live aboards. What do they
7 consider -- with the understanding that the slips are
8 being sold as I can have ownership and pass it on to -- or
9 I can sell it, I don't mind people coming and staying on
10 the boats, I'm a boater, but if you make that a permanent
11 residence if they own that slip, how is that going to
12 work?

13 HEARING EXAMINER: I'll let them respond to that.

14 MS. ENGLISH: There's no authorization in the
15 zoning for live aboards. We've not requested
16 authorization for live aboards. That's a whole separate
17 concept from a marina. We're not set up to support live
18 aboards.

19 MS. BIELERT: But to clarify, the weekender, say,
20 would be able to, for example, if someone wanted to go to
21 Key West -- or came up from Key West to visit and they
22 wanted to stay for the weekend, they would be required to
23 check in with the marina, they would be required to have
24 quiet hours, they would be required to utilize the
25 pump-out system when they arrive and make sure that

1 their mode while staying there is complicit with the
2 type of atmosphere that the yacht club is going to
3 provide --

4 It's relatively unlikely that they would even
5 have that, but when -- if and when they did, it would be
6 very restrictive as far as what they'd be allowed to do.
7 They're not going to show up and stay all weekend and
8 party till 3:00 in the morning and doing that kind of
9 thing because that's not the type of environment these
10 people are trying to sell.

11 MS. ENGLISH: Likewise, the definition of live
12 aboard is not someone who comes to visit temporarily and
13 parks their boat. A live aboard is just that. We do have
14 residential marinas in Lee County where people like Mr.
15 Hoffacker --

16 MR. HOFFACKER: There's only one left.

17 MS. ENGLISH: But that is not what we are
18 requesting and under no circumstances is that what we're
19 looking for.

20 MR. HOFFACKER: Also, there's what they call wipe
21 out. Are you a big boater? Do you understand about the
22 wipe out has to be inspected to where it has to go into a
23 holding tank, the minute that boat goes there, if that's
24 not turned to go into the holding tank, no.

25 MRS. McCORMICK: Okay. That answers my

1 question.

2 The hours of operation for the fitness system --
3 or center, that hasn't been established?

4 MS. BIELERT: I don't think that's going to be an
5 issue. I would assume when the pool closes down --

6 HEARING EXAMINER: That is not a zoning
7 issue.

8 MS. ENGLISH: It's not, it's an indoor use only.
9 It's not like it generates noise and it's limited to those
10 who have memberships.

11 MRS. McCORMICK: Who have memberships.

12 MS. ENGLISH: Yes, it's not a public club.

13 MRS. McCORMICK: No, I understand that. But it's
14 going to be located across from me, so I wondered what the
15 hours were going to be for the fitness center, if it's
16 going to be nine o'clock --

17 MS. BIELERT: Seven to eight o'clock.

18 MRS. McCORMICK: So people who work full time
19 that want to come to the fitness center, they have a
20 membership, say, for instance, myself --

21 MS. BIELERT: There's going to be like key cards,
22 so you have access to your fitness center. But, you know,
23 at eight o'clock, there's a lock because, first of all,
24 there's health issues associated with the pool being
25 operated. We don't have to man the fitness center --

1 MRS. McCORMICK: But I would still be able to
2 have access if I was a member and go in after eight
3 o'clock?

4 HEARING EXAMINER: Yes, but, ma'am, you're
5 getting beyond the zoning issues.

6 MRS. McCORMICK: Okay. All right.

7 HEARING EXAMINER: Like a sales conference.

8 MRS. McCORMICK: Okay. I'm out of step, okay. I
9 think that's all that I -- oh, the travel lift. You no
10 longer have your --

11 MS. BIELERT: I was going to come up and
12 reclarify. I misspoke. I was under the impression that
13 they had sold it. It's actually just parked over there.
14 We're going to fence around it because it's not something
15 that we want people to be just driving right into or
16 walking right into. But it's my understanding after
17 speaking with the manager that if there are extremely
18 heavy boats that the forklift could not operate, if they
19 do maintain ownership of that lift, that that would be the
20 only thing that it would be used for is to get very heavy
21 vessels out in primarily emergency situations.

22 MRS. McCORMICK: But that would still be from the
23 south door down to the existing --

24 MS. BIELERT: No, the travel lift area, the only
25 purpose for that travel lift is to be able to go over that

1 opening with straps so it can get underneath the boat and
2 pick it up, and it's for very heavy boats. But that would
3 not be something that's on a day-to-day basis going on.
4 That would be an emergency situation.

5 MRS. McCORMICK: The reason I asked the question
6 is because you have a hurricane plan in effect and that
7 you gave the opportunity for people to sign a contract to
8 have their boat pulled in case of hurricane. I'm one of
9 them and if you don't have a travel lift, my boat can't be
10 pulled.

11 MS. BIELERT: Which is why they clarified to me
12 that that would be a reason that they would maintain that
13 is because in those emergency situations for hurricanes,
14 they need to be able to lift some heavier boats. I hope
15 we don't have to use it.

16 MRS. McCORMICK: That's all the questions I have.

17 HEARING EXAMINER: County Attorney have any
18 questions?

19 MR. FREDYMA: There was a reference to the
20 selling of wet slips. I don't believe that's part of the
21 request.

22 MS. BIELERT: It's not a fee simple title. It's
23 an equity sale of the right to use the slips, wet slips
24 and dry slips.

25 MR. FREDYMA: So it's wet and dry that you will

1 sell the ability to have ownership or use of.

2 MS. BIELERT: Correct.

3 HEARING EXAMINER: Like a co-op rather than a
4 condominium.

5 MR. FREDYMA: I wasn't aware that it included the
6 wet slips. I knew that it included the space in the
7 building.

8 MS. BIELERT: It's also for wet slips.

9 MR. PHILPOTT: The 44 that were requested for.

10 HEARING EXAMINER: Okay. Anything else?

11 MRS. McCORMICK: No.

12 HEARING EXAMINER: Thank you.

13 Robert McCormick, do you want to refute anything
14 your wife had to say?

15 MR. McCORMICK: God, no.

16 HEARING EXAMINER: Smart man.

17 Joseph Catalano.

18 UNIDENTIFIED SPEAKER: He had to leave to go to
19 work.

20 HEARING EXAMINER: Okay. Jim Williams.

21 UNIDENTIFIED SPEAKER: He had to leave.

22 HEARING EXAMINER: Richard Yawl.

23 Thereupon,

24 RICHARD YAWL,

25 called as a witness, having been previously duly sworn,

1 was examined and testified as follows:

2 MR. YAWL: How you doing? My name is Richard
3 Yawl. I live at 1744 Dockway, and I did take the oath.

4 HEARING EXAMINER: Thank you, sir.

5 Walk up there and show me where you live.

6 MR. YAWL: Okay. Dockway is the street that
7 comes right here (indicating) and if you come up through
8 the canal, once you make this bend, going to the left, it
9 would be the second house on the left.

10 HEARING EXAMINER: Okay. Thank you, sir.

11 MR. YAWL: If I can keep using this, the previous
12 restaurant was right here and my house is over here
13 (indicating). I'm sorry, the previous restaurant was
14 right here and my house here (indicating), so I'm about as
15 far away as you could be from the last restaurant. At
16 8:30 at night we had no problem. Well, my bedroom window
17 is right on this corner closest to it, we had no problem
18 hearing music. I mean, I guess you all had talked about
19 that before about had to be down to a certain level, but I
20 don't know why they didn't before but I'm sure there's
21 been plenty of people complaining then. It wasn't low
22 then, I'm not sure what would change.

23 I know -- I don't know what's considered indoor
24 or outdoor, but this one, it was -- I guess you're saying
25 it was indoor but it was in a screened-in enclosure. The

1 back of this restaurant was all screened in. And the
2 bands were inside that screened-in enclosure.

3 HEARING EXAMINER: I think one of the big
4 distinctions is -- distinctions would be is whether it's
5 under air. In other words, whether there's an air
6 conditioned space. That's generally indoor and outdoor
7 being something that's not air conditioned. I think if
8 you use that standard, it's reasonable.

9 MR. YAWL: So the new restaurant then is going to
10 be -- the bands, when they say outdoor, you're talking
11 still the same type of thing, screened-in enclosure,
12 there's going to be a roof on it or something to that
13 effect.

14 MS. ENGLISH: That's a tough area to be screened
15 in, some parts of the year.

16 MR. YAWL: Right, yeah. I agree. I wouldn't
17 want to be out there myself. But music, though, isn't
18 going to have any problem getting through that screen. I
19 mean, if it was like an acoustic type thing and it was
20 real low, you know, like you were speaking before, it
21 might not be that big an issue. But before, I mean, it
22 wasn't acoustic then and it was -- like I said, I'm as far
23 away as you could see and we had no problem hearing it.

24 When you move it to this side, it's not really
25 going to change anything for me, it's going to be just

1 probably about the same. I'm sure it will help out Mrs.
2 McCormick and some of these others. But I'm just not sure
3 what would change as far as -- I mean, will they be
4 allowed to do any more or not be allowed to do any less?

5 HEARING EXAMINER: I'm going to have them address
6 that issue on their rebuttal.

7 Anything else, sir?

8 MR. YAWL: Well, my only other question was about
9 these slips here, 40, 41 and 42. Are those going to be
10 slips that are sold?

11 MS. ENGLISH: Yes.

12 MR. YAWL: Okay.

13 MS. ENGLISH: We hope.

14 MR. YAWL: Right. Well, as far as like the
15 restaurant, where people come and they're going to park
16 boats and they're going to eat dinner there and stuff like
17 that, where are they going to park at if all these are
18 sold --

19 MS. BIELERT: All the cross hatching is
20 specifically dedicated for temporary mooring.

21 MR. YAWL: So if they go in the restaurant, they
22 only have this area?

23 MS. BIELERT: Just to note, there has been
24 discussion with Marina Holdings and the restaurant owner
25 that they're going to potentially purchase a few slips

1 over there --

2 HEARING EXAMINER: Why don't you address us, not
3 them.

4 MS. BIELERT: I do believe that the restaurant
5 owner is working with the yacht club to allocate
6 potentially more of that actual dedicated slips but with
7 the numbers to be able to facilitate some more. That has
8 not been finalized, but, you know, obviously they want to
9 facilitate as many people as they can so they're trying to
10 get -- figure out, you know, sell the slips and do what
11 they need to do but also accommodate transient boating.

12 MR. YAWL: My concern is, I mean, it's going to
13 be pretty upscale and I welcome the restaurant, the yacht
14 club, everything is going to help our property values as
15 opposed to the failing business that was there before.
16 But when I come out of here, say you have these three
17 slips that are sold, that are full most of the time, say
18 there's -- hopefully your business works out well, there's
19 going to be a boat there almost all the time.

20 If the restaurant starts and they start parking
21 boats, you know, too many boats in here, we won't even
22 have an area when we come out and come around the corner,
23 if there's big boats or a lot of traffic through here, you
24 know, have a place that's wide enough to pull to the side,
25 you know, for another boat to come through. So, I mean,

1 if we have to wait out here, I mean, if you've got a lot
2 of traffic, it was actually that way before. Occasionally
3 a boat would come in and he'd be doing something here,
4 well, by that time, he got settled, another boat would
5 come in and then we'd just be sitting back here still
6 waiting.

7 But if you had an area -- I'm afraid -- if the
8 restaurant starts here and this dock is here, they're
9 going to park boats all the way from this end to this end.

10 MS. BIELERT: Well, part of the agreement with
11 the county is that we are allowed to have mooring on that
12 boardwalk. That's part of the licensing.

13 MR. YAWL: All right.

14 MS. BIELERT: And that's one of the things that
15 if the approvals are released and we're able to build it
16 and someone is violating that, you guys are in a position
17 to call Code Enforcement on those issues. That's why
18 we've got the protections in place.

19 MR. YAWL: I mean, I agree that for a safety
20 issue, it would be nice if somebody could shoot straight
21 through there. But my only concern is, I mean, as long as
22 nothing is parked in that area, that at least -- and they
23 cut these back the way they were talking, I mean, if
24 that's done and it's dredged, and we have at least an area
25 that we can pull over to the side, let a boat go through,

1 and we can still get through --

2 MS. BIELERT: This will be more actually involved
3 with the permitting with the South Florida Water
4 Management District, DEP, than zoning because the zoning
5 is not really going to be able to make those --

6 MS. ENGLISH: Those authorizations come through
7 the environmental permitting agencies.

8 MR. HOFFACKER: And the dredging permit is
9 eminent, it's just a matter of getting it. Like I say, it
10 falls under an exemption, but you still have to go through
11 a big dance. And the mangrove permit in my office, we
12 have four guys, I think I have four now that are already
13 licensed by the state who already have --

14 HEARING EXAMINER: You're getting way beyond the
15 zoning issue here.

16 MR. HOFFACKER: Sorry.

17 HEARING EXAMINER: Any other questions, sir?

18 MR. YAWL: Just music. I mean, we didn't really
19 go into that as far as --

20 HEARING EXAMINER: I think I just said they're
21 going to address -- I'm going to have them address that
22 entertainment issue in their rebuttal.

23 MR. YAWL: Okay. Well, anyway, if I don't get
24 back up, we were hoping that it would end by like -- at
25 least during the week, Monday through Thursday, I'd think,

1 you know, by eight o'clock or at least anything that's
2 going to go from, you know, like it was before, from one
3 far end of the property all the way to my house, I mean,
4 you know, that time of night it gets pretty loud. You
5 know, if it ended at eight o'clock weekends, I mean, I
6 understand it's business and they've got to be able to
7 make a profit but that's about it.

8 HEARING EXAMINER: Okay. Any questions of this
9 witness?

10 MS. ENGLISH: No, sir.

11 HEARING EXAMINER: Okay. Thank you, sir.

12 MR. YAWL: Thank you.

13 HEARING EXAMINER: Is there any other members of
14 the public? I don't have any more public participation
15 forms, but is there any more members of the public that
16 wish to address me? Speak now.

17 Okay. I'm going to close the public portion of
18 this hearing. I'm going to open it up to the applicant
19 for rebuttal. And one of the main issues I think you
20 should hit on is the issue of times of entertainment and
21 noise.

22 MS. ENGLISH: If I might have just a brief moment
23 to confer with my client in regard to one aspect. I asked
24 her a question, and they need some clarification. I need
25 about two minutes.

1 HEARING EXAMINER: Take two minutes.

2 (A recess was taken.)

3 HEARING EXAMINER: Let's go back on the record,
4 folks. I'm going to ask the applicant to have their
5 rebuttal and discuss some of the public's questions that
6 otherwise have not been answered, and then I'll have staff
7 make a rebuttal presentation if they deem it necessary.

8 MS. ENGLISH: The applicant recalls Rachel
9 Bielert. And, Ms. Bielert, I would remind you that you're
10 still under oath.

11 Thereupon,

12 RACHEL BIELERT,
13 called as Applicant's rebuttal witness, having been
14 previously sworn, was examined and testified further as
15 follows:

16 MS. BIELERT: Rachel Bielert. And I am still
17 under oath.

18 MS. ENGLISH: I believe that most of the issues
19 that were raised by folks making public comment, I believe
20 navigation issues were addressed during those comments by
21 Mr. Hoffacker, the construction, demolition issues and
22 buffering. The primary issue at this point appears to be
23 now the hours of operation for the restaurant and the
24 possibility of outside entertainment. What is your
25 response?

1 MS. BIELERT: First of all, I'd like to reiterate
2 how this operation is a polar opposite situation than the
3 previous Shucker's. We are trying to create a friendly
4 neighborhood environment.

5 We don't want our neighbors to be calling Code
6 Enforcement every day because they're unhappy, that's not
7 going to be lucrative for what we're trying to do.

8 That being said, the restaurant operation is
9 going to be on a much higher level and the outdoor
10 entertainment will be kept to a very respectable level.

11 The hours of operation that we've requested
12 changes to, the morning hours are just to facilitate --
13 right now there's no intention of having breakfast served,
14 but if the members call up and say, hey, I'd like to do
15 brunch one morning, they'd like to have the ability to do
16 that and facilitate those types of things. We've already
17 gotten calls from people in the Buttonwood area who are
18 interested in brunch meetings and those types of things.

19 The later hours of operation for outdoor are
20 being requested to facilitate the ambience of the
21 location. We have a beautiful waterfront location and if
22 someone would like to go out and have dinner but they
23 don't get off work until 7:00 and get cleaned up and go to
24 dinner, if they're sitting outside or they have come to
25 the restaurant at 8:30 and they would like to sit outside

1 and enjoy the river front that North Fort Myers has to
2 offer, we'd like to be able to facilitate that.

3 We'd also like to be responsible about it. So we
4 would like the opportunity to provide outdoor
5 entertainment in a reasonable and responsible way.

6 MS. ENGLISH: There was also a question earlier
7 involving the gazebo. Is there any clarification you want
8 to place on the record?

9 MS. BIELERT: Yes. This is in response to Josh.
10 We had had discussions about the levels of the gazebo and
11 the public access of that location. I have to give kudos
12 to our architect, he's very good, and he was able to
13 design a gazebo that would facilitate the restaurant
14 operation but in a way that leaves enough space around the
15 outside of the gazebo to allow for public to be on the
16 ground level without having the requirement to go to the
17 restaurant and buy food or buy drinks. Obviously, we want
18 them to, but we also recognize that in the morning it
19 would be nice for the people who live there, who walk over
20 there to watch the sun rise, to come out and have easy
21 access on the ground level out and around the restaurant
22 building without having to enter. So we would keep the
23 public access location in the same general location that
24 it is, but we wouldn't designate the gazebo or decking,
25 whatever you want to allocate it as, on either level

1 specifically for the public access because we are
2 providing the public with access to that location.

3 HEARING EXAMINER: Any questions by staff?

4 MR. PHILPOTT: No, sir.

5 HEARING EXAMINER: I just have one question and
6 it's not really a question but sort of to refine a
7 question from the public. I presume with the hours of
8 operation, you will also want to include outdoor
9 entertainment during those periods of time?

10 MS. BIELERT: Up to the restrictions of outdoor
11 seating, yes.

12 HEARING EXAMINER: Okay. What is the level of
13 entertainment that you anticipate?

14 MS. BIELERT: We do not anticipate hard core rock
15 bands and rap bands under any circumstances. We'd like to
16 have a mellow atmosphere that people can enjoy their meals
17 and enjoy a beverage with a friend and have some nice
18 background music.

19 It's not going to be a place where people are
20 going to go and have to yell at each other across the
21 table because they can't hear themselves think over the
22 entertainment being provided.

23 HEARING EXAMINER: Okay. Would it be appropriate
24 to condition outdoor entertainment to let's say a
25 conversational level, a conversational noise level,

1 whatever that may be?

2 MS. BIELERT: I was going to say that's kind
3 of -- that's subject to personal, you know -- but I think
4 that the county's noise ordinances are very clearly
5 defined, and I believe that there's like an actual --

6 HEARING EXAMINER: There's a decibel level?

7 MS. BIELERT: Yes, a decibel level and like how
8 far away. You know, I think reasonable --

9 HEARING EXAMINER: County Attorney have any
10 comments?

11 MR. FREDYMA: We've had a number of COP
12 applications that come in --

13 HEARING EXAMINER: I have approved a number of
14 those wherein --

15 MR. FREDYMA: You've limited the type of music --
16 or not type as such, but electronic versus --

17 HEARING EXAMINER: The noise level.

18 MR. FREDYMA: Yes. And I think we've been
19 successful in seeing those adopted and --

20 HEARING EXAMINER: Let --

21 MR. FREDYMA: -- implemented.

22 HEARING EXAMINER: I think, John, you know what
23 I'm thinking about, and I will leave that up to you to see
24 if you both can work it out in the condition. If not,
25 I'll attempt to do something. But I have done that in the

1 past. It's not that I want to restrict the entertainment,
2 I just want to restrict the noise level of the
3 entertainment.

4 MS. BIELERT: Sure. Understandable.

5 MR. FREDYMA: As part of the submittal, we may
6 have the applicant's request and the staff's request or
7 the county's request and that's fine.

8 HEARING EXAMINER: That's fine. I'll drop the
9 hammer on --

10 MS. ENGLISH: If you could provide us with
11 something that you've used in the past that you feel
12 comfortable with so we can take a look at it.

13 HEARING EXAMINER: Yes. We have some
14 overlapping. Just make sure whatever you submit is
15 readily ascertainable, okay?

16 MR. FREDYMA: Will do.

17 MS. ENGLISH: Enforceable.

18 HEARING EXAMINER: Yes.

19 MR. FREDYMA: That's a two-way street.

20 MS. BIELERT: That's right.

21 MS. ENGLISH: I would prefer that the line be
22 clearly drawn.

23 HEARING EXAMINER: Absolutely. And if it
24 requires a decibel level, that's fine, too. Because at
25 least you can get somebody trained with a decibel meter to

1 run out there and determine that.

2 MR. FREDYMA: No, you can't. We have not had
3 good luck with decibel meters and readings actually, in
4 all honesty.

5 HEARING EXAMINER: Why not?

6 MR. FREDYMA: One, you have to have someone who
7 has one, then you have to have someone who is trained to
8 use it. We rewrote our ordinance for sound and noise a
9 number of years ago at the request of the sheriff's
10 department, and since then it's now up to them and --

11 HEARING EXAMINER: I had dealings with another
12 jurisdiction on the same issue.

13 MR. FREDYMA: I think we can give you some
14 language that I think you can choose from and you can
15 determine what's appropriate.

16 HEARING EXAMINER: Submit what you want to submit
17 and then I'll make a determination with respect to that.
18 But I think the applicant understands where I'm going with
19 regard to the noise levels. And my only comment is I'd
20 just like something, as you say, that's readily
21 enforceable so there's no questions by anybody.

22 Anything else you have of this witness?

23 MS. ENGLISH: No, sir.

24 HEARING EXAMINER: Any other witnesses or final
25 statement?

1 MS. ENGLISH: No, sir.

2 HEARING EXAMINER: Anything by way of rebuttal
3 from county?

4 MR. PHILPOTT: Just to the point relating to
5 consumption on premises and then hours of operation. And
6 with all due respect to the applicant, the intentions of
7 the applicant are irrelevant due to the change in
8 ownership that occur, and the only sureties that will be
9 provided are those that are in the resolution, so staff is
10 going to stand by its recommendation of no outdoor
11 entertainment and also the very limited hours of operation
12 for consumption on premises.

13 MS. ENGLISH: I would suggest, however, perhaps
14 we can --

15 MR. PHILPOTT: If I could finish. However, we
16 will provide conditions relating to an enforcement -- or a
17 forcible condition that may be approved by you.

18 HEARING EXAMINER: Okay. Anything else?

19 MR. PHILPOTT: In the case that you decide to do
20 that.

21 HEARING EXAMINER: Anything else? I mean, if
22 that's an unresolved issue between you, it's an unresolved
23 issue and I'll make a decision. But if you have any
24 proposed conditions, please also submit those along with
25 the proposed language with respect to the noise issue if I

1 desire to -- okay.

2 Is there any other -- oh, I propose leaving the
3 record open until August 4th, I believe that is next
4 Friday, for the purpose of the applicant submitting a
5 revised Master Concept Plan and the parties submitting
6 revised conditions and/or disputed conditions. And if you
7 have disputed conditions, perhaps proposed conditions that
8 either the parties would deem appropriate.

9 Have I got the right date?

10 MR. FREDYMA: August 4th is next Friday, that's
11 correct.

12 HEARING EXAMINER: Is that --

13 MR. PHILPOTT: That should be sufficient time for
14 staff.

15 MS. ENGLISH: That's sufficient for the
16 applicant.

17 HEARING EXAMINER: Okay. Well, I'll issue an
18 order to that effect.

19 Are there any other items with respect to this
20 matter that have to come before me today?

21 Hearing none, I'm going to close these hearings.
22 I thank you all for participating, and I certainly
23 appreciate the public's input, too, okay. Your
24 suggestions and comments will not be overlooked. Thank
25 you.

(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 155, is a true record.

9 Dated this 17th day of August, 2006.

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11 Roberta June Bishop
12 Roberta June Bishop, RPR
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