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from HEX hearing

Case Number: DCI 2000-00014

Case Name: Pelican Landing RPD/CPD Amend.

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LEE COUNTY HEARING EXAMINER MEETING

Transcript of proceedings before Diana Parker,
Lee County Hearing Examiner, at 1500 Monroe
Street, Fort Myers, Florida, on Thursday, May
25, 2000.

PRESENT:

Patrick White, Assistant County Attorney
Michael Pavese
Kim Trebatoski
Neale Montgomery
Terrence Dolan
Barry Ernst
Edward Griffith

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1 THE HEARING EXAMINER: Good afternoon. I'm Diana
2 Parker, Chief Hearing Examiner for Lee county. This
3 is Thursday, May the 25th, Case Number DCI 2000-00014,
4 WCI Communities in reference to Pelican Landing
5 RPD/CPD amendment.

6 Okay, everybody that's going to be talking today,
7 please stick your right hand up in the air. If you
8 are an attorney and testifying to facts, please stick
9 your right hand up, to.

10 (Thereupon, all prospective witnesses were duly
11 sworn.)

12 THE HEARING EXAMINER: Applicant is prepared to
13 go forward on this, correct?

14 MS. MONTGOMERY: Yes, ma'am.

15 THE HEARING EXAMINER: Very good.

16 MS. MONTGOMERY: Are you ready?

17 THE HEARING EXAMINER: I'm ready.

18 MS. MONTGOMERY: Mr. Ernst will be our first
19 witness.

20 Due to the fact that Mr. Ernst's resume is on
21 file, we would ask that you accept him as an expert in
22 planning and zoning in Lee County.

23 THE HEARING EXAMINER: Any objections from the
24 county?

25 MR. PAVESE: No.

1 THE HEARING EXAMINER: All right. Accepted.

2 MR. ERNST: Good afternoon. For the record,
3 Barry Ernest.

4 I have been employed at WCI Communities for the
5 past nine years; and prior to that I worked for Lee
6 County Zoning as well as Lee County Engineering, Inc.

7 I would first like to give a brief overall
8 description of the proposed amendment modification and
9 the development plan for this 60-acre parcel. I will
10 briefly go over the existing land uses, zoning,
11 relevant zoning history as well as compatibility and
12 consistency with applicable land use regulations.

13 The property that is subject to this amendment is
14 a 60-acre parcel located approximately 600 feet north
15 of Coconut Road. The site is currently vacant,
16 undeveloped and primarily wooded. It is this yellow
17 piece. Coconut Road actually has been realigned
18 approximately 600 feet north of the new alignment of
19 Coconut Road.

20 MS. MONTGOMERY: Just for the record, who owns
21 the property outlined in green?

22 MR. ERNST: All adjacent property to the north,
23 to the east is owned by WCI Communities.

24 THE HEARING EXAMINER: So this parcel is
25 surrounded, then, by WCI Properties except for the bay

1 area, of course?

2 MR. ERNST: With the exception of one owner here,
3 one single owner who owns this strip of land.

4 THE HEARING EXAMINER: That's the Weeks?

5 MS. MONTGOMERY: Yes.

6 MR. ERNST: Actually, it's the Weeks compound.
7 It's not the Weeks family.

8 THE HEARING EXAMINER: I have been out there.

9 MR. ERNST: The site is bounded to the north side
10 by lands owned by WCI, zoned RPD, and currently
11 undeveloped but planned for golf and limited
12 residential units.

13 In 1998, the Pelican Landing NOPC fifth
14 development order and Kersey Smoot RPD zoning added a
15 204-acre tract to the Pelican Landing DRI and that
16 approved golf uses as well as 362 residential units.
17 That's that area outlined in green. To the east is
18 mangroves, mangrove islands and Estero Bay. To the
19 south, as I mentioned, is a long rectilinear parcel
20 zoned AG-2. It's primarily wooded. It's got a mobile
21 home and a small outbuilding along the western edge of
22 the property. Further south is a mixture of single
23 family, mobile homes as well as vacant lots.

24 There's a mixture of zoning here. It's RS-1,
25 RPD, MHPD; and the current zoning of RPD of the

1 subject property was approved in 1994 along with the
2 original Pelican Landing DRI. The zoning approval
3 permitted both golf and residential on the majority of
4 lands within the RPD. They are depicted on this map
5 here outlined in red. All this area, this area and
6 this area was approved for both golf and residential.
7 In the resolution these are noted as Areas B, C, D and
8 F.

9 In 1994, this 60-acre parcel was a noncontiguous
10 parcel. Therefore, golf was not anticipated or
11 planned. Residential units up to 75 feet in height
12 were approved. And since then, of course, WCI has
13 purchased the Kersey Smoot parcel and taken that
14 through the rezoning process and got it approved for,
15 as I said, residential and golf. No longer was parcel
16 E an isolated tract. As part of the overall golf
17 plan, it was presented and Map H was actually modified
18 in the Kersey Smoot hearing; and that depicted golf as
19 the primary use on this tract.

20 The basic purpose of this request is to adjust a
21 piece of the puzzle to allow for golf. Our plan is
22 fairly simple and straightforward. As this is the
23 subject property here outlined by this dashed line,
24 basically our intention is to provide for three golf
25 holes, a portion of another, a portion of a driving

1 range, lake and an access road. There are no
2 structures other than possibly minimal shelters.

3 Currently we do have zoning in place to construct
4 actually as many units as we possibly could on that
5 parcel up to 75 feet in height. I believe basically
6 they would be six-story buildings. No longer will
7 this plan be implemented. We'll simply be doing golf,
8 lakes and maintaining the mangroves.

9 There's a couple modifications to the staff
10 report that I'm going to make. There's going to be
11 other ones, too, coming from other consultants.

12 MS. MONTGOMERY: When we talk about this, what
13 version does the Hearing Examiner have at this time,
14 since there is about three versions now?

15 THE HEARING EXAMINER: I have one dated May the
16 23rd. That's the last one that I have got or the only
17 one, actually, that I have.

18 MR. ERNST: I'm not going to address the ones
19 that she's talking about. I have got two minor ones.

20 On Page 1, Roman Numeral II, Recommendation, the
21 last word on that page says deviations. We're not
22 asking for any deviation, so that word should be
23 removed.

24 On Page 2 of 7, A(2)(a), under schedule of uses,
25 I have talked to Mike about this prior to the hearing.

1 Since 1994 we have had a canoe park noted and shown on
2 all the master concept plans and it still is shown.
3 We would like to have the canoe park specifically
4 listed under the schedule of uses just so there's no
5 confusion.

6 THE HEARING EXAMINER: It's not an accessory use,
7 it's going to be a --

8 MR. ERNST: It's an accessory use to the
9 development, but it's not specifically spelled out.
10 It says similar recreational amenities, and we just
11 want to make sure that canoe park is listed
12 specifically.

13 THE HEARING EXAMINER: I see. Shelters, canoe
14 park and other?

15 MR. ERNST: Probably best after tennis courts.

16 MR. PAVESE: Just below that.

17 THE HEARING EXAMINER: That's a good place to put
18 it. Yeah, I agree. I hadn't gotten that far down in
19 my reading.

20 MR. ERNST: Our proposed amendment as requested
21 and presented is consistent with applicable goals and
22 objectives, policies and standards of the Lee Plan.
23 In addition to the ones staff has noted in their
24 report, I would like to provide a copy of some of the
25 policies and objectives and vision statements. I will

1 just briefly mention the policy numbers. Policy
2 1.1.6, Policy 4.1.1, Policy 5.1.7, Objective 52.1 and
3 Vision Statement Number 4.

4 In addition to these policies, the amendment
5 meets or exceeds all performance and design standards.
6 Our golf development plan was designed to minimize any
7 potential negative impacts or effects that the
8 proposed land use has on adjacent and surrounding
9 properties. The development is -- the parcel is of
10 adequate size and configuration to accommodate the
11 proposed golf holes, driving range, water retention,
12 preservation of wetlands, of course, and clearly the
13 required open space, because that's all it is. The
14 amendment is consistent with the density and general
15 uses of the outlying suburban land use category. The
16 amendment with the proposed golf uses is clearly
17 compatible with the existing and proposed land uses
18 both adjacent to and nearby. The golf usage will not
19 place an undue burden on transportation or planned
20 infrastructure facilities. It certainly will be
21 served by the streets with the capacity to carry the
22 traffic generated by the golf development. And,
23 finally, as with all of our developments, we maintain
24 strict control through our design review process of
25 signage and vegetative plantings.

1 In conclusion, I feel confident that the proposed
2 golf course is appropriate at this location on this
3 parcel with the modified conditions, both the ones I
4 stated and the ones that will be stated by Neale and
5 other consultants. I believe it is -- the project's
6 impact on the public as well as the immediate
7 community have been addressed; and I will be happy to
8 answer any other questions you might have.

9 THE HEARING EXAMINER: Questions?

10 MS. MONTGOMERY: I don't have any questions.

11 THE HEARING EXAMINER: Questions?

12 MR. PAVESE: No.

13 THE HEARING EXAMINER: I don't have any either,
14 Barry. Thank you.

15 MS. MONTGOMERY: Terry Dolan.
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1 MR. DOLAN: Good afternoon. For the record, my
2 name is Terrence Dolan. I am the environmental
3 director for WCI Communities' west coast operations.
4 I have been with Westinghouse Communities and WCI now
5 for almost 12 years.

6 I'm going to keep my presentation very short and
7 to the point.

8 I'll give you a little brief overview of the
9 60-acre tract of land that we're speaking to.

10 I'm not sure if it was spoken to before by Mr.
11 Ernst. This was part of the original Pelican Landing
12 DRI, this 60-acre tract; and we're simply trying to
13 get the schedule of uses adjusted so we can allow the
14 golf and any ancillary golf uses on this tract of
15 lands. It was shown in the Kersey Smoot NOPC fifth
16 amendment process in '98 as golf.

17 MS. MONTGOMERY: Would you show her for the
18 record where the Kersey Smoot property is?

19 MR. DOLAN: It's highlighted in the fluorescent
20 green color.

21 When that went through the process in '98, this
22 land, because it wasn't an attached parcel, like Mr.
23 Ernst mentioned before, it was shown as part of the
24 master concept plan for golf at that time. The units
25 were not included and had been substituted with the

1 portions of the different golf fairways.

2 The tract of land, it ranges from a high
3 elevation of probably five to six feet NGVD elevation,
4 going down sloped towards the estuarine saltwater
5 wetlands, the mangrove wetlands, down to an elevation
6 of less than one foot in elevation as you go westerly
7 across this square box of land here. It is buffered
8 currently by vacant lands. It's all forested,
9 including this parcel. It's mostly a pine/palmetto
10 flat wood, some small areas of scrub vegetation, live
11 oak and then segueing down to cord grass, buttonwood,
12 a big thick band of Brazilian pepper mixed in with the
13 pepper work to a saltern region, then to the mangrove
14 forest further to the west; at the northern end, an
15 existing man-made excavated canal that was done I
16 believe in '63 or '64, so it's been there over 35, 36
17 years now.

18 MS. MONTGOMERY: Could you show us on the aerial
19 where --

20 MR. DOLAN: If you lift this land use plan up,
21 this is a 200 scale area that was flown about a year
22 and a half ago; and the man-made canal, it dead-ends
23 at the east end here, approximately at this location,
24 and then terminates out here in the mangrove system.
25 It has revegetated itself out in the mangrove portion.

1 We have had trouble with dumping over time where
2 people have gone and illegally dumped all kinds of
3 refuse in this canal. We have gone through efforts to
4 keep that maintained clean and free of all that.

5 It's a fresh water system and then at certain
6 times there's so tidal influence more at the western
7 end of it there.

8 As I mentioned, portions of one fairway, three
9 entire fairways and a portion of the driving range
10 will be included on this property, plus possibly some
11 ancillary rest shelter, rain shelter.

12 I believe that's all we're trying to incorporate
13 in the schedule of uses with the exception of the
14 canoe park, which was previously approved during the
15 original '94 DRI process.

16 The only listed species of note for this property
17 is gopher tortoise, and it is part of the Pelican
18 Landing gopher tortoise accidental take permit. It
19 will be scheduled. When we do initiate site
20 development, we will do our customary sweep of the
21 property, looking for any active or potentially active
22 burrows. We go in there with the gopher cam, the
23 underground camera, to check for activity levels; and
24 if they are deemed to be active, then we can invade
25 the burrow, remove the tortoises and take them to the

1 eco park, which is on the other side - I can show you
2 here - in this portion here, the 78-acre eco park
3 lands. And that is one of the primary purposes of the
4 eco park is to be a receptor park for the gopher
5 tortoises and any commensurate species that we find.

6 In addition to that, the -- when we did the
7 Kersey Smoot portion, and again I mention that this
8 was shown as golf and represented as future golf when
9 we did Kersey Smoot, WCI agreed to maintain a
10 hundred-foot buffer setback for any fill from the golf
11 course development along the western edge of the golf
12 course development from the mangrove line. The
13 mangrove line was specifically surveyed in after that
14 hearing, and that has been utilized in order to
15 facilitate our planning and zoning efforts for the
16 water management district and the Corps permitting and
17 also the pending Lee County development order that
18 this property is undergoing currently.

19 I guess there are no wetland impacts to speak of
20 for this property.

21 I think one important thing that I need to bring
22 to your attention is something that we have undertaken
23 for the development of this golf course. This golf
24 course is being done in conjunction with the Hyatt
25 Resort, which is further to the south at this location

1 right here. That's where the Hyatt Hotel is currently
2 under construction.

3 These 18 golf holes that are approved or pending
4 approval with this land use allowance on this 60
5 acres, we have enlisted the assistance of Audubon
6 International, which is basically a not for profit
7 group of scientists and college faculty members, in
8 order to go through what they call the Gold Signature
9 program. This is the highest level of environmental
10 protection - they have several different programs -
11 that you can enlist. Many of the area golf courses
12 are under the Audubon International Cooperative
13 Sanctuary program. Over, above and beyond that, they
14 have a more stringent code that you can abide by or
15 agree to abide by; and you enlist them as advisers and
16 that gives you their whole faculty to advise you how
17 to best design your course for environmental
18 integrity.

19 What we have learned in dealing with Audubon
20 International, and on this course, which I believe
21 will be the first North American resort course that
22 will be under the Gold Signature program, which again
23 is their highest program, we do some redundant water
24 quality treatment processes as water runs off of the
25 golf course with the herbicides, insecticides,

1 fungicides that you typically have on the golf course.
2 In order to properly treat the water coming off the
3 course, we have a series of planted filtration zones
4 that any drainage will run into, get scrubbed in these
5 vegetative zones prior to going into the lake and
6 becoming mixed with the surface water in the lake
7 systems. This will give some additional redundancy
8 for treatment processes that you would have over and
9 above what the water management district requires
10 under Chapter 373 and the Corps requires under their
11 dredge and fill program for water quality
12 certification.

13 That's one aspect. We're looking very
14 stringently at tree preservation for this course.

15 There are no units attached, again, on this piece
16 of property. The only units are up on the Kersey
17 Smoot in the approved -- I believe it was a 25-acre
18 parcel of land up there, and the rest of it becomes
19 strictly golf course around it.

20 And so we have been ongoing with Audubon
21 International probably for the better part of ten to
22 twelve months now and have their assistance and their
23 advice; and it's an exciting program and we look
24 forward to getting that under way with the development
25 of this course.

1 I think I need to address real briefly there was
2 some concern by county staff. We received a revised
3 set of conditions. If I can draw your attention to
4 8(a) through c.

5 MS. TREBATOSKI: This one?

6 MR. DOLAN: Yes.

7 MS. TREBATOSKI: She doesn't have that one yet.

8 THE HEARING EXAMINER: I was going to say.

9 MR. DOLAN: I think there was some questions from
10 the legal staff of the county on these conditions.
11 These conditions have been in place since the original
12 DRI.

13 MS. MONTGOMERY: Now, Terry, when you're talking
14 about these conditions, which ones are you talking
15 about?

16 MR. DOLAN: I'm talking about --

17 MS. MONTGOMERY: Let me just ask before you start
18 this, maybe, so the record will be more clear.

19 When you look at Conditions 5 through 8 of the
20 staff report, do they bear any resemblance to
21 Conditions 2(k) interface zone in the DRI development
22 order?

23 MR. DOLAN: There's some resemblance, yes. There
24 have been some changes, and that caused us some
25 concern. Questions arose like why was this being

1 changed, especially being changed at the ninth
2 amendment of the DRI for the RPD/CPD amendment. Staff
3 had recommended changes, and then on 8(a) I think
4 there has been some further in-house consulting
5 amongst county staff and they decided to go back to
6 what was originally written.

7 We have what's called an interfaced zone
8 groundwater and surface water monitoring program.
9 This was approved by Department of Community Affairs
10 out of Tallahassee and Lee County, I believe it was
11 1995. This is part of the DRI development order
12 conditions issued in September of '94 for the Pelican
13 Landing DRI. It is a twice annual monitoring program
14 where we have groundwater monitoring wells established
15 throughout the western interface of the community, and
16 there is also surface water management sampling grab
17 sites within Spring Creek at several locations and
18 then out in Estero Bay.

19 When we brought in the Kersey Smoot addition to
20 the DRI community, we agreed at that time to establish
21 two additional sampling sites, one additional
22 groundwater monitoring well - these are fairly
23 shallow, 15 feet below natural ground, monitoring
24 wells - and another surface water sampling site out in
25 the northern part of the cove there, just offshore in

1 Estero Bay, about 400 meters north of the Coconut
2 Point Marina, so those have been established, those
3 have been identified. We have amended the existing
4 plan that we have been doing in a dry season and wet
5 season now for five years, this being the fifth year;
6 and those will be incorporated in the overall
7 community interface zone monitoring program.

8 The good news is nothing has been shown to date
9 from the construction of our courses to the south in
10 terms of adverse water quality. The parameters that
11 have been identified in that program, there hasn't
12 been any violation of any state statutes; and, if
13 there are, then we have to remediate them immediately
14 within I believe 30 days is how it's written.
15 Fortunately, we haven't had any problems to date so
16 far with that program; and we will continue that
17 program.

18 The modified program addressing the two
19 additional sites that I mentioned, the modified plans
20 have been submitted to county staff and to DCA; and
21 we're just waiting to hear back from them on the
22 amendment process to include those two sites.

23 The county staff agreed to go back to the
24 original language on 8(a) as to how it was written.

25 MS. MONTGOMERY: I think we're now looking at the

1 language that's on the May 25th submittal.

2 THE HEARING EXAMINER: That's the one you gave me
3 or the one they gave me? Staff's Exhibit Number 1, is
4 that what we're talking about?

5 MS. TREBATOSKI: The one I just handed to you.

6 THE HEARING EXAMINER: Staff's Exhibit 1?

7 MS. TREBATOSKI: That reverts back to what the
8 original language states; and we're in concurrency and
9 we agree to that language, simply put.

10 MS. MONTGOMERY: How about 8(b), Terry?

11 MR. DOLAN: Eight(B), it may just -- there was a
12 change from what was written from the last time there
13 was any language prepared and codified, so I guess the
14 county staff deemed that there needed to be a change.
15 What they had included now is the golf course within
16 Parcel E - Parcel E is the 60-acre track that we're
17 here for today - must be set back a minimum on average
18 of a hundred feet from any saltwater wetlands at the
19 time we came in and spoke with Ms. Trebatoski; and the
20 development order that is pending for this property is
21 in compliance with that agreement, so I don't really
22 have a problem with the way that is written.

23 MS. MONTGOMERY: Let me just ask you a question,
24 Terry.

25 MR. DOLAN: Yes.

1 MS. MONTGOMERY: The interface zone, Condition 7
2 in the DRI development order, the seventh amendment
3 that's been signed, says the mangrove wetland
4 jurisdiction line will be buffered from any golf
5 course development except for water management
6 facilities permitted by the water management district
7 and except for removal of exotics as required by Lee
8 County. I'm wondering if those two exceptions need to
9 be included here.

10 MR. DOLAN: I think just to make sure it's clear
11 for the record, it probably should be.

12 MS. TREBATOSKI: If I could comment just quickly.
13 Kim Trebatoski for the record.

14 The last sentence that's crossed out in 8(b) on
15 the May 25th memo could just be reinserted for that
16 clarification.

17 MS. MONTGOMERY: Probably would be a good idea.

18 MS. TREBATOSKI: That's not a problem.

19 THE HEARING EXAMINER: Okay, so starting at,
20 "Water management facilities permitted by South
21 Florida"?

22 MS. TREBATOSKI: Yes. And down.

23 MS. MONTGOMERY: Actually could save all our time
24 and not adopt any of this language and just keep the
25 original language in the DRI development, as it also

1 applies. That's a personal observation.

2 MR. DOLAN: That will be reinserted then?

3 MS. MONTGOMERY: Yes, I think that's what I just
4 heard.

5 MR. DOLAN: And then 8(c) is a new condition; and
6 in discussion with county staff, we have tried to
7 educate them on this, what we're calling the phyto
8 zones, which is these vegetative planting zones for
9 runoff prior to flows into the surface water
10 management lake. So the last part of it mentions
11 other technology such as filter marsh systems to
12 obviously distribute the treated discharge. All the
13 discharge has been designed to go out -- I mentioned
14 this existing man-made canal, which is this point
15 right here. It will go, run into the central lake,
16 being pre-treated prior to that in these planted areas
17 around the lake, basically flanking on the four
18 corners.

19 MS. MONTGOMERY: The engineer will discuss this
20 and water quality expert will discuss that more fully.

21 MR. DOLAN: And then go into the existing canal
22 that doesn't get backfilled and then distributes out
23 into the mangrove forest if there's any runoff at all
24 from the lake.

25 So I think as it is written, with the

1 understanding when the county staff is interpreting
2 the development order plans, I think everybody is in
3 concurrence that we're all on the same page with that
4 now.

5 THE HEARING EXAMINER: Okay. So you want the
6 last half of this sentence taken off, is that what
7 you're fixing to ask me, or is that the intent of your
8 explanation, the filter marsh system?

9 MR. DOLAN: The filter marsh system is being
10 employed per the water management district and the
11 Corps of Engineers plans and with the Lee County
12 development order. Ms. Trebatoski indicated she
13 doesn't have a problem with that and she understands
14 now where the discharge location is. I don't think we
15 were -- really have any issues with it.

16 THE HEARING EXAMINER: Okay.

17 THE WITNESS: And that concludes my presentation.
18 If you have any questions, I will be glad to try to
19 address them.

20 MS. MONTGOMERY: Let me see. Terry, you talked
21 about the incidental take permit. That's already been
22 obtained for Pelican Landing, including this property;
23 is that correct?

24 MR. DOLAN: Yes, it has.

25 MS. MONTGOMERY: I don't have any further

1 questions.

2 THE HEARING EXAMINER: Questions by staff?

3 MR. PAVESE: No, ma'am.

4 THE HEARING EXAMINER: Kim, anything from you?

5 MS. TREBATOSKI: No.

6 THE HEARING EXAMINER: All right, thank you.

7 MS. MONTGOMERY: Next witness is Steve Means.

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1 MR. MEANS: Good afternoon. For the record, my
2 name is Steve Means, M-E-A-N-S. I'm a registered
3 principal engineer with Wilson-Miller in the Naples
4 office; and to give you a little bit of my background,
5 I have got an undergraduate degree in environmental
6 engineering, a Master's in civil engineering,
7 concentrating in groundwater hydraulics. I have been
8 registered in the Florida as an engineer since 1986
9 and have been working in the water resources field
10 within Southwest Florida for almost 19 years. I'm a
11 qualified expert in civil engineering, surface water
12 hydrology and community development districts.

13 MS. MONTGOMERY: We would ask that he be so
14 qualified as an expert here.

15 THE HEARING EXAMINER: Objections from the
16 county?

17 MR. PAVESE: No.

18 THE HEARING EXAMINER: Good. Accepted.

19 MR. MEANS: Thank you very much.

20 I want to do three things today. I want to
21 update everyone on the status of the South Florida
22 Water Management District's permit application that's
23 pending currently in the local service center here in
24 Fort Myers and then I want to walk everyone through
25 the surface water management plan as designed and

1 presented to the water management district and then,
2 finally, I would like to sum up and demonstrate how
3 and give you reasonable assurance that the discharge
4 that's coming off of this site from the water
5 management system will not adversely impact Estero Bay
6 and the receiving waters in between.

7 In January our office on behalf of the applicant
8 submitted a permit application for the entire 27 holes
9 that comprise the project, which includes the subject
10 property that we're speaking about today. We have
11 gone through two rounds of comments. I would expect
12 within the next two weeks that the staff at the water
13 management district will write a positive staff report
14 and submit it to the July board for approval.

15 The bottom line is all of the outstanding issues
16 have been addressed and the -- what I'm going to
17 describe to you in terms of the design of the water
18 management system has been accepted by the district.

19 So now let me walk you through the water
20 management design. If you don't mind, I will step
21 over here to the board.

22 THE HEARING EXAMINER: Okay.

23 MR. MEANS: Indulge me for a minute so you can
24 see it a little better.

25 The subject parcel is here. This is the

1 approximate 60 acres. The Weeks area is down here and
2 the remainder of the project is out behind to the
3 north and to the east. Over here in the green is the
4 mangrove fringe. There's a transition zone in the
5 gold and then there's an upland preservation buffer
6 that runs -- it's very difficult to see from your
7 vantage point, but it's located right along the
8 easterly portion of the gold area. The blue line here
9 is the hundred-foot setback from the mangrove fringe
10 that we spoke about earlier, Terry spoke about
11 earlier. Notice that there's no development
12 waterwards of that hundred-foot setback, so all of the
13 improved areas are within -- I'm sorry, outside of
14 that setback zone.

15 All of the water that rains on this site is
16 collected within the surface water management system
17 and routed first to these phyto zones that Terry
18 talked about previously; and that's P-H-T-Y-O, for the
19 record.

20 MS. MONTGOMERY: I thought They were Fidos, like
21 dogs.

22 MR. MEANS: That's what everybody's first
23 thoughts were, dog zones; but that's not true.

24 These phyto zones are a technique that Audubon
25 likes to use; and what they are, they are polishing

1 areas for water quality. They consist of shallow,
2 depressed areas that contain water most of the year;
3 and they are vegetated with different vegetative types
4 that are conducive to uptake of nutrients and other
5 constituents within the runoff. Once -- every drop of
6 water that falls on this will be routed through these
7 phyto zones before they hit the primary water
8 management lake that's in the center in this dark blue
9 area. Within the lake we also use best management
10 practices regulated by South Florida Water Management
11 District and we are providing one and a half inches of
12 water quality treatment before discharge up in the
13 northwest corner of the parcel. The one and a half
14 inches is over and above what's normally required and
15 that's -- the reason is it's because we're discharging
16 to an outstanding Florida water body in Estero Bay.
17 So we're in compliance with all of the district
18 regulations with regard to water quality.

19 On top of that, we have this two-tiered system of
20 water quality, using the phyto zones as the initial
21 polishing and then the lake system and the water
22 quality attenuation within that lake for the final
23 polishing before discharge.

24 For off-site, prevention of off-site flooding,
25 we're attenuating the 25-year three-day storm event.

1 We're doing that by providing storage within the golf
2 course and the pond.

3 THE HEARING EXAMINER: I'm sorry. That was a
4 ten-year?

5 MR. MEANS: Twenty-five-year, three-day storm.

6 THE HEARING EXAMINER: I was going to say, I
7 never heard of a ten-year one before.

8 MR. MEANS: I say we can attenuate the 25, so
9 that's probably --

10 THE HEARING EXAMINER: That's where I got it.
11 All right. I knew I heard it in there somewhere.

12 MR. MEANS: We do that by providing a berm at the
13 minimum 25-year, three-day storm stage around the
14 parcel that prevents any runoff and keeps it within
15 the water management system for treatment.

16 The discharge is up here. As Terry described
17 earlier, there is a remnant channel that runs
18 east-west across the top of the parcel; and it is a
19 fresh water channel. It discharges out into the
20 mangrove system, and what we're proposing is to
21 utilize the end of that channel as our discharge
22 point. Currently most of the runoff migrates and gets
23 into that channel and then discharges out, so to try
24 and minimize any impacts of forcing any other
25 discharge points into existing vegetated areas, we

1 wanted to utilize that existing outfall to minimize
2 any impacts to the areas that would be waterward of
3 that hundred-foot setback line.

4 MS. TREBATOSKI, is she still here?

5 MS. TREBATOSKI: Over here.

6 MR. MEANS: I just wanted to clarify that 8(c),
7 that you understand that what we're -- we do have a
8 discharge at this existing location and it isn't your
9 classic spreader swale situation, although this canal
10 does act as a spreader swale. I wanted to hopefully
11 get you on record by understanding how we designed
12 this and that your stipulation is this is consistent
13 with what we're proposing.

14 MS. TREBATOSKI: For the record, Kim Trebatoski;
15 and it is consistent and I will address it when I get
16 up to speak.

17 MR. MEANS: Thank you very much.

18 Well, that in a nutshell is my presentation
19 today; and I will be happy to entertain any questions
20 that anyone might have.

21 THE HEARING EXAMINER: Questions, Neale?

22 MS. MONTGOMERY: I just have a couple questions.

23 BY MS. MONTGOMERY:

24 Q. I believe you said, Steve -- let me ask again.

25 If you were to do a classic spreader swale along

1 the edge of the transition zone there, that would require
2 impact to that wetland vegetation, wouldn't it?

3 A. Yes.

4 Q. So we're actually minimizing wetland impacts by
5 this water management system?

6 A. Yes.

7 Q. And the system that you have proposed actually
8 mimics predevelopment conditions?

9 A. Yes, it does.

10 Q. To do the other sort of system would not mimic
11 predevelopment systems?

12 A. Yes, you are correct.

13 MS. MONTGOMERY: Okay, that's all.

14 THE HEARING EXAMINER: Questions by the county?

15 MR. PAVESE: None.

16 THE HEARING EXAMINER: Okay. County Attorney?

17 MR. WHITE: No, Madam Hearing Examiner. Thank
18 you.

19 THE HEARING EXAMINER: I noticed you jumped up
20 here to see, so I didn't know if you had something in
21 the back of your mind.

22 I don't have any questions either. Thank you.

23 MS. MONTGOMERY: I would call Kirk Martin at this
24 time.

25

1 MR. MARTIN: Good afternoon. For the record, I
2 am Kirk Martin. I am vice president with Missimer
3 International, a water resource consulting firm,
4 working in Lee County as a groundwater hydrologist for
5 19 years, working for a variety of interests,
6 including municipal, state and very varied private
7 interests.

8 What I would like to talk about a little bit,
9 because both Terry and Steve talked a lot about the
10 fundamentals, the mechanics of what we're doing in
11 water treatment, I want to talk a little bit more
12 about the detail and the thinking that goes behind
13 some of these design elements.

14 First of all, development has historically been
15 associated with water pollution. This is not -- it's
16 a valid thinking in that historic practices were to
17 essentially get water off the site as quickly as
18 possible. That meant ditching, diking and dumping
19 water to the nearest surface water body as quickly as
20 possible. We had particular oils, greases,
21 pesticides, all the normal things you don't want in
22 your water system.

23 However, over the last ten to fifteen years a lot
24 of design elements have been put into place because of
25 the thinking and the things we have learned through

1 these past practices. These are built into the rules
2 of the water management district, Army Corps of
3 Engineers, DEP and further elements that I will talk
4 about a little bit in terms of Audubon designed
5 criteria and the county's desires to protect the water
6 resources that are here.

7 Clearly, this is a site that is deemed worthy of
8 a little extra protection. We're bordering on
9 outstanding Florida waters, we have some fairly
10 pristine environmental offshore here and Estero Bay
11 which is an aquatic preserve that's worthy of
12 protection, obviously. In direct opposition to these
13 historical practices, the modern techniques that Steve
14 talked about included or include holding water on the
15 site longer.

16 What a natural piece of land does is not magic in
17 that there are many things that go on. There's
18 bacteria, soil absorption, plant absorption, uptake of
19 many things that go on; but the key ingredient in a
20 natural system is the time water is allowed to stay on
21 the property. Water tends to percolate in the ground
22 or run off to the nearest wetland. Water typically in
23 a natural system will stay in and around a property
24 for many days if not weeks, sometimes months,
25 depending on the property.

1 When you start to develop a property, you change
2 topography to some extent. You start putting parking
3 lots and things like that on. This particular
4 property has very little of that, but you do change
5 the nature of water entering and exiting the property.
6 With a modern storm water management process, however,
7 you try to add back the time that nature had at one
8 time. That includes lots of retention lakes, that
9 includes directing water to wetland areas or shallow
10 swales and providing a long travel time before water
11 is allowed to exit the property. With this time
12 element added back, in we get those natural
13 attenuation processes, bacteria breaking down of the
14 elements, soil uptaking of various nutrients and
15 pesticides and so forth, lots of biological activity
16 within the lakes that occur, and, finally, polishing
17 that goes through the wetlands before the final
18 discharge.

19 In particular, this property we often talk about
20 best management practices, which is desired by the
21 water management district, especially when you are
22 adjacent to an outstanding Florida water. However,
23 with the Audubon Gold Signature program, I would like
24 to call this above and beyond the best management
25 practices. It is really a state-of-the-art process,

1 these little phyto zones whereby water is directed to
2 a shallow vegetative water body prior to being allowed
3 to enter a lake system takes in a tremendous amount of
4 treatment prior to even getting into the water body;
5 and the reason I say state of the art is because this
6 type of process is what is really done for some major
7 cleanup projects.

8 Many of the people are aware of the Everglades
9 restoration. One of the things they are doing is
10 providing shallow vegetative water bodies to uptake
11 all of the nutrients that come out of the farm areas,
12 which, of course, is a much worse product than would
13 be exiting this property. Also, you may be familiar a
14 number of years ago Lake Apopka up in central Florida
15 was a highly polluted lake because of agricultural
16 runoff. The key element to restoring that lake to its
17 original condition was building marshes around the
18 lake so any water running to that lake would have to
19 be run through the marshes and again get that travel
20 time element into it so that water was retained,
21 treated and polished in the vegetated shallow water
22 bodies prior to entering the deep lake.

23 Given all these elements, first of all, the
24 modern surface water management that's taking place
25 here, this includes directing water internal to the

1 property, not allowing it to exit; giving it long
2 travel times, directing it to phyto zones for initial
3 treatment, which is, as I said before, a very high
4 level of treatment, then to a lake system for a long
5 retention time and finally to an outfall system that
6 would also include wetland polishing long before it
7 gets to Estero Bay.

8 These conditions, the Audubon Signature
9 conditions, including design and operation, in my
10 opinion creates a tremendous amount of treatment and
11 really negates the possibility of an adverse affect to
12 water quality either in the wetlands areas or in
13 Estero Bay.

14 Added to that just as a policy to make sure this
15 happens, Terry talked a little bit about the
16 monitoring program ongoing. As part of this process
17 we're adding two stations to the monitoring that's
18 ongoing. These are groundwater stations and surface
19 water stations. So that way, if there's any water
20 exiting the property through surface runoff or through
21 the groundwater system through direct filtration, we
22 should be able to pick that up and find it.

23 At this point there's been five years of
24 monitoring ongoing on the existing property and there
25 have been no conditions found to be degrading water

1 quality in the area, so, again, we think it's a very,
2 very positive design and treatment process and should
3 work very well for this property.

4 THE HEARING EXAMINER: Questions?

5 MS. MONTGOMERY: I just have a couple questions.

6 BY MS. MONTGOMERY:

7 Q. Kirk, have you and Dr. Missimer been involved
8 with this project since its inception?

9 A. In the very beginning, yes.

10 Q. Were you and Dr. Missimer involved with the
11 creation of some of the language that went into the
12 interspace zone condition?

13 A. A lot of thought was put in that process. You
14 mean talking about the monitoring system?

15 Q. Yes.

16 A. The monitoring system, again, many times people
17 want to monitor just outfalls; but the concern was here
18 because we don't have a lot of topography that there may
19 be water of adverse quality exiting the property through
20 the groundwater system, so we made a fairly complex
21 monitoring system that looks at groundwater and surface
22 water for a number of parameters, including nutrients,
23 pesticides, metals and the normal things you would find in
24 runoff in developed property.

25 Q. Have you and Dr. Missimer been doing the

1 monitoring from the very beginning?

2 A. Correct.

3 Q. And in doing that monitoring, has there ever been
4 anything that would indicate to you that the golf course
5 is creating adverse impacts?

6 A. No.

7 MS. MONTGOMERY: I don't have any other
8 questions.

9 THE HEARING EXAMINER: County?

10 MR. PAVESE: No, ma'am.

11 THE HEARING EXAMINER: Okay. Thank you.

12 MS. MONTGOMERY: That concludes our testimony at
13 this time. We would reserve the right for rebuttal;
14 and, so that it's clear, while I sort of flippantly
15 stated earlier but I am serious in saying I don't know
16 that any of these conditions were necessary because
17 this property was part of the original DRI, it was
18 part of the interface zone conditions. I don't know
19 that there's any evidence that would require or need
20 change of those conditions, nor, in keeping with past
21 practices, we haven't readopted language that already
22 has been adopted and applied, so I don't know that
23 they are necessary.

24 If for some reason the Hearing Examiner does
25 actually believe they are necessary, then we would

1 agree with 8(a) as it's been revised that you got
2 today; 8(b) with the clarification that we have added;
3 and we either want 8(c) removed or added with the
4 understanding that the water management plan as
5 presented by Mr. Means and about to be permitted in
6 the next month by the water management district is
7 consistent with that language.

8 The only other things - I guess two other
9 comments - are minor. If you look at the staff
10 report, there's standard language in there and the
11 standard language in Condition 9 talks about approval
12 of this request does not address mitigation of the
13 project's vehicular or pedestrian traffic impacts,
14 because this property was part of the original DRI and
15 traffic was indeed reviewed extensively and that
16 wouldn't necessarily be true; and Condition 10, I
17 don't know that golf courses are part of the 2020
18 allocation, but there was a commitment for 2020
19 allocation for the development of Pelican Landing, so
20 it's a little different than other projects. I'm not
21 certain that that's applicable either, and I wouldn't
22 want to tell you which amendment, but I know that
23 during one of the amendment cycles Ms. Collins from
24 the County Attorney's Office revised the language from
25 the 2010 allocation to the 2020, so it's been reworded

1 but it's still in there.

2 And that concludes our presentation and case in
3 chief -- or maybe not. Mr. Griffith is here. He
4 would like to say something.

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1 MR. GRIFFITH: Good morning. My name is Ed
2 Griffith. I'm a vice president with WCI Communities
3 and I have been with the company over 12 years. I am
4 an officer of the company, so I guess I can say --

5 MS. MONTGOMERY: That's why we let him talk
6 whenever he wants to.

7 MR. GRIFFITH: I guess the one thing we want to
8 say is the importance of this, and that is that the
9 Hyatt Resort, and we call it resort golf, is a major
10 component of it; and so without golf, I think we would
11 have a new meaning of what the resort is, so in
12 keeping with that, this 60 acres is vital to the
13 completion of the overall 18 holes and I just wanted
14 to imply how that relates to the economics of the
15 hotel and the resort and the importance of the
16 completion of being able to do the 18 holes with the
17 land we have, so --

18 THE HEARING EXAMINER: Okay.

19 THE WITNESS: Thank you.

20 MS. MONTGOMERY: There is one other thing. I
21 think I forgot to qualify Mr. Martin as an expert,
22 but --

23 THE HEARING EXAMINER: You did forget to ask on
24 him.

25 MS. MONTGOMERY: But I would ask that he be

1 qualified as an expert because he has been qualified
2 here before at least three or four other occasions
3 that I know of.

4 THE HEARING EXAMINER: Now, you also did not ask
5 for Mr. Means either.

6 MS. MONTGOMERY: Yes, I did.

7 THE HEARING EXAMINER: I'm sorry. I have got you
8 down here. I missed that one.

9 So, all right, any objections to Mr. Martin being
10 accepted as an expert in water quality issues?

11 MR. PAVESE: No.

12 THE HEARING EXAMINER: Okay. Because I always
13 write it down so I remember.

14 MS. MONTGOMERY: I usually write it down, but I
15 wrote it down and forgot to ask him.

16 THE HEARING EXAMINER: Okay. Staff's ready to
17 make a presentation?

18 MR. PAVESE: For the record, Mike Pavese, Lee
19 County Development Services; and I will be very brief.

20 This case as most go is pretty straightforward.
21 It's pretty easy.

22 This development, Pelican Landing, essentially
23 from the time of its conception was contemplated to be
24 a residential and golf course community, although this
25 particular parcel wasn't designated for golf course

1 uses at that time. It certainly is consistent with
2 the overall development plan that WCI has down there;
3 and I would say that if we -- if the county has a
4 problem with the mixed use of golf course and
5 residential development, especially here at this stage
6 of the game, it's a little bit late.

7 A couple things I wanted to go over. The project
8 as proposed is consistent with land development code
9 regulations and will be consistent with those
10 regulations at the time of local development order
11 application unless approved as -- unless approved
12 according to deviations in this planned development.
13 I don't have any concern about its consistency with
14 the comprehensive land use plan. It was previously
15 found consistent and the change proposed as part of
16 this amendment is not going to alter that finding.

17 Staff agrees with the applicant's request to add
18 the canoe park use to the list of permitted uses as
19 referenced by Mr. Ernst earlier.

20 Kim Trebatoski is going to discuss the revisions
21 to the environmental conditions and how that came
22 about.

23 The only other thing I wanted to address was in
24 relation to Conditions 9 and 10 that Ms. Montgomery
25 referred to.

1 Condition 9, that is a standard condition. And
2 Ms. Montgomery referenced the DRI mitigation that
3 currently exists for this entire project; but I would
4 maintain that this, the DRI mitigation, deals with
5 significantly and adversely impacted roadways that are
6 located outside of the development and are
7 significantly and adversely impacted by the proposed
8 development. Condition 9 really refers to local
9 development order approval and any type of
10 improvements that might be required at the time of
11 local development order approval, so I would ask that
12 you keep that condition in there.

13 And Condition 10, I tend to agree with Miss
14 Montgomery on this one. I don't know that it's really
15 required. It is a standard condition. I do remember
16 that we had this discussion as part of a previous
17 amendment, although I don't remember which one it was
18 either. I'm thinking that it was the amendment that
19 we did to decrease retail and increase office up at
20 the --

21 MS. MONTGOMERY: Probably Number 6.

22 MR. PAVESE: -- U.S. 41. I can't remember what
23 case number that was.

24 MS. MONTGOMERY: Eight, the parking lot; 7,
25 Kersey Smoot.

1 THE HEARING EXAMINER: What was Bay Winds?

2 MS. MONTGOMERY: Seven is Bay Winds.

3 MR. DOLAN: Eight was the parking lot. This is
4 9.

5 MR. PAVESE: The 140 was 9.

6 THE HEARING EXAMINER: Bay Winds wasn't a DRI
7 amendment.

8 MS. MONTGOMERY: Yes, it was. For some reason I
9 think it's 6, 6 or 7.

10 THE HEARING EXAMINER: Tina is a whiz. She'll
11 find it.

12 MR. PAVESE: If she can't, I'll help her.

13 THE HEARING EXAMINER: If not, Donna Marie will
14 remember.

15 MR. PAVESE: It wasn't the last planned
16 development amendment, but it was the one before that.

17 THE HEARING EXAMINER: Okay.

18 MR. PAVESE: I'll take any questions that you
19 might have, but I really don't have a whole lot to say
20 about this.

21 THE HEARING EXAMINER: Questions by the County
22 Attorney?

23 MR. WHITE: None, Madam Hearing Examiner.

24 THE HEARING EXAMINER: I don't think I have any
25 questions either.

MS. MONTGOMERY: No questions.

THE HEARING EXAMINER: Okay.

1 MS. TREBATOSKI: For the record, I'm Kim
2 Trebatoski with the Division of Planning.

3 I have -- the documents I have with me are the
4 revised staff report dated May 23rd and the revised
5 Condition 8 dated May 25th. Revisions came about to
6 the conditions when the County Attorney's Office
7 raised some questions of clarification as to meanings
8 and intents of --

9 MS. MONTGOMERY: We wanted to shoot the County
10 Attorney's Office, by the way, when they did that.

11 MS. TREBATOSKI: -- of the conditions so that
12 they will be able to be disseminated by our
13 development order review staff, who do not take part
14 in the rezonings, and we need to be sure that they can
15 understand the conditions when they come forward; and
16 also staff is continually trying to improve the way
17 conditions are written.

18 Eight(a), on the May 25th condition, I -- when I
19 rewrote it, I thought I was clarifying issues; and it
20 raised a whole bunch more issues, so I went directly
21 to natural resources. Through the process,
22 environmental sciences staff often writes the
23 conditions for the monitoring; but natural resource
24 department is who reviews the monitoring and all those
25 plans, so I went and spoke with Roland Ottolini and

1 asked him what he thought about the original
2 condition, if it is enforceable and such. And he said
3 why, so I went back to what the direction from natural
4 resources --

5 THE HEARING EXAMINER: Okay.

6 MS. TREBATOSKI: Conditions 8(b) and (c),
7 although they may be somewhat more stringent than the
8 original planned development, are consistent with the
9 latest conditions that county staff has been placing
10 on the most recent golf courses along Estero Bay; and
11 although the DRI may not have been that stringent,
12 county staff does have the option to place conditions
13 under the planned development order and I would
14 contend that the condition of the minimum hundred foot
15 on average setback from the saltwater wetlands is met
16 on their design and I would assume there's a purpose
17 for that partially being water quality; and those are
18 what all these conditions are all about is protecting
19 water quality.

20 As to 8(c) and how Mr. Means described the
21 outfall, the purpose behind that Condition 8(c) is if
22 treated runoff is going to be discharged into
23 saltwater wetlands, we wanted the water to be spread
24 out instead of coming through a concentrated zone,
25 which that influx of fresh water could result in

1 invasion of cattails or other freshwater plants that
2 would change the system and most likely be problematic
3 to the golf course owner as well. Outfalling into an
4 existing canal system where discharge is taking place
5 from the site at this time is in compliance with this
6 condition.

7 THE HEARING EXAMINER: Okay.

8 MS. TREBATOSKI: I don't have any further
9 comments. I'm just here to answer questions.

10 The conditions, as I said, on the golf course and
11 the water quality monitoring and such are all measures
12 to protect our Outstanding Florida waterways and also
13 serve to protect the developer from being accused of
14 pollution that he or she is not the cause of.

15 THE HEARING EXAMINER: Okay. Questions of this
16 witness by the county?

17 MR. PAVESE: No.

18 THE HEARING EXAMINER: Applicant?

19 MS. MONTGOMERY: No. We asked all of our
20 questions via e-mail to get to this point.

21 THE HEARING EXAMINER: Okay. Any other county
22 witnesses?

23 MR. PAVESE: No, ma'am.

24 THE HEARING EXAMINER: All right. I notice that
25 we have a few members of the public sitting here. Did

1 you all wish to speak or are you just here to listen?

2 All right. The only thing that I ask is to
3 please keep your comments germane to the issue at
4 hand: Will the golf course use on this parcel have an
5 effect on your property? Okay?

6 So who wants to go first?

7 MS. ANSTY: I'll be happy to.

8 For the record, my name is Jane Ansty, A-N-S-T-Y.
9 I am a property owner in Pelican Landing. My address
10 is 25010 Cypress Hollow Court, Number 204. Bonita
11 Springs; and I am a full-time resident in Pelican
12 Landing.

13 Mr. Dolan in his presentation referenced the eco
14 park, and I have some questions about the eco park as
15 it relates to the golf course in this fine resort.
16 And I'm not opposing the Hyatt being built, I'm not
17 opposing a golf course resort; but there's some impact
18 to the eco park and I think --

19 MS. MONTGOMERY: Can I stop for a moment?

20 THE HEARING EXAMINER: Yes.

21 MS. MONTGOMERY: I don't believe that this
22 rezoning has any impact on the eco park. I believe if
23 you look up on the master concept plan, you can see
24 where the eco park is located. This may very well be
25 in the very near future coming to a hearing near you.

1 THE HEARING EXAMINER: Near me? Like I'm in the
2 other room and somebody else is in here?

3 MS. MONTGOMERY: Or even closer. That may raise
4 those questions of that regard, but this isn't that
5 hearing.

6 THE HEARING EXAMINER: Let me do ask, Ms. Ansty,
7 now, the questions that you have with the eco park, it
8 relates directly to the hotel development?

9 MS. ANSTY: Well, the questions relate to the
10 existence of the eco park and how the eco park -- Mr.
11 Dolan referenced that the eco park --

12 THE HEARING EXAMINER: The gopher tortoises would
13 be moved to the eco park.

14 MS. ANSTY: A primary receptor for that.

15 And he failed to talk about another primary
16 function of eco park which throughout the one through
17 nine DRI amendments and various zoning issues has not
18 been properly addressed, and that's the focus of my
19 questioning today.

20 THE HEARING EXAMINER: I can't let you ask the
21 questions, all right? The eco park is not an issue in
22 this hearing; and if your concerns were regarding what
23 was going to happen to the gopher tortoises or any
24 other critter that might be on the 60 acres and having
25 them moved to the eco park, that would be one thing.

1 THE WITNESS: I can phrase my comments to
2 accommodate that condition.

3 THE HEARING EXAMINER: Well -- but the only thing
4 is, I mean, the true intent that I think you're trying
5 to get on the record is something dealing with the use
6 of the eco park, and that's not an issue here. The
7 fact that they are fixing to pick the critters up and
8 move them over there is one thing, but the actual use
9 or the benefit or the detriment to the eco park is not
10 an issue in this hearing.

11 So rather than -- it's really irrelevant. If you
12 would like to talk to Terry or some of them off the
13 record, I have no objections if you can run them down
14 and get them to talk to you or whatever; but I really
15 feel that the questions or the information that you're
16 trying to elicit is going to be irrelevant to my
17 decision on this case, my recommendation.

18 MS. ANSTY: Can I ask you a question to help
19 clarify for me?

20 THE HEARING EXAMINER: Yes.

21 MS. ANSTY: So that I will know the correct venue
22 so that my comments will be on the record, because I'm
23 certainly not interested in off-the-record comments
24 when, Miss Montgomery, you're indicating that sometime
25 in the near future there will be --

1 MS. MONTGOMERY: I think there may be. I'm
2 anticipating there may be.

3 MS. ANSTY: Are you referencing when an
4 additional nine holes are coming into the golf course?

5 MS. MONTGOMERY: Tell you what I'm trying not to
6 do. I'm trying not to discuss what may be a future
7 rezoning hearing that hasn't been properly advertised
8 and properly noticed and having any impact
9 predisposing either one of the Hearing Examiners one
10 way or the other because that would be unfair to us
11 and unfair to you and I'm trying not to do that. So I
12 just want to leave it out there. There very well may
13 be an opportunity in the future where whatever
14 questions you have regarding the eco park and golf may
15 be germane; I just don't believe it is germane.

16 MS. ANSTY: As you can appreciate, it's very
17 difficult for common citizens to properly interpret
18 public notices and understandings of when to make
19 public comment; and in the pure interest of helping
20 the public know when to properly speak, I would like a
21 little more assistance than what I'm getting.

22 MR. PAVESE: You can talk to me after the hearing
23 if you like and I think I can probably help you.

24 MS. ANSTY: Help me in identifying when I can
25 present public hearing regarding the eco park?

1 MR. PAVESE: Yes, ma'am.

2 MS. ANSTY: Thank you.

3 MS. MONTGOMERY: In fact, I'm sure Mike can help
4 you.

5 THE HEARING EXAMINER: Thank you.

6 Anyone else wish to speak?

7 MR. BASINAIT: For the record, Charles Basinait
8 with Henderson, Franklin. I'm here to represent the
9 interest of Hyatt. I don't have anything to say other
10 than to just note for the record.

11 Thank you.

12 THE HEARING EXAMINER: Okay. You couldn't decide
13 which one of these you wanted to check?

14 MR. BASINAIT: No, I couldn't. The longer I
15 listened to Neale, I wasn't sure.

16 THE HEARING EXAMINER: Well, you never made it
17 all the way over to against.

18 MR. MASICK: I'm filling out my form.

19 MS. MONTGOMERY: Did you want to speak?

20 MR. MASICK: Yes, ma'am, please.

21 THE HEARING EXAMINER: He's just going to give me
22 a completed form so I know who he is.

23 MS. MONTGOMERY: Are you in favor of this golf
24 course, Mr. Basinait?

25 MR. BASINAIT: Of course.

1 MR. MASICK: I'm Larry Masick (Phonetic
2 spelling). I'm vice president and project manager for
3 West Bay Club. We're the 886-unit planned residential
4 community lying north of the properties which are
5 being considered here.

6 I just had a couple of quick questions that I
7 would like to ask and perhaps get a little more
8 information from the consultants, folks at WCI.

9 I would like if someone could give us a little
10 more information as to how you plan to irrigate the
11 golf course and what your water sources would be,
12 whether it's going to be reused water or groundwater,
13 these type of means of irrigation; and then also I
14 have a question as it pertains to I think the old
15 Kersey Smoot.

16 MS. MONTGOMERY: I'm going to object to any
17 questions on Kersey Smoot because we're not here on
18 Kersey Smoot.

19 THE HEARING EXAMINER: Let's find out what his
20 question is first.

21 MR. MASICK: I'm just trying -- from the maps
22 that I have up here, I'm having a little bit of a
23 difficult time finding my property boundary in
24 relation to you all's property boundary and I was just
25 wondering if you could show me the area of the Kersey

1 Smoot PUD and where the time share units were going to
2 be built and how it pertains to the rest of it.

3 That's my two questions.

4 THE HEARING EXAMINER: Okay.

5 MR. PAVESE: Can you see this, sir?

6 THE HEARING EXAMINER: I have to tell you I'm not
7 real good with turning those things over and inside
8 out. I get lost real quick.

9 MR. ERNST: In the green here is Kersey Smoot. I
10 believe the West Bay property is here, time share pod
11 generally right here. All that is surrounded by golf
12 course. So adjacent to West Bay would be golf course.

13 MR. MASICK: And then I'm assuming that this is
14 the wetland area that adjoins the wetland area that we
15 presently have which goes up here?

16 MR. ERNST: Right here.

17 MR. MASICK: And, for the record, I'm not here in
18 objection to the property. For the record, I'm not
19 here in objection. I just, as I said, would like a
20 little bit of further information if I could.

21 THE HEARING EXAMINER: Okay. Can someone answer
22 his question about the irrigation method?

23 MS. MONTGOMERY: Our experts will.

24 MR. MARTIN: Again, for the record, I'm Kirk
25 Martin with Missimer International.

1 Water resources in this area are fairly limited.
2 Obviously, we're near saltwater areas. We have done a
3 tremendous amount of testing on site just to be able
4 to obtain a marginal resource without adversely
5 affecting things. Right now there's an application to
6 the water management district which they have already
7 looked at and at this point are suggesting that
8 everything looks good to them, maybe some minor
9 tweaking.

10 Essentially, our water supply will come from
11 primarily the shallow aquifer system. There is a --
12 not on this piece of property but on another piece of
13 property there's a fairly high yield rock unit in the
14 shallow aquifer that produces very fresh water in the
15 capacity that meets the demands for this site.

16 THE HEARING EXAMINER: That raises a question for
17 me, then.

18 Kirk, there's a lot of houses in this area,
19 residential, that I believe are on wells. Is that
20 going to have an effect on their wells?

21 MR. MARTIN: No. Again, like I say, a lot of
22 design or a lot of testing first on site, holes in the
23 groundwater being pumped out and so forth, and then
24 specific design elements using computer models to make
25 sure there are not any adverse impacts.

1 Adverse impacts, according to water management,
2 includes impacts to wetlands, adverse impacts to the
3 groundwater system itself and adverse impacts to
4 existing legal uses. Those existing uses include
5 large suppliers and individual homes even though those
6 are -- they are protected under that permit process.

7 THE HEARING EXAMINER: All right. Any other
8 questions of this witness?

9 MS. MONTGOMERY: You got him to answer the
10 question I was going to ask him.

11 THE HEARING EXAMINER: All right. Anyone else
12 have any additional public?

13 Okay. Anything else from the applicant?

14 MS. MONTGOMERY: No, not at this time.

15 THE HEARING EXAMINER: All right. Is there -- is
16 there a roadway through to the site?

17 MR. DOLAN: Yes, a dirt trail road.

18 THE HEARING EXAMINER: So I should use one of the
19 county's vehicles and not my own?

20 MR. ERNST: Oh, yes.

21 THE HEARING EXAMINER: Okay. I will do a site
22 visit on this. I can't tell you when this is coming
23 out. I'll just be honest with you. The girls are
24 working now on a 17-taper. That's a hearing that Sal
25 had that we have 17 tapes on. I've got a couple that

1 are four or five-tapers.

2 You want to do a transcript?

3 MS. MONTGOMERY: Yes.

4 THE HEARING EXAMINER: I knew the minute -- if
5 you can get me a transcript by the end of next week,
6 I'll see if I can get this done before I leave. You
7 have got two weeks before I leave.

8 MS. MONTGOMERY: Because Mr. Basinait's clients
9 will be most happy if we got it done and I know Mr.
10 Griffith would be happy, so --

11 THE HEARING EXAMINER: All right. I'll do a site
12 visit then. I don't know when I'll do a site visit,
13 but I'll do a site visit, and then if you get me --

14 MS. MONTGOMERY: Here you go. Friday night, get
15 a picnic, bottle of wine, go out and do a site visit,
16 watch the sunset. It will be great.

17 THE HEARING EXAMINER: Watch for snakes,
18 whatever, alligators. Anything else?

19 MS. MONTGOMERY: Can't have it all.

20 THE HEARING EXAMINER: Anything else on the
21 record?

22 This hearing is closed, then.

23 Thank you.

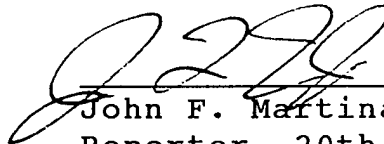
24 (Proceedings concluded.)
25

1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3
4 I, John F. Martina, Contract Court Reporter for the
5 20th Judicial Circuit of the State of Florida, do certify
6 that I was authorized to and did stenographically report
7 the foregoing proceedings and that the typewritten
8 transcript, consisting of pages numbered 1 through 59, is
9 a true record.

10 Dated this 30th day of May, 2000.

11
12 

13 John F. Martina, Contract Court
14 Reporter, 20th Judicial Circuit of
Florida, State of Florida at
Large.

15 My commission expires: 3-3-2001
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