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TRANSCRIPTS FOR

CASE NUMBER: DC12004-00028

VISTANNA RPD

LEE COUNTY HEARING EXAMINER MEETING

CASE NO: DCI2004-00028

APPLICANT NAME: KB Homes in reference to Vistana RPD

TRANSCRIPT OF PROCEEDINGS

Before Diana Parker, Chief Hearing Examiner of Lee County, held at the Hearing Examiner's Hearing Room, 1500 Monroe Street, Fort Myers, Florida, on September 22, 2004.

APPEARANCES:

CHARLES J. BASINAIT, Attorney at Law
HENDERSON FRANKLIN
1715 Monroe Street
Fort Myers, Florida;
on behalf of the Applicant.

JOHN J. FREDYMA, Assistant County Attorney
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on behalf of the Board of County Commissioners.

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Tony Palermo, Senior Planner
Lee County Department of Community Development
Division of Zoning

Alaina Ray, Environmental Planner
Lee County Department of Community Development
Division of Environmental Services

I N D E X

WITNESS:

APPLICANT:

Jon G. Hagan 5

STAFF:

Tony Palermo 52

THE HEARING EXAMINER: Good morning. I'm Diana Parker, Chief Hearing Examiner for Lee County. This is Wednesday, September the 22nd, Case Number DCI2004-00028, KB Homes in reference to Vistana RPD.

Okay. I need to swear in all persons who are going to speak in the hearing this morning, so if you're an attorney and speaking to facts, you need to raise your right hand to testify this morning.

(All witnesses were placed under oath by Hearing Examiner Parker.)

THE HEARING EXAMINER: Okay. Now, if I've not sworn you in and you need to speak after Staff and Applicant's presentation, let me know and I can swear you in at that time.

Okay. Applicants ready to go forward?

MR. BASINAIT: Yes.

THE HEARING EXAMINER: All right. State your name, please.

MR. BASINAIT: Good morning. For the record my name is Charles Basinait with Henderson Franklin. With me today is John Hagan of Banks Engineering, Ted Treesh of Metro Transportation Group and Andrew Woodruff of Ken Passarella and Associates. We are appearing in support of the

Applicant in this matter, KB Homes.

The request is to rezone a fifty-seven and a half plus or minus acre site from AG-2 to Residential Planned Development for a maximum of 296 residential units. The project is located adjacent to Beth Stacey Boulevard in Lehigh Acres. We have reviewed the staff report and agree with Staff's recommendations of approval and do not object to Staff's conditions one through sixteen.

We also agree with Staff's recommendation of approval regarding deviations 2 and 3. The only point of disagreement that I think we have here today is with respect to the Staff recommendation on deviation number 1 and we have a difference of opinion as to where the appropriate emergency access point should be. We're suggesting that the access point should be located adjacent to the main entrance, and you'll see why we say that when Mr. Hagan testifies, versus the Staff proposal which is suggesting that it be located somewhere I think north of the main entrance along Beth Stacey Boulevard, I think it's right in this area here (indicating). That really is the only point of disagreement that we have.

At this point what I would like to do is to

have Jon Hagan come up. Jon is going to go through the Master Concept Plan for you, compatibility issues, Comprehensive Plan issues, hopefully be able to answer all your questions, but we do have Ted Treesh, as I said, from Metro Transportation Group and Andrew Woodruff with Passarella and Associates here to answer either the traffic or environmental issues and certainly we can answer the engineering questions if you have them, also.

THE HEARING EXAMINER: Okay.

MR. BASINAIT: Thank you very much.

Jon, would you come up, please?

Thereupon,

JON HAGAN,

a witness called by the Applicant and having been duly sworn, testified as follows:

EXAMINATION

BY MR. BASINAIT:

Q. Jon, when you're ready, please state your name, occupation and address for the record.

A. Good morning. For the record my name is Jon Hagan. I'm the director of planning with Banks Engineering.

Q. And the business address?

A. The address is 10511 Six Mile Cypress Parkway, Suite 101, Fort Myers, Florida, 33912.

Q. And have you been qualified as an expert in the field of land use planning in this forum previously?

A. Yes, I have.

MR. BASINAIT: Madam Hearing Officer, certainly we can go through Mr. Hagan's qualifications for you and Staff if they would like; I would simply like to tender him as an expert in the field of land use planning.

THE HEARING EXAMINER: Any objections from Staff?

MR. PALERMO: No objections.

THE HEARING EXAMINER: County attorney?

MR. FREDYMA: No, ma'am.

THE HEARING EXAMINER: All right. Accepted.

BY MR. BASINAIT:

Q. Jon, would you go ahead please and first of all describe the project and then go through the Master Concept Plan compatibility issues and consistency issues?

A. Certainly. As Mr. Basinait has said, we are requesting a rezoning from AG-2, which is an agricultural zoning district, to residential planned

development.

Over here on the zoning map exhibit that we have this property is made up of three parcels here which totals about -- I believe it's fifty-three and a half acres. Fifty-seven and a half acres, I'm sorry. It's located along Beth Stacey Boulevard, south of Homestead Road. Homestead Road connects into Lee Boulevard, which is a main intersection of Lehigh Acres.

What we're requesting is a residential planned development with 296 dwelling units. The property type that is going in this planned development is two-family attached dwelling units.

Just to go over the Master Concept Plan here a little bit that I have up on the wall here, as you can see, we've provided a very detailed Master Concept Plan, we've really kind of gone above and beyond what's required by the Land Development Code as far as detail in a Master Concept Plan. We've showed block configurations, streets, where the lakes are going to be, preserve areas.

The entrance to the development is going to be right here (indicating), approximately in the middle of the property. Over here is where the model locations are going to be. What we've also requested

is to have a temporary sales office; this is to sell the product that's going to be built in this development until the models are completed; once the models are completed then the temporary sales trailer will go away.

As I said, it's 296 lots that we're requesting on 57.53 acres, which equals out to 5.15 dwelling units per acre.

Also as part of this planned development, going back to the Master Concept Plan, we're asking for three deviations. The first deviation is for which requires two or more means of ingress and egress; we're asking to provide just one means of ingress and egress with some stabilized emergency access to that. I'll get into that in a little more detail later in my presentation.

The other deviations that we're requesting is for connection separation. One is for the temporary sales trailer and the other is for the main entrance. Both of those entrances are lining up across the street from existing roads, but as part of this request we needed to ask for deviations. However, we are lining up with roads across the street.

Next I'd like to get into Lee Plan compliance. The staff report cited several policies

and objectives of the Lee Plan that they stated we are in compliance with. I'm just going to go through those policies and objectives quickly and I have also included a few others that I feel we're in compliance with as well.

The first is policy is Policy 1.1.3, which is the central urban land use category. The location of this development, there are currently high levels of urban services in place to service the development. The central urban land use category allows a density range of four dwelling units to ten dwelling units per acre with a bonus of fifteen dwelling units per acre. As I said, we're at 296 dwelling units on fifty-seven and a half acres, which equates to approximately 5.15 dwelling units per acre, so we're at the low end of that density range in the central urban category.

The next policy is Policy 1.8.1. We are providing housing alternatives to the typical quarter acre and half acre subdivision lots. Lots in this subdivision are forty-two hundred square feet, which are well under the quarter acre and half acre subdivision lots. We're also providing a two-family attached dwelling unit product type, which is not your typical single-family residence.

Next, Goal 2, Objective 2.1, Policy 2.1.2,

Objective 2.2 and Policy 2.2.1. We're located adjacent or off of Beth Stacey Boulevard, which is an arterial right-of-way. There's water and sewer available to the site and will be provided by Florida Governmental Utility Authority. We're convenient to shopping. Just north on Beth Stacey Boulevard -- if we go back to the Master Concept Plan north on Beth Stacey Boulevard, as I stated, connects into Homestead Road. At that intersection and all along Homestead Road there's retail, banking, shopping, just about any type of commercial use that you may need to -- that will be available to the residents of this development.

There is fire and police protection in place to service the development and we're compatible with the surrounding land uses, the surrounding zoning. With this residential planned development and the product and what we're doing we will be compatible with the surrounding zoning, and I'll get into that a little bit later in my discussion.

Next, Goal 4, Objective 4.1, Policy 4.1.1 and Policy 4.1.2. We are requesting a residential planned development zoning district. This planned development has been designed to enhance the development and provide open space and buffers. We're providing the

efficient and safe flow of vehicles and pedestrians within the development and there will be sidewalks within the development to provide safe walkways for pedestrians and residents of this development.

Next I'd like to talk about Goal 5 and within that goal, Policy 5.1.2. There are no physical constraints or hazards that exist on the property. We're not located in the coastal high hazard area or anything of that nature.

Next I'd like to talk about Policy 5.1.3. As I just stated, this development is close to shopping, schools, parks and social services.

Policy 5.1.4. The property is not in an airport noise zone.

Policy 5.1.5. As I stated before, this development is compatible with the surrounding zoning and the surrounding development, and just to go through what is surrounding this property a little bit, first to the north of the property -- and to go over to the aerial here -- to the north we have social service types of uses. That property is zoned CFPD, which is community facilities planned development and AG-2, which is agricultural. There is, as I said, social services and a daycare facility in there.

To the south we have a mixed use planned

development which is known as Copperhead Golf Course to the south here. This golf course was approved for -- or this development was approved for commercial uses, a golf course as well as different residential dwelling units such as single-family, multifamily, two-family attached. In looking at the Master Concept Plan for this Copperhead Golf Course, this first tract, which is right in here (indicating), this tract here is slated to be commercial development.

THE HEARING EXAMINER: That's the tract that fronts right on Beth Stacey?

MR. HAGAN: Yes, ma'am, that fronts right on Beth Stacey.

And then next to that tract is, as you can see from the aerial, part of the golf course.

Going next east from the golf course tract here the Master Concept Plan shows this as being multifamily development.

THE HEARING EXAMINER: Okay.

MR. HAGAN: Adjacent to that we have another golf course tract, which is as the aerial shows built as a golf course, and then adjacent to that to the east is another residential tract of this development.

I'd also like to point out you can see, as

shown on this aerial, that this road, the Leatherwood Loop (indicating), this road currently ends right here, but the Master Concept Plan shows it from this intersection here to continue north just about to the property line of our development and then go east right above this golf course hole right here and then come down south to service this residential area there.

This development was approved for 990 dwelling units, and as the staff report states that with the acreage and the density of this development with the 990 dwelling units, they're at about 3.4 dwelling units per acre.

I also did a little bit of research myself on this development. You know, being the golf course, you know how the golf course obviously takes up a lot of land so I just wanted to do some calculations of approximate densities of the actual tracts that are going to be developed with residential multifamily, two-family attached development. According to the Master Concept Plan where I got the acreages from, if you take out the golf course, clubhouse and the aqua range, as well as the commercial development, you get an acreage of approximately 105.8 acres, and that's going to

be -- that 105.8 acres is the residential development. If you use that number, their density on the residential portions of the site is approximately 9.35 dwelling units per acre.

Now, granted, the reason I did this was to compare somewhat apples to apples as far as the residential tracts of this development and the residential tracts of our development, but granted, when this was approved they are allowed to use the golf course in their density calculations.

But I just thought it was interesting to see if you take out the golf course really what they're at.

BY MR. BASINAIT:

Q. Jon, do you recall the square footage on the commercial that was approved as part of this?

A. I'm not sure of the square footage as far as the intensity. I know there's ten acres of commercial development, but I could locate that resolution real quick.

Q. That's okay. We'll get back to that if we need to. Go ahead.

A. Another thing I did in kind of analyzing the density on this site; as I said, you know, with the

golf course it's at 3.4 dwelling units an acre. I left the golf course in, took out commercial and it really goes up to about 3.5 dwelling units per acre. I just thought that it was an interesting comparison to look at the residential tracts but then look at the overall development as well.

But with our density of 5.15 dwelling units I think we are definitely compatible, we're at the low end of the allowable density range and I think our development will compliment this development.

To the east of our property and to go back to the aerial here -- well, first off I'll go to the Master Concept Plan that I have up here. You can see our residential tracts stop right here (indicating), and from these lot lines right here on the east side of our development to the actual property line of our development we have approximately 160 feet of a preserve area. Adjacent to that preserve area to the east of our property line is a hundred foot canal that's called Yellow Tail Canal Extension. And then from the east of that canal is where the residential tracts start, and these are developed with single-family residences. As you can see, we have a two hundred and sixty foot buffer, basically, from the residential tracts.

Additionally, these residential tracts, according to the staff report and in looking at the lot sizes on the property appraiser's records, they're approximately seventy-five hundred square foot lots, which puts them at a density of about 5.8 dwelling units per acre, so we feel that at our 5.15 dwelling units per acre that we are compatible, not only with the density with that residential tract, but with the very extensive buffer that we're providing, the hundred and sixty feet along with the hundred foot Yellow Tail Canal, we feel that sufficiently buffers the residential areas from our development.

Q. Jon, what is the size of that preserve area that you were just outlining for the Hearing Officer?

A. The entire preserve area is 9.47 acres. As I said, we have a hundred and sixty feet from our lot lines to the property lines on the east, but part of that acreage does encompass some of the preserve that comes up on the north of our development and down along the right-of-way on Beth Stacey as well as on the south and along the right-of-way on Beth Stacey.

Q. So it's approximately nine and a half acres total?

A. So it's approximately nine and a half acres total.

Q. Okay. Thank you.

A. Yes.

To the east of our development is Beth Stacey Boulevard, which I stated was an arterial right-of-way, and then on the other side of Beth Stacey Boulevard is some existing conventional zoning districts, going back to the zoning map you can see along Beth Stacey Boulevard we have a lot of RM-2 zoning districts, which is a residential multifamily zoning district in the Land Development Code.

Some of that property has been developed. Starting with the north we have Sunset Lake Condominium, which is this development tract right here (indicating). That development is developed at -- or so far according to the staff report developed at 9.3 dwelling units per acre.

To the south of Sunset Lake we have Stone Edge Condominiums, which is this tract right in here on the zoning map; on the aerial you can see it right in here. That development is developed at nine dwelling units per acre.

And just on a side note, going back to the Sunset Lake, I just want to clarify one thing. This isn't built out yet, but it was approved at the density that I said.

South of Stone Edge we have Camelot Gardens, which going back to the aerial is right in here (indicating). That development is built in there at approximately 9.8 dwelling units an acre. And then south of that we have Glendale Village, which is right here on the aerial and you can see that there's existing buildings and that's an existing development and they are developed at 7.2.

THE HEARING EXAMINER: Okay. Then there's that one vacant parcel right across or between the two developed areas, or it appears to be vacant from where I'm sitting.

MR. HAGAN: Correct. This is a vacant parcel right in here (indicating).

THE HEARING EXAMINER: Is there any development approval on that yet, Jon?

MR. HAGAN: Not that I'm aware of, but as you can see on the zoning map, it's in an existing RM-2 zoning district. Being a conventional zoning district they can develop it up to the ten dwelling units per acre allowed in the central urban land use category; obviously site design really drives your density a lot of times.

THE HEARING EXAMINER: Right. Right.

MR. HAGAN: But it's got a conventional

multifamily zoning district.

THE HEARING EXAMINER: Okay.

MR. HAGAN: So as you can see, there's kind of a wide range of density around this development. The single-family subdivision to the east of us is a little bit higher density, but, you know, basically at the same density that we're requesting to the north you have the social services and the daycare type uses. To the south is the mixed use planned development, which I said is approved as a golf course at 3.4 dwelling units per acre.

Across the street on Beth Stacey Boulevard is where the higher densities are, so there's really a mixture of density and a pretty wide range, but we feel that our development at 5.15 dwelling units per acre is compatible with the surrounding uses, as well as the surrounding densities.

The next policy I'd like to talk about is Policy 5.1.7. The community's facilities will be easily accessible. In our development -- to go to the Master Concept Plan here we're providing a recreation area here (indicating). Basically this area is going to entail a parking lot with a pool and then just a small building that's going to

have bathrooms in it for the residents to use. There's going to be sidewalks provided within this development so all the residents of this development will have easy access to the recreation area via internal sidewalks. However, we are providing a parking lot in case some of the residents want to drive up there; with small kids sometimes it's easier just to drive than it is to walk them.

THE HEARING EXAMINER: Okay, so this development then is going to be actually a family development, it's not going to be age restricted like some of -- I think the development to the north up here past the CFPD. I think that area in the Woodward Street area, if memory serves me correctly I think that is a senior citizen assisted living or independent living. I did a rezoning I think on the piece behind what you were just showing, but I think that's all senior citizens.

MR. HAGAN: Yeah, in driving out there it appears to be that type of development in here.

THE HEARING EXAMINER: Okay.

MR. HAGAN: But yeah, I'm not aware of any age restrictions or anything of that nature for

our development.

THE HEARING EXAMINER: Okay. All right. When I was reading this and it said tot lot I figured well, it could be grandkids, I suppose, but not many seniors are going to be playing in the tot lot, you know.

MR. HAGAN: They like to swing, too, you know.

MR. BASINAIT: Careful. Stick to the facts, Jon.

MR. HAGAN: Next I'd like to talk about Standard 11.1, which is water. As I said before, we're connecting into an existing public water system provided by the Florida Governmental Utility Authority. Along with that, Standard 11.2, which is sewer; we're connecting into an existing sewer system provided by Florida Governmental Utility Authority.

Standard 11.3 is traffic. The traffic impact statement shows that Beth Stacey Boulevard will operate at an acceptable level of service, which it shows it will operate at level of service C with this development built out at 296 dwelling units.

Standard 11.4, the environmental. As I

stated, we're providing approximately 9.47 acres of native vegetation preserve, as shown on the Master Concept Plan here (indicating), along with open space.

Goal 41, Policy 41.2.3, Objective 41.3, Policy 41.3.6 and Policy 41.3.11, this deals with storm water management. The storm water management system will be designed in accordance with South Florida Water Management District so we'll be in compliance with these policies, objectives and goals of the Lee Plan.

BY MR. BASINAIT:

Q. Jon, let's go back to the traffic for a second. Is it fair to say that both before and after the project it will operate at level of service C, Beth Stacey Boulevard?

A. That is correct. The traffic impact statement shows that it's currently operating at a level of service C and it will continue to operate at a level of service C once this development is built.

Q. Okay. Thanks.

A. Lastly is Policy 100.9.5. This development will be compatible with the area's existing character of single-family, multifamily, as well as commercial, social services, uses that are -- have been approved

or are existing in this area.

Next I'd like to talk about compliance with Land Development Code Chapter 34-145(d)(3). Just to run through this quickly, as I just demonstrated, we are consistent with the Lee Plan as stated by the several policies, objectives and goals that I just mentioned.

This request will meet or exceed all performance and location standards set forth for the potential uses allowed by this request. This request is compatible and consistent with the density, intensities and general uses set forth in the Lee Plan as I just demonstrated. We're compatible with existing and planned uses in the surrounding area.

We will not place an undue burden upon existing transportation or planned infrastructures.

We will not adversely affect environmentally critical areas and the proposed use is appropriate in the subject location and finally, urban services are available and adequate to service the proposed land use, which is the two-family development.

Next I'd like to talk about the staff report. Just a couple of quick corrections that I'd like to point out on the staff report. On page 5 of 12 deviation 1 references Land Development Code Section

34-1091(3). That should be Land Development Code Section 34-291(3).

THE HEARING EXAMINER: Two?

MR. HAGAN: Yes, ma'am, 291.

THE HEARING EXAMINER: Okay.

MR. HAGAN: And then on page 9 of 12 in approximately the middle of the page it references Policy 5.1.4, and that really is Policy 5.1.3.

THE HEARING EXAMINER: Okay.

MR. HAGAN: As Mr. Basinait had stated, we are in agreement with conditions one through sixteen of the staff report. The only thing that we are in disagreement with is we asked for the deviation that requires two or more means of ingress and egress into the development. Staff approved this deviation; however, they provided two conditions upon approval.

MR. BASINAIT: Jon, just -- if the Hearing Officer would turn to page 5 of 13 down at the bottom it references deviations. That's what he's looking through right now.

MR. HAGAN: I'm sorry, yes, on the bottom of page 5 of 12 and then at the top of page 6 of 12 are the two conditions that Staff --

THE HEARING EXAMINER: Right.

MR. HAGAN: -- provided.

Basically what the condition says is Staff wanted -- we wanted to provide the second means of ingress and egress though a stabilized access at the main entrance of the development. Staff's conditions would rather us provide it either to the north or to the south. In reading that, they basically just want it away from this area in here (indicating).

MR. BASINAIT: Jon, I'm going to go ahead and give a copy of this to the Hearing Officer.

THE HEARING EXAMINER: Okay.

MR. BASINAIT: Make it a little bit easier to follow.

MR. HAGAN: And then this is an exhibit showing the entrance on what we're proposing. Basically what we have here shown on this exhibit is we have two twenty foot lanes coming into the entrance of the development as well as two 20 foot lanes coming out of the development, along with a 10 foot median and then a 20 foot stabilized access on both sides of the entrance.

THE HEARING EXAMINER: Okay.

MR. HAGAN: That equates to approximately 130

feet, which is a very substantial entrance. We feel that the second emergency access entrance is appropriate here. We feel that it would be -- it's easier for the residents of this development, as well as the emergency vehicles that may need to come to this development to have the -- to go back to this exhibit, showing the entrance, it's a lot easier for them to find. We have basically forty feet on both sides as far as pavement is concerned along with stabilized access on the north and south, twenty foot stabilized access on the north and south.

You know, Staff didn't really have a problem with the stabilized access, it's my understanding what their problem was is they just wanted it away from the entrance. We feel to put it up here, to try and put it between two lots it may cause some confusion if there is an emergency. We just feel that it better serves the development as well as emergency vehicles if we have access at the entrance. We're providing sufficient room. I just don't think that there's, you know, trees falling down or something of that nature, you know, I highly doubt there's going to be any 130-foot trees in this area.

BY MR. BASINAIT:

Q. Jon, let's talk about that for a second. Is it accurate to say -- first of all within the right-of-way itself will there be any trees planted in connection with this development?

A. There will be some trees planted along the right-of-way.

Q. In terms of the right-of-way that is the entry way to the subdivision?

A. Correct. Well, within the twenty foot stabilized access there will not be any plantings at all. As far as the ten foot median, you'll have your typical, you know, entrance sign, you know, shrubs, maybe some small trees of that nature.

Q. At best those would be mid-story, I presume?

A. Correct. With that just ten foot wide I don't think you're going to want to plant really big trees in there, there's just not enough area in there, so it would be more of the smaller trees than the big large trees.

And then as far as on either side of the -- on the stabilized access there's -- you know, there's a little bit of room, but I don't anticipate any big trees necessarily being planted in there.

Q. Again, at best those would be mid-story, I

presume?

A. Correct. There wouldn't be any tall trees and with the -- you know, with the two lanes coming in, the median, the stabilized access, we have 130 feet, which is very substantial. It would provide sufficient area for emergency vehicles to get in or residents to get out and it would also be easy for them to find, they wouldn't have to be driving around going is that it and different things of that nature.

THE HEARING EXAMINER: Is it going to be identified in some way, though? I mean you've got your entrance. Is the emergency access going to be identified in any way from the roadway or from internal to the project?

MR. HAGAN: It is my understanding that the emergency access ways do have to be identified in some way, whether they be markers or something, obviously some type of marker that the emergency vehicles or residents can drive over. It's not permanent.

MR. BASINAIT: And understand that we're not asking for a deviation from any markings of that nature, we're simply asking for the location to be somewhat different than what the Staff has requested.

THE HEARING EXAMINER: Okay. And you're planning to use the pavers that let the grass grow up through it or are you planning to -- you said stabilized, but I mean what are we talking about, stabilized?

MR. HAGAN: I'm not sure, you know, exactly what type of stabilized. It could either be some kind of hard subsurface that allows grass to grow on top of it, but it's definitely just not going to be grass and dirt, whether it be the pavers that the grass grows through or a stabilized subsurface that grass can grow on top of.

MR. BASINAIT: Typically I think you're going to find that many of these stabilized areas are not the actual brick stabilized areas, they're grass areas that have been stabilized subsurface.

THE HEARING EXAMINER: And the grass planted over top.

MR. BASINAIT: Yes, to allow for transportation over top. That seems to be a pretty standard feature in many developments.

THE HEARING EXAMINER: I was going to say otherwise if you have dirt hanging out there it's going to be real ugly.

MR. BASINAIT: They wouldn't let us do that

and we don't want to do that.

MR. HAGAN: I agree with that statement, too, we're definitely going to stabilize it so that if there is an emergency the vehicles can get in there, as well as residents getting out of the subdivision if necessary.

And to expand a little bit on what Mr. Basinait was saying, we're not necessarily saying we don't want to provide the second access, we just want to do it stabilized and adjacent to the entrance on the north side of the entrance as well as the south side.

THE HEARING EXAMINER: All right. Now let me go through this real quick. If I were to say okay, fine, I agree with Staff, you can't put the stabilized on either side, the emergency access, can you close down that emergency access? I mean not the emergency, I'm sorry, the entrance road, make it a little narrower and then actually transfer that width up between two lots so you wouldn't lose any lots up to the north or to the south so you would have a definite area that's been set aside? You know, I mean would that be possible in the site design without having to redo everything?

MR. HAGAN: I mean it would be possible, you know, to provide, you know, a twenty foot access up in here somewhere or wherever (indicating). I mean that would have to take some looking at and, you know, it would be possible, but like I said, we feel that if it was -- you know, if it was between two lots up here somewhere that it's just going to basically be an extension of the existing yards and it may be marked, but it also may be confusing in case of an emergency, whereas if everyone knows it's here at the entrance and not only do you have forty feet of pavement on each side but you also additionally have twenty foot of stabilized access on each side it would be easier to find and we feel safer for the residents to get in and out as they won't be driving around looking for another access point.

THE HEARING EXAMINER: All right.

MR. BASINAIT: Before we leave that I'm going to suggest to you that it would in fact be difficult to redesign that, that's a question that Jon hasn't had an opportunity to really explore, but I'm looking at the Master Concept Plan and I'm going to suggest to you given the curbs that have been set up and the way that the entryway is

designed it's going to be very difficult for us to move this emergency access to the north without losing essentially two lots because this is a duplex subdivision, essentially, and by doing that you're not just losing one, you're losing two.

THE HEARING EXAMINER: Okay.

MR. BASINAIT: And I think it's going to be difficult. Again, given the design of the entryway, I'm not sure you can change the design of the entryway that much short of just having one lane in and one lane out, which we don't want to do and the County really hasn't asked us to do. I think it would be tough to change it and still salvage that lot to the north.

THE HEARING EXAMINER: The next question that I had about that, too, was given just a twenty foot wide access way is that going to be -- looking at the curb you've got up here to the north and the street alignment and what not, is that going to be -- is the street going to be wide enough to handle a fire truck? I mean if a fire truck has to come in through the emergency access are they going to be able to make that turn?

MR. BASINAIT: Well that's going to be an issue because you have -- on either side of that

you would have a lot that they have the ability to plant up to the lot line and we can't tell them that they can't put trees there necessarily or fences, so that's certainly going to be an issue. If you look at the way that it's been designed down near the entryway, certainly you're going to have much more flexibility in terms of space constraints than you would have to the north of it, so you're right, that's a good point.

THE HEARING EXAMINER: Okay.

MR. HAGAN: And to expand on that a little bit, too, and these internal streets within here are forty foot right-of-way widths, not necessarily pavement width, but that is the right-of-way width.

THE HEARING EXAMINER: Okay.

MR. HAGAN: But other than that portion of the staff report on that requested deviation we are in agreement with everything else in the staff report. We agree with the findings and conclusions. We agree with the Staff's analysis of the Lee Plan considerations, their neighborhood compatibility discussion in the staff report, we agree with that and as I demonstrated, we're going to be compatible with the existing uses in the

area as well as future uses in the area.

We agree with the environmental discussion in the staff report as well as the traffic section of the staff report stating we're going to be -- Beth Stacey Boulevard will operate at an acceptable level of service.

BY MR. BASINAIT:

Q. Jon, in your role as a professional planner you've had the opportunity to review the staff report, you've had an opportunity to review the traffic analysis, the environmental analysis and had to do your own review with respect to the Land Development Code and the Comprehensive Plan. Is it your opinion as a professional planner that this particular request is consistent with both the Comprehensive Plan and the Land Development Code and that it's compatible with the surrounding development?

A. Yes, I do. It is consistent with the Land Development Code, the Lee County Comprehensive Plan, as well as surrounding development.

Q. Okay. Is there anything else you'd like to add at this point?

A. At this time I have nothing further, but I would be available to answer any questions if you have any.

THE HEARING EXAMINER: Any other questions?

MR. BASINAIT: I don't have any questions at this time.

THE HEARING EXAMINER: Okay. Staff, questions of this witness?

MR. PALERMO: No, ma'am.

THE HEARING EXAMINER: Okay. County attorney, questions?

MR. FREDYMA: Yes.

THE HEARING EXAMINER: John, you'll need to come up to the podium, please.

MR. FREDYMA: Just a couple questions, if I may, Madam Hearing Examiner. John Fredyma, Assistant County Attorney.

It shows on there a tot lot. I assume that's for children, a play area?

THE HEARING EXAMINER: I made the same assumption. They told me that some of the seniors might want to swing, too, you know.

MR. BASINAIT: Yes.

MR. FREDYMA: The question that relates to that, though, is how do you get there? Because I mean it appears that if you look very carefully that lot 70 and 71 appear to be slightly wider than some of the abutting lots, so is there an

intended access at that location? It doesn't show one on the MCP or at least not the copy that I have.

MR. HAGAN: For the record Jon Hagan with Banks Engineering.

That is something that I neglected to mention in my discussion. The tot lot shown back here in this preserve area (indicating), obviously it wouldn't be any kind of structures necessarily, building types in that tot lot. In discussions with KB Homes we're actually going to move that tot lot to this recreation area (indicating), we felt it would be better served in this area here. The access would be one reason. I mean we could put some kind of easement to let people access it back here, but --

MR. BASINAIT: We don't need to do that at this point.

MR. HAGAN: But we don't need an easement there because we're actually not going to put the tot lot there, we decided to put it up here with the recreation area.

MR. BASINAIT: We'll make that change to the MCP when we submit a revised MCP after the board hearing.

MR. FREDYMA: Is there space on the recreation area to also accommodate the tot lot, given what's drawn on there now?

MR. BASINAIT: Yes, there is.

MR. FREDYMA: Okay. The request is for 296 units; the MCP shows 292. In the staff report on page 7 of 12 at the bottom there's a sentence that reads, "Should the recreation area not be built approximately four units would fit, bringing the unit total to 296."

Is there an option with respect to whether or not the recreational area is going to be built? I'm asking the question.

MR. BASINAIT: And I'll answer the question. Yes, there is an option at this point; we may or may not construct it, that's why we allowed ourselves the opportunity to put the four lots in there if it wasn't constructed.

MR. FREDYMA: All right. Thank you.

And then my final question relates to the plan for the entrance that's been added this morning. There doesn't appear to be a cross section, so I guess one of the questions that I would have from a public health, safety and welfare standpoint is one of what about curbs,

sidewalks and drainage and how they affect the ability to have the adjacent area stabilized and still have it accessible for both fire, police, EMS and conventional vehicles.

MR. BASINAIT: Without having the cross section in front of me, all I can tell you is we've looked at those issues and we believe we can make that work and not create any internal difficulties, nor negatively impact health, safety and welfare issues.

MR. FREDYMA: The only concern I would have then, Madam Hearing Examiner, is that if you approve the requested deviation that's asked for by the Applicant I believe it would be appropriate to craft some conditions to at least ensure that it's constructed or usable in a manner that would be suitable.

MR. BASINAIT: Well, honestly, with all due respect, I think that's kind of overkill. We have to go in and apply for a development order. For things other than those things we've asked for a deviation from we have to comply with. First of all, we haven't asked for any deviation for any regulations John is alluding to here.

Secondly, the county is not going to let us

put in a stabilized area for emergency purposes that's unusable, they won't let us do it. It flies in the face of what the regulations say and what they are intending to say, and while I can understand what John is saying, the fact of the matter is I think that any conditions with regard to that are superfluous and it's just one more condition to add to a list. I mean we've already got the regulations in place; we either have to comply with them, we have to get a variance from them or we have to get a deviation from them. We haven't asked for any deviations or variances with respect to those kinds of construction activities.

MR. FREDYMA: I'll give you the basis for my concern. Something very similar was done with respect to the relocation of a portion of Horne Lane down off of Three Oaks Parkway by the Estero fire rescue district. What they did is they needed to accommodate the relocation of a roadway. They did that for the most part by putting most of the roadway through the parking lot. The last portion of the road, however, goes through a stabilized area that's now covered with sod. The problem is it's not readily apparent to anybody who comes through there that they can drive

through there. As a result, traffic from time to time will bottleneck and people will not know that they can actually go through the site.

As an aside, what's happened -- and this is sort of between the neighbors and the fire district -- they have had people who have driven through the sodded area and the fire district has called the sheriff's department and then they've gone after the folks who are driving through.

The concern is it's all well and good to have perhaps a stabilized area and that may be appropriate perhaps at another location, but it needs to be carefully or very -- what's the word I want? It needs to be obvious that that's what it's for, otherwise the problem is it won't be.

THE HEARING EXAMINER: Signage should take care of that, that's why I was asking about how they're going to know what this is and how are they're going to know they can use it.

MR. FREDYMA: Well, the question then comes back to feasibility in terms of again, if you have sidewalk, if you have curb, if you have drainage, it has to be something that can be traversed not only by larger EMS vehicles and fire trucks but also regular passenger vehicles. These are used

for a number of purposes primarily related to emergencies, but sometimes it may be just diverting traffic through there because another part of the access is unusable.

THE HEARING EXAMINER: Okay.

MR. BASINAIT: All I can tell you is number one, this is no different than any other project in Lee County, and I'm presuming here a little bit, but I'm presuming that we have regulations on the books that speak to emergency access points. We have to as part of our development order process show those emergency access points. I just cannot imagine that the county is going to approve those things if they're unusable, it doesn't make any sense. And there's mountable curbs and all sorts of things that can be done there.

I mean as long as we indicate that we agree with the condition relating to emergency access points and that we will provide those on either side of the main entrance, then all the county has to do is look at the zoning, which they do on a regular basis, decide that's where they're going to go and in our development order plans we'll show them and we'll I think have to show them in a

fashion that they are usable.

I just -- I'm sorry, but it just doesn't make any sense to me. John, I don't want to beat this to death.

MR. FREDYMA: No, I understand. The alternative -- and I don't know if it's been considered by Staff or the Applicant -- in other instances what they have done for other projects is rather than requiring a second access point they've simply required the divided access, much as what's depicted here, but then widened the actual entrance and exit lanes without having to have something outside of the actual traveled way, it's just divided.

THE HEARING EXAMINER: But how does that meet the requirement, though, John, for an emergency access? You know, I mean the requirement is to have two accesses, one primary --

MR. BASINAIT: Well actually that's not really the requirement. The requirement is to have a single access point, but on projects that are larger than a certain acreage it is up to the discretion of the director as to whether or not you have a second access point or an emergency access point.

THE HEARING EXAMINER: Right. Right.

MR. BASINAIT: They don't even have to require an emergency access point. The only time we're supposed to have to ask for a deviation is if the director says I think you need an emergency access or I think you need a second access point.

So I would argue with you whether or not we even need to ask for this deviation, but since it's in this format, we've done that and John's idea is a good one to the extent that we've already provided forty feet on either side of the ten foot divider median, which is already wider than what it would normally have to be for an entryway. We could provide one twenty-foot lane on either side; we've doubled that on both sides.

MR. FREDYMA: They've done that in other projects and that way they've negated the need for the actual second separate access, and again, because this is divided and you have larger lanes for ingress and egress then that has satisfied the requirement.

THE HEARING EXAMINER: Well I think we need to talk to Staff. I mean this is, you know, Staff's recommendation here. I think that this discussion is all fine and dandy, but, you know,

Staff is the one that has some concerns about this and so, you know, I mean even if other projects had done the extra wide entrance, that still may not accomplish what Staff is trying to accomplish with their condition, so I think Staff needs to have some input on this, too.

MR. FREDYMA: I would agree, I think that's probably a good question for Staff. I don't know if that was considered in this particular case or not.

THE HEARING EXAMINER: Okay. All right.

MR. FREDYMA: But it's another option or alternative to what's proposed here, but would still meet the requirements.

THE HEARING EXAMINER: We'll let Tony address it when he does his presentation.

MR. PALERMO: All right.

THE HEARING EXAMINER: Okay. Do you have any more questions?

MR. BASINAIT: We don't have anything further at this time unless you have specific questions of either the traffic engineer or the environmental planner, and I forgot to mention Sam Marshall from Banks Engineering is also here and can answer any engineering questions you have.

THE HEARING EXAMINER: Okay. I don't have any particular questions. Does Staff have any questions of any of the experts, Applicant's experts, anything they want to get on the record?

MR. PALERMO: No, ma'am, I'm fine.

THE HEARING EXAMINER: Okay. Alaina?

MS. RAY: No.

THE HEARING EXAMINER: Okay. All right. At which point then I guess we can go to Staff's input; if something comes up you've got your experts here.

MR. PALERMO: Madam Hearing Examiner, I wanted to respond to a couple of things Mr. Hagan said. Could we take a couple minute break and I'll be right back and then I can shorten my presentation, also?

THE HEARING EXAMINER: Okay. All right.

MR. PALERMO: Because he covered a lot of ground.

THE HEARING EXAMINER: Okay. Let's do a five minute break. Be back here please at twenty-five minutes of twelve.

(A short break was taken, after which the hearing continued.)

THE HEARING EXAMINER: Okay. Tony, you had a

short break. I think the Applicant wants to put something else on the record before we go through with Staff's presentation.

MR. PALERMO: Yeah, let's have the Applicant go for a minute or so, then I'll do a presentation.

MR. BASINAIT: Charles Basinait for the record.

During the course of that break John Fredyma's question raised some issues that I don't think we had considered before, and what we've done is we've looked at this just a little bit differently; it doesn't really change anything substantively, but it does make a little bit of a difference.

What we're going to propose is that we reduce the size of the lanes down to fourteen feet as opposed to the twenty feet that you see on the drawing up here and that we increase the size of the center aisle to fourteen feet, which will allow us a little more room for signage and landscaping and things, so from a practical standpoint number one, this will look better, I think aesthetically, as opposed to the twenty foot lanes, the fourteen foot lanes there's going to be

less pavement there, more room for landscaping and things.

There's going to be two foot gutters on either side of the paved area, both north and south, so you've got basically a seventy-four foot area that will run from gutter to gutter and then we are willing to do a twenty foot stabilized area both north and south of that, but what I'd like to do is set it up in the alternative. In other words, we're happy to provide the twenty feet north and south for the emergency access, but at the development order stage we'd like the ability to ask the Staff if we could convince them, anyway, that it would be appropriate simply to have the emergency access be located either north or south, depending on which side of the break that they needed to have it on, because quite frankly --

THE HEARING EXAMINER: Instead of having it split like it is?

MR. BASINAIT: Well, no. Again, John Fredyma had raised this issue, said that there's been some projects that have come in that have this divided entryway and they have two lanes on either side; because of that the County has allowed the

emergency access and the main entryway to be one and the same, and that's what we would be asking for in the alternative to providing a separate stabilized area both north and south.

THE HEARING EXAMINER: All right. Does that require any kind of a variance?

MR. BASINAIT: It does not, as I understand the regulations, no, because again, those regulations don't require that you actually even provide the emergency access, it's up to the discretion of the Development Review Director, I believe, so in my view it doesn't require a deviation; but we've already asked for one in any event, so if that gets approved and it gets approved with the option either to provide north and south emergency access or with the consent of the County make the main entryway the emergency access way also.

And we might have to do some design changes to the entryway in terms of breakaway gates or things of that nature to make it work. I don't know that it's going to be a gated subdivision in any event. The client's saying it's not, so that's not an issue, really.

THE HEARING EXAMINER: Okay.

MR. BASINAIT: So that would be the proposal that we'd like to put on the table. Now, I understand that the exhibit that we had formally submitted during the course of our testimony is somewhat different than that; the drawing I gave you does correct that and we would be happy certainly to go back and do a more formalized drawing and submit that to the Hearing Officer and the Staff.

THE HEARING EXAMINER: Yeah, that would be helpful, because what I would like y'all to do too is draft up that proposed language, I'd like the Staff and the Applicant to work together to do that.

MR. BASINAIT: Not a problem.

THE HEARING EXAMINER: All right. This is going to be Applicant's Exhibit 5.

MR. FREDYMA: If I may.

THE HEARING EXAMINER: Okay.

MR. FREDYMA: Once again, John Fredyma, Assistant County Attorney. I'm not sure whether or not they need a deviation for the configuration that they've now proposed, I'm going to look through the LDC, but I think if they do this is absolutely the appropriate time to ask for it.

MR. BASINAIT: It does say that if the Development Services Director recommends a certain course of action and if you disagree with that then you have to ask for a deviation from that, and that's what we're doing here basically. I think we qualify --

MR. FREDYMA: I agree.

MR. BASINAIT: -- in either event. I mean we are asking ask for the deviation, we would be proposing a condition that would allow for it and quite frankly if the County doesn't consent to our using the main entryway as the emergency access way we simply revert to the other option and that is the north/south emergency access points.

MR. FREDYMA: Basically he's painted several options and flexibility for doing that.

In the past, as I said before, I know that the County has -- you can probably find the language for it as well -- has allowed the main entrance to also be the emergency access area and with the configuration that he's depicting in his drawing that Sam Marshall prepared, it shows that you can use either side for two-way traffic.

THE HEARING EXAMINER: Right. Right.

MR. FREDYMA: And it's my understanding

that's part of what they are trying to reach with the access, not only the ability for emergency vehicles to enter, but also vehicles to enter and exit through the one side, assuming that the other side is not blocked.

THE HEARING EXAMINER: When you all are discussing the conditional language or whatever here, the alternative language, can you check with Pete Eckenrode and find out which one of those, you know, you remembered the case in which the entry that you all are thinking about, the entry feature, see if you can find out from him what the entry feature was and find out if there was any conditions or anything on that DO, it may shorten, you know, something in the long run if you figure out what they did on that one and sort of duplicate it. If the County's already accepted it one time, certainly they shouldn't have a problem accepting it a second time, you know, provided that facts and circumstances are similar or identical here.

MR. BASINAIT: We'll get with Pete and Don.

THE HEARING EXAMINER: Yeah, I think that would be the better way of doing this and then submit to me whatever comes out of that situation

for conditions on that one deviation.

MR. FREDYMA: With a little luck we shouldn't have to reinvent the wheel. I know of several cases in the past few years where they have done this and if you'd be kind enough to hold the record open to assist the Applicant and Staff in doing so.

THE HEARING EXAMINER: Okay. Tony, did you have something to you wanted to add?

MR. PALERMO: No, I'll just give my presentation whenever we get around to it.

MR. BASINAIT: I think we're finally done.

THE HEARING EXAMINER: I think we're around to it now, Tony. Okay.

Thereupon,

TONY PALERMO,

having been placed under oath, testified as follows:

MR. PALERMO: Good morning, Madam Hearing Examiner. My name is Tony Palermo with Lee County Community Development. I'd like to be recognized as an expert in planning, zoning and land use and my resume is on file.

THE HEARING EXAMINER: Any objections from the Applicant?

MR. BASINAIT: No objection.

THE HEARING EXAMINER: All right. Accepted.

MR. PALERMO: Madam Hearing Examiner, we're going to do three things here today briefly and then I'll go through my staff presentation.

Number one, I'll give you some exhibits to put on the record, including the photographs I took on site and that one aerial to the very far left here, that's from Staff.

Two, I'll give you some facts from the September 8 staff report. Mr. John Hagan did an excellent job presenting the facts of this case, so my presentation will be quite brief on that and third, I'll give you Staff's recommendation and conclusion.

As you know, Staff recommends approval of this application with conditions. The only communication with the public we heard was from a Mr. Mills Graham, a resident of 10 Beth Stacey Avenue contacted me by phone, by e-mail and expressed his opposition to more residential development in Lehigh Acres and one of his e-mails is attached to the staff report. However, Staff recommends approval of this with conditions.

First, we got your attention to an aerial provided by Staff of the subject property and

surrounding properties and Mr. Hagan used that to illustrate what's surrounding the property.

The next exhibit I have is photographs taken by me July 1st, 2004, of the subject property. You'll see the cover on page 2 of views looking south on Beth Stacey Boulevard; page 3 will show looking north on Beth Stacey; page 4 will show views of Glendale Village, Stone Edge Condominiums, Camelot Garden on the other side of Beth Stacey. Page 5 will show you social services on the north side of the property and you'll also see the last page will show you the golf course to the south.

I also went to Cherokee Avenue, which is east across the canal and took a couple pictures of the Yellow Tail Canal to illustrate how very large it is and how it separates the subject property from the property to the west.

Now just a few of the facts to put on the record. This is a request to rezone 57.5 acres from agricultural to residential planned development and permit a maximum of 296 dwelling units with a maximum building height of 357 feet, three stories. No development blasting is being requested. The subject property is at one, three

and five Beth Stacey Boulevard in Lehigh Acres.

The future land use is central urban. The current zoning is agricultural and the land use, as you can see, is vacant.

Staff recommends approval consistent with the Master Concept Plan; you have a copy of that dated July 7, 2004. The schedule of uses are purely residential, clubhouse, 296 total dwelling units, two-family attached.

THE HEARING EXAMINER: I'm sorry, what was the July 7th date?

MR. PALERMO: 2004.

THE HEARING EXAMINER: Yeah, but what was that?

MR. PALERMO: The date that the Master Concept Plan is stamped.

THE HEARING EXAMINER: Oh, thank you. I'm thinking you're saying the staff report and I'm going wait, I've got one dated in September.

MR. PALERMO: Yeah, you've got the right one.

MR. BASINAIT: That was the secret staff report.

THE HEARING EXAMINER: Oh, I see. Okay. I was getting further and further behind in his -- he's getting faster and faster and I'm getting

slower and slower in hearing it.

MR. PALERMO: I'll try to slow down here.

THE HEARING EXAMINER: Thank you.

MR. PALERMO: It also includes four model units.

We talked about the maximum height, three stories, thirty-five feet and the residential portions maximum lot coverage of forty-five and a half percent.

Condition number 3 is no blasting.

Condition number 4 is no agriculture.

The 5th condition is in regard to model homes, it limits it to four with conditions and it limits the hours.

Condition number 6 covers real estate sales, the temporary sales trailer.

Condition number 7 covers the recreational facilities and clubhouse.

Condition number 8 states that you must get a local development order.

Condition number 9 says that they're not guaranteed a local development order and condition number 10 is pretty boilerplate, it's about accessory uses.

Condition number 11 is again boilerplate,

just saying they have to deal with the easements before getting their development order.

Condition number 12 just verifies that a type D buffer will be planted on Beth Stacey Boulevard and Condition Number 13 says all required buffers must utilize a hundred percent all native vegetation.

Condition number 14 was recommended by Development Services. That states, "The lake shorelines must be sinuous at time of local development order."

Condition number 15 was a condition to allow the five foot setbacks for residential construction and requiring a civil engineer to certify that to the county that the site is graded in accordance with the approved site grading plan on the development order.

And condition number 16 was recommended by Environmental Sciences, which states, "Prior to local development order approval the development order must delineate twenty-three acres of open space, of which 9.47 acres must be preservation areas in substantial compliance with the approved Master Concept Plan." It goes on to say, "All heritage trees on the property must be flagged and

numbered on site for the Division of Environmental Sciences staff field verification. The number of heritage trees to be verified and impacted must be included on the development order plans with the replacement of any of the impacted heritage trees with twenty foot trees of the same species within the preserve area."

The only point of contention with the Applicant was regarding deviation 1. Staff recommends approval of the deviation but with two conditions. Let me just read those into the record. These conditions were recommended by Development Services. Number one, "The Master Concept Plan and local development orders must include one emergency access gate to be constructed at the location labeled temporary access or temporary sales trailer or another location on Beth Stacey Boulevard acceptable to the Division of Development Services." That's number one.

And number two, "The emergency access gate on Beth Stacey Boulevard must comply with all applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. Additionally, if an

emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle, if applicable, will be the responsibility of the owner or the operator of the gate."

Madam Hearing Examiner, the subject property has approximately sixteen hundred feet of frontage on Beth Stacey Boulevard and the Master Concept Plan shows one entrance on this two-lane arterial road, and we've talked about how exactly that would be designed. The Applicant has been proposing several options about 130 feet, but essentially it's still one location for access. And the Applicant says that should this main access be blocked, traffic could use a twenty foot access as an escape; now they're saying on both sides, the north side and the south side.

However, the Development Services Division I think wisely said that the proposed access point is not acceptable for a two hundred and ninety-six unit development. They point out that in the event it should happen near this entrance a tree, telephone pole, automobile crash, all sorts of scenarios are likely, it will block both the main entrance and the stabilized access as well.

Development Services recommends a secondary access point be located at the temporary sales trailer location across from Camelot Gardens or a similar location, if possible. Staff is not -- is pleased with the first entrance location and widening it and playing with, you know, how it will be done, but any way you slice it you're talking about one entrance, and if that entrance is compromised you're trapping approximately three hundred dwelling units inside a development.

I think in the interest of safety you need an emergency access at a minimum and I would stick with Staff's recommendation that you have two entrances, and that is Staff's recommendation. The Applicant has said that the second entrance will somehow cause confusion, but they haven't demonstrated how that's the case, and I think you need that second emergency entrance.

They've also said well, a fire truck or something like that can't fit through the twenty foot access but a car can, and as we've seen in, you know, the disasters that we've been experiencing the last few months it's nice for a car to be able to escape or even a person on foot to be able to escape if something disastrous

happens at the entrance.

The Applicants also said well, there's not going to be any trees that are going to be in the way, but I think our own personal experience tells us with a hurricane that trees, debris, vehicles, can come from any direction from miles around, so just because there's no trees at this particular entrance doesn't give us a great deal of comfort.

THE HEARING EXAMINER: So after all the discussions that we've had and what not, Staff's recommendation is still to have a separate secondary emergency access?

MR. PALERMO: That's the case. It's also been brought up that perhaps Staff has allowed one big hyperentrance in other cases; this is a case by case thing, this is different and I think this is a significant number of units we're talking about. We're not talking about a five or ten unit development, we're talking about more than fifty acres, we're talking about three hundred cases.

And I think we also have to bear in mind the experience that we just went through this summer; that was then, this is now, and that's the only argument I can make. And that's all I have on that deviation.

Mr. Hagan was right that this development is consistent with the Lee Plan. I think we've addressed the transportation and environmental issues and we have the same conclusion, that this requested rezoning meets the criteria for residential planned development, it's consistent with the Lee Plan, it's compatible with neighboring properties and will not adversely affect environmentally critical areas and the deviations recommended as conditioned, as still conditioned, enhance the objectives of the planned development, preserve and promote the general intent of the Land Development Code and protect the public health, safety and welfare.

THE HEARING EXAMINER: Okay. Questions of this witness by the County Attorney?

MR. FREDYMA: No, ma'am.

THE HEARING EXAMINER: Okay. Questions by the Applicant?

MR. BASINAIT: No.

THE HEARING EXAMINER: All right. Thank you, Tony.

Okay. Any other county witnesses?

MS. RAY: My name is Alaina Ray. I'm an environmental planner for Lee County Division of

Environmental Sciences and I would like to be qualified as an expert witness in the Lee Plan and Land Development Code regarding environmental issues. My resume is on file with the Hearing Examiner and I have additional copies available should any be needed, and if there are no objections I would like to make myself available if there are any questions.

MR. BASINAIT: I don't have any objection.

THE HEARING EXAMINER: Okay. No objections. All right. Alaina, let me ask you a couple of questions. I looked at your resume before coming into the hearing and you've been working with the county for approximately nine months?

MS. RAY: Right.

THE HEARING EXAMINER: Okay. And before that you did a lot of other type of non -- actually nonenvironmental. I see that your degree is in environmental studies and that you have quite a few other classes and projects and stuff that you've done. Other than the experience or the work record you've got here, have you had any other experience in environmental?

MS. RAY: Over the last eight years I have been involved in numerous environmental projects

and studies related to my course work in college. My course work extended over a period of approximately nine years and I did participate in a lot of environmental vegetation regrowth studies, ground water studies, environmental geology. I went on location to many places to do some of these studies.

Professionally this is my first job in the environmental field, but I have been involved in the environmental issues for quite some time.

THE HEARING EXAMINER: Okay. I notice that you got your degree in 2003, so all of your job experience in the insurance field, this was done while you were going to school?

MS. RAY: Yes, it was.

THE HEARING EXAMINER: Okay, so this was your day job and what not. Okay. All right.

Any questions of this witness?

MR. BASINAIT: No.

THE HEARING EXAMINER: County attorney?

MR. FREDYMA: No.

THE HEARING EXAMINER: Okay. I'm going to accept you as an expert based on your degree and time in grade here at the county and time in grade in your special projects, so I don't have any

questions, either. Thank you, ma'am.

Okay. No other county witnesses?

MR. PALERMO: No, ma'am.

THE HEARING EXAMINER: Okay. Any response from the Applicant?

MR. BASINAIT: Just very briefly on the emergency access issue. Charles Basinait for the record.

Tony had made some comments in talking about the emergency access issue, for instance, providing pedestrian access. I mean honestly, I don't think this really applies. You've got, as he said, I think sixteen hundred feet of frontage on Beth Stacey. Anywhere along there the members of the public, if they wanted to, could get to the subdivision to Beth Stacey Boulevard. If they were walking the fact of the matter is they could do that.

Secondly, with regard to width, as I recall, Madam Hearing Officer, you were the one that initially identified that potential issue in terms of the fire trucks and the EMT, and while it's important certainly to be able to get people out, it's equally important in many cases to be able to get people in, so I do think that that is an

important issue and one you should look at and I think that you will find that the proposal that we have actually addresses that issue much better than the one that the County is recommending to you.

With regard to the trees and vegetation, I would ask you to look at that exhibit that I handed out a few moments ago, the one that was handwritten by Sam Marshall from Banks Engineering, and what you're going to find is that between the northern perimeter of the north stabilized area and the southern perimeter of the south stabilized area the only place in there that you could put any vegetation at all for the most part is within the fourteen foot area that separates the paved lanes of travel at the entryway. Everything else is either going to be a stabilized area which can't have any vegetation in it, it's going to be some kind of a mountable curb or gutter area and two, fourteen foot lanes, paved lanes. So you're not going to have vegetation in there, I'm sorry, it is just not going to be there.

On the other hand, if you're talking about putting the emergency access point up here with

lots on either side of it, well, there's a couple things. One is you can in fact restrict that area to only twenty feet because of fencing that the residents can put in; you can have trees, you can have bushes, you can have all sorts of vegetation on either side that quite frankly if they go down they're just as likely to go down into the stabilized area as they are anywhere else, and at that point you have cut off your emergency access point.

Now we're dealing with risk aversion, we're dealing with likelihood that this is going to occur and I'm going to suggest to you that from the standpoint of blocking the emergency access through trees falling or things of that nature, that if it were to happen it's much more likely to happen under the proposal that the County is making to you versus the proposal that we're making to you.

Having said that, I understand their concerns, I can appreciate it, I'm simply suggesting to you that the proposal that we're giving to you better addresses the health, safety and welfare concerns.

With regard to that, I will go ahead and

prepare a new exhibit that is consistent with the handwritten exhibit that we handed to you. I say "I"; we'll ask Banks Engineering to do that, obviously.

Secondly, we'll work with the Staff to prepare a new condition with respect to emergency access and if we can get agreement from Staff so much the better; if we can't, I will simply submit a new condition that we're going to ask you to recommend.

We will talk with Pete Eckenrode and Don Blackburn about those other cases and see if we can give you some assistance there.

And the only other thing that I'm going to suggest to you is -- and John Fredyma mentioned this to me, I think it's a good idea -- I'm going to ask you to add a condition here, assuming that you're going to be in a position to recommend approval to the Board of County Commissioners. That condition should read something similar to the following: When the final Master Concept Plan is prepared the tot lot will be removed from the preserve area and relocated to the recreation area.

THE HEARING EXAMINER: Okay. That's actually

going to change condition number 7. I have already noted that condition number 7 needs to be revised.

MR. BASINAIT: Yes. Right.

THE HEARING EXAMINER: I have already noted that in my staff report.

MR. BASINAIT: I just thought it was worthy of mention, I think it's a good idea. Somehow whether it's in that condition or some other condition, we simply notify the Board that this tot lot will be coming out and the tot lot area will be going in over here (indicating).

THE HEARING EXAMINER: Okay. All right.

MR. BASINAIT: Thank you very much. Those are all the comments I have. Certainly I would respectfully request that you recommend our request to the Board of County Commissioners for approval.

Thank you.

THE HEARING EXAMINER: Okay. Let me do ask Tony one question now. Tony, the problems that Staff -- and I don't want to say you, but the problems that Staff is seeing with deviation number 1, is this Zoning staff or is this Zoning and Development Review staff? The reason I'm

asking is because if these guys are going to Pete Eckenrode to try to come up with some alternative language for possibly, you know, fixing up this entrance where it's located, if Pete's going to be happy with the entrance here, is zoning staff going to be happy with it? I mean that's what I'm looking at right now. We've got two different county departments or divisions involved here as far as the permitting is concerned and I need to know where this is coming from.

MR. PALERMO: It's definitely coming from Development Services in terms of wanting number one, the large entrance, the sort of hyperentrance, and as a back-up to that the emergency entrance, and they were very clear in their determination that they wanted a minimum of two entrances and one of them could be an emergency entrance. If they can work out something, that's fine, but that's just not my expectation.

Staff's position is number one, give us the hyperentrance because that's a plus, and number two, do an emergency entrance either at that location or some other location that we can work out during the development order process.

MR. BASINAIT: May I ask a question just to clarify that?

THE HEARING EXAMINER: Yeah.

MR. BASINAIT: Tony, just so that I'm sure I understand, if we're able to arrive at an accommodation with the Development Services staff; in other words, we can get to some agreement as to where that should go, I take it from what you've just said to the Hearing Officer that you're not going to object to that?

MR. PALERMO: I haven't gotten there yet, but --

MR. BASINAIT: Maybe I misunderstood.

MR. PALERMO: I mean I'm not going to change Staff's recommendation right here on the fly and I don't know what else you can work out with Pete Eckenrode, that was just the direction I was given, there is just one staff position that stayed the same.

THE HEARING EXAMINER: Okay. You guys work with Pete, both of you work with Pete on this and if this is Staff, being both Zoning and Development Services, if Development Services changes their mind then you need to talk of course to your zoning director and find out if, you know,

you all will also change your opinion or recommendation, you know, in this. So you guys work on this --

MR. BASINAIT: We'll do that.

THE HEARING EXAMINER: -- together and give me something and if you can't agree, then give me separate submittals on this one particular condition.

MR. PALERMO: That's fair.

THE HEARING EXAMINER: Staff can simply say if Zoning staff does not agree or zoning and whatever, just simply indicate that, you know, whatever, that you cannot agree to a change of condition and that you want it left the way essentially it is and Chuck can recommend whatever else he wants to recommend at the time.

MR. BASINAIT: Okay.

THE HEARING EXAMINER: All right.

Now, I understand that you wanted the decision on this expedited.

MR. BASINAIT: As much as we can.

THE HEARING EXAMINER: So we need to leave the record open. How long is it going to take you all to get with Pete Eckenrode and work on this?

MR. BASINAIT: Well, today is Wednesday. I

would hope that we can at least talk with Pete before the end of the week and get some resolution of whether or not they will be interested.

THE HEARING EXAMINER: All right. Wednesday of next week?

MR. PALERMO: Oh, easily.

MR. BASINAIT: That's fine.

THE HEARING EXAMINER: All right. Let's leave the record open until Wednesday of next week and God only knows what date that is.

MR. BASINAIT: The 29th.

THE HEARING EXAMINER: the 29th. Yes. Very good. Okay. 5:00 p.m. on Wednesday, the 29th, and as I said, if you cannot agree then submit individual conditions or position papers to me on the deviation, but the record is open only for the revision to deviation 1 or the reconsideration of deviation 1.

MR. BASINAIT: Along with the new exhibit.

THE HEARING EXAMINER: I'm sorry, with the new exhibit, too. Yes, I'd forgotten about that.

MR. BASINAIT: Very good.

THE HEARING EXAMINER: Anything else from anybody in the room? Okay. This hearing is closed then. Thank you. (Hearing adjourned.)

STATE OF FLORIDA)

COUNTY OF LEE)

I, Elizabeth Barnes, RPR, Contract Court Reporter, 20th Judicial Circuit of Florida, do certify that I was authorized to and did stenographically report the foregoing proceedings and that the typewritten transcript of proceedings, consisting of pages numbered 1 through 73, is a true record.

Dated this 27th day of September 2004.

Elizabeth Barnes