



Transcripts for Case #
DCI 2004-00046

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2004-00046

IN RE: West Bay Club Development Corp. in ref.
to West Bay Club RPD

Transcript of Proceedings

Before Diana M. Parker, Chief Lee County Hearing Examiner, held at the Hearing Examiner's Hearing Room, 1500 Monroe Street, Fort Myers, Florida, on January 19, 2005.

PRESENT:

Mr. Bryan Kelner, Principal Planner
Ms. Dawn E. Perry-Lehnert, Assistant County Attorney
Ms. Kim Trebatoski, M.S., Principal Environmental Planner
Mr. Andy Getch, Department of Transportation, Lee County
Mr. Russell P. Schropp, Attorney for the Applicant

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ORIGINAL

I N D E XWITNESSES PAGE

Russell Schropp - Presentation	8
Patricia Newton - Presentation	17
Stephanie Keyes - Presentation	31
Examination by Mr. Kelner	47
Gary Chensoff - Presentation	49
Jeff Mangan - Presentation	57
Bill Parker - Presentation	63
Bernard Cunningham - Presentation	65
Bryan Kelner - Presentation	67
Donald Eslick - Presentation	83
David Guenther - Presentation	88
Warren Patterson - Presentation	90
Examination by Mr. Schropp	96
Richard Woodburn - Presentation	99
Examination by Mr. Schropp	100
Carl Hoke - Presentation	101
William Glatz - Presentation	103
Greg Toth - Presentation	104
Albert O'Donnell - Presentation	107
Donald Vilnius - Presentation	110
Sissel Robertson - Presentation	113

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Master Concept Map and Plan	35
2	Copy of Survey	61
3	Series of letters	61

1 HEARING EXAMINER: All right. Let's go ahead and
2 start the hearing.

3 Good morning. I'm Diana Parker, Chief Hearing
4 Examiner for Lee County. This is Wednesday, January the
5 19th, Case No. DCI2004-00046, West Bay Club Development
6 Corporation, in reference to West Bay Club RPD.

7 Now, before we get started this morning, let me
8 explain to those of you who have never been to one of our
9 hearings how we operate. Okay?

10 First off, I've got some white forms here so some
11 of you already know to fill these out. If you wish to
12 speak this morning at the hearing, I need to get a white
13 form from you. All right?

14 If you wish to receive a copy of my
15 recommendation and not to speak, I need a white form from
16 you. All right.

17 If you do not speak at this hearing today, if you
18 don't like my recommendation to the Board of County
19 Commissioners, you cannot speak before the Board. The
20 ordinances are written that way to give me the opportunity
21 to consider your concerns before you present them to the
22 Board.

23 I should be able to address them in my
24 recommendation before you talk to the Board if you don't
25 like my recommendation. All right?

1 So if you have not filled out a white form and
2 you wish to speak or you wish to receive a copy of my
3 recommendation, please do so and give it to me before the
4 end of the hearing. Yes, ma'am.

5 UNIDENTIFIED SPEAKER: I would like to have a
6 form.

7 HEARING EXAMINER: Okay. They're up here at this
8 table, the little typewriter table.

9 UNIDENTIFIED SPEAKER: Thank you.

10 HEARING EXAMINER: Yes, sir.

11 UNIDENTIFIED SPEAKER: Can we ask some questions?

12 HEARING EXAMINER: All right. I'll explain that
13 to you. What happens is in the process, the applicant
14 will make their presentation. They will bring up whatever
15 witnesses they have that they need to explain to me what
16 the project is, what they're going to be doing, what they
17 -- thank you, sir -- what they feel the effects will be on
18 the adjacent properties, what the area is like, and why
19 they feel that their request should be approved.

20 After they have presented their case with all
21 their witnesses, staff will then make a presentation with
22 their other staff member witnesses.

23 After staff and applicant have made their
24 presentations and I have asked the questions that I need
25 to ask to fully understand the request, then I'll open the

1 floor up for public comments.

2 At that time, you will come up one at a time to
3 the podium, you may ask any questions you have at that
4 time, you may make any comments that you have concerning
5 this.

6 However, if you are having an internal dispute
7 between your homeowners association and the developer, I
8 do not need to know that. That will have no bearing on my
9 decision.

10 If you don't like the developer, I don't need to
11 know that. That will have no bearing on my decision.

12 What I need to know from you folks to be able to
13 address your concerns is what effect you think the
14 approval of this request will have on you, your lifestyle,
15 your property, your neighborhood. Okay? Those are the
16 things that I need to hear, not likes and dislikes,
17 personality conflicts, neighborhood disputes, those kind
18 of things. I cannot deal with those. All right? I can't
19 give you any relief from those. You know, those have to
20 be worked out somewhere else.

21 UNIDENTIFIED SPEAKER: If I come here and ask
22 questions, that will qualify us for the next meeting?

23 HEARING EXAMINER: Yes, it does. If you come up
24 and state your position on the record and then ask the
25 questions that you have to ask, you know, we will have --

1 what I'll do generally is have, after everybody has asked
2 their questions and all the public has spoken, I will then
3 have the respondent -- I'm sorry, the applicant and staff
4 address your questions. All right? Try to answer them as
5 fully as they can at this time.

6 Just keep in mind that sometimes in this arena we
7 don't know or the applicant and staff does not know the
8 actual detailed plan of development. That won't be worked
9 out until much later than this. This is one of the
10 preliminary steps in the process for development.

11 UNIDENTIFIED SPEAKER: So the next meeting,
12 they'll have those answers?

13 HEARING EXAMINER: No. The next meeting will be
14 before the Board of County Commissioners. They probably
15 won't have the answers there either. They don't get those
16 answers on the actual details of the plan until after it
17 comes in for development review, for a Development Order
18 to start actually constructing the project on the
19 property.

20 So, you know, I mean, this is a very basic step
21 in the development process. Yes, sir.

22 UNIDENTIFIED SPEAKER: Has a date already been
23 established for that next meeting?

24 HEARING EXAMINER: No, sir. That date is
25 dependent upon when I get my recommendation out. It will

1 be four to six weeks from that date, and you will, if I
2 have a white form from you, you will receive a copy from
3 the zoning staff of the date that that is scheduled before
4 the County Commissioners. Now, that will be a Tuesday
5 morning. Those are our typical -- I'm sorry, Monday
6 morning.

7 The first, third and fifth Mondays of the month
8 are our typical zoning hearings, okay, in front of the
9 Board at nine o'clock -- 9:30. It's in the Commissioner
10 chambers over there, in their Commissioner hearing room,
11 okay?

12 You will be notified as long as I have a white
13 form from you, you know, that you have attended and a name
14 and address, you will be notified of the next hearing on
15 this. Okay?

16 All right. Now, in order to speak at today's
17 hearing, you need to be sworn in. If you are an attorney
18 and testifying to facts, you need to be sworn in as well.
19 So at this point in time if you intend to speak at this
20 morning's hearing, please raise your right hand.

21 (All witnesses were sworn.)

22 HEARING EXAMINER: All right. Now, if any of you
23 have not been sworn in and after hearing the presentations
24 decide that you absolutely, positively have to speak, let
25 me know when you come up, okay, and I'll swear you in at

1 that time. All right?

2 Applicant's ready?

3 MR. SCHROPP: We're ready.

4 HEARING EXAMINER: Okay.

5 Thereupon,

6 RUSSELL SCHROPP,

7 called as a witness, having been previously duly sworn,
8 testified as follows:

9 MR. SCHROPP: Good morning, Madam Hearing
10 Examiner.

11 For the record, my name is Russell Schropp. I'm
12 an attorney here with the Henderson, Franklin firm.

13 HEARING EXAMINER: Russ, check the -- make sure
14 the microphone is on, please. I'm not registering you on
15 my machine.

16 MR. SCHROPP: Is that better?

17 HEARING EXAMINER: Very good.

18 MR. SCHROPP: Okay. Thank you. I'll start over.

19 For the record, I'm Russell Schropp with the
20 Henderson, Franklin law firm here in Fort Myers, and I'm
21 here today representing the applicant in connection with
22 this case, which is West Bay Club Development
23 Corporation.

24 As a prelude to my introduction, West Bay Club
25 Development Corporation is a wholly owned subsidiary of

1 Lehman Brothers and is the successor developer of this
2 project.

3 The operating partner for the development is an
4 entity called Indian Hill Partners. I have some members
5 here from both entities that if I could just introduce
6 briefly.

7 HEARING EXAMINER: Okay.

8 MR. SCHROPP: Seated at the table with me is Gary
9 Chensoff from Indian Hill Partners. Seated in the first
10 row here is Jeff Mangan, also from -- well, actually from
11 West Bay Club Development Corporation. Chris Johnson, if
12 you could stand up, please, from Indian Hill Partners.
13 And also Steve Gorey (ph), if I could, and Matt Stewart
14 from Lehman Brothers are here today for the hearing.

15 Also here with me today is our consultant team,
16 and you'll hear from some of them later as well, but we
17 have Pat Newton and Stephanie Keyes from Johnson
18 Engineering who were the project planners with whom you're
19 well familiar. Dana Hume (ph) also from Johnson
20 Engineering who is the project engineer. George Swartz
21 from David Plummer & Associates and Mark Hillis (ph) also
22 from David Plummer & Associates who are the project's
23 traffic consultants.

24 This is a request to modify an existing
25 Residential Planned Development, or RPD, to modify one

1 parcel contained within the existing RPD and also to add a
2 small parcel to the RPD that is presently zoned AG-2. As
3 such, the actual request that's pending before you today
4 is a request to rezone the property from RPD and AG-2 to
5 RPD.

6 The project as you know, because you were the
7 original Hearing Examiner who heard this about eight years
8 ago when we first came before you, this project is located
9 at the west terminus of Williams Road, about a mile west
10 of US 41. The entire project consists presently of about
11 866 acres.

12 Of this total acreage, about 80 percent of the
13 site or 700 acres is going to be retained in open space,
14 and of that about 60, 61 percent remains in indigenous
15 open space.

16 So as you can see, it's a site plan that was
17 promoted back in 1996 as a site plan that was heavily
18 dependent on open space and it has retained that character
19 through the years.

20 The gross density under the current land use
21 parameters is approximately 1.29 dwelling units per acre.

22 While the entire site is 866 acres, what is
23 before you today is essentially concerned with only two
24 relatively small areas of the plan, and I'll point them
25 out. Development Area 3, and I've got to work off of the

1 original Master Concept Plan, if I could.

2 HEARING EXAMINER: Okay.

3 MR. SCHROPP: Development Area 3, which is this
4 area right in here (indicating), shaded here, it's the
5 first area that today's action is concerned with, and
6 basically what we are seeking to do there is restore that
7 area to a high rise, multi-family product. And I'll go
8 over in a few minutes the process that let that pod to be
9 converted from the originally approved high rise product
10 that was approved in 1996.

11 The other area concerns a small parcel I believe
12 about 1.6 acres which we are proposing to add to the
13 Master Concept Plan, and again if I could step to the
14 plan.

15 HEARING EXAMINER: Uh-huh.

16 MR. SCHROPP: That area is located -- north is to
17 the left here on this --

18 HEARING EXAMINER: Oh, good.

19 MR. SCHROPP: I'll point that out initially. But
20 north is to the left, east is to the top.

21 The parcel that we're seeking down here is down
22 in the southeast quadrant of the site, it's I believe
23 about 1.6 acres, and basically the intent there is to add
24 that portion to -- that parcel to the project so that it
25 can accommodate additional single family dwelling units, I

1 think no more than four.

2 Neither of these actions that we're asking today
3 will increase the overall density of the project beyond
4 the originally approved 1,121 dwelling units that were
5 approved back in 1996. And, in fact, in a minute, I'll
6 discuss some project density modifications that we've
7 worked out with -- through an agreement with the property
8 owners association for the West Bay residential community
9 that will actually reduce the project density from that
10 which was originally approved.

11 Ms. Newton will probably cover it in some greater
12 detail in a minute, but from a historical perspective, as
13 I said before, this project was rezoned in 1996, you were
14 the Hearing Examiner. You may recall that that rezoning
15 at that time was a request to rezone to RPD from a myriad
16 of zoning classifications, including RM-2, significant
17 areas of RM-2 multi-family residential, C-2 commercial,
18 CS-1 commercial, as well as AG-2.

19 The then developer of the project commenced
20 construction shortly after the zoning was approved but ran
21 into some financial problems that eventually led to a
22 bankruptcy filing for the developer, although I don't
23 believe it was for reasons related to the rezoning. But
24 before the bankruptcy was filed, in an effort to generate
25 some cash flow for the project, the previous developer

1 took one of the high rise sites, that being Site 3,
2 Development Area 3, and converted it through an
3 administrative zoning amendment from a high rise product
4 to a single family residential product that would
5 accommodate approximately 13 single family dwelling
6 units.

7 It was, in retrospect, a decision that was borne
8 out of the financial situation of the developer at that
9 time but did not quite have -- did not make a whole lot of
10 sense for the project.

11 Shortly after the current ownership group
12 acquired the project out of bankruptcy, they realized the
13 importance of this high rise site, not only to the
14 financial viability of the project but also to the
15 vitality of the community, its golf course and its other
16 amenities. So Johnson Engineering and I were directed to
17 pursue an attempt to restore Development Area 3 to high
18 rise product.

19 We initially inquired of the Zoning Department
20 whether this could be done administratively, either
21 through an administrative amendment similar to the one
22 that converted it to single family or by simply rescinding
23 the previously approved administrative amendment, and we
24 were told, no, that we could not do it that way, that we
25 would have to go through the public hearing process and

1 that's what led to the filing of this request.

2 HEARING EXAMINER: Did they give you a reason why
3 they would go to single family but they wouldn't come back
4 to multi-family?

5 MR. SCHROPP: I think it was basically because we
6 were increasing the density although it wasn't going -- it
7 was increasing that parcel density although it wasn't
8 increasing the overall density of the project, they viewed
9 it on a site specific --

10 HEARING OFFICER: But that's in terms of the
11 project?

12 MR. SCHROPP: Yes. There was an increased --
13 that was their decision.

14 HEARING EXAMINER: Okay.

15 MR. SCHROPP: As part of this request to restore
16 the density to the Development Area 3, we decided to also
17 include the small parcel in the southeast quadrant that I
18 previously pointed out. This is in the Laurel Oaks
19 portion of the West Bay project. That parcel was acquired
20 by the previous developer prior to filing bankruptcy but
21 was never incorporated into the Master Concept Plan, he
22 never got around to doing it. And as I said, that parcel
23 was intended to be for no more than four single family
24 dwelling units.

25 HEARING EXAMINER: Okay.

1 MR. SCHROPP: That's the background on the
2 request and I think the gist of the request that's pending
3 before you today. Basically, as I said, it affects two
4 parcels within the project. One is about nine-and-a-half
5 acres, the other is about 1.6 acres. So out of the entire
6 866 acres, we're dealing with basically a request that
7 affects about 11 or 12 acres.

8 The rezoning process thus far has been
9 interesting. We filed in May of 2004. We held our
10 required meeting with the Estero Community Planning Panel
11 in late May, I believe, of 2004. I believe the minutes
12 are included in the Staff Report.

13 HEARING EXAMINER: Uh-huh.

14 MR. SCHROPP: Ultimately, the application was
15 found sufficient by staff. During the course of the
16 process, we've had discussions with a number of groups
17 besides that. Two in particular that I'll mention at this
18 point, one is the internal property owners association of
19 West Bay residents, and I'll make just a caveat. The
20 actual homeowners association that gets formed when a
21 project is developed, as you know, is retained by the
22 control of the developer for a number of years --

23 HEARING EXAMINER: Right.

24 MR. SCHROPP: -- until a certain period of time.
25 That's not what we're talking about here. The West Bay

1 Homeowners Association that was formed through the
2 restrictive covenants is still under the control of the
3 developer so we're not negotiating with ourselves, I want
4 you to understand that.

5 HEARING EXAMINER: Okay.

6 MR. SCHROPP: What we've been talking with is a
7 group of property owners that formed an independent
8 association. I believed they'll address you later on
9 today and explain their membership, but it's a separate
10 voluntary property owners association that has
11 incorporated as a corporation not for profit.

12 We've had discussions with them regarding the
13 project parameters and density, and we've also had
14 discussions, and if I misstate the name I hope Mr. Eslick
15 will forgive me, but I believe it's the Estero Council of
16 Community Leaders, or something to that effect, if I
17 didn't get it exactly correct, regarding other issues
18 associated with the project in the general area.

19 With regard to our discussions with the West Bay
20 property owners association, we discussed with them
21 various issues regarding zoning and also some non-zoning
22 issues that aren't particularly pertinent to this
23 particular hearing. But the end result after the extent
24 of the negotiations was we reached agreement regarding
25 some density parameters primarily that was consummated

1 about two days ago. I won't clutter the record with a
2 bunch of non-zoning issues but then I reviewed these with
3 zoning staff, Bryan.

4 From a zoning perspective, my client made some
5 commitments regarding the ultimate build-out density for
6 the project as well as the configuration of the high-rise
7 buildings on the three high-rise sites. And if I could,
8 I'll go back to the board. As I said, we're only dealing
9 with one of the high-rise sites, that being Area 3, but
10 there were two others that were approved in 1996, as you
11 might recall. This one, which is Development Area 4, and
12 this one here, which is Development Area 5.

13 The commitments we made, and we made basically
14 were that with regard to the maximum build-out of the
15 project. In place of the 1,121 build-out density for the
16 project, we've agreed that that would be reduced to 1,016
17 total dwelling units. It's a reduction of about 10
18 percent, not quite, almost 10 percent over what was
19 approved in 1996. Would reduce the overall protect
20 density to 1.17 dwelling units per acre.

21 And the other commitment that we made was with
22 regard to the high-rise sites, and we agreed with regard
23 to the maximum number of buildings that could be
24 constructed on each of the sites, which was a reduction of
25 what was originally approved in 1996, and specifically we

1 agreed that there could be a maximum of two high-rise
2 structures constructed on Development Area 3, two high-
3 rise structures constructed on Development Area 4, and one
4 high-rise structure constructed on Development Area 5,
5 for a total of maximum of five structures total which is,
6 I believe, one less than what was permitted originally in
7 1996.

8 We agreed that we would have no objection to
9 incorporation of these parameters into our zoning approval
10 if the County deemed it appropriate.

11 I did review those limitations with Mr. Kelner
12 and Ms. Lehnert yesterday, and I believe neither have any
13 objections to their incorporation. I'll let Bryan address
14 it, and I believe he has some proposed language to
15 incorporate those conditions in.

16 The other group that we had discussions with
17 during the process was the Estero Council of Community
18 Leaders. Primarily Mr. Eslick, Mr. Niblick were the
19 representatives, and the main issue that I believe they
20 were concerned with was Williams Road. The project access
21 point is onto Williams Roads and, ultimately leads to US
22 41. And as you probably know from a recent case, that
23 being the Paradise Village case that I think went before
24 you several months ago, or maybe it was Mr. Territo, I'm
25 not sure.

1 HEARING EXAMINER: Paradise Village does not ring
2 a bell.

3 MR. SCHROPP: Okay. It might have been Mr.
4 Territo. And there were some concerns regarding the
5 intersection of Williams Road and US 41. And if I may, I
6 don't know if you'll be able to see it from here, but the
7 project, this being US 41, the project being located here
8 about a mile west of US 41, Williams Road is basically a
9 straight shot back west from US 41 to the project.

10 There's been discussion and concerns about the
11 intersection of Williams Road and its capacity to handle
12 traffic, not only from surrounding developments --

13 HEARING EXAMINER: Is that the one that
14 Albertsons is on the south?

15 MR. SCHROPP: On the south side.

16 HEARING EXAMINER: I did that one.

17 MR. SCHROPP: Okay. I thought so.

18 HEARING EXAMINER: Coconut Road and Williams
19 Road, I have the worst time keeping straight unless I know
20 what's on a corner, then I'm oriented. So, okay, you're
21 right, I did that one.

22 MR. SCHROPP: All right. Anyway, there's been
23 concerns regarding the configuration of traffic and the
24 laneage needed basically to handle the traffic at the
25 intersection.

1 We've had some very productive discussions with
2 Mr. Eslick's group as well as the developer of Paradise
3 Village, residents within our own community and with other
4 residents of surrounding communities and also with Lee
5 County DOT, they have participated in these discussions.
6 And I believe we're working on some solutions to that
7 intersection of which West Bay is going to be a very
8 critical part. As you may or may not know, West Bay owns
9 the parcel at the southwest corner of 41 and Williams
10 Road, and one of the requirements that's -- one of the
11 necessities for any solution to the problem here is going
12 to be the need for additional right-of-way on Williams
13 Road. That's where we potentially come in with the
14 commitment to provide that additional right-of-way.

15 I think we've made the commitment that if we can
16 secure permitting and everybody agrees that that's the
17 right way to go, then we will provide the additional
18 right-of-way along Williams Road to add the additional
19 right-turn lane that's required there.

20 I think it's up to about a maximum of 15 feet of
21 right-of-way along the south side of Williams Road.

22 There are other things that need to occur to
23 implement the solution, obviously. There's permitting and
24 there's other details that need to be worked out, but West
25 Bay has agreed to continue to cooperate with the various

1 parties towards the solution and resolution of this issue
2 here, and has made the commitment to make the right-of-
3 way available.

4 And this all despite the fact that, in fact, the
5 density, we never proposed to increase the density
6 associated with the project, but, in fact, now have
7 committed to reduce the density that would be associated
8 with the project.

9 With regard to the Staff Report, I filed a memo
10 with you yesterday, I believe, indicated we had no
11 objections with the Staff Report.

12 HEARING EXAMINER: Right.

13 MR. SCHROPP: That still stands. But as noted
14 earlier, we do have some proposed changes to reflect the
15 density limitations that we worked out with the property
16 owners association. And I believe Mr. Kelner will present
17 those specific changes to you but we, I believe, will
18 concur with those changes.

19 As for the remainder of our presentation, I would
20 like Ms. Newton to address you first regarding some
21 historical planning features of the site and the process
22 that we went through originally. Ms. Keyes to address you
23 regarding the Master Concept Plan and its consistency with
24 the Lee County Comprehensive Plan and other zoning issues.
25 And then I'd like Mr. Chensoff as well as Mr. Mangan to

1 address you briefly regarding their perspective as the
2 successor developer here and also efforts to try and
3 secure some community support for the project.

4 Dana Hume is here as well if you have engineering
5 questions regarding water, sewer, surface water
6 management, but nothing has markedly changed or changed at
7 all, I think, from what was originally submitted and
8 approved and represented back in 1996. And George Swartz
9 is here from David Plummer & Associates if you have
10 traffic concerns. But, obviously, since the density is
11 not increasing, in effect now is decreasing, the traffic
12 impacts that were evaluated back in 1996 have been
13 lessened. But he's available if you have any questions of
14 a traffic nature.

15 So unless you have any questions of me or staff
16 has any questions of me, I'd proceed with our
17 presentation.

18 HEARING EXAMINER: Staff, questions of this
19 witness?

20 MR. KELNER: No questions of this witness.

21 HEARING EXAMINER: County Attorney?

22 MS. LEHNERT: No.

23 HEARING EXAMINER: All right. Thank you.

24 MR. SCHROPP: Thank you. Then at this point I'd
25 like to call Pat Newton. I believe she has been here

1 before you in this setting before and has been accepted as
2 an expert witness in land use and planning, and I would
3 tender her as an expert in this matter at this point.

4 HEARING EXAMINER: Okay. Any objections from
5 staff?

6 MR. KELNER: No objections.

7 HEARING EXAMINER: County Attorney?

8 MS. LEHNERT: No, ma'am.

9 HEARING EXAMINER: Okay. Accepted as an expert
10 in land use, planning and zoning.

11 MR. SCHROPP: Thank you.

12 HEARING EXAMINER: Pat, remember to speak up.
13 You have a very soft voice.

14 MS. NEWTON: Yes. And my map point is small.

15 HEARING EXAMINER: Oh, good. Thank you.

16 Thereupon,

17 PATRICIA NEWTON,
18 called as a witness, having been previously duly sworn,
19 testified as follows:

20 MS. NEWTON: Good morning. For the record, my
21 name is Patricia Newton. I'm the Director of Planning at
22 Johnson Engineering, and I was asked to present the
23 history of Estero Pointe that is now known as West Bay
24 Club.

25 HEARING EXAMINER: Do me a favor. Pull the

1 microphone closer in. There you go.

2 MS. NEWTON: Russell has described the location
3 of West Bay Club and I know you know it well. It is
4 bounded to the north by Estero River and to the west by
5 Estero Bay. Pelican Landing sits on our south boundary.

6 I was very, very fortunate to have been involved
7 in the very beginning planning of Estero Pointe. When I
8 first went on to the site, I thought I had entered a
9 little piece of paradise. It's an absolutely beautiful
10 sight and it truly is unique.

11 It has approximately 2,000 lineal feet of
12 frontage on Estero River. It's bisected by Halfway Creek
13 on the eastern boundary. It has a wonderful high ridge,
14 wonderful high sandy ridge that has slash pine, oaks,
15 rosemary, curtis milk weed and then, of course, we
16 come to the mango fringe before it heads out to Estero
17 Bay.

18 The second delight was to work with a developer
19 who really had a genuine environmental vision. Their
20 primary goal, while staying financially -- fiscally sound,
21 at least, was to develop with low density and to preserve
22 as much of the wetlands and uplands on site.

23 The original request, as Russell pointed out, was
24 from RM-2, C-2, CS-1 and AG-2 to a residential planned
25 development for 1,121 dwelling units, 18 holes of golf and

1 a variety of recreational amenities.

2 The site plan took many months. There were quite
3 a few staff meetings. I'm not quite not sure if Kim was
4 involved in meetings or not at that time. Were you, Kim?

5 MS. TREBATOSKI: No.

6 MS. NEWTON: Initially, I think George parker
7 from Environmental Services was here.

8 There were also many meetings with residents of
9 Estero Heights, north of Estero River, and many, many
10 staff meetings.

11 The applicant concluded after all those meetings
12 that in order to preserve substantial portions of the site
13 and to provide for a single family product that was on
14 both sides of Halfway Creek, that it would be required to
15 cluster in the form of high-rise development. And the
16 logical place for that was along Estero River.

17 The original zoning of RM-2 was actually placed
18 right up on the river which allows multi-family. The
19 limitation on height is that you have to set back one-half
20 a foot for every foot of height over 45 feet.

21 The residents of Estero Heights, however, did
22 show some concern for that location and so the developer
23 chose to look internal to the site for a location, and
24 those locations were here, which is Tract 3 or Development
25 Area 3 I think it's referred to, and then Development Area

1 4, which is right here (indicating), and then the island
2 part, future Development Area 5.

3 The issues that were actually raised at the time
4 and during the original rezoning were, of course, the high
5 rises up on Estero River. The environmentally sensitive
6 lands that were on site, protecting storm water runoff
7 from the parking lots associated with multi-family parking
8 lot, and evacuation.

9 The developer knew that by removing the multi-
10 family from along the river down internal to the site,
11 this would free up the river for the rest of the residents
12 of West Bay Club. Canoes, small boats, picnic areas, and
13 there are actually a couple of parks along Estero River
14 now.

15 In order to build to the height that we needed
16 and because we were an outlying suburban at this location,
17 we needed a deviation from the outlying suburban
18 limitation of 45 feet. And so deviation was requested to
19 allow 20 stories over parking in Development Areas 3, 4
20 and 5.

21 The granting of this deviation, and it was
22 approved, allowed many things. It definitely allowed an
23 increase in open space. Normally 40 percent open space is
24 required of a multi-family or mixed residential
25 development. We gave 76 and that was before credits.

1 Indigenous vegetation of 20 percent, we gave 57
2 percent, again without credits.

3 There was over 100 acres of upland preserve that
4 was preserved on this site. And a lot of that, of course,
5 was in this high sandy ridge with the beautiful vegetation
6 that was there.

7 As far as open space is concerned, and in
8 addition to that which I just quoted, 60 percent is
9 required for Parcel 5, 35 percent additional open space is
10 required for Areas 3 and 4.

11 By providing this clustering of multi-family
12 units, it allowed the creation of a wildlife corridor.
13 This is a pretty significant wildlife corridor.

14 You have Halfway Creek coming through the natural
15 preserve areas. Culverts were built under the roadways to
16 allow the critters to move backwards and forward. Then
17 into more nature preserves through the golf course, again
18 more nature preserves, under culverts and then all the way
19 out to Estero Bay. This was considered well before its
20 time. The rules existing at that time did not require
21 this kind of preservation.

22 It decreased the amount of impervious area
23 constructed, thus allowing the project to better meet the
24 standards of the outstanding Florida waters. It
25 provided -- definitely provided a mixture of residential

1 product type, single family, large lot estates, small
2 courtyards, product townhouses, mid rise and, of course,
3 the high rise, and it allowed for vertical. Evacuation,
4 which was a very important part of that original rezoning.

5 George Parker did note in his recommendation of
6 approval of that, and I quote, "Staff was very pleased in
7 particular with the upland preservation that was provided
8 on this site and believed that the ultimate design that
9 was put forth was one that was environmentally
10 responsible." Approval came in March of 1996, and that
11 was about nine years ago, of course, we were just young
12 girls at the time. And it was proved by Resolution
13 Z96-005, and did include the approval of deviation 9, and
14 thereof, it came with actually many conditions, but three
15 of them actually pertained to these three high-rise tracts
16 and I would just like to put those into the record, if I
17 may.

18 HEARING EXAMINER: Okay.

19 MS. NEWTON: It limited 630 dwelling units within
20 six multi-family buildings having a maximum of 20 stories
21 and a height of 220 feet within Development Areas 3, 4 and
22 5.

23 90 percent of the required parking for the high-
24 rise product must be constructed under the principal
25 building. This limits the impact to the impervious areas

1 created by those open parking lots, and it also reduces
2 storm water runoff and it also protects the exposure of
3 storm water to the pollutants that come off the parking
4 lots, basically stopping those pollutants from going into
5 the lakes and then going on out to outside waters.

6 And the last condition, the storm water
7 management system for these three high-rise areas and the
8 golf courses adjacent to the mango fringe must be designed
9 so that the storm water discharge rate will be
10 approximately 70 percent with a calculated permeable
11 runoff rate in accordance with South Florida Water
12 Management requirements.

13 And that is actually the end of my presentation
14 for the history. If you have any questions, I'll be more
15 than happy to answer them.

16 HEARING EXAMINER: Okay. Since you have your
17 little site plan thingie there oriented north so that I
18 know where I'm going when I drive out there, where is the
19 entrance to the project?

20 MS. NEWTON: Williams Road off of US 41 comes
21 right to this point (indicating), and there's a guard
22 house that sits right there.

23 HEARING EXAMINER: Okay. So I should not take
24 the first right then, I should go in and take the second
25 right?

1 MS. NEWTON: Correct.

2 HEARING EXAMINER: Okay. Good.

3 MS. NEWTON: And you can actually loop through
4 the project.

5 HEARING EXAMINER: Okay. Good. Good.

6 I can go straight and take the third one, yeah.
7 But if I take the first one, it gives me an opportunity to
8 look at the rest of the development in the area to see
9 what -- you know, what's happening out there so I get a
10 feel for the actual area and whatnot. I just didn't want
11 to get in there and get to a dead end and not know where
12 the heck I was, you know. I've done that before.

13 MS. NEWTON: We have included a colored
14 rendering, 11 x 17, which might help you.

15 HEARING EXAMINER: Oh, good, I'll take it with
16 me.

17 MS. NEWTON: It's in the package that Stephanie I
18 believe will be giving you.

19 HEARING EXAMINER: Okay. Thank you.

20 Questions of your witness?

21 MR. SCHROPP: I have no questions.

22 HEARING EXAMINER: Questions of this witness?

23 MR. KELNER: No.

24 HEARING EXAMINER: County Attorney.

25 MS. LEHNERT: No, ma'am.

1 HEARING EXAMINER: Okay. Thank you very much,
2 Pat.

3 MR. SCHROPP: Thank you. Next we'd like to call
4 Stephanie Keyes, also planner with Johnson Engineering, to
5 discuss the concept plan as well as the comp plan
6 consistency and zoning issues. I believe she's also been
7 previously accepted as an expert in land use and planning
8 in this forum and I tender her as such at this hearing as
9 well.

10 HEARING EXAMINER: Any objections?

11 MR. KELNER: No objection.

12 HEARING EXAMINER: County Attorney?

13 MS. LEHNERT: No, ma'am.

14 HEARING EXAMINER: Okay, accepted.

15 Thereupon,

16 STEPHANIE KEYES,
17 called as a witness, having been previously duly sworn,
18 testified as follows:

19 MS. KEYES: Good morning.

20 My name is Stephanie Keyes, and I'm the Principal
21 Planner with Johnson Engineering, representing the
22 applicant, West Bay Club. And as Russell has said, I've
23 previously been sworn in before you in the past. My
24 resume is on file. I do have an American Institute of
25 Certified Planners certification since 1984, a Master's

1 degree in geography and planning, and I have been
2 practicing planning in Lee County for 28 years.

3 I was also part of the original zoning team, as
4 Russ and Patricia have indicated, in 1996. At that time I
5 had my own planning consulting firm, and I was here
6 strictly talking about the hurricane shelter issues.

7 HEARING EXAMINER: Okay.

8 MS. KEYES: And since that time I have joined
9 Johnson Engineering and so today I'll be talking more
10 about the overall project, the comp plan consistency, the
11 fact that we have worked very closely with county staff
12 and are in full agreement with the staff recommendation
13 and go over a few of the changes, actually, that have
14 occurred in the shelter requirements as well if you would
15 like to hear those.

16 It hasn't really been raised as an issue, but
17 we're prepared to speak on that if you -- you know, if you
18 would want to.

19 HEARING EXAMINER: As it relates to the high
20 rise, I would like to hear something as it relates to the
21 high rise.

22 MS. KEYES: As Patricia had stated, the property
23 consists of several land use categories, suburban,
24 outlying suburban and the wetland land uses, and was
25 originally approved for 1,121 units at a density of 1.29

1 units per acre.

2 As Russell has stated, through negotiation with
3 the homeowners we are so pleased to state that we are now
4 in agreement with a reduction in the overall density to a
5 total of 1,016 units, which is a 34 percent reduction from
6 the original land use category unit permitted at the time
7 that the project was inspired. So that's a pretty
8 significant decrease in our opinion.

9 However, in conjunction with this, the developer
10 is still providing an outstanding project with some of the
11 more superb amenities in the area for the residents. A
12 beautiful golf course, golf clubhouse that has now been
13 constructed, a sports club, other recreational areas, and
14 tennis courts and the like, making it an absolutely
15 beautiful project for the Estero area.

16 Also, I'd like to point out this was a sub DRI
17 project, yet many of the conditions, many of the
18 iterations of zoning and so forth were almost equivalent
19 to a DRI but yet it has always remained a sub DRI project.

20 The project is surrounded primarily on all three
21 sides by existing residential projects. Since the time of
22 the rezoning, additional residential projects, additional
23 high-rise projects have been approved by the Lee County
24 Commission, so, again, this restoration of the high rise
25 we believe, and staff has concurred, does not add

1 anything inconsistent to the comp plan, to the
2 neighborhood, is fully consistent with development ongoing
3 in the Estero and nearby city of Bonita Springs
4 communities.

5 Now, staff has recommended the approval to
6 restore the multi-family residential area and also, as
7 Russell indicated, add the 1.6 acres which are depicted on
8 your site plan here as units -- or excuse me, single
9 family lots 31 through 34. And Russell has the packages
10 that have the color maps and depictions for you and --

11 MR. SCHROPP: If you'd like to have them at this
12 time it might help you follow along.

13 MS. KEYES: You can kind of follow along, yeah.
14 So that's the Laurel Oaks single family units
15 that are being added, just four lots.

16 HEARING EXAMINER: Okay.

17 MS. KEYES: And staff has concurred that that
18 does not significantly change the issue.

19 HEARING EXAMINER: This will be Applicant's
20 Exhibit 2, Exhibit 1 being the Master Concept Plan.

21 MS. KEYES: And as you can also see from the --
22 you have a copy of this drawing in your package. Just
23 taking --

24 HEARING EXAMINER: Actually, excuse me. Make
25 that Applicant's Exhibit No. 1 since this also includes

1 the Master Concept Plan, and then we don't have two
2 separate exhibits here.

3 (Applicant's Exhibit No. 1 was marked for
4 identification.)

5 MS. KEYES: So as you can see by the Master
6 Concept Plan, the amount of preservation is just fantastic
7 and orienting the high-rise units internally, away from
8 the river as Patricia said, was something that was
9 approved and recommended for approval by staff in 1996 by
10 yourself and the Board of County Commissioners at that
11 time.

12 The project has continued to move forward since
13 the time of the rezoning and obtaining Development Orders.
14 There is construction, as when you go out there you will
15 see just a beautiful project under construction at this
16 time.

17 The staff in their analysis noted that there have
18 been no changes to the land uses out here. There have
19 been no other changes. As Patricia indicated, the
20 conditions that were previously agreed to by the applicant
21 are still being adhered to. There have been no changes as
22 far as the high-rise units with construction over parking,
23 which did significantly limit runoff. And so, therefore,
24 staff did recommend approval of the restoration of the
25 multi-family.

1 Since the original zoning case, the Estero
2 community plan has been in effect and was approved by
3 Ordinance 02-05 on January 10th of the year 2002, so since
4 that is probably the major change since our original
5 rezoning, that the Estero community plan came into effect,
6 and as Russell stated we did go meet with the Estero
7 community and had a very spirited discussion with the
8 Estero community.

9 One of the issues, of course, was the restoration
10 of the high rises and whether the holding capacity of the
11 property could hold such density.

12 It was reiterated a number of times that in the
13 change from the high-rise units to the single-family units
14 that Atlantic Gulf made due to their financial problems,
15 the number of units never changed. The original number of
16 units always remained the same at 1,121 and I'd really
17 like to emphasize that.

18 It's important because we've been asked a number
19 of times, well, could you still put that many units on
20 this property, and the answer is yes. Studies were done
21 internally. Perhaps more town homes would have been
22 built, more low-rise units, but the answer is still, yes,
23 the property could have held that many units, still have
24 had the amount of preservation and still have been an
25 attractive project.

1 However, due to the desire to cluster and have
2 even more open space, that is the reason for the
3 restoration of these multi-family units. And now, as
4 Russell has indicated, a new agreement has been made which
5 lowers the density even further to 1,016 units for 1.17
6 units per acre.

7 That is probably much lower density than most of
8 the surrounding multi-family projects that you have seen
9 before you such as Pelican Landing, Pelican Sound, and so
10 forth.

11 At the Estero Community Panel meeting we did
12 answer a number of questions. All of those are in the
13 original rezoning package, I believe are attached. We
14 have minutes from the meeting. We submitted a summary and
15 also minutes from that meeting and tried to answer as best
16 as we could all of the concerns of the residents.

17 The addition of the four lots also staff has
18 indicated will not change overall intensity of the project
19 and so staff has again recommended approval of that, and,
20 of course, we would urge you to approve it as well.

21 The original zoning application did include a
22 full outline of all of our consistencies with the Lee Plan
23 starting with our consistency with the Estero Planning
24 District and going through all of the policies. I'll just
25 summarize those if that is all right with you.

1 You do have a copy of this in your total package,
2 or it was submitted with the rezoning application. I
3 believe it's in your package as Exhibit 6-G or Exhibit --
4 Attachment J, I'm sorry.

5 HEARING EXAMINER: Yes, I have it. Exhibit 6-J,
6 yes, I have got it.

7 MS. KEYES: So to start, as I said, the project
8 is now in the Estero Planning District, and we do believe
9 that we do meet all the requirements and are consistent
10 with the Lee Plan in terms of what the Estero Planning
11 District has envisioned for itself.

12 The subject property falls within suburban,
13 outlying suburban and wetland designations. And the
14 proposed change back from single family to multi-family
15 within Area 3 is fully consistent with these land use
16 policies and staff has concurred with that.

17 In the suburban land use category, a mix of
18 residential uses is appropriate as is the case with
19 outlying suburban, and all of our densities do match the
20 total allowed under the land use plan as originally
21 approved and as before you today.

22 In the course of getting ready for this hearing,
23 I did re-read the entire verbatim transcript from 1996.
24 We have it in a notebook over there. You probably don't
25 want to re-read it. But one of the things that stood out

1 in my mind was after George Parker finished really lauding
2 the project, you asked if Mr. Schropp had any questions
3 for Mr. Parker and Mr. Schropp replied, "I wouldn't dare."
4 And that was kind of a very nice thing because in putting
5 this together, I think that there's no question that staff
6 and all of the surrounding neighbors can see the amount of
7 open space and the respect for the wetland land use
8 category in this site planning effort.

9 Also, a critical impact is the Objective 2.1,
10 development location, which states that contiguous and
11 compact road patterns will be promoted through the
12 rezoning process to contain urban sprawl, minimize energy
13 costs, conserve land, water and natural resources and
14 prevent development patterns that, in essence, leap frog.

15 Again, we feel very strongly that the use of
16 residential towers on this site does conserve land and
17 natural resources and is consistent with the use of the
18 two other separated tower development pods within the West
19 Bay project and feel that we fully meet Objective 2.1.

20 In addition, we also believe we're consistent
21 with Policy 2.11 that primarily most residential
22 development will occur in future urban areas on the land
23 use map, and, of course, we are in the future urban area.

24 We do believe the proposal is consistent with
25 Objective 2.2, development timing. Again, it is not urban

1 sprawl. This is directly in the path of growth. Of
2 course, all of us that have been following development in
3 Estero know that this has been directly in the path of
4 growth and is consistent with that objective.

5 The project is also consistent with Policy 2.2.1,
6 rezonings and development of regional impact proposals
7 will be evaluated as to the availability of all
8 infrastructure.

9 Again, as you will see by the Staff Report, all
10 of the various county departments indicated the proposal
11 does not impact any existing infrastructure. There were
12 letters from the EMS, fire, school district, all
13 indicating since we were not increasing densities over and
14 above what had already been permitted and that the
15 infrastructure was in place, that we did not create an
16 impact, so again we are consistent with Policy 2.2.1. In
17 fact, now we have actually lowered the density, so again
18 not an issue there.

19 We are also consistent with Policy 2.2.2 which
20 states that the uses and density ranges ultimately
21 permitted on a given parcel are not always guaranteed but
22 that they must be appropriate over the course of the next
23 20 years. Our feeling is by virtue of the previously
24 approved RPD by yourself, by the Board of County
25 Commissioners, the lowering of the density and the

1 appropriateness of the use of residential towers to
2 provide such a significant amount of open space, that we
3 are consistent with this policy.

4 Again, existing infrastructure will not be
5 overwhelmed. The property is not leap frogging. It is
6 compact and contiguous in efficient growth, and the
7 acreage allocation table has not been exceeded.

8 We also believe we are consistent with Policy
9 5.1.2, and I want to go into that a little more in
10 detail. That policy states that the County shall prohibit
11 residential development where physical constraints or
12 hazards exist or require the density and design to be
13 adjusted accordingly.

14 Now, this policy goes into detail as far as
15 hurricane evacuation, environmental limitations, and so
16 forth. And without belaboring the issue again, the
17 project and the reason for the residential towers is to
18 ensure the full preservation and protection of so many of
19 the beautiful environmental resources on the property.

20 In addition, it does allow for a variety of
21 hurricane evacuation proposals of which the applicant has
22 selected a specific course of action back in 1996.

23 However, since that time there have been a number
24 of changes, which I'll go into in a minute so that you can
25 see that this is clearly consistent.

1 The project also is not a conventional zoning as
2 stated. It's an RPD. In fact, it's a sub DRI RPD that
3 was primarily treated as an RPD. Excuse me, as a DRI in
4 actuality without review by the Regional Planning Council,
5 but otherwise it was subjected to rigorous review.

6 As such, the buffers and open space in this
7 project far exceed the norm. Conditions limiting the
8 height, setbacks and parking have all been established in
9 the Staff Report. These also will minimize all potential
10 impacts.

11 The fact that the project received the Audubon
12 Sanctuary certification is also of note, and I will go
13 into detail on the points that are used by Audubon. They
14 only grant certification for certain projects that have
15 superior environmental planning, that provide an outreach
16 and education program in terms of environment, have
17 superior wild life and habitat management, excel in water
18 conservation and excel in water quality management. All
19 of those points have been met by this project, and so it
20 did receive the Audubon certification.

21 So for that reason, as well as all of the others
22 I have stated, there is no doubt that we are consistent
23 with Policy 5.1.5.

24 In addition, we are also consistent with Policy
25 5.1.2, again, which states that residential development

1 will be prohibited where physical constraints or hazards
2 exist or require the density and its design to be adjusted
3 accordingly.

4 Again, we are now limited to the total number of
5 high-rise units based on the staff revision, the density
6 is limited, parking is limited, and so forth. So we
7 believe that we have met all of those conditions.

8 We also believe we're consistent with three
9 residential land use policies of the Lee Plan, Policies
10 5.1.3, 5.1.5, and 5.1.6. And these policies basically do
11 address high-rise density. They direct high-rise density
12 to be located in locations near employment and shopping,
13 close to parks and schools, we definitely meet that
14 requirement.

15 In fact, since this original rezoning, the
16 closest school, which is Estero High School, has expanded
17 on Williams Road just to the east of the project, and a
18 large regional Lee County park is now under construction
19 on Williams Road to the north of Estero High School, again
20 meeting the needs of this community. And, of course,
21 numerous shopping centers, as you well know, have been
22 approved, including the new shopping mall that is going in
23 on US 41 and Coconut very close to this site. So this is
24 clearly in an area of urbanizing growth and development.

25 As far as Policy 5.1.5, the location of the high-

1 rise pods internally to the project furthest away from all
2 surrounding neighbors meets that policy because it is not
3 creating any encroachment on the surrounding existing
4 residential development.

5 And, finally, Policy 5.1.6 requires high density
6 multi-family to have adequate open space, landscaping, and
7 so forth, and, again, this project well, well exceeds all
8 of those requirements.

9 Without going into a lot more detail, I'll just
10 list the policies that we also are consistent with, and
11 then if you have questions, I can answer them because it
12 does get rather lengthy.

13 Policy 5.1.7, Objective 75.1, Policy 75.1.1,
14 Policy 75.1.2, Policy 75.1.3, Policy 75.1.4, And then all
15 of the housing availability objectives and policies.
16 Again, very important, the project does increase diversity
17 of housing within the Estero area, does provide for a
18 diversity of housing units, and does meet Lee County's
19 Objective 100.1 and Policies 100.1, 101.2, 101.9, 101.10
20 and 109.5. So those are the policies that we believe the
21 project is consistent with and staff has agreed with.

22 Now, just very briefly, I'll go into the
23 hurricane evacuation issue. At the time of the rezoning
24 request, we had shown that the applicant could provide a
25 shelter of 8,940 square feet on site or could provide

1 money to Lee County to use the money to shelter a public
2 facility to provide additional 8,940 square feet of
3 shelter space in this immediate area.

4 The applicants are still moving forward with
5 their plan to provide on-site shelter, and their clubhouse
6 that they are building right now would be considered a
7 refuge of last resort and is going to meet all of those
8 requirements.

9 In addition, since the time of the original
10 application, the County has entered into a very state of
11 the art agreement with the Tico or now it's the Germain
12 Arena, which is in this immediate neighborhood. So the
13 Germain Arena has also become a major hurricane shelter
14 for this entire community and that's something new that
15 wasn't here in the past, again adding to plan consistency
16 for the proposed West Bay Club.

17 In addition, Estero High School has added a
18 two-story addition onto its campus, also available for a
19 refuge of last resort.

20 There are also numerous other schools under
21 construction in the Estero and Bonita area that can be
22 used as hurricane shelters in the future.

23 Since the time of this rezoning, the all hazards
24 tax continues to be paid for by the applicants and as the
25 project moves forward, that funding will continue. In

1 addition, since the time of the original rezoning, the
2 County and the school district have passed a school impact
3 fee ordinance which again adds money to the construction
4 of new schools which then are used for hurricane
5 evacuation shelters. So, as you can see, the hurricane
6 evacuation shelter issue has actually improved
7 dramatically since 1996.

8 There are no additional deviations being
9 requested by this application than the ones originally
10 asked for in the original rezoning, so I'm not going to go
11 through and talk about any of those.

12 I'm not going to go through and talk at length,
13 unless you have questions, about the actual design of the
14 high rises, other than to state that in the original
15 application, the designer of the towers did talk about the
16 fact that the tower approach was far superior to a large
17 slab or something that you would normally see which would
18 create a canyon like appearance.

19 This is going to create a very delicate, very
20 kind of state of the art, if you will, construction so
21 that the overall ambience of West Bay Club is retained.

22 And in summary, I think we're very pleased with
23 the Staff Report. We have reduced the density. At this
24 time now it's a 34 percent decrease from what the Lee Plan
25 would have originally permitted in 1996 to the 1,016

1 dwelling units, and we would respectfully request that you
2 restore the multi-family and approve the request before
3 you.

4 HEARING EXAMINER: Questions of your witness?

5 MR. SCHROPP: I have no questions. Thank you.

6 HEARING EXAMINER: Questions by the County?

7 MR. KELNER: Yes.

8 I just have one question on the Applicant's
9 Exhibit No. 1, and this would be, I guess the third page
10 from the end, and this is West Bay Club, shows the site
11 plan for the two towers. Also, there are two areas for
12 low-rise villas, and if you could just briefly explain
13 what that is and how that fits into the overall plan.

14 MS. KEYES: This would be on Development Area 3.
15 Yes. You see the site plan before you, yes, you're on
16 that.

17 Well, basically, I believe the plan now is for 24
18 villas.

19 MR. SCHROPP: Maximum of 24.

20 MS. KEYES: Maximum of 24 villas to be built in a
21 low rise manner in and around the two towers that have now
22 been submitted.

23 MR. SCHROPP: And I'll note for the record that I
24 believe the conditions that Bryan is going to introduce
25 address that as part of the deviation, revision of

1 Deviation 9.

2 MS. KEYES: And we did submit this site plan to
3 staff as part of their review. Unfortunately, it was
4 rather late in the process, but, nevertheless, staff did
5 review it prior to issuing their Staff Report and the
6 applicant has stated that they are going to follow this
7 site plan, you know, within reason. I mean, it is a
8 general Master Concept Plan, but the applicant has agreed
9 to abide by this overall site plan.

10 HEARING EXAMINER: Anything else, Bryan?

11 MR. KELNER: No other questions.

12 HEARING EXAMINER: Kim?

13 MS. TREBATOSKI: No.

14 HEARING EXAMINER: County Attorney?

15 MS. LEHNERT: No, ma'am.

16 HEARING EXAMINER: Okay. I don't have any either
17 then. Thank you, ma'am.

18 MR. SCHROPP: Thank you.

19 Next, just to sort of conclude the presentation
20 by the applicant, I'd like to have Mr. Chensoff and Mr.
21 Mangan address the project request from the developer's
22 perspective. So first, Mr. Chensoff.

23 HEARING EXAMINER: Okay.

24 Thereupon,

25 GARY CHENSOFF,

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

3 MR. CHENSOFF: I'm so fortunate. This is an easy
4 job.

5 Thank you, Stephanie. You did a fantastic job
6 and Patricia and Russell. It makes my job easy. I said
7 the only thing I'm okay at is making sure I surround
8 myself with the best people.

9 And I feel fortunate to be standing here today
10 because I was on this site about ten years ago and fell in
11 love with it. And met with Atlanta Gulf a number of
12 times, and for various reasons I decided not to
13 participate in the development but did watch it from afar
14 and, you know, monitored the progress once a year. I
15 would check up on it and I still love it. Okay.

16 The project was blessed with one strong financial
17 lender in Lehman Brothers. Unfortunately, it was a lender
18 and as a lender you don't have a lot of control over the
19 development, there's lender liability issues, and Atlanta
20 Gulf, the former developer, we shouldn't be too hard on
21 them, they did a lot of things right in this project.

22 They did -- as it relates to this site, they did
23 miss the boat, okay. The initial concept of the 1,121 was
24 probably the right number, maybe even a little bit more to
25 make it financially successful. The concept of all of the

1 amenities was terrific in terms of the beach house and the
2 bay house and the golf house and the various parks, but it
3 really needed that density to be successful.

4 A lot of people made mistakes in '99 and 2000,
5 okay, in terms of the overall market. They over estimated
6 the strength of the golf market. They over estimated the
7 strength of the large single-family estates. They were in
8 some financial difficulty and based on conversations with
9 former officers, they needed cash to stay alive. And
10 rather than develop high rise on this site, they thought
11 that they didn't need it for the amenities, for the golf
12 course. They thought that they could raise seven, eight
13 million dollars quickly rather than building this out over
14 a five-year period of time. I understand that. I mean,
15 people do strange things when they're backed into the
16 corner.

17 9/11 hit, the company had some difficulties.
18 Lehman came in and Lehman Brothers was the mezzanine
19 lender, paid off nearly all the creditors. It's a little
20 unfortunate some people got hurt. But Lehman really
21 stepped up to the plate and I give them a lot of credit
22 because a lot fewer people got hurt than what could have
23 happened.

24 My relationship was, and I was fortunate that I
25 have a pretty good relationship with Lehman Brothers. We

1 did a number of transactions together. They brought me in
2 and said, why don't you just spend two to three months
3 analyzing this and see what we can do with it. This was
4 about two years ago.

5 I spent two or three months, and I said, this is
6 going to be a lot, a lot of work, but it's still a great
7 project and if you're willing to commit the time and
8 energy and capital, we could turn this around and make
9 this, you know, one of the -- my goal was to make it the
10 number one community in Lee County, period. That has been
11 our mission statement. I said, they need capital and they
12 need time. And so there's some gentlemen here from --
13 that represent direct Lehman's interest and they gave me
14 that commitment.

15 In the last year, we have been going full speed.
16 We've renovated the beach facility. We don't like to talk
17 about money, but we put over \$300,000 in the renovation
18 for the beach facility. The original sports facility, we
19 now call it the bay house. We have a beach house, the bay
20 house, the golf house. We spent over a million and a
21 half dollars on that renovation because it was really
22 dysfunctional for our residents. It's a gorgeous
23 building. It just didn't work, okay. It takes great
24 pictures. We think that we made it a lot more
25 functional and we've had positive feedback from our

1 residents.

2 The golf house was -- the old design really
3 didn't work and it looked over the driving range and
4 didn't take advantage of some views. We spent a lot of
5 time on the golf house. We plan to finish that, I hope
6 sometime the end of March, April, probably April sometime,
7 as we did have some weather issues this August, September
8 that maybe put us back 45 days. But we came up with a
9 concept that I think is unique. We call it the Niblick
10 Inn, it's really part of the golf clubhouse, but we put a
11 facility over here that is a dining, eating facility on
12 this side of the road on top of the 18th and 19th green.
13 We call it the Niblick Inn because the Niblick is a little
14 golf club. We've had a lot of positive feedback from our
15 residents on that.

16 We actually got approval to do a little bridge to
17 keep the traffic, you know, off the road rather than
18 walking. It's a handsome bridge. And Lehman, I said to
19 Lehman, we've got to be the best. If you want to be the
20 best, you have to spend a little extra money. And they
21 understood that the project had some financial
22 difficulties, so we had to turn it around in terms of the
23 perception.

24 All of this was kind of conditioned on redoing
25 this. I knew that the project needed the additional

1 density to support all the amenities.

2 I knew that also if I had the time with the
3 existing residents, I could convince the existing
4 residents that it was in their best interest to do it.
5 And there are some representatives here from West Bay
6 that, you know, I'll thank you now for staying with me and
7 understanding the issues. And it wasn't all rose petals,
8 there was a few thorns in there, but, you know, in the
9 last six months, we worked those issues out and I think
10 that the compromise of two towers on the site rather than
11 three is an acceptable compromise for us. Indian Hill
12 were the operating partner, major financial interest in
13 this project.

14 I think it's a good compromise for the existing
15 homeowners, and I believe that with a lot of hard work,
16 there will be enough units there to support the amenities,
17 and that's still the issue, okay, but we're hoping that we
18 have enough units here to justify the cost.

19 On projects like this, you're always worried
20 about the expenses being too high, there's not enough
21 residents to support them. You're always worried about
22 once the fees get too high, then people don't want to move
23 in. That's the number one problem of some smaller
24 communities. And our residents understood this. Okay?

25 There's always some people out there that, you

1 know, say, I'd like to have 300 homes and one golf course,
2 but the numbers don't work, okay.

3 So, you know, what's nice about this site is, it
4 was the most and always was the most logical site for high
5 rises. It's the largest of the high rises on sites.
6 Madam Hearing Diane, I don't know what I'm suppose to call
7 you, what's nice about this is when you drive in, it's
8 really not a right, it's almost like a straight shot, so
9 you never have to drive through single-family communities.
10 So the traffic here doesn't go in front of anyone's front
11 door.

12 Even though it was the best high-rise site in
13 terms of size and everything, the problem is it was so
14 large, it also enabled them to do more single-family lots
15 to raise cash quickly, so that's the reason, one of the
16 major reasons why they did it.

17 And the capture rate on the golf back then was a
18 lot different than what it is today. Back in '99, 2000,
19 55 percent of your residents, you know, that lived in a
20 community would join a golf course, now the number is down
21 substantially so you need more units to support it.

22 I'm pleased where we are today, okay. I'm please
23 -- I told Russell I'll be quick, so I promise I'll hold me
24 to that.

25 MR. SCHROPP: You're the boss.

1 MR. CHENSOFF: I'm walking on here because again
2 sometimes I get to take all the credit and my team of
3 Chris Johnson and Jane Eaton (ph) and Jeff, Steve Gorey
4 (ph) and Matt Stewart, we have a great team here, and we
5 have a great high-rise team that we've developed. We
6 think that we have the best high-rise development team in
7 the state of Florida. That sounds egotistical, but that's
8 our MO.

9 You know, we have some of the height limitations
10 of 220 feet, I think is a little bit different. I think
11 Bonita Bay is 265 or 275.

12 HEARING EXAMINER: I don't remember Bonita Bay.
13 It was before my time.

14 MR. CHENSOFF: So I'm confident that we're going
15 to be able to do something here that the residents will be
16 proud of. I'm confident, I feel good now that we are not
17 backed in the corner of doing a lot of single, maybe one
18 bedroom units to get our density, okay. We're going to
19 develop on this site rather than smaller units. You know,
20 we're going to do the three-bedroom units.

21 Our alternative was to do the 1,121 and have a
22 lot of one bedrooms and that wouldn't have been right for
23 the community. So we're back to the original concept here
24 of the original that the developer had with a little
25 larger units and using this site for the additional

1 density.

2 I'm done. Do you have any questions?

3 MR. SCHROPP: I have no questions.

4 MR. KELNER: No questions.

5 HEARING EXAMINER: County Attorney?

6 MS. LEHNERT: No, ma'am.

7 HEARING EXAMINER: All right. Thank you.

8 MR. SCHROPP: Thank you, Gary.

9 And our last presentation, Jeff Mangan who is the
10 local representative for West Bay Club Development
11 Corporation.

12 HEARING EXAMINER: Okay, Jeff, hang on just a
13 second.

14 Folks, after Jeff we're going to stop for a ten-
15 minute break. Now, I neglected to tell you earlier,
16 please bring only water in this room. No sodas, no
17 coffee, water only in this room when we come back from our
18 break. Okay?

19 MR. SCHROPP: Madam Hearing Examiner, if I may,
20 there was one, I believe he's the representative of the
21 West Bay property owners association, put on a note that
22 he has a plane to catch that leaves relatively early, so I
23 was wondering if maybe after Mr. Mangan --

24 HEARING EXAMINER: Okay. Who is that gentleman?

25 MR. SCHROPP: Mr. Parker, I believe.

1 MR. PARKER: I guess I could wait another 15
2 minutes.

3 HEARING EXAMINER: All right. Well, we can take
4 the break after you, that's not a problem. I just had not
5 read through these, need early time.

6 MR. PARKER: I'm sorry, but my driver was also
7 leaving.

8 HEARING EXAMINER: Oh, I see. Okay. All right,
9 go ahead.

10 MR. PARKER: So we'll wait till after --

11 HEARING EXAMINER: Okay. Thank you, sir. We'll
12 take you right after the break then.

13 MR. SCHROPP: Thank you.
14 Thereupon,

15 JEFF MANGAN,
16 called as a witness, having been previously duly sworn,
17 testified as follows:

18 MR. MANGAN: For the record, I'm Jeff Mangan.
19 I'm the chief operating officer of West Bay Club
20 Development, and I joined the West Bay Club HP team some
21 18 months as a result of an invitation by Gary Chensoff
22 and Indian Hill Partners, joined their efforts in taking
23 this project out of its, I'll call it a static position
24 and in a bankruptcy position of the prior developer.

25 I was quick to take the position, given my

1 history and knowledge of Gary and Chris Johnson, his
2 partner, Indian Hill Partners out of Chicago in that they
3 have a very highly regarded and proven track record in
4 southwest Florida as being honest and working only on
5 quality projects and putting their efforts forward on that
6 and always doing it with integrity. So it was an easy
7 decision for me to join that team, and I'm thankful to be
8 here as Gary is today.

9 My position includes that of the responsibility
10 for communications, and that's really why I'm standing up
11 here today.

12 You know, and as developers and Gary mentioned
13 it, we don't look to the world through rose-colored
14 glasses. We know that you're going to have your objectors
15 and that's what the development business is all about.

16 And there's a myriad of variables to be dealt
17 with and discussed, et cetera, so with that we took the
18 common tools you'll find in a development being
19 newsletters or in community television channels, websites,
20 things of that nature, and we revisited each of those
21 vehicles and put them in a current context, if you will.

22 But we decided to add a unique program on my
23 mind. I've been in development for nearly 15 years as a
24 developer rep, if you will, and we decided to create an
25 open forum program and we initiated that last January.

1 We've had ten of those open forums since then. They
2 consist of 90 minute agendas. We try to stay to the
3 agenda, sometimes they run over. But they've been well
4 received, well attended. We've seen 60 -- I'd say an
5 average of about 80 people at each one of those open
6 forums. We've seen as many as 120 people at one of those
7 forums.

8 And as a result of those efforts, once we took
9 all that information and condensed it, we determined that
10 it was time to engage a national company to conduct a
11 survey, an independent survey, if you will, of our
12 residents. That survey resulted in a 60 percent response.
13 And two of the key points that I wanted to have on the
14 record here and when I'm speaking is that some 98 percent
15 that responded spoke favorably and good to excellent
16 ratings for Indian Hill Partners. And only two gave
17 unfavorable responses, 2 percent I should say.

18 Multi-family use on West Lake Court was also the
19 subject of a few of the questions in that survey, and the
20 responses to that were 80 percent in favor of multi-family
21 use.

22 In addition to that, as Russell has already
23 stated to you, we did meet with the Estero Community
24 Planning Panel, that's it, back in May in advance of
25 this. We decided that was the proper thing to do given

1 the location of West Bay. And as Stephanie has stated
2 also, it's in your report, all the minutes from those
3 meetings. And then the Estero Concerned Citizens
4 organization was also a consequence of the surveys and the
5 meetings that we've conducted hours and hours and hours
6 with our residents, and we're happy to say that we have
7 great positive results at this point in time. And we look
8 forward to your support. Thank you.

9 HEARING EXAMINER: Okay. Thank you, sir.

10 Questions of this witness?

11 MR. SCHROPP: No.

12 MR. KELNER: No.

13 HEARING EXAMINER: County Attorney?

14 MS. LEHNERT: No.

15 HEARING EXAMINER: All right. Thanks, Jeff.

16 Okay. Let's take a --

17 MR. SCHROPP: May I just real quick, just a
18 couple --

19 HEARING EXAMINER: Sure.

20 MR. SCHROPP: -- tie-up items if I may.

21 HEARING EXAMINER: That's the end of your
22 presentation then?

23 MR. SCHROPP: Yes.

24 HEARING EXAMINER: All right. At the end of the
25 applicant's presentation, then we'll take a break.

1 MR. SCHROPP: Thank you.

2 First of all, Mr. Mangan indicated the survey
3 that was conducted by the National Golf Foundation, NGF,
4 and I do have copies of pertinent portions of that. It
5 was a broad spectrum survey, but as he indicated one of
6 the questions dealt with support for multi-family high-
7 rise product on this site and it came to the conclusion
8 that 80 percent of those responding were in favor of
9 either two or three towers on the site. So I'll submit a
10 copy of that for the record, if I may.

11 HEARING EXAMINER: That will be Applicant's
12 Exhibit 2.

13 (Applicant's Exhibit No. 2 was marked for
14 identification.)

15 MR. SCHROPP: The other thing that I would like
16 to present, during the last several days, after we reached
17 agreement with the property owners association, we did
18 request letters of support from those who were in contact
19 with the developer at that time, and I believe I have 59
20 such letters, signatures of West Bay residents in support
21 of the requested zoning change. I'll submit that for the
22 record.

23 HEARING EXAMINER: All right. Applicant's 3
24 composite.

25 (Applicant's Exhibit No. 3 was marked for

1 identification.)

2 MR. SCHROPP: Thank you. That concludes our
3 presentation. I'd note that the changes, as I've
4 indicated, apply to only limited parts of the project as
5 originally approved in 1996. We are proposing through
6 negotiations with the property association a reduction in
7 density of about 105 dwelling units and further limits on
8 the number of high-rise buildings that can be
9 constructed.

10 It also retains all of the other conditions that
11 were approved in 1996. You got a good flavor of those
12 from Ms. Newton and Ms. Keyes. We support that.

13 HEARING EXAMINER: Okay.

14 MR. SCHROPP: We rest our case in chief. Thank
15 you very much.

16 HEARING EXAMINER: All right, folks, let's do a
17 ten-minute break. Be back here, please, at 20 minutes of
18 11. As I said, please no coffee or sodas in this room.
19 Water only.

20 (A recess was taken.)

21 HEARING EXAMINER: Let's go back on the record,
22 folks.

23 Okay. Mr. Parker, would you come up, please.
24 All right. And you have been sworn?

25 MR. PARKER: Yes.

1 Thereupon,

2 BILL PARKER,

3 called as a witness, having been previously duly sworn,
4 testified as follows:

5 HEARING EXAMINER: All right. State your name,
6 please, for the record.

7 MR. PARKER: My name is Bill Parker, a resident
8 at West Bay Club, and I'm president of a group of property
9 owners within West Bay. We have 101 members of our
10 organization.

11 HEARING EXAMINER: Hang on just a second.

12 Bryan, check the microphone, would you? It
13 registers but it doesn't register. Is it on or off? All
14 right, now tap it. All right, now it's on. Good. It
15 started to register and then it quit and I didn't know if
16 it had been turned off or what.

17 MR. PARKER: Shortly after the developer
18 announced their plans for this rezoning that's before you
19 today, a number of us had objections to that. But over
20 the ensuing months we've had a number of meetings with
21 them and with our members, and we have concluded a very
22 satisfactory agreement with the developers and we're
23 pleased to report that we would like to encourage you to
24 approve this rezoning project.

25 There's a section of that agreement that is

1 already part of your records, but I'll leave a copy of our
2 notations regarding that.

3 HEARING EXAMINER: Okay.

4 MR. PARKER: We're very pleased to support the
5 process.

6 HEARING EXAMINER: Okay. Will you state the name
7 of the homeowners association that you're --

8 MR. PARKER: It's the West Bay Club Property
9 Owners Association, Incorporated.

10 HEARING EXAMINER: Okay. And that's the
11 independent one?

12 MR. PARKER: Yes, ma'am.

13 HEARING EXAMINER: Okay. Good enough.

14 MR. SCHROPP: Did he indicate what the membership
15 is?

16 HEARING EXAMINER: 101 I think he said.

17 MR. PARKER: That's correct.

18 MR. SCHROPP: Thank you.

19 MS. LEHNERT: Can I see what agreement he's
20 talking about?

21 HEARING EXAMINER: Yes.

22 Mr. Cunningham.

23 MR. CUNNINGHAM: I need to be sworn in.

24 HEARING EXAMINER: Okay. Raise your right hand.

25 Thereupon,

1 BERNARD CUNNINGHAM,
2 called as a witness, having been first duly sworn,
3 testified as follows:

4 HEARING EXAMINER: Thank you, sir. State your
5 name.

6 MR. CUNNINGHAM: My name is Bernard Cunningham.
7 And in addition to being Bill Parker's driver, I'm also a
8 happy resident of West Bay, living there since 2002.

9 My brief comments this morning are directed
10 towards Williams Road and Williams Road only. The matter
11 before the Hearing Examiner this morning, I have voted in
12 favor of and happy to so do.

13 I have had experiences with Williams Road,
14 particularly during the hurricane season, and my comments
15 this morning are simply that since it is the only way in
16 and the only way out of the West Bay community, I was a
17 firsthand participant in the situation on Williams Road
18 the day after Hurricane Charley, which was Friday, August
19 the 13th. And that day I lost my new Mercedes to that
20 hurricane, having been pushed off to the side of the road
21 and turned upside down with my wife as we were attempting
22 to return to West Bay from Tico Arena.

23 Specifically, I'd point out that on Williams Road
24 there are no deceleration lanes, can't be, no room for
25 them. There also is no emergency pull-off area. So,

1 essentially, between 41 and West Bay, Williams Road is a
2 bowling alley configuration, straight shot right in.

3 That road already serves West Bay with our
4 planned 1,016 residences. It serves Pelican Landing,
5 partially, our neighbors to the north. It also serves the
6 individual homeowners who live either directly on Williams
7 Road or immediately to the south.

8 The Paradise shops that are coming and the
9 residential community, that will also empty out onto
10 Williams Road, and the nursing home, which is already in
11 existence on the northwest corner of Williams Road and 41.
12 All those residents get in and out by using Williams Road.

13 Additionally, there is Fountain Lake, which has
14 an enormous population and has an entrance/exit on
15 Williams Road, but they also have access directly to 41,
16 and I acknowledge that.

17 But all of these things add up to include
18 Fountain Lake, Albertsons, all the other stores and
19 shopping centers there, and when you put all this
20 together, I can attest from firsthand experience, that it
21 adds up to a potential traffic and a very distinct
22 emergency evacuation potential situation. I say potential
23 because I'm sure the planners are on to all of this and
24 probably have done some planning for it.

25 But I can tell you the scene on Saturday, August

1 the 14th, as we were attempting to, one, extricate my car
2 from the ditch which was now half under water, my car was
3 eventually totaled; two, to remove all of the fallen trees
4 that had completely closed off the access and egress in
5 and out of West Bay, as well as the emergency vehicles
6 that were attempting to address the down wires, et cetera,
7 et cetera, et cetera. And as we look forward and think in
8 terms of school buses as well as the residents that are
9 there and those that are coming, we need to really take a
10 look at Williams Road and more particularly the
11 intersection of Williams and 41.

12 Thank you for the opportunity to speak.

13 HEARING EXAMINER: Thank you, sir.

14 Okay. What we're going to do now is start staff
15 presentation. Bryan, are you ready?

16 MR. KELNER: Yes.

17 HEARING EXAMINER: Okay.

18 Thereupon,

19 BRYAN KELNER,
20 called as a witness, having been previously duly sworn,
21 testified as follows:

22 MR. KELNER: For the record, Bryan Kelner,
23 Department of Community Development, Zoning Services
24 Division, Principal Planner, and my resume is on file with
25 the Hearing Examiner's office, and I'd like to be

1 qualified as an expert witness in zoning and planning.

2 MR. SCHROPP: No objection.

3 HEARING EXAMINER: All right, accepted.

4 MR. KELNER: I would just like to address a
5 couple of things. The Staff Report, the applicant, and
6 Stephanie Keyes and Ms. Pat Newton addressed a number of
7 items in the Staff Report, so I don't want to rehash all
8 those but I'll just look at some of the things that are a
9 little bit different.

10 But, first of all, the Hearing Examiner has
11 requested -- wanted some information, I think, with regard
12 to why this was not done administratively since we did the
13 other one administratively. The Land Development Code in
14 Chapter 34-380 requires if there's a change in height or
15 intensity, you have to have a public hearing. And, of
16 course, since it was reduced down to single family and now
17 it's going back to multi-family, in essence, it's
18 increased in height and intensity, so we needed the public
19 hearing on that particular parcel.

20 HEARING EXAMINER: Okay.

21 MR. KELNER: Also, briefly, Mr. Schropp in his
22 presentation, and I believe the last -- Mr. Cunningham
23 spoke about Williams Road and what they're doing there to
24 work with the community to improve Williams Road and their
25 continued meeting as of this date to try to resolve

1 different issues and looking at a third-party agreement to
2 resolve that.

3 Of course, that's not part of this rezoning, but
4 I think what we want to do is introduce at the hearing so
5 everybody understands what's happening overall with the
6 community itself, so I just wanted to point that out.

7 With regard to the conditions, as Mr. Schropp has
8 mentioned earlier, true, their agreements with the
9 homeowners association, staff had revised the Staff Report
10 and what I have done is prepared some new conditions that
11 will supersede the ones in the Staff Report that was
12 originally presented on January the 4th.

13 HEARING EXAMINER: Okay. Bryan, do you have an
14 extra copy? Can I have it, please, so I can write on it?

15 MR. KELNER: Sure.

16 HEARING EXAMINER: Thank you. I need a copy for
17 the file and a copy to write on. Thank you.

18 MR. KELNER: These were discussed with Mr.
19 Schropp and we're in agreement with the changes. What it
20 basically is, if you go to Page 3 of 4, we added a
21 Condition No. 6 and a Condition No. 7. And I'll just read
22 through them. I think it's better if I read through these
23 so everybody understands the language that's going to be
24 in these conditions.

25 No. 6, Section A, Condition. Condition No. 4 of

1 resolution D96005 and subsequent amending language in
2 administrative amendment TD-98-003, Condition 3 is further
3 amended as follows: The RPD is limited to a maximum total
4 of 1,016 residential dwelling units with the following
5 distribution. A maximum of 970 dwelling units are
6 permitted in the subject properties located within the
7 Outlying Suburban Land Use Category for which no more than
8 630 dwelling units are permitted within Development Areas
9 3, 4 and 5.

10 B. The maximum 46 dwelling units are permitted
11 within the subject properties in Suburban Land Use
12 Category.

13 This one, of course, is just showing the
14 reduction in the number of units, that the applicant had
15 went from 1,121 down to 1,016.

16 No. 7, Sheet 3 of four page Master Concept Plan
17 entitled Master Concept Plan for West Bay Club, formerly
18 Estero Point RPD, staff received by the permit counter on
19 August 27th, 2004, attached hereto as Exhibit B, it's
20 amended by adding and deleting language as follows: An
21 overall maximum of five high rise buildings may be located
22 within the multi-family pods 3, 4 and 5. Of course, that
23 was originally six. And I can just show you where that
24 was on the plan. It's actually within the property
25 development regulations tables here so that had to be just

1 changed.

2 HEARING EXAMINER: Okay.

3 MR. KELNER: Then with regard to deviation, no
4 additional deviations have been requested as part of the
5 rezoning action. Deviations approved by Resolution
6 Z-96-005 remain in full force and effect. However,
7 Deviation 9 is revised as follows: Deviation 9 requests
8 leave from LDC, Section 34-935(f)(3)(e), which limits the
9 height of the buildings in the RPD zoning category within
10 the Outlying Suburban Land Use Category to 45 feet, to
11 allow 20 stories over parking for Development Areas 2, 3,
12 4 and 5.

13 The requested deviation is approved subject to
14 the following conditions: A. Development area 2 is
15 limited to a maximum height of 75 feet. B. Development
16 areas 3, 4, and 5 are limited to a maximum height of 220
17 feet and were further limited to a maximum combined total
18 of five multi-family high rise buildings, a maximum of two
19 high rise buildings on Development Areas 3 and 4, a
20 maximum of one high rise building on Development Area 5,
21 and two areas of low rise villas on Development Area 3,
22 with a maximum of 630 dwelling units which includes 24 low
23 rise villas for Development Area 3. Thus, the low rise
24 villas we had spoken to earlier.

25 C. Development Areas 3 and 4 must provide a

1 minimum of 35 percent open space. Of course, no change in
2 the language from the previous.

3 D. Development Area 5 is limited to one multi-
4 family high rise building, and must provide a maximum of
5 60 percent open space.

6 E. There is no changes. 90 percent of the
7 required parking in multi-family Development Areas 3, 4
8 and 5 must be provided under the prints of building
9 structure to limit impact with impervious areas created by
10 open parking lot.

11 In F there's no changes. All buildings over 45
12 feet in height must be set back an additional one-half
13 foot for every foot of height over 45 feet along the
14 external development perimeter, and this would be for the
15 entire property itself.

16 So those were the changes that were made to the
17 original conditions of the Staff Report.

18 MS. LEHNERT: Madam Hearing Examiner.

19 HEARING EXAMINER: County Attorney.

20 MS. LEHNERT: Dawn Lehnert, Assistant County
21 Attorney. Just for sake of consistency, in new Condition
22 No. 7, there's a reference to multi-family pods 3, 4 and
23 5, and we've been consistently calling that development
24 area. Is there an objection to changing that to
25 development areas just for consistency unless there is a

1 reason that we --

2 MR. KELNER: The thing is that in some areas
3 within the Master Concept Plan it refers to pods, some
4 areas development areas. So the two numbers are used
5 interchangeably. If you wish, you could put development
6 areas and pods in brackets and I think that would cover
7 it.

8 HEARING EXAMINER: Or put a slash, or whatever,
9 yeah, some indication so that we know the terms are used
10 interchangeable.

11 MR. KELNER: That's right.

12 MR. LEHNERT: Thank you.

13 HEARING EXAMINER: Okay.

14 All right. Can I ask a question here, Bryan?

15 MR. KELNER: Yes.

16 HEARING EXAMINER: Now, I know that you're
17 changing Deviation No. 9 to incorporate the low rise
18 villas only in Development Area 3. Has the applicant
19 approached you or anyone regarding the development of
20 Areas 4 and 5, whether there's going to be any villas in
21 those because if they decide to put villas in those areas,
22 if you limited it only to Development Area 3 in this
23 condition, they will have to come back and get some kind
24 of special amendment, I think, to do that. Do you know if
25 they're planning to do the same kind of a plan?

1 MR. KELNER: No, I don't. This is the language
2 that speaks to Mr. Schropp that we worked into there, but
3 I'm not aware of any change to allow those on the other
4 development areas.

5 HEARING EXAMINER: Okay.

6 MR. CHENSOFF: Ma'am, can I speak?

7 HEARING EXAMINER: Yes.

8 MR. CHENSOFF: The 24 villas will be very happy
9 with just pod 3. Pods 4 and 5 we don't anticipate nor are
10 we asking at this point to do any villas.

11 I could bring up the point that we said two areas
12 here. This is conceptual. We would like to do the villas
13 in -- the 24 villas in such a fashion that fits that site
14 plan. I just want some flexibility that it doesn't have
15 to be exactly what its location is.

16 HEARING EXAMINER: Okay.

17 MR. KELNER: Staff had a Condition No. 5 in
18 there, Development Area 3 must be in substantial
19 compliance with the attached site plan labeled Exhibit A
20 in terms, conditions of Resolution Z96-005. Substantial
21 compliance I think gives them some means of moving some of
22 that around, but generally, you know, we don't want to see
23 four of these villas in there. We're showing three, but
24 they can move them around on site. I don't think the
25 intent was to hold verbatim but to give an indication of

1 what is there.

2 HEARING EXAMINER: Okay.

3 MR. CHENSOFF: Our plan is not to do more than
4 two areas. I just don't know exactly how they're going to
5 lay out.

6 HEARING EXAMINER: All right. Well, we could
7 take the two out and just put "and areas of low rise
8 villas, including 24 low rise". That could be modified, I
9 think, in some way to indicate that this is going to be 24
10 low rise villas with a maximum total of 630, and just take
11 the last twitch out and move it into the -- after the
12 "and", move some of that around there to work, reword
13 that, so that you've got the 24 low rise villas but you're
14 not limited to just two areas in case you have to break
15 them up into three or four. Because my concern is that by
16 limiting this, you know, so strictly, that you're going to
17 end up having to come back in and at least get an
18 administrative approval which is going to hold you up, if
19 not more. So -- all right. I'll reword that then to
20 remove the two and just indicate 24 low rise villas.

21 MR. CHENSOFF: Thank you.

22 THE COURT: Uh-huh. Bryan, anything else?

23 MR. KELNER: Yes. I'll just go briefly into the
24 Staff Report. As I mentioned, the applicant, Stephanie
25 Keyes and Par Newton, pretty well followed all items

1 within it. Staff, of course, has recommended approval
2 with conditions. We find it consistent, of course, with
3 policies of the Lee Plan, and we're referring to Policy
4 1.1.6, Policy 1.1.5, Objective 1.5, Policy 1.5.1,
5 Objective 2.1, and Policy 5.1.6. And Stephanie Keyes, of
6 course, went over the policies in more detail.

7 With regard to compatibility, staff still finds
8 the project compatible with -- in the initial approval on
9 this, there was really very, very little change, a minor
10 change to the original plan that was approved. I think if
11 there's a total redesign of it, then we may have more
12 concerns with it, but the design and development community
13 is substantially the same as originally approved, and,
14 therefore, we feel that it's still consistent with that
15 design with the proposed high rise development.

16 With regard to environmental issues, Kim
17 Trebatoski is here. We talked about Parcel 9B, which is
18 adjacent to Halfway Creek, and the parcel does contain
19 gopher tortoise burrows. However, these tortoises will be
20 relocated to the existing gopher tortoise preserves within
21 West Bay Club RPD and the portion of Halfway Creek and
22 associated mixed hardwood areas adjacent to the creek
23 within Parcel 9B are proposed for preservation.

24 Environmental staff recommends approval of the
25 proposed revision to the West Bay Club with the condition

1 that all environment related conditions from the
2 previously approved RPD remain in full force and effect,
3 and, of course, we have not amended any of those previous
4 conditions.

5 HEARING EXAMINER: Okay.

6 MR. KELNER: And with regard to transportation,
7 Andy Getch is here. Within the development, staff had
8 reviewed it and development services' comments on the TIS
9 are an Attachment C, and they have no concerns with it
10 since there is really no increase in intensity of the
11 development from the original approval.

12 And that's, in essence, Staff Report and I'd be
13 glad to answer any questions from the Hearing Examiner or
14 the applicant or the public on it.

15 HEARING EXAMINER: Okay.

16 MR. KELNER: I guess the only thing I can say is
17 that when you review the Staff Report, there are some
18 differences in the numbers because of --

19 HEARING EXAMINER: Right. Because what we just
20 discussed here.

21 MR. KELNER: Yes.

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

24 MS. LEHNERT: No, ma'am.

25 HEARING EXAMINER: All right. Questions by the

1 applicant?

2 MR. SCHROPP: I have none.

3 HEARING EXAMINER: All right. I don't have any
4 either, Bryan. Thank you.

5 Okay. Any other county witnesses?

6 MR. KELNER: No others.

7 HEARING EXAMINER: All right. I would like to
8 ask Andy a question. Andy, would you step up to the
9 podium, please.

10 State your name, please, for the record.

11 MR. GETCH: For the record, I'm Andy Getch from
12 the Lee County Department of Transportation and I work in
13 the Planning Section.

14 HEARING EXAMINER: Have you been sworn in?

15 MR. GETCH: Yes, I was sworn in and I'm a
16 registered professional engineer in the State of Florida
17 and have been accepted as an expert in transportation
18 engineering on many occasions.

19 MR. SCHROPP: I have no objection as an expert.

20 HEARING EXAMINER: All right. I'll accept you as
21 transportation planning.

22 The question I wanted to ask now, this is the
23 second time that the intersection there at Williams Road
24 and 41 or second case, let's put it that way, in which the
25 intersection at 41 and Williams Road has come into

1 question. I know the other case I restricted the access
2 point, I think, for the Paradise stores, or whatever, I
3 don't remember cases by their names, you know, tell me
4 where they're located and I can tell you whether I did it
5 or not. That particular rezoning I think I restricted the
6 access to a right in, right out only until such time as
7 that intersection is improved to accommodate a left turn
8 out.

9 Do you know if anything -- has DOT staff looked
10 at this intersection and the situation there on Williams
11 Road with the commercial development all trying to get out
12 at the same spot on Williams?

13 MR. GETCH: Yes, Madam Hearing Examiner. Staff
14 has had several meetings with representatives from
15 Paradise shops, as well as been involved in a couple of
16 meetings with folks from the West Bay Group.

17 HEARING EXAMINER: Okay.

18 MR. GETCH: Representatives of this project as
19 well as members of the public that are also here today
20 discussing a proposed solution to that intersection. In
21 part, it's the desire on the part of Paradise shops, which
22 I believe was the name of the zoning case, which actually
23 previously was called Comargo MPD, in order for them to
24 preserve ability for their customers to turn left out and
25 also for people to be able to turn left in from

1 Williams Road into the Paradise shops development.

2 That, as one earlier speaker mentioned, the ALF,
3 it's my understanding that that was all part of the
4 original Comargo MPD. It was subdivided up on their own
5 volition. I believe the West Bay Sales Club was actually
6 originally -- that driveway was originally requested by
7 the predecessor for a sales center there and then
8 Albertsons connected to it and then Paradise shops lined
9 up to it, and the dang thing is just too close to the U.S.
10 41 intersection to effectively operate on a collector road
11 as a full median opening, and we've expressed our concerns
12 with, you know, even some temporary solutions to add turn
13 lanes, that there still could be operational concerns with
14 that median opening. So that's something that our traffic
15 section will be keeping an eye on as time goes by.

16 HEARING EXAMINER: All right. So you're not
17 familiar then with any potential improvements to the --
18 all of Williams Road, I mean, from 41 all the way west to
19 West Bay. You know, Mr. Cunningham indicated, I think
20 that there's no emergency lanes, and if I remember
21 correctly, it's like Coconut Road and Williams Road both
22 are very narrow local roads until all of this development
23 started going in on them and they're totally inadequate as
24 far as for any type of an emergency situation. If you get
25 a stalled car, you're stuck. You're either in the ditch

1 or you're in the middle of the road. Has county looked at
2 any kind of widening of this road or anything that's going
3 to, you know, provide some relief maybe even to the
4 intersection as it approaches it?

5 MR. GETCH: It's not on the long range plan or in
6 the CIP.

7 I would add the comment that Williams Road,
8 similar to the Coconut Road on the west side of U.S. 41
9 and Broadway, they're all older roads that were built at a
10 lower grade than what we would build them now.

11 I believe the gentleman made reference to August
12 14th, which was the day after the hurricane. My
13 recollection is that Page Field registered seven inches of
14 rain on Friday, August the 13th, and we were all under a
15 hurricane warning and the public safety officers told us
16 not to venture out unless it was an emergency.

17 Even under better conditions on Williams Road,
18 travel -- better design conditions on Williams Road,
19 travel there would have still been difficult with downed
20 trees and potentially downed utility lines or power lines,
21 so that's an emergency type of a situation that we don't
22 design our roads to address, frankly, because we just
23 don't have the resources or funds to do it and we use
24 impact fees to generate capacity to address the typical
25 BMD peak hours conditions.

1 HEARING EXAMINER: Okay. Questions of this
2 witness based on anything I've asked?

3 County Attorney.

4 MS. LEHNERT: I'm the County Attorney. I just
5 need to make sure the record is clear. Are there any
6 site-related improvements to Williams Road, 41, the road
7 system that is required to support the request that the
8 applicant has before the Hearing Examiner today?

9 MR. GETCH: It's my understanding that there
10 wouldn't be.

11 MS. LEHNERT: Okay.

12 HEARING EXAMINER: I understood that. Okay. All
13 right. Questions of this witness by the county?

14 MR. KELNER: No questions.

15 HEARING EXAMINER: Okay. Thank you, Andy.

16 MR. GETCH: You're welcome.

17 HEARING EXAMINER: So, folks, if you all want a
18 better roadway, you need to start lobbying your
19 commissioners and you didn't hear me say that.

20 Not on the record because I want to keep my job.

21 All right. No other County witnesses at this
22 time? Then let's go ahead and open this up to the public.

23 Now, what I do have, I have all of your white
24 forms here, so why don't I just call the roll. If you
25 don't want to speak, let me know at the time I call your

1 name.

2 Richard Steele. Richard Steele. Not here. All
3 right. We'll put him at the bottom and see if he's gone
4 out for a minute.

5 Don Eslick. I thought I saw you hiding back
6 there.

7 Thereupon,

8 DONALD ESLICK,
9 called as a witness, having been previously duly sworn,
10 testified as follows:

11 MR. ESLICK: Madam Hearing Examiner, I'm Don
12 Eslick. I live in Estero. I'm a member of the Estero
13 Community Planning Panel and the chairman of the Estero
14 Council of Community Leaders, and I'm here to talk about
15 the Williams Road situation.

16 HEARING EXAMINER: Okay. Are you representing
17 any of those or is this your own personal --

18 MR. ESLICK: I'm representing the Council of
19 Community Leaders.

20 HEARING EXAMINER: Okay.

21 MR. ESLICK: And my only role as it relates to
22 the Community Planning Panel, I should say that I did
23 participate in the meeting that the developers, where they
24 made their presentation and issues were raised relative to
25 the project by the community and by residents of West

1 Bay.

2 As the chairman of the Estero Council of
3 Community Leaders, we have a committee, as you know, that
4 was involved with the Paradise shops rezoning, and where
5 we first raised this issue with you and that same
6 committee has continued to function and represents
7 residents in all of these surrounding communities that
8 have been mentioned heretofore who are on Williams Road or
9 have access to Williams Road and who have to deal with the
10 traffic problems at that intersection.

11 As a result of your decision in the other case,
12 we have continued to work with the Paradise shops
13 developers, and they have come forth with commitments that
14 would substantially improve the intersection. Now, along
15 the lines, in order to overcome the conditions which you
16 imposed in that case.

17 They're still very interested in having a left
18 out at that intersection. And in order to do so, then
19 obviously that intersection has to be substantially
20 improved.

21 Since that time, and you'll hear some testimony,
22 I think, from Fountain Lakes people, I think Dick Steele
23 who had to leave is from Pelican Sound, he would have said
24 as well, that there's a great deal of concern in those
25 communities about having right in, right out. Directing

1 traffic to the west that would ultimately end up having to
2 turn around in their driveways and creating traffic
3 problems at the entrance to Pelican Sound on the
4 right-hand side and then to Fountain Lakes on the left
5 hand side, so there is concern about just having that be a
6 right in from those communities as well.

7 But as a result of that earlier decision which
8 was affirmed by the Board of County Commissioners, as you
9 know, we have had -- Paradise shops people stayed
10 involved, so, Neal Niblick, the chairman of the Community
11 Planning Panel and myself met with the representatives of
12 the ownership of West Bay to talk about what they might do
13 to further assist in the improvement of that
14 intersection.

15 Given that, although it's not subject to zoning,
16 they happen to own the property on the south side of the
17 intersection, southwest corner of the intersection, and
18 they have been very forthcoming, very helpful, both with
19 engineering time and in terms of commitments relative to
20 the provision's right-of-way on the south side that would
21 allow us then to add a fifth lane so that we would be able
22 to go from three lanes at that intersection today, to five
23 lanes in the future.

24 At this point in time, all of which would be
25 between the intersection and the two entrance points. But

1 we have talked about a second phase with the West Bay
2 developers where we were -- further right-of-way west of
3 that point would also be contributed and the entrance to
4 the south to Albertsons would be relocated to the rear of
5 their property. And I don't know if you can envision that
6 at this point in time, but on the south side of Williams
7 as you're going west, right now I think it's 230 feet into
8 Williams is the entrance to the West Bay sales office, to
9 Albertsons and now there's Coconut Point Fork further down
10 that access road.

11 That entrance point could be moved further west,
12 I think about 150 feet, to the rear of the West Bay
13 property, okay, and that would then allow the cueing lane
14 for going south to be west of the Paradise shops entrance
15 and would change that and, of course, having five lanes
16 instead of three would allow a configuration where you
17 would have two northbound, two turn lanes on eastbound --

18 HEARING EXAMINER: I got you.

19 MR. ESLICK: -- eastbound lanes where they could
20 turn left and go north on U.S. 41. In addition to which
21 you would have a right-turn lane for cars coming from the
22 west and there has been a problem there where through
23 traffic going east on Williams has blocked cars that want
24 to turn to the right. And so all of these things would be
25 substantial improvements.

1 West Bay has committed orally at this point in
2 time to providing that right-of-way and to working with us
3 as relates to relocation of the entrance road to the
4 south.

5 Now, and out of that, and a final -- next step in
6 the process is currently underway and could not be
7 accomplished prior to today's meeting is the engineers for
8 all parties are working together to try to determine all
9 of the improvements that have to be made to that
10 intersection, including the changes in signalization,
11 movement of the utilities, you know, the right-of-way
12 contributions. Apparently there are some tapers on the
13 other side of the road that would have to be adjusted.
14 All of those kinds of things, engineers looking at what
15 are all of those items that need to be done in order to
16 make these improvements and how much are each of them
17 going to cost.

18 How much of those are being contributed or will
19 be contributed by Paradise shops, how much by West Bay, et
20 cetera.

21 So it's our fervent hope that as a result of the
22 Board of County Commissioners' consideration of this
23 matter that between now and then we can work something out
24 so that the intersection will be improved as part of this
25 deal. And I hold out the hope that the County, being a

1 County road, that the County itself will be a party to the
2 overall agreement.

3 Now, Bryan has said that right now it's a private
4 agreement. We do have potentially private agreements
5 here, but it is a County road and we're talking about
6 improvements in that intersection to which the County is
7 going to have to be a player and participate with these
8 two willing developers who have stepped up to the plate to
9 try to solve the problem, and I believe, frankly, benefit
10 both of them but also benefits the public to a great
11 degree.

12 So that's the essence of my testimony. I very
13 much appreciate the opportunity to make that presentation
14 and I'd be happy to answer any questions.

15 HEARING EXAMINER: Questions? Thank you, Don.

16 MR. ESLICK: Thank you very much.

17 HEARING EXAMINER: David Guenther.

18 MR. GUENTHER: Guenther.

19 HEARING EXAMINER: Guenther, okay. And you have
20 been sworn?

21 MR. GUENTHER: I have been sworn.
22 Thereupon,

23 DAVID GUENTHER,
24 called as a witness, having been previously duly sworn,
25 testified as follows:

1 MR. GUENTHER: My name is David Guenther, and I
2 am a property owner and resident of West Bay.

3 Just a general comment first. Notwithstanding
4 the claims of the developer, I remain unconvinced that the
5 density of over a thousand residences is required to make
6 West Bay fiscally, financially successful, both during
7 development and after turnover. I'm sure there's a lot
8 more to say on that.

9 Secondly, there has been talk about an agreement
10 between the developer and the property owners association.
11 I'd like to point out that that agreement was reached
12 Monday evening at approximately six o'clock, I believe. I
13 got an e-mail. And it's been suggested also that that was
14 really only finalized Tuesday morning, yesterday morning.

15 Part of that agreement involved that property
16 owners association telling their members that they no
17 longer would be needed at this hearing, and I wonder if a
18 lot more people that aren't in agreement with this might
19 not be here were that not the case.

20 The Area 3, West Lake, I guess is basically what
21 this hearing is about, but that also in my view affects
22 Area 4, which is referred to as Waterside, and I am
23 concerned more about that, they're kind of interrelated.
24 Waterside is a much smaller piece of land and the Twin
25 Towers that would be going up there, it seems to me would,

1 unless there's severe setback, and that piece of property
2 is not terribly deep, so I question how far back that can
3 be set, and if it can't be set back adequately, it seems
4 to me that that is going to just totally overwhelm both
5 the street and that new Niblick Club.

6 So I guess my concern is if you limit Area 3,
7 that takes the developer's ability, flexibility, if you
8 will, on the Waterside thing away. I'm basically more
9 concerned about Waterside than I am the other one.

10 And that's it.

11 HEARING EXAMINER: Okay. All right. Questions?
12 Thank you, sir.

13 Warren Patterson. Now, folks, if I call your
14 name and you don't wish to speak, you just tell me you
15 don't wish to speak.

16 Thereupon,

17 WARREN PATTERSON,
18 called as a witness, having been previously duly sworn,
19 testified as follows:

20 MR. PATTERSON: My name is Warren Patterson. I
21 own two properties at West Bay Club presently. I
22 purchased my first -- or signed my contract on my first
23 property December of 1999.

24 You asked at the beginning of this hearing that
25 we address personal impact. Area No. 3, which is right in

1 here (indicating), I own a condominium that right now is
2 250 yards off Area 3. At the time that I purchased this
3 condominium and the other condominium that I own, which is
4 immediately across the street, West Bay Club development
5 presented Area 3 as being single family development.

6 In my researching the County records, and if I
7 understand how Lee County puts together their records,
8 application for the change of what is called West Lake
9 Court was actually made in 1998 by the original
10 development team, and it was approved, it appears in the
11 computer, that it was approved in early 1999, which was
12 early on in the sales effort of West Bay Club.

13 At the time I was looking at West Bay Club, there
14 was very little there other than a very new golf course,
15 some roads and a gate house. There were some models under
16 construction. There was what they currently call the Bay
17 House under construction. And the developer was
18 presenting West Bay Club as being a low density
19 community. Yes, they had said that what they're calling
20 Jasmine Bay right now or what was just called Waterside
21 was going to be a high rise operation. They were
22 presenting what is called The Island as being a future at
23 the end of development high rise.

24 But they were showing, even though on the
25 original maps that looked very similar to this map here,

1 what is Area 3 on the first map that I got in 1999, which
2 they said was an original printing, said future
3 development. The second map that I had had the West Lake
4 Court roads put into it. And they were showing it as
5 being single family homes.

6 We bought our condominium based upon what was
7 presented to us on a sales basis. And I know that there
8 were people that up until the property owners association
9 said that they need not be here that live in this area and
10 are very concerned about high rises being less than 100
11 yards off of their back yards would be here.

12 What they're asking for right now really is a
13 departure from what the original factual written materials
14 were that West Bay development presented to us. So,
15 consequently, as you must gather, I'm opposed to having
16 any high rises down there.

17 As I have discussed with the developer, I am not
18 opposed to alternative higher density housing. I
19 recognize the fact that West Bay development and Lehman
20 Brothers do need to make a profit on what they're doing,
21 that they're not a nonprofit organization. However I also
22 have some other concerns here.

23 As Mr. Cunningham addressed and some other people
24 have addressed, I'm concerned with the safety impact of
25 fire and rescue being able to get into West Bay and get

1 out of West Bay as far as Williams Road is concerned. I
2 don't really recognize, even though I know that down here
3 in southwest Florida the concern of hurricanes is a
4 necessity, I feel that even with the two hours we were
5 given on August 13th, telling us that it wasn't going to
6 hit Tampa, it was going to hit southwest Florida, we had
7 adequate time to move if we needed to move. And I was
8 here on August 13th. The morning of August 14th we could
9 not get out of West Bay Club because of five different
10 blockages going down Williams Road. However, if you're in
11 a hurricane, those things happen.

12 I'm also concerned with what the environmental
13 impact of putting additional high rises at West Bay Club
14 is actually going to have as far as the wildlife is
15 concerned. What's going to happen as far as birds are
16 concerned, the gopher tortoises they've been talking
17 about, and I'm certain that the environmental people with
18 Johnson Engineering have done a yeoman's job of looking
19 into this. But it's still, somewhere in the back of my
20 mind goes this has to hurt somehow.

21 I also think that right now -- and I have
22 developed some properties in my life. I own real estate.
23 I actually moved a zoning meeting up in northeast Ohio so
24 I could come to this zoning meeting. I feel that here in
25 southwest Florida, that there is a glut of high rises

1 right now.

2 I inquired with my commercial bank prior to
3 coming down here and they've given me different reports at
4 times, what the inventory of CO'd high rise units are in
5 southwest Florida. And this is both Lee and Collier
6 County. And they came back to me on Friday afternoon
7 before they closed for the holidays, and they said that
8 according to their current bankers reports, and I can't
9 give you exact documentation because this is just a verbal
10 report, as of Friday, they believe the WCI right now has
11 578 CO'd units that they have never sold.

12 That doesn't include those units that investors
13 have purchased for the purpose of flipping after the time
14 the building has a CO on it.

15 I think that right now there are probably a lot
16 of investors that thought that they could make a quick
17 buck down here in southwest Florida buying into a building
18 pre-construction and getting out of it before residency
19 happened that are sorely looking at their loss.

20 I know that I personally within the West Bay Club
21 suffered from that problem. I had a third condominium
22 that I've just recently sold that I acquired right after
23 9-11, and had it on the market shortly thereafter and held
24 it until the middle of November of this year. Non-
25 productive real estate is not something I like to have.

1 So, consequently, I take a look at the whole
2 picture. Lehman Brothers has admitted that they've been
3 involved in the original financing. You know, I'm not
4 sure exactly what part they were in. I was present at a
5 couple of the bankruptcy hearings that happened in
6 Cleveland, and I know that there were Lehman Brothers
7 representatives there as were Fleet Bank and a few other
8 smaller entities.

9 So I think Lehman Brothers has been aware since
10 the beginning that a lot of low density -- or the low
11 density operation here was really a reality even though
12 the original zoning back in 1996 allowed 1,125, or
13 whatever the exact number is there. You know, there had
14 to be some sort of business plan that they were looking at
15 that made sense to them.

16 The people at Lehman Brothers are top notch
17 financial people who know how to analyze the numbers even
18 though they may not choose to want to personally operate
19 something like this.

20 I also think there may be a problem within the
21 community at West Bay that the people feel that this is a
22 rubber stamped deal, that it's been done with the County
23 already. West Bay development is already taking up the
24 infrastructure in Area 3, and I think that that portrays
25 to the individuals that this is already done. I know that

1 somebody sitting here in the audience today said that they
2 felt this was already a completed deal. That they were
3 surprised at what this hearing was really about.

4 Consequently, I would implore you to ask West Bay
5 development and Indian Hills partners to go back to the
6 drawing board and come up with an alternative to this high
7 rise program. I do not think that it is beneficial for
8 the community.

9 Thank you.

10 HEARING EXAMINER: All right. Thank you, sir.

11 MR. SCHROPP: May I inquire?

12 HEARING EXAMINER: Yes.

13 MR. SCHROPP: Thank you.

14 Mr. Patterson, you've indicated that you thought
15 the application to change Development Area 3 to single
16 families was made in 1998 and approved in '99?

17 MR. PATTERSON: Yes.

18 MR. SCHROPP: How sure are you of that?

19 MR. PATTERSON: Well, according to what I see on
20 the computer within Lee County computer program, it
21 appears to me that original application was made around
22 December 30th of '98 and was approved by the County on
23 February 23rd of '99.

24 MR. SCHROPP: Okay. There were a couple of
25 administrative amendments approved along the way for this

1 project other than the one that you're concerned about
2 with Development Area 3. I'd just point out for the
3 record, I guess, in the Staff Report and also the actual
4 amendment is included in the package, it wasn't approved
5 until 2000. So I think you're probably looking at another
6 administrative amendment, not the one that --

7 MR. PATTERSON: Okay. Well, I'm going based on
8 how the County employees directed me to this number.

9 MR. SCHROPP: Okay. Okay. I get confused, too.

10 MR. PATTERSON: I mean, I deal with different
11 county programs in different counties across the country
12 and each one of them is just a little bit different.

13 MR. SCHROPP: And that approval then in 2000
14 would have been after you signed the first contract with
15 West Bay, correct?

16 MR. PATTERSON: Well, actually the first contract
17 that I signed with West Bay, I ended up backing out of
18 because the builder would not make some changes in the
19 building that I wanted.

20 MR. SCHROPP: But you indicated that was December
21 of '99?

22 MR. PATTERSON: Yes. That actually was the week
23 between Christmas and New Year's of '99. I signed the
24 contract on my first unit, Building 2 of Turtle Point the
25 end of March of 2000.

1 MR. SCHROPP: Okay. And you indicated you have
2 two condos?

3 MR. PATTERSON: I currently have Building 2 at
4 Turtle Point and Building 21201 in Indigo Shores. I also
5 had owned a unit in Building 3 of Indigo Shores, which is
6 the one that I recently sold.

7 MR. SCHROPP: So obviously -- go ahead.

8 MR. PATTERSON: I, unfortunately, was caught up
9 with the drag on the real estate market by 9-11-2001.

10 MR. SCHROPP: So, obviously, not all of these
11 condos are your personal residences or used for your
12 primary residence?

13 MR. PATTERSON: No. I've purchased them as
14 investments as rental units. I've tried to help West Bay
15 make some sales and successfully done that.

16 MR. SCHROPP: Okay. At this point both of the
17 condos are owned as investments. At this point your
18 primary residence would be in --

19 MR. PATTERSON: My primary residence is in
20 northeast Ohio.

21 MR. SCHROPP: Okay. Thank you. That's all I
22 have.

23 HEARING EXAMINER: Okay.

24 Richard Woodburn.

25 Thereupon,

1 RICHARD WOODBURN,
2 called as a witness, having been previously duly sworn,
3 testified as follows:

4 MR. WOODBURN: My name is Richard Woodburn, and I
5 live in Estero River Heights, which is right here on the
6 other side of the river (indicating).

7 My main concern was, when I first got the notice,
8 is that when I walk out my front door I'm going to see a
9 high rise condominium which would have been detrimental to
10 my property values.

11 I see the map, and I'm not sure what scale this
12 is, but they'll be here which -- what is the scale on this
13 map?

14 MR. SCHROPP: I don't know what the scale is, but
15 I believe the distance from the river is approximately
16 3,000 feet, but that's -- I'm recalling testimony from
17 about eight years ago, I could probably look in the
18 record, but it's in that neighborhood.

19 MR. WOODBURN: It will be highly visible from my
20 front door at this point, a quarter mile. So to me that
21 hurts my property values.

22 My other concerns are the wildlife which the
23 gentleman before me brought up. We are very fortunate to
24 have all this property here in the Estero Bay buffer
25 preserve that is up in this area (indicating). A lot of

1 birds. In many years, I have lived out here a long time,
2 but I have seen panthers in the buffer preserve, deer,
3 hogs. I don't think there's any panthers left, but we'd
4 love to see them come back. We know they're making great
5 strides in the Cypress preserve area.

6 And as far as the birds go, well, if you set up
7 high rises, you're going to end up with a lot of light
8 pollution which is going to affect the bird population.

9 The other thing I guess I'll call site pollution,
10 and it sticks out, you can see it, which nature, the
11 animals will avoid. They will not go near that area. And
12 I just feel it's going to be detrimental to the wildlife.

13 Thank you.

14 HEARING EXAMINER: Thank you.

15 MR. SCHROPP: May I just inquire? When did you
16 purchase your property?

17 MR. WOODBURN: About eight years ago.

18 MR. SCHROPP: Do you know an approximate date
19 that would have been? That would have been about the time
20 we got the original building?

21 MR. WOODBURN: I think it was 1996, actually,
22 yes. It was just before the West Bay Club was being
23 developed.

24 MR. SCHROPP: Okay. Where exactly do you live?
25 Can you point it out on the site map?

1 MR. WOODBURN: Right here (indicating).

2 MR. SCHROPP: Okay. Thank you.

3 HEARING EXAMINER: Thank you, sir.

4 Carl Hoke.

5 Now, remember, folks, if you have not been sworn
6 in, you need to tell me. I know some of you did come in a
7 little later.

8 MR. HOKE: I have been sworn in.

9 HEARING EXAMINER: You have been, all right.
10 Thereupon,

11 CARL HOKE,
12 called as a witness, having been previously duly sworn,
13 testified as follows:

14 MR. HOKE: My name is Carl Hoke. I'm a resident
15 of Fountain Lakes, and I'm speaking for myself and also
16 for Fountain Lakes in place of Dick Schweers who couldn't
17 be here today.

18 Our concern is the intersection of 41 and
19 Williams Road. Unfortunately, the area we're talking
20 about was defective from its inception because of the left
21 turn holding lane. The additional development from West
22 Bay, from the Meadows which is going to be developed now,
23 from the Paradise shops is all going to add to the
24 problem.

25 We believe that you recognized this when you

1 allowed only a right in, right out. And some progress has
2 been made. We realize that there have been meetings with
3 the developers and we're very happy about this. But we
4 still are going to be living there after the developers
5 leave, and what we want to see, we don't want to see a
6 Baid-Aid solution, we want to see the best solution
7 possible because there's no question in our minds that's
8 dangerous, a little more dangerous than our main entrance
9 now. I've been using that area for about two-and-a-half
10 years now, so I have firsthand experience seeing how that
11 backup lane stacks up.

12 So what we basically want is we want the best
13 possible solution that we can have to that and want it to
14 be concurrent with the development.

15 If the development goes forward, we would like
16 the solution to go forward simultaneously and probably
17 this is going to wind up before the Board of County
18 Commissioners. But basically what we want is a good final
19 solution to this problem.

20 Thank you.

21 HEARING EXAMINER: Okay. Thank you, sir.

22 William Glatz.

23 MS. LEHNERT: Madam Hearing Examiner, could
24 we change the batteries --

25 HEARING EXAMINER: I'm sorry, I can't hear it up

1 here.

2 (A discussion was had off the record.)

3 HEARING EXAMINER: We're back on the record.

4 Thereupon,

5 WILLIAM GLATZ,

6 called as a witness, having been previously duly sworn,

7 testified as follows:

8 MR. GLATZ: My name is Bill Glatz. I'm a
9 resident of West Bay Club, and I'm up here with mixed
10 emotions somewhat because I would like to applaud the most
11 recent efforts on the part of our homeowners association
12 and West Bay. I think you've had made some important
13 strides.

14 Nevertheless, I'm impacted, and I don't like high
15 rises. I don't like the idea. I live here (indicating).

16 HEARING EXAMINER: Okay.

17 MR. GLATZ: I bought my lot in 1999. I commenced
18 construction on my home in the spring of 2000 and I moved
19 here in December of 2000.

20 I don't think it needs to be pointed out, but
21 certainly one of the happier days of my experience at West
22 Bay was the extensive advertising and knowledge that I
23 saw, perhaps best epitomized by the Parade of Homes 2000
24 literature that was passed out where the future
25 development was identified as single-family housing, 13, I

1 think was the number, and I thought isn't that marvelous.
2 I will have this pristine, beautiful sunset view forever.

3 I'm less than 500 feet across the fairway to this
4 high rise development. Two towers are better than three
5 towers. The specific location of those towers is also
6 important in my consideration. I would like to see them
7 moved back as far as possible on this land.

8 I live in Sunset Trace. That's a good name for
9 that development because when those two towers go up,
10 that's what I'll get, a trace, maybe, between two towers.
11 Maybe your yard, my pool will be in shadow from mid
12 afternoon to sunset.

13 I, again, speak with some feeling of disquiet,
14 but I would much prefer mid rise to low rise, four or five
15 family development if we must go further to make West Bay
16 the superb community that it is a financial success.

17 Thank you.

18 HEARING EXAMINER: Thank you, sir.

19 Greg Toth.

20 MR. TOTH: I did come late.

21 Thereupon,

22 GREG TOTH,
23 called as a witness, having been first duly sworn,
24 testified as follows:

25 HEARING EXAMINER: State your name.

1 MR. TOTH: Greg Toth, a member of the Estero
2 Community Planning Panel. And I don't want to take any
3 more time than I have to and go over some of Don Eslick's
4 testimony.

5 MR. LEHNERT: I'm sorry. I want to know if he's
6 speaking on behalf of the Planning Panel because that
7 group is not represented here yet today.

8 HEARING EXAMINER: All right. Greg, are you
9 speaking on your behalf or are you speaking on behalf of
10 that group?

11 MR. TOTH: I think that I can say that I'm
12 speaking on behalf of the Planning Panel only because
13 these issues were addressed there and I'm just relaying
14 them to you.

15 HEARING EXAMINER: Okay. Has the panel taken a
16 position on this? I mean, has there been a vote on this
17 and a position taken?

18 MR. TOTH: Well, the position was mainly a
19 traffic issue here and the issue was Coconut -- I mean,
20 Williams Road, as you made mention. As a county road as
21 development is happening on that road, the community was
22 concerned with the betterment of that, and I guess I would
23 like to get on the record in saying that we've talked
24 about a public-private partnership a number of times in
25 front of you. This is one of those areas where I think

1 that we have an opportunity to do something with that
2 road. The applicant certainly isn't forced to be doing
3 something. They've come up willing to give some property
4 away. The County has been in meetings, as Andy testified,
5 as well as the Comargo, and I know that a lot of these
6 things have been tied in verbally and I don't know if it's
7 possible or not to tie them in more finitely into some
8 sort of written agreement. But I know that Williams has
9 problems, and I know that with the partnershiping of the
10 Comargo, the West Bay people and the County, that we can
11 at least make some improvements at this point as Don
12 mentioned Phase 1 of this to better that intersection.

13 Phase 2 that he mentioned will probably take a
14 while because it will take amendments to probably Fountain
15 Lakes as well as the Albertsons development. There are
16 some wetland issues, so in the short term, what I believe
17 the community would like to see is whatever can be done
18 quickly and with the help of the County and the applicant
19 and Comargo Trust, we would like to see done at that
20 intersection. And we will continue to address the
21 problems at Williams Road through the normal channels to
22 try and get that.

23 HEARING EXAMINER: All right. Thank you, sir.

24 Marvin or Wanda Silver. Are the Silvers here?

25 Okay. I'll put them at the bottom of the list just in

1 case one of them stepped out.

2 Albert O'Donnell.

3 MR. O'DONNELL: I have been sworn in.

4 HEARING EXAMINER: You haven't?

5 MR. O'DONNELL: I have.

6 HEARING EXAMINER: You have. Okay. Good.

7 Thereupon,

8 ALBERT O'DONNELL,

9 called as a witness, having been previously sworn,
10 testified as follows:

11 MR. O'DONNELL: My name is Albert O'Donnell. I'm
12 here today in two capacities actually. I'm the
13 vice-president of the Estero Chamber of Commerce and I'm
14 also a neighbor. I have a nursery business on the 30
15 acres adjoining the property and I also live on the
16 property next door by the maintenance facility of West Bay
17 Club.

18 The effective community, the Chamber of Commerce,
19 has voted to support this application on several grounds,
20 first of which it's less density than it was previously.
21 Secondly, it was the original sort of configuration of the
22 site. And, thirdly, because West Bay has been a good
23 member of the Chamber of Commerce and supported some of
24 our events and it's a beautiful community, ^{en} in addition to
25 the area.

1 But more importantly as a neighbor I've had a
2 long relationship with the development. A lot of issues
3 came up during the development that were tied with me.
4 The franchise, the water franchise line was on Williams
5 Road, so the development was originally in two different,
6 BSU and Lee County utilities, Gulf Environmental, so there
7 was a long complicated process.

8 The water people wanted to put a loop instead of
9 a dead end main so it had to come down a side access road
10 of Kings Road, which is essentially on my property. And I
11 wasn't very interested in that if I couldn't get any
12 water, so a very long negotiation to trade me out of one
13 district to another piece a mile down the road, down
14 Williams, so things like that.

15 There was some surveying, some old surveys
16 disagreed on Kings Road, so when they're trying to
17 resurface that back to the maintenance facility, that
18 turned into a nightmare. One of the residents wouldn't
19 sign on for that, so when they tried to improve that and
20 fix the drainage, there's a notable jog in the road now to
21 get around that, so there's been a lot of issues.

22 The 1.6 acres that they're -- that is part of
23 this application of land, I traded West Bay because I own
24 some land on the other side of Halfway Creek in their
25 development and they own land in my nursery, so we

1 swapped, basically, equal pieces of land so that we could
2 each use them.

3 I've done landscaping for the original developer
4 in my business, and I've done work for the new
5 developers. So I've also worked for them professionally.

6 But some of the things they've done that I don't
7 think are quite so -- people are aware of, for about three
8 years they mowed all of Williams Road and they resurfaced
9 and raised Williams Road. It was actually essentially
10 rebuilt at their expense.

11 The Kings Road area, they've -- we've jointly
12 mowed and kept up the common properties for years with our
13 golf maintenance people, so they've been, you know, an
14 excellent neighbor that way. And they've done trash
15 removal since the -- on Williams Road since the company --
16 you know, since they started their development, obviously
17 to make their front entry look good but it's been great
18 for the neighborhood. Their security patrols come down
19 and sort of through my back area, so they've really been
20 an excellent neighbor.

21 HEARING EXAMINER: Okay. Thank you, sir.

22 William Watts.

23 MR. WATTS: I don't want to speak.

24 HEARING EXAMINER: Okay. Thank you, sir.

25 I'm back to Richard Steele again.

1 UNIDENTIFIED SPEAKER: He had to leave.

2 HEARING EXAMINER: He is gone, okay.

3 Donald Vilnius.

4 MR. VILNIUS: Yes.

5 HEARING EXAMINER: Vilnius.

6 MR. VILNIUS: I've been sworn in before but not
7 earlier.

8 HEARING EXAMINER: You weren't sworn in today?

9 MR. VILNIUS: No.

10 HEARING EXAMINER: Then I better swear you in.
11 Thereupon,

12 DON VILNIUS,
13 called as a witness, having been first duly sworn,
14 testified as follows:

15 HEARING EXAMINER: State your name, please.

16 MR. VILNIUS: My name is Don Vilnius. I live in
17 West Bay at 22199 Nature's Cove Court. And I'll properly
18 represent myself.

19 I'm a resident there and on the Estero CCL and
20 I'm also a member of the West Bay Club Property Owners
21 Association and an officer.

22 MR. LEHNERT: So is he representing -- I just
23 need to know for the record who's doing what.

24 MR. VILNIUS: I'm representing myself.

25 HEARING EXAMINER: Okay.

1 MS. LEHNERT: Works for me.

2 MR. VILNIUS: And it's just a point in
3 clarification. The recently handed out information, and
4 I'll address this to Bryan. We reduced the number of
5 residential units. If you take a look at the 1,016, I'm
6 not certain as to the distinction between the outlying
7 suburban areas which is 970, I guess, and the suburban
8 land use category, 46 units.

9 But all I'm asking is in terms of clarification,
10 if we start with the number 1,016, and we reduce that by
11 the number of properties that are currently not high-rise
12 units, there's about 463 of those. That gets us down to
13 number 553. The proposal includes 24 villas. If we
14 reduce the 553 by 24 that leaves a number of 529.

15 The document says that there will be no more than
16 630 dwelling units in Areas 3, 4 and 5. So, I mean, in my
17 estimation, there can only be like 553 dwelling units
18 because all the other dwelling units are taken up already.
19 Do you follow me?

20 MR. KELNER: Yes.

21 MR. VILNIUS: Okay. My question I guess would
22 be, can we rely on the 1,016? This isn't some
23 mathematical exercise here in terms of 630 dwelling units
24 on 3, 4 and 5.

25 MR. SCHROPP: We can address that, but I'm not

1 sure how to go. If we could on rebuttal maybe address
2 that.

3 HEARING EXAMINER: I think really what he's
4 looking for is just confirmation that there will be no
5 more than 1,016 dwelling units on the property. Whatever
6 is already existing there is going to be deducted from
7 that total and then that's all you're allowed to build on
8 those pods.

9 MR. VILNIUS: Yes.

10 HEARING EXAMINER: Even though you've got the
11 630, that's the maximum number that would be permitted on
12 those --

13 MR. SCHROPP: Those three pods, that would be the
14 total build-up density of the whole project would not
15 exceed --

16 HEARING EXAMINER: Now, if they don't have 630
17 dwelling units, I can guarantee you they are not going to
18 be building 630 dwelling units.

19 MR. VILNIUS: That's what I say. I just want to
20 clear up that that's not an inconsistency that the
21 overwhelming -- the superseding number would be 1,016.

22 HEARING EXAMINER: Right. That is the maximum
23 project total, and they cannot exceed that without coming
24 back in and asking for another approval.

25 MR. VILNIUS: All right. Thank you.

1 HEARING EXAMINER: Thank you, sir.

2 Daniel Besser. Besser? Mr. Robert Wilson.

3 MR. WILSON: I don't care to speak. Thank you.

4 HEARING EXAMINER: Thank you, sir.

5 Sissel and Stewart Roberts. You'll have to
6 pronounce that for me.

7 MS. ROBERTSON: I'm Sissel Robertson.

8 HEARING EXAMINER: Is it Robertson?

9 MS. ROBERTSON: Sissel Robertson.

10 HEARING EXAMINER: Oh, okay. It looks like an
11 s-c-h here on the end. Okay. Have you been sworn in?

12 MS. ROBERTSON: I have.

13 HEARING EXAMINER: Okay. All right.

14 Thereupon,

15 SISSEL ROBERTSON,

16 called as a witness, having been previously duly sworn,
17 testified as follows:

18 MS. ROBERTSON: Again, my name is Sissel
19 Robertson, and I live at 4401 Williams Road, which is
20 right next door to the entrance of West Bay Club. I've
21 lived there for 17 years and I've seen a lot of changes.
22 I have several concerns.

23 One of them being Williams Road, once again, the
24 intersection, yes, it's terrible. The problem, of course,
25 is that we have too many cars but let's not go there for

1 now.

2 I would very much like to see some side roads put
3 in and a bike trail. I have a 15-year-old son. My
4 husband and I pick him up and drive him to the bus
5 stop at Albertsons because of the concern about the
6 traffic.

7 I used to walk where Pelican Sound and West Bay
8 Club is, but, you know, I no longer have access to those
9 properties. Just to maintain my basic health, I must
10 walk. The only place left is Williams Road, and it's just
11 not a safe place to walk. I fear for my life.

12 And some sidewalks would be, you know, so
13 wonderful. I realize we can't have stop growth and all of
14 this, but we need to grow in a sensible way. I applaud
15 West Bay, you know, for making attempts in the development
16 to preserve the natural environment. I do appreciate it
17 even though I'm not there to enjoy it.

18 My other concern is that when we do build high
19 rises and make changes in density and zoning, it has
20 happened so many times in the past that after a little
21 while developers come back and ask for another change.
22 I'm just concerned that, you know, that this won't set a
23 precedent for, you know, higher density than originally
24 allowed for in that area in the future.

25 HEARING EXAMINER: Okay.

1 MS. ROBERTSON: My final concern is that 1.6
2 acres which is right next door to me. At the present time
3 West Bay has the nursery facility there, and we've endured
4 a lot. We've had every construction worker park their
5 cars there at lunch and litter under our trees. During
6 the construction phase, we've had RV storage there. We've
7 had boat storage there. The house that is there now, it's
8 looking worse all the time. And it is my understanding, I
9 don't know if it's true, that four residences that are to
10 be built next door are to be housing for guests of West
11 Bay. And, you know, I would really like to have some real
12 neighbors, because I don't have a relationship with the
13 people in West Bay. I don't have any neighbors. They
14 have all been bought out.

15 HEARING EXAMINER: Where do you live exactly?

16 MS. ROBERTSON: I live at 4401 Williams Road, on
17 the south side of Williams Road.

18 HEARING EXAMINER: Okay. Is it outside the
19 entrance to West Bay or are you in West Bay?

20 MS. ROBERTSON: No, I'm not in West Bay.

21 HEARING EXAMINER: So you live outside of West
22 Bay?

23 MS. ROBERTSON: Right.

24 HEARING EXAMINER: Okay. North or south side?

25 MS. ROBERTSON: I live on the south side of the

1 street.

2 HEARING EXAMINER: Can you show us on this aerial
3 he's got? Give us an idea where you live.

4 MR. SCHROPP: Here's West Bay. Here's the
5 entrance right here. There's Kings Road.

6 MS. ROBERTSON: Okay.

7 MR. SCHROPP: West Bay owns that corner. The
8 house next door to it?

9 MS. ROBERTSON: The house right there
10 (indicating).

11 MR. SCHROPP: Right there (indicating). She
12 lives approximately right here (indicating).

13 HEARING EXAMINER: Okay. So you live -- okay.
14 You live one house or one block away from the actual
15 entrance I guess it is?

16 MS. ROBERTSON: Right.

17 HEARING EXAMINER: Okay.

18 MR. CHENSOFF: I'll show her where the lots are
19 going to go inside the community over here. It is not
20 housing, employee housing. It's not next to you, it's way
21 over here (indicating).

22 MR. CHENSOFF: You have this in your packet.

23 HEARING EXAMINER: Okay. I do have it. All
24 right. Now, you understand where those houses -- where
25 that 1.6 acres is, right?

1 MS. ROBERTSON: Yes. That's right next door to
2 our property.

3 MR. CHENSOFF: No, it's not. It's way over here.
4 You're over here (indicating), it's on the west side of
5 Halfway Creek.

6 MS. ROBERTSON: So there's no plans for
7 developing the property right next door to ours at this
8 point; is that right?

9 MR. CHENSOFF: Not at this time, no.

10 MS. ROBERTSON: Okay. Thank you.

11 HEARING EXAMINER: All right. Thank you, ma'am.

12 Okay. I'm back to the Silvers, Marvin and Wanda.

13 Okay. All right.

14 Applicant want to respond to any of the concerns
15 and issues brought up by the public?

16 MR. SCHROPP: I think I would, but could I have
17 about five minutes to organize?

18 HEARING EXAMINER: Sure. Let's take -- let's be
19 back here at ten minutes after twelve, and we'll finish up
20 with the applicant and staff's response to your questions
21 and concerns.

22 Water only in this room, please.

23 (A recess was taken.)

24 HEARING EXAMINER: Okay. Now, I have a white
25 form here from a Mr. Brice, Robert Brice.

1 MR. BRICE: I don't want to talk.

2 HEARING EXAMINER: You didn't want to talk, okay.
3 I noticed you just checked to receive a copy of the
4 recommendation, but I thought I'd give you the
5 opportunity.

6 Okay. The applicant is ready to respond now to
7 the concerns raised by the public.

8 MR. SCHROPP: Yes. And if it would be
9 appropriate, a lot of the concerns or a lot of the
10 comments dealt with wildlife issues, and Kim Trebatoski
11 indicated she's probably the most knowledgeable on the
12 site to address them, volunteered to do it. So if I could
13 ask Kim to address those issues.

14 MS. TREBATOSKI: For the record, I'm Kim
15 Trebatoski. I'm the Principal Environmental Planner with
16 Lee County, Division of Environmental Sciences. It may be
17 a little bit unusual for me to answer these instead of the
18 applicant, so let me pose a little bit of background why
19 I'm doing this.

20 West Bay Club was one of the very first golf
21 courses that I reviewed as an environmental planner in the
22 county to apply all of the zoning conditions to, the main
23 person writing the vegetation removal permits on the site
24 so I was on the site before it was cleared. I was on the
25 site during clearing process. I have subsequently been

1 involved with the site for quite a while and am aware of
2 the evolution of West Bay Club and also some of the things
3 that they have done over time that I was either involved
4 in or indirectly involved in environmentally.

5 So an additional reason why I thought it was
6 appropriate for me to address this is that I am the staff
7 member man who oversees all the zoning and Development
8 Order review from an environmental standpoint, so I'm very
9 familiar with what is occurring development wise
10 throughout the county and what we typically see.

11 I hear the concerns loud and clear about the
12 wildlife. It's a very, very unique piece of property. It
13 has very diverse habitats.

14 You have a creek, you have upland scrub, one of
15 the only areas of rosemary scrub left in the county. You
16 have salt water wetlands. You have fresh water wetlands.
17 You have pine flatwoods. It's an extremely diverse piece
18 of property habitat wise.

19 The wildlife underpasses through the roads do
20 work as a wildlife corridor. If you stop and look when
21 you're on the site, you see the paths that the wildlife
22 have utilized in there, so their corridors under the roads
23 are actually working.

24 It's an exceptional piece of property. Yes, it
25 would have been wonderful to have been a public wildlife

1 park, but you have to say that from seeing the piece of
2 ground when it was pre development with the dirt trails
3 that I know people used to walk, that people use to camp
4 back there, people use to fish back there, this
5 development preserved far, far more wildlife habitat and
6 the diversity of it, they preserved creek areas, they
7 preserved the coastal ridge, rosemary scrub ridge, they
8 kept the majority of their preserves in large tracts
9 instead of breaking them up.

10 This in and of itself provides better long term
11 habitat than what we see throughout the county on a
12 regular basis that meets the code. Just some quick
13 numbers. It's about 866 acres of project. 700 acres is
14 open space. 526 acres is preserve. I mean, it's
15 astounding to have 526 acres out of 866 as preserve.

16 The restoration of a wetlands actually, that
17 was -- the wetlands actually has been a nesting ground for
18 an alligator in the past. I don't know if he's still
19 around.

20 In the marsh, it's come back. It's been
21 successfully restored. One of the very first
22 environmental planning methods you learn when you're
23 dealing with developments in school and such is in order
24 to preserve more, you build up.

25 I know that some people don't like stories,

1 anything taller than 35 feet is what I hear a lot in
2 hearings. But when you do go up, it allows for the
3 preservation of what you see here in that the -- the
4 multi-family are diverse. There's driveways in between
5 them. If birds are going to be flying, they can get
6 around them. So I know that a lot of people don't like to
7 see vertical structures in south Florida where we're so
8 flat, they stand out more than other places. But from a
9 wildlife perspective, this development is a premier
10 project in the county. And I do know, as an aside, that
11 they worked with the native plant society to allow plant
12 recovery work. The scrub area that's created at Manatee
13 Park, they called it sand bare forest, they work with Pro
14 to release wildlife, so I think that in and of itself
15 states that it's a wildlife habitat, its value has been
16 maintained on the project.

17 And I hope they continue to manage their
18 preserves over time to keep them in habitats there because
19 I know that a lot of residents purchased in here because
20 of the uniqueness of it. So wildlife wise I don't see the
21 towers being a negative effect. I think they're actually
22 a -- have allowed for the preservation of other areas.

23 HEARING EXAMINER: Okay.

24 MR. SCHROPP: Thank you.

25 Madam Hearing Examiner, I'll just -- Russell

1 Schropp for the record. I'll just wrap up with a few
2 items that address some comments.

3 HEARING EXAMINER: Okay.

4 MR. SCHROPP: And then we'll rest.

5 First item I guess as part of our presentation in
6 chief I presented to you a portion of -- or the survey
7 results, pertinent part of the survey results that West
8 Bay conducted, and I perhaps wasn't clear with regard to
9 the results of the survey.

10 The question that was asked was whether the
11 residents would be in favor of two or three towers on the
12 site and a full 80 percent indicated for that particular
13 site that they would be in favor of either two or three. I
14 think that you can see the results in what I presented to
15 you was 49 percent in favor of three, and of those that
16 weren't in favor of three, a certain percentage were in
17 favor of two. And so would add up to a total of 80
18 percent. And that was specific to that site, that being
19 Development Area No. 3.

20 Secondly, I guess with regard to Mr. Parker's
21 letter that he passed out, just a little clarification
22 that I noted. He recited the conditions that came from
23 our -- or one of the conditions that came from our
24 agreement with the property owners association, and he
25 refers to sites 1, 2 and 3. Those don't jibe exactly with

1 what the site plan -- site 1 is actually site 5,
2 Development Area 5. Site 2 in his letter is actually
3 Development Area 4. And site 3 is actually Development
4 Area 3, which is the one we are concerned with here today.
5 Just so when you get back and read the letter, you're not
6 confused and can relate one to the other.

7 With regard to the comments that were made by
8 several residents with regard to Williams Road and several
9 parties with regard to Williams Road, as I indicated in
10 our presentation in chief, we are working very diligently
11 with property owners, with the County, with Mr. Eslick's
12 group, the ELCC, to try and address the situation.

13 It really is not a part of our rezoning or factor
14 of our zoning, I don't believe, but we will continue to
15 work with them and we have made the commitment to make the
16 right-of-way available. So we're working on a solution.
17 We anticipate to continue to work with them and cooperate
18 with them and we hope that will certainly come about.

19 As one of the speakers mentioned, yes, it's a
20 benefit to our project as well as the Comargo project as
21 well as the residents in general so we do stand to benefit
22 from it.

23 We are not increasing density. We're, in fact,
24 reducing density on the project as a result of the
25 commitments that we've made with the property owners

1 association.

2 I guess the only other point that I'd make is
3 that the last statement that was made with regard to --
4 one of the speakers with regard to the precedent,
5 precedential effect of the rezoning, and I don't think it
6 has any precedential effect at all with regard to the
7 request here. We're simply asking to restore what was
8 granted in 1996. The system was a comprehensive plan at
9 that time, and I believe if you'll go back and look
10 through records and your decision, you'll recognize the
11 precedent for high rise in this area was actually
12 established before this project with other projects that
13 came before us.

14 So, in fact, I don't think we're adding to the
15 precedent, I think the project is trying to re-incorporate
16 some of the design that it originally had, some of the
17 benefits that it had with regard to preservation, wildlife
18 protection and other matters similar to that.

19 And with that I believe we rest. We simply
20 request your consideration of the request as presented.

21 HEARING EXAMINER: Okay. Staff have any comments
22 they'd like to make?

23 MR. KELNER: Just a few brief comments, and, of
24 course, this is with regard to the high rise, and I think
25 there was some mention made of some person who lived north

1 of the Estero River and the view from the angle of that
2 proposed high rise going back onto Area 3.

3 Recently, I believe the zoning -- that was an
4 RM-2 area, right near the river, so by rezoning the
5 property you'll be able to remove the RM-2, move these
6 units farther away from the residential areas to the
7 north.

8 With regard to the property owners within the
9 development, it's essentially the same as it was
10 originally approved. There's a question about do we
11 spread out horizontally to go vertically. As you heard
12 from Kim Trebatoski, by going vertically, you're able to
13 preserve so much more of the natural environment in the
14 surrounding area. So there's benefits also from that.
15 They reduce the amount of impervious surface. They're
16 looking at the parking garages, that 95 percent are going
17 to be underground, under the buildings, so, in other
18 words, you're still preserving more, reducing the amount
19 of impervious surface. The improved storm water
20 management and basically these, I think, go on to
21 preserving that area. And, of course, all these things
22 were looked at in the original rezoning about the visual
23 impact of the development itself.

24 And so that's basically staff's comments
25 regarding the visual aspects of the development.

1 HEARING EXAMINER: Okay.

2 All right. Folks, I will need to do a site visit
3 out there as I indicated earlier in the course of the
4 hearing. Is this gated?

5 MR. SCHROPP: Yes, it is.

6 MS. TREBATOSKI: They'll let you in.

7 HEARING EXAMINER: They'll let me in?

8 MS. TREBATOSKI: Yeah, they let county employees
9 in real easy.

10 HEARING EXAMINER: I won't be driving a county
11 vehicle.

12 MR. SCHROPP: I had trouble when I went out there.

13 MR. CHENSOFF: Me, too.

14 MR. MANGAN: Please feel free to contact me, Jeff
15 Mangan, at any time and I'll --

16 HEARING EXAMINER: All right. I'll have my --
17 when I decide to do the site visit out there. Jeff, give
18 me your phone number, please.

19 MR. MANGAN: 948-9009. Do you want my cell
20 phone?

21 HEARING EXAMINER: All right.

22 MR. MANGAN: 777-7075. I think everyone in the
23 room basically knows that, though.

24 HEARING EXAMINER: Okay. What I'll do is have my
25 office manager or secretary contact you and let you know

1 the date that I'm coming or let -- you know, so you can
2 clear it at the gate so that they don't do a body search
3 or whatever else they do when I get out there.

4 MR. MANGAN: They have turned Gary away from time
5 to time.

6 HEARING EXAMINER: I will tell you guys, and I
7 know you all think that this is a done deal, it actually
8 is not a done deal. But one of the strongest factors in
9 favor of the approval of this as far as my decision is
10 concerned is the fact that this was reviewed very
11 extensively, they said, you know, it's like a sub DRI.
12 Well, a sub DRI, you know, even though it is a sub DRI, it
13 got very extensive review at the initial application stage
14 and, you know, based on the approval at that time, that is
15 a very strong factor in the continued or the approval of
16 this now since they want to go back to what they had
17 originally requested.

18 I don't want anyone to walk out of here, you
19 know, feeling like this is a done deal. It does not
20 always happen that way, but because this is -- if they
21 were going from what had been originally a single family
22 to a 20 story high rise, I can tell you that there would
23 have been a totally different atmosphere, I think, on this
24 entire hearing. But because they're simply asking to
25 reinstate what had already been approved on that property,

1 that has -- I'm sure was also a big factor in staff's
2 consideration as well.

3 So right now, my inclination is to recommend
4 approval of this. I need to go out and look at the area,
5 get a feel for what the rest of the neighborhood is and
6 whatnot, and make a final decision.

7 Now, I have to tell you guys that we're looking
8 at probably -- what's today, the 19th, we're looking at
9 sometime toward the end of February. I'm working as hard
10 as I can. I'm the only Hearing Officer on right now until
11 the middle of February. So I am sorely backed up in the
12 back even though working weekends and whatnot, I'm just
13 barely keeping up. So it will probably be sometime toward
14 the end of February before my decision is made, and it
15 will be four to six weeks after that before it goes to the
16 Board of County Commissioners.

17 MR. SCHROPP: I've already explained that to
18 them.

19 HEARING EXAMINER: Okay. So my decision will be
20 out sometime hopefully in February, toward the end of
21 February, and then you all will receive notice from the
22 Zoning Department when it is scheduled in front of the
23 Board of County Commissioners. All right?

24 Thank you all for coming. This hearing is
25 closed.

(Hearing concluded.)

STATE OF FLORIDA)

COUNTY OF LEE)

I, Roberta June Bishop, Registered Professional Reporter, do certify that I was authorized to and did stenographically report the foregoing proceedings, and that the typewritten transcript, consisting of pages numbered 1 through 128, is a true record.

Dated this 4th day of February, 2005.

Roberta June Bishop
Roberta June Bishop, RPR