

TRANSCRIPT OF THE SPECIAL MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER

Naples, Florida  
November 20, 2014

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in SPECIAL SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER MARK STRAIN

Also Present: Jeffrey A. Klatzkow, County Attorney  
Ray Bellows, Zoning Manager

EXHIBITS:

- A Staff Report
- B Legal Advertisement
- C Staff Backup Materials
- D Mangrove Impact Resubmittal
- E Mr. Strain's Graphic Presentation
- F Mr. Strain's LDC presentation
- G The Applicant's Presentation - BOCC\_add
- H Applicant's Presentation - 10/2/2014 PDFs

PROCEEDINGS:

HEARING EXAMINER STRAIN: Okay. Good morning, ladies and gentlemen. Welcome to the Thursday, November 20th meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: I'm going to go through a series of procedural announcements for how this meeting is going to be conducted today, but first I'd like to ask the commissioner, our new commissioner, Ms. Taylor, to make some opening statements.

COMMISSIONER TAYLOR: Good morning. I'm so pleased to be your commissioner, and I'm so pleased to see this turnout. I mean, this is a neighborhood, and I'm very excited about it.

We're ladies and gentlemen listening to ladies and gentlemen. So please respect who's speaking. It's very, very important. This is going to be a very informative hearing. I've been assured by Mark this is not -- there's going to be some new information. And when it's time, what we'd like to do, if you agree, is those folks who are working who have to leave, if they could speak first if you have questions, and I believe the process is you will present and then you'll be open for questions, right?

HEARING EXAMINER STRAIN: Right, in a little more detail but, yes, that's generally the process.

COMMISSIONER TAYLOR: And Mark has assured me he will be here until all the questions are answered. So no one's going anywhere. This is a public forum, and congratulations, neighborhood, congratulations.

HEARING EXAMINER STRAIN: Thank you.

Okay. I've got some housekeeping matters to announce. Speakers will be limited to five minutes unless otherwise waived. This is an informal process in that regard. We're here to listen to the public, and I want to hear everything you-all have to say.

This is an evidentiary-type hearing. A recommendation will be provided to the Board of County Commissioners as a result of the input and facts discussed today --

All materials used during the presentation at the hearing will become a permanent part of the record. We have a court reporter here who's taking verbatim minutes of what's going on. It also has an audio.

When this is finished, between now and the time of the next board hearing, hopefully sooner than later, I'll be issuing a recommendation to the board with all the backup that's brought in as exhibits in this meeting. So everything will be provided to the board that is basically brought forward today.

The procedure for today is going to be an introduction of the case, which I will be doing, a presentation by the applicant, a presentation by county staff, then we'll move into public speakers, and then the applicant will be allowed to make a closing statement if they would like.

Now, as Ms. Taylor said, Commissioner Taylor said, that if any of you have to work and you've got a time-certain period in which you have to leave, we can accommodate you at an earlier point in the process, but

I'll need to know that. The best time for you to speak is, hopefully, after you've heard the dialogue that's going to go on between the applicant and staff and myself.

I have pages of questions that need to be answered. In their answers, it may provide a lot of information for all of you in this room.

With that in mind, how many people in here have a time that they have to leave earlier than, say, 12 o'clock? Okay. What I'll try to do is about 11 o'clock, I'll ask that same question again, and we'll try to get the speakers who have to leave early if we haven't started on speakers by that time. If we have, we'll ask you to be first.

There are speaker slips available. I've got to ask that you fill out the speaker slips. Gail's got the speaker slips.

Ms. Taylor?

COMMISSIONER TAYLOR: Yeah. Mark, if you would also explain why we're here and not in the BCC chambers.

HEARING EXAMINER STRAIN: Thank you.

Originally when this was set up by the Board of County Commissioners and remanded to this office, the Planning Commission has a Thursday meeting of every -- twice a month, and this coming Thursday, today, would have been the meeting date. The meeting could have been in that room, boardroom, where there is a lot more space, but the boardroom was booked for another agency. I think it's the Big Cypress Basin who's meeting there today.

As a result, this was the next largest room. So I apologize for the inconvenience and not having the number of chairs available. But we're slowly finding more, and hopefully there's some empty ones out here in case anybody is standing that would still like a seat.

With that in mind, I'm going to move right into the announcements for the rest of the meeting.

The first advertised and only public meeting, advertised hearing today, is Boat Dock Extension PL20130001765. It's known as the Haldeman's Landing boat docks.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. That means, if you're going to speak, please stand now and have the court reporter swear you in.

(The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER STRAIN: Thank you.

Normally we open with the applicant's presentation, but I am going to walk you through some of the background to today's meeting and then the LDC sections that are most pertinent to the hearing today.

I've put together a series of slides to show you how Haldeman Creek looked before it was developed. In 1952, which is the earliest slide that was predevelopment -- I've actually seen some back prior to this, but this is probably the most relevant -- Haldeman Creek wasn't really a creek yet. It was a vegetated mangrove slough. A blow-up of that is right here, and this is in the vicinity that these docks are being requested.

In 1962, when the development started happening more rapidly in Collier County, you can see Haldeman Creek on the bottom starting to show some water.

And I'm not sure why this stopped working. There we go. That's the '62 aerial in a little blow-up. All the canals and other locations that are there today started to form prior to '62. This is the 2014 aerial, the situation we're dealing with today.

There's been a question about whether or not the uplands portion of this particular project is in the MSTU. I got these documents from the MSTU. They definitely are in the MSTU and will be part of the MSTU as this moves forward. It was also -- by the way, I have read all of your emails. There were 68 emails that were sent to the Board of County Commissioners. I have read every one of those. Over the weekend and for the past week or so, I've received an additional about 30 emails. I read all of those. And a lot of the items you see here are a result of reading the emails knowing that some of your questions pertain to just exactly what was that side of the creek. I mean, is it a mangrove fringe? How did it get there? I saw some emails where they asked, did the developer plant those mangroves? Well, the answer is yes.

The rocks you see on the right side is a riprap bank when the mangroves were planted from that riprap back to this dirt where another riprap bank was placed, and that is a stand of mangroves that was planted as a mitigation requirement for the developer at the time.

Another question was what kind of zoning was on this property. And it goes back quite a ways. Current zoning is RMF-6, which is multifamily, limited to three units per acre. And I wish this thing was working.

In 1982, it was still zoned RMF-6, and in 1976, it was zoned RMF-6, and that was as far back as I could find the maps for. But it looks like that property's been zoned that way for approximately 40 years.

Something interesting that came out of a lot of research, this is what's called -- this is the applicant's survey. It's a more intense survey than you normally see. It's not just a boundary and property survey. It's an ALTA survey. And ALTA survey means that the particular traits of the title have to be put on the survey.

In this particular case, those two areas that I have circled became an area of focus that I will be asking questions of the applicant about as we go forward today. And what those two areas say is that Haldeman's Creek in this area is actually a drainage canal, and it was at D Book 28, Page 116 and 114 on the other side, was how it was transmitted from the property owner at the time in 1953 to the State Road Department in Tallahassee.

Now, the State Road Department's been consumed by the Florida DOT. I have had extensive discussion with them, their general counsel in Tallahassee. The question comes down at this point, we're not sure who owns that easement, who it's been -- I shouldn't say owns. Who is the titleholder of the easement rights.

The underlying lands still are in the possession of the -- well, at least that's the question I'm going to have today. I believe the applicant believes they own the bottom lands, but the DOT is the last entity that I've been able to find that has the rights to the easement.

The drainage basin, something that's important for that canal, that creek, especially being a drainage canal, is where it drains in its capacity. The area outlined in yellow is the general vicinity of all the uplands, and some are many north of U.S. 41 that drain down through the creek that rely on that creek for drainage.

There's been questions about the speed of the channel in the location that we're talking about. We've had a lot of research done by our environmental department. Steve Lenberger's here to discuss that. It started -- the applicant had indicated it was idle speed, but what we're finding, that was a decision that was issued by the Board of County Commissioners but not apparently ratified by the state, so it may still end up being a slow speed, and we'll hear more discussion on that. Slow speed and idle speed are completely different modes of travel on that waterway and will have different impacts.

Also, in 2003 there was an attempt to put 51 boats there. And you might have heard that there was a suggestion they were vested or they had a right for 51 boats. Well, they did, but it was in 19 -- it was in 2003, and it was off the creek.

As you can see, it was a boat basin that was to be dug out of the uplands area. That plan had gone through the county process, got approved by the county but was never issued, and I'm sure the applicant will explain to us why it wasn't issued today.

I've looked at different alternatives to the boat docks. These are a couple that show the impact of navigation when you reduce the docks and angle them so that their boats going into the perpendicular docks don't have to back so far out into the waterway. That's an item that we're going to be discussing in detail today.

The applicant has provided several locations that they feel docks were there consistent with theirs. This is one of them. It's Harmony Shores to the east on the other side of Bayshore. This is Sandpiper Bay; it's just to the west. Well, it's going to be there in a minute. Our overheads here are not as directed as the ones in the commission room, unfortunately. And then we have the commercial facility to the east of the current property.

So what are we here for today? This is a fact-finding meeting. This was remanded to this office to provide the Board of County Commissioners with a collection of data and research and also a recommendation.

This office reviews things pursuant to our Land Development Code. Our code is an ordinance. It's the law of the land. The introduction to the dock facility sections of the code is where we start. Docks and the like are primarily intended to adequately secure moored vessels and provide safe access for routine maintenance and use, while minimally impacting navigation within any adjacent navigable channel, the use of the waterway, the use of the neighboring docks, the native marine habitat, manatees, and the view of the waterway by the neighboring property owners.



Now, the primary and secondary criteria that staff has to judge a dock application for extension on is based on this paragraph.

There are five primary criteria. The applicant has to reach at least four of those, but even if they hit them all, even if they hit all the secondary criteria, that doesn't mean it's automatically approved. That just means some of the basics are out of the way and there are other criteria that the Planning Commission and the staff can review by.

Whether or not -- Primary Criteria No. 1 is whether or not the number of dock facilities and/or boat slips proposed is appropriate in relation to the waterfront length, location, upland land use, and zoning of the subject property. And, typically, multifamily use should be one slip per dwelling unit. We'll hear a lot of testimony today on how the calculations were made to determine the amount of boat slips that they're asking for.

Criteria No. 2 is whether the water depth at the proposed site is so shallow that a vessel of the general length, type, and draft as that described in the petitioner's application is unable to launch or moor at mean low tide.

We know that the applicant is applying for dredging. That would be in deference to No. 2. That would actually make them be able to be consistent with No. 2.

Number 3, whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. Many of your emails talked about the size of the channel, the navigability. This is one of them that will have an impact on that.

Number 4, whether the proposed dock facility protrudes no more than 25 percent of the width of the waterway and whether a minimum of 50 percent of the waterway width between dock facilities on either side of the waterway is maintained for navigability.

Number 5, whether the proposed location and design of the dock facility is such that the facility would not interfere with the use of neighboring docks.

Now, those are the five primary criteria. They have to at least hit four out of the five in order to be considered for approval.

The secondary criteria, there's six of these, and they have to hit four out of the six.

Number one is whether there are special conditions not involving water depth related to the subject property or waterway which justify the proposed dimensions and location of the proposed dock facility. One of those items would be, for example, mangroves along the shoreline. You can't get to the shoreline without clearing the mangroves. A lot of the dock extensions are to get out beyond mangroves.

Number two, whether the proposed dock facility would allow reasonable, safe access to the vessel for loading or unloading and routine maintenance without the use of excessive deck area not directly related to these functions.

The boardwalks and all the walkways and wharves leading to the boats, this is an item to prevent them from becoming bigger and wider than they need to be.

Number 3, for single-family dock facilities, whether the length of the vessel or vessels in combination described by the petitioner exceed 50 percent of the subject's linear water frontage. Now, that's for single-family docks. This is a multifamily application, so that particular category is not one of consideration.

Number 4, whether the proposed facility would have a major impact on the waterfront view of neighboring waterfront property owners. This isn't meaning if you sit across the water and you see these boats, that's affecting your view. This is saying that if you are alongside this property and they obstruct your view, that's what the purpose of this particular criteria is for.

Number 5 discusses seagrass beds within 200 feet. As you all know, Haldeman Creek has been dredged. There's not a lot of seagrass beds out there. There were none found in the transects (sic) done on this property.

Number 6, whether the proposed dock facility is subject to the manatee protection requirements of the subsection, and we all now know that it is subject to the manatee requirements, and those will be discussed at length today.

There is additional criteria. So even if the primary and secondary criteria come out all in favor, the Planning Commission may impose such conditions upon the approval of an extension request that it deems

necessary to accomplish for the purposes of this code and it protects the safety and welfare of the public.

So we have the ability to take a look at this in a holistic basis and determine if, even with the primary and secondary criteria met, are there other factors that come into play that affect public safety?

And I believe that's what a lot of your emails addressed or tried to address as I was reading them.

And with that, that's the end of my introduction. And at this point we're turning it over to the applicant for their presentation and my questions of them after we -- after their presentation.

So I don't know, Richard, who's going to present from your side.

MR. YOVANOVICH: A lot of us.

HEARING EXAMINER STRAIN: A lot of us, okay.

MR. YOVANOVICH: Good morning. For the record, Rich Yovanovich on behalf of the petitioner.

With me today is Michael DeBrock from Standard Pacific of Florida, which is the property owner; Charles Cook, who's a consultant on this project; Tim Hall with Turrell, Hall & Associates who is going to speak to you today regarding how we meet the criteria; Jeff Rogers with Turrell, Hall who is a licensed boat captain, will also speak to you today about navigability issues and concerns that have been raised. And then, finally, Andrew Rath with Davidson Engineering is our civil engineer.

UNIDENTIFIED SPEAKER: We can't hear you back here.

MR. YOVANOVICH: Andrew Rath with Davidson Engineering can answer any questions you have from a civil engineering standpoint.

Mr. Strain, can you put up the aerial that has the red property outline that shows the entirety of the property owned?

HEARING EXAMINER STRAIN: Tim, is that in your exhibit?

MR. HALL: Yeah. Go into mine. It should be either the second or third.

HEARING EXAMINER STRAIN: There's a lag between this machine, and that one that, unfortunately, is not -- well, your PDF is not coming up. You got it up on here before, right, Tim?

MR. HALL: Yeah, but it took it a minute to load.

HEARING EXAMINER STRAIN: Okay. Well, we'll give it some time. There we go. Is that the aerial you want?

MR. YOVANOVICH: One more, please. There you go. Thank you.

As was brought up in the initial comments from the hearing examiner, on the aerial you have in front of you, surrounded in red is the property owned by my client, and I think it's important that we keep that exhibit up while I'm going through my initial remarks.

As was pointed out, this is an appeal that we filed challenging the Planning Commission's tie vote which, effectively, resulted in a denial of the boat dock extension as for the Haldeman Landing project.

The Haldeman Landing project is a 64-unit multifamily project with 42 boat slips. The request was for 42 boat slips extending out a total of 45 feet from the mean high-water line from the property. And as was pointed out from some of the earlier exhibits and as you can see from this exhibit, there are mangroves that separate the developable portion of the property and the waterway. So we are requesting an extension of the --

HEARING EXAMINER STRAIN: Whosever cell phone that is, I ask to put your -- please put your cell phones on vibrate, if you could, and thank you. If you can find it.

Sorry, Richard.

MR. YOVANOVICH: That's okay.

And I think most people know, but maybe not everybody in this room knows, that under the Land Development Code, you're allowed to build docks within 20 feet of your property line seawall or -- it's a moving area where you can actually build your docks.

In our particular case, we can't get to that 20-foot limitation because of the mangroves. So what we've asked for -- although technically the request is for a 45-foot extension, it's, effectively, a 25-foot extension from the 20 feet we can have under the Land Development Code --

Do you want me to wait, Mr. Strain?

HEARING EXAMINER STRAIN: No.

MR. YOVANOVICH: Okay -- and, effectively, is a 25-foot extension water ward of the mangroves. So I think there might be some confusion as to how far out into the waterway this extension really goes.

And Tim will take you through in greater detail exhibits that show the water depth and how the docks extend out into not only the existing waterway but the waterway after we do the dredging as part of this project.

My client owns everything in red on that exhibit that's identified as the Haldeman Landing project site. That includes the bottoms, the bottom lands of that water.

There is a drainage easement that encumbers the property. It's a drainage easement. That's all somebody has. Either FDOT, or whoever, owns those drainage rights; that's the only rights that encumber this particular piece of property.

My client has the right to use those waters as long as they are not interfering with the drainage rights that are encumbering that property. And Mr. Rath will be able to testify or has the opinion that the docks that we are constructing as part of this project, as well as the dredging that we will be doing as part of this project, will not interfere with those drainage rights that someone holds and has had since approximately 1953.

So there are some people who believe that we needed to get permission to build these docks from whoever owns that drainage easement. We do not. The law is clear. My client owns those lands and can use that land as long as they're not interfering with the drainage rights.

Now, the person who can challenge whether or not we are interfering with those drainage rights is the holder of those drainage rights, and we don't know who that is. But we don't believe we're interfering with that, and we do not have to get permission from anyone to use our lands as long as we're not interfering with those drainage rights.

And the general public can't raise that issue. The general public can't challenge that issue. It's only the person who owns the drainage rights that can raise that issue.

As you pointed out in your earlier presentation, this is basically a manmade waterway and was constructed as part of an FDOT drainage easement. If you go through our permit package that we provided as part of the record, you will see that the state DEP permit for our project acknowledges that the lands are not sovereign lands and that the creek is not a natural creek. It's a manmade creek, and my client owns the bottom lands. So it's not only our legal opinion, it's the state's legal opinion in issuing the permit that we have the right to do what we're doing.

We have also received all necessary permits from the state and federal agencies to construct these docks.

Now, I may have created some confusion when I brought out the fact that there was an agreement between the county and the previous property owner to use this property as a spoil site for dredging activity that was occurring in the waterway.

There was an agreement that was entered into and was, I think, most recently amended and restated in 2007 to allow this site to be used as a spoil site as part of the dredging of the waterway.

As part of that agreement, there was a Site Development Plan approved, and the hearing examiner put that on the visualizer, that showed a configuration of docks in the basin that would have allowed 51 boats of the same size we're asking today to navigate up and down the creek or the waterway.

The reason I pointed that out was not that we're going to talk about anything other than we had previous permission to put 51 boats in this area.

Now, I acknowledge that it was in a different configuration, but the number of boats that was approved by the county was 51, and those boats could go both up and down the waterway.

So I included that simply for, I don't believe we're here to talk about the number of boats because the county had previously approved 51 boats in this area.

In addition, under the Manatee Protection Plan, and using the numbers most conservatively against us, based upon our shoreline we could have 97 boats in this area; however, as you pointed out in your opening remarks, we're a multifamily project of only 64 dwelling units. So under that criteria, we would be limited to 64 boats in this area.

So, in fact, our request is for less than the 51 boats -- number of boats previously approved by the Board of County Commissioners. We're asking for 42. It's less than the 64 that we could ask for because we're a multifamily project.

So we believe we have, in fact, compromised and worked with our neighbors to arrive at an appropriate number of vessels to use this area.



What we're here today to talk about simply is where will those vessels go? And Tim Hall will take you through the criteria that apply. And we do not believe that -- it's our position that if we meet the criteria, we're entitled to the 42 slips we're asking for today as well as the boat dock extension that we're requesting.

We have exhibits that I think the public didn't -- I know they didn't see them at the Planning Commission hearing that I think will clarify exactly where the water depth is and how wide that 4-foot low mean tide area will be to show that we are, in fact, not interfering with navigation when we build this project.

In addition, we've worked closely with the residents of Windstar about the proposed project, including the portion of the project that fronts their golf course. And if you're looking up there, it will be to the left side of their property. You can see some mangroves and golf courses or golf course hole to the left.

We've worked with the people of Windstar. I believe you should have in your packet a copy of their letter of support of the request that's before you today, which is the perpendicular docks, as well as the parallel docks.

The decision that ultimately the Board of County Commissioners has to make is whether or not there is competent substantial evidence in the record to support the approval of the boat dock extension.

You'll hear from our experts, Tim Hall, Jeff Rogers, and Andrew Rath, regarding how we meet all of the criteria that apply to this project.

In addition, your county staff has reviewed this project and has recommended approval. Your staff. They are experts.

Now, I know I'm going to upset some people by this next statement, and I apologize. But resident testimony is not competent, substantial evidence unless they have the expert credentials necessary to provide the necessary expert testimony.

Zoning is not a popularity contest. There are very specific criteria that apply to this project. And if we meet those criteria, we, as the property owner, have a right to what we're requesting.

I'm going to turn it over to Tim to go through his presentation in greater detail. Jeff Rogers will follow Tim. I just want to make sure, for purposes of today's record, that everything that we've submitted in writing, our application, the appeal, as well as the follow-up documentation, are all part of the record so we don't have to go through all of those documents in greater detail. Tim will take you through those, but that is part of the record.

Unless you have any questions of me, I'll turn it over to Tim and let him take you through how we meet the criteria.

HEARING EXAMINER STRAIN: Well, let me clear a couple things up. First of all, the statement you just said that you talked about zoning. This is not a zoning matter. It's a boat dock extension.

MR. YOVANOVICH: And it's part of the Land Development Code.

HEARING EXAMINER STRAIN: But this is not a zoning action. It's a boat dock extension.

MR. YOVANOVICH: Well, then let me clarify.

HEARING EXAMINER STRAIN: Thank you.

MR. YOVANOVICH: We, as the property owner, have the right as long as we meet the criteria. The approval of this boat dock extension is not a popularity contest, as long as we meet the criteria -- and that's what we're here to discuss is how we meet the criteria -- we're entitled to the boat dock extension.

HEARING EXAMINER STRAIN: And that's the opinion you've expressed historically, and I've expressed historically I don't necessarily agree with you.

MR. YOVANOVICH: I appreciate that.

HEARING EXAMINER STRAIN: So we will go through the process that we normally go through on boat dock extensions today, and that will involve the questions. You are already aware of some of them, and that's another point I wanted to make today.

There are several exhibits that we need to label. The first one is, Exhibit A will be the legal advertisement for the project, for the hearing. Exhibit B will be the staff report. Exhibit C will be the staff backup materials, of which it was about 300 pages. Exhibit D will be a mangrove impact resubmittal. It's labeled 9002.5-BOCC, and I'm sure Tim Hall will explain the changes between that and the original application packet.

As far as my disclosures, besides meeting with staff, I have met with the applicant. Those meetings, I



went over the questions, some of the questions that I knew at that time, to look for better answers from both sides when I ask them these questions today.

I've also reviewed over 90 emails, about 95 as of last night, from all the residents. I have read all of them. Some of them were lengthy, but I did read every one of your emails.

The historical files, as you saw, there was photos back to '52. I've read deeds back in '53 that we've had to get from the old files at the Clerk's Office. I've read literally thousands of pages, all of the Windstar documentation, this particular property's attempt to combine themselves with Windstar back in 2006, their various SDPs and plans that were submitted in the prior -- sometime after 2000. There were several different groups of them.

I have talked to many of the county commissioners about this issue, and I have reviewed the CCPC minutes, and I watched their video. So all that is the background that I have done to get here today.

And with that, I'll move to your -- go ahead, Richard.

MR. YOVANOVICH: Just quickly. Did you -- in all those documents you just talked about marking as exhibits, does that include your presentation that you just went through?

HEARING EXAMINER STRAIN: No. We're going to get to that in a little bit. I've got it right here. I'm going to mark those.

MR. YOVANOVICH: But that will be an exhibit, correct?

HEARING EXAMINER STRAIN: Yeah. I was going to wait. I want to make sure how much of that exhibit we're going to use. There's other parts of it that I haven't gotten to yet because you may have them in your exhibit. And if you don't, I'll bring them back up on mine.

MR. YOVANOVICH: Okay. Appreciate that.

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: Thank you.

MR. HALL: Good morning. For the record, my name is Tim Hall with Turrell, Hall & Associates.

Mark already did a good job of walking through the five primary and six secondary criteria that the project has to meet when applying for a boat dock extension. And what I'm going to do is kind of walk through the project with a series of exhibits to illustrate certain points and show how the project is consistent with those criteria, and then, I guess, respond to whichever questions that I'm sure Mark might have.

UNIDENTIFIED SPEAKER: Can you talk a little bit louder? It's very difficult to hear.

MR. HALL: I'll try, yes, sir. I'll try to get a little closer to the microphone.

UNIDENTIFIED SPEAKER: Can we turn the volume up somehow?

HEARING EXAMINER STRAIN: I think it's a set mike. I don't believe we can do anymore. There's no buttons to turn up, so --

UNIDENTIFIED SPEAKER: We can hear you fine.

MR. HALL: I don't see a volume control. Is that better?

UNIDENTIFIED SPEAKER: Yeah.

HEARING EXAMINER STRAIN: I think we've got to turn him up a little bit.

MR. HALL: Yeah. Starting with primary criteria, the first one is whether or not the number of dock facilities or boat slips proposed is appropriate in relationship to the waterfront length, location, land use. Rich already went through all of that.

What I will say is that the project -- in terms of the project's shoreline, it actually has about 3,400 feet of shoreline, if you count the north and south sides of the creek as well as the shoreline that runs all the way down through the canal.

In terms of the location of these docks, we just utilized the shoreline associated with the southern portion of the creek.

An earlier survey had listed that -- the mean high-water line, which is the line that we use to delineate the shoreline, as 938 feet, and then a follow-up survey's showed that as 973 feet, which is why Rich had said 97 slips is what we were entitled to under the 10 slips per 100 feet of shoreline.

If you use the earlier survey of the 938 feet, it would be 93 slips under that same criteria with 10 slips per 100 feet of shoreline. And that number is a result of the application of the Collier County Manatee Protection Plan which has three different criteria. It talks about -- they look at the amount of resources that are

being impacted by the docks, and resources generally mean mangroves, seagrasses, barnacles, benthic habitats like that.

They look at the manatee use in the area of the property and, generally, it's within a five-mile radius. The way that they determine manatee use is based on recorded instances of boat and manatee impacts, either manatee mortality or boat strikes on manatees, and then it also looks at the water depth. What's the water depth at the property and along the waterway out to open water.

So if you are -- if you are in the highest category of those three items, then you are a preferred facility. If you are in the highest of two but in a lower category of another one, you're a moderate facility, and if you are in the very bottom of more than one of those, then you are a protected facility.

And so the differences in the allowances of slips is 18 slips per hundred feet of shoreline, 10 slips per hundred feet of shoreline, or one slip per hundred feet of shoreline, and because the existing facility where the boats are going is not currently 4 feet deep, it qualified as a moderate facility, so that is where we got to the 10 slips for hundred feet of shoreline or the 93 allowed.

As Rich said under the county code, normal allowances is one slip per unit for multifamily residences, which in this case would be 64 and, again, the 42 slips that are being proposed are below that threshold as well.

So because of that, the numbers associated with the type of use on the property and the Manatee Protection Plan and other code requirements, we believe that we are consistent with that first primary criteria.

The docks will be for vessels between 25 and 30 feet in length overall, and that means not just the hull, but it includes the motor and whatever might be sticking out on the front of the boat, if you have a bow pulpit or that kind of thing.

So, like, a 23-foot boat with an outboard motor would be closer to that 25-foot length overall because it includes the motor. It's not just the hull length.

And then the drafts that we're proposing will be appropriate for the waterway, you know, the 3- and 4-foot depths associated with the waterway. There won't be any deep draft, 4- or 5-foot draft vessels at this facility.

So the second criteria is whether or not the water depths at the proposed site is so shallow that a vessel of the general length, type, and draft described is unable to launch or moor. As I just said, the types of vessels that we're proposing in that 25- and 30-foot length with the one-and-a-half to two-and-a-half-foot drafts are appropriate for this waterway. They're consistent with the other vessels that utilize the waterway; however, the water depths where the boats are proposed are not deep enough to support the vessels without dredging.

So the state and federal permits that were applied for included dredging along that -- along the shoreline where the boats are proposed, which will take the depth where those boats are to 4 feet, and it will tie into that 4-foot contour that already exists, essentially, deepening the shallow areas and widening that 4-foot area to be able to accommodate the vessels as it proposed.

Because of the mangroves along the shoreline, the mangroves and other wetlands along the shoreline there, there is no way to have docks on this property without going through this BDE process. Even without a dock, if you just tried to moor the vessels adjacent to the mangroves, because of the way the county measures the protrusion and the extent of the waterway and where the mangroves are and the mean high-water line is, in that extent, there's no way to moor any vessels in this site without going through this process.

The way we have oriented the vessels now, perpendicular to the shoreline, is consistent with the docks that are to the east of the project in the same waterway, and the dredging would allow them to, then, be safely moored there.

The extension is for 25 feet past the allowed 20-foot, which is 45 feet overall from the mean high-water line. So for those 30-foot vessels, what you're looking at is the 30 feet from the vessel plus the 5-foot walkway, and then the mangroves to the mean high-water line account for that other 10 to 12 feet in the area where the 45 is being measured.

The actual protrusion in the waterway is different along the entire length because of how the mean high-water line meanders. It's 45 in some areas, it's 40 in others, and it's 39 where some of the parallel mooring is, so it varies according to where the mean high-water line is.

Because of the mangroves and the shallow depths that are in existence there, as I said, the -- we meet Criteria No. 2 because there's no way for the facility or any facility to be proposed or built there without a BDE.

The third criteria in primary is whether or not the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. And then it says, the facility should not intrude into any marked or charted navigable channel impeding vessel traffic in the channel.

The waterway in front of this property is actually not marked. It's marked to the south of the property. Where the creek starts to meander and bend, the county did put up some channel markers through those areas. But where this portion of the waterway is, it's not actually marked; however, there is navigation through there. People do motor their boats. So we look at that and take that into account.

And based on the depths of the waterway and where most of the navigation occurs, the dock drawings -- and, Mark, could you go forward. I believe it's two more. Keep going. Right there.

What you see shaded in blue is based on a survey that was done that shows where that channel is four feet deep at low tide, at mean low water, the average low tide.

And then when we had a neighborhood meeting, there were some questions raised about the validity, correctness of that survey. So we actually had a second firm go out and resurvey the waterway. If you go to the next exhibit, that shows where the 4-foot contour was based on the second survey.

And then if you go forward one more, the overlay of the two, the blue over the top of the purple, shows that they were actually very, very consistent with each other. The yellow that you see there is actually the dredging that would be done in conjunction with this application so that the blue survey line is the one -- the earlier one that was originally submitted with the application. That's the one that we based the actual dredging footprint on -- would take that 4-foot contour line down to the face of the docks.

You can see that the 30-foot-length slips are associated with the canal entrances on the other side of the creek, and that has to do with the next criteria, which is whether or not the proposed dock facility protrudes 25 percent the width of the waterway and whether or not a minimum 50 percent of the waterway width between dock facilities on either side is maintained for navigability.

The docks as they're shown right now all fall within that 25 percent width of the waterway line, and I believe that would be the next exhibit. You see those purple lines that mark the 25, 50, and 75 percent width of waterway? Again, that width of waterway is based on the mean high-water lines, and so where those creeks or openings are, the actual width of the waterway expands a little bit, and then where it's tightest, where there are more mangroves at the western end of the facility, where the parallel mooring is proposed, you can see that the entire facility does fit -- thank you -- does fit within that 25 percent width. So the project, as it stands, is also consistent with that fourth criteria.

And the last primary criteria is whether or not the proposed location and design of the facility is such that it would not interfere with the use of neighboring docks. Well, you can see based on this -- based on that aerial, there really are no currently built neighboring docks immediately adjacent to or across from this facility. There is actually a facility that has been permitted with the state and federal permitting agencies, and it did receive a 49-foot BDE from the county. It was called the Sanctuary of Demere Landing. And where you see that "AA" cross-section on this exhibit is where that facility would go. And if you go to the next cross -- I think it will be the next cross-section.

HEARING EXAMINER STRAIN: Do you want the next slide?

MR. HALL: The next slide, yes. Right here shows the permitted layout of that facility, and it also indicates that the Demere Landing came out to their 25 percent with the waterway line. This project, going out to the 25 percent, actually leaves the 50 percent with the waterway which, in this case, is 83 feet. I believe that says 83 feet between the two facilities at the narrowest point.

So that fifth criteria is also being met, and the project does not interfere with the use of any adjacent docks.

So as proposed and as we presented, and county staff agreed with us, the project is consistent and does meet all five of those primary criteria.

Going into the secondary criteria, the first one of those is whether there are special conditions not involving water depths related to the project or waterway which would justify the dimensions and location of the docks.

In this case, I already explained that the mangrove shoreline along the backside of these docks, in order to comply with the Manatee Protection Plan and the State of Florida and Corps of Engineers environmental



regulations, avoidance of impacts to mangroves and other wetlands is a high priority.

So the docks are situated outside of those mangroves so that they did not have to be destroyed in the construction -- during the construction or the use of this facility.

The docks do intrude into some of the overhang of those, and there will be some vertical trimming of those mangroves to accommodate the construction, and then the access of those docks as it becomes operational. But the mangroves themselves will still be in place and will be trimmed as they are in many other locations throughout the county.

The second criteria is whether the dock facility would allow reasonable safe access to the vessel for loading and unloading without the use of excessive deck area not directly related to these functions.

These original -- the original proposal, as you can see, showed five 8-foot-wide access walkways based on some recommendations by county staff at the Planning Commission hearing.

The applicant agreed to eliminate one of those walkways and reduce three of the remaining four to six feet wide instead of eight feet wide, again, in an effort to reduce impacts to those -- you know, to the mangroves, and also within this special treatment overlay area that's associated with this.

The actual finger piers of the docks themselves are proposed to be four feet wide. That's kind of, I guess you could say, an industry standard. It allows for use -- safe access and use of the docks.

There are instances where projects will permit narrower finger piers. Usually that is associated with dimensional criteria. If they don't have enough width along their shoreline to accommodate the four-foot finger piers plus their slips, they will many times -- or occasionally they will reduce the width of those finger piers. We try not to do that, because if you go to a 2-and-a-half foot, 3-foot finger pier and you're stepping on or off a boat and stumble, it doesn't seem like a lot, but that one extra foot can make a big difference as to whether you stay on top or go off of the dock.

So whenever possible, four feet is the minimum finger pier that we like to propose. It also allows more distance between the pilings. Everything's not so crammed together in terms of the support and the infrastructure for the docks. It makes them more stable.

So the 4-foot finger piers, the reduced walkways, we believe that this is consistent with other projects throughout the county. It allows for the safe use without excessive decking, so we are consistent with the second criteria as well.

Mark talked about the third criteria, which is specific to single-family slips. That one is not applicable to this project, so we didn't -- this --

The fourth criteria is whether or not the proposed facility would have a major impact on the waterfront view of neighboring waterfront property owners. And that term "waterfront view" is important. In instances where we have dealt with this with these state permitting agencies, they consider waterfront view the property from your shoreline to the center of the waterway, not all the way across it.

So if you are on a canal, your waterfront view is to the center of the canal. It's not to the horizon.

There have been a couple of court cases I know where riparian views -- one of them here in -- well, up north in Fort Myers when they built the new Midpoint Bridge, there were some lawsuits there where people did show that their waterfront view is impacted because that bridge blocked their view to the center point of their waterway that they had been used to.

In this case, the docks are all along the shoreline. There are no property owners on either side that would have their view affected to the waterway. Those properties across the water will have a different view. Rather than seeing the blank mangrove shoreline, there will be docks in place should this be approved; however, their view -- their waterfront view is not being affected, just their view further out. So we are consistent with Secondary Criteria 4.

Five is whether or not seagrass beds are located within 200 feet of the proposed facility. We have done, I believe, three different seagrass surveys over the last 15 years within this section of the waterway and have not seen any indications of any seagrass beds or seagrass growth within or adjacent to the facilities, so we are consistent with Secondary Criteria 5.

And then the last one is whether or not the proposed facility is subject to the Manatee Protection Plan requirements. Because there are more than nine slips proposed, we are subject to that plan. I explained in conjunction with Primary Criteria No. 1 how we are consistent with the Manatee Protection Plan, and so we're



consistent with this secondary -- Secondary Criteria No. 6.

Based on the current layout, the changes that were made in response to some of staff's recommendations prior to the Planning Commission -- the project has gone through both state and federal permitting. There are active Department of Environmental Protection and Corps of Engineers permits for these slips. And this project is a little different in that there's also -- in addition to the Department of Environmental Protection permit, there's also a South Florida Water Management District permit in place for the upland portion of the development, and that also covers a small piece of those access walkways.

But based on all of those, the review that's already occurred through those processes with those three different agencies, county staff, everybody that has looked at them in a regulatory -- from a regulatory viewpoint has maybe not agreed but has allowed for the construction of these slips in the orientation and in the location that's allowed.

Based on the presentation I just gave, we're consistent with the county code in regards to the criteria in association with the BDE, and we believe that the project should be allowed to go forward as proposed.

I'd be happy to answer the questions that I'm sure I missed.

HEARING EXAMINER STRAIN: No. What I -- and the way I've structured the questions, Tim, is I was going to move through the staff report like we normally do at the Planning Commission, but also, as I went through the emails from the residents, I tried to summarize the most common points that were brought out in emails, and I have a separate list of questions of those, which I give you -- went over with you at one point, or at least Richard --

MR. HALL: Right.

HEARING EXAMINER STRAIN: -- to let you know what --

MR. HALL: And I tried to remember to address some of those in my comments here, but I may have missed some.

HEARING EXAMINER STRAIN: You did. No, you did.

While we're on this email or PDF, I want to point out something. The Sanctuary project to the north, when you showed that -- when that appeared in the staff report and I was reading it, I looked at the date, and I realized I was on the Planning Commission, so I would have had to review that.

And after I've learned about this project, based on the information and the data that was accumulated, I couldn't figure out why I hadn't raised the same questions in 2006, I think it is, so I went back and pulled all the files on the Sanctuary, including your submittal, and I read the minutes, and what I found was something different than what we're being told here today in regards to the information provided.

The survey provided to the Sanctuary application labeled that canal as a platted 150-foot-wide canal. We now know that is not the case. I've checked which John Houldsworth. That canal itself is not platted. There used to be a Lot 42 in the old -- I think it was the Naples Grove plat that became that canal up to that -- up to that angle right there by the Sanctuary. From that angle eastward, that piece was platted as an uplands lot at one time and became a drainage easement that is not platted.

MR. HALL: And that's -- and that 150 actually came from that drainage easement. In looking back at that, the platted -- I keep saying "platted." But the width of the drainage easement as it was described was that 150 feet. The canal itself is actually wider than that.

HEARING EXAMINER STRAIN: I realize that now, but just -- for the decision that was made in 2006, it was based on the information provided to the extent we had it. And at that time that survey showed it was 150-foot platted canal. It did not mention that the underlying ownership was to a different party.

In fact, the application said you were needing a submerged land lease, and you actually put the square footage of the submerged land lease that you were going to need for the Sanctuary. Well, you don't need a submerged land lease because the property's owned by somebody else underneath where the Sanctuary applied for.

MR. HALL: And that BDE was done, I believe, prior to the actual DEP permitting for that project. And our understanding was that we would need the submerged land lease when we were going in. Through the permitting process with DEP, they said that that was not state lands, so we would not need the DEP, and that's when the owners of the Sanctuary talked to the previous owners of the Haldeman Landings property and asked about their -- if they would have an issue with the boat docks being built out there, and they said no.

HEARING EXAMINER STRAIN: Well, I also notice that there's apparently some agreement that was created between the company that you now represent, or the predecessor to the company you now represent who used to own the property, and the Sanctuary, but I haven't seen that agreement nor was it presented to the Planning Commission at the time.

MR. HALL: No. And I'm not aware of any written agreement. It was simply a verbal discussion that --

HEARING EXAMINER STRAIN: So at this point someone, you believe, could possibly put docks out on somebody else's property based on a verbal discussion? I mean, that's not typical. And had the Planning Commission been aware of the circumstances that have come to light from this project, I'm sure we would have had additional questions of the Sanctuary project.

MR. HALL: I would like to -- just let me get back to the 150 feet. I don't think that's correct, Mark, because the Sanctuary extension was for 49 feet. And to meet the 25 percent width of waterway, that waterway would have had to have been shown as wider than 150 feet.

HEARING EXAMINER STRAIN: I never said waterway. I said your survey showed a platted canal. It said canal right-of-way 150 feet; platted canal right-of-way 150 feet. I didn't say right -- I didn't say waterway.

What I'm trying to tell you is a platted canal is different than the canal that's a drainage easement and that has different underlying ownership, as we've learned in this Haldeman Creek dock BDE. I'm just going back telling you why the Planning Commission back in 2006 did not have the ability -- did not have the -- did not have the information that this particular project is now revealing. I wish we had.

MR. HALL: Okay.

HEARING EXAMINER STRAIN: It would have made it more thorough, and it would have been helpful today.

My questions of you, though, Tim, will start in the staff report. There's a description of the project that I've talked with staff, and it was apparently provided by you. It's Page 23 of the staff report, but I'm not sure if that coincides with the manner in which you've got your pages collated. But what it says, description of project, and it goes into the square footage. Then it says, in the area of the proposed dock, the applicant owns the shoreline on both sides of the creek and the bottom lands of Haldeman Creek. The layout will consist of a 473-foot-long by 6-foot-wide shore parallel dock that includes 12 30-foot-long marginal slips and a 22-foot-long, 27-foot-long, and 30-foot-long and 4-foot-wide finger piers perpendicular to the mooring.

Well, how do you get to 473 feet in that project description? Because your docks -- I mean, if you go from the east to the west, best I can scale it, it comes out greater than that.

MR. HALL: Well, yeah. No, it's definitely greater than that. I think the 400 feet was just the parallel, was the shore parallel mooring area. Then there's an additional -- you know, the additional -- where the finger piers are is an additional 500 feet.

HEARING EXAMINER STRAIN: Okay. So you're -- what is your overall total length? It's about 800-something, isn't it?

MR. HALL: I believe it's 953.

HEARING EXAMINER STRAIN: Okay. The 938 linear feet of shoreline, did you bring a graphic to show us where that shoreline is?

MR. HALL: I did.

HEARING EXAMINER STRAIN: Is it something that I can put on the screen?

MR. HALL: I don't think it was included on that process, but --

HEARING EXAMINER STRAIN: Can you show me -- is it on this pictorial here --

MR. HALL: It is, yes.

HEARING EXAMINER STRAIN: -- or is it further down?

MR. HALL: Actually, if you go -- let's see. Go back a couple of exhibits. That one right -- well, maybe go back one more. I'll try to clarify it. Keep going. No, go -- right there. That black line that is shown -- between the two green lines, the black line that runs along there --

HEARING EXAMINER STRAIN: Okay.

MR. HALL: -- that's labeled as the mean high-water line.

HEARING EXAMINER STRAIN: Watch -- ooh, boy. You've got to watch that cord.

MR. HALL: That's where that 938 feet came from. It's the length of that black --

HEARING EXAMINER STRAIN: So the shoreline that goes north/south down into the canals to the east, you didn't consider any of that shoreline in your calculation?

MR. HALL: Well, I did. I mean, in my application, I actually said -- or one of the descriptions that we had, 3,432 feet, but that -- and then I said if we only consider the shoreline along the south side.

HEARING EXAMINER STRAIN: Okay. The way this reads is the property has 938 linear feet of shoreline along the southern portion of Haldeman Creek which is the location of proposed docking facility.

MR. HALL: Yes.

HEARING EXAMINER STRAIN: But then the next statement, the remainder of shoreline will not have docks built on it.

MR. HALL: Correct.

HEARING EXAMINER STRAIN: What do you mean the remainder of the shoreline? What are you talking about there?

MR. HALL: The remainder of the shoreline would be all this shoreline that they have on the northern side of the creek --

HEARING EXAMINER STRAIN: Right.

MR. HALL: -- and all of the shoreline going down along the canal on the eastern side of the property.

HEARING EXAMINER STRAIN: Okay. So that --

MR. HALL: There's about --

HEARING EXAMINER STRAIN: -- eastern canal going north/south for the full length of the property in that bay in there, by this statement you're not putting any docks there?

MR. HALL: That's correct.

HEARING EXAMINER STRAIN: You don't intend to put any docks there?

MR. HALL: No, we do not.

HEARING EXAMINER STRAIN: You talk about the surveys that indicate water depths and that you're basically performing a maintenance dredge. What sediment -- did you do sediment samples to confirm that this was a maintenance dredge situation? Because when the dredging came through for Haldeman Creek prior to the initial digging of that drainage canal, what else do you -- what other period of time -- were there any more excavations being done out there or dredging been done out there?

MR. HALL: 1994 that area was dredged when the mangrove -- when the actual mangrove shoreline was created, that was all dug back.

HEARING EXAMINER STRAIN: And so your -- did you do sediment samples to find out how much is filled in?

MR. HALL: No, we did not do sediment samples.

HEARING EXAMINER STRAIN: How did you decide that the depth could be gotten to there as a maintenance dredge then?

MR. HALL: Based on the depths that were permitted when those mangrove planters were done. It was permitted to that minus four.

HEARING EXAMINER STRAIN: So you're not going any deeper than that?

MR. HALL: No.

HEARING EXAMINER STRAIN: You're not going any deeper than what was permitted in '94?

MR. HALL: Correct. And -- we're not, no. I'll leave it at that. We're not.

HEARING EXAMINER STRAIN: Okay. One of the statements that was supplied to staff in regards to this document that you wrote says there are portions of the proposed docking facility that exceed the 25 percent width of the waterway when measured from the mean high water to mean low water, but this does not represent the width of the navigable waterway.

Now, from a navigability viewpoint, how much of the waterway is considered navigable by the studies that you've done?

MR. HALL: And that statement is based on the original application, not the one that was presented to the Planning Commission. Because where the docks exceeded the 25 percent width of waterway was changed



prior to us going in front of the Planning Commission.

HEARING EXAMINER STRAIN: Do you have an exhibit that we could talk off of?

MR. HALL: Yeah. If you go to the -- I mean, we could use that one right there.

On the eastern section of the property where the -- where the shore parallel mooring is proposed, that dock originally extended out. It kind of followed that contour of the blue. It was out further from the shoreline. I'm sorry, at the west. Yeah, the west end.

HEARING EXAMINER STRAIN: Right.

MR. HALL: And so in that area it exceeded the 25 percent width of water. If you go forward two or three more slides -- right there. See how the boats right now in that area are right against that 25 width of waterway? In the original submittal, that dock was further from the shoreline because of the shallow waters there. We were trying to minimize the amount of dredging, however, when that issue was raised about the 25 percent width of waterway.

Our justification for the original proposal was that the applicant also owned the other shoreline and knew that that was being placed under conservation easement. There would not be any boats on that side, so the provision to maintain 50 percent of the waterway in an open condition would still be satisfied; however, based on those comments, that change was made and the dock was straightened out, brought in much tighter to the mangroves, and so that it all fit within the 25 percent width of waterway.

HEARING EXAMINER STRAIN: In another section of the same narrative, you say the applicant owns the creek bottom lands and the land on the opposite side of Haldeman Creek across from the proposed docking facility. That shoreline has been placed into a conservation easement which does not allow docks to be built on it. So you're referring to all that on the opposite shoreline. Why did you say the conservation easement would not allow docks?

I mean, you've got a conservation easement where the mangroves are that you're putting docks through, and you're trimming the mangroves to accommodate the docks on the south side. Could the same thing happen on the north side?

MR. HALL: No. The way that that conservation easement is written with DEP, it would not allow for the placement of docks on that side.

HEARING EXAMINER STRAIN: Is it not the standard form DEP uses?

MR. HALL: It is but, I mean, their permit has certain -- you know, their permit allows for the docks right here, and it doesn't allow for the docks on the north side.

HEARING EXAMINER STRAIN: Okay. But the conservation easement that you have on the south side where you're putting the docks through --

MR. HALL: Is a passive use that allows --

HEARING EXAMINER STRAIN: Is the language in the conservation easement to the north the same? I mean --

MR. HALL: I don't know the answer to that.

HEARING EXAMINER STRAIN: Okay. On No. 5 you talk about the same thing. You talk about the conservation easement, meaning no docks can ever be built on this portion of the creek. So now you're extending the fact that, because of that conservation easement, the creek that's outside the conservation easement you've agreed, basically, there will be no docks going there; is that a fair statement, because of the conservation easement?

MR. HALL: Yes, sir.

HEARING EXAMINER STRAIN: Then how are you putting all those docks along Windstar? That's all the conservation easement by Windstar's PUD.

MR. HALL: Because the docks themselves are on the property owned by the applicant.

HEARING EXAMINER STRAIN: Right, but the applicant owns the property on the north side, too, in which you just testified that you're not going to be placing docks along that conservation easement because it wouldn't allow it. How does the Windstar conservation allow give you the right, then, to put docks in front of the Windstar property?

MR. HALL: The Windstar conservation easement doesn't -- I don't get how you're associating the two of them. This project was permitted through those agencies, and the conservation easements and where



the docks go is part of that permitting process.

HEARING EXAMINER STRAIN: Well, I think the expectation is that if you can't put docks in front of a conservation easement, there's some level of assurity that you're not going to do that on the north side based on the statements that I find in the staff report.

MR. HALL: It's not --

HEARING EXAMINER STRAIN: Why wouldn't we rely on the same level of surety in regards to the conservation easement that Windstar has in place along the shoreline there?

MR. YOVANOVICH: Mr. Strain, we have no intentions of putting boat docks on the north side of the property. If we need to stipulate to that as a condition of the boat dock extension to make that clear, we're happy to do that.

HEARING EXAMINER STRAIN: I know you can do that, Richard --

MR. YOVANOVICH: Right. So --

HEARING EXAMINER STRAIN: -- but I'm looking at the premise under which the previous -- the written statements that were submitted to staff clearly say because of the conservation easement, no docks have can ever be built on this portion of the creek.

MR. YOVANOVICH: It's in conjunction with the permitting we're going through with the state and federal agencies, together with the fact that there's no access to the other side that's being approved.

As you can see, we have access to the portion of the docks to the west. That is beyond the conservation easement for Windstar. We have the ability to access that. To the north we do not have that same access available to us, but if we need to belt and suspender it to make sure we stipulate to that as part of this boat dock extension, we're happy to do so.

HEARING EXAMINER STRAIN: Well, you've answered -- at least I understand what you've answered. I don't believe it addresses the concern that I've got, but I certainly will look at it further in the conservation easement.

MR. HALL: No. Okay. I mean, I think what -- all right, if you're ready to move on.

HEARING EXAMINER STRAIN: You talk about that because of the conservation easement and the fact it can't have any docks, it says, this makes the navigable width as large or larger than any other developed area of Haldeman Creek. I didn't see any documentation showing how that compares to any of the other developmental areas. What is it you meant by that statement?

MR. HALL: That we're not constricting the waterway smaller than anywhere else, that the result of these docks being put in wouldn't constrict the waterway to a width narrower than is found anywhere else on the creek.

HEARING EXAMINER STRAIN: And did you -- I mean, I assumed you must have looked at the whole creek to come up with that conclusion? And that is just the -- is that including east of Bayshore or just west of Bayshore?

MR. HALL: That included just west of Bayshore.

HEARING EXAMINER STRAIN: On the Sanctuary dimensioning of their docks, you know they're at three feet?

MR. HALL: I do, yes.

HEARING EXAMINER STRAIN: And you argued at the time that that was a safe width for a pier, so now you're saying it's four. I know one is preferred, but in looking at your reasoning, the Sanctuary docks did have room to go to 4 feet along that shoreline that they own. So is there a reason why three feet wouldn't be just as acceptable on the south side as it would be on the north side?

MR. HALL: I'm trying to remember, but I thought that the 3-foot width at the Sanctuary had to do with being able to maintain the side-yard setbacks for the riparian -- the riparian rights there, that they did not have the width there. If I am not remembering that correctly, then I apologize, but --

HEARING EXAMINER STRAIN: Well, Rocky did the presentation on that one, by the way. That's probably why it's hard to remember. He did state in the comments made to the Planning Commission at the time that the 3-foot was considered a safe width to be used in that location. I didn't -- I don't believe we even got into the reasons why until I heard you say what the potential reason might be.

MR. HALL: It's a -- I mean, you can -- there are other -- there are docking facilities that have 3-foot

widths. As I said, you know, the 4-foot is just kind of an industry standard when you're buying -- what you're constructing.

HEARING EXAMINER STRAIN: Okay. You talk about the moderate ranking for the Manatee Protection Plan. I found a reference in one of the documents that said once the dredging was done for Haldeman Creek, the ranking would go to preferred. Did anybody confirm that, or is that still a question?

MR. HALL: Not in my mind. I mean, I don't know staff ever confirmed that. But in terms of the criteria, we would then have four feet under the docks and all the way out to Naples Bay. We're not in a high manatee use area, and we're impacting less than five percent of any aquatic resources with the dock, so we would qualify under the preferred ranking.

HEARING EXAMINER STRAIN: I know you're not an engineer. And I'm going to ask staff to comment on the preferred ranking, and I've already kind of cautioned them ahead of time to have that information available.

The fact that this is a drainage easement is of some concern. Some of the emails that I got from the citizens expressed a concern that the docks would block or tend to block or catch debris that might restrict the flow of water in a hazardous condition. So I had asked, in one of the questions I previously told you to be prepared to answer, if there's any comment from your side on that.

And the other day when I was talking to Richard, he said that you have an engineer who's willing to talk about that?

MR. HALL: Yes, sir.

HEARING EXAMINER STRAIN: Can he come up and address that question?

MR. RATH: Hello. For the record, my name is Andrew Rath with Davidson Engineering, and I'm a professional engineer licensed in the State of Florida.

And I guess we wanted to talk a little bit about what impacts the proposed docks with the proposed dredging would have to the drainage capacity of the creek.

When we look at the drainage capacity of the creek, we kind of look at the plane perpendicular to flow if we look at the flow area. With the proposed dredging we have on our plans, we'd be increasing the flow area of the creek and, subsequently, the conveyance capacity of the creek as well.

So we'd be able to move more water through this creek with the proposed dredging. That especially becomes apparent as you move to the west around Cross-section B.

The amount of flowway that we'd be opening that up would be somewhere in the line of 15 to 20 percent greater than what exists today. Simply by bringing that dredging back, you're bringing it full depth minus four all the way out. That, right now, is the existing choke point of that flowway.

HEARING EXAMINER STRAIN: Well, you're going out past the mangroves with the docks. And during -- and the issue is more not on a day-to-day flow basis but on a high-hazard event that may occur, say, when a hurricane or a tropical storm comes through.

The debris that comes down through the channel at that point is more than water. It's going to have chunks of wood, sides of houses, who knows what.

The docks -- the concern from the viewpoint of the docks is, would they tend to collect more of that debris? If they do, would the backup resulting from that debris cause any concerns from a flooding basis upland from there?

MR. RATH: I think in the existing condition, you've got the mangrove shoreline that's jagged, which would be able to capture and get debris stuck in it as it is. If you go out there in the present condition, there's plenty of garage and trash all stuck into the mangroves as it sits.

With the proposed docking and the dredging, the docks are going to stick out into the waterway a bit more. There's at least 50 percent of the waterway left there in the worst-case scenario.

HEARING EXAMINER STRAIN: Well, before you go too far, let me read what I got just a couple days ago from the Department of Transportation, and they have a division that manages their drainage easement in Bartow, and the fellow that's in charge of that division sent the following:

As for the proposed work within the easement, it appears reasonable since much of the work is proposed along the shoreline, which includes dredging to lower the channel bottom. As for the wetland impacts, they will need to be mitigated for either directly in the waterway or purchase credits for the mitigation

bank as approved by both the Corps of Engineers and South Florida.

Then he goes on to say, the hydraulic impacts need to be modeled using, at a minimum, a 2D tidal model to ensure the flows within the waterway are not impacted by the new docks or boat launches.

The bigger concern will be associated with the sediment transport within the waterway and where the material will be prone to either accumulation or erosion due to new shoreline modifications.

Have you addressed any of that? Have you done a 2D tidal model to know the impact? Have you calculated the hydrological value of the flow?

MR. RATH: We have not up to this point.

HEARING EXAMINER STRAIN: You have not?

MR. RATH: No.

MR. YOVANOVICH: Okay. I've got to get up here for a second, because the boat dock extension criteria, we have our permit from the state regarding the dredging. That's the agency that's going to regulate the dredging.

If FDOT has questions of us, we'll be happy to answer those questions of FDOT, but we don't believe that that's part of today's proceedings. We have the permits we need, and FDOT is the agency who owns the drainage easement. And we will deal with FDOT if they have questions of us, and we'll do whatever modeling they would like.

HEARING EXAMINER STRAIN: Well, Richard, I know you like to believe that the dock extensions are simply a matter of the primary and secondary criteria. I don't believe you're correct in that. And to add to that, we have a section of the Code of Laws, which I've just put up there.

Public safety means anything which is not injurious to the safety or the health of the entire community or a neighborhood or in any considerable number of persons or does not unlawfully obstruct the free passage or use in the customary manner of any navigable lake or river, bay, stream, canal, or basin.

I believe that the powers of the Board of County Commissioners, and certainly the Planning Commission, can extend far beyond just review of the primary and secondary criteria. This is another reason why it can; we have to look out for the overall safety of the public.

If that drainage canal isn't functioning as it was intended to function, that's a factor. If you've failed to provide information on that or you have not researched that, it was your tidal survey that provided the fact that D book was there.

So by now I would have assumed that anybody looking at that would have wanted to address that issue. If you haven't, so be it.

MR. YOVANOVICH: And we have, we have. Mr. Rath is a civil engineer, and it is his professional opinion that that drainage easement will function as intended.

Now, keep in mind that that drainage easement was for a road. It is not a drainage easement for --

HEARING EXAMINER STRAIN: For a road?

MR. YOVANOVICH: -- the entirety -- it was given to FDOT. FDOT does roads.

HEARING EXAMINER STRAIN: It was given to -- no.

MR. YOVANOVICH: FDOT --

HEARING EXAMINER STRAIN: I talked to FDOT. They said it was an appurtenance to the road system so that the drainage from the roads can get out to the bay. So how is that going to be -- it's never going to be a road.

MR. YOVANOVICH: No. It's drainage to serve a road.

HEARING EXAMINER STRAIN: That's correct.

MR. YOVANOVICH: Okay. In our professional opinion, the -- my engineer's professional opinion, the drainage for the roadway system will not be negatively impacted by this design. If FDOT would like us to do an additional model for FDOT's purposes, we'll be happy to do that, but we've done what is required.

And, remember, the public safety means for the customary use of the waterway, and we are in no way interfering with the navigability of that waterway. And when Mr. Rogers gets up here, he will assure you of that.

So we meet all of the criteria in the code regarding the customary use of that waterway and specifically

the criteria regarding that drainage easement.

HEARING EXAMINER STRAIN: Okay. Now, the drainage easement was for the roads, but the part of the roads that it functions for is where the road blocked the drainage, both sides of 41, and afterwards. When they put in U.S. 41 -- and you saw that drainage exhibit that I put up there -- all those lands north of 41 are draining through this canal, because 41 was put there and blocked them. This canal functions for the road system for what it blocks, so it still covers all that property.

And there's been no hydraulic models done to show how it's impacted by this -- any restrictions in this drainage easement.

MR. YOVANOVICH: And not -- and that's not required for this petition. The state has reviewed and --

HEARING EXAMINER STRAIN: Well --

MR. YOVANOVICH: -- approved the dredging and the docks that are going in this location, and so has the federal government.

HEARING EXAMINER STRAIN: Well, we'll continue to --

MR. YOVANOVICH: And the state -- and you're --

HEARING EXAMINER STRAIN: -- disagree on that one.

MR. YOVANOVICH: That's right. That's a good point. The Water Management District has approved the docks, and that's the state agency responsible for drainage.

HEARING EXAMINER STRAIN: Okay. Usually we take a break for 15 minutes every hour and a half so the court reporter, who is trying to type as fast as I, unfortunately, talk, can give her fingers a rest. So we'll do that now, and we'll come back at 10 minutes of 11 and resume.

And what I'd like to do is those people who have to leave and cannot stay here, we'd like to get their comments before they leave, and we'll ask that when we get back.

Thank you. And there is free coffee across the hall but, like the chairs, it's limited.

(A brief recess was had.)

HEARING EXAMINER STRAIN: Everybody, if you would please take your seats, we'd like to resume the meeting.

Okay. Everybody, I'd ask that you please quiet down. We're going to resume the meeting.

Thank you, Gail.

We left off in talking with applicant's engineer. I was going to move to public speakers. Sir, did you have something you wanted to add before we do?

MR. RATH: Yeah, please. Can I just add a bit to this?

As far as reviewing from a state agency, the drainage capacity, the impact to the drainage canal, we permitted this through South Florida Water Management District in 2009, which showed the docks on there as well, and their engineering staff has reviewed it macroscopically for the drainage basin area as well on the microscale for the project site itself. They approved the plans showing this dock layout with the perpendicular docks.

Subsequently, we filed for a major modification with South Florida Water Management in 2014. We just received approval for that major modification also showing the docks on there as laid out, as you can see here.

HEARING EXAMINER STRAIN: Okay. And I have all that paperwork. In fact, I have -- in 2009, you got a South Florida permit, but there were prior permits from both the Corps of Engineers, DEP, and South Florida that I have found back -- going back in the early 2000s. So, yes, I've read all that, and I appreciate you pointing that out. Thank you.

MR. RATH: Okay.

HEARING EXAMINER STRAIN: My question was more to try to find out what additional information you may have that I could review regarding the drainage issue. It wasn't to say that you didn't go through the agencies that you just mentioned, because I did see the paperwork on that.

MR. RATH: Okay.

HEARING EXAMINER STRAIN: Thank you.

MR. RATH: You can see that they showed the docks on there.



HEARING EXAMINER STRAIN: I understand.

MR. RATH: Okay.

HEARING EXAMINER STRAIN: Thank you.

And with that, is there anybody that wishes to speak who can't stay here -- can't come back after lunch? And those of you raise your hand. There's two of you.

First of all, could you both stand up?

UNIDENTIFIED SPEAKER: Three.

HEARING EXAMINER STRAIN: Did you -- were you both sworn in?

MR. DOBSON: Yes.

HEARING EXAMINER STRAIN: Okay. Now, did you fill out speaker slips?

MR. DOBSON: Yes, I did.

HEARING EXAMINER STRAIN: Okay, great. Would you mind coming up and using the mike, and I'd be glad to hear from you. Thank you.

MR. DOBSON: Thank you. Mr. Strain, ladies and gentlemen, and neighbors, thank you for giving me a few minutes.

MR. BELLOWS: Could you state your name for the record, please.

MR. DOBSON: My name is Rick Dobson. I've been a resident in Windstar in Naples Bay for several years, since 2002. My address is there. I own a home in the development.

This particular project is part of an extension of the Windstar of Naples Bay community and, therefore, I'm of (sic) vital interest in it. I'm probably about a half a mile away. I'm on the bigger map, where I live.

I'm past president of the club and was involved in the original negotiations with Center Line and then Standard Pacific about the whole property, including the boat docks.

I have a boat. I have a 26-foot boat. We're customers of Gulf Shores Marina. I navigate the creek quite often over the years. And I just make one point about that. This particular part of the creek, as far as I'm concerned, is the widest and most navigable part of the creek. There are so many other constrictions and narrow points. And I don't think anybody would do a slow speed on here. It's idle speed only. I mean, most people know that.

I support -- well, I haven't seen --

HEARING EXAMINER STRAIN: Sir, the debate is not -- we're just looking for information.

MR. DOBSON: Windstar owners and club members thought long and hard about the whole proposed development. When all was said and done, there was an overwhelming majority of the 557 homeowners who approved the 64-unit development with the boat slips as an important new addition to our neighborhood.

As you may know, the area was proposed for a much larger development in the past. We worked hard to reduce the size, the footprint, and the density, and it's presently zoned for more than the 64 units.

The new development represents what we think is a tremendous improvement in the development of the Bayshore area, bringing in more customers to local businesses, such as the marina I mentioned, and restaurants along Bayshore Drive, increasing the tax base.

We believe that a much less desirable new development not connected to Windstar might well have happened on this site if we had not got involved and helped frame this proposal.

This would have been a problem for both the Windstar residents and the neighbors on Lakeview Drive.

Other current and possible developments, such as the Naples Botanical Garden, the Isles of Collier Preserve, with 1,600 homes, and hopefully new quality developments like this one of the other vacant properties along Bayshore Drive will improve our lifestyles, our property values, increase the tax base, bring more needed new business and employment to all of East Naples.

From the days of Kelly Road, we have all wanted to see this area progress to a safe, comfortable, successful neighborhood, and we think with developments like Haldeman's Landing, that it's starting to happen.

As some of my colleagues may get a chance to say this development and the boat slips will come under the stewardship of Windstar, Naples Bay community standards and maintenance.

Our record shows with Audubon certification, the current beauty of our community, and how we take care of it with the high standards we have protecting mangroves, burdened wildlife, and the environment in general. We believe this will be a positive addition to Haldeman Creek.

We've always been vitally interested in our larger Bayshore neighborhood community, witnessed our involvement with the CRA, the MSTU, the local business community charities such as the Boys and Girls Club, Harry Chapen's Food Bank, Avalon and Shadowlawn school programs, and the Women's Shelter in the area, just to name a few.

We support the 42 slips as a desirable change to the Haldeman Creek area, and as well as the new 64 residents who will live in these high-end coach homes that they're building.

I believe the proposal; I've listened; I've read all the documents; I've read the minutes of the previous hearings; I've read the law. I'm not a lawyer. I'm a resident, and I'm retired, but I believe the proposal is well within federal, state, and county standards, and once built will be well taken care of by our organization.

I've read, as I say, all the transcripts. And although I can emphasize with people not wanting to change, I believe change is exactly what the Bayshore area needs. It has the potential to be a much better thriving community with more jobs, bigger tax base than it is today.

Change is coming. New developments are coming. And I believe we should all welcome these as long as they add value to our community. This high-quality proposal does that, in my view. Sometimes we need to embrace change to get to a better place.

Thank you very much.

HEARING EXAMINER STRAIN: Sir, I've got one or two questions of you. You're with Windstar, not this particular project; is that correct?

MR. DOBSON: This project is incorporated into the Windstar community.

HEARING EXAMINER STRAIN: By what means? Because it isn't legally in regards to zoning. It's an RMF-6 zoning. It's not part of Windstar's PUD.

MR. DOBSON: Through the master association documents, which are the housing association of Windstar/Naples Bay.

HEARING EXAMINER STRAIN: But that's a private document, correct?

MR. DOBSON: Correct.

HEARING EXAMINER STRAIN: Okay. Because the county, on land use actions, Windstar, in 2006, I believe, tried to bring this property into their PUD. It didn't go forward. I don't know all the reasons why --

MR. DOBSON: I know the reasons if you want them.

HEARING EXAMINER STRAIN: Well -- but that's fine.

MR. DOBSON: We voted it down because they wanted 172 multiple units.

HEARING EXAMINER STRAIN: Okay. I understand there were reasons, and that's not what this hearing is about. But I wanted to make sure I understood your comments about being part of Windstar. Because while that's a private agreement, the county does not recognize this site as part of Windstar.

THE AUDIENCE: Can I say something?

HEARING EXAMINER STRAIN: No. Sir, I'm sorry. You're going to have to stop -- sir, please, please.

MR. KLATZKOW: No, no, no. You'll get your time to speak at the time. If we're going to have discourse back and forth, this is never going to work. So please.

MR. DOBSON: It's a housing association agreement.

HEARING EXAMINER STRAIN: I understand.

MR. DOBSON: So these new owners will be part of the homeowners association of Windstar.

HEARING EXAMINER STRAIN: Okay. I just wanted to clear it up from a land-use perspective.

The golf course that is adjacent to the preserves --

MR. DOBSON: Yes.

HEARING EXAMINER STRAIN: -- that are in this picture on the left --

MR. DOBSON: Correct.

HEARING EXAMINER STRAIN: -- those aren't owned by your master association. Those are

owned by Windstar Club, Inc.; is that right?

MR. DOBSON: Correct. The club has property within Windstar, and the master association owns the, quote, common areas.

HEARING EXAMINER STRAIN: Okay. And I have not -- so you don't represent them?

MR. DOBSON: No. Well, I represent the club, yes.

HEARING EXAMINER STRAIN: Right. But I -- you represent the master association?

MR. DOBSON: No. There are others that will do that.

HEARING EXAMINER STRAIN: Yeah. I did not see a letter from the club; that's why I was asking, but you've helped me understand.

MR. DOBSON: Well, if you want a letter, we can give you a letter.

HEARING EXAMINER STRAIN: Well, there isn't one in the record at this point.

MR. DOBSON: Okay.

HEARING EXAMINER STRAIN: But thank you very much, sir. I appreciate your time.

There was one other gentleman or maybe now two that would like to speak. Sir, come on up. Just so the audience knows, we have a lot of information to go over yet today, and I'm hoping most of it will at least answer some of your questions and clarify issues.

So those that can wait for the day to go through, you'll find a lot more information coming forward.

Please state your full name for the record, sir.

MR. WOODWORTH: My name is David Woodworth. I live on Lakeview Drive. I've been there over 30 years.

HEARING EXAMINER STRAIN: Before you start too much, were you sworn in when we started?

MR. WOODWORTH: Excuse me?

HEARING EXAMINER STRAIN: Were you sworn in? Did you raise your hand and get sworn in when we started?

MR. WOODWORTH: Yeah, I did.

HEARING EXAMINER STRAIN: Okay. That's what I'm asking. And did you fill out a speaker slip?

MR. WOODWORTH: Yeah. I've lived on Lakeview Drive for over 30 years.

HEARING EXAMINER STRAIN: Did you fill out a speaker slip? No, before you go too far, did you fill out one of those slips that gives us your name and address and everything?

MR. WOODWORTH: My name and address is 2735 Lakeview Drive, Naples, Florida.

HEARING EXAMINER STRAIN: Gail, as he exits, see if you can get that from him. Thank you. Go ahead, sir. I'm sorry.

MR. WOODWORTH: Yeah, okay.

Originally this property was supposed to be called Fisherman's Cove, and I appeared before the county at that time. I had two little boys, and that project was approved. They were single-family homes in this property. And I don't remember how many. I think there was, like, less than 24.

And at that time the county promised a sidewalk going down Lakeview Drive down to Bayshore. It was called Kelly Road then, I think. Now this project wants to go out into a canal. I live on a canal. I don't know how wide it is, but when it's low tide, I can't turn my boat around. I have to go down the canal where there's no docks to be able to even flip my boat to go the other way.

And the other day I saw a 50-foot boat going down Lakeview Drive, I mean the canal there. I don't know how it got there because it certainly -- I mean, the canal is not even 50 foot of navigable waterway there.

But, anyway, I'm not opposed to development. The development has to come. But they have over 900 feet of shoreline there. And they're not using very much of it.

There's a little cove on the west side of Lakeview Drive that would be ideal for a little boat dockage area, okay. They might have to do some dredging, but it would be perfect, you know.

And, also, they have a shoreline where there's lots of boats on Lakeview Drive where it goes the L shape. You know, Lakeview Drive goes one way, and then it makes a right turn.

That whole street, those property owners on the west side, they all have docks. Just about everybody there has a dock. Some of them are even sailboats so they can get in and out. They're not using any of that



shoreline at all.

I mean, when I go up and down Haldeman Creek, there's only, I would say, 20, 25 feet at the most in the middle on low tide that I could go up and down. And when I see another boat, sometimes I just stop because I don't want to hit them, you know. I think it definitely is a safety factor having docks going way out into the middle of the creek there.

HEARING EXAMINER STRAIN: Okay.

MR. WOODWORTH: So that's all I have to say.

HEARING EXAMINER STRAIN: Thank you very much, sir. Appreciate your input.

Is there another gentleman in the back who wanted to speak at this time? Maurice, come on up. You need to state your name for the record. Let me know if you were sworn in and if you filled out a speaker's form.

MR. GUTIERREZ: Thank you. My name's Maurice Gutierrez. Yes, I have filled out a speaker card --

HEARING EXAMINER STRAIN: Yes, sir.

MR. GUTIERREZ: -- as well as was sworn in.

HEARING EXAMINER STRAIN: Thank you.

MR. GUTIERREZ: I'm a 30-year resident also of the creek and as well as, do not make a living at it, but hold a captain's license.

I want to clarify a couple of quick things. The petitioners have compared this to three areas: Harmony Shores, the commercial district, and Sandpiper Bay. Now, first of all, Harmony Shores is east of the bridge. If your boat's bigger than 16 feet, you may not get home depending on the tide. So we don't look at that as an impact.

The commercial district has hard seawalls with piers, not dock extensions and not T docks that protrude into the waterway, which reduces the backing out and boat traffic safety issues.

The only other commercial development, which is Sandpiper Bay, which has over 200 units, has only a 300-foot dock, and they are parallel. And, most importantly, they are not on the main creek.

I think our biggest objection is the fact that this is occurring on the main creek, and the issues that have been brought up with safety is obvious if you're a boater. But I have a problem with the fact that no data has been presented that is not site specific.

Collier County has a rating system of roads that if you want to build something and it has a lot of vehicular traffic and it dumps onto a single-lane road, that's going to cause a problem; that road will fail.

There is no criteria like that for waterways, and that is unfortunate because the amount of boat traffic on this flowway -- it's a creek. It's not a river -- is pretty impressive. And let me run down the numbers. Let's start with Gulf Shores Marina. They're permitted for 150 dry docks. Now, the developers have said, you know, a home's got two boats, possibly. So we're going to take Gulf Shores, 150 homes. So we're going to add 300 boats to that equation.

Demere Landings, 100 boats; Land Yacht Harbor, 100 boats; and Sandpiper Bay, 30 boats. That's close to 730 boats. Let's just keep adding to the roadway that can't support the infrastructure.

The S turn is where the safety issues are. There's a marker there -- marker, I do believe it's 6 -- where between the marker and the shoreline there's only one marker. So the marker's in the water. You can't navigate on the shoreline -- is 40-foot at medium to low tide or less.

Now, you get two 30-foot boats -- this development will facilitate the ability to dock 30-footers, right? So you take a 30-foot boat that has a 3-foot draft going out and a 30-foot boat's got a 3-foot draft going in. Now, Coast Guard states the boat with the largest draft has the right-of-way. So what are we going to do there? Who's going to be shot up against the edge?

You see my concern is like a road, because this is a road to us. We use this to get out to the bay. We use this to navigate in and out of our area.

So you take a large number of units of boats, constrain it to a very narrow passage, and if this was a development on land, that developer would be forced to redo the roads and widen it. Unfortunately, that area's ecologically sensitive, it will never be widened, and to deepen it, you would have to blast through the cap rock. Good luck. I don't believe that the DEP would ever allow that to happen.



So what we're doing is just piling and piling and piling on the usage of this waterway without any official determination of can it handle the boat traffic and how big a vessel will ultimately go up.

Okay. The marina that's currently there uses large vessels for working, but you also know that any large vessel coming up in there is, A, temporarily brought in and out during high tide; two, usually, not only is it escorted, but it has a marina worker on board that knows the waterway. This is not your local boater running from a thunderstorm coming in at the end of the day wanting to make the dock before it gets dark. So you can't compare the operations of that marina to this public facility.

The fact that this is a multifamily development -- look at the creek. It is 99 percent residential. So I feel most of the owners have the problem with the incursion onto the creek, not so much the size of the boats. If they were to have built what they were originally allowed to build, quote, we could build 51 docks. Fine. Put it on your land. Don't put it in the creek. That's our objection. It will eliminate the safety issue with the pilings and potential stormwaters or anything that's trapped under those pilings.

Look at the configuration of the docks. Has anybody said how many pilings are going to be sunk? My estimation under drawing is 3- to 400, and at least 30 foot out into the main creek. Is that a safety issue? Are we going to have to wait for a hurricane to find out?

One of the other problems that I have with the project, it is not consistent with the flavor of the creek.

I heard the word "compromise." Well, I don't see it up there. If this was a single-family development and you had 400 feet of dry land behind your dock -- you know, I can't put a pier out in front of my dock out in front of my neighbor's house, but that's what they're doing. They're putting in 500 feet of dock where the land behind the dock is not theirs. That's a bad precedent. This is so unique to the point of owning the submerged land.

I would question there's probably no other place in Collier County like this. This is extremely unusual, and if there were situations like this, I'm sure that there would be much more problems at the county with trying to build docks.

Compromise. Really? Let me share a compromise with you. Welcome to the neighborhood. We're homeowners, 99 percent.

I have a parallel dock at my house. Everyone here on the water has the same. Build a 400-foot extension without a variance. It will eliminate the chance of catching any debris during storms. It will keep the parallel docks up against the mangroves. And, I'm sorry, you don't own the land behind the docks you're building; you shouldn't be allowed to build those docks. I feel that's part of criteria; otherwise, we'll all just be putting piers coming out of our homes and obstructing navigation.

I own the land out in front of my canal, just like these people do, but we don't abuse it or push the law to the point of this extent.

This property is very colorful. Never has anything been proposed that keeps coming up and keeps getting shot down.

I feel it prudent to suggest that compromise despite maybe some neighbors not agreeing with it. But I would like some assurances. I would like an assurance that this development will never be annexed into Windstar because, after all, it is not Windstar.

We're going to be impacted with boat traffic. We're going to be impacted with construction. I use the word "we" to signify Gulfshore subdivision. We're going to have to put up with everything, and the other development will receive nothing but monetary benefits.

I really don't want to see these docks sold to other than deeded owners of the property. That will assure us homeowners that this will not become Northpoint Yacht Club, just like Southpointe Yacht Club has become.

So, please, look at the data downstream. Don't focus on where they're building but where they've got to go, where they've got to come from.

Personally, I'm kind of insulated. I would hate to be one of the owners in Royal Harbor that are going to see close to 700 boats come and go a day in the peak. On the same day if everybody decides to go boating, this is what we're going to have.

Let me tell you what, it's going to be like the interstate dumping out into a one-lane road. Think about this project and please make sense of some type of compromise or, my position is simple, build your inboard

marina on your property where it's not going to obstruct the flow or any way obstruct into the creek, because this is the only development that is allowed to build on the creek. None of the homeowners have docks on the creek. I wonder why. How are they able to do this? I'm not a lawyer; can't answer that question. Thank you.

HEARING EXAMINER STRAIN: Thank you. Appreciate it.

Is there anybody else that cannot wait till --

(Applause and boos.)

HEARING EXAMINER STRAIN: Ladies and gentlemen, please. This is not what -- this is not a forum for cheerleading or clapping or anything like that. So, please, don't make any comments. We have to continue our decorum and just listen to the facts.

Anybody else need to be heard before we get -- before this afternoon?

(No response.)

HEARING EXAMINER STRAIN: Okay. With that, we'll move back into the questions that we were asking of the applicant before we went to the public.

MR. YOVANOVICH: Mr. Strain?

HEARING EXAMINER STRAIN: Yes.

MR. YOVANOVICH: Would it be okay if we had Mr. Rogers come up and complete our presentation regarding navigability?

HEARING EXAMINER STRAIN: Sure.

MR. YOVANOVICH: And then --

HEARING EXAMINER STRAIN: I mean, no, that's fine. He can come up. The more information you have the better. It's not a debate. It's information. So if Mr. Rogers wants to come up and supply information, that would be great.

MR. YOVANOVICH: I would like him to do that, and that may answer some of your questions. It may not, but --

HEARING EXAMINER STRAIN: Well, I have 21 questions from the various emails I read from the public, and then probably triple that of my own, so --

MR. YOVANOVICH: Okay.

MR. ROGERS: For the record, my name is Jeff Rogers. I'm with Turrell, Hall & Associates. I've been there for nine years. And I'm born and raised here in Naples, Florida; grew up in Royal Harbor, which is right around the corner from this.

I'm an avid boater. I am a licensed merchant marine captain. I don't act upon it, but I do have it. It's my love.

I grew up boating in this area all through Royal Harbor, Naples Bay, as well as Haldeman Creek, been up and down it I couldn't even tell you how many times. But it is a tight waterway, as we all know, especially west of our site. And as the gentleman before me stated, that this is actually one of the widest areas of the creek.

I've been up and down this creek personally. I have a 36-foot boat. I've been up and down it numerous times in that boat going to Gulf Shores Marina. It is a shallow waterway, as we all know, but my 36-foot boat does draft 3 feet of water, and I go up and down it no problem. Have passed boats numerous times going up and down the waterway.

You know, there are areas where you do have to have some local knowledge, but we are dredging along our property of shoreline as proposed on the drawing there, increasing the navigational safety area of this creek, allowing safe ingress/egress to our site, into our docks; therefore, not impeding the existing thread of navigation that is there.

We do have state and federal permits, as everybody knows, which allow us to go out 25 percent width of the waterway. We have complied with that; therefore, we're leaving 50 percent width of waterway.

It's my personal opinion that there's plenty of room for the proposed vessels and the existing vessels on this waterway to pass each other safely as they routinely go from Naples Bay into Haldeman Creek.

I don't foresee any navigational issues that are any different than what's there currently by putting these docks in. As we all know, as you go into these canals off of Haldeman Creek, the waterways get considerably

tighter, and there are numerous boats packed into those canals. Those canals, I understand that there are navigational issues; can't really do anything about that here. We're not trying to create nor do I think we're creating a navigational issue. We're basically leaving it the way it is, just adding more docks and boats to it.

Increasing the boat traffic, yeah, there's a possibility of increased boat traffic, but with Naples, this is a very seasonable area, and I don't foresee any increased traffic. You know, when I go up and down this creek, I'm lucky to pass one boat, if that, going out. That's just my personal experience.

With that, if there's any more questions with navigation, I'd be happy to answer them.

HEARING EXAMINER STRAIN: I have questions, but I don't know which one of your team members are best to answer --

MR. ROGERS: I'll step down.

HEARING EXAMINER STRAIN: -- so I'll just throw out the first one. I need a little more information on the 51-boat-slip basin that was at one time shown on the plans in the uplands area.

And, basically, from the history I could find, Tim, it looked like it got approved through the county but never got issued pending possibly the Corps or DEP or something like that. Can you clarify?

MR. HALL: I didn't specifically work on the permitting of that, but I know that the basin itself, like you said, it was kind of an agreement between a previous developer and the county.

In looking at the past records from a permitting standpoint, you know that in '94 or '95 is when the mangrove shoreline was actually constructed and put in place as mitigation for wetland impacts that occurred for previous actions that had happened on that property.

So trying to put in that basin would involve a lot more mangrove impacts than what's currently proposed. It would also mean voiding portions of that conservation easement, and the mitigation that that was supposed to be providing would then be -- have to be accounted for somewhere else.

In terms of the basin itself, it creates an area off of the main-flow channel so it raises more environmental concerns from the agency's standpoint in terms of flushing and the ability of the basin to keep itself clean. So it would have been -- to permit a new basin like that confined within -- totally within the property's boundaries would have been a much more difficult permitting endeavor.

HEARING EXAMINER STRAIN: Weren't the conservation easements, including the one across the water, just recently redone?

MR. HALL: They were redone because the original easements were in favor of, I guess, the association that was part of the old, you know, mid '90s development. The easements were in favor of an organization that was either never formed or no longer there. So they were redone to make them to the state agencies so that they would have more control over them.

HEARING EXAMINER STRAIN: So you can redo conservation easements?

MR. HALL: You can, yeah. I mean -- you can.

HEARING EXAMINER STRAIN: So the mangrove fringe that was installed in '94, and it being in a conservation easement, you could have modified that conservation easement to -- if you wanted to move forward with the 51-slip boat basin that was off the canal?

MR. HALL: You can ask for it. Whether the agency grants it or not is up to them. But keep in mind the change that was done now was to change the easement from one entity to another, not to void a portion of the area that was contained under the easement.

HEARING EXAMINER STRAIN: Okay. Did you receive any rejections by the agencies in regards to any applications that you did with that 51-boat basin?

MR. HALL: Not that I'm aware of, no.

HEARING EXAMINER STRAIN: Did you apply to any agencies for that 51-boat basin?

MR. HALL: Not that I'm aware of.

HEARING EXAMINER STRAIN: With the exception of Collier County.

MR. HALL: Yeah. I guess --

HEARING EXAMINER STRAIN: Well, I mean, I've got the records. You did apply to Collier County. It went through its complete review, and I believe the only thing holding it up was the fact you didn't have any other agencies.

MR. HALL: Got to have other agencies.



HEARING EXAMINER STRAIN: So you're assuming the agencies may be more difficult to deal with on that particular uplands piece, but you never really pursued it. Is that a fair statement?

MR. HALL: I believe there was a preapplication meeting where it was discussed and that --

HEARING EXAMINER STRAIN: With one of the agencies?

MR. HALL: With the DEP --

HEARING EXAMINER STRAIN: Can you send me --

MR. HALL: -- but I was not part of that -- I was not part of that discussion, so I don't know. I know that the plan for the boat docks was changed during that time frame.

HEARING EXAMINER STRAIN: Can you send me any records of that meeting?

MR. HALL: I don't know. It wasn't -- it wasn't myself that was involved in that, so --

HEARING EXAMINER STRAIN: Okay. If you have any, I'd like to see them. It would help me understand.

MR. HALL: I'll do some research. If I can find them, I will. We've tried to look into it, and I don't see any records in our files.

HEARING EXAMINER STRAIN: Well, that would be appreciated, if you could find something.

Also, previously it was stated that you had been approved for 51 boat slips but you're changing the configuration. I don't think the configuration is the issue. I think it's the fact you're moving it from the uplands parcel that was off the creek and now putting them on the creek. So I think the issue centers around the location more than it does the configuration. I just want to make that clarification.

And, Richard, it's not a point of debate. I'm just making a --

MR. YOVANOVICH: I just wanted to add a fact, if I could.

HEARING EXAMINER STRAIN: Okay.

MR. KLATZKOW: Are you testifying?

MR. YOVANOVICH: I would like to, if I can, respond to a statement --

MR. KLATZKOW: Richard --

MR. YOVANOVICH: Let me --

MR. KLATZKOW: -- you act as an attorney or you act as an expert, okay. It's one or the other.

HEARING EXAMINER STRAIN: This is strictly factual information, Richard. I'm not -- I definitely don't want to get into a debate with you.

MR. YOVANOVICH: It's in relationship to the 51 slips and what the agreement was for, and I think I'm an expert attorney and could comment on the agreement, okay?

HEARING EXAMINER STRAIN: What agreement?

MR. YOVANOVICH: The agreement for the 51 slips that was approved by the county.

HEARING EXAMINER STRAIN: You're talking about the dredge spoils agreement?

MR. YOVANOVICH: And that's what you're asking my expert about at this point, correct?

HEARING EXAMINER STRAIN: No. I was asking your expert a clarification on the configuration versus location.

MR. YOVANOVICH: Right.

HEARING EXAMINER STRAIN: You had stated earlier that the configuration slightly changed for the docks between 51 and 42. It's not the configuration as much as the location. I was making a clarification.

MR. YOVANOVICH: That's exactly -- and I wrote my comments out, and I specifically said we're here to debate the location of the docks --

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: -- not the number.

HEARING EXAMINER STRAIN: I understand. We're in the same page about the clarification.

MR. YOVANOVICH: That's all I wanted to clarify.

HEARING EXAMINER STRAIN: Thank you.

Tim, as far as lighting on the docks, what's the intention?

MR. HALL: There's no need for bright, you know, nighttime light. It would be as with any other residential docks. They probably have either rope lighting or downward lighting to keep the boardwalks lit just for safety factors at night.

HEARING EXAMINER STRAIN: If you were to have any docks there, have you considered the dark-sky criteria?

MR. HALL: They could easily meet the dark-sky criteria. I wouldn't have any problem with that.

HEARING EXAMINER STRAIN: The 4-foot dredging that you're going to do where your docks are, how is that going to interact with the dredging that's already been done in 2006 or '7 by the MSTU? And I've already got all their as-builts, so I know how their contours lie.

How are you going to mesh with that, and how are you going to prevent the silt from your operation flowing over and causing some fill into the area they just recently dug?

MR. HALL: Well, the area where we're dredging -- where you'd have slope sloughing, if you will, or potential for slope sloughing, is separated, you know, from that. But based on this drawing, it shows how we would mesh into that. The survey showing where the existing 4-foot contour line is and the minus four contour or the minus four depth that we would be dredging would tie into that minus four, come back towards the face of the docks, and then that slope, the back slope, where necessary would be stabilized with additional riprap.

HEARING EXAMINER STRAIN: Well, the dredging that was done at Haldeman Creek, first of all, had a minus five, and you are allowed a 1-foot overage. So some of it actually got down to six. These are the numbers. They're hard to see on there.

So your dredging is going to be to a four?

MR. HALL: Yes, sir.

HEARING EXAMINER STRAIN: Okay. So will that cause any fluffing off into the creek for the remainder of the area that's going to be actually lower than what you're dredging to most likely?

MR. HALL: It shouldn't, no. The slopes right there are gentle enough where I don't anticipate that being an issue.

HEARING EXAMINER STRAIN: This is a question you may not be able to answer, but maybe one of your team can. I have more of you, but this just happens to be the order that I took them off of some of the emails.

What is the anticipated sales price of the homes in that facility?

MR. YOVANOVICH: Can I? Do you mind?

HEARING EXAMINER STRAIN: Yeah, go right ahead. If you're the one that knows the answer to this.

MR. YOVANOVICH: I do know the answer. The answer is, it's going to be 500-plus thousand dollars starting prices of these coach homes.

HEARING EXAMINER STRAIN: Does that include the docks?

MR. YOVANOVICH: No. That's just the coach homes.

HEARING EXAMINER STRAIN: Okay.

MR. YOVANOVICH: Okay.

HEARING EXAMINER STRAIN: Tim, there's a series of operational criteria in your DEP permit. Are you able to go over that with us, or do you need me to put it on the screen?

MR. HALL: Do you have the DEP permit?

MR. YOVANOVICH: I have the hard copy.

MR. HALL: I mean, I've got a copy here. If you put it on the -- if you put it on the screen, I can go over it on the screen. I mean, that's --

HEARING EXAMINER STRAIN: Trying to figure out how this -- there's no dimmer on this, and you'll need to see that.

MR. YOVANOVICH: Maybe if you put it on the screen, Mr. Strain.

HEARING EXAMINER STRAIN: I'm going to try that right now. I don't have it on this particular computer. I have it in this one, but this one isn't on the screen, so it doesn't look like I'll be able to put it on the screen after all. I can read them to you, and I just want confirmation that that's the intention of what you're going to be doing.

MR. HALL: Okay.

HEARING EXAMINER STRAIN: And only -- and the important part about this is I got a lot of

emails that question how the boats were going to be managed if they were there and in the water, and they were concerned about that. And from what I read on the DEP permit, a lot of those items were clarified in your operational portion of the DEP permit.

Here's what it says. Number 21, all future authorized replacement pilings for support of the dock structures and for boat moorings shall be non-chemically leaching, recycled plastic concrete, greenheart or wrapped, with impermeable plastic. So that means you're going to have all your -- you're not going to use the -- you're not going to expose the pressure-treated timbers to the creek?

MR. HALL: That's correct.

HEARING EXAMINER STRAIN: No live-aboard vessels will be allowed?

MR. HALL: Correct.

HEARING EXAMINER STRAIN: No fueling facilities or fuel storage shall be allowed?

MR. HALL: Correct.

HEARING EXAMINER STRAIN: No overwater fish cleaning stations or disposal or fish waste in the water shall be allowed?

MR. HALL: Correct.

HEARING EXAMINER STRAIN: No sewage facilities shall be permitted?

MR. HALL: Correct.

HEARING EXAMINER STRAIN: And then you'll implement attached marina operations and management plan, which reiterates how those particular items are implemented.

And that's most -- boat maintenance activities or repairs requiring removal of vessel are prohibited for the life of the facility, so there will be no boat repair or any of that operation going on.

MR. HALL: Right, and then it also -- it also requires us to put up signage that shows that there will be no gray-water discharge.

HEARING EXAMINER STRAIN: Which is sewage -- well, that's gray water. Yeah, it's not quite sewage.

MR. HALL: Yeah.

HEARING EXAMINER STRAIN: Okay. If you don't have a -- yeah, we don't have any way of doing that in the overhead. We'll just -- because your operations -- you have your own separate operations list. Are you going to do a clean -- are you going to abide by clean marina standards?

MR. HALL: Where applicable. A lot of the clean marina standards are more in association with commercial facilities, and a lot of the things that are addressed in the clean marina are just strictly prohibited here, so we --

HEARING EXAMINER STRAIN: You would abide by them when they pertain to this multi-slip docking facility?

MR. HALL: Yes, sir.

HEARING EXAMINER STRAIN: Okay. Then that brings up another question. There was a concern in some of the emails that this was a marina. Why not just say it is a marina? Well, it is a marina. I don't think there's any doubt in that. It just happens to be a marina that is noncommercial. Is that a fair statement?

MR. HALL: I think -- yeah, according to the county's definition, it's a marina --

HEARING EXAMINER STRAIN: Right.

MR. HALL: -- but it's a multifamily facility, not a commercial marina.

HEARING EXAMINER STRAIN: A commercial marina would be prohibited at that location, so --

MR. HALL: It would be, yes.

HEARING EXAMINER STRAIN: What will be the hours of operation on the docks? Is there any particular hours?

MR. HALL: I mean, they're residential docks, so right now people would come and go as they -- you know, as with any other homeowner in the area.

HEARING EXAMINER STRAIN: On your -- one of your -- oh, did you bring an exhibit for a threaded channel?

MR. HALL: Yes. If you go to where it says BOCC add. If you open that. And I believe



it's -- keep going through. Keep going through. Right there. Back one.

HEARING EXAMINER STRAIN: I know. I look at this picture, and I'm ahead of you, and then it takes a while for that to show up, so --

MR. HALL: So --

HEARING EXAMINER STRAIN: And I thought I'd really confuse you.

MR. HALL: What I did in terms of the threaded navigation, the reason I've got the solid and dashed lines, the solid line is where there are existing channel markers, and I don't know that the line is exactly where the channel markers are, but basically it's a marked channel where it's solid, and then the threaded navigation through, you know, our project is, essentially, down the center of the deepest portion and in as straight a line as possible.

HEARING EXAMINER STRAIN: The center line -- the thread of the channel, then, from your analysis was set up basically with the center line of the dredging. And how does that --

MR. HALL: Well, it's the center line of the deepest portion of the channel.

HEARING EXAMINER STRAIN: Well, okay. How does that line up with the dock extension? Because what this page shows is that the blue actually is over the top of the docks.

MR. HALL: No, it's not.

HEARING EXAMINER STRAIN: Well, okay. If you look right in this area here --

MR. HALL: Right.

HEARING EXAMINER STRAIN: -- it looks like the docks are covered up with the blue.

MR. HALL: There are -- okay. They're not completely covered up. The most -- the most that the docks protrude into that blue area in one place is about four feet.

HEARING EXAMINER STRAIN: If the thread is where most of the boat traffic will be expected to go, have you produced an exhibit or do you have an exhibit that shows how those docks actually lie against the thread from a distance measurement? How far off the end of the docks is that thread?

MR. HALL: If it's in the center of the waterway, it would be between 35 and 40 feet.

HEARING EXAMINER STRAIN: And when a boat backs out of a perpendicular dock, how much distance do they need, one-and-a-half times the length of the boat?

MR. HALL: That's the standard is one-and-a-half.

HEARING EXAMINER STRAIN: And the boat size -- you have two sizes. Most of them are 25, so that means you need 37-and-a-half feet. So you'd be out past the center line of the channel, the thread of the channel?

MR. HALL: Yes.

HEARING EXAMINER STRAIN: So if you use perpendicular docks, you'd be going across the thread of the channel?

MR. HALL: You'd be going across the thread of the channel with the parallel docks as well. You're going to be going across the thread of the channel --

HEARING EXAMINER STRAIN: Well, but parking --

MR. HALL: -- with any mooring there.

HEARING EXAMINER STRAIN: But I'm saying backing in and out of a T -- of a perpendicular dock, you'd be backing out across the channel?

MR. HALL: You'll be backing straight out and then turning in. With a parallel slip going one direction or the other, you're going to be doing a complete circle. You'll actually be in the channel more or as much with parallel slips as you will with the perpendicular.

HEARING EXAMINER STRAIN: I found some discussion of what is the navigable portion of the waterway. What do you consider the navigable portion of the waterway?

MR. HALL: What do I consider or what does the regulatory --

HEARING EXAMINER STRAIN: Well, what does the regulatory consider? Because you can't -- you can't say that's mean high water to mean high water because you can't navigate through mangroves.

MR. HALL: That is correct.

HEARING EXAMINER STRAIN: So what is the net result of our navigable area?

MR. HALL: The navigable area is based on some old regulations that have to do with commerce, and

it's wherever you could take a vessel that was engaged in commerce. And I'm paraphrasing. I'm not an attorney, but -- so they looked at --

HEARING EXAMINER STRAIN: Thank goodness for that.

MR. HALL: So they looked at several instances where canoes were used in, like, Chesapeake Bay on some of the old rivers. Canoes were used to transfer furs and haul furs and all. So, basically, the simple standard is anywhere you can take a canoe is considered navigable waters. On this waterway, if you go forward one more exhibit --

HEARING EXAMINER STRAIN: Forward or --

MR. HALL: Yeah. Go to 5, I believe. You're on No. 4. Go to No. 5.

HEARING EXAMINER STRAIN: Well, actually, I'm on No. 5 on this one, but it's going to take a minute to come up to that one. Sorry. I didn't know there was a lag in this. We haven't used this that often in this room. There you go.

MR. HALL: Based on the conversation -- and I apologize. I just basically created this exhibit this morning. But those dark red lines is what I would consider the navigable portions or the navigable area of this waterway. Essentially, it goes from the edge of vegetation, or in the case of -- on the western side there, a shoal area, to the shoreline or the vegetation on the opposite side. So it's that open-water area that would be available for canoes to travel.

HEARING EXAMINER STRAIN: Okay. This particular graphic is a good example of one of the other issues that I was concerned about. In your -- I think they're, like, a maroon line you have on there would show the percentages across the channel, you keep using the humps where the tributaries flow into the creek as percentages that you would calculate by. It's almost, then, insinuating that that's the route a boat would take because, otherwise, why would you calculate by if they go straight through? And the boats aren't going to follow that maroon line. They're not going to jut up and down and jut up and down again because there happened to be a wider width from a tributary to the north.

So from a perspective of understanding how boaters are impacted by the docks, those humps don't seem to be very practical. Is that how you normally use --

MR. HALL: I have to use the criteria that the county puts forward on how to calculate that.

HEARING EXAMINER STRAIN: So that's the county's fault, right?

MR. HALL: That's the result of the requirements of the county for how you calculate that width.

HEARING EXAMINER STRAIN: Okay. Did you -- are you aware of any permission from the easement holder indicating that docks within a drainage easement will not impede or interfere with the purposes of the easement? I mean, we had the hydraulic discussion, but did you make any attempt to get approval for using that drainage easement for this purpose from the holder of that easement?

MR. HALL: No.

HEARING EXAMINER STRAIN: Okay. Do you have any -- well, I think I've already asked your engineer about the tidal flow.

Primary Question No. 3 says the channel is neither marked or charted, yet in order to meet the requirements of -- the Primary Criteria No. 3 actually refers to being marked or charted.

So how do you -- how do you feel you've met that criteria when this is not a marked or chartered (sic) channel? And I'd like to know what it means by not chartered.

MR. HALL: Well, if I would have said not applicable, I think your staff would have disagreed with me. I mean, there's navigation that goes through there. So my interpretation of that criteria is whether or not you are impacting navigation through an area that you know has navigation. Whether it's marked or not, the answer is either as I presented it, or that criteria is not applicable to this project because there's not a marked channel.

HEARING EXAMINER STRAIN: Okay. What's chartered (sic) channel? What's a chartered channel compared to a channel that's not chartered? What's is that? What is the intention?

MR. HALL: A chartered channel, where, like, the Corps of Engineers, portions of the inland waterway, portions of canals that are dredged and maintained could all be -- if they're plotted or platted or somehow defined in some case but may not actually have formal aids to navigation.

HEARING EXAMINER STRAIN: So that's why -- and this doesn't have any markers except when

you get further to the west?

MR. HALL: Correct.

HEARING EXAMINER STRAIN: How far into the waterway does the South Florida Water Management permit preserve -- the preserves that were provided in a conservation easement to South Florida Water Management District, how far outside the mean high-water line do they go in regards to your T docks; do you know?

MR. HALL: It varies because of the location of the mean high-water line but, essentially, it goes to the back, you know, the docks -- and for the -- for where we have the perpendicular mooring, I believe we're actually about a foot over into the easement in some areas. You know, the access walkways and all of that go through the easement.

HEARING EXAMINER STRAIN: Generally, then, how far are the T docks proposed to go out past that edge of that conservation easement?

MR. HALL: If you go to the first set of drawings, I believe, on the cross-sections, it shows -- we have three different cross-sections. And you see there's a conservation easement line there.

HEARING EXAMINER STRAIN: And that goes out past the mean high-water line.

MR. HALL: It does in some cases.

HEARING EXAMINER STRAIN: Seven-foot-six. So you're 35 feet less 7-foot-six for that cross-section?

MR. HALL: For that cross-section, yes.

HEARING EXAMINER STRAIN: Okay. The DEP permit for the dredging of Haldeman Creek, which was done by the MSTU, you said there would be 12 aids to navigation, parenthetical, channel markers, that were to be installed with that. Do you know if they ever got installed?

MR. HALL: I didn't have anything to do with that permit.

HEARING EXAMINER STRAIN: Right. But since you were out there, I didn't know if you --

MR. HALL: I would assume that those are the markers that are in place at the western end of the channel.

HEARING EXAMINER STRAIN: Okay. Because if they were installed -- if they should have been installed in the area that you're in, you would have had a marked channel then, and that's what I was trying to determine.

MR. HALL: Yeah. I'm not aware that there's supposed to be any marking in this area. It's -- generally a straight line with the channel in the middle doesn't need markers, usually.

HEARING EXAMINER STRAIN: And I think you indicated in your application, you said it was idle speed. As you've seen in one of the graphics I showed in talking with staff, it seems to be slow speed. Do you have any input?

MR. HALL: Well, the graphic you put up wasn't for the correct area. That was for the north end of Naples Bay.

HEARING EXAMINER STRAIN: No.

MR. HALL: And Rock Creek. Our project is actually further south.

HEARING EXAMINER STRAIN: Yeah, it's the wrong -- you're right, it is.

MR. HALL: And according to the county's waterways map, it's -- where our docks are is idle speed. There's a section of the river that's slow speed. I'm saying according to the waterway, if that has not been approved by the state, then I was unaware of that.

HEARING EXAMINER STRAIN: No. There's another notation on the lower part. They're identical the way they noted the slow speeds of the Manatee Protection Plan. I just grabbed the wrong one. The other one points there. It's a slow-speed area.

I believe Steve checked it out with the state, and the state hasn't recognized the county's idle-speed area, so there might be a discrepancy. I've asked Steve to -- over the last couple days, to do what research he could to find out, and he'll be testifying in a little bit to provide what information he has found out.

The last I had heard, though, it was still considered slow speed without the state's initiation.

MR. HALL: And that may be. I know that a lot of the boats that travel through there, you know, do maintain idle speed, but there are some that -- there are some that go faster than slow speed as well. I'm sure a



lot of the neighbors here, you know -- we've heard complaints that there are some people going through there much faster than the slow speed as well, so it's a matter of -- there it's a matter of enforcement.

HEARING EXAMINER STRAIN: Another issue that came up in a lot of emails was the concern over the impact to seawalls. Do you have any background you can shed on how boats of that nature and the speed that this canal would allow would impact seawalls?

MR. HALL: I mean, it depends on -- there's a lot of factors that would go into answering that question; the age of the seawall, how it was constructed, what it's constructed out of, the material that it's constructed out of.

I mean, in terms of 42 slips, I think you heard one of the other gentlemen say he thought there was 750 boats, you know, using this waterway. That's a very small percentage in the overall numbers.

And as long as they're abiding by the same speed limitations as everybody else, they're going to have no extra impact over what would already be occurring out there.

HEARING EXAMINER STRAIN: I've got someone, hopefully, from staff who can try to answer that question as well.

Let me go onto my -- oh, you and I -- I think I mentioned it to Richard. Where in Collier County have you known there to be docks allowed in front of someone else's property? In this case, I'm talking about those docks that are on the left side of this plane that are parallel parked in front of the Windstar property. Have you ever done that before?

MR. HALL: I have. There's a marina -- I'm trying to think of the name of the marina. It used to be Back Bay. Gary Murphy's place up on Bonita Beach Road. It's up at the very north end of Collier County. There are docks there located in front of somebody else's property because, as is the case with this one, the marina actually owns the bottom lines there.

HEARING EXAMINER STRAIN: And, I mean, now that I know that, I'll have to look up the circumstances. Are they similar to this particular project?

MR. HALL: No. In that case it's more of a -- it's more of a -- there's more distance between their actual property boundary and where the other property line is, so --

HEARING EXAMINER STRAIN: Okay.

MR. HALL: But they are -- they're in the riparian area, I guess, of that one.

The other instance was at Aqua and Wiggins Bay Marina. The county's marina docks that were in place there actually extended over across the riparian areas of the adjacent property owners.

HEARING EXAMINER STRAIN: But they weren't up against the property lines like they are here.

MR. HALL: Not like that, no.

HEARING EXAMINER STRAIN: No. And I did look at -- I tried to look at all of the tidal areas in the county where there were docks, and I couldn't find -- and I clicked on properties next door to them if they seemed to go beyond what the upland development was. Generally what I found out, occasionally there was HOAs that owned the preserves within the same development, and they did docks a little bit spread out across their own development, but I've not found one of this configuration yet.

MR. HALL: No, not where it's right up against it like that. The only other example I could think of is a little bit more extreme where there was a canal in question that had properties on both sides of the canal, but the one property owner owned the entire canal bottom and actually filled the canal in, much to the consternation of the gentleman on the other side.

HEARING EXAMINER STRAIN: That wouldn't work very well.

Okay. That's all I've got at this time. I'm waiting. I've got a page of stuff to go over with staff, and we'll move into staff report for about 10 minutes, and then we're going to be taking a one-hour lunch break for everybody to have a break.

So with that, thank you, Tim.

Fred, do you want to do a staff report?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl with planning and zoning. I wanted to put on the record --

HEARING EXAMINER STRAIN: Can you pull one of those microphones closer to you. These don't pick up like we're used to.

MR. REISCHL: I wanted to put on the record the advertising. This is an appeal of a boat dock petition, and the appeal is heard by the Board of County Commissioners. The Board of County Commissioners remanded it to the hearing examiner for fact finding, which is what we're doing today.

And the appeal requires advertising of the Board of County Commissioners' meeting, which was in yesterday's Naples Daily News.

There was no advertising required for this; however, we did put an ad in the Naples Daily News on October 31st. I emailed the folks that I had their emails and asked them to spread the word. And I believe the MSTU has sent out a mail notice. So we did --

HEARING EXAMINER STRAIN: Well, whatever you did, I think it worked. So you're the reason we ran out of chairs today, huh?

MR. REISCHL: As you read in my analysis in the staff report, we believe that the criteria have been met and that we recommend approval subject to the conditions that the dock shall not -- construction of the docks shall not commence until approval of a Site Development Plan amendment for the upland housing development and the docks, and the issuance of a building permit for the upland housing developments, as well as the docks.

Also, there is an ST, special treatment, permit required prior to approval of a Site Development Plan amendment for the boat docks.

And we also stipulate that a certificate of occupancy shall not be issued for the docks until a certificate of occupancy has been issued for the upland housing development.

And we also recommend that boat slips be owned and used by residents of Haldeman's Landing multifamily development or its property owners association and shall not be sold, leased, or rented to any other parties.

MR. KLATZKOW: Fred, when will the appeal be heard by the Board of County Commissioners?

MR. REISCHL: It's December 9th, the appeal for the boat docks as well as the special treatment permit.

MR. KLATZKOW: And that will be located where?

MR. REISCHL: At the main courthouse, third floor. Will not commence earlier than 1:30.

HEARING EXAMINER STRAIN: Okay. Fred, I've got a question about one of your -- based on some testimony I heard this morning, your Recommendation No. 4 -- let me read it so everybody can hear it again. Boat slips shall be owned and used by residents of the Haldeman's Landing multifamily development or its property owners association and shall not be sold, leased, or rented to any other parties.

The gentleman that came this morning from the master association seemed to indicate they're all one property owners association. And if that's the case, wouldn't that mean, then, that Windstar, by that staff recommendation, would be allowed to use the slips at Haldeman's Landing?

I heard -- the guy this morning said they're one property owners association. So if he did, then how does this recommendation prohibit what we've been trying to prohibit?

MR. REISCHL: Well, the way -- you're correct, the way it's worded -- I was trying to include the phrase "property owners association" because the --

HEARING EXAMINER STRAIN: HOA generally runs a rec association associated with it --

MR. REISCHL: Pool, tennis courts.

HEARING EXAMINER STRAIN: -- and it's usually associated -- in this particular case, they seem to have combined property owners associations.

MR. REISCHL: You're correct. But in the case of what the gentleman testified to before, the property owners association may be a master association for both developments.

HEARING EXAMINER STRAIN: Right. And so I think from -- the intent of your staff recommendation, was the intention to then allow those slips to be used by both developments?

MR. REISCHL: No. The intention was to limit it to Haldeman's Landings residents.

HEARING EXAMINER STRAIN: Would that mean between now and Board of County Commissioners' meeting you're going to possibly consider your rewriting that recommendation?

MR. REISCHL: It will take some crafting, but yes.

HEARING EXAMINER STRAIN: Okay. I saw that -- when I heard the gentleman this morning



and then reread your recommendation, it was concerning. Is there any way the county staff or the zoning -- I know Ray's our zoning director -- can provide that a private agreement between parties impacts zoning?

MR. REISCHL: Ray and I were talking about this a few days ago. There are some HOAs in the county. For example, Da Vinci PUD is entirely surrounded by -- I can't remember the name -- another PUD, and they share a master association.

MR. YOVANOVICH: Old Cypress.

MR. REISCHL: Big -- Old Cypress, thank you. And they share some master association facilities because Da Vinci is so small and Old Cypress is bigger. There were a couple of other examples. But there are examples in the county where an HOA can go beyond a PUD limit.

The reason I added this fourth condition was because of concerns I heard from the neighbors.

HEARING EXAMINER STRAIN: Okay. Because I'm going to -- I've got something I want to point out and ask your input on it then. Hang on a second.

This particular section is quoted directly from the LDC. This is -- the Haldeman's Landing is an RMF-6 section of the Land Development Code, and the accessory uses are stated to be uses and structures that are accessory and incidental to the uses permitted as of right in the RMF-6 district, and, No. 3, recreational facilities that serve as an integral part of the residential development and have been designated, reviewed, and approved on a Site Development Plan or a preliminary subdivision plat for that development. And the development, it would be the development zoned RMF-6.

The accessory uses and structure definition from the LDC says, a use or structure located on the same lot or parcel and incidental and subordinate to the principal use or structure.

And so I'm not -- I don't understand how these docks -- these docks could be used by anybody but those upland residents. I understand your need for a clarification under staff recommendations. But, historically, if it's spelled out clearly in the LDC, we've not needed to restate it; however, in this case, I think we need to make sure it's restated consistent with the LDC because at this point, unless you've got some reason to tell me otherwise, I don't see how an accessory use to the uplands on one project can be used by another.

Now, if they were to take the Haldeman Landings and try to do what they did in 2006 and bring it into their PUD, that's a different story, but that's not what's been done. They didn't pursue that. It didn't get reached to final conclusion.

So from this perspective, in the plain reading of how you deal with accessory uses, I'm not sure how we can get to where the gentleman was testifying this morning that he seemed to indicate they had some ability to use those docks. And I'm just making that as a point. And if you have any comments on it, that's fine. If not, we'll move on.

MR. REISCHL: No. I had a conversation with someone who told me that this was an issue. I explained to her that the LDC prohibited it, but she felt strongly enough that I decided to put it in as a condition.

HEARING EXAMINER STRAIN: Okay. And then we're getting close to lunchtime. There is another presentation I want to make -- have staff make before I ask some questions, and then we'll wrap that up within an hour and a half, hour, maybe, after lunch, and then we'll go up -- and I'll finish all the -- anybody that wants to speak, I and the staff are here to listen to you today.

So when we get to that -- finally get all this factual data on the table and you have more comments you'd like to make, that will be the time we'll be hearing you later this afternoon. But it will probably be within an hour after lunch or something like that.

So we're going to take a lunch break from now until one o'clock. We'll resume with a staff presentation on the environmental aspects at one o'clock, then some questions, and then we'll go to the public for questions. Thank you.

(A luncheon recess was had.)

HEARING EXAMINER STRAIN: Okay. We're going to start with a couple of cleanup issues, and then we'll go into the environmental staff report and then some questions of that, and then to the public. I'm sure others will move on in as they get done with their lunch.

The first thing I wanted to clarify, as pointed out previously, the slow-speed indicator that I showed on the first graphic, I caught the top one. I should have caught the one on the bottom. It's still the same. They're both slow speed. That was the indication that I wanted to get across.



The environmental report will clarify what the speeds are and how -- where they stand, so when we get into that matter.

And while I was sitting here for lunch, I saw a couple questions that I'd like to get the applicant to explain.

Tim, I think this is going to be -- this is a mean high-water line issue. If you see over here, it's mean high-water line .50, but over here on your side of the creek it says .57. Why do we have two different mean high-waters across the creek? And which is the right one; do you know?

MR. HALL: The .57 is the one that we have been using.

HEARING EXAMINER STRAIN: Well, I know, but your survey says .50. And you're supposed to use the mean high water, and I don't know how you got there, because I see two different numbers. I mean, could you get -- figure that out and get back to me on it?

MR. HALL: Yeah, I could try. I'll have to get with the surveyor. I --

MR. YOVANOVICH: One says 1.50.

MR. HALL: It's -- yeah, 1.5, right?

HEARING EXAMINER STRAIN: One point 50 and 1.57.

MR. HALL: Okay.

HEARING EXAMINER STRAIN: The one on the right says 1.50. I can get it larger if you need it.

MR. YOVANOVICH: No. You had said, for the record, .50. We just wanted to make sure --

HEARING EXAMINER STRAIN: Oh, no, no. I'm referring to the difference, because you're talking .07. That's a couple inches. It may have an impact on how far back the mean high water actually should have been measured from. So I'd like that clarification, okay?

MR. YOVANOVICH: Okay.

HEARING EXAMINER STRAIN: And there's one other item which I'm not sure you'll have knowledge of because it was your surveyor, but I -- it needs to be clarified, and it's down here. Right here just above the words "Parcel 2." This is the title commitment. Everything's delayed with this. Legal description per exhibit of the title commitment, which is, I'm assuming, the property you bought.

And when you get down here it says, less and except. And it says, less and except therefrom, the present or former beds or bottoms of lakes, rivers, canals, or other bodies of water located on or within the lands described.

Then the double asterisk over the side says, note, existing lakes, canals, creeks, and water bodies as they exist at the date of, and -- of the survey.

So your surveyor, in his survey, found reason to except out the bottom lands that you believe you own. And I'm not saying you don't, but I'm saying I need clarification on that.

So when you resolve the issue with the mean high water -- and this isn't an ALTA survey, which means your lender probably ordered it, or whoever's doing your financing, because that's generally what that higher level survey is ordered for, and they're more expensive. I'd like to understand what's happened here.

MR. HALL: Okay. I know there was some confusion early on, and I believe that was -- Charles isn't here, but I believe that was sorted out, in turn, when they did their title insurance or something to do with the title. That's outside of mine.

The mean high water, what is -- can you see -- can you find Note 4 of that survey?

HEARING EXAMINER STRAIN: On the top up here?

MR. HALL: Survey Notes No. 4.

HEARING EXAMINER STRAIN: I'm at it now. Let me see if I can blow it up for you.

MR. HALL: Right there, the 1.57 contour as approved by DEP.

HEARING EXAMINER STRAIN: I read that.

MR. HALL: Is there a date -- is that -- I'm trying to figure out if that's an earlier or later date, because the 1.50 had a different date, and I think it may have been the result of differing surveys. If DEP gave them a different elevation --

HEARING EXAMINER STRAIN: 2/19/09, it looks like.

MR. HALL: So the bottom -- or the south side mean high-water line looks like it was updated later with a different contour that DEP gave them. I'm guessing that's what it is, but I'll confirm that.

HEARING EXAMINER STRAIN: Okay. Well, if you could just get a confirmation, I'd like clarification, because this record needs to be as accurate as it can be when it goes forward.

MR. HALL: Okay. And if you're correct, if that's the case, then the 1.57, it could be slightly --

HEARING EXAMINER STRAIN: Different.

MR. HALL: -- more landward on the north side of the creek. The south side won't change. The north side --

HEARING EXAMINER STRAIN: If it's more landward, though, you've got to make sure how that's going to impact your request for a boat dock extension.

MR. HALL: It would -- it would give us more waterway, because it would be wider.

HEARING EXAMINER STRAIN: Right. But it would also need you to go out farther.

MR. HALL: No. I'd be going out, because that would be on the other side.

HEARING EXAMINER STRAIN: Well, your .50 would be on the south side.

MR. YOVANOVICH: It's on the north.

MR. HALL: No. It's on the north side.

HEARING EXAMINER STRAIN: I know it is, but if .50 is the correct number and you had to apply that to the south side, what would you end up with?

MR. HALL: Well, but the 1.57 is a later date.

HEARING EXAMINER STRAIN: Okay. Well, get it clarified and come back to me.

MR. HALL: So if it changes, it would be -- the .50 would change to .57.

HEARING EXAMINER STRAIN: Okay. One way or another, let me know what the right one is, and we'll get that corrected.

MR. HALL: I'll do that.

HEARING EXAMINER STRAIN: And that's all I wanted to clean up. And we're going to go into the staff report on the environmental aspects of this.

And, Steve, just tell me what you'd like. You gave me a folder full of all kind of things, and I'll put them on the screen for you.

MR. LENBERGER: Well, you want me to touch base on the speed zone? Did you want to pull up the manatee page?

HEARING EXAMINER STRAIN: Right there?

MR. LENBERGER: Wait a minute. It's --

HEARING EXAMINER STRAIN: What's it, MPP Figure 3-13?

MR. LENBERGER: Yes.

HEARING EXAMINER STRAIN: Okay.

MR. LENBERGER: All right. For the record, Stephen Lenberger, engineering and natural resources department, filling in for Summer Araque.

The speed zone for Haldeman Creek, according to the Manatee Protection Plan and according to the administrative code, is a slow speed zone.

We had a little discrepancy. We did find a county ordinance, Ordinance No. 97-10, which indicated that it was an idle speed zone.

We did contact our coastal zone management section, and they have been unable to confirm whether the Ordinance 97-10 has been approved by the state. And in order for our speed zone to be effective, it has to be approved by the State of Florida.

Just to back up a minute, speed zones are adopted two different ways. They're adopted by the Manatee Protection Plan and a separate rule-making process for speed zones and then incorporate into the Manatee Protection Plan, and they're also adopted for safety reasons.

So as far as we can find, the slow speed zone is what is applicable to Haldeman Creek, at least at this time.

HEARING EXAMINER STRAIN: Okay.

MR. LENBERGER: I wanted to touch base on the Manatee Protection Plan. I don't know if everyone's familiar with it. I think I gave you a file, purpose and objective of the Manatee Protection Plan.

HEARING EXAMINER STRAIN: And I do have the whole plan if you need it, but I'll pull the

sections up you've asked for in the order that you asked for them, so --

MR. LENBERGER: All right. It will be quicker.

HEARING EXAMINER STRAIN: And I've got it on this screen. It takes a minute or two here.

MR. LENBERGER: That's okay. If you go down to the bottom for purpose and objective, they're at the bottom half. And I'll just read it. The objective is mandated objectives for county Manatee Protection Plans by the Florida Department of Environmental Protection, include reducing the number of boat-related manatee mortalities, achieving an optimal, sustainable manatee population, protecting manatee habitat, promoting boating safety, and increasing public awareness of the need to protect manatees and their environment.

And if you can pull up the next attachment, which is the reference to LDC 5.05.02 and scroll down to the bottom. And the first page -- yeah, you're right, C.

HEARING EXAMINER STRAIN: Right there?

MR. LENBERGER: Yes. And under C it gives you the different rating systems. Number one is the preferred rating system, second is a moderate rating, and the third is a protected.

And the rating systems are designed to direct boat traffic away from sensitive habitat for manatees and also educating the public and reducing speed and things of this nature.

And I can go through the criteria. I'd like to do that. And if you'd scroll to the next page, it gives you criteria. And if you look at the columns on top of the chart, it talks about water depth measured at mean low water, native marine habitat and manatee use.

And I'd like to just go through those. The Manatee Protection Plan adopted an adequate water depth of four feet mean low water, and that's the premise that -- the average boat has a 2-foot draft, and you have two feet of clearance under the boat should manatees occur under the boat.

And when you determine adequate water depth, you have to determine from the site to open water via five miles. So five miles for your influence. Earlier we talked about achieving adequate water depth at the dock. And the petitioner has a moderate rating. They have not achieved adequate water depth. But if they wanted to get a preferred rating, they would have to demonstrate that they have adequate water depth to the channel of Naples Bay.

The next one, native marine habitat, there's two ways of looking at it. There's shoreline vegetation and there's submerged resources. And the submerged resources that we look at are seagrasses, and no impact criteria would be if you have less than or equal to 100 square feet of impact of seagrasses.

This particular project has no seagrasses within 200 feet of the project, so that's not applicable.

The other one is you have less than or equal to but no greater than 5 percent of native marine habitat disturbed, and that's referring to mangrove shoreline vegetation. And the applicant has demonstrated that they're under that 5 percent.

There was a little discrepancy in the application materials, and it was clarified earlier by Tim; basically utilizing all the mangroves on site as opposed to a portion of them. But, anyway, the project is below the 5 percent.

The next one is manatee abundance, and that's the term used in the DEP manatee carcass recovery data. And you're considered in a high manatee use area if you have more than 20 percent of all the watercraft-caused manatee deaths found in the county.

And I looked at the determination done by our staff, and from what staff has found, as of November 2012, the area within five miles had 20 out of 163 deaths, so that was 12.3 percent. So it would get a favorable rating under that.

We did ask staff yesterday to take a look at the updated data for DEP, which is now updated to February 2013, and there was one more death, but it was not related to watercraft, so the project has 11.6 percent of manatee deaths within five miles.

I'm just thinking what else you need me to discuss about the manatee protection.

HEARING EXAMINER STRAIN: One of the comments I found in the documents was that at this point they were considered moderate, but there was a reference that if a canal was dredged they may be considered preferred.

And I did pull the as-builts up for the dredging that was done on the MSTU, and it seemed to have



been dredged to a negative five all the way out to Gordon River. If they were to provide the documentation for that, does that mean they would then qualify as a preferred?

MR. LENBERGER: Well, that depends how old the survey was. We want updated data to verify that it was four feet and that it didn't shoal in.

HEARING EXAMINER STRAIN: And the difference between the calculations using moderate and preferred, how does -- do you know how that applies?

MR. LENBERGER: Yes. It affects the rating. If you scroll down to the bottom of that page that you have up there -- if I put my glasses on -- you'll see that a preferred rating gives 18 boat slips for every 100 feet of shoreline and, No. 2, moderate rating would be 10 boat slips for every 100 feet of shoreline.

HEARING EXAMINER STRAIN: Now, for the shoreline on this project, Steve, did you analyze it from your own perspective to determine how many they are entitled to under the moderate rating?

MR. LENBERGER: Well, I looked at David Anthony's evaluation of the shoreline and, according to what the applicant gave us, it was 938 feet of shoreline. But what Tim had said earlier, that it was only considering the shoreline on the south of the creek. You actually have to look at all the shoreline in the project.

So if you look at all the shoreline on the project, according to what the applicant has provided, they have 3,432 feet of shoreline, so that would allow 10 boat slips at a moderate rating. For 100 feet of shoreline, it would allow for 343 boat slips.

HEARING EXAMINER STRAIN: Okay. But the project has a secondary limitation which is the number of units that are built on it, and that's where that comes in, that Fred's analysis would come in. Bringing it down to the maximum would be the number, then, that's allowed by the unit count. And those two numbers together, you go with the least possible; is that correct, Fred?

MR. REISCHL: Correct. That's 64. For a multi project you're allowed one slip per dwelling unit.

HEARING EXAMINER STRAIN: Okay. And, Steve, in counting and creation of the shoreline -- this issue came up years ago, and I'd just like, for the record, your clarification on it. When you count shoreline, can you count shoreline where there are preserves, since preserve can't be used, as testified to by Mr. Hall, for boats?

MR. LENBERGER: We had that discussion, and we proposed -- staff proposed an LDC amendment back to the Planning Commission a couple years back, and the LDC amendment did not move forward. The recommendation of the Planning Commission, that that be decided on a case-by-case basis.

HEARING EXAMINER STRAIN: And in this particular case, you did -- in your analysis just now, you did count the preserves?

MR. LENBERGER: Yes, I did.

HEARING EXAMINER STRAIN: Okay. And I noticed one of the exhibits you haven't mentioned yet is David Anthony's, and I guess it's his then. And I thought that was a pretty good explanation of all the issues. I'd like you to walk through that with everybody, because it does explain a lot of the issues that I've seen emails on. In fact, the primary issue with many of the emails, navigation, of course, seawalls, and then wildlife.

So the more we can explain some of the wildlife issues, at least the public will know how they got there; not necessarily in agreement, but that's how it got there.

MR. LENBERGER: Well, the rating, I can go through it.

HEARING EXAMINER STRAIN: Well, all -- the vegetation impact is as you stated.

MR. LENBERGER: Right.

HEARING EXAMINER STRAIN: That the pathways that go through the mangroves, the boardwalks and the boardwalks up against the mangroves, they're not allowed to impact or damage more than 5 percent of those areas, so they have to calculate the square footage of those boardwalks and determine how much of the mangroves they're taking out to put them in, and the percentage is less than 5 percent, so that's how the vegetation gets past that point.

As far as the depth, I have confirmed that the dredging was supposed to be at a negative five. In front of the project it's at least four feet or more.

As far as manatee deaths, I think Steve just mentioned that. It's down to about 11 percent now. And

the shoreline calculation is for 93.8 feet of shoreline, which -- and they're only proposing 42 slips, and they could have had about 94 slips based on the shoreline. And that's how those calculations got into the primary and secondary criteria analysis.

Steve, is it -- can I ask you some questions, or do you have more presentation?

MR. LENBERGER: No, I'm finished. Go ahead.

HEARING EXAMINER STRAIN: Okay. A lot of the activities that occur with mangroves, can you tell me the county's -- I mean, I know these answers, but these were part of the questions in the emails, so I'd like you to answer them for the record.

Can you tell me the county's position on how mangroves are handled in Collier County in regards to trimming and items like that?

MR. LENBERGER: Okay. Well, there's two things to look at. One is mangrove removal as far as boat slips in the Manatee Protection Plan, which we've just talked about. The other is permitting of trimming or removal of mangroves. That's strictly -- that's strictly given to the State of Florida, the DEP, Department of Environmental Protection, unless delegated to a local government entity, county, whatever the case may be.

So we have -- we can't permit removal or trimming of mangroves. Only the DEP can.

HEARING EXAMINER STRAIN: Okay. The mangroves that are along the applicant's uplands, they were all -- it looks like a certain number of them were planted in 194 based on prior photographs.

Do you know if that applies to the mangroves in front of the Windstar project where these docks are proposed?

MR. LENBERGER: What applies?

HEARING EXAMINER STRAIN: Were they propagated by the uplands landowner, or are they natural?

MR. LENBERGER: I don't know the answer to that.

HEARING EXAMINER STRAIN: Okay. I'll ask the applicant that before -- Tim might know.

There was quite a few concerns over the destruction of natural habitat. So let's take the mangrove piece out of the picture. You've basically explained that. Is there any other destruction from your department's perspective of natural habitat?

MR. LENBERGER: For the boat dock facility?

HEARING EXAMINER STRAIN: Right.

MR. LENBERGER: No.

HEARING EXAMINER STRAIN: What about marine -- aquatic marine life? I know there's no seagrass beds. Is there any other forms of aquatic sea life that was going to be -- that is problematic from the county's perspective?

MR. LENBERGER: Well, the manatee plan look at all submerged resources, hard-bottom communities and things of that nature --

HEARING EXAMINER STRAIN: Right.

MR. LENBERGER: -- but there were none around the facility within 200 feet. The applicant did observe fish and other marine life, but they were all associated with the mangroves as well as the benthic organisms growing on the roots.

HEARING EXAMINER STRAIN: Okay. And then another theme that was consistent in many emails was that this is a natural, pristine waterway. I don't know how those two terms are actually described or defined. But from your analysis, is this going to be considered a natural or pristine waterway?

MR. LENBERGER: We would consider it artificial waterways created. So I guess I don't have more to say in regards to that, yeah.

HEARING EXAMINER STRAIN: I'm just trying to get clarification on some of the things I read.

There's another -- a gentleman wrote that the Sheriff's Office, the county, the state, and Florida Wildlife are unclear of any status of this creek. Do you have any idea what that was -- what status that could be referring to?

MR. LENBERGER: Status? Unless they're referring to speed zones.

HEARING EXAMINER STRAIN: That's what I was thinking based upon the testimony you said. Maybe we'll find out before the day's over.

There were some preserves shown on the drainage plan -- or dredging plans that the MSTU submitted back in the mid 2000s, and they showed a -- I'll try to show it to you, in fact. They showed a preserve directly across from the application. It's the one -- the top arrow to the left right here.

MR. LENBERGER: Oh, okay. That's the applicant's property?

HEARING EXAMINER STRAIN: No, that's not the applicant's property, and that's kind of why I'm asking. I didn't find that preserve noted anywhere, and I'm wondering, did you -- remember I mentioned it to you. I didn't know if you found any conservation easement or any -- I don't know why the MSTU thought that was the preserve. I'm trying to figure that out.

MR. LENBERGER: Yeah, I don't know either.

HEARING EXAMINER STRAIN: Okay. That dredging of the creek, was there an environmental study done before the dredging went into place that revealed any aquatic marine life that was considered protected? I would assume none.

MR. LENBERGER: When the county dredged it about eight years ago; is that what you're referring to?

HEARING EXAMINER STRAIN: Yeah.

MR. LENBERGER: There was a special treatment permit with the county. And if I remember correctly, there were surveys of the bottom to avoid impacts to marine resources. But the county doesn't permit the actual dredging. The state does. We had a special treatment permit to allow for the dredging, but we don't actually permit the details of it. That's permitted by the state and federal agencies.

HEARING EXAMINER STRAIN: Okay. Thank you, Steve.

MR. LENBERGER: You're welcome.

HEARING EXAMINER STRAIN: I have some general questions of staff in response to the staff report.

Fred, are you familiar at all with that 51-slip boat basin that was previously discussed?

MR. REISCHL: I've looked at the plans, yes.

HEARING EXAMINER STRAIN: In the process, my reading it got through the process, and it was only held up because of the other permits that were required. Did you take a look at the county's review of that?

MR. REISCHL: That's what my research revealed, that through -- just by going back through the old correspondence. At that time it was required to have other agency permits before we could issue the Site Development Plan.

And they didn't have the other agency permits, and the SDP basically expired because of too much time in not responding to the county's request.

HEARING EXAMINER STRAIN: Okay. That application showed 51 slips, and for the most part, the county reviewed it and accepted it. Did that -- the applicant, when they came in for this application, referenced that as a settlement -- as the result of a settlement agreement that seemed to indicate it was a vested 51 slips or that it was -- they were allowed to have 51 slips. Did that have any bearing on the staff's review?

MR. REISCHL: No. I looked at the 64 multifamily dwelling units, and that's what I used as my max.

HEARING EXAMINER STRAIN: Okay. The boat dock extension, I've had various comments in the emails that they could -- some people call it a variance, some people call it an exemption, some people call it an exception.

From your perspective, what is a boat dock extension looked at? Is it any of those categories?

MR. REISCHL: It's an extension. It's not a variance. There's no hardship criteria to meet. It's a request that -- well, under the current Land Development Code we have the criteria to look at. Previous land development codes was more vague. These are very specific. And we look at these criteria and make our recommendation based on that.

HEARING EXAMINER STRAIN: Okay. If the applicant took away all the perpendicular docks and say they just wanted parallel docks, would they still need a boat dock extension?

MR. REISCHL: From the measurement I did, which is just with a scale on paper, yes.

HEARING EXAMINER STRAIN: Okay. Because the measurement that the applicant is required



to start from is the mean high-water line, and that's up inside the mangroves. So by the time you start there and get out to where you pass the mangroves, you've already eaten up a good percentage of the non-extended part of the boat dock; is that correct?

MR. REISCHL: Correct. Well, plus, in addition to the dock facility itself, our definition of a dock facility also includes the boat and the outboard pilings.

HEARING EXAMINER STRAIN: Okay. The parking for the docks, how is the parking -- the vehicle parking, how is that determined when you review docks from a planning perspective?

MR. REISCHL: It's not in consideration. The upland housing -- this is an accessory use to upland housing, and the upland housing requires two parking spaces per unit; and that's what was looked at in that review, which I didn't personally do.

HEARING EXAMINER STRAIN: So because the docks -- first of all, it's not a commercial marina, so they can't be leased out.

MR. REISCHL: Right, thank you. That's very important. It's not commercial. If it were commercial, then we'd have to look at parking, but because it's residential, each residential unit has the two parking spaces per unit. And since the resident of the unit is going to use the boat, or the dock, then there's no further parking required.

HEARING EXAMINER STRAIN: Okay. So the parking is directly connected to the upland residential unit --

MR. REISCHL: Exactly.

HEARING EXAMINER STRAIN: -- to which the dock is an accessory use?

MR. REISCHL: Yes.

HEARING EXAMINER STRAIN: Which is the units on that parcel?

MR. REISCHL: Yes.

HEARING EXAMINER STRAIN: One of the other questions, and I'll answer it, was how long has the uplands parcel been zoned multifamily. In the beginning I showed everybody that the zoning graphics I found go back to at least 1976.

MR. REISCHL: And if I might add, too, you notice on the parcels where it's RMF-6, parens 3, that means that that was through the zoning reevaluation process after the Growth Management Plan was in effect, and that means that Board of County Commissioners affirmed the zoning on those parcels during the ZRO process.

HEARING EXAMINER STRAIN: And that was in the early '90s, right?

MR. REISCHL: '91 or '92, yes.

HEARING EXAMINER STRAIN: Have you, as a planner for the county, ever come across another situation where docks have been allowed in front of an adjoining parcel not owned by the uplands parcel to which the docks are attached?

MR. REISCHL: Not personally. I know Tim mentioned a couple that exist, but I didn't have any relationship with those.

HEARING EXAMINER STRAIN: If you recall, Primary Criteria No. 3, whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. This has been proven to be neither marked or charted. So is it customary to read into that to allow basically any navigable channel to apply for No. 3?

MR. REISCHL: Yes, and especially in this case where it's basically a flat bottom by their surveys, bottom survey. If there is a deep spot that's in some areas, even though it's not marked, that's what we would use, but in this case, it's basically flat.

HEARING EXAMINER STRAIN: Okay. And because it's -- even though it's not marked or charted, we're just applying it as a flat bottom --

MR. REISCHL: Correct. I checked with Chris D'Arco of coastal zone, and he said that the markers stopped at Sandpiper Street.

HEARING EXAMINER STRAIN: Okay. There's several references to -- I shouldn't say several. There's many emails that said that the volume of boats and the width of the waterway -- width was too narrow and the volume of boats was too much traffic for that waterway. Has the county ever taken a look at a -- like a

concurrency element for waterways, meaning, on roads we calculate how many cars are on a road before it fails. Have we done any study like that on the waterways?

MR. REISCHL: As far as I know, there's no level-of-service ranking for waterways.

HEARING EXAMINER STRAIN: Do you keep track of any kind of tally of boats and how many are approved up in -- back up in any waterway that uses a main -- one or more outlets to get into a main body of water?

MR. REISCHL: No. We look at both sides of the shoreline --

HEARING EXAMINER STRAIN: That's it.

MR. REISCHL: -- and that's one of the -- yeah.

HEARING EXAMINER STRAIN: And I don't know who -- I know today got ahead of us quickly, and I wasn't able to get some of these questions with the staff members who may be involved in them. Are you familiar with any issues involving seawalls and how they may be impacted by boat traffic?

MR. REISCHL: I was in on a discussion, but I'm not an engineer. I don't really know what kind of -- you're talking about wave impacts, I would guess?

HEARING EXAMINER STRAIN: Right.

MR. REISCHL: No, I don't.

HEARING EXAMINER STRAIN: And the impact on the neighboring view is one of the requirements of the code. Can you tell us how that applies?

MR. REISCHL: Tim explained it very well, and maybe Jeff can add to this. But from what I understand, the riparian lines form the sides of your view shed, and to the middle of the waterway is the outward extent of the view shed and, therefore, I didn't see any impact.

HEARING EXAMINER STRAIN: So if someone's view has changed from across the water looking at it, that's not the view this pertains to. It's if you're on either side and your view out to the water is what your criteria is?

MR. REISCHL: That's my understanding of it, yes.

HEARING EXAMINER STRAIN: Okay. I got -- let me see what questions I have from the staff report. The revision to 45 feet, that's not going to have any change to your review, instead of 52 feet?

MR. REISCHL: No. The reason I used the 52 in the advertisement, because that's what the original request was for. And this was an appeal to that original request, so I kept that the same.

HEARING EXAMINER STRAIN: And you're aware of the question of the ownership or leasing of the docks.

MR. REISCHL: Yes.

HEARING EXAMINER STRAIN: And we've talked about some language on that. How is that monitored by the county?

MR. REISCHL: It's enforcement driven, code enforcement. I know some folks brought up the fact that there were -- not necessarily this project, but there are docks in residential neighborhoods that are advertising to rent them. If folks see that, please call code enforcement.

HEARING EXAMINER STRAIN: And then we've had cases come before the Planning Commission in the past where the homeowners have asked for two docks, and they're not -- even a single-family home isn't allowed to lease out the second dock; is that correct?

MR. REISCHL: That's correct. It's a residential use, not a commercial use.

MR. BELLOWS: Accessory use.

MR. REISCHL: Accessory, yes. Accessory to residential, right.

HEARING EXAMINER STRAIN: That extension going over in front of Windstar, did you count that as water frontage?

MR. REISCHL: From what perspective?

HEARING EXAMINER STRAIN: From the uplands that are part of this project's consideration.

MR. REISCHL: It's their property. I considered it a side yard.

HEARING EXAMINER STRAIN: Okay.

And, Fred, I think I've got most my questions answered between you and the applicant. Let me just make sure there's no others.

The lighting, the bollard lighting or downward lighting. Is there any provisions in the code that requires specific kind of lighting on docks?

MR. REISCHL: It's not required, but that's typical lighting, and dock numbering and sometimes manatee education.

HEARING EXAMINER STRAIN: And I have one other item that I need to resolve, and if I can find it, I'll show it to you. If I can't, well, we'll go on. I know it's not going to be there. No, I'm not going to have it.

During the preapp there was a note to review the title work and the easement, but I couldn't find any documents in the file. Do you know -- that didn't seem to get in the package. Did you see anything come in in that regard?

MR. REISCHL: I think that was Heidi or Scott, so I don't know if they got -- I didn't get a copy of that.

HEARING EXAMINER STRAIN: Okay. Thank you, Fred. I appreciate it.

That's the questions I have at this point. And what I'd like to do is have the members of the public who registered to vote -- registered to vote -- registered to speak first. Ray will call out your name. Just please come on up to the microphone and identify yourself for the record. If you weren't sworn in, please let me know so we can swear you in, and we'll go from there.

Ray?

MR. BELLOWS: Thomas Melvin.

MR. MELVIN: Yes. Good morning --

HEARING EXAMINER STRAIN: Good morning.

MR. MELVIN: -- or afternoon.

I'm Tom Melvin, and I was past president of the Windstar Master Association. Let me just digress for a second. The Windstar Master Association has the overall responsibility for the Windstar development. Within that development, there are some areas that are subject to a PUD, the original Windstar PUD. The Southpointe Yacht Club is in another PUD and some of the homes there, but we also have sections that are not in any PUD that are still part of the Windstar Master Association.

Each one of our neighborhoods has its own homeowners or condominium association or board. So in this case, Haldeman's Landing, soon to be called by Regatta Landing as its new name, will have its own homeowners association, which will be a condominium association that would be responsible for all this property.

Okay. As president, or past president of the Windstar Master Association, I was intimately involved in the negotiation for this development and for the annexation of this property to the Windstar community. So it was the previous developer, Centerline Homes, that we were dealing with, but Standard Pacific assumed the project from Centerline Homes.

In a previous life, I spent over 20 years with serving on zoning and planning commissions, so I know a bit of what you're going through, and I appreciate the detail that you're going into in this particular proposal. But I know also that any project that involves previously undeveloped land brings all sorts of people out that want things to stay the way they were, and they'll come with all sorts of reasons to try to thwart the project.

I wasn't at the Planning Commission meeting to speak on this proposal because, given the staff's clear recommendation of the project, I mistakenly thought that it was going to be just sort of a slam dunk, it would go right through. Obviously, that wasn't the case.

I'm here today, as I should have been then, to speak on behalf of the 55 -- or 555 homeowners of the Windstar Master Association that -- and soon to be 64 residents of Regatta Landing or Haldeman's Landing, to say that we very much support this development, including specifically the plan for the 42 boat docks.

Then annexation of this development in Windstar required the approval of two-thirds of all the homeowners. Now, it's usually hard to get even two-thirds of the people to vote. So the fact that we not only did that but got 85 percent of the people who voted to vote for it and 76 percent of the total homeowners to approve it is quite a statement that the Windstar community is behind this development.

Windstar wasn't looking to expand. And maybe you could put up the picture that shows the overall Windstar development, the aerial, if you would, one of the first ones you showed.



HEARING EXAMINER STRAIN: We'll try. We'll move as fast as the electronics let us. For the first time in my life I'm moving faster --

MR. MELVIN: One of the first with the red outline around the property.

HEARING EXAMINER STRAIN: Was it that one?

MR. MELVIN: Well, that doesn't quite show it. The one with the red outline around the subject property, I think, showed it on a site map.

MR. YOVANOVICH: It was in our exhibits. It was in our exhibits.

HEARING EXAMINER STRAIN: Okay. Well, we'll pull theirs up. It's right here.

MR. MELVIN: Well, what I want to say -- and I can start talking about it -- is that we aren't really looking to expand Windstar, but we did have an intense interest in this piece of property.

And, actually, I got involved in the master association as a result of an earlier attempt by a developer, Mr. Antaranian, to develop this property that I objected to the density that was planned for that property. So I succeeded to get myself a job and was involved in negotiating the agreement with Centerline Homes.

And the reason we got interested in this is because of the proximity of this property to many of our homes and to the golf course. What happened on that property was going to have a big impact on our community. And while we weren't looking to expand, you know, we did know that this -- I mean, we would have preferred if this had been just left vacant or maybe used as single-family homes off of the end of Lakeview. It would have been terrific in our judgment, but the traffic was zoned multifamily. And once you get that zoning, you know, your single-family use sort of goes out the window. The property becomes too valuable to some developer that's going to do multifamily.

So we had understood that Mr. Antaranian had a plan that we understood was approved, but he had a plan for 72 units in this property with 51 boat docks, and we didn't know where they were. We understand some of them may have been along the creek behind Lakeview Drive there.

And that plan included a number of three-story buildings. Well, we didn't want the three-story buildings, and we didn't want that much density.

So as part of this process, we were able to negotiate with Centerline Homes to reduce the number of units to the 64 units in the number of buildings that they have and to have only two-story buildings rather than three-story, so a more residential scale for the potential development.

So that's why we got involved in it, and thankfully the developer did see an advantage in becoming part of Windstar, so that gave us some bargaining power in working with them.

Our board negotiated an agreement with the developer. They then got a very specific plan, because one of the things when we went to voters is we said, what you see is what you're going to get. So we had specific architectures for what the building would look like. We had a specific site plan. We had the docks and the recreation area for this development all specified, and our boaters -- or our residents then voted on the plan. So none of what has been proposed by the developer is a surprise to anyone within Windstar.

And it's -- one of the questions that came up earlier was, is the club behind this? Well, this wouldn't have happened without the club's intense support on the project, so they're very much behind this project.

Windstar, if you measure it, has over two miles of mangrove waterfront. We've got a mile along the bay. We've got another mile from roughly the beginning of the Haldeman Creek slow or no-wake zone all the way into the subject property, and then the subject property has another over a half a mile of waterfront, so we've got a lot of waterfront, but most of it's mangroves.

So if you view this project -- and I know maybe you don't look at it this way, but if you view it in context of all the waterfront that Windstar has, we'll have a relatively small percentage that's taken up with docks on that waterfront.

Now, we understood that the previous developer also had some plans for projects or for docks along the canal that is on the west side of Lakeview Drive, so that one that goes behind. And I saw you had some letters in your file where people said, well, why don't you put the marina in there?

We thought, in working with Centerline, that that would create too much congestion in those very narrow canals. We thought also that the people who lived along that portion of Lakeview wouldn't feel too great about that. And we thought we'd be much better off having the marina -- or the docks along Haldeman Creek.

So we were actually steering the developer in that direction of having -- concentrating all the docks on Haldeman Creek rather than in other parts of his property.

I keep a boat that I share with friends at the Gulf Shore Marina there, and so we're in and out of those canals a lot. And I know that, while there's some traffic on the river, that the traffic in the canal is a real problem. I mean, there are areas where you've only got 15 or 20 feet between boats on opposite sides of the canal. So people go slow in there, and it works perfectly fine.

My experience is when I get out to the main creek, it's like going from a one-lane country road to a four-lane highway. I mean, there's tons of room out there, and we'll have -- we'll still have 80 feet between the closest two pieces of docks if the docks across the river are actually built. So in my judgment, there really is no problem with distance.

Also, boats in this area, in my experience, do go slow. I mean, it may not be posted as a no-wake zone, but people certainly treat it that way all the way from the area where it begins to narrow, all the way past the Land Yacht Harbor and all the way into Bayshore Drive. So it's not a -- it's not a speed area, and I very rarely pass anybody that's putting up any sort of wake in that area. You get further out towards the bay, people do go a little bit faster.

So there is -- as I say, there's boat traffic in this area that we want to keep at a minimum level. And as a boater, I did also want to say that I favor the straight-in docks. I think if you think about the whole way you park a car, if you have an angled parking, you've got to back out that one direction, and if you're pointed in the wrong direction, then you've got to go up and turn around. It's the same thing with parallel docks.

With straight-in parking, you can come in and make a T turn. You come in, and then you go back out the other way, and you're headed back out again. So, to me, that creates less turning in the creek than would otherwise be the case.

To me, also, you don't back out of a dock if you see another boat come along; same as you don't back out of a parking place if you see traffic.

So I think -- the only other point I would make on traffic is that most boats sit in their docks most of the time, you know. And citing the number of spaces of boats that could be owned down this creek and in the various canals, I think, is misleading. I think most of the boats just sit out back most of the time. The traffic we see on the river is very light.

One other point. Remember that we're dealing with a developer right now, which a lot of the people like to look at as a big bad guy. But these homes and these docks will ultimately be owned by your neighbors, by people who are individual taxpayers and residents of Regatta Landing, and they're all part of the MTSU (sic). They'll all be contributing to the upkeep and maintenance of these canals, so I think their rights should be considered.

And just a final note. I know we've had a lot of our residents here earlier today, and not all of them made it back from lunch, but we do have a lot of people who are very interested in this. And I've been getting a lot of calls and questions from people about, you know, what's going on? You know, what is this with this zoning process?

They don't understand why -- they don't understand the reason for this meeting. They don't understand how this docks project that had such a favorable review from staff, that seemed to meet all the criteria of the code, how that wasn't approved at the Planning Commission meeting, how -- when the failure to approve it was then appealed to the commissioners, how suddenly that meeting was just disbanded the day before the meeting was supposed to be held, and we were sort of ready to present there.

Well, this morning's giving me a better appreciation for the fact finding you're doing, and I think it's good to get all of this stuff out. I assume that we're going to go through the same process again in a few weeks when the commissioners meet, that everyone that has presented their information, the developer, interested residents, will go through the same presentation. But I -- that's a question I would ask you is whether or not that's true.

HEARING EXAMINER STRAIN: Well, this is a fact-finding meeting.

MR. MELVIN: Yeah.

HEARING EXAMINER STRAIN: And when I collect all the data from today and what I review from the minutes and the notes on the meeting, I'll write a report to the Board of County Commissioners as a



recommendation. The board is going to hear it, and they will hear it -- they can hear it as a brand new meeting. And so everybody that's speaking here can speak again at the board meeting, and the issues can be talked about just like they are here.

The board will have the advantage of all the research that was done, and there is thousands of pages of that, and that will be formulated into a package to be given to the board.

So to the depth they want to go through all that data, it's there, and the citizens here today, part of the -- I believe the hope was that we could express all this research in a public meeting such as this where everybody could understand what data has been found, what is on the table, and it will give everybody a better chance to speak at the board meeting, should they decide to do so.

MR. MELVIN: Good. I do understand that, and I appreciate the depth that we're going into in a lot of these issues.

So on behalf of the residents of Windstar and the board of the Windstar Master Association, I just want to say that we believe in this project. We're behind it 100 percent. We think that the number of docks that were requested -- which we sort of beat the developer down from an earlier proposal. We think that 40 or 42 is a perfectly reasonable number of docks, because we anticipate using a couple of those spaces ourselves. And, you know, that the -- you know, the association, the association for the homeowners of Haldeman's Landing.

And we think that -- we urge you to recommend approval.

HEARING EXAMINER STRAIN: Thank you, sir.

MR. MELVIN: Thank you. Do you have questions for me?

HEARING EXAMINER STRAIN: No, I understand most of what you've said, and I appreciate your input. Thank you.

And as far as the members of the public that come up and speak, if you agree with the person ahead of you or some other -- somebody else that speaks, if you want to just acknowledge that you're either in favor or object to, that's fine, too. But I'm here to listen to you, so would the next speaker like to come up? Ray?

MR. BELLOWS: Elizabeth Bailey.

HEARING EXAMINER STRAIN: Is Ms. Bailey here?

(No response.)

HEARING EXAMINER STRAIN: Okay.

MR. BELLOWS: Robert Messmer.

MR. MESSMER: My name is Robert Messmer, 2978 Orange Street. I live on a canal that is on the north side leading off of Haldeman Creek and, needless to say, will be greatly impacted by this project.

First off, Mr. Strain, I'd like to thank you and commend you for the very professional and thorough manner you're conducting this hearing.

HEARING EXAMINER STRAIN: Thank you.

MR. MESSMER: Without a doubt, the Board of Commissioners are going to benefit from the information you are now going to give them for the first time.

I sent you an email, and if I may give you a hard copy when I conclude my remarks to be sure that you do have it and it's part of the record.

HEARING EXAMINER STRAIN: That's fine, sir. Thank you.

MR. MESSMER: I want to make a couple of comments. One is, I disagree with the staff's interpretation of the criteria about view. It seems like you say views of neighbors to the north are not impacted because the boats and docks aren't between their property and the water, which is true; however, the string of boats and docks running nearly 1,000 feet eliminate 30-some feet of water view.

I don't think there's anyone here that could -- would prefer to look at docks and boats rather than water or the nice vegetation to the south.

I think that criteria is very subjective and, candidly, poorly worded, and I think it should include views from property owners on the north side of the creek for the reason I just articulated.

This developer has alternate locations for locating this marina. One was pointed out earlier of cutting into that property. Two others that haven't been brought up. The two gentlemen from Windstar have ascertained (sic) and confirmed my recall that this development is going to be or is already under the umbrella of the Windstar Master Association.



Windstar has two docking facilities on the east side of Naples Bay several hundred feet east of the channel in Naples Bay with plenty of space around either or both of those docks to build 42 or maybe even more docks. They don't have to build them where they're proposing. These other two locations would be completely outside of any boat traffic by hundreds of feet.

I'm not a bit surprised that the Windstar community is not in favor -- that is in favor of this; not a bit surprised. They're getting, to my understanding, \$750,000 in cash infused into their bank account which, according to a document I have from Windstar, will allow them to reduce their monthly assessment. Of course they're in favor of it.

And that's all I have.

HEARING EXAMINER STRAIN: Okay. If you want to leave your documents with the young lady that's sitting next to you, and at the end of the meeting I'll compare it to the electronic. And if I have it already in electronic, we won't need to separately record it, because all those electronic emails are being kept.

MR. MESSMER: I understand. Thank you, Mr. Strain.

HEARING EXAMINER STRAIN: Thank you, sir. Appreciate it.

MR. BELLOWS: Luan Dola.

HEARING EXAMINER STRAIN: Ms. Dola?

MS. DOLA: I did not request to speak.

HEARING EXAMINER STRAIN: Okay.

MR. BELLOWS: John Lawless?

HEARING EXAMINER STRAIN: Mr. Lawless.

MR. LAWLESS: I'll pass.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. BELLOWS: Thomas Dore'.

HEARING EXAMINER STRAIN: Mr. Dore'.

MR. DORE': Yes. Thomas Dore'. I represent the Naples Land Yacht Harbor. I'm on the board of directors and chairman of the Seawall Committee.

It's our concern that the additional traffic, which is unmonitored at this point, would have an adverse effect on our seawalls.

I know there's been a lot of talk about speed limits. None is -- occasionally the marine police will be there when they're called.

I guess in the last three months we had two reports from the environmental people coming to check and looking for oil spills in Haldeman Creek. The additional pollution concerns me. This is not people -- I know there's no fuel facilities granted or any of this, but people have a tendency to start carrying their own fuel to reduce their operating costs, and they're not very efficient at transporting the fuel and changing it from the container into the boat. And there's also spillages. We've seen sheens on the water reportedly (sic). And, you know, it's just the way of life.

These are not professional boaters. They're weekend boaters. And I see it in my marinas back home. I'm a winter resident here, but in my marinas back home I see it. And they say you can't do it, but people still do it because the laws don't pertain to them.

Our biggest concern is the pollution and the damage to our seawalls. We weren't -- originally when the park was built, we weren't allowed to have any dockage on Haldeman Creek. And the question comes to me all the time, why are they allowing people to dock boats on Haldeman Creek now? And I said, I have no idea. I have to go to the board meetings and find out.

So there are the issues for our park, the additional traffic and the speed.

HEARING EXAMINER STRAIN: Great.

MR. DORE': Thank you very much.

HEARING EXAMINER STRAIN: Thank you, sir. Appreciate it.

Next speaker?

MR. BELLOWS: Kate Linehan.

HEARING EXAMINER STRAIN: Ms. O'Neale (sic)?

MS. LINEHAN: I'll pass.

HEARING EXAMINER STRAIN: Pass, okay.

MR. BELLOWS: Tony (sic) Evans.

HEARING EXAMINER STRAIN: Mr. Evans?

MR. EVANS: Yeah, it's Tom.

HEARING EXAMINER STRAIN: Tom.

MR. BELLOWS: Oh, Tom. Sorry.

MR. EVANS: Yeah. My name is Tom Evans. I live in Naples Land Yacht Harbor.

I agree with Mr. Dore', his position, but I have one other piece of information. The Collier County Sheriff's Department Marine Division has occasionally been spotted doing audits of traffic on Haldeman Creek. They came to us and gave us a presentation, actually. One of our residents, actually, was cited for speeding, and they mentioned that there were quite a few others which they had not been able to catch.

So I would recommend that perhaps you go and check with the Collier County Marine Division of the Sheriff's Department, and you might get some idea of what kind of traffic there has been. Now going forward, we have an additional amount of traffic.

I'm here to say that I'm opposed to this in this current position. Thank you.

HEARING EXAMINER STRAIN: Thank you, sir.

Next speaker, Ray?

MR. BELLOWS: Mare Ward.

UNIDENTIFIED SPEAKER: She's not here.

HEARING EXAMINER STRAIN: Not here.

MR. BELLOWS: Janie Moore.

HEARING EXAMINER STRAIN: Ms. Moore.

MS. MOORE: No comment.

HEARING EXAMINER STRAIN: Okay.

MR. BELLOWS: Mike Pelletine (sic).

MR. PELLETIER: Pelletier. I pass.

MR. BELLOWS: Gary Melhart or Melhart.

THE AUDIENCE: Looks like he's not here either.

MR. BELLOWS: Robert Buelow.

MR. BUELOW: Hello. I'm Robert Buelow, Bob Buelow, and I live at 2997 Poplar Street.

Thank you, Mr. Strain. I wanted to echo my comments to you in what the previous -- Mr. Messmer said about how you're treating the meeting, how you're holding the meeting. I think it's being done very professionally.

I appreciate the opportunity to speak to you and to the other people present. My wife and I live on Poplar Street just east of the proposed building site. Our house was built by my late in-laws in the early '80s. It's located directly across from the creek finger that feeds into the pond and finger canals going down the west side of Bayshore Drive.

During our first visit after they had built the home, I asked my father-in-law how deep the creek was. His reply, you can walk across that creek without getting your knees wet. He added that Haldeman Creek started as a drainage ditch for a strawberry farm. I don't know if that's true or not, but it gives you an idea why it's called a creek and not a river or a canal. It's simply not big enough to have earned those names.

As the individual given the responsibility to advise the commissioners, you understand their role to promote growth but not at the expense of the current residents. Approval of this petition, which isn't asked -- isn't asking for a few feet but rather a 125 percent increase beyond current code restrictions, will create a navigational and safety problem forever, not counting the added noise, lighting, and pollution from what will undoubtedly become Windstar Marina North.

Although the petitioners and Windstar claim to be separate entities, the history of the Windstar property proves that there are -- they are one and the same. There is a simple document -- there is ample documentation that Windstar intends to annex Haldeman Creek Landing and become another dues-paying property within Windstar.

I agree that Windstar has done a marvelous job of modernizing what was Kelly Road, now Bayshore.

They've won awards, and rightfully so, about how they've created their previous dock systems on the south side of their property, but this proposal is not one of those award-winning operations, in my opinion.

In previous conversations, petitioners have called -- have cited that if people on the east side of Bayshore can navigate past the commercial area where the boats -- Boatworks is located, why should our 42 docks create a bigger problem? This is an apples and oranges comparison. Remember, the only boats coming from the east side of Bayshore are, by necessity, tiny. They have to be to get under the bridge and to flow to the even shallower water on the west side of that bridge.

The site of these proposed docks is a totally different situation. These proposed docks will be at the very place where all the small boats from the east side of Bayshore and the large boats in the Lakewood area and the boats from all the fingers off of Becca and the cabin cruisers seeking services in the commercial area all converge. It's an intersection. It's an intersection of boats ranging from giant 40-plus-footers down to 12-foot kayaks.

And if you think it's difficult to see a kayaker on that canal now when you're in a 30- or 40-footer, wait till you're also trying to watch for backing out of one of these 42 slips. I'd be willing to bet that anyone who has boated on Haldeman Creek -- and we may not be experts and have degrees in engineering, but we are experts on boating on that canal because we do it constantly. We know what it's like.

I'd be willing to bet that anyone who has boated on Haldeman Creek could share stories of close-calls they've had trying to pass an oncoming craft. And with all due respect to Mr. Rogers, I think it is down here, who has boated -- who has admitted that he's boated, he even admitted it's a tight waterway. That's his words, tight waterway.

That's his read on it now. Wait till you add docks on the south side and the north side, those that have already been approved. It's going to be a nightmare.

It will simply compound the mistake that was made by having docks approved on the north side with docks pending on the south side, in my opinion.

As I understand it, they already approved six docks on the north side of the creek. It never got to this stage of debate. Perhaps notification was inadequate or perhaps six docks didn't seem like too many nine years ago, just as the Windstar people have told you tonight, or this afternoon, that 64 units is fine, but they admit that 172 units was too many.

Well, someplace they had to make up their mind. Which were they willing to accept? So they have to appreciate for us who boat on that canal that too many boats can create a problem for the people who are boating there now.

This is asking for -- they cited the other group of docks down by -- across from Naples Land Yacht Harbor, and I think Maurice said earlier that there are probably a 200 -- 200 or 300 units in there, and they've only got about 300 feet of dock, maybe 20 or 30 docks in there. At that ratio, if you use that kind of ratio for a multifamily like they're doing, that the Haldeman's Landing would be getting about four, five, six docks at most.

What they're asking for is a 700 percent increase over the previous six docks they had -- they happen to be directly across from the six already approved.

This is where the approval of this petition will create what future boaters will call the Haldeman Creek bottleneck. The decision of the commissioners will rely on your input. You have an opportunity to represent the current residents of your community. We hope you do so by recommending that this proposal be denied.

Finally, when I attended an earlier information meeting at the CRA offices this spring, I was amazed by the comment made by one of petitioner's representatives. He told the residents, one commissioner in attendance, and I quote, we're only meeting with you as a courtesy. Really? This entire debate is already settled? You and our elected commissioners have no say in this?

If this has been a done-deal, why have we been meeting? Why have we -- why are we even here today? I contend that you do have a final say and that the commissioners can prove untrue their perception that your role is to rubber stamp their proposal.

I submit to you that they don't live on Haldeman Creek and -- or even in East Naples, and they never will.

Please do not approve this request, and thank you for listening.



HEARING EXAMINER STRAIN: Thank you, sir.

MR. BELLOWES: Jean Taylor.

UNIDENTIFIED SPEAKER: Not here.

MR. BELLOWES: Phil Taylor.

UNIDENTIFIED SPEAKER: Not here.

MR. BELLOWES: Sharon McClain?

UNIDENTIFIED SPEAKER: Not here.

MR. BELLOWES: Tom McClain?

UNIDENTIFIED SPEAKER: Nope.

MR. BELLOWES: Roy Wilson?

MR. WILSON: Here.

MR. BELLOWES: Yeah.

MR. WILSON: Somebody had to be here.

My name is Roy Wilson, and I live at 336 Pier C, and I'm the chairman of the Haldeman Creek MSTU.

We, as an MSTU, first became aware of this by some residents asking some questions to some of the MSTU members. Based on that, we asked the planner, using our staff, to invite Fred out to one of our meetings.

So the word got around. And by the time that meeting came and Fred attended to explain this proposal to us, we had the largest attendance we've ever had in eight, nine years of the MSTU.

HEARING EXAMINER STRAIN: Fred does that wherever he goes.

MR. WILSON: Yeah. Some of you may think that that's a good sign, and maybe it is, because we have an awful lot of interest now.

And those residents were asking for help. They weren't the only ones asking for help, because the members of the MSTU were asking for help also, help to get information, to get documents.

We heard something years ago back in 2007 about Fishermen's Landing, not a word since and yet we're a commission-appointed group to be watching over various aspects of Haldeman Creek.

We had no knowledge as the local residents had no knowledge of the Demere project right across the way. It took a lot of effort and research to try to get any level of information.

We tried to take the comments from the residents and run with them, including informing other residents on Haldeman Creek that something was going on.

As a note for the back of somebody's mind for action later, we're certainly not in the modern age on notifying people about government activities. A sign at the end of a dead-end street and an advertisement in one newspaper was supposed to suffice for everybody knowing that something was going on. In these days of the Internet, oh, my gosh, even the U.S. mail, we should do better.

I've sent -- I've taken the proposal by the petitioner and added my comments to it, and I had forwarded it to the Planning Commission. I've tried to update that with the latest report and forward it to you. So I'm not going to go into a lot of the detail on there.

I'm going to first try to do a little bit of a summary and then maybe go back and clarify some things that were said today that I have a little different perspective on or at least some background information.

You know, when you look at this proposal as a layman -- I've got to apologize. You know, I'm just a resident out here trying to help, trying to do my civic duty. We don't have a big budget for engineers, lawyers, and everything else. So we just -- we do our best.

But if you look at this as a layman, it's easy to see that all the advisors work backwards from how many docks can you get me in this area. I mean, why else would you come up with this design? Why else would you try to work a technicality that you've got underwater rights, and at the end of your property line you can still go another 40, 50, 60, whatever feet it is. It's just -- it's easy to see what it is.

And I don't -- I don't have any malice towards the developer. The developer's in this for money. If I was developing it, I would be, too. But I think we have to have clear eyes when we look at it and say, why would somebody come up with this design?

And we've got plenty of evidence of places where people have built docks and marinas that have empty slots in them. So it wasn't working backwards, I don't believe, from a great study that said if we have

64 units, we're going to need 42 docks because that's going to be the pressure on us.

I did, by the way, think it was kind of interesting for the speaker for Windstar to say he hopes this goes in because he hopes to use the docks after we just went through a discussion that unless you live in that area you can't own one of the docks, but that's a sidenote.

(Applause.)

HEARING EXAMINER STRAIN: Ladies and gentlemen, please. And, Mr. Wilson, that's not going to be productive, so let's just focus on the facts of the case at hand, okay.

MR. WILSON: Okay.

HEARING EXAMINER STRAIN: Thank you.

MR. WILSON: I appreciate that. I did get carried away.

The proposal to dredge near the shoreline -- I have two things to comment about that -- is once you do that, presuming you get approval to put docks in, whether they be parallel or the design here, you might consider trying to get a permit to dredge all the way to the other side.

As I think most boat captains would know, if you're driving down the channel, you tend to go center channel, okay. If now you take 40 or 50 feet of the south side of that channel away with docks, you're going to tend to move your boat over, okay.

The north side of that channel is very skinny, even in the best of times. So if you're going to spend money on dredging, I would say you probably need to dredge all the way across.

There's been comments about the channel markers. Well, the design for the dredge was done by the transportation organization of the county before the MSTU was created and staffed, okay. The best understanding I could come up with in questioning them about why the channel markers stopped where they did was simply because it was sort of straight ahead from there and so you didn't need to move people in the channel, again, because most boaters unmarked and unknowledgeable about an area would go center channel.

So there was no great thought pattern about what's a navigable, what's not navigable. It's just going straight.

Another interesting piece it came up with, when we did the study after the dredge, yes, we did go down -- they did go down center channel, and they dredged it out. I heard testimony today that the previous owners dredged up to the riprap to a depth of four feet when they put in the riprap, okay.

The studies I have says that by the time we dredged Haldeman Creek, the depth there was 1.6 near the edge. That's an awful lot of silting in a short period of time. Do you follow that with me okay?

HEARING EXAMINER STRAIN: Yes, I do.

MR. WILSON: All right. When I'm talking offhand, sometimes it gets --

HEARING EXAMINER STRAIN: No, the sediment course was an comment I made earlier. That's how you determine how far you can maintenance dredge by the way the sediment accumulates after you dredge initially.

MR. WILSON: Yes, yes, no, yeah, and totally.

I was just amazed that that area had been dredged and yet only had 1.6 feet of depth now. You'd think that -- you know, to me it's just a -- it's a characteristic of how much sediment's coming down that creek.

I'm one, quite frankly, that believes putting these docks in, with or without Demere, is going to narrow it to the point that you do have a safety hazard. I don't know. I guess we all boat different, but if you're lined up with boats on each side of you and you start backing out into that channel, you are blind for about 50 percent of your movement out of the dock. Unless you've got a bunch of flat boats next to you, you can't see right away, and you're backing into a used channel.

And I think the testimony's come up today, there are a lot of people that are very considerate of the speed on that creek, but if you lived on it instead of occasionally going up and down it, you'd have a little different feel of how many polite boaters we have. Yes, once they turn around the corner and get back into the finger canals, they slow down. Well, they have to. But with speed, a 90-degree turn coming up, boats backing out, I do believe you're going to have quite a safety issue there.

Some stuff that I could not uncover in my research, and it's documents that today I don't have, and maybe the engineers have them and would provide them at some time. But I did come up with a letter from the Corps of Engineers, and in that letter 7/12 of '07, they included information that a Mr. Jacobsen and a Dr.

Bauer from the City of Naples had written letters about the need to consider downstream impacts from things that would be done on Haldeman Creek, and specifically dock proposals. And also a Mr. Rose from Save the Manatee Club as well as, quite frankly, a letter from myself back then, all raised concerns about the impacts of the project back then.

I have no knowledge at all if any of those questions have ever been answered. For my own good, it would be nice if they have been answered, because they were sent to some of our engineers. I could get copies of those because I would like to see what was said.

Finally, you know, I recommend in a final analysis that you come up with that you can support not recommending these docks and this project as proposed.

Stay within the basic code. I did hear the testimony that they couldn't have any docks without some type of an extension. Well, quite frankly, it would be nice to hear a discussion about that. I had the -- I had the feeling leaving the commissioners' meeting a couple weeks ago that there might be some modifications that could be made to make everybody feel better about the project. And, to date, I hear none and I see none, yet I hear repeats of "I've got a right. You just have to grant this." It just doesn't sound like working together and working together as neighbors.

And as I said before, owning the bottom lands of an old farm, to me, is kind of dangerous ground and I think a very bad precedent to be set.

HEARING EXAMINER STRAIN: Mr. Wilson, I've got one question since you are the chairman of the MSTU.

MR. WILSON: Yes.

HEARING EXAMINER STRAIN: The map that's on here, the property that is involved with this application is outlined in that red rectangle.

MR. WILSON: Yes.

HEARING EXAMINER STRAIN: How many units did you figure were going to go on that property when the MSTU added the taxing base from that property to your program?

MR. WILSON: It's only taxed as it is valued by the property appraiser today.

HEARING EXAMINER STRAIN: Oh, I know that. But previously you said that when you guys calculated the boats, you did it by a certain number of units you expected from the properties. Well, you wouldn't have taken in that entire length of property -- of which only the north part of it is on Haldeman Creek -- to tax for dredging Haldeman Creek without considering probably then what would be generated for units from the entire property.

So were you on the -- were you on the MSTU when they brought this in and came up with some plan on what they intended to tax and how many units they thought they were going to be taxing on that piece of property?

MR. WILSON: No.

HEARING EXAMINER STRAIN: Okay.

MR. WILSON: But the piece of property is within the MSTU; however, the piece in front of the Windstar golf course is not inside the MSTU. I would also point out that one of the first things we did was look at properties that were included, and we found three or four properties in the area that the designers of the ordinance did not include.

HEARING EXAMINER STRAIN: I found those.

MR. WILSON: And the BCC then, on our request, added them. It wasn't a problem.

HEARING EXAMINER STRAIN: See, here's my -- here's where I'm coming from.

MR. WILSON: Yes.

HEARING EXAMINER STRAIN: If you only felt, or as some emails have indicated, that the only boats that should be generated for docks on the creek is the property that is immediately adjacent to the creek, why would you tax the whole property for dredging purposes?

MR. WILSON: Oh, probably under the same reason that has been utilized at Sandpiper, that all of the residents of that property have an opportunity, and part of the value of the property relates to having water access.

HEARING EXAMINER STRAIN: Okay. That's what I needed to know. Thank you. I



appreciate it.

MR. WILSON: Yeah.

HEARING EXAMINER STRAIN: Okay. Thank you. Is there anything else you want to add, sir?

MR. WILSON: I'm going to check real quick. No, I think that's it. And as others have stated, I really appreciate your thorough approach.

HEARING EXAMINER STRAIN: No, I thank you for your input. It's valuable. Thank you very much.

We'll have one more speaker before we take a break, Ray.

MR. BELLOWS: Nyle Pickett?

HEARING EXAMINER STRAIN: Mr. Pickett.

UNIDENTIFIED SPEAKER: Not here.

MR. BELLOWS: Susan Pickett?

UNIDENTIFIED SPEAKER: Not here.

HEARING EXAMINER STRAIN: Terry Martin?

MS. MARTIN: Sir, I pass.

MR. BELLOWS: Kate Riley.

MS. RILEY: Here.

Hello, my name is Kate Riley. I live at 2998 Poplar Street.

Mark -- or Mr. Strain, would you please --

HEARING EXAMINER STRAIN: Mark's fine.

MS. RILEY: Okay. Would you please put up Page 8 of 12?

HEARING EXAMINER STRAIN: Oh. What document?

MS. RILEY: The one -- I think you're in it.

HEARING EXAMINER STRAIN: Okay. That would be eight.

MS. RILEY: Eight, oh.

HEARING EXAMINER STRAIN: What kind of picture are you looking for?

MS. RILEY: The picture of the subject property with the boats on -- kind of scaled in.

HEARING EXAMINER STRAIN: Okay.

MS. RILEY: That one.

HEARING EXAMINER STRAIN: Okay.

MS. RILEY: That's good. Okay.

My house is the house with the tin roof directly across the subject property.

HEARING EXAMINER STRAIN: Okay.

MS. RILEY: So I am -- I have a huge impact on what happens as a result of this passing. However, I learned today that really my eyes and my ears can't see past the middle of the creek, so I can't really talk about the view anymore, so -- although, this is my view today.

HEARING EXAMINER STRAIN: Did you bring copies of that for the record?

MS. RILEY: I'll give you this one.

HEARING EXAMINER STRAIN: If you don't mind only because --

MS. RILEY: Not a bit.

HEARING EXAMINER STRAIN: -- when the process went from the Planning Commission to the board, some of the board members expressed concern they didn't have all the exhibits that were presented at the Planning Commission meeting, so I would like to catch as many of these exhibits as we can.

MS. RILEY: Okay, yes.

HEARING EXAMINER STRAIN: Thank you. If you could leave that with us, I'd appreciate it.

MS. RILEY: Okay. So there's my view today, which is -- would look like something you would have on your desktop, you know, like on your computer, the first thing you see. And this is what it will look like. Not something I would really even take a picture of. Okay. That's it on that.

The other thing I want to talk about, I live right -- because I live so close to this property and I am a boater and I have a boat lift, and my -- I've had underneath my boat lift dredged. And the silt -- I have to be a planned boater today. So if I want to go boating at sunset, sometimes I have to get my boat out of my boat lift

at 12 noon when the tide is high. Fortunately, I have a dock, a small dock, that I -- with mooring whips that I can pull up to. And at 12 noon I'll take my boat out, put the -- and put it at the dock, and when I'm ready to go boating, I can go boating at any time at that point.

Now, when I come back in, if it's not high tide, my boat can't go back into my lift. Fortunately, again, I have a small dock. What are they going to do when they cannot get back into their boat lifts or their boat slips? Because this is what it looks like on Haldeman Creek. I have a couple of pictures.

HEARING EXAMINER STRAIN: Well, I don't think I'll be able to keep those.

MS. RILEY: This is low tide from my dock. That was taken from my dock. That's the reality. This was taken two years ago.

HEARING EXAMINER STRAIN: I've got a good view of it. Thank you.

MS. RILEY: Just in case.

And this photo was taken of what boats look like when they can't get -- this is after dredging, by the way, when you cannot get -- this is what -- this is what it looks like with boats.

HEARING EXAMINER STRAIN: I think I've seen that one around before. So, yeah, thank you.

MS. RILEY: That was taken from my property as well.

UNIDENTIFIED SPEAKER: Show it to us.

UNIDENTIFIED SPEAKER: Where's the water?

MS. RILEY: That's the point.

So because of the location of my house, I really do have a lot to say, but everybody else has said it, so I'm not going to repeat anything. So thank you for listening, and I am -- I can see where Windstar would be totally for the project because, really, they do not boat down that creek unless they're going to the marina or coming out of the marina or they're going to 360 Restaurant. And -- but, there are -- anyway, I just oppose the project. Thank you.

HEARING EXAMINER STRAIN: And I thank you for your input and that one photograph, if you don't mind. Thank you.

And with that, we will -- well, the second photograph is just a picture of your plan, I believe; is it not?

MS. RILEY: Well, actually -- it's actually a little revised, yeah.

HEARING EXAMINER STRAIN: Can you -- during the break, can we borrow that and I can have someone make copies and you let us have the copies in color, if that's okay.

MS. RILEY: Absolutely, yeah.

HEARING EXAMINER STRAIN: Okay, thank you.

We're going to take a break now and come back at 2:45. Thank you.

And, Gail, if you don't mind getting the copies when you get a chance and turn them into PDFs.

(A brief recess was had.)

HEARING EXAMINER STRAIN: Okay. Ladies and gentlemen, welcome back from the break. We're going to resume where we left off with the remaining public speakers.

And, Ray, if you'll call the next speaker.

MR. BELLOWS: Carla Corban.

MS. CORBAN: I didn't request to speak.

MR. BELLOWS: John Farquhar?

MR. FARQUHAR: Good afternoon. My name is John Farquhar. I represent the Windstar Master Association.

I wanted to just clarify a few points. I know there's been a substantial amount of discussion about the fact that the docks -- some of the docks are being put in front of Windstar's property. Windstar, both the golf club and the master association, fully support that and have no objection to that, so I think that's an issue that really is being overplayed by a number of people that -- when Windstar -- I'm assuming that the November 11th letter from the Windstar Master Association is something that you're aware of.

HEARING EXAMINER STRAIN: Yes, sir, and it's in the record.

MR. FARQUHAR: And the club has assured me -- the first speaker that was up this morning, Rick Dobson, was from the club, and he assures me that they will send you a similar letter, because the intent is that Windstar, both the club and the master association, fully supports this project.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. FARQUHAR: I also wanted to point out that the view issue -- from the criteria that the county has in the statute, which is the only thing that I think should be being looked at as far as view goes, Windstar is the only neighbor that is affected by that, and Windstar has fully supported and has no objection to that.

And we also believe that this is a relatively wide area at Haldeman Creek, that having the docks on this side and the potential someday of maybe six on the other side still leaves a much wider area to navigate in than in most areas of Haldeman Creek without any docks. And I think that the concerns about traffic and things because of the docks I think is an overconcern as well as the concern about blockages. There's much narrower areas in Haldeman Creek where there will be blockages from flood material or other things than in this particular part of the creek.

I know someone mentioned payments to my clients. There were payments to my clients to become part of the association. It is -- which were made. They're not contingent upon whether or not docks are approved or not approved. They get to use the other facilities in Windstar. They are part of Windstar, as a number of other portions of Windstar are not all one PUD. It's a number of separate projects that are made into one master community, as Haldeman Creek's project will also be part of Windstar.

And Windstar has a very good reputation for regulating the properties within their -- within the master association. It's a very well-kept, maintained community, and we believe the Haldeman Creek -- the 64 residences and the 42 boat docks will be a positive attribute to both the neighborhood and to the community.

Thank you.

HEARING EXAMINER STRAIN: Thank you. Next speaker, Ray?

MR. BELLOWS: Michael Sherman.

MR. SHERMAN: It's nice to have the whole day to think about your speech, huh?

Anyway, good afternoon. My name is Mike Sherman, and I'd like to add my perspective.

By way of background, I've lived in Bayshore, in the Bayshore neighborhood at Harrington Sound in Windstar since 2001, and for half of that time, I've owned a 22-foot boat on Naples Bay and have been in Haldeman Creek many times in the last six years.

Previously, I spent 40 years in the commercial real estate business. And because of my business life, I've studied, read, and thought a great deal about how cities grow and what is best for their residences and businesses.

Since I've lived in this neighborhood, I've personally invested in a number of small home lots off Bayshore Drive where I'm planning -- excuse me -- where I'm planning to help with the neighborhood improvements by building new, small, Florida-style single-family homes.

I believe in the redevelopment and beautification work of the Bayshore/Gateway CRA, the Haldeman Creek MSTU, and the Bayshore Beautification MSTU. And I presently serve on the CRA advisory board.

I believe while we have made tremendous headway at improving this area in the last 15 years, we have plenty more to do and that our success will turn on our ability to attract investors to East Naples and to the CRA area, in particular.

In fact, so far, the strategy for redeveloping this area has been for the community to invest seed money through its government in the form of the MSTUs and the CRA in order to encourage private investors to invest much more money.

An important and, I think, kind of brilliant strategic decision, which was made back in 1999, was to include the Windstar or Naples Bay community in the CRA and the MSTUs thus enlarging the base so that increases in tax money from that community would benefit the whole Bayshore area.

The result is that increases in the value of homes in Windstar on Naples Bay have the same beneficial effect on the CRA budget as increases in property values in all the rest of the Bayshore community. And I believe the recent announcement of this development of 64 coach homes and their docks along Haldeman Creek, now annexed into Windstar, should be seen as very big, positive news for the whole Bayshore/Gateway CRA community. It is perhaps the most significant private investment in the CRA yet and just what we've been all trying to get the private sector to do in our area.

And the higher the value of these 64 new homes and their docks, the larger will be the positive impact on the whole CRA budget. Put another way, the CRA and the MSTUs will be able to spend more money to



make improvements to the whole Bayshore community because of this private investment.

As such, I believe the County Commission should negotiate a reasonable compromise to approve the installation of docks for this development on Haldeman Creek and, in the process, send a signal that will encourage more major investors to invest in our neighborhood.

Finally, I'd like to make one further point. One of the most positive things we have going for us in the Bayshore neighborhood is the existence of direct water access and private docks available to homeowners and businesses in this area.

This water access provides jobs for residents in the fishing industry and in marinas, boat sellers, and restaurants.

Homes with frontage on our narrow creeks sell for three to four times as much as homes without.

Many of the neighbors to this development enjoy this private dock advantage on a "one private dock for each home" basis. And I, for one, cannot imagine why we would restrict the future 64 residents of this Bayshore neighborhood on Haldeman Creek from having docks of their own as well.

That's my story. Thank you.

HEARING EXAMINER STRAIN: Thank you very much, sir.

MR. BELLOWS: William Barancyk?

(No response.)

CHAIRMAN HENNING: Mr. Razzano.

MR. RAZZANO: It looks like I might be the last one, and I'll be brief.

My name is Pat Razzano. I'm the secretary of the Windstar Master Association. And I wanted to point out to you, the members of this board, that the marinas in Windstar right now are covered by the rules and regulations of the respective properties that are associated with it, the homes that they're associated with and the boards of those groups. They're also covered by the rules and regulations of the master association.

Currently, the boaters are not allowed to bring gas down to the docks, not allowed to put gray water into the water. They're regulated closely, and the rules are enforced.

They would also be subject to the master association's rules and regulations for safety in the boating facilities. This would be true of the Regatta Landing site as well. So the concerns that have been expressed about safety, there may be safety issues, but the regulations that we have are enforced and should not be a problem.

As a boater for 30 years in New England, I kept a 30-foot boat in a marina that has docks like this, docks on the other side of the channel that are facing the opposite direction, and the channel in between the docks, the boats, is no more than 30 feet. People are careful when they pull out of these boats -- of these kinds of docks if they're knowledgeable boaters, and they don't need 80 feet, which is the minimum distance between the proposed docks here and the proposed docks on the other side, to be safe.

Thank you.

HEARING EXAMINER STRAIN: Thank you, sir. Is there any speakers left, Ray?

MR. BELLOWS: That was the last one.

HEARING EXAMINER STRAIN: Okay. Is there anybody in the audience who has not spoken but yet would like to speak?

(No response.)

HEARING EXAMINER STRAIN: Okay. Thank you.

MS. RILEY: I do.

HEARING EXAMINER STRAIN: Oh, well -- okay. Come on up.

MS. RILEY: Okay. Something I -- my name is Kate Riley, and you know where I live.

And something I forgot to mention is -- you know, because I see about every boater that comes through the creek, I forgot to mention the wind that whips down that creek, and for -- and to watch boaters -- I know for my myself, getting into that little finger canal when the wind -- and it happens a lot, especially in the winter when most people will be using these docks. To be able to get into their perpendicular docks will be a nightmare. That's when the nightmare will start right there. You know, trying to wiggle around with the wind blowing and, especially if they have, you know, like, a cabin around them, that -- that is an absolute public-safety issue. I don't care how much dredging somebody would do, that is a public-safety issue.

Thank you for letting me speak one more time.

HEARING EXAMINER STRAIN: Thank you, miss.

Okay. With that, we've got a couple more items to wrap up.

Richard, I'm not suggesting you have a rebuttal period, but you do have any -- if you have any additional comments you want to add to the record, you're more than welcome to at this point.

MR. YOVANOVICH: Would you mind pulling back -- putting back up the first exhibit that I had, which was the aerial with the property outline.

I'm going to make a few comments, then I'm going to ask Tim to make a few.

HEARING EXAMINER STRAIN: Is that the right one?

MR. YOVANOVICH: Yes, thank you.

For purposes of shoreline calculation, I want you to understand the fact that there are -- there is 2,198 linear feet of shoreline that is not encumbered by a preserve within this project, so that needs to also be a fact that -- I don't know if you're aware of that.

HEARING EXAMINER STRAIN: No, I want -- that's good information. Thank you.

MR. YOVANOVICH: I find it ironic that the entirety of the property is within the MSTU, but under the current regulations, we have no access to the water because we need a boat dock extension to get access to the water.

Clearly, when the MSTU was formed, there had to be an understanding that boats were going to be on that property. And my understanding is, from a timing perspective, there was still that agreement that existed regarding the dredging and using it as a spoil site, that there would be 51 vessels served by docks.

Again, that's just a number, not the location. We're here to talk about the location. But there was an understanding, I would believe, that 51 docks would be at that property when the MSTU was formed.

HEARING EXAMINER STRAIN: But since you brought it up, it could have been -- the thought at that time could have been that it was going to be for the basin that was proposed just a few years before the MSTU was formed.

MR. YOVANOVICH: I understand.

HEARING EXAMINER STRAIN: So out of fairness to the MSTU process, that may have been the mindset at the time.

MR. YOVANOVICH: Well, the question was, did they assume any docks?

HEARING EXAMINER STRAIN: Right.

MR. YOVANOVICH: I mean, any boats.

HEARING EXAMINER STRAIN: Well, I think they did assume docks. The gentleman testified to that.

MR. YOVANOVICH: Right. So I just want to make sure that clearly a few boat docks along the frontage of the creek was under consideration when the MSTU was formed. That's the fact that I was trying to point out.

From a view standpoint -- and I apologize. I forgot your name.

MS. RILEY: Kate.

MR. YOVANOVICH: Kate? Is it okay if I use your first name? Kate. From a view standpoint, what was originally allowed was the basin. That would have impacted her view far greater than the view that's being discussed today.

HEARING EXAMINER STRAIN: Ladies and gentlemen, that's -- it's his turn to speak, so let's just -- let's finish it out.

MR. YOVANOVICH: The choke points that exist. And I believe it was Maurice -- I didn't catch his last name -- spoke that actually what's in front of our property is the wider portion of the canal. And a question came up about choke points and, obviously, the choke points are to the east with the bridge and further to the west when the meandering of the creek begins.

Our docks will not create a choke point to create navigation issues, as we've gone through with the exhibits.

I'd like Tim to briefly address a couple of items that -- I'm not going to do my typical rebuttal. I'm just going to hit a couple of highlights.

HEARING EXAMINER STRAIN: Thank you.

MR. YOVANOVICH: Well, since it's a different hearing --

HEARING EXAMINER STRAIN: Yes, it is.

MR. YOVANOVICH: -- I won't subject you to it.

HEARING EXAMINER STRAIN: You haven't quite recognized that yet, but you're getting the drift. That's good.

MR. YOVANOVICH: Well, you know, I'm a little slow.

I'm going to ask Tim to address a couple of points, and then we'll await your ruling.

But, again, we believe, and your staff believes, that we've met all of the criteria for the request that's in front of you today.

HEARING EXAMINER STRAIN: Okay. Thank you.

MR. HALL: I guess I'll start at the back and work forward.

Mrs. Riley; is that correct?

HEARING EXAMINER STRAIN: Tim, remember, this isn't a rebuttal.

MR. YOVANOVICH: No, it's not.

HEARING EXAMINER STRAIN: This is just factual statements for the record that you want to add after you've heard what's going to happen this afternoon -- or heard the comments this afternoon, so --

MR. HALL: Okay. It's not rebuttal.

HEARING EXAMINER STRAIN: I mean, I don't need you to rebut everything. I need the facts to be straight, and we'll sort that out later.

MR. HALL: Okay. Well, then I can reiterate, if you go to the -- in this set that you're on right now, go forward to the drawing with the blue hatching.

HEARING EXAMINER STRAIN: That one? I had it on mine, again, before you, so --

MR. HALL: Looking at the differences between the actual overall width of the waterway and that portion of the waterway that's deeper than four feet, you can see the narrowing by the first survey that we had done. There's a point there's that's 28 feet wide to the western end of the property.

And with this project and the dredging associated with it, that area goes from 28 to 51 feet. The area next to it goes from 52 to 71 feet wide. So rather than creating a choke point for navigation, it actually widens those areas for boats to be able to move through.

The other, I guess, big issue that I heard that maybe we didn't address completely was the gentleman talking about the potential downstream effects related to the docks. And for people here that have been involved, I'm sure you've heard that Mike Bauer -- Dr. Bauer's been promoting oyster bars and mangrove plantings and trying to increase the amount of habitat that's around Naples Bay for improving water quality.

These docks right now, where they're located, are in the portion of the system that flushes the best. If you had it down in the creek or created a basin, you'd be creating a dead end or adding to impacts within a dead-end area that actually could do more damage downstream than what's currently being proposed under the way that the regulatory agencies look at it.

The flushing of the system they see as a better benefit than putting docks into a dead-end -- into a dead-end system. So by keeping the docks on the outside of the mangroves and maintaining as much of that mangrove habitat as we can on the site, that that actually contributes to the benefits downstream.

HEARING EXAMINER STRAIN: Okay. That's all?

MR. HALL: That's all I have.

HEARING EXAMINER STRAIN: Thank you, Tim.

And, Richard, before we close today, I'd like to run by the exhibits that I am going to add to the record.

Exhibit E would be the graphic presentation that I started out the meeting with; Exhibit F would be the LDC presentation I started out the meeting with; Exhibit G would be the applicant's presentation titled BOCC, underline ADD; and Exhibit H will be the applicant's presentation 10/2/2014 PDFs.

Now, Mrs. Riley's photographs will be added to the record but not necessarily an exhibit.

So do you have anything that you need to add as an exhibit?

MR. YOVANOVICH: I don't believe so other than both packets of information that Tim presented.

HEARING EXAMINER STRAIN: Those are the two packets that Tim utilized during the meeting.



Now, he gave me a third packet titled 2014 03-20 Boundary Survey EX2.

MR. HALL: That was --

HEARING EXAMINER STRAIN: That's the survey that's already been part of the overall packet, so I don't need to bring that in again unless you see a reason to.

MR. YOVANOVICH: No, no. I just wanted to make sure that the first set that I think was 11 slides, that is -- that's duplicative of what we had previously provided, but --

HEARING EXAMINER STRAIN: Well, no. You used it today. What you used today I want entered as an exhibit, unless there's a problem with that.

MR. YOVANOVICH: I wanted -- as I said at the beginning, all of the written documentation that's part of our application materials are already exhibits, correct?

HEARING EXAMINER STRAIN: That's correct, they are.

MR. YOVANOVICH: That's all I wanted to make clear.

HEARING EXAMINER STRAIN: I want to make sure when the board receives this, they see exactly what was presented today --

MR. YOVANOVICH: As well as what was previously --

HEARING EXAMINER STRAIN: -- in addition to what's in the packet, so --

You'll need to use the microphone, Tim.

MR. HALL: One other concern that we had with the packet that goes to the BOCC is that a lot of the exhibits that we've presented are illustrative because they're in color, and I know that the commissioners don't always get those exhibits --

HEARING EXAMINER STRAIN: Oh, no. These will be all given to them in color. Everything that's in color today will be in color when it goes to the board.

MR. HALL: Okay. I wanted to make sure so that we didn't need to provide them.

HEARING EXAMINER STRAIN: No. We're going to do it differently. We're going to make sure everything gets to them exactly as it was seen here today.

MR. HALL: Thank you.

HEARING EXAMINER STRAIN: Okay. Thank you.

Takes us to the end of our agenda. Before we close, I want to thank all of you for being here today. Your input has been valuable. It's helped me a lot, and I very much appreciate the six hours you've had to wait. So thank you all very much for your time today.

And with that, this meeting is adjourned.

Oh, ladies and gentlemen, there will be a decision issued prior to the board meeting. A copy can be attainable from the planner, Fred Reischl, who you are familiar with from your previous discussion.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 3:07 p.m.

COLLIER COUNTY HEARING EXAMINER



MARK STRAIN, HEARING EXAMINER

November 20, 2014 HEX Meeting

ATTEST:  
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 12-11-2014 as presented \_\_\_\_\_ or  
as corrected ✓.

TRANSCRIPT PREPARED ON BEHALF OF  
GREGORY COURT REPORTING SERVICE, INC.  
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.