

MINUTES OF

PALM BEACH COUNTY

BOARD OF ADJUSTMENT

MARCH 18, 1999

100 AUSTRALIAN AVENUE

WEST PALM BEACH, FLORIDA 33406

9:00 A.M. - 10:30 A.M.

APPEARANCES BY BOARD MEMBERS: APPEARANCES BY STAFF:

JOSEPH JACOBS

JON MACGILLIS

CHELLE KONYK

MS. BEEBE, COUNTY ATTORNEY

STANLEY MISROCH

DAVID CUFFE

GLENN WICHINSKY

PETER GOUSIS

ROBERT BASEHART

JOYCE CAI

STEVEN RUBIN

I N D E X

PAGE

BOFA 9900009

Dora Mancuso, to allow the existing glass block windows to be replced with awning windows in the zero lot line wall
 LOC: 10536 Grande Palladium Way, approximately 450 ft. E of Lawrence Rd. and .5 miles N of Woolbright Rd. within the Twin Lakes PUD, in the PUD Zoning District, (PET. 95-092).

4

BATE 9900016

The applicant is requesting a six month time extension for BATE98-60 Condition #2, which requires a building permit to be applied for by December 18, 1998.

5

BOFA 9900017

TBA/Palm Beach Limited Partnership, to allow a reduction in the required number of off-street parking spaces for a proposed golf clubhouse facility. LOC: Vacant parcel, approximately 1 mile S of West Atlantic Ave., and approximately 1 mile E of State Road 7 (aka U.S. 441), and .8 miles W of the Florida Turnpike, within the Delray Training Center PUD Zoning District, (PET. 87-007).

6

BOFA 9900018

S.P.B.C.J.F. Title Holding Co. to allow a proposed Congregate Living Facility building to encroach into the required rear setback and to eliminate the required landscape buffer along the W property line. LOC: Vacant parcel, approximately 900 feet S of the L46 Canal with frontage onto State Road 7 (aka U.S. 441), and approximately .75 miles N of Palmetto Park Road., within the Rainberry PUD, Pod B (aka J.C.C. Adult Day Care), in the RTS Zoning District, (PET. 84-139G).

11

BOFA 9900015

Jerry L. Case, to allow for a reduction in the required acreage for a lot to be rezoned to the RSER zoning district and to reduce the requirement that 50% of the lot be located within .5 miles of the intersection of two existing arterial roads. LOC: Vacant parcel, NW intersection of Southern Boulevard and "E" Road, approximately .5 miles W of Big Blue Trace, in the AR Zoning District

5

BOFA 9800100

The hours of operation shall be limited to
8 a.m. to 5 p.m. The business shall not be
open on Sunday or shall there be any
outdoor activity on Sunday. (ONGOING-CODE
ENG.)

CHAIR PERSON KONYK: I'm going to call the meeting to order. This is the March 18, 1999, Board of Adjustment meeting. And we'll start with roll call and declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. MOODY: Mr. Gilbert Moore?

(No response.)

MS. MOODY: Mr. Raymond Puzzitiello?

(No response.)

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

I have before me proof of publication. And I guess we had published it originally on February 28, 1999, and then corrected it on March 3rd. But it's within the fifteen days, so we have publication on the meeting.

Remarks of the chairman. I think that we're going to move ahead with the meeting even though the court reporter isn't here, and we'll rely on her to use the tape.

I'll make this brief. I think that most people that are here are familiar with how the board conducts its business. There's items on the consent agenda, and there's the regular agenda. Items on the consent are items that have been recommended for approval by staff either with or without conditions. There's no opposition from the public, and the applicant agrees with the conditions, and the board members agree that the item does not warrant a full hearing.

And the items that are on the regular agenda are items that either staff has recommended for denial or the applicant doesn't agree with the conditions or there's opposition from the public or there's a board member that feels the item warrants a full hearing.

If your item is on the consent agenda, once the consent agenda is voted on, you're free to leave.

Next item on the agenda is the approval of the minutes. Everybody received a copy of the minutes. Does somebody want to make any corrections or addition or does somebody have a motion to approve?

MR. BASEHART: Madam Chair, I'll make a motion that the February 18, 1999, minutes be adopted.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Okay. Motion by Mr. Basehart.

Second by Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item is the remarks of the zoning director.

MR. MacGILLIS: Just two comments. One is that, first of all, I'd like to -- and people don't know yet. Peter has resigned. His last day will actually be Friday. He's going to the private sector for an even bigger challenge, we hope.

MR. BASEHART: Where is that, Peter?

MR. GOUSIS: It's down in Boca Raton. I'm changing careers. I'll be working for a small business down there, a Xerox dealer selling copiers and faxes.

CHAIR PERSON KONYK: That's interesting.

MR. MacGILLIS: And I'd like to introduce Joyce Cai.

She's a new Planner II. She comes from the Village of Biscayne Bay.

MS. CAI: Key Biscayne.

MR. MacGILLIS: Or Key Biscayne. Sorry.

She has five years experience there. She has a masters degree in urban regional planning and an undergraduate in architecture. So she'll be -- seeing a lot of her over the next -- while working the staff reports.

CHAIR PERSON KONYK: Welcome.

Sorry to see you go, Peter. But good luck to you.

MR. GOUSIS: Thank you.

MR. MacGILLIS: The only other comment is we're working on the annual workshop. So we should have it to be able to hand it out to you next month, the statistics and -- at that we can -- we'll hand out the typical packet that we do each year. And, from that, we can do a discussion from that.

CHAIR PERSON KONYK: Are there any changes in the agenda?

MR. MacGILLIS: Yeah. There's just the -- item number five, BofA 99-15, that's a thirty-day postponement to the April 15th hearing. We did receive a letter five days prior to the -- this hearing. So, therefore, since this is the first request, it's by right. There's no vote needed on this. So it will be time certain --

CHAIR PERSON KONYK: So isn't that already really under the postponements? It's just not ordered that way because this sticker is on it. When did that sticker come on it?

MR. MacGILLIS: Right. I think it just got put on the regular agenda. Should have been under the postponements.

CHAIR PERSON KONYK: Okay.

MR. BASEHART: They had a bunch of these stickers and they wanted to use --

CHAIR PERSON KONYK: They wanted to use them up. They actually were Peter's, and they wanted to use them up before he leaves. Right?

MR. MacGILLIS: That's the only change.

CHAIR PERSON KONYK: Okay. Anybody else that has a cell phone, turn it off or put it on voice mail or whatever you have to do.

Okay. Anything else? That's it?

Okay. Then the first item on the agenda is two requests for postponement.

MR. BASEHART: One.

CHAIR PERSON KONYK: No. There's two.

I'm the chair.

The first one we've already discussed. It's by right.

The second one, is this also by right?

MR. MacGILLIS: Staff is requesting this postponement. This is the second request. The first one was by the applicant, by right. The second one -- we're asking for a sixty-day postponement to take this to the May 20th hearing.

There's code revision -- I mentioned last month -- that needs to be done that was supposed to be done in April. So this thing could have gone forward on the April agenda. But the board postponed their public hearing to review the ULDC changes. Until those ULDC changes are done, this variance can't move forward. So the scheduled date for the BCC hearing is April 20th. Therefore, they can't make the April hearing, so we've got to carry them over to the May hearing.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: So staff is recommending a sixty-day postponement. So you'd have to make a motion on this.

CHAIR PERSON KONYK: Is someone prepared to make a motion on this item?

MR. BASEHART: So moved.

MR. MISROCH: Second.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by who? Stanley Misroch.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

And we don't need a motion on the other item. It's just postponed, correct?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Okay. So BofA 99-00009 is postponed for sixty days. So that would be the May meeting?

MR. MacGILLIS: Yes. May 20th.

CHAIR PERSON KONYK: May 20th.

And BofA 99-00015 is postponed to the --

MR. MacGILLIS: April 15th.

CHAIR PERSON KONYK: -- April 15th meeting. Okay.

Next item on the agenda is a consent item, Board of Adjustment time extension 99-00016. The applicant is requesting a six-month time extension to condition number two which requires a building permit to be applied for by December 18, 1998.

So they haven't met the condition, correct?

MR. MacGILLIS: Right. So they're applying for a time extension.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: They're asking for it to be extended from February 18th to August 18, 1999.

CHAIR PERSON KONYK: From December 18th or February -- it says here they had a requirement to apply for a building permit by December 18th.

MR. MacGILLIS: If you go to page two on your back-up material there, it should be -- it should have expired February 18, 1999.

CHAIR PERSON KONYK: Okay. So they are here before it expired?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: That's a misprint on the front?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Is the applicant present?

MR. SMITH: Yes.

CHAIR PERSON KONYK: Are these new conditions?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Okay. So these are the original five conditions?

MR. MacGILLIS: Right. It's just an extension on condition --

CHAIR PERSON KONYK: Is there anybody here from the public -- no, because we didn't advertise this, right?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: So do we vote on this whether or not we --

MR. MacGILLIS: Yes, you do.

CHAIR PERSON KONYK: Oh, under the consent. All right.

Well, does anybody have any opposition to this remaining on the consent?

(No response.)

CHAIR PERSON KONYK: Okay. Next item is BofA 99-00017. TBI/Palm Beach Limited Partnership, to allow a reduction in the required number of off-street parking spaces for a proposed golf clubhouse facility.

Is the applicant present?

MS. MORTON: Yes.

CHAIR PERSON KONYK: Your name, for the record.

MS. MORTON: Jennifer Morton with Land Design South.

CHAIR PERSON KONYK: The staff has recommended four conditions. Do you understand and agree with those conditions?

MS. MORTON: Yes. I believe staff is going to modify the first condition.

MR. MacGILLIS: Yeah. Actually, the first condition can -- actually, I just rather it was just modified --

CHAIR PERSON KONYK: You know what. I just want to make a comment real quick. We're relying on the tape recorder today. So if everybody could either speak louder or not shuffle papers, I think it's going to be difficult for them to pick this up.

MR. MacGILLIS: The applicant has provided us documentation to state that the area on the approved development plan, the approved subdivision plan and the approved plat will all be consistent. That's what staff was requesting in this condition number one.

Our only concern is that there's a discrepancy between what is shown on the plat, the site plan and the master plan for this pod. The acreages are different through all three of them, and they have to be consistent.

So we put this condition on there just giving us a statement that it will be consistent; therefore, we don't need the condition. This letter will suffice to satisfy that condition. Therefore, staff can delete condition number one.

CHAIR PERSON KONYK: Okay. So then there's three conditions. And you understand and agree with those three conditions with condition number one being deleted?

MS. MORTON: Yes, we do.

CHAIR PERSON KONYK: Is there anybody here from the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Do you have any letters on this item?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Any member of the board feel that this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: BofA 99-00017 will remain on the consent agenda.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.
ANALYSIS OF ARTICLE 5, SECTION 5.7.E. VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The proposed golf clubhouse facility is located inside an upscaled residential community, the 500-unit Delray Training Center PUD. The overall site consists of 334 single family detached and 166 zero lot line residences with approximate 1,250 residents (2.5 persons/unit). It is designed as a golf course community to allow residents the option to either drive golf carts or walk to the proposed golf clubhouse facility. The facility provides multiple uses within two combined structures, the clubhouse and the tennis center. The facility is private and open only to a limited number of members and the guests (500 member limit for social and 350 member limit for golf membership).

The ULDC requires off-street parking to be calculated for each use anticipating that single destination trips are generated to each use. As stated by the applicants, the residents will utilize more than one of the uses during a single trip. As a result, the parking requirements for the multi-use facility may have been too stringent and in excess of the actual needs of the private membership clubhouse. The limited private membership and the multiple uses within one combined facility during one trip place this application into a special circumstance that is unique to this subject property.

The requested parking space reduction WILL NOT compromise the intent of the code to provide adequate on-site parking.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant has been granted approval of the Delray Training Center PUD master plan including the proposed golf clubhouse facility. This application is requested by the applicant for an approval of the off-street parking space reduction prior to the submitting of the development site plan.

As previously mentioned, the special circumstance is associated with the unique nature of the facility which services multiple uses to a limited private group rather than the public. Furthermore, the proposed design standards and layout of the overall development that each residential pod is aligned along the golf course as well as many residents own their swimming pools will also reduce the actual needs of on-site parking spaces.

Therefore, the requested reduction of the parking spaces will comply with the ULDC parking provision to ensure the proportion to the demand of the off-street parking created by each use.

Other similar type of residential developments have been granted parking variances in the past. The facilities have demonstrated that they can function adequately with a lower number of parking spaces.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. Granting the variance to reduce the overall parking by 12.6% WILL NOT grant a special privilege to the applicant. The current ULDC off-street parking provisions do not differentiate the parking rate for a single use from the rate for multiple uses within a limited private group. The applicant provided the staff with a Parking Statement (see back-up material) that the majority of the golf clubhouse facility members will utilize more than one of the facility's uses during a single trip and thus the parking requirements for the proposed multi-use facility are in excess of the daily parking needs of the private membership club.

In addition, to increase the amount of pavement area and impervious surface that will not be utilized is not good site or environmental planning practices nor an efficient use of the land which could be dedicated to open space and landscaping. It is in the applicant's best interest that the adequate parking be provided to accommodate the proposed activities and this facility is well aware of this. It is also the applicant's position to base on the nature of multiple-use facility for the entire community in order to satisfy the intent of the code and the users' needs.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant has obtained all necessary approvals for this PUD residential development. To redesign the site to accommodate extra parking that will not be utilized on a daily basis would require further delays in site plan review, permitting and construction of the golf clubhouse facility. The land area that is not being utilized for these parking spaces will be dedicated to open space and landscaping to enhance the proposed

amenities. To redesign the parking layout to obtain land area for these 47 parking spaces would result in a loss of land area that can be better utilized to serve the community residents.

5. THE APPROVAL OF THE VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The applicant has clearly demonstrated to the staff that the proposed parking with a reduction of 47 parking spaces is SUFFICIENT to satisfy the needs of the members and their guests. Considering the proposed number of spaces being provided, which is based on the standards for each individual use, the parking variance is minimal in terms of the private nature of the facility and should it be granted, the pedestrian nature of the community will be enhanced.

6. GRANTING OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The general intent of the off-street parking provisions, Section 7.2, is to ensure the provision of the off-street parking in proportion to the demand created by each use. Furthermore, Section 6.8.B PUD parking provision is to ensure that parking areas for multiple commercial uses shall be designed to encourage the pedestrian nature of the community by facilitating a reduction in parking through a sharing of spaces.

The proposed facility is in close proximity to the residents' homes which reduces the needs for parking since the residents can either walk or ride golf carts. Additionally, the clubhouse and recreational facilities are situated on one site (100-foot spacing between the tennis center and the clubhouse) allowing the multiple users to have access to one parking area.

Staff believes that the applicant makes a logical argument that the requested variance WILL BE consistent with the intent of the Comprehensive Plan and the ULDC.

7. THE GRANTING OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The Delray Training Center PUD has been reviewed by various government agencies for consistency with the State and the County rules and regulations. The development order and the preliminary development plan have been previously approved for the overall project complies with all the relevant code and comprehensive requirements. The parking variance IS compatible with the surrounding area which are mainly private residences and open space. Also since this parking variance is for the parking within the clubhouse facility, only internal residents and club members will be affected by this variance and, as previously stated, 327 spaces will be adequate to meet the members/staff needs. The variance is considered minimal in nature if compared with the multiple single-use commercial requirement that is open to the public. Thus

it will not impose any negative impacts on the adjoining areas.

The applicant states that the parking spaces reduced with this request will be dedicated to the open space and landscaping so that the general community residents in the surrounding areas will benefit better from the non-paving area that will not be utilized.

ENGINEERING COMMENT(S)

No comment. (ENG)

ZONING CONDITIONS

1. Prior to Development Review Committee certification of the final site plan for the golf clubhouse facility, the applicant shall clarify the 3-acre discrepancy of the total site area (7.60 acres shown in the approved preliminary development plan dated 11/20/98 and 10.585 acres shown in the proposed site plan of golf clubhouse facility date submitted 2/2/99 for Petition 87-007 and BOFA 9900017). (DRC-Zoning)
2. Prior to Development Review Committee certification, the final site plan for the golf clubhouse facility shall provide tabular information to demonstrate how employees parking calculation were derived. (DRC-Zoning)
3. Prior to DRC certification, the applicant shall ensure the Board of Adjustment conditions are placed on the Site Plan. (DRC-Zoning)
4. The parking variance is for a reduction in a total of 47 spaces. (On-Going)

CHAIR PERSON KONYK: Next item on the consent it BofA 99-00018, S.P.B.C.J.F. Title Holding Company, to allow a proposed congregate living facility building to encroach into the required rear setback.

Is the applicant present?

MS. MORTON: Yes. Jennifer Morton with Land Design South.

CHAIR PERSON KONYK: Staff has recommended three conditions. Do you understand and agree with those conditions?

MS. MORTON: Yes, we do.

MR. MacGILLIS: I'd just like to clarify on the record so there's no confusion later on. On page thirty-seven, the -- for the rear setback, it's required forty. It's proposed thirty-five. The variance is for five. From page forty-four of the back-up material, the applicant was requesting a variance of eight feet.

Staff had spoken to the applicant and clarified that.

They were applying their setback to the overhang instead of the actual building, because you're allowed a two-foot overhang into the setback. So staff clarified what the variance is for. So on page thirty-seven, it's correct; the applicant agrees the variance is only for five feet, not eight.

CHAIR PERSON KONYK: Okay.

MS. MORTON: And we agree.

CHAIR PERSON KONYK: Okay.

Any member of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Any board member feel this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E. VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. This is a 115 acre residential project, known as Rainberry PUD. The master plan supports five pods (A through F) support residential, schools and daycare facilities. The overall PUD is partially constructed (Pod A, Pod D, Pod E, Pod F). This PUD is unique in that it supports a variety of residential and civic uses. This variance application effects Pod B, which is designated as a Private Civic Pod. The Master Plan approved by the Board of County Commission (BCC) has designated Pod B as a private Civic Pod, to support an elementary, middle and high school, also an adult daycare facility. The requested variances are for the proposed rear setback for the adult daycare facility and to eliminate a portion of the required western property line 15 foot landscape buffer. The applicant states that the proposed one-story 23,000 foot daycare facility was designed with the PUD residential rear setback of 20 feet. It was later discovered that a 40 foot rear setback was required for a structure within a Civic Pod. The site has limited design options that would eliminate the need for the rear setback variance. The architect has modified the site layout to reduce the amount of the variance, however, in order to comply with the required parking, landscaping, etc., a setback variance is required. To the rear (south property line) of the proposed building where the encroaching will occur, is a 25 foot landscape buffer, then beyond the property line is Boca Lago PUD. There is a 15 foot right-of-way and a 60 foot preserve and then approximately 230 feet of golf course to the nearest residence.

Therefore, the minor five foot setback variance will not compromise the intent of the code. The request to eliminate a portion of the 15 foot landscape buffer along the west property line between Pod A and Pod B, is a reasonable request. The uses on Pod A (Congregate Living Facility) and Pod B (adult daycare facility) are compatible land uses. The intent of the PUD landscape buffer provisions is to require a 15 foot landscape buffer between residential and civic pods. Generally, the uses proposed on a Civic Pod are not compatible with residential (active park, government uses, etc.) However, in this particular situation the uses are both health care related uses for the elderly population. The landscape buffer would not serve any significant purpose in this situation. Since the sites have been site planned out on a "campus design," visibility and access between the two uses is important to the customer. Therefore, granting the elimination of the 15 foot buffer width will not compromise the intent of the code. Staff is recommending a condition of approval that the required landscaping for the 15 foot buffer be relocated elsewhere on site (parking lot and foundation planting around the adult daycare facility).

Therefore, THERE ARE special conditions and circumstances to this particular use and situation. The proposed use is approved by the BCC and will be compatible with the adjacent uses. The rear setback and landscape buffer elimination variances are unique to this use and structure and if granted will meet the general intent of these code provisions.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant is implementing the Master Plan by site planning Pod B for a one story 23,000 square foot adult day care facility for 90 adults and 20 employees on 34 acre site. The applicant's client hired a professional architect to design the structure and layout the site consistent with the Master Plan. When the structure was designed, the architect had applied the PUD residential rear setback of 20 feet to the proposed structure instead of the PUD civic pod rear setback of 40 feet. The architect has made modifications to the layout in order to attempt to eliminate the need for a rear setback variance. However, the proposed adult daycare center has State building code requirements that must be satisfied with respect to number of rooms, storage, etc., therefore design options are limited. In order to comply with these regulations there are no design options other than designing a two-story structure to meet the rear setback or reduce the total number of rooms. This is not a viable solution since the structure is for elderly people and a two-story structure is not viable. The rear setback proposed is 10 feet, however, the rear setback is measured within the 25 foot landscape buffer along the south property line. Therefore, the applicant is requesting a 5 foot setback variance. The landscape buffer to the rear of the structure will be landscaped with trees and shrubs which will mitigate the minor 5 foot encroachment. Furthermore, to the south of this property is Boca Lago

PUD, which supports a 15 foot abandoned right-of-way, 60 foot preserve and a 230 foot separation created by the golf course before the nearest residence is reached. With respect to the landscape buffer variance, the applicant's request IS NOT self created. The ULDC PUD landscape buffers between residential and civic pods is intended to buffer incompatible land uses. However, in this particular situation the adult congregate living facility on Pod A and the adult daycare facility on Pod (subject of this variance) are compatible and function as one use. Both uses are within the Rainberry PUD and will provide needed services for the residents of this development. The two projects have been designed in a "campus environment" encouraging customers to travel between the two uses for required services. The installation of the required 15 foot landscape buffer between these two uses would create both a visual as well as a physical buffer between the two uses.

Therefore, the two variances ARE NOT self created. The unique situation is created by the designation of the Pod (Civic and not residential). The fact there is adequate separation to the rear of the proposed structure which is created by the buffer and golf course on the adjacent property and the fact the two uses are compatible along the west property line and therefore a landscape buffer is not necessary to meet the general intent of the code.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. The granting of the two requested variances for a rear setback and to eliminate the required western property line buffer between the two compatible land uses WILL NOT be a special privilege. The applicant is requesting the minimum variances that will allow the best use of this parcel of land. The Master Plan has been approved for this adult daycare facility. The applicant was designing the final site layout for the use when it was realized these two specific code requirements could not be satisfied. All other code requirements for the site will be met. The granting of the two variances will recognize the uniqueness of the use and site layout and the fact there is adequate separation between the proposed structure and the structures on the adjoining site to mitigate any negative impacts associated with the variances.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant is requesting the minimum variances that will allow the best use of this property for the future users. Pod B is approved to support a variety of private civic uses for the Rainberry PUD. There will be schools and an adult daycare facility on this 34 acre parcel of land. The daycare facility was originally designed by the architect with a 20 foot rear setback,

however, the required setback is 40 feet. The confusion was related to the fact this Pod B is designated as a civic pod and not residential as assumed by the architects. The architect has explored other design options that would eliminate the need for a rear setback variance. However, even after these modifications to the site layout and structure, a 5 foot rear setback is still required. To require the applicant to comply with the required setback would place a significant hardship and delay in finalizing the building plans and construction of the site since the architectural drawings would have to be redrawn at considerable cost and delays. The architect might have to consider a two-story building in order to meet the setbacks. This is not a viable solution, since the future uses of the site are elderly persons and a two-story building would have more of a visual impact than a one-story encroaching 5 feet into the setbacks. Since there is adequate separation and buffering to the rear (south), the requested setback variance is a reasonable request. The landscape variance is also a reasonable request, since as stated previously, the two uses on Pods A & B will support compatible uses and will provide many services to the same users. Visibility and access to both these uses is critical. The 15 foot landscape buffer would provide both a visual and physical buffer between Pods A & B. Staff is recommending a condition of approval that the required plant material that would have been installed in the 15 foot buffer be relocated to the parking lot and foundation planting around the adult daycare facility.

5. THE APPROVAL OF THE VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The two requested variances are minimal and if granted WILL NOT grant a special privilege to the owner. Furthermore, it will allow a reasonable use of this property and for the permitting and construction to proceed. The rear setback will be mitigated by the 25 foot required buffer and plantings and the open space created by the preserve and golf course on Boca Lago PUD to the south of this property. The landscape buffer variance is a reasonable request since the two uses are compatible and will serve many of the same customers who will travel between the two pods. The landscaping in this particular situation would serve no major purpose to the property owner or future uses.

6. GRANTING OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The approved Master Plan shows Pod B to support a private civic pod. The applicant was in the process of designing the final site plan for this parcel when the two requested variances became evident. The rear setback variance for the proposed adult daycare facility is the result of applying the PUD residential pod setbacks instead of the civic pod. The applicant's architect has explored other design options that would eliminate the need for a variance. However, there are State building

requirements for minimum building requirements be satisfied for this type of use, therefore, the architect is limited to amount of modifications that can be made to the proposed structure. With respect to the western property line buffer reduction the applicant is only proposing to eliminate that portion of the buffer between Pod A and Pod B where the two uses are to be constructed.

The remainder of the western buffer towards the north of this parcel will be installed. The intent of the buffer requirement is to buffer incompatible land uses, however, in this particular situation the uses are compatible and will function as one to provide needed services to the same users.

7. THE GRANTING OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. the two requested variances, if granted, will not be injurious to the area. The rear setback variance will be mitigated by the 25 foot landscape buffer between the proposed structure and the south property line. In addition, the property to the south, Boca Lago PUD, has a right-of-way, preserve and golf course that provides adequate separation between this proposed structure and the existing single family residences. The landscape buffer variance will not be injurious to the public welfare, if granted. This buffer is an internal buffer required along the west property line of Pod A and Pod B.

The ULDC intent is to provide buffering between incompatible land uses, in this case residential on Pod A and private civic uses on Pod B. However, the portion of the western buffer the applicant is requesting to eliminate is located between the Congregate Living Facility on Pod A and the Adult Daycare Facility on Pod B, both compatible uses that will function as one use in providing necessary services to the future residents.

ENGINEERING COMMENT(S)

No comment (ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. By April 18, 1999 or DRC certification, which occurs first, the applicant shall prepare a preliminary landscape plan that reflects the relocation of the required trees and shrubs from that portion of the western landscape buffer elsewhere on site. (DATE:MONITORING-ZONING-DRC)
3. Prior to DRC certification, the BofA conditions shall be reflected on the certified site plan. (ZONING-DRC)

CHAIR PERSON KONYK: Okay. So we have the two items -- three items on the consent agenda; Board of Adjustment time extension 99-00016, Board of Adjustment 99-00017 and BofA 99-00018.

Do we have a motion for approval of the consent agenda?

MR. MISROCH: So moved.

CHAIR PERSON KONYK: Motion by Mr. Misroch.

Second by?

MR. JACOBS: I'll second it.

CHAIR PERSON KONYK: Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Any discussion?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

If your item was on the consent, you're free to leave.

Now, the next item on the agenda is clarification of the intent of condition number eight, BofA 98-00100, the hours of operation shall be limited to eight a.m. to five p.m. The business shall not be open on Sunday or shall there be any outdoor activity on Sunday.

Is the applicant present?

MR. KOEHLER: Yes, ma'am. Dennis Koehler, appearing for the applicant.

And with your permission, Madam Chair, I'll give you a status report?

CHAIR PERSON KONYK: Do we need to have this item introduced by the staff or -- you want to give a quick introduction?

MR. MacGILLIS: This is BofA 98-100. I don't remember exactly when this item was heard, what date.

CHAIR PERSON KONYK: It was two meetings ago, wasn't it?

MR. KOEHLER: January 21.

MR. MacGILLIS: January 21 for a rear setback for a proposed storage area that was encroaching into the side setbacks.

The applicant was granted the requested variance with conditions approved by the board. The applicant is requesting clarification of specifically condition number eight, which limited the business operations between the hours of eight and five.

The applicant would request the board clarify exactly what they meant by limiting the hours of operation for the site.

Staff has not done any -- other than provide you with the back-up material, because we believe it's the board's role to just clarify what the condition is.

CHAIR PERSON KONYK: Okay.

There were several conditions on this item. Have they all been complied with other than this condition?

MR. KOEHLER: I'm prepared to give you a report on that.

CHAIR PERSON KONYK: All right. Let's start with Mr. Koehler.

MR. KOEHLER: Thank you. Good morning, Madam Chair,

board members.

I'd like to ask you to turn to -- I think it's the fifth page of your back-up. It's a report written by Mr. MacGillis. And it has my initials at the upper right dated 1/25/99.

And I think it would be appropriate if we start to tell you how we're doing as far as these conditions are concerned.

CHAIR PERSON KONYK: My mistake. I should mention that the only people that are eligible to vote on this item are people that were at the original meeting. And I'll just read those off so everybody's aware. It's Chelle Konyk, Glenn Wichinsky, Robert Basehart, Stanley Misroch and Steven Rubin.

So Mr. Jacobs you'll be --

MR. JACOBS: Silent.

CHAIR PERSON KONYK: Well, not silent. Listen, take notes, and keep it in mind for the next time.

Okay.

MR. KOEHLER: Thank you, Madam Chair.

Again, if the board has the two-page report that Mr. MacGillis had assembled listing the ten conditions. My notes that you see on there simply say to Jon that they were acceptable. I'd like to tell you where we stand with regard to those provisions before we get to the reason that we're here today.

The first condition required installation of these landscape buffer materials by March 21st which, of course, is only three days away. The work has not been completed simply because we have not yet, I don't believe, obtained final site plan approval.

You'll recall that once you have an approval from the board of adjustment of that site plan, your board, in its wisdom, said, we want you to go through the development review committee site plan approval process, signature-only process. And that process, to my knowledge, has not been completed. I say, "to my knowledge," because I've left messages with the site planner David Kier -- you may recall he testified on January 21st -- last night and this morning. And I haven't been able to reach him. So I can't tell you if it has been -- that is, the site plan has been approved yet.

Clearly, the plan has to be approved before these materials can be installed and the planter erected.

And, of course, item number two is related. It says that the CBS wall has to be architecturally treated on all exterior sides to be compatible with the neighborhood. That is well understood by our contractor. Again, I think the satisfaction of these two conditions is directly tied to the site plan approval.

If I might jump ahead to condition number eight. This required us to submit by February 21 the final site plan to the development review committee. That application was submitted. There were discussions with staff back and forth. I believe that the final application -- my notes may be incorrect. I talked with David Kier on March 11th -- that the file revisions requested by staff were submitted to them on March 12th, which is last week. Since this was a signature-only application and since all of the comments of staff have been incorporated in Mr. Kier's final plan -- which, by the way, included the provision of an additional twenty

trees on the site over and above what you saw. If it was a signature-only approval, that should have actually taken place last week.

Again, I've not gotten answer from Mr. Kier as to whether or not that site plan has been approved. Certainly, it was initially submitted before the February 21st deadline. And the final package, Ms. Fusuw Mutgon was the site plan reviewer. She received that on the 12th of March, just last week.

If I can go back up to the conditions. We talked about two.

Number three, the illegal point of purchase sign along Vicliff Road had to be removed by February 3rd. That was done before February 3rd, in fact, before I appeared before you last month.

Number four talks about how to maintain the gates. And that is being done right now. That is the maintenance at a width not to exceed fifteen feet during business hours. Of course, the gate setback presented to the board of adjustment, that can't be installed until after the final site plan is approved. So we can't tell you that -- that setback, which you may recall, was involved with construction of some new fencing and a gated entrance shifting of the location. That has not yet been completed.

Of course, there is no deadline for compliance on that. It just says that this has to happen. I think the board understood and Mr. MacGillis understood that we had to have site plan approval and construction of other improvements before that gate could be installed.

Condition number five simply says that when the site plan is finally approved, the building Division has to receive those plans as Exhibit 45 was presented to you on January 21st. Of course, you understood there would be some adjustments. And, in fact, they have been made. At the time that we do submit -- which really ought to be happening today, if at all possible, it will be done according to condition number 5.

We talked about condition number eight, requiring the submittal of the final plan. I'm representing to you that that was initially submitted --

CHAIR PERSON KONYK: That's number six, Dennis.

MR. KOEHLER: I'm sorry?

CHAIR PERSON KONYK: That's number six.

MR. KOEHLER: Thank you. You're right. It looks like eight here.

Condition number six. That was submitted prior to the February 21st date. And, again, I hope that it's been approved by signature-only today.

Number seven, of course, simply is one that's an ongoing condition.

Number eight is why we're here, and we'll talk about in a minute.

Number nine and number ten have to do with ingress and egress to the site, one-way signage and so on. And I'm prepared now to pass out to you photographs that show that we've done that. The five photographs are, first of all, one, a sign that was posted on the side of the building saying quiet area.

CHAIR PERSON KONYK: I'd just like to have the record reflect that we're accepting these photos.

MR. KOEHLER: Yes. I'd like to ask the board to

accept as Petitioner's Exhibits 1 through 5, five photographs taken of the site by my client on -- looks like -- I can't tell the date from these photographs, but it was certainly in the recent past.

The first photograph is of the quiet sign posted on the building. The second is a sign that I know the board was interested in. It says, Williams Soils and Sod entrance only, one way. Also has the quiet area. That's on the main entrance to the project. Clearly marked, no exit.

On the inside of that same fence on Vicliff Road is a sign that says absolutely no exit. You will recall the neighbors were concerned about tracks backing out on to the street where the exit is on the south end of the property. Here it is clearly marked exit. And then the flip side of that south fence says exit. Please use -- please enter other side.

So we have satisfied the last two conditions, nine and ten, of your variance approval.

Again, board, if you have any questions about where we stand before we get to the hours of operation, I'll be glad to take them at this time. I'd like to suggest that we're making good-faith compliance with all of the conditions that you imposed.

CHAIR PERSON KONYK: Since you opened the door, Jon, what is your opinion on the meeting of the conditions and his explanation of why it's not possible to meet condition number one?

MR. MacGILLIS: I don't really see why condition number one can't be met because it was just taking the planter and revamping it. I guess his understanding is that it can't be done until the DRC is certified. I mean, they're not touching that side of the site, so...

MR. BASEHART: Do they need to do any construction to expand the planter?

MR. MacGILLIS: No. It's just going to be like a liner inside the back of the planter.

MR. BASEHART: So no permit would be required?

MR. MacGILLIS: Are you going to require a permit to do -- I don't know exactly what David Kier's doing with that thing. I haven't --

MR. KOEHLER: And I apologize, board members, for not having Mr. Kier here this morning to answer your questions directly.

The condition does require the planter to be designed to include irrigation, and that would involve installing of some irrigation lines. And I think our position had to be, let's get final approval of this plan before we actually make physical improvements.

Again, today's the 18th of March. My fond hope is that the site plan has been approved. And over the next couple of days, my clients will have this construction of the planter, the installation of these materials begin. I would say that's a matter for our continuing attention; and we'll keep you posted, Jon, as to how we perform on this.

MR. MacGILLIS: The procedure is once it's a time certain condition, that's why you get those BATES that come back here, the board of adjustment time extensions, the applicant applies for a time extension before it runs out saying, for reasons beyond my control, I can't comply with the condition. No application has come in for that;

so, technically, if you're following our standard procedure, this condition is going to be overdue as of -- if it's not in.

CHAIR PERSON KONYK: He's got four days to complete, correct?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Or three, March 21st.

MR. KOEHLER: What I will do, Madam Chair, I will -- and, Jon, I appreciate your reminding me what the requirements are.

If we don't have the work completed by this deadline, I will ask for a reasonable time extension; and I would submit that to Mr. MacGillis. Is that correct?

MR. MacGILLIS: It's going to come in here. There's a formal application that has to be filled out and justification and everything. It's called a board of adjustment time extension application.

CHAIR PERSON KONYK: This photo is what addresses that first condition?

MR. MacGILLIS: No. That's regarding condition number two.

CHAIR PERSON KONYK: Oh, okay.

MR. MacGILLIS: Condition number two is the exterior of the wall that faces the property to the east. I mean, I don't see what that has to do -- that's just going over there and putting plaster and painting the wall. The exterior of the wall that faces that residential lot, the Hodge's property to the east -- I mean, that's March 25th. I mean, that could be done between now -- if it isn't, that picture just shows that's exactly the way it was when they came in for the variance. There's nothing been done to that wall.

CHAIR PERSON KONYK: The requirement is that they do what?

MR. MacGILLIS: They stucco it because it's not finished. It's just the exposed CBS blocks. They're supposed to go over there and put a stucco on it and then paint it so it's architecturally compatible with that adjoining property. Right now, it's unfinished, and that's a code requirement that a wall be finished.

MR. KOEHLER: Once, again, we've got seven days to satisfy that. And we will either satisfy it or file the request that Mr. MacGillis has told us must be filed.

CHAIR PERSON KONYK: Okay. And?

MR. MacGILLIS: Condition three is done. I checked that yesterday. I went out to the site. It's been removed.

Condition four is going to be contingent upon the DRC certification. And I have Fusuw Mutgon here, the acting principal planner of the DRC section. She can answer any questions as far as the status of the DRC certification.

Condition five. Condition five, I guess it's contingent upon the final site plan because Fusuw is going to address that. Actually, DRC is making them put in some additional landscaping on-site to just meet minimum code.

Number eight, they did submit -- Fusuw indicated to me by the February 21st deadline and --

CHAIR PERSON KONYK: Number six?

MR. MacGILLIS: Number six. That looks like an eight.

She can comment on it as far as what the status is. Number seven is ongoing.

Number eight we're discussing here today.

Number nine. I did see signs on Vicliff indicating one way. I didn't go around to the Dale Road.

Is there a sign on that side as well?

MR. KOEHLER: The sign is on the gate. That's what I showed --

MR. MacGILLIS: Right. There's supposed to be one on Dale Road as well. I didn't go around that side of the -- there is a sign hanging on the fence that I have a picture in there on Vicliff saying one way --

CHAIR PERSON KONYK: Is this the Picture?

MR. MacGILLISH: Right. That sign right there where your -- right there.

CHAIR PERSON KONYK: Was this car just entering or was it parked?

MR. MacGILLIS: It was parked when I took that picture.

CHAIR PERSON KONYK: Isn't this supposed to be closed or something?

MR. MacGILLIS: When they get everything finished, yes.

CHAIR PERSON KONYK: I mean, aren't these gates supposed to --

MR. MacGILLIS: They're going to move the gates in. But they've got to get that final DRC certification to show where they're going to put the gates in. So they're going to have to move that.

CHAIR PERSON KONYK: This wasn't a problem. You're just showing the signs here?

MR. MacGILLIS: Right, to show that it was okay.

CHAIR PERSON KONYK: You didn't take this picture to show us that the gate is open?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Because we're going to let them wait until they get the gate moved to enforce that requirement?

MR. MacGILLIS: Right. Because they've got to move it and then landscape around it.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: So as far as Dale Road, Dennis, is there a sign on Dale?

CHAIR PERSON KONYK: Yeah. There's a picture here showing it.

MR. KOEHLER: There's a sign on the gate.

MR. MacGILLIS: That's Vicliff. That's not Dale.

CHAIR PERSON KONYK: What about --

MR. KOEHLER: There's a sign on the gate where you come in off of Dale Road --

MR. MacGILLIS: Okay. That's right.

MR. KOEHLER: -- and then you come to the gate.

MR. MacGILLIS: Right.

MR. KOEHLER: That's a distance of a hundred feet.

MR. MacGILLIS: That's the intent.

MR. KOEHLER: That's where the sign is.

MR. MacGILLIS: Right. That is --

CHAIR PERSON KONYK: Why don't you take those pictures over there --

MR. MacGILLIS: -- satisfied.

CHAIR PERSON KONYK: -- so you can all have a look at them.

MR. MacGILLIS: I'd say condition five is satisfied. Fusuw, if you can address just the status of the DRC

certification of the plan.

MS. MUTGON: Sure. These submitted prior to the first -- they called me prior to 21st and they said they board of adjustment conditions. So we have to submit prior to 21st. And I think the 20th, they came and submit. I took it then.

The site plan had not met our presentation requirements as far as DRC was concerned, so we made them make some revisions on the site plan. And now they are on the agenda for the 28th meeting this month. So next Wednesday, we are hoping that they are going to get certified.

MR. KOEHLER: May I ask a question?

I know -- I think it was Mr. Basehart who suggested that the DRC site plan review be signature-only.

MS. MUTGON: It is signature-only.

MR. KOEHLER: So my question was: How is it that it's going to the DRC on the 28th?

MS. MUTGON: Well, signature-only is a DRC review. It's only shortened. The time period is two weeks instead of five weeks.

MR. BASEHART: What happens is the staff, when you submit the signature-only application, identifies which agencies on the DRC would be effected by the plan. Then you have to hand carry a sign-off sheet and the plans around, get their signatures. Then they just stick it on for consent at the next DRC meeting.

MS. MUTGON: Yeah. Not necessarily, but...

CHAIR PERSON KONYK: Hopefully.

MS. MUTGON: Hopefully, yes.

MR. KOEHLER: The way we would like things to work. So that means it's the 28th, Fusuw?

MS. MUTGON: 28th will hopefully be the date, yes, that they'll certify.

MR. KOEHLER: Well, then it becomes clear, board members, that we will have to submit an application for a time extension to satisfy board of adjustment deadlines given what Ms. Mutgon has just told us. Not for everything --

CHAIR PERSON KONYK: Right.

MR. KOEHLER: -- but certainly for installing the landscape materials. Obviously, you wouldn't want us to install materials before we have final approval of that plan unless, I suppose, the staff is willing to tell us go ahead and do that.

MS. MUTGON: Excuse me?

MR. KOEHLER: I guess my question to you, Fusuw, would be: Do you feel that the site plan that you've seen with all the landscaping would be sufficient for my client to actually apply for permits to install those things?

MS. MUTGON: We haven't completed the review yet because we recently received the revised site plan and we're going to work on it. Because it's a signature-only, our review kind of is delayed always.

CHAIR PERSON KONYK: The landscaping does not require a permit.

MS. MUTGON: Yeah, it does.

CHAIR PERSON KONYK: Why?

MS. MUTGON: We always have a landscaping permit submitted for landscaping.

CHAIR PERSON KONYK: On private property?

MS. MUTGON: Sure. I mean, it's a commercial

property.

MR. BASEHART: You don't have to do it at your house.

CHAIR PERSON KONYK: I don't?

MR. BASEHART: Not yet.

MR. KOEHLER: Chelle, you can't lift a finger without getting a permit in Palm Beach County today.

MS. MUTGON: The western portion of the property, if I remember correctly, the existing portion, did not show landscaping. And we asked them to continue with the same landscaping that was required by the board of adjustment to have consistency along -- I don't remember what road. So they agreed with that. They showed additional landscaping trees on every thirty feet of center and a hedge, I think. So far everything looks fine.

CHAIR PERSON KONYK: But, for instance, for him to file for an extension, by the time we get here, he's probably going to have met the requirement, correct? I mean, we'd hear the extension at the April meeting.

MR. MacGILLIS: I notice here as well, if he applies for extension, not to be asking for six months on these conditions, if he does.

CHAIR PERSON KONYK: Hopefully, this will be completed by the next board of adjustment hearing because if this is --

MR. MacGILLIS: He should file an application now --

CHAIR PERSON KONYK: Right.

MR. MacGILLIS: -- with the way that these conditions --

MR. KOEHLER: I agree.

CHAIR PERSON KONYK: So he can always withdraw that?

MR. MacGILLIS: Exactly. He can say, I've complied.

MS. MUTGON: Excuse me. I'll just correct what I said. It's not -- the next DRC meeting is on the 24th, not on the 28th.

MR. KOEHLER: 24th. Good.

MS. MUTGON: Next Wednesday.

CHAIR PERSON KONYK: Anything else? Dennis?

MR. KOEHLER: I say thanks to Fusuw for giving me that update on what our site plan status is. We appreciate that. And I will follow through on the time extension application to make sure there's no problems. Certainly, the neighbors have every expectation that we're going to follow all the code requirements.

Board, if you have no more questions about the other conditions, then I think it's appropriate to address condition number eight. And I'll try to be brief. I know this is a public hearing. I'd like to think that I've submitted a number of documents to you so far, some of which were mailed to you at home, others were introduced in the record during the February meeting, that support our contention that the operating hours of restriction which was suggested at the last minute on January 21st is reasonable so long as it applies only to heavy equipment operations, the type of operations that produce the noise that the neighbors, I think properly complained about; the dump trucks backing up and shaking, the sod trucks -- the eighteen-wheelers coming in and unloading. And we think that that's the kind of activity that is reasonable to limit to the hours of eight to five.

I had a very brief memo that I faxed over to staff on February 26th addressed to all of you. It's one of the early pages in the document. I'll just skim over that. I

thought that the term heavy equipment ought to be defined by a professional. I called our county -- used to be called the motor pool. Now it's the fleet management department. I love that Doug Wikeman. And he was kind enough to not only explain some pretty terrific credentials that he has, serving on the National Association of Fleet Administrators, but giving me detailed description of what heavy equipment is as far as it's defined by this national organization.

And for record purposes and also for the benefit of the neighbors, I'd like to read what we're proposing should be condition number eight. The hours of heavy equipment operation -- again, we've defined it here earlier -- shall be limited to eight a.m. to five p.m. The business shall not be open on Sunday nor shall there be any outdoor activities on Sunday.

Here's the new language. For the purpose of this condition, heavy equipment shall mean, tractor/trailer trucks, dump trucks and any other multiple-axle vehicles that weigh two and a half tons or more or are included in the definition of Class 8 trucks exceeding thirty-three thousand gross vehicle weight rating as established by the National Association of Fleet Administrators.

Let me point out something that I'm sure is obvious to you. We do not wish to have the little bobcat, the little front end loader that Mr. Randel's company uses to catch those early morning landscape contractors who come in, say, at seven-thirty and ask for a pallet of sod to be loaded into the back end of their truck. That doesn't produce the kind of noise that has ever been the source of any complaints. The neighbors, of course --

CHAIR PERSON KONYK: Wait a minute. The people in the audience are going to need to be quite. You'll have an opportunity to speak. Okay?

MR. KOEHLER: Now, I understand the fact that the neighbors are -- they have to believe that this is an opportunity for them to come up with some new arguments about noise. Let me assure you that never before have any neighbors offered any complaints to the county about noise of these little front end loaders, about complaints that the county ought to restrict the operating hours of this whole facility to not starting before eight o'clock or not running after five o'clock. And I examined the complete record. Their complaints, legitimate, had to do with these heavy equipment -- the dump truck and the truck and the sod delivery vehicles, the dust and the noise pollution which you addressed by the conditions of -- that you required involving the site plan; the very heavy landscape vegetation, the wall and so on.

So I would respectfully suggest to you that if you hear today some complaints about Mr. Randel's bobcat loading -- causing noise for his neighbors by loading a pallet of sod on to a pickup truck, first of all, that's the first time you will ever have heard such an argument.

But, secondly, that kind of noise we suggest is more than adequately addressed by the tremendous landscape buffer program that is about to be installed.

That's really it, board members. My clients, of course, are here. Mr. Nick Randel, his mother Ms. Georgiana Randel are both here to answer any questions that you might have about the business. I know Ms. Randel is eager to remind you that all businesses on Military

Trail are allowed to open at seven o'clock. And, in fact, Williams Soils and Sod has been doing so for over forty years.

So with that, board members, I'll take your questions or we'll look to comment from the public.

CHAIR PERSON KONYK: Any questions from the board? Steve? Did you have a question?

MR. RUBIN: I guess I can ask the applicant. Did you look into or is there available section of the code which restricts audible noise levels, decibel type of things, for a residential zone which could be inserted in the condition in any workable way?

MR. KOEHLER: Yes. There are such limitations. In fact, the county code enforcement folks sent a code noise inspector out to the property back in the summer of 1997.

I can't remember off the top of my head what the limit is. I think it might be sixty-five decibels is the county's noise limit. And that limit was not exceeded by the operations that were measured back in the summer of '97.

MR. RUBIN: If that were an added condition for the additional hours, would you have any objection to that?

MR. KOEHLER: When you say -- actually, it's a county-wide standard right now. So we have no objection.

We would -- we continue to comply with the standard, and we will do so in the future.

MR. RUBIN: I didn't know whether -- because they're commercial and this is residential, whether they would apply the commercial limit or the residential limit.

MS. BEEBE: It's actually the sound that is admitted into a residential area. It actually applies to where the noise is being admitted into. If it's a residential property, then that would be the limitation.

MR. KOEHLER: Ms. Beebe is correct. The standard applies to the emission of sound on to residential property.

MR. MacGILLIS: For the board's information, I've asked Cindy MacDougal to come here. She's been monitoring the site for several months now, I guess. So if you have any questions regarding what's going on in the site, she can -- as far as -- I guess you're familiar with the readings that were taken out there?

CHAIR PERSON KONYK: Mr. Wichinsky would like to ask her --

MR. WICHINSKY: I would like to ask her a question, if I can?

CHAIR PERSON KONYK: Sure.

MR. WICHINSKY: If we're going to revise this condition, I'm just curious how code enforcement can address enforcement of the condition. Can -- we're talking audible levels which can be tested?

MS. MacDOUGAL: Right.

MR. WICHINSKY: Code enforcement would be aware of the various class of vehicles and so on that Mr. Koehler is suggesting?

MS. MacDOUGAL: We do have a listing from the highway department as to the general classifications of the vehicles as to, like, if it's a C 250 or 2500, that has a certain weight limit, a certain size. We do have a listing of that. We do have a -- several gentlemen who are trained in the noise readings. The noise reading that was taken was done on a Sunday because we had had complaints. And it happens that, yes, they were within

normal range because they weren't open that Sunday. Our inspector sat out there for three hours.

MR. WICHINSKY: I think what the board would want to do is to have any final condition in a form that can be enforced and that can be identified if any actions are in violation of the variance -- of the condition.

MS. MacDOUGAL: Our means of enforcement is to take them before the code board, find them to be in violation and set a fine. And when the fines -- after three months, they're turned over to a collection agency or foreclosure or whatever. That's our only means is a fine. Or to take it back to -- we can take it back and have any conditions removed in that -- and ask to have it done, back to the BCC or to you.

MR. BASEHART: One other option, the zoning -- the public hearing section of the zoning division does it. You know, maybe we need to start looking into some specific code enforcement or condition enforcement language which would result in a rescinding of a variance if conditions of approval are not complied with.

I mean, basically, when we put conditions of approval on the approval of a variance, we intend that those conditions are imposed to mitigate an impact that the granting of the variance might have. Otherwise, they wouldn't be legitimate conditions. And if those conditions aren't followed, then the mitigation that was intended to secure the variance wouldn't be there. And, therefore, you know, there should be a mechanism where either automatically, and if that's not possible, code enforcement division of this department or the board of adjustment staff should be able to bring violation or noncompliance with conditions back to us so that we can then vote to rescind a variance, if warranted.

MR. MacGILLIS: Actually, we do have that set up now. We really enforce the BofA conditions. We had one where that nursery was approved, just recently came back up where you gave them another year to implement that nursery on that site. We went out there and the nursery wasn't in. So they established it within a week because we were going to bring it back here to revoke the approval for the mobile home that was on ten acres that was only granted if they had a bona fide nursery there. And they had two years to do it, and they didn't do it. So the nursery went in in three days.

CHAIR PERSON KONYK: I would like to ask the county attorney to clarify for all of us, again, exactly the procedure that we're to take on this issue. What are we here to do today?

MS. BEEBE: The only thing that you're doing is clarifying what hours of operation means in that condition that was placed on Mr. Koehler's client. You're not going back and redoing the entire hearing. That's the only thing that you're addressing here.

CHAIR PERSON KONYK: Right. Are we only relying on testimony that was given before, or can we take into consideration everything that's said today as well?

MR. BASEHART: I think we need to get back into the heads of the people that voted on the variance.

CHAIR PERSON KONYK: Right.

MS. BEEBE: Because Mr. Koehler has had an opportunity to speak, the neighbors are also going to have to be given an opportunity to speak.

CHAIR PERSON KONYK: I'm not talking about that. I'm talking about on -- you know, he's brought in some information concerning decibels and vehicles and those things. I mean, I think they're pertinent to the situation, and I'd like to be able to consider them when I make my --

MS. BEEBE: I think that's relevant to what you may have intended in your original --

CHAIR PERSON KONYK: Okay. That's what I wanted to clarify.

Do you have anything else to add, Mr. Koehler?

MR. KOEHLER: Nothing.

CHAIR PERSON KONYK: Staff do you have anything to add at this point?

(No response.)

CHAIR PERSON KONYK: Okay. Then we'll open to the public, and we'll swear in anybody that's going to speak.

Anybody that's going to speak, please stand and raise your right hand. That's it? Two people? Just everybody raise your hand just in case you might speak.

MR. BASEHART: Dennis, you too because -- you didn't lie, did you?

MR. KOEHLER: Absolutely not.

CHAIR PERSON KONYK: We'll assume that everything to this point was the truth.

(Thereupon, the audience members were sworn in as

well as Mr. Koehler.)

CHAIR PERSON KONYK: If whoever's going to speak would like to approach.

MR. NEWBERRY: Good morning, board. I stood here on the 21st of January at the last variance board hearing.

CHAIR PERSON KONYK: Your name for the record.

MR. NEWBERRY: K.J. Newberry.

And I specifically dealt with the bobcat situation. Stood here in front of the board and told you how they operate this machinery at three-quarters throttle so that they get maximum lift. Does this ring a bell? We were talking about this.

One of the noisiest machinery on that property is the bobcats. Now, why Mr. Koehler would stand here and say we said nothing about that when it's on the record we did? This is the noisiest piece of equipment out there. Why would we omit objecting to that?

And, you know, secondly, nothing's been done. You can put all the signs you want up on -- you can put a hundred more signs, but it's not doing anything. They're still driving out on to Vicliff bringing all the dirt and the mud out on --

CHAIR PERSON KONYK: That's a code enforcement issue. That's not what we're really here to discuss. We're here to discuss the clarification of item number eight. Code enforcement issues you need to take up with code enforcement. I would suggest that you get pictures of this activity and submit them to code enforcement.

MR. NEWBERRY: We have that.

CHAIR PERSON KONYK: Okay.

MR. NEWBERRY: After the last hearing when you, in your wisdom, very thoughtfully insisted on the hours being regulated, it was fantastic when they eventually complied.

Now, for the first two or three weeks, we were continually calling Cindy MacDougal complaining that they stand here and they go, yeah, yeah, yeah; and then they go

back out there, nothing.

CHAIR PERSON KONYK: So what you are saying is that the bobcats do create a noise factor --

MR. NEWBERRY: It's one of the worst noise emissions coming off the property.

CHAIR PERSON KONYK: So then are you okay with the semis? I'm just kidding. I'm just kidding, honestly.

MR. NEWBERRY: Let me just tell you about attitude.

CHAIR PERSON KONYK: I don't want to know about attitude. All I want to know is --

MR. NEWBERRY: Last week, the young Mr. Randel jumped on to the wall, shouted at this woman over here saying, you can take all the pictures you want; it's not going to do a thing. This is the kind of attitude.

CHAIR PERSON KONYK: Okay.

MR. NEWBERRY: And it goes on ten-fold. I mean, I can give you hundreds. I mean, we don't have enough time.

CHAIR PERSON KONYK: Did he exceed the decibels when he did that?

MR. NEWBERRY: Vocally? Yeah. And obscenities, you know, are continually coming out of the yard.

CHAIR PERSON KONYK: The point you're making is that you do have a problem with the bobcats before eight a.m.?

MR. NEWBERRY: You know, to be able to wake up in the morning, collect one's thoughts, drink one's coffee, prepare one's mind for the day instead of the first noises you hear being heavy equipment, bobcats, crashing, banging, obscenities and everything else that goes along with this business. It's profound.

I mean, to be able to regulate these people to holding the noise emissions and not starting before eight. Now, they finally started doing that. But Cindy MacDougal will tell you, we were calling them -- I mean, we are so frustrated. This has been two years. We are continually being kicked. It's like we have no rights. All we are are law abiding, tax-paying citizens that are to be abused by big business and two-hundred-and-fifty-dollar-an-hour lawyers that can't tell the truth. We're really tired of it.

CHAIR PERSON KONYK: Is there somebody else that has something they want to say?

MR. WICHINSKY: Is that what you charge them?

CHAIR PERSON KONYK: Dennis, is that what you charge?

MR. KOEHLER: No.

MR. NEWBERRY: I can't even buy socks.

MR. KOEHLER: In fact, I'm not charging my clients for this whole appearance.

CHAIR PERSON KONYK: Dennis, you have socks on, don't you?

MR. HODGE: My name is Joel Hodge. I live next to the wall there. I believe you answered my question on the reason they haven't hired a landscaping; there's some cause here or some reason.

CHAIR PERSON KONYK: They need to get the site plan through DRC is what they're telling us. And as soon as that's done, they've agreed to comply.

MR. HODGE: And, of course, as the other neighbor said, we do have the noise and all this stuff. And the gate, the signs on the gate, is useless because nobody does anything about it. And when they open the gate --

CHAIR PERSON KONYK: Okay. We're here to talk about the noise between seven -- whatever time.

MR. HODGE: Seven -- yeah. And they --

CHAIR PERSON KONYK: That's all we're here -- I understand that you have a complaint, a problem with it. And, honestly, it's a code enforcement issue.

MR. HODGE: All right. That was my main thing, okay. Thank you.

CHAIR PERSON KONYK: Thank you.

MR. WICHINSKY: Chelle?

CHAIR PERSON KONYK: Hu?

MR. WICHINSKY: I'd just like to bring notice to the board. You may want to look on your minutes of that meeting, bottom of page seventy-eight, top of page seventy-nine, just supporting Mr. Newberry's comments that he did, in fact, bring up the bobcat issue in his concerns in that meeting.

MR. KOEHLER: Madam Chair?

CHAIR PERSON KOEHLER: Yes.

MR. KOEHLER: I realize that I'll have a chance to rebut later. I would just simply point out that Mr. Newberry in his testimony did mention bobcat equipment, but he called it heavy equipment.

MR. NEWBERRY: That's what it is. Based on the sounds coming out, it's heavy equipment. That's --

CHAIR PERSON KONYK: You can't talk unless you're at the mic and it's okay. That's okay.

Does anybody else want to speak?

MS. NEWBERRY: I have a quick word.

CHAIR PERSON KONYK: Your name, for the record.

MS. NEWBERRY: Sandy Newberry.

Mr. Koehler submitted photos of the one-way system and how wonderful it is. Could I submit some photos in rebuttal?

CHAIR PERSON KONYK: Is it a code enforcement issue?

MS. NEWBERRY: I don't really know.

CHAIR PERSON KONYK: You need to submit those to code enforcement, honestly.

MR. BASEHART: I think what everybody needs to understand is what we're here to do today is to talk about one condition, the hours of operation. The other things were -- nobody's questioning those conditions.

CHAIR PERSON KONYK: He was letting us know just that there was a general compliance with the conditions that have been imposed by the board, which was the signage. And if they're violating that, that's a code enforcement thing. And that's the avenue that you take.

Cindy MacDougal is waiting for your phone calls. I know she is.

MS. MacDOUGAL: I've talked with them previously.

MR. WICHINSKY: Bob?

MR. BASEHART: Yes.

MR. WICHINSKY: When we talk about hours of operation, I guess we're keying in also on what does operation mean?

MR. BASEHART: Right.

CHAIR PERSON KONYK: Is there anyone else from the public that wishes to speak?

(No response.)

CHAIR PERSON KONYK: Okay. I'm going to close the public portion of the hearing at this time.

MR. KOEHLER: Madam Chair? Would it be useful -- Mr. Wichinsky just asked a question about the nature of the business operations. Mr. Randel is prepared to tell you

what he normally does from seven o'clock to eight o'clock and after five. That might be useful to you as to why we don't want to be limited to eight to five for everything.

CHAIR PERSON KONYK: Okay. I'd appreciate hearing that.

MR. RANDEL: My name is Nick Randel. I'm one of the owners of Williams Soils and Sod. Basically, we open at seven o'clock in the morning, have done since the year 1954, not in that one position, but the place over there.

Normally, when people come in --

CHAIR PERSON KONYK: Were you born in 1954?

MR. RANDEL: No.

CHAIR PERSON KONYK: Okay.

MR. RANDEL: No. No. Close but not there.

MR. BASEHART: How long have you been operating on this site?

MR. RANDEL: This site I think it's close to two years; and the site previous to that, which was east of there, one lot or one section, certainly since I've been here fifteen years. And previous to that, I'm not sure.

CHAIR PERSON KONYK: Okay.

MR. RANDEL: Basically, what happens is, people come in to pick up sod, landscapers, lawn maintenance people. They come in to purchase pieces of sod; twenty, thirty, forty, eighty, whatever it may be. Some people require a half a pallet of sod. Some people require a full pallet of sod, all variations of that, bag of top soil, bag of mulch, that type of thing, which is basically all that we're doing at this moment in time before the hour of eight o'clock.

At the end of the last meeting, this area wasn't clarified on the hours. The times weren't there. And I asked Mr. Verner at the time, I said, what can I do? I asked him what I could do. He said, you can open at seven o'clock as of that moment in time. Just do not operate any machinery before the hours of eight o'clock, which is basically what we have been doing. All we have been doing -- it's not like we get fifty people come in between the hour of seven and eight.

But we have -- people are used to us being there at eight o'clock, one, to get out early, obviously to beat whatever heat is there, especially in the summer months. The lady over here, I'm sorry, has been doing checks. We know that she's there. She knows that we're here. Whether or not she's prepared to vouch that we're not starting machinery until eight o'clock in the morning, I don't know. But, certainly, since the end of the last meeting, we have not started any machinery before the hours of eight o'clock.

And maybe -- I don't know if the lady has been there in the last month. I don't know. But this is what we're basically doing. We are just trying to be open to service customers we have had for many many years. And you have people such as Tire Kingdom. They're over the next block.

Bartlett's Tire. They're over one block further to them with their tools, their machinery, things like that. You have various other sod companies that are in the same situation as us that open before seven o'clock there on Military Trail, Southern Boulevard. They all open at seven o'clock. And it's something that we've always done.

And it seems that, you know, it's going to cut off a section of business to our company if you restrict us to

those hours.

MR. BASEHART: Let me provide some input here. I think I made the motion for approval on the original approval.

CHAIR PERSON KONYK: You did.

MR. BASEHART: You know, it was my intent -- it was not my intent that you not be able to operate normal business hours for your type of business. Certainly, the office activity -- you know, I did not intend that the motion would limit use of your office and, you know, paperwork and receiving telephone calls and, you know, that kind of thing. Nor did I intend that the hours of operation would limit you from outdoor activity that would not be a noise problem for the neighbors.

Frankly, you know, I don't think the solution lies in classifying something heavy versus light equipment. You know, noise is noise. And I know bobcats are noisy. And it was my intent that that kind of noise not be allowed to be emanated from the property before eight o'clock in the morning, you know. But I think --

MR. RANDEL: Under that proviso, are we allowed to hand load people --

MR. BASEHART: I wouldn't have a problem with that. In fact, there are other types of machinery that can be -- you go to Home Depot or any warehouse building in Palm Beach County and they've got front end loaders that are electric, and they don't make my noise. I mean, they operate them in Home Depot while people are shopping, and you don't even know they're there. I don't have a problem with that kind of equipment would be operated before eight in the morning.

MR. RANDEL: Unfortunately, the site that we have wouldn't allow that type of equipment. I understand what you're saying, definitely.

MR. BASEHART: I've even seen hand forklifts where a person can push them and then electronically the forks -- you know, I mean, there are a lot of solutions. It would require you to buy a piece of equipment.

But, you know, in terms of clarifying what my motion intended to do, you know, I'd like to, if it's appropriate, amend that motion to indicate that -- you know, that prior to eight a.m. or after five p.m. there will be no operation of gasoline-powered equipment or engines on the site.

CHAIR PERSON KONYK: Other than a vehicle?

MR. BASEHART: Other than, you know, like, a pickup truck. I'm talking about equipment for the purpose of --

CHAIR PERSON KONYK: We're talking about construction equipment?

MR. BASEHART: -- moving or loading or that kind of activity.

MR. RANDEL: People would be able to come in -- for instance, if you wanted ten pieces of sod at seven o'clock in the morning --

MR. BASEHART: Yeah.

MR. RANDEL: -- you could drive your pickup truck and pick up ten pieces of sod?

MR. BASEHART: Absolutely. And if you wanted to hand load it for me or if you wanted to have an electronically-powered forklift, I wouldn't have a problem with that. And I'd like to offer that --

MR. MISROCH: I would like to clarify that a bit

further. I would say any equipment that did not exceed DB levels -- permitted DB levels.

MR. BASEHART: You know --

CHAIR PERSON KONYK: That's a little technical. Who's going to be there with a DB level to measure it?

MR. BASEHART: I think it would be -- from the point of view of emanation of noise, if you prohibited gasoline-powered equipment, that's what makes the noise. That's what a bobcat is.

MR. MISROCH: Yes. I appreciate that. But a forklift doesn't necessarily exceed DB levels.

MR. BASEHART: No. If you get into -- if you use a DB level, then they could use gas-powered equipment --

CHAIR PERSON KONYK: Just a minute, Bob. Just a minute. The audience is really going to need to be quiet.

This is the last time I'm going to ask you. And if I have to ask you again, you're going to have to leave because the tape recorder picks up the noise in the background and it makes it very difficult.

That's all. Go ahead.

MR. BASEHART: Well, I mean, that's -- how do we handle this?

MS. BEEBE: As far as noise levels and having to comply with the code, they still have to comply with the noise ordinance.

MR. BASEHART: Right.

MS. BEEBE: So regardless of what you put in your condition, they're going to have to comply with that. So you don't really need to address the noise levels themselves because the code enforcement can enforce those now.

CHAIR PERSON KONYK: The only thing that we need to address is what Mr. Basehart has suggested as far as no gasoline-powered equipment being operated because that would be what would be annoying to homeowners?

MS. BEEBE: Whatever he meant by between the hours of eight and five --

MR. BASEHART: Well, you know, obviously, I --

MR. MacGILLIS: The section of the code seven point eight -- could you retract the condition -- Cindy's here.

she's going to have to enforce it.

So, Cindy, just advise the board if it's -- we don't want to be back here again with Mr. Koehler and staff questioning what they're doing out there because we've already spent hours of county staff time on this.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: And it's going to continue -- I can tell you now, we've had this much problems now when it's in the interim of interpreting this condition, the minute this session is over here, if it's not clear today, we are going to be back here with neighbors calling code enforcement, Cindy, out there five, six times a week and the property owner upset that we're harassing him.

So I think we've got to be absolutely clear of what we mean here today. And if we could put anything in there as far as the type of machinery, expand it or -- so that Cindy feels comfortable she can enforce that and the property owner is absolutely clear so that when he's out there with something and we go out there --

CHAIR PERSON KONYK: I agree with you.

MR. MacGILLIS: Before it was absolutely clear. That's obviously not satisfactory to Mr. Koehler or his

client. But it was clear before, no activity meant no activity. If it was office stuff going on, that's one thing. But when you open that back area up, we've got to be absolutely clear what we're doing out there.

CHAIR PERSON KONYK: Okay. So you want Mr. Basehart to clarify his motion?

MR. MacGILLIS: I would, because I think it's still open when you're just talking about gas because someone's going to come in here and start breaking that term down and saying, no, yes. I will be called into meetings with Dennis, I can see it, and the executive director trying to interpret exactly what the board said.

CHAIR PERSON KONYK: Well, effectively, I know how landscapers operate because I deal with a lot of different landscapers on a lot of projects that I'm involved in. And I know that they get started very very early in the morning. And they have to get started very very early in the morning. These guys work in the heat, and they need to get these difficult jobs done early in the day so that they, you know, are not overwhelmed, et cetera.

And I think that, effectively, if we do not allow Mr. Randel to operate his business in a quiet fashion early -- between seven and eight a.m., we will effectively be putting him in a very bad situation as far as his competition is concerned.

And I don't think that was the intent of this board.

I think the intent of this board was to satisfy all of the issues involved with the condition that we imposed. And I think that a clarification of the conditions would be appropriate. I just -- I think we're going to need some help and some discussion here as to the best way to clarify that so we don't, as you say, have an ongoing problem.

While Mr. Basehart is thinking about that, I have another question. As far as our intent was concerned on this item, I think it was our intent that the landscaping on conditions one be met, and we certainly wouldn't have expected him to meet it before he got the site plan approval if we had been aware or had been thinking at the time that that was going to be something that he would necessarily have to have before he could proceed.

Is it possible to avoid bringing this item before us maybe again to clarify that as well and maybe, say, within two or three weeks of that approval from DRC that this other condition will be met so we don't have to go through this paperwork again?

MR. MacGILLIS: Technically, it's not advertised. So the only advertisement that went out, even though we assume everyone here is interested, but I had specifically people calling me because it was regarding the hours of operation. They didn't care about anything else. But they thought it may affect them, some of the other commercial properties. They said, if you're going to limit them --

CHAIR PERSON KONYK: So we really can't do that then?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Okay. All right.

MR. MacGILLIS: We don't know when DRC -- I mean, it could be next week, but --

CHAIR PERSON KONYK: That's why he could be -- maybe when you bring your board of adjustment time extension forward, you suggest that it be within three weeks of your

DRC approval or something of that nature instead of a date certain, if it's necessary for you to come to us for another extension -- time extension. Do you understand what I'm saying?

MR. KOEHLER: Yes, I do.

CHAIR PERSON KONYK: The other thing is is that -- I want to go back to what Fusuw said. The only permit that I'm aware of other than on a single-family home that a property is required to pull when they're landscaping other than under the building process -- this is a built-out structure. He's not building anything. So he's not applying for a building permit -- would be a tree removal permit. I don't think his landscaping requires a permit.

MR. MacGILLIS: He requires a landscape approval. We don't actually issue a permit. We review the landscape plans for this site, so --

CHAIR PERSON KONYK: Even when you're not building?

MR. MacGILLIS: When you're installing new landscaping, yes. We have to make sure it's put in the right place, it's not in easements, it's the proper native plant material that's going in. We have two landscape inspectors to review --

CHAIR PERSON KONYK: Omar Beals and Rodney?

MR. MacGILLIS: Omar and Rodney, right.

CHAIR PERSON KONYK: Right. Because I've called them many times, and they've told me it's not necessary.

MR. BASEHART: They're afraid of you.

CHAIR PERSON KONYK: I guess they are.

All right. Go ahead.

MR. KOEHLER: I'd like to hear what Mr. Basehart had to say. I'll tell you, we're willing to work with him. I think that's a good compromise that Mr. Basehart is offering.

MR. BASEHART: What I would like to do is to make a motion that we modify condition number eight to prohibit the outdoor use of any machinery, demolition equipment, construction equipment, excavating equipment, power tools or equipment of a semi -- semi-mechanical devices powered by anything other than electricity prior to eight in the morning or after five in the evening, Monday through Saturday, and that there be -- and also all day on Sunday.

That wouldn't allow the use of bobcats or any other noise-producing equipment, but I -- and that would be the way I'd like to frame the condition to replace the original condition number eight. In making the original motion, it was not my intent that they couldn't use their office before eight in the morning or after five in the evening. It wasn't my intent they couldn't -- it wasn't my intent to prohibit outdoor activity of a non-noise-producing nature.

And if they want to hand load materials for customers earlier than eight or use an electric forklift or something, I think that should be allowed, as Ms. Konyk said, to enable them to continue to be competitive in the market place.

And I know that, you know, they've been doing this activity for quite a while on the site. You know, I think it was kind of a comedy of errors that ended up having this whole item have to come before the board of adjustment in the first place because, remembering back to the -- you know, the beginning -- to the -- I think it was

January, according to the reports, permits were issued for the installations that you were talking about doing. And then they were rescinded. Apparently, the permits were issued in error. But, nonetheless, there's a reliance issue here.

And, you know, I think it's unfortunate the situation that developed, you know, with the neighbors. You know, I'd like to see that cured. I'd like to see, you know, Williams Sod be a good neighbor to the residents in the area and vice versa. And, hopefully, if we modify the condition, this way he can peacefully operate and not cause a problem for them. And then maybe the animosity that appears to have been generated here will go away.

MR. KOEHLER: I share your optimism on that, Mr. Basehart.

Could I ask Mr. Basehart, Madam Chair, to read again his revised condition?

MR. BASEHART: Oh, great.

CHAIR PERSON KONYK: Maybe somebody could read -- could you read it back?

MR. BASEHART: Could the court reporter read it back? (Thereupon, the requested portion was read

back by the court reporter.)

MR. RUBIN: I'm in agreement with what Mr. Basehart has said. And I know the board doesn't -- can't use estoppel. And I know we weren't using estoppel in terms of allowing the variances in the first instance.

However, in my mind, I think this board was trying to do equity in granting the variance. But, on the other hand, I think one who receives equity still has to do equity. And I think the intent at the time was also to limit the noise, not just the heavy equipment.

But what I would like to add to Mr. Basehart's conditions is to include heavy equipment because there could be trucks which are not considered to be machinery or excavating equipment. So I think it would further limited it.

I don't know that you'd have an objection to that?

MR. KOEHLER: That's fine.

MR. RUBIN: I'd like to specifically state within that definition that it includes a bobcat because I think that's what we're trying to preclude and we don't want to have an issue over that particular piece of equipment.

I don't know if we need to include a front end loader or backhoe, but that may be included in the definition. But, certainly, a bobcat.

And, lastly, I'd like to state, so that there's no misunderstanding or lack of clarification over this motion, that we are not intending to allow any equipment or any outdoor activity which would otherwise exceed the permissible decibel levels as are currently provided by code. We're not saying that because we haven't mentioned it, that, by implication, you can do it.

MR. BASEHART: I would like to add that to my motion.

CHAIR PERSON KONYK: So just clarify this for me, Mr. Basehart. Basically, the purpose of your motion here is to allow them to operate their business before eight a.m. and five p.m. as long as they're not making noise with the items -- or in the way that you've intended for your motion to read?

MR. BASEHART: Right. Exactly.

CHAIR PERSON KONYK: So you're not going to say that

if they're in there making coffee or answering telephones, that they're in violation or if they're hand loading a pickup truck or using a forklift that's noise free --

MR. BASEHART: Right.

CHAIR PERSON KONYK: -- they would not be violating your intent?

MR. BASEHART: That's right.

CHAIR PERSON KONYK: So that every time somebody drops a pencil over there, someone else isn't going to be calling code enforcement?

MR. BASEHART: I think what, you know, I'd like to also -- this isn't part of the motion, it's just -- it's my intent, you know, that your client be allowed to operate his business, you know, without undue restrictions. But, by the same token, the whole spirit of the thing is that it be able to be done without being obnoxious or obtrusive to the neighbors.

And I would hope that the Williams Sod people wouldn't be looking for loop holes to, you know, to go out and do what they want to do and say, well, you know, we're not violating the condition. The spirit and the intent of the thing is that before eight in the morning and after five at night, six days a week, and at all times on Sunday that they not produce disturbing noises to the adjacent neighbors. That's the intent of the motion.

MR. KOEHLER: My response on behalf of my clients is that that's acceptable. The condition that you've proposed as amended by Mr. Rubin, I've been taking notes of everything, and I appreciate Ms. Konyk's clarification that they could use a hand forklift and not violate that condition.

MR. BASEHART: Right.

CHAIR PERSON KONYK: Okay. Thank you.

MR. BASEHART: That's my motion.

MS. MacDOUGAL: May I ask a question?

CHAIR PERSON KONYK: Sure.

MS. McDOUGAL: Just for clarification, because I'm dealing with both parties, sometimes heatedly on their part. This does not mean that whenever they -- because they do occasionally hand load trucks. They have on two occasions hand loaded a truck when I was there before eight.

If they need to move their own flatbed out of the way to get to the sod, that does not mean they can't move it off the site, does it?

MR. BASEHART: No.

MS. McDOUGAL: Okay. Because common sense would say, yeah, you can move your vehicle. But because I don't want to be getting --

CHAIR PERSON KONYK: You mean, their trucks?

MR. MacGILLIS: Flatbed trucks.

CHAIR PERSON KONYK: Oh, okay.

MS. McDOUGAL: Well, they park their own equipment inside the secured area.

MR. MacGILLIS: They're going to start it in the morning.

MS. MacDOUGAL: And just so that I don't get calls, which I will get calls --

CHAIR PERSON KONYK: I think everybody needs to cooperate with everybody else. I think this is a two-way street. I've said this before. It always disturbs me when neighbors come in to argue with neighbors in this

forum. It certainly is much more pleasant when everybody can just resolve these kind of differences amongst themselves. And I think it's just a difficult situation.

So, yes, I would hope that everybody would be cooperative and understanding that they are a business. They to have business to conduct, and they are residents that live in their homes, and they have nowhere else to go. So I would hope that that would be the undercurrent of our intent.

MR. RANDEL: I missed the part that Ms. MacDougal was saying about the trucks being in front of things. Are we able to move the trucks?

MS. MacDOUGAL: That's what I wanted clarified today was because, rather than -- because I'm the one out there, as you know, between six and eight every time I go out monitoring the site.

CHAIR PERSON KONYK: So the answer was?

MS. MacDOUGAL: That I wanted clarification that when your flatbeds or your large trucks are parked on the site and you need to move them to hand load a truck, that this is not going to come up as an issue. Common sense would say, yes, you could. But the noise from these vehicles are some of the things that are causing the problems.

MR. MISROCH: Not to confuse the issue, when you say move the truck, that does not permit them to let it stand there and idle --

MS. MacDOUGAL: No, sir.

MR. MISROCH: -- for any length of time.

MS. MacDOUGAL: No, sir.

MR. BASEHART: Right. And I would think that -- you know, to produce the minimum affect on the neighbors, if there are -- if there are options on where to park equipment overnight on the site, park them as far away from the areas where you might have to load sod so that you don't have to move them in the morning.

MS. MacDOUGAL: The mornings I have been there observing, that has been the case. Like I said, the mornings I've observed. There has been two occasions that they've had to move them. They've cranked them up and promptly moved them to the lot on Dale Road. They didn't move them a little bit, stop, move them again. They moved them one time before eight o'clock.

So, I mean, that's on the days I've been there.

MR. BASEHART: Okay.

MR. RUBIN: I need a clarification. The flatbed trucks that they're referring to are the trucks within your own business. Do those literally fall under our definition of heavy equipment? Is that what we're saying that this is an exception to the heavy equipment?

MR. RANDEL: I don't know whether or not it would go under -- it's on the borderline of thirty-three thousand and above. I'm not quit sure whether or not thirty-three thousand and above is classified as heavy duty equipment.

CHAIR PERSON KONYK: Dennis, you had that definition.

MR. BASEHART: The issue here is, you know, we're not intending that his equipment -- his equipment that transports stuff during the normal business day can't be parked there overnight. They certainty can.

We don't want them using that equipment as a part of a loading operation or leaving it idling on the property in the morning. If it has to be moved, then get it the hell off there -- you know, out of the site and --

CHAIR PERSON KONYK: Quickly.

MR. BASEHART: -- quickly. And just get it over with.

MR. RUBIN: That has to be part of the motion, though, because if their flatbed overlaps in the definition of heavy equipment, I don't want code enforcement --

CHAIR PERSON KONYK: Does it?

MR. RUBIN: -- and the neighbors and the business owner in a quandary every time -- the business owner may think, well, I'm just moving the truck from spot A to B. The neighbors think, well, you idled it for five minutes while you were moving it from A to B. And code enforcement will be called and say, well, it is heavy equipment; so you shouldn't even start it up.

CHAIR PERSON KONYK: So, in other words, you don't want them moving it from point A to B, like, eleven times, right?

MR. RUBIN: I don't think we should create more problems either.

MR. RANDEL: I would personally like to preload the truck and then drive it right out and do a delivery, get it off the site all at one go.

CHAIR PERSON KONYK: Okay.

MR. RANDEL: I wouldn't -- I mean, that would be --

CHAIR PERSON KONYK: What's your definition?

MR. RANDEL: That would be -- it would be start it up and go. And it wouldn't even be parked out into the vacant lot. I mean, that would be what I would want to do.

CHAIR PERSON KONYK: In other words, you would load it before five p.m.?

MR. RANDEL: The previous day.

MR. BASEHART: Sure. Okay.

MR. RANDEL: Then it would be started --

CHAIR PERSON KONYK: That's fine.

MR. RANDEL: -- and you go. It's not a question of parking it, starting it. And, even in the case where we'd have to move it off the secure area, as Ms. MacDougal says, we have pulled out into the Dale Road lot and switched it off, you know. And we haven't loaded it up until after eight o'clock.

And you're quite right. It's been a couple of occasions. This is not something that I do every day of the week. This is just, there are odd occasions where somebody would like to have a delivery of X amount of pallets of sod which would be a maximum of eight. That is all that the truck will carry. I would have that availability to say, okay, I have a truck driver here at seven-thirty in the morning. Start the truck. Go. The truck -- everything's off the lot. It's not there. It's gone, and it's not going to come back before eight o'clock.

CHAIR PERSON KONYK: So how are you going to clarify that in your motion? The continual operation or what are you going to do?

MR. BASEHART: Just going to make it -- and I don't think it even needs to be part of the motion. It just needs to be on the record, I think, that we do -- you know, that we do -- this limitation does not prohibit you from starting one of your vehicles up that delivers materials and moving it off the site, period. But it's --

the intent is that it's not to be started and left idling or revved up or anything like that. Okay.

MR. RANDEL: The vehicle would have to be preloaded the night before. I mean, there would be no loading before eight o'clock of that equipment.

MR. BASEHART: Right.

MR. RANDEL: It would be preloaded the night before, started, driven off the lot all together. I mean, that would go with the starting and moving of the truck. If you're going to allow the starting and the moving of the truck to the furthest point away from the neighbors, why not let the truck just carry on going out.

MR. BASEHART: Fine. Okay?

MS. MacDOUGAL: Thank you.

CHAIR PERSON KONYK: Okay.

MR. BASEHART: That's the motion.

CHAIR PERSON KONYK: What he said, right?

MR. BASEHART: Yeah. And I'm not going to say it again.

CHAIR PERSON KONYK: We have a motion. Did we get a second on this?

MR. MISROCH: I'll second.

CHAIR PERSON KONYK: Second by Mr. Misroch.

Any further discussion by the board?

(No response.)

CHAIR PERSON KONYK: All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: All those opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

MR. KOEHLER: Thank you, board. I love coming here, but this has been too much, I agree.

CHAIR PERSON KONYK: And whose fault has that been?

MR. KOEHLER: That's why I'm not charging my client for today's appearance.

CHAIR PERSON KONYK: I was curious about that.

MR. KOEHLER: Thank you.

CHAIR PERSON KONYK: Okay. Next item we have to look at is the attendance record for the last meeting. Mr. Moore was absent on business. Mr. Cohen resigned. Mr. Misroch's an alternate. So we shouldn't really list where he was, should we, because he had an appointment. But he's an alternate.

MR. BASEHART: You might want to know where he is.

CHAIR PERSON KONYK: I just was curious, yeah. Where were you?

MR. MISROCH: You want an address?

CHAIR PERSON KONYK: No.

So we need a motion to accept these as approved absences.

MR. BASEHART: So moved.

CHAIR PERSON KONYK: Second by?

MR. WICHINSKY: Second.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by Mr. Wichinsky.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: That's it, right? Motion --

MR. MacGILLIS: You have those certificates just to show them.

CHAIR PERSON KONYK: We had two certificates to present to -- one to Mr. Cohen --

MR. MacGILLIS: Apparently, Mr. Cohen can't come. He's too ill to come down here. So we're going to deliver it.

The other one, Bart Cunningham, I think he'll make it next month.

CHAIR PERSON KONYK: So we can give it to him next month.

MR. RUBIN: Do we have a band or any other entertainment?

CHAIR PERSON KONYK: I think we should have brunch.

MR. BASEHART: Who's absent today? Why are they absent?

CHAIR PERSON KONYK: Yeah. Mr. Moore's absent again, right? And his reason, again?

MS. MOODY: I believe he had an appointment.

CHAIR PERSON KONYK: Okay. These are approved absences. But, really, I think that any board member here -- and I think we all need to be aware of this. If we are going to have a continual situation that keeps you away from these meetings -- I mean, it is only one morning a month -- as Mr. Cunningham did, he resigned from the board because he didn't think it was fair to be continually absent.

And I think that anybody who is continually absent should really consider resigning from the board only because we need to have seven members here. We haven't resolved that other issue yet. It's very important that we have at least six people at the meeting. I just would make a suggestion that, you know, if somebody finds that they're going to continually not be able to be at the meeting, that maybe they should suggest that there be another appointment.

MR. BASEHART: I agree.

MR. MacGILLIS: Who would suggest that?

CHAIR PERSON KONYK: I would suggest that.

MR. MacGILLIS: The Chair Person.

CHAIR PERSON KONYK: I mean, what would you suggest?

MR. MacGILLIS: I mean, I wouldn't suggest that. I think it's more appropriate coming from the Chair Person.

CHAIR PERSON KONYK: Okay. Thanks.

If there's nothing else, could we have a motion to adjourn?

MR. MISROCH: So moved.

CHAIR PERSON KONYK: Motion by Mr. Misroch. Second by Mr. Basehart.

All those in favor -- I could read his mind.

MR. BASEHART: Steve said he's voting, no, he doesn't want to end the meeting.

CHAIR PERSON KONYK: Motion carries unanimously.

(Thereupon, the proceedings were concluded at

ten-thirty o'clock a.m.)

C E R T I F I C A T E

THE STATE OF FLORIDA,)
COUNTY OF PALM BEACH.)

I, Rachele Lynn Cibula, Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out in the caption page hereto; that I was authorized to and did report the proceedings; that the foregoing and annexed pages, numbered 1 through 41, inclusive, comprise a true record of the proceedings in said cause.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor am I interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my seal this _____day of _____, 1999.

Rachele Lynn Cibula, Notary Public