

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, July 21, 2005
9:05 a.m. - 11:50 a.m.
100 Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Ms. Chelle Konyk, Chairperson

Mr. Robert E. Basehart, Vice Chairman

Mr. Stanley Misroch

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Mr. Joseph J. Jacobs

Mr. Bart Cunningham

Annie Helfant, Assistant County Attorney

Steve D. Rubin, Esquire

Jon MacGillis, Zoning Director

Maryann Kwok, Chief Planner, Zoning Division

Susan Miller, Principal Planner, Planning Department

Alan Seaman, Senior Site Planner

David Cuffe, Civil Engineer II, Land Development

Miradieu Aubourg, Planner II

Oscar Gamez, Planner I

Juanita James, Zoning Technician

Annette Stabilito, Secretary

Timothy Sanford, Student Para Professional

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P R O C E E D I N G S

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CHAIRPERSON KONYK: I'd like to start the September -- September, I wish, the July 21st, 2005, Board of Adjustment Meeting.

We'll start with the roll call and the Declaration of Quorum.

MS. STABILITO: Mr. William Sadoff?

MR. SADOFF: (No response).

MS. STABILITO: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. STABILITO: Mr. Bart Cunningham?

MR. CUNNINGHAM: Here.

MS. STABILITO: Chairperson, Ms. Chelle

Konyk?

CHAIRPERSON KONYK: Here.

MS. STABILITO: Vice Chairman, Mr. Robert Basehart?

VICE CHAIRMAN BASEHART: Here.

MS. STABILITO: Ms. Nancy Cardone?

MS. CARDONE: Here.

MS. STABILITO: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. STABILITO: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. STABILITO: Mr. Donald Mathis?

(No response.)

CHAIRPERSON KONYK: Next item is the opening prayer.

MR. CUNNINGHAM: Let us pray. May we approach today's business as tasks of faith to do our best within our power, to provide positive leadership on behalf of our community and those who live and work here, and that our decisions meet the standards of divine compassion for all. Amen.

CHAIRPERSON KONYK: Thank you, Reverend. Stand for the Pledge.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRPERSON KONYK: I have before me proof of publication in the July 3rd, Palm Beach Post.

Remarks of the Chair. For those of you who are not familiar with how this Board conducts its business, the meeting is divided into two parts, the consent and the regular agenda.

Items on the consent agenda are items that are recommended for approval by staff, the applicant agrees with any conditions, there's no opposition from the public, and no Board member feels the item warrants a full hearing.

If there is opposition from the public or the applicant does not agree with the conditions or a Board member feels the item warrants a full hearing, that item will be reordered to the regular agenda.

Items on the regular agenda are items that have either been recommended for denial or there is opposition from the public.

The items on the regular agenda will be introduced by staff. The applicant will have an

opportunity to give their presentation. After the applicant's presentation, the staff will give their presentation, at this point we'll hear from the public. After the public portion of the hearing is closed, the item will be voted on.

Next item on the Agenda is the approval of the Minutes. Everyone received a copy of the Minutes of the last meeting.

Does anybody have any corrections or additions?

(No response.)

CHAIRPERSON KONYK: Seeing none, could I have a motion for approval?

MS. CARDONE: So moved.

CHAIRPERSON KONYK: Motion by Ms. Cardone.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Second by Mr. Puzzitiello. All those in favor?

THE BOARD: Aye.

CHAIRPERSON KONYK: Motion carries unanimously.

Remarks of the Zoning Director?

MR. MacGILLIS: No remarks.

VICE CHAIRMAN BASEHART: You got the real one here today.

CHAIRPERSON KONYK: The real one, the real deal.

Any changes to the agenda?

MR. SEAMAN: Yes, if you'll look at Petition 2005-826 on page 17 of your report, at the top where we talk about the required proposed and the variance.

Under required it says 22.5 feet. It should be changed to 25 feet, and under variance strike .05 feet for lots 6, 17, 19, 25 and 29 of Pod G-1 and change it to three feet for lots 6, 17, 19, 25 and 29 of Pod G-1.

CHAIRPERSON KONYK: Can we have you guys be quiet out there? If you have something to talk about you can take it outside. Thanks.

MR. SEAMAN: And just for the record for that particular petition, we have a letter from Chip Carlson that is authorizing Kevin McGinley to represent the agent.

CHAIRPERSON KONYK: Okay. Thank you. Any other changes?

MR. SEAMAN: There are condition changes, but I'll bring those up as we get to that petition.

CHAIRPERSON KONYK: Anyone that is in the audience that wishes to speak on an item today, we're going to swear everyone in en masse, so if you would stand and raise your right hand?

(Whereupon, speakers were sworn in by Ms. Springer.)

CHAIRPERSON KONYK: We have a withdrawn item, BA2004-00993.

Next item on the agenda is postponed, BOA2005-00817, is this by right?

MR. SEAMAN: I'd have to ask Juanita. Are you here?

MR. AUBOURG: Yes, it's by right.

MR. SEAMAN: All right, thank you.

CHAIRPERSON KONYK: Okay. So that will be postponed.

CHAIRPERSON KONYK: First item on consent is a time extension, 2005-00822. Michael and Lisette Cox, owners, to allow a 12-month time extension for the Development Order and Condition No. 1, for the approved variance BofA2004-278.

Applicant present? Your name for the record.

MR. TRIPIANI: Joe Tripiani.

CHAIRPERSON KONYK: Does any Board member feel this item should not be granted a time extension?

(No response.)

CHAIRPERSON KONYK: Seeing none, that item will remain on consent.

VICE CHAIRMAN BASEHART: There is an amended condition, does he agree with that?

CHAIRPERSON KONYK: Is there an amended condition?

VICE CHAIRMAN BASEHART: That's what it says.

CHAIRPERSON KONYK: That's from before. Alan, is that from before?

MR. SEAMAN: The amended condition is from before.

DEVELOPMENT ORDER

The Development Order for this particular variance shall lapse on **June 17, 2005**, one year from the approval date (**DATE: MONITORING-ZONING**).

IS HEREBY AMENDED TO READ:

The Development Order for this particular variance shall lapse on **June 17, 2006**, one year from the approval date (**DATE: MONITORING-ZONING**).

ZONING CONDITIONS

1. Zoning - By **June 17, 2005**, the applicant shall obtain a building permit for the proposed solid roof screen enclosure in order to vest the variance approved pursuant to BA-2004-00278.
(DATE: MONITORING-BLDG PERMIT)

IS HEREBY AMENDED TO READ:

1. Zoning - By **June 17, 2006**, the applicant shall obtain a building permit for the proposed solid roof screen enclosure in order to vest the variance approved pursuant to BA-2004-00278.
(DATE: MONITORING-BLDG PERMIT)

2. Zoning - Prior to the issuance of a Certificate of Completion for the proposed solid roof screen enclosure it shall be determined by the Landscape Inspectors that there is a hedge (type to be determined by applicant and approved by the Landscape Inspectors) planted along the complete northern side of the proposed solid roof screen enclosure that shall be a minimum of thirty-six (36) inches in height at installation and shall be spaced at a maximum of twenty-four (24) inches on center.

3. Zoning - Prior to the issuance of a "Building Permit", the applicant shall submit both the Board of Adjustment letter and a copy of the approved survey/site plan to the Building Division. (EVENT: MONITORING: BUILDING)

CHAIRPERSON KONYK: Okay. Next item is BofA2005-00823, Marino Diaz, to allow an existing addition to encroach into the required side interior and rear setbacks. Is the applicant present?

Your name for the record?

MR. DIAZ: Marino Diaz.

CHAIRPERSON KONYK: The staff has recommended three conditions. Do you understand and agree with those?

MR. DIAZ: Yes.

CHAIRPERSON KONYK: Okay. Is there any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are 12, eight approval and two disapprove and they simply say, no comments, but they don't approve.

CHAIRPERSON KONYK: Okay. Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **October 21, 2005**, the applicant shall secure a building permit for the room addition, in order to vest this variance. A copy of the BA result letter shall be submitted along with the building permit application. (DATE: BUILDING: ZONING)

2. By **December 21, 2005**, the building inspection must be completed. A copy of the Board of Adjustment result letter from this variance shall be submitted to the Building Department, as part of their application. (DATE: BUILDING: ZONING)

3. The variance request is only for the existing room addition. All other improvements shall meet the ULDC requirements. (ON-GOING: ZONING: ZONING)

CHAIRPERSON KONYK: BofA2005-00824, Gentile, Holloway, O'Mahoney & Associates, for New Hope Charities, to reduce the size of the required plant materials.

Applicant's name for the record?

MR. SIMPSON: Daniel Simpson.

CHAIRPERSON KONYK: Staff has recommended one condition, do you understand and agree with that?

MR. SIMPSON: Yes, we do.

CHAIRPERSON KONYK: Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: No letters.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent. Thank you.

BOARD OF ADJUSTMENT CONDITIONS

Prior to the issuance of the Certificate of

Occupancy, all required landscape material for the Santa Maria Village PUD shall be planted in accordance with Article 7 of the ULDC. This variance is only to reduce the size requirement for the trees that will be planted. (EVENT: LANDSCAPE: ZONING)

CHAIRPERSON KONYK: BofA2005-00825, Siemon & Larsen, agent for Fred and Jerri Shapes, to allow a proposed structure and roof overhang to encroach in the required rear setback.

Is the applicant present?

MR. MESSENGER: Todd Messenger for the applicant.

CHAIRPERSON KONYK: Staff has recommended two conditions. Do you understand and agree with those?

MR. MESSENGER: Yes, we do.

CHAIRPERSON KONYK: Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: No letters.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. On or before September 21, 2005, the applicant shall amend the site plan to reflect the variance approval pursuant to BA2005-825.

2. By July 21, 2006, the applicant shall secure a building permit and completed his first inspection by a building permit inspector in order to vest this variance request.

CHAIRPERSON KONYK: The next item, BofA2005-00826, Kenco/Oaks of Boca Raton, to allow proposed and existing balconies to encroach in the required front setbacks.

Applicant?

MR. MCGINLEY: This is Kevin McGinley, pinch-hitting for Chip Carlson.

CHAIRPERSON KONYK: Staff has recommended two conditions. Do you understand and agree with those?

MR. MCGINLEY: Yes, we do.

CHAIRPERSON KONYK: Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are none.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: This item will also remain on consent.

MR. MCGINLEY: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. The variance is only for the balconies on lots 6, 17, 19, 25 and 29 of Pod G-1. Any other improvements shall meet the ULDC requirements (ON-GOING: ZONING: ZONING).

2. By **October 21, 2005**, the applicant shall amend the site plan to reflect the setback reduction for the balconies of lots 6, 17, 19, 25 and 29 of POD G-1 (DATE: BUILDING: ZONING).

CHAIRPERSON KONYK: BofA2005-00827, Ellen Smith for Folke Peterson Center for Animal Welfare, to allow a proposed bird aviary to encroach into the required side interior setback.

MS. SMITH: Good morning, Madam Chairman, Ellen Smith for the record. We agree with the conditions as amended, the second one to the year 2007. If that correction has been made, we'd be in agreement.

MR. SEAMAN: Actually, if I can say, there are corrections to the conditions. We need to also correct the Development Order.

The Development Order needs to go to 2007 as well as -- let me read it.

The Development Order for this particular variance shall lapse on 7-21-2006, we need to

change that to 7-21-2007, three -- two years, two years from the approval date.

And Condition No. 2, which says by July 21st, 2006, that needs to be changed to July 21st, 2007.

CHAIRPERSON KONYK: Okay. So you agree with the conditions as amended?

MS. SMITH: Yes, thank you.

CHAIRPERSON KONYK: Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are none.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

MS. SMITH: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **October 21, 2005**, the applicant shall amend the approved site plan to reflect the variance pursuant to BA-2005-827. A copy of the Board of Adjustment result letter from this variance shall be submitted to the DRO section, as part of the application to amend the approved site plan. (DATE: DRO: ZONING).

2. By **July 21, 2006**, the applicant shall apply for and receive all necessary building permits and have the first inspection completed by a building inspector. A copy of the Board of Adjustment result letter from this variance shall be submitted to the Building Department as part of the application for all necessary building permits. (DATE: BUILDING: ZONING).

CHAIRPERSON KONYK: BATE2005-00863, Kevin McGinley, agent for Robert Malt and Company, to allow a time extension for the Development Order.

MR. MCGINLEY: Good morning. Kevin McGinley.

CHAIRPERSON KONYK: Any Board member feel this item should not receive a time extension?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will receive a time extension.

MR. MCGINLEY: Thank you.

CHAIRPERSON KONYK: If it's voted for on the consent, rather.

DEVELOPMENT ORDER

The Development Order for this particular variance shall lapse on **June 17, 2005**, one year from the approval date (**DATE: MONITORING-ZONING**).

IS HEREBY AMENDED TO READ:

The Development Order for this particular variance shall lapse on **June 17, 2007**, two years from the approval date (**DATE: MONITORING-ZONING**).

BOARD OF ADJUSTMENT CONDITIONS

1. Zoning - By June 17, 2005, or prior to DRO certification, the applicant shall ensure that the existing wooden fence directly behind the existing loading zone on the eastern lot is replaced by a six (6) foot high concrete block wall. (**DATE: MONITORING: DRO**).

IS HEREBY AMENDED TO READ:

1. Zoning - By June 17, 2007, or prior to DRO certification, the applicant shall ensure that the existing wooden fence directly behind the existing loading zone on the eastern lot is replaced by a six (6) foot high concrete block wall. (**DATE: MONITORING: DRO**).

2. Zoning - Prior to the issuance of a "Building Permit", the applicant shall submit both the Board of Adjustment result letter and a copy of the approved survey/site plan to the Building Division. (**EVENT: MONITORING: BUILDING**).

3. Zoning - Prior to the issuance of a "Certificate of Occupancy", all of the required foundation planting shall be planted in the reduced foundation planting area along the west side of the existing structure.

4. Zoning - Prior to the issuance of a "Certificate of Occupancy", all of the required landscaping for the incompatibility landscape buffer shall be planted in the reduced incompatibility landscape buffer along the western property line.

5. Zoning - By June 17, 2005, or prior to DRO certification, the applicant shall ensure the BA conditions are shown on the certified site plan. (**DATE: MONITORING-DRO**).

IS HEREBY AMENDED TO READ:

5. Zoning - By June 17, 2007, or prior to DRO certification, the applicant shall ensure the BA

conditions are shown on the certified site plan.
(DATE: MONITORING-DRO).

6. Zoning - By June 17, 2006, the applicant shall obtain a building permit for the proposed structures on the western parcel in order to vest the variance approved pursuant to BA-2004-00152.
(DATE: MONITORING-BLDG PERMIT).

IS HEREBY AMENDED TO READ:

6. Zoning - By June 17, 2007, the applicant shall obtain a building permit for the proposed structures on the western parcel in order to vest the variance approved pursuant to BA-2004-00152.
(DATE: MONITORING-BLDG PERMIT).

CHAIRPERSON KONYK: BofA2005-00877, Jeff Irvani, to allow a Planned Development District to have less than 200 linear feet of frontage along an arterial or collector street.

MR. KOLINS: I'm Ron Kolins, here representing the applicant today.

CHAIRPERSON KONYK: Staff has recommended two conditions. Do you understand and agree with those?

MR. KOLINS: We do.

CHAIRPERSON KONYK: Any member of the public here to speak against this item? Against?

MS. EVACHEK: Well, just a question. What does the 200 linear feet of frontage mean on the arterial? Is that on Stacy? Stacy going north/south or the Stacy that goes in east/west, whatever it is, the main Stacy?

MR. KOLINS: All this really means is that for a PUD project, you're normally required to have 200 feet on an arterial. But the location of this property doesn't allow for that, so our 200 plus feet is on Stacy Street.

MS. EVACHEK: The Stacy coming off of Haverhill?

MR. KOLINS: And going the other direction as well, it's sort of a T. It comes up to Stacy North and Stacy South.

MS. EVACHEK: Right at that corner?

MR. KOLINS: Right.

MS. EVACHEK: So it would have to be enlarged then?

MR. KOLINS: Right. No, it's not going to be enlarged. It is what it is and you don't have room to enlarge it. There's so much right-of-way,

and this would allow us to proceed with the development with the road as it is.

MS. EVACHEK: And then my other concerns are of course, the traffic, it doesn't as I understand address this area here, is that they have a lot of speed bumps and things. And the only thing that I would suggest is better lighting coming in, some of the speed bumps taken out if you're building 84 -- is it 84 unit townhouse?

MR. KOLINS: That's correct.

MS. EVACHEK: And say you have two cars, whatever, you know, where you're looking at maybe 180 more cars coming down that road. I know that doesn't address here, but I'd like to ask them if they would --

CHAIRPERSON KONYK: Okay, that really doesn't -- it has nothing to do with this, and we really need to get on with what we have --

MS. EVACHEK: Okay. But the 200 linear feet is what I needed to worry about what that meant.

CHAIRPERSON KONYK: Okay. So do you want us to pull this from the consent?

MS. EVACHEK: No, I don't. I approve this very much.

CHAIRPERSON KONYK: Okay. Thank you. Your name for the record.

MS. EVACHEK: Laverne Evachek.

CHAIRPERSON KONYK: Can you spell your last name?

MS. EVACHEK: E-V-A-C-H-E-K.

CHAIRPERSON KONYK: Thank you.

MS. EVACHEK: You're welcome.

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are ten letters, and of the ten, seven just wanted clarification, three that were in disapproval.

Two of the comments again, need to be addressed at public hearing, but there is one comment here that says they just simply oppose to the PUD having legal access on the local street, but they don't make any further comments.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

MR. KOLINS: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By July 21, 2008, the applicant shall have submitted and received a building permit as well as received the first inspection by the Building Department.

2. By October 21, 2007, the applicant shall amend the site plan to reflect the variance approval to BA2005-877.

CHAIRPERSON KONYK: BATE2005-00929, Daisy Martinez, to allow a time extension on Condition No. 1 from approved variance BofA2005-457. Your name for the record?

MS. MARTINEZ: Daisy Martinez.

CHAIRPERSON KONYK: Okay. Any Board member feel this item should not be awarded a time extension?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent. You can have a seat.

DEVELOPMENT ORDER

The Development Order for this particular variance shall lapse on **May 19, 2006**, one year from the approval date. (DATE: MONITORING-ZONING).

BOARD OF ADJUSTMENT CONDITIONS

1. By **June 19, 2005**, the applicant shall obtain a building permit for the existing guest cottage. (DATE: BUILDING: ZONING).

IS HEREBY AMENDED TO READ:

1. By **March 20, 2006**, the applicant shall obtain a building permit for the existing guest cottage. (DATE: BUILDING: ZONING).

2. Zoning - The variance request is only for the existing 14.1 feet by 6.0 feet addition. All other improvements shall meet the ULDC requirements. (ON-GOING: ZONING: ZONING).

3. Zoning - The applicant shall maintain the existing 6 foot tall wood fence along the NE property line. (ON-GOING: ZONING: ZONING).

CHAIRPERSON KONYK: The items on consent today are BATE2005-00822; BofA2005-00823; BofA2005-00824; BofA 2005-00825; BofA2005-00826; BofA2005-00827; BATE2005-00863; BofA2005-00877; and BATE2005-00929.

Is someone prepared to make a motion?

VICE CHAIRMAN BASEHART: Madam Chair, I'll make a motion that we approve the consent agenda with the amended conditions as were read by the

staff on some of the petitions. And I'd like the record to reflect that the record of the hearing for each of these items is the staff report.

CHAIRPERSON KONYK: We have a motion by Mr, Basehart.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Second by Mr. Puzzitiello.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries unanimously. The consent letters are not ready and I'm told they will be mailed, so you're free to leave if you've had your item voted on.

CHAIRPERSON KONYK: First item on the regular agenda is Board of Adjustment Administrative Appeal, is that what the AA stands for?

MR. SEAMAN: Yes. Very good.

CHAIRPERSON KONYK: Oh, good. I thought it was something else. BAAA2005-00816, Broad & Cassel, agent for Centex Homes, petitioner, to request an appeal on the decision of the Zoning Confirmation Letter No. 2005-632.

And if the applicant can come forward, and the staff will read the legal -- is there one?

MR. SEAMAN: First we need if you -- the pleasure of having the attorney, your attorney, speak about something?

CHAIRPERSON KONYK: Okay. Sure.

MS. HELFANT: As you know, this is an appeal, so basically what you may do is either reverse it or affirm, wholly or partly, or you may modify the interpretation of the Zoning Director's, his interpretation, also the Zoning Director's interpretation is going to be presumed correct, and the applicant has the burden to demonstrate the error. So just to let you guys --

CHAIRPERSON KONYK: Okay. Thank you. Staff, you want to read the legal on it?

MR. SEAMAN: There's no legal. The subject of the appeal is related to the acreage threshold requirements for PUDs.

In this case, Centex Homes requests an appeal of the Zoning Director's interpretation of Planned Unit Development thresholds found in Article 3.E.2.C.1 and related Table.

The applicant contends that although this

Table does list the required minimum PUD acreage for future land use classifications for a PUD rezoning request, there is no provision stating that property over certain acreage is required to rezone to a PUD.

CHAIRPERSON KONYK: Okay.

MR. HERTZ: Thank you, Madam Chair, Mr. Vice Chair and members of the Board. For the record, my name is Cliff Hertz, I'm with the Broad & Cassel law firm here in West Palm Beach. I have with me Mr. Chris Barry, he is with Centex Homes, they're the applicant, I am the agent.

And as a preliminary matter, I would like to inquire into the procedure. I went through the By-laws of your Board yesterday in preparation for the hearing, and noted in three separate places it stated that staff will make their presentation first, then the applicant will make their presentation, and then after the applicant makes their presentation, cross examination would take place.

In regard to my preparation, I prepared in the context of what the procedure would be. I do believe that I can make a much shorter presentation second than I can if I go first, for the simple reason that I think that if I have to go first, I have to go through the entire staff report and show why each one of the points really is either irrelevant or really supports our position.

I prepared a response to the staff presentation, what I'll call my short presentation, and I was hoping after the short presentation, which essentially only makes five points, that you would be in the position to rule in our favor. If you're not, I can then go to the long presentation.

CHAIRPERSON KONYK: Well, I'll defer to staff and see how they want to do it.

MR. SEAMAN: I think we should ask our attorney, your attorney.

MS. HELFANT: Actually, this is an appeal of an interpretation of the Zoning Director. It's not a public hearing, therefore the appellate process goes into place and the person who is appealing is required to actually go first.

MR. HERTZ: I'm okay with that if -- I would like some citations in the By-laws of the organization since in three separate places it says --

MS. HELFANT: That's what the procedures --

MR. HERTZ: -- in all hearings, this is the order of the proceeding. I'm not trying -- I'm trying to shorten -- what I'm trying to do is condense the time frame of this hearing and what it's going to take.

I mean, it's a procedural issue. I've got three places. I've got page 10, I've got page 102, all throughout this, so how is somebody supposed to be on notice of what your procedures are, if you don't set out any different procedures for your variance, which is usually, you know, the

applicant carries the burden, or your appeals of administrative interpretation?

So I have no notice, no due process notice of your procedure. So I'm not trying to be argumentative, I'm really trying to save your Board some time.

MS. HELFANT: Sure.

MR. HERTZ: But if you'd like, we'll go through the entire long form presentation. I know some of the Board members have time constraints, and I'm trying to keep it short. But I'll do whatever you all want.

MR. RUBIN: Madam Chair, for the record, my name is Steve Rubin, I'm representing staff in this particular matter.

I concur with the Board's attorney. We are in an appellate situation. It is the burden of the applicant to go forward. And we concur with the procedure that the Board attorney has suggested to the Board.

MR. HERTZ: Thank you. We'll just place our objection on the record and it can be noted. We'll do the long form. I'm sorry.

CHAIRPERSON KONYK: We're here all day. It doesn't really matter to us.

MR. HERTZ: I understand that some of the Board members won't be. That's okay. We're okay with it, it just seems like an undue waste of time. Okay.

Firstly, I'd like to thank the staff for being cooperative, efficient in the processing of our application, particularly Mr. Seaman, who has been available and has been communicative throughout the process.

The County staff report, I think that's where we have to start at this juncture in view of the procedure being used. Typically I find County staff reports to be unusually crisp and concise. This one, I find to be confusing, disjointed and really almost baffling in how it was put together and the arguments made.

The issue here I think was framed by Mr. Seaman quite simply, does the Uniform Land Development Code require properties in the zoning category of RM with an HR-8 future land use which are more than ten acres to have Planned Unit Development zoning?

That would mean one of the consequences of that is if I had a 15 acre parcel and I wanted to develop it into a few lots, because this interpretation would apply to all residential zoning districts the way it's been made, and I want a three lot subdivision, I could not use the straight zoning provisions of the Code.

The Uniform Land Development Code, and Mr. Barry is here, and he'll be up later going through some chapter and verse, contains a very well-developed set of guidelines for what one must do in order to develop their property.

And if you meet the criteria of the land development regulations for any particular zoning district, then you can develop in that manner

without having to go to the Board of County Commissioners or the Planning Commission, seek a conditional use approval, which is not an approval as a matter of right, and subject yourself to a process that you can be loaded up with all kinds of conditions.

In other words, where you have a planned development approval and you have a conditional use approval, which is quasi-judicial, you have no certainty. So no landowner in this County can have any certainty if they had more than ten acres as to what they could develop in a residential district if in fact the interpretation is correct.

It may be that as a matter of policy for parcels in excess of certain acreage requirements it may make sense, it's just not supported by the Code as the Code presently exists. And we will take you through that chapter and verse.

A little background. There's an 80 acre parcel roughly that Centex owns. We filed for a PUD application in order to obtain the benefits of the PUD density bonuses.

If you -- and we'll get to it later -- under the Code, you can get two extra units per acre if you go as a PUD. And that's the incentive that the Code provides for people to ask for PUDs.

On the other hand, you expose yourself to a lot of conditions. You expose yourself to a long, drawn out process of negotiation. You expose yourself to neighbors' objections. You expose yourself to a lot.

So we simply asked the question as we were dragging through this process of Mr. MacGillis, Jon, what must -- may we develop this property under straight zoning as we call it, because we have HR-8 and we know that we can have six units per acre, and we'll show you on the charts that we can have six units per acre, and we'll just go about our business and develop our roughly 500 units, and not be involved in this PUD process and dealing with the neighbors and dealing with objectors, and we will have predictability. We will have a blueprint from which we can develop our property. It may not be as pretty, it may not be as nice, it may not be as much density, but we will have some predictability as to what we can develop our property for.

And Jon's answer was quite simple. If you are more than ten acres, you must have a PUD zoning district. And we asked him, Chris did, actually, and he'll tell you about it if you'd like. Where does it say that in the Code?

Therein started the paper. So Jon cited to a provision in the Code that basically states, it's in here, I think it's page 14, Chris? No.

It starts on page 7 and really goes on to page 8. And it states, "A PUD shall meet the minimum acreage indicated in the Table ...", okay.

Minimum. And you go to your zoning category of HR-8, minimum number of acres that one must have in order to apply for a PUD is ten acres.

That makes sense. The County doesn't want

little tiny PUDs and if you want to have the density bonuses, you got to have more than ten acres.

And I said, "Well, how does that mean that if you have a parcel more than ten acres, you have to be a PUD?"

"Well, that's the way we've always interpreted it."

And my response to that, not at the time, but today is, in 1981 I started to work with the Palm Beach County School Board, as an Assistant School Board Attorney. It was a very interesting experience. And things would come across my desk and I was just out of law school and knew less than I know now, which probably isn't that much, but I would read things.

And I would say, well, it says this, why are we doing it like that? And the answer that you get all the time, that I got from people who I respected and liked and worked with for a few years, "That's the way we've always done it."

Well, what's happened here is, that is the way that staff has always interpreted it. Unfortunately or fortunately, depending on which side of the table you may be on, a few years back there was a requirement in the Code, and I'm going to walk you through it, that said if you were more than 50 acres you had to get a PUD zoning approval.

I understand that. That makes sense, okay. But it got dropped out of the Code, and admittedly even by the staff report, it was dropped out of the Code. Well, the staff report says it wasn't our intent to drop it out of the Code.

Well, I don't know what the County Commission's intent was. I don't have the seven County Commissioners here. I understand staff says, well, that's not the process we would usually use to make that significant a change.

I'm not here to talk about what process may or may not have been used, what I'm here to really talk about is what specifically does the Code say.

And I think staff even by its own admission would say, if you just read the Code, there doesn't seem to be a requirement that you have a PUD just because you happen to be more than ten acres.

So that's kind of a background as to how we ended up where we are. Let's look at a few charts.

And this is kind of what I'll call, this was going to be the short presentation. But unfortunately, now I have to go through the staff report and the long presentation.

If we look at page 14 of the staff report, this is the current County Code. And it's Residential Categories & Allowable densities. Okay.

High Residential 8, that's three from the bottom. Standard, you see that little chart that

says standard, and it's got a little 1 next to it on the top. Six dwelling units per acre. Okay. This is good. Everything is consistent.

Then you look at the little note. The standard density is the highest density permitted in each future land use category, unless the parcel is developed as a PDD, et cetera.

So once again, we have a provision in the Code that staff has cited to that says you can have six units per acre in this category without having to get a planned development approval.

Well, I'm still looking, where is this if it's more than ten acres, you have to be a PDD. We're looking, and I've looked through the Code, Chris has looked through the Code, and let's go to page 8, where we have already been.

Okay. Minimum acres for a PUD, HR-8, ten. Okay. We've got to have at least ten acres if we want to be a PUD.

Well, we don't want to be a PUD. I don't understand even why our PUD application was attached to the staff report. It really should be stricken as irrelevant because it's got nothing to do with this hearing. It was just in my opinion put there as surplusage at best or to confuse the issue at worst.

VICE CHAIRMAN BASEHART: Excuse me, can I ask you a question? You know, I mean, I agree, this hearing shouldn't be about -- what was the name of your project?

MR. HERTZ: Meadowbrook PUD.

VICE CHAIRMAN BASEHART: This is about the interpretation of the Code as to when a PUD is required; right?

MR. MacGILLIS: If you look on his application, I mean, this is his appeal application that he submitted, and you look on the first RE:, request for an administrative decision, Meadowbrook Mobile Home Park.

MR. HERTZ: Well, Meadowbrook Mobile Home Park is an 83-acre parcel that exists. But that clearly does not say Meadowbrook Mobile Home Park PUD application. It says Meadowbrook Mobile Home Park, an 83-acre parcel.

So I don't understand how he got confused under the PUD application, which is a whole other application for a different Board to decide if we determine that we want to go forward with it. But putting that -- I'm sorry.

VICE CHAIRMAN BASEHART: All right. Well, one other question. You're talking about an interpretation as to whether or not a property in the HR-8 category that's ten acres or more has to be a PUD.

Wouldn't what we're considering apply to that same concept for all the land use categories?

I mean, we're not making a decision just on the HR-8 requirements; right? This would include LR-3 and MR-5 and all the other ones?

MR. MacGILLIS: Correct.

VICE CHAIRMAN BASEHART: All right. Okay.

MR. RUBIN: If I may, Mr. Basehart, on

behalf of the staff --

MR. HERTZ: Excuse me. Again, under your rules of procedure, all cross examination is to take place after the close of all of the evidence. So if there's going to be any questions posed to anybody here, including a Board member that asks a question, I would ask that the Rules of Procedure be complied with.

VICE CHAIRMAN BASEHART: All right.

MR. RUBIN: I'll address the issue when staff presents.

VICE CHAIRMAN BASEHART: Okay.

MR. HERTZ: We've got some interesting additional information that's not contained in the staff report that at this point we'd like to hand out.

And what these are are a number of current Code provisions that are currently in the ULDC, where the authors of the ULDC and the Board of County Commissioners have seen fit into certain zoning categories under certain circumstances -- I would like to place these in the record if possible.

MR. RUBIN: If I may, Madam Chair. This is not cross examination.

Apparently what the applicant is handing to the Board are some citations to other portions of the Code, which I believe were at one point considered to be a supplement to their appeal that I believe was never filed.

I think this Board can construe and constrict itself to what the applicant actually filed before the Zoning Director, or in terms of what materials the Zoning Director had relied upon based upon the applicant's submission as opposed to additional information which is being presented at this time.

CHAIRPERSON KONYK: Okay. Thank you.

MR. HERTZ: In any event, there's been no -- there are probably a number of provisions, we've handed them to you.

And the import of these provisions, and they're in the Code, as long as we're going to start getting really technical here, anything that is a statute or an Ordinance is always admissible before a quasi-judicial body.

And whether or not it was part of an application or a lawsuit if it were a lawsuit, is really irrelevant because everyone is on notice of what the provisions of a publicly published ordinance or law is.

So that's like saying if you don't argue that a statute says "X", you can't come to Court and cite the statute. I don't really get the objection.

CHAIRPERSON KONYK: Can I have a clarification then. This little package you just handed us is just the Code reprinted?

MR. HERTZ: This is just -- you can tear off the first page. How's that? And we'll just go to the Code reprinted.

CHAIRPERSON KONYK: Okay.

MR. HERTZ: The first page was meant to assist. If you go to page 3 of the Code.

CHAIRPERSON KONYK: Of your Code?

MR. HERTZ: Of this -- we've numbered it, right?

And you go to the bottom, and this is for MUPDs. Projects which exceed the square footage thresholds, in Table blah-blah, MUPD thresholds, shall be submitted and reviewed as an MUPD. Okay. We can understand that.

In other words, the staff and the County Commission know how to create maximum thresholds.

Other examples, page 6, you've got some Item C, projects which exceed the square footage thresholds indicated in Table blah-blah, MXPDP, thresholds shall be submitted and reviewed as an MXPDP.

So I guess my point is, and there's a third one on page 8, a PUD, that's really what we've already seen, so let's just stick with the first two.

My point is that if you have a Code, and throughout the Code when you want to put in a maximum requirement in a zoning district of square footage or acreage that would trigger a requirement for a planned development, certainly the County knows how to say it, as the staff, and the Commission knows how to adopt it as the Commission.

So this is not one of those, well, the Code is silent and it really doesn't address the issue. The Code addresses the issue because the Code is silent and everywhere else in the Code when this type of mechanism, when someone desires to put this type of mechanism in place, they seem to be able to do it quite well and easily.

Next item, page 11 of the staff report. This is the really mysterious one. There's actually one greater mystery but that is what I'll just call recently discovered evidence.

Right here in what staff admittedly says is the old Code in the staff report, there is and I will admit, the old Code says if you were more than 50 acres in residential or 250 dwelling units, you must go forward as a planned development.

If this provision was in the existing Code, I wouldn't be here. I'm not one to beat my head against a wall.

But this provision was dropped out of the Code, this provision was dropped out of the Code in 2003. Staff has basically between the lines in the staff report which we're going to get to, has said gee, maybe that was a mistake or it was unintended, that wasn't really our intent.

But I don't care what their intent was, I care what, you know, -- if you have some Ordinance or law that's clear, I'm not sure if it says, "Thou shalt not kill", we have to get to the intent of what that provision is.

When you have something that's clear on its face and its meaning when taken as a whole,

why are we looking at the intent? What value does the intent really have, if you're going to have rule of law, rather than the rule is whatever we say it is whenever we want it to mean what we want it to mean.

And that's kind of the problem that I see with the staff position. They just want it to mean what they want it to mean, because they want it to mean something other than what it says.

And I understand that they're in an uncomfortable position. And I sympathize with them. But I think it probably would have been better had they said, gee, we made a mistake, you're right, and we're going to correct it.

But what's probably the most interesting of all of the new facts that we have, because this is something that we only discovered two days ago, notwithstanding the fact that the County knew that this issue was near and dear to my heart, is a Code change.

It's a miracle. The County is processing a Code change currently, and has taken it on the 13th without of course advising me, which they had no duty to do, that will reword page 8. And I have in my file probably something a little better, I'll just give this to the Clerk.

This is the agenda from the Palm Beach County Land Development Regulation Advisory Board, July 13th. And in it is, we will be handing to you the applicable sheet that's in it and I will give the entire agenda to the Clerk, this needs to go to the Clerk, and this one --

MS. COURT REPORTER: I'm sorry. I can't hear you, Mr. Hertz, when you're walking away.

MR. HERTZ: You're right. I'm sorry.

MS. HELFANT: Excuse me. Are you introducing this into evidence?

MR. HERTZ: Sure. Why not.

CHAIRPERSON KONYK: Motion to accept?

MR. PUZZITIELLO: So moved.

CHAIRPERSON KONYK: By Mr. Puzzitiello.

MR. CUNNINGHAM: Second.

CHAIRPERSON KONYK: Second by Mr. Cunningham.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Carries unanimously.

MR. HERTZ: This is just an amendment.

Let's look at the language as to what it says. What it used to say was a PUD shall meet the minimum acreage indicated in Table 3.B.2.C.14 PUD minimum acreage, shall be submitted, shall be submitted and reviewed as a PUD unless submitted as an MHPD or a TDD. And that's kind of what's consistent with what's at the bottom of page 8 and really elsewhere in the staff report.

This Code change now is going to say, projects which exceed, there's a concept, exceed, not minimum requirements, but if you exceed the acreage indicated in the Table, shall be submitted

and reviewed as a PUD unless submitted as an MHPD or TDD.

Now, I'll have the opportunity later to cross examine Mr. MacGillis and ask him, or perhaps call Ms. Alterman as a witness, since I don't have the right to subpoena, and ask what prompted this Code change.

I can't imagine the answer is going to be anything other than, well, we know we're right in going to the Board of Adjustment, but just in case we're wrong, we thought we would just change the Code to say what we had hoped it had said to begin with.

And I really think that this is pretty compelling evidence in terms of you know, how the County staff truly feels about their position. If they had any feeling that their position had any footing considering what you've heard from the Assistant County Attorney whose name, I'm sorry, I don't know.

MS. HELFANT: It's Ms. Helfant.

MR. HERTZ: I'm sorry, Ms. Helfant, that somehow they're entitled to a presumption of correctness, they must feel like there's not a lot of traction to their position to have to go through filing a Code change. And I can't really -- I don't know what else I can say about that.

The other thing that's interesting, is while Ms. Helfant has told you what the standard is and she is your lawyer, I'm looking at Roman numeral III of the staff report, which doesn't use the term presumption of correctness at all.

And while I'm not here to argue with your lawyer, I would just point out that it says shall not modify or reject the Zoning Director's interpretation, this is on page 1 of the staff report, if it is supported by competent, substantial competent evidence, which we'll have to see whether there is any competent and substantial evidence that the County can present in view of what is within the four corners of the documents that are the subject of the interpretation, and then it goes on and says, unless the interpretation is found to be contrary to the Plan, the ULDC or the Official Zoning Map.

Well, I think you can throw out any presumption of correctness if you find or believe that the interpretation of the Zoning Director is contrary to the ULDC.

If the ULDC does not have maximum thresholds, how can the interpretation of the Zoning Director that it does be supported by the ULDC. And therefore, I don't think any presumption of correctness should be entitled to staff if you so believe that to be the case.

That was really going to be my short presentation. The long presentation is going to involve Chris a little bit more. Let me make sure I didn't have anything else.

And the longer presentation really goes through the entire staff report, almost on a point by point basis, to show why either the information

provided is irrelevant to your considerations today, and if we're going to get technical, perhaps I'll ask that it be stricken as irrelevant. And basically show why all of the exhibits that relate to the actual Code itself are irrelevant.

I have really two options that I will present to you at this time. We will go through the long version or I will stop now but ask that I can reserve say 15 additional minutes to walk through the staff report if you guys think it's necessary.

I really don't want to beat this to death. I don't want to belabor the point. I think this is an awfully clear issue, but if you'll indulge me the opportunity to come back and go through the staff report point by point for 15 or 20 minutes if it's necessary, I'll sit down.

If you'd like me to go forward now on a point by point basis through the staff report, I really think it -- there's going to be some redundancies, unfortunately, to my presentation, which I drafted in anticipation that the rules of procedure of this Board would be followed, and that I would be going second.

So it's really entirely up to you. I'll do whatever you all want.

CHAIRPERSON KONYK: Isn't there rebuttal after?

MS. HELFANT: Yes, he does get --

CHAIRPERSON KONYK: So you can come back as rebuttal.

MR. HERTZ: Okay. Then we'll just come back if we feel it's necessary or you feel it's necessary or one of us feels it's necessary to come back to rebut the contents of the staff report.

And I thank you for your considerations and I'm sorry for any confusion about the procedures of the Board.

CHAIRPERSON KONYK: Now we'll hear from the County Attorney, attorney for the County.

MR. RUBIN: My name is Steve Rubin, R-U-B-I-N. Thank you Madam Chair, good morning, Board members.

I think Mr. Hertz has raised several issues that we will have our witnesses address and also go through the staff report for your benefit.

But a couple of preliminary points if I might.

I would respectfully disagree with Mr. Hertz in terms of Mr. MacGillis' interpretation of the Code. I think the Director's interpretation of the Code is and should be based upon an actual application or whatever was referenced in that appellate application because the Zoning Director is trying to formulate an opinion and an interpretation based upon a particular set of facts.

I don't think the Zoning Director's job and responsibility is to issue hypotheticals and discuss hypothetical zoning matters with property owners, but he's supposed to be addressing a real

problem, a real issue regarding a particular project that's come before the County so that the property owner and the County can move forward or address that issue.

And I think the application in this case is pretty clear that we're dealing with a particular project, in this case a residential development of 610 proposed townhome units of 83 plus acres. You have in your packet a copy of the Planned Unit Development drawing as an Exhibit so you can see the scope and breath of it.

And I believe that Mr. MacGillis was entirely proper and appropriate to be referencing that in his opinion when he's determining how to apply the Code as it exists today with respect to the project that is now before the Zoning Commission.

And what I wanted to point out initially is we're going to have Mr. MacGillis present a brief background of how this case came before the Zoning Director, and then we're going to have Mr. MacGillis go through some of the Exhibits that are referenced in the staff report and we're going to provide you with the explanation of the Zoning Director and how he came to his interpretation in this particular issue.

The focus of Mr. MacGillis' presentation will in fact be the Table in Article 3, which is Exhibit 3 on page 8 of your materials. And with respect to an argument that Mr Hertz made, we think it is very significant and Mr. MacGillis will address this, in the prior version of the Code since 1992 forward, there was the notation in that particular section regarding this Table which explained that those thresholds that appeared in the Table were actually minimum thresholds, and that if those minimum thresholds were exceeded, it would in fact require a rezone to a PUD if it was a residential project, as it is in this case.

You have in your packet Exhibits 14, 15 and 16, copies of what was presented to the Board of County Commissioners when the Code was revised in 2003 together with Mr. MacGillis' explanation of that process, that if in fact there was an intention to change that requirement which would obviously eliminate a public hearing concept, that would have been considered a major change or major revision. And you would have seen in those Exhibits a notation and a highlight to that particular change before the BCC.

You wouldn't see, as you have in these particular documents in Exhibits 14, 15 and 16, reference only to minor changes, streamline the Code and to avoid redundancies.

We'll also have Mr. MacGillis testify and the Exhibits in the staff report show that since 2003, staff has consistently required rezonings to PUDs for any projects that have exceeded the ten acre minimum threshold as outlined by that Table.

They are in no way discriminating against this particular applicant.

The chart will show, I don't know, ten,

15, probably 20 projects that have come before the Zoning Division and all have been required to rezone to the appropriate PDD district.

I just also want to emphasize that again, this is an appellate process, that in fact the standard of review in Section 3 of the staff report does apply. That you are to presume that Mr. MacGillis' interpretation is correct since he is the Zoning Director, he is the person who has the authority to make those determinations.

We believe that substantial competent evidence will be presented to you and it has been presented to you in the form of the staff report, and that the applicant's own PUD rezoning application in fact shows that in this particular case that the requirement of a PUD rezoning is consistent with the Comprehensive Plan, it's consistent with the Official Zoning Map. It's also consistent with other provisions of the ULDC.

But you'll also see and which is also in your packet, and this is in Exhibit 11 on page 4 of that exhibit, you'll see that when the applicant submitted their rezoning application to the County in 2004, I believe it was originally submitted in September of 2004, and then amended in November of 2004.

Under subsection D of that justification statement, the applicant itself admitted and stated that this particular Table that we're talking about today, triggered the requirement, it wasn't an option they said, it was a requirement to rezone to a PUD. That's how the applicant phrased it, that's referenced in the staff report.

I have a blow-up of that particular section, which we'll get into a little later, but my suggestion to this Board is based upon the other factors that are involved in this particular case, vis-a-vis the applicant and the Mobile Home Park and mobile home lot owners or mobile home owners, that the applicant in this particular case is trying to avoid the public hearing of their rezoning application and are trying to somehow figure out a way to avoid that process and come in in another direction.

But it's significant to state today that that rezoning application is still pending. It has not been withdrawn. There's been no correction if there was a mistake that the application said that a rezoning was required.

So I think sitting here today you almost have what in the law is called an estoppel, meaning an applicant can't take a position in one proceeding and then take an inconsistent position in another proceeding. That's what essentially the applicant is doing here based upon their own application.

And at this point I'm just going to call Mr. MacGillis, who I believe has been sworn. He's going to as quickly as he can go through the history of the case and reference the Exhibits.

And we'll follow up with some questions if we need to. Thank you.

MR. MacGILLIS: Thank you, Mr. Rubin. Just want to go into a little background on how an appeal actually gets to the Board of Adjustment. The applicant is required under the Unified Land Development Code before they file an appeal, to file what's called a zoning confirmation letter.

The applicant filed the zoning confirmation letter in May requesting -- and on that letter you asked, Mr. Basehart, how Meadowbrook came into the picture.

On that letter the reference was to the Meadowbrook Park, and when a Zoning Director's making an interpretation or a staff member who generally starts the zoning confirmation letter process doing the research for the Zoning Director and consulting other divisions if it's necessary in order to respond to that letter, does the basic research and then sits with the Zoning Director. That's what took place in here.

It was my understanding when the thing was presented to me, we were speaking to a specific case, the Meadowbrook rezoning application that Mr. Rubin had indicated is in your application that was filed.

That was filed in November of 2004, had been in the process for approximately six months before this appeal was -- before the zoning confirmation letter was submitted. And actually the zoning confirmation letter was submitted the day before the Zoning Commission hearing, which was in May of this year.

And at the Zoning Commission hearing, the applicant requested a 90 day postponement. So that rezoning application will be going back to the Zoning Commission on August the 4th and then to the BCC on August 28th.

When I did the review with staff on this letter, obviously the Zoning Director can't know every provision of the Code or how it's been applied consistently through various applications in the system, so I obviously have to sit down and consult the staff in the public hearing section, which I have Maryann Kwok here and we have Susan Miller from the Planning Division, because when something comes up relating to density or planned developments, it's obviously something that's between Planning and Zoning that you have to check the Comp Plan, Zoning Code for consistency.

The last two exhibits in the back of your packet are the Official Zoning Map and Land Use Map that the Zoning Director has to find they're consistent. In part of doing the review, is a rezoning even permitted in this area, is residential allowed?

So those two exhibits in the back show that the property currently is zoned RM with a land use of HR-8.

From that we go to Exhibit 8, which is the densities, and we looked at the application with what the gentleman was submitting at that time, and his density was 7.33.

So at that time I thought, well, there's

no question here because you're exceeding the standard density of 6 units. Looking at the footnote, you're greater than the standard but you're less than the maximum, so the footnote indicates that you're a planned development.

Then when the actual letter came in then it became more a broader question. Well, when do I have to be a PUD? There's no acreage requirement here, I'm reading that it says if you want to be a PUD, then these are the requirements that you have to meet.

So my logic says, well, I've worked in the Zoning Division 18 years. It's clear to me that anything exceeding a certain threshold -- that's been in the Code since the first planned development was created in 1969, you had to be a PUD.

So at that point, we started getting in and looking at the back and tried to track back, well, is there any room that somebody could read this differently. So I consulted with Maryann, since the Code was amended as indicated in some of these exhibits that staff included in here.

In the '92 Code it was very clear, you had to be a PUD based on either the acreage or the unit count or the threshold for BCC based on -- there was two charts in the Code. So he definitely would have exceeded them under the '92 Code.

And in 2003 there were major amendments to the entire Unified Land Development Code, which I played a key role in with the Zoning Director, Mr. Whiteford, the former Director, worked primarily on that Article 3, which includes all the planned developments and overly districts and Maryann Kwok, who is in the audience, the Chief Planner, worked on those provisions as well.

One of the main goals of that 2000 Code rewrite was to streamline the process, eliminate redundancies in the Code, consolidate like stuff in sections of the Code.

And the planned development, what the Director did, was moved a lot of the general provisions up to the first chapter of the Article, and then went through every one of the planned developments and eliminated redundancy language and referred back to Comp Plan language and said this language is not necessary in here, it's very clear that the acreage requirement is spelled out in the land use and based on your density, therefore the only thing we need actually in the Zoning Code is the acreage threshold.

Staff has consistently and it's indicated in this -- in Exhibit No. 13, this is the sheets that we present to the Land Development Regulation Advisory Board. They review all amendments to the Code, and it's imperative upon staff to identify to that Board that reviews amendments to the Code any significant changes we're making because we have to justify that.

And the Advisory Board will ask staff, well, what are the implications? If you're going

in there and telling us that every other planned development in the Code has minimum requirements as far as dedications and acreage and thresholds, that all of a sudden in the planned development section you're telling us that there's no threshold now, no matter what acreage you are? Then we'll have no dedication of civic sites or recreational parcels and stuff.

So that was never brought up. I worked on this Article. I presented a lot of this information on these articles to the LDRAB. It was never my understanding it was ever anyone's intent ever to take out the threshold for the acreage requirement for a planned development. It was supposed to be consistent with the rest of the development.

And when it went to the Board of County Commissioners, the Ordinance, in January 2003, there was no reference that the Exhibit -- it's part of that Exhibit 13, which is the summary that staff presents to the Board of County Commissioners for every Article any significant changes were made and in that particular Article, there was reference to us consolidating information for planned developments -- eliminating planned developments that were no longer used.

But once again, there was no reference in there that the Zoning Division was eliminating the threshold for planned developments. So with that, my understanding and the public hearings consistent application of the acreage requirement, there was over 20 some applications that came in after the Code was amended in 2003. I read the Code provision and said, well, that applies. You have to meet the acreage requirement.

The applicant is arguing that, well, there's room -- I'm interpreting it different. I think there's room for interpretation here. It's only if you want to be.

So with that in mind in talking to staff, I said, is it appropriate then -- when somebody comes to us, if we can't do it with a policy, PPM, which is the Zoning Director can draft a memo up in explaining if there's some area, it's just a grey area to interpret it to apply it across, for staff to apply, I felt this wasn't something I felt comfortable doing. I could have gone back to the Board with an AI and asked them, was this your intent to take it out?

And I felt while we're in the process now of amending the Code twice a year, I said if there's any room on anyone's part, I never had a question before, but if there's any room for somebody to interpret this differently, why leave the door open? Why not go back and fix it, because why would you want somebody like -- he submitted this entire application, wrote his own rezoning application.

He clearly states that he knew he had to be a PUD. He knew. He submitted all the requirements to say he was a planned development.

He's questioning why we're submitting to the Board to amend the Code, I'm clear he's required to do it and staff is, but if there's any room for the public to question it, I thought it was a good opportunity.

We're in the process of amending the Code to put the provision in and make it clear that the former Zoning Director felt it was clear.

MR. RUBIN: Now, you're referencing, since we're on that subject, changes that the BCC would have considered important, you're saying there would have been some indication in the proposed Ordinances or the supporting materials to indicate that; is that correct?

MR. MacGILLIS: That's correct.

MR. RUBIN: And just for the Board's consideration, you'd be referencing page 33 of the staff report, which is the errata changes sheet in Exhibit 14; would that be accurate?

MR. MacGILLIS: That's correct.

MR. RUBIN: Then under that, Chapter E, Section 2, amended language. If in fact there was an intention of the BCC to eliminate a public hearing concept and these minimum threshold requirements, that somewhere in there that would have been brought --

MR. MacGILLIS: Yes.

MR. RUBIN: - to the attention of the BCC?

And would that be also correct with regard to Exhibit 14, and particularly on page 35 of the material, where you have the amended Table for Chapter E, Section 5, that if there was an intent to make that change, i.e.; eliminate the minimum threshold requirement, that there would have been something noted after that particular change?

MR. MacGILLIS: Yes.

MR. RUBIN: And similarly with regard to Exhibit 15, page 54 of the materials, under Article 3, Overlays & Zoning Districts, in fact, that's the section that would have brought this type of change to the attention of the BCC?

MR. MacGILLIS: Yes.

MR. RUBIN: And in fact, is it your understanding and of course the language could be read by the Board, it's really only referencing minor changes being made and elimination of redundancy to the Code itself; is that correct?

MR. MacGILLIS: That's correct.

MR. RUBIN: Now for the record, let me just ask you, you're the Zoning Director for the County; correct?

MR. MacGILLIS: Yes.

MR. RUBIN: How long have you been working for the County?

MR. MacGILLIS: Nineteen years.

MR. RUBIN: And your experience with the County started at what particular responsibility level?

MR. MacGILLIS: At a planner level.

MR. RUBIN: And you worked your way up to Senior Planner; is that correct?

MR. MacGILLIS: Senior, Principal, Chief,

Zoning Director.

MR. RUBIN: And you've been working with the Palm Beach County Code for approximately the same amount of time?

MR. MacGILLIS: Nineteen years.

MR. RUBIN: And obviously you have professional degrees in planning?

MR. MacGILLIS: Yes.

MR. RUBIN: What degrees do you have?

MR. MacGILLIS: ASLA.

MR. RUBIN: And in this particular case, did the Executive Director of the County delegate to you the authority to issue this particular interpretation?

MR. MacGILLIS: Yes.

MR. RUBIN: Let's go to the crux of the issue I think as the Board has to address it this morning, and that's on Exhibit 2, excuse me, Exhibit 3, and compare it to Exhibit 5 & 6.

And let's go back to page 11 of the materials if we can, and this is on Exhibit 5.

When you were referencing the fact that for years it's been a requirement that if you meet a minimum threshold that you have to rezone to a PDD and in the case of residential a PUD. You were referencing footnote 1; is that correct?

MR. MacGILLIS: That's correct.

MR. RUBIN: And that expressly states that the fact it is a requirement or it's a minimum threshold, it's not an option on behalf of the applicant to decide whether to rezone if it meets the threshold; is that correct?

MR. MacGILLIS: That's correct.

MR. RUBIN: Now under the applicant's proposed interpretation, if in fact for argument sake there was some intent of the BCC to eliminate the threshold requirement, does that mean that if someone, if an applicant came before the Zoning Division with a project of 1,000 acres, under that scenario where there's no minimum threshold, is it possible to avoid the PUD process, the PDD process altogether, under the applicant's interpretation?

MR. MacGILLIS: Yes.

MR. RUBIN: Does that mean -- what sense from a Zoning Director does that make in terms of interpreting the Table that now exists after the Code was amended, does it make any sense?

MR. MacGILLIS: It doesn't -- we circumvented this chart.

MR. RUBIN: And why is a property that in this case is in the HR-8 district, why does it require a PUD?

What are the benefits, what is the County trying to accomplish by making that a requirement to rezone to a PUD?

MR. HERTZ: I object to this line of questioning as being totally irrelevant as to what the Code says. Just for the record, please. It's just way off -- we're here, what does the Code mean? It's not about public policy. I'm sorry. Let me step up to the microphone.

Just to make my objection clear, this is

not a Board that is here to make a determination about what good public policy is, and my objection is that public policy right now is irrelevant to what the Code says, not what maybe somebody wants it to say.

And therefore I feel it's very irrelevant.

Thank you.

MR. RUBIN: My brief response to that is it's exactly why we're here. If in fact there's believed to be some ambiguity, something the Code does not expressly address, that is why we have a process for the Zoning Director to be the person to make that interpretation, and that is exactly what has happened here.

The applicant is asserting and alleging that there is some issue with a particular Code provision. The Zoning Director has responded with his letter of interpretation, and we're here supporting why that letter of interpretation is correct even though obviously from the law the applicant has the burden to show why the Zoning Director's interpretation is incorrect.

I also object because it was not in the staff report and therefore we could not anticipate any possible rebuttal for what is not in the staff report, in the same manner as it was objected on my side when I tried to submit information that was not Jon's opinions, no offense Jon, not Jon's opinions but actual statute, actual County Ordinance that somehow was objectionable, but eliciting all of this stuff about, you know, what is good planning and what's not good planning, you know, that's for the Board of County Commissioners to decide.

That's not -- and they decided it when they adopted the Code. And just because, you know, maybe it's not a good idea or it is a good idea, I don't think is relevant, number one; and number two is, I didn't have the opportunity to hire an expert to come in and talk about, you know, planning theory.

That's not what I thought this hearing was about, planning theory. That is supposed to be policy decisions by people who make policy decisions.

And that's why I'm objecting to this whole eliciting of what Mr. MacGillis thinks good planning theory is about. And some people like new urbanism, some people like, you know, suburban/exurban lifestyle, but that stuff doesn't, you know, that stuff doesn't matter what people like, it's what the Code says.

MR. RUBIN: Madam Chairman, may I continue with the questions?

CHAIRPERSON KONYK: Please do.

MR. RUBIN: Mr. MacGillis, could you explain to the Board, why is there a requirement in this HR-8 zoning district if there's a development ten acres or more to require a PUD? What's the rationale?

MR. MacGILLIS: Well, it's generally --

MR. RUBIN: And I ask that question from

your perspective as the Zoning Director whose responsibility is to interpret the Code.

MR. MacGILLIS: Well, generally, the larger the property gets, you have to look at compatibility issues, that's what zoning does.

So the larger the land area or the number of units that can go on there based on the land use, the Zoning Division is responsible for looking at the property regulations. The planned development creates a unified land, piece of property, and within that development you can look at -- it has a lot of advantages both for the development and the County.

You have various housing types, hierarchy of streets, you get civic dedications, you get limited commercial that captures internal trips, you have common areas that are dedicated, so with smaller lots, the people can enjoy larger common areas, you can have preserves, you can have larger buffers that mitigate the larger parcels. It allows for phasing of the development that you wouldn't be able to do in a straight subdivision.

So I mean there's an array of advantages for both the County and the developer when they go with a planned development and it's usually based on the size or the number of units that creates the compatibility impacts on the surrounding residential properties.

MR. RUBIN: And in fact in this particular case, the Meadowbrook application, isn't it correct that essentially what you're testifying to were their justifications for the rezoning; isn't that correct?

MR. MacGILLIS: That's correct.

MR. RUBIN: Let me --

CHAIRPERSON KONYK: Let me interrupt just one second. I'd like the record to reflect that Ms. Cardone is leaving the meeting. Sorry.

MR. RUBIN: If I can Mr. MacGillis, I direct your attention to Exhibit 12, which I believe is on page 26 of the materials. That's a Table which is attached to the staff report entitled Residential PUD's.

Can you explain to the Board what that Table is? Page 26.

MR. MacGILLIS: I requested the staff to prepare this to go in and check everything that came through the Zoning Division since 2003 to determine if staff was interpreting the Code as the applicant is indicating we should, that anything with any acreage requirement does not require a PUD.

This chart, the 4th column indicates the acreage and all these projects as you can tell by the project name, all came in as planned developments into the Zoning Division. So there was nothing that the Zoning staff misinterpreted that Code requirement and said well, you're ten acres, you can go to DRO. They all had to come through the public hearing process.

So this was the first time it ever came to my attention that actually there was a question on

the PUD threshold.

VICE CHAIRMAN BASEHART: When do we get to start to ask questions? I guess after everybody's done talking?

CHAIRPERSON KONYK: You can wait.

VICE CHAIRMAN BASEHART: I'll forget.

CHAIRPERSON KONYK: Write it down.

MR. RUBIN: Let me also draw your attention to page 2 of the staff report. There's also a Table in the middle of that page entitled Prior Code Years 1969 Through 2003.

What does that Table refer to?

MR. MacGILLIS: That's a summary of all the various Zoning Codes indicating that there has always been a minimum acreage requirement.

MR. RUBIN: Minimum threshold that would trigger the rezoning in a particular case?

MR. MacGILLIS: Yes. Prior to 1992, it would have been a special exception. It became a rezoning in 1992.

MR. RUBIN: Let me if I might, draw your attention to Exhibit 11, and that is in the materials starting on page 22.

This is -- was submitted to the Zoning Division as part of -- the justification statement submitted to the Zoning Division as part of the applicant's rezoning application; is that correct?

MR. MacGILLIS: Yes.

MR. RUBIN: And to your knowledge, has this justification statement ever been amended, corrected or withdrawn through the present date?

MR. MacGILLIS: No. MR. RUBIN: After November of 2004?

MR. MacGILLIS: Not to my knowledge.

MR. RUBIN: Isn't it correct, that with a rezoning application, and let me show this to counsel, I'll refer this to County's Exhibit 17 which is not in the staff report. I'm sure the applicant has a copy of it.

This is an aggregate of documents that are signed and submitted to the County when a rezoning application is filed, and let me show that to you if I might.

Do you recognize the forms that are utilized for rezoning applications?

MR. MacGILLIS: Yes.

MR. RUBIN: And these are the forms that the County uses and were used in this particular rezoning application?

MR. MacGILLIS: Yes.

MR. RUBIN: I've highlighted some of the language in the form and in fact isn't it correct that when an applicant submits a rezoning petition, they are in essence indicating that the statements contained in the application are true and they're accurate and they're complete?

MR. MacGILLIS: Yes.

MR. RUBIN: And that the applicant has reviewed the statements and information and is essentially verifying to the County that they are accurate statements made within the application?

MR. MacGILLIS: That's correct.

MR. RUBIN: And in fact, in the Justification Statement under section D, which I believe is on page 25 of the materials, that's changed conditions. And again this is the applicant's rezoning application.

The first sentence of that -- could you read the first sentence, please?

MR. MacGILLIS: "Per the ULDC, the property triggers the threshold which requires it to be rezoned to a PUD."

MR. RUBIN: And in fact, isn't that exactly the interpretation that you have made on behalf of the Zoning Division in this particular instance?

MR. MacGILLIS: Yes.

MR. RUBIN: Do you want me to -- if I might.

MR. HERTZ: No objections.

MR. RUBIN: This is just for the Board's consideration.

And again, what's important to note here is that this is the applicant's own rezoning application. This is not Mr. MacGillis' zoning letter. What we have in November of 2004, is in fact a statement from the applicant essentially agreeing with the Zoning Director that the ULDC triggers the threshold which requires it to be rezoned to a PUD.

That's why I think we're here today, but I think we agree. I'm not sure why there is an issue other than as I've suggested, there may be something else about this application which is not necessarily following the strict interpretation of the Code by Mr. MacGillis which may be driving the application.

MR. HERTZ: Object to the characterization of what we're doing and not doing.

MR. RUBIN: And if I might, I would like to for the record admit the staff report and its attachments as evidence.

As part of the record I would also like to admit County's Exhibit 17, which I have just referenced with regard to the attachments to the petitioner's rezoning application which indicates the certification of the statements being true and accurate.

MR. PUZZITIELLO: Motion to accept.

CHAIRPERSON KONYK: Motion by Mr. Puzzitiello.

MR. CUNNINGHAM: Second.

CHAIRPERSON KONYK: Second by Mr. Cunningham.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: It's accepted into the record.

MR. RUBIN: Let me check my notes. What I'd like to do at this point, I think I'll give Mr. Hertz an opportunity to present a rebuttal.

I would like to reserve some time if I might for just concluding comments at the end of

Mr. Hertz' presentation.

Thank you very much.

CHAIRPERSON KONYK: Okay.

MR. HERTZ: Thank you, Madam Chair, Mr. Vice Chair and members of the Board.

From what I can gather, County staff is making this (indicating) the cornerstone of their case. I think that's very interesting.

County staff, when you come to them and say, I have a piece of property and it's 20 acres and it's zoned residential and I'd like to develop it, do I have to be a PUD or can I do a straight zoning?

What they tell the experts, they say, no, it has to be a PUD because it's more than ten acres, even though the old Code said 50, and of course there's nothing in this Code that addresses it whatsoever.

Most people don't argue with County staff. I can tell you people like my good friend John Schmidt, people like who are regular planners who are part of the system, are loathe to argue with County staff because they have to get along with County staff, it takes somebody like me, who just doesn't care, to be able to make an argument that County staff is wrong.

As a matter of fact, a little anecdote and I'll take the liberty here, I could not get an expert witness to testify in this matter from this County, because nobody wanted to be adverse to County staff. That is the way the game is played and those are the realities.

However, let's go to the centerpiece of the County's case that we agreed with them, and let me just first say, no, Mr. Barry went in and asked, do we have to be a PUD, and staff of course said, yes, you do. And if we certified to something which I will show you we didn't, that was inaccurate, it was in total and complete reliance on County staff.

So to use that against us and say, oh, you're estopped, you said that the property triggers thresholds. Well, let's take another look at this statement.

Mr. MacGillis, what are the thresholds for an 83-acre parcel in terms of number of units for a PUD? Well, let's just do 80, it's probably an easier math.

MR. MacGILLIS: You're going to have to look at the land use.

MR. HERTZ: Okay. Would it be at 6 units per acre? Are you familiar with the charts in your own evidence?

MR. MacGILLIS: I mean, that's more of a planning issue than a zoning issue.

MR. HERTZ: If I told you it was six units per acre, would you believe me, and that to get a PUD density bonus it would be -- you could get up to eight units per acre?

MR. MacGILLIS: (No response.)

MR. HERTZ: You're the one who put the application in. You've got all these codes and

charts that talk about six units per acre for the zoning district. Am I wrong?

MR. MacGILLIS: (No response).

MR. HERTZ: Are you unable or unfamiliar with the Code that you said you wrote?

MR. MacGILLIS: I'm sorry, but I don't understand specifically what is your question?

MR. HERTZ: My question is, how many units to the acre is one entitled to as standard density for an HR zoning district?

MR. MacGILLIS: There's the minimum, I believe, and I've got Susan in the audience, five, six is the standard, and eight is the maximum.

MR. HERTZ: Okay. So if we have 80 acres, and we wanted to go beyond six units per acre, what is the staff's -- what would occur at more than six units per acre?

MR. MacGILLIS: You'd be a planned development.

MR. HERTZ: What would trigger it as being a planned development?

MR. MacGILLIS: In that case the units in the Comp Plan.

MR. HERTZ: Okay. So is it clear from the application materials in the staff report that we were asking in the pending PUD zoning petition that had nothing to do with this matter whatsoever, but just for fun since you're trying to use it against us in some absurd and obscure way, is it clear that if you wanted 600 acres [sic] on an 80 acre parcel, 600 units on an 80 acre parcel, because of the number of units, you would have to be a PUD?

MR. MacGILLIS: Yes.

MR. HERTZ: Okay. Per the ULDC, the property triggers the thresholds which requires it to be rezoned to a PUD. Now, that could be in our application for two reasons.

One is because of the number of units. Okay. That's because we're 600 units, or it was a poor choice of words, I should have said the project requires, or number 3, staff told the applicant that because it was more than ten acres they needed to be a PUD.

Chris, can you -- I'm going to ask Chris to come up. And this is probably the most twisted fact I've ever seen.

Chris, did you speak to County staff at a pre-application conference?

MR. BARRY: It was actually our agent, Gentile, Holloway & O'Mahoney, and they did speak to staff.

MR. HERTZ: And what were they advised by staff?

MR. BARRY: That since they were ten acres, the property had to be rezoned as a PUD.

MR. HERTZ: Thank you.

First of all, you could say that this is accurate because we were looking for more than 600 units, which triggers a PUD or you can say we were just misled by County staff. Either way, don't hold it against me.

I mean, I'd like to go back to a couple of other things. Jon, you've given us some charts about all of the projects, their acreage, and how they've been zoned.

Did anybody ever ask you between the Code change in 2003 and until Centex came to you about straight zoning for residential properties in excess of ten acres?

MR. MacGILLIS: As I stated in my presentation, as the Zoning Director, I was never approached. No one came to me. Staff generally would come to me if there's a part of the Code that they are getting challenged on. They will come to me and say, Jon, I have an applicant in my office who is saying he does not have to be a planned development, he's in the DRO process, what do I do?

I'd say I'll meet with him, or if he disagrees, he needs to submit for a zoning confirmation letter and then appeal it because he would have to go through the public hearing process.

No one approached me, to answer your question.

MR. HERTZ: To your knowledge, was staff consistent in telling applicants if you're more than ten acres in residential then you needed to be a planned development?

MR. MacGILLIS: Yes.

MR. HERTZ: And nobody made a request for an interpretation until we did?

MR. MacGILLIS: That's correct.

MR. HERTZ: So I mean, staff, who are the experts on the Code, people generally rely upon. And that's the only point I'm trying to make.

Plus, most developers and I would say most owners of large parcels and I think everyone would agree, would rather go through the process of a planned development approval for the additional 2 units per acre of density, especially in today's economic times and value of land, than give up the additional two acres for a more expeditious and certain process. Most developers are willing to embark on the long negotiations and expose themselves to conditions and go through the process.

But nobody really has ever said, I'm willing to give up the two units per acre of density bonus that I can get with a PUD, straight zone the parcel and develop it since 2003. And that's all we're trying to say, that we have an option under the Code.

I understand that staff says that wasn't what the County Commission intended. The County Commission is not here.

They're saying, we didn't intend to put that change in. Well, they might not have caught it. Maybe the Commissioners are smarter than they think and the Commissioners caught it and they said, you know, maybe this is a good thing.

I'm not here to argue policy. I'm not here to argue whether if you have 1,000 acre

parcel it has to be a planned development or not.

I'm here on a very narrow issue which is in front of you, which is quite simply, what does the Code say?

I have to make a brief trip through the staff report because I feel compelled to now that it's been put into evidence. Just kind of walk through it.

The first I've already hit upon, is the standard of review. I do not see the words, "presumption of correctness" in there. I don't know where that comes from. It says it should be -- it should not be modified if it's supported by competent, substantial evidence. I think what we have to keep in mind here is what's the issue.

The issue is not policy. The issue isn't what the County staff thinks should have been in the Code, or what they intended to put in the Code before they submitted it to the policy makers of the Board of County Commissioners, but what's in the Code.

And I would submit, once again, that the Zoning Director's interpretation is contrary to the ULDC because there's no provision that has a threshold that says if you're more than ten acres, you have to be a PDD. Admittedly, it was dropped out of the Code, so it just seems clearly wrong.

When you look at the legislative history under the background, and I won't ask you to flip back and forth, but Appendix 5 of course, is the old Code, where the 50 acre threshold was there.

You know, if the County had a 50 acre threshold like they did in the old Code, I would not be here. I would not be so disingenuous to be standing here in front of you saying, oh, it says that if there's 50 acres you have to be a planned development and try to tell you it means something different.

Exhibit 6, really is just -- which is on page -- it's really just a restatement that there's a minimum acreage requirement of ten units to the acre -- I'm sorry, of ten acres. So that if you're not ten acres you can't be a PUD.

But it certainly doesn't say anywhere in there that if you're more than 10 acres you got to be, like it used to say, you know, on Exhibit 5.

When you look at Exhibit 7, this is a pretty simple statement. If you want maximum density, you've got to be a planned development.

What we're talking about is not a pending PUD application for more than standard density. We're saying if we want to develop at standard densities, would we need to be a PDD? I mean this really, if you look at it says, look, if you want the bonuses, you got to be a planned development.

I'm talking about a project without the bonuses. Therefore, I shouldn't have to be a planned development unless there is an acreage threshold like there used to be in the Code that said if you're more than 50, you got to be a planned development.

Next, Exhibit 3, we've been all over that

a few times. Once again, the chart merely sets the minimums.

Exhibits 7 & 8, we've been through these before, particularly 8, which seems to support our position which says standard density, 6.0, is the highest permitted unless you have a planned development district.

Yes, it begs the question, which is really such a little, tiny, narrow question, are there any maximum amounts that would trigger a PUD. Staff has not pointed to one except in Codes that are no longer in effect.

I mean, a lot of this is just rehash. I'm not even going to go through some of it. You know, in terms of our existing application, I think I've already addressed that as I think it's almost humorous to say, oh, well, they said that it was required.

Well, as I pointed out, required for two reasons. One is because we had more units than we could have under a standard zoning. And the other reason is because that's what staff told us, and we relied on staff.

I really, you know, I could go further, but I don't want to. I'm kind of out of gas, personally. I'm sure you're getting bored of hearing the same thing over and over and over again. This is not a question of -- but I will say this. This is not a -- you know what? I forgot to do something.

This is the pending Code change, the just in case we're wrong change, as I call it. I just want to pass it out.

MR. CUNNINGHAM: We were waiting for you to pass it out earlier but you --

MR. HERTZ: I forgot. I got all wound up.

And I have to wrap up now, and I'm sure that makes you all happy.

I guess in conclusion, I feel that this staff report is confusing. I think it's misleading, and frankly, I think it's disingenuous.

I think that staff is in a bad position, because a Code change happened that maybe they weren't aware of and maybe they continued to give the same advice that they had always given to applicants and I won't call us a poor, unsuspecting applicant, but this is a very technical Code, admittedly, and a lot of people do rely on staff.

But when we started to look at the issue, we couldn't find the counterpart provisions in this Code that existed in the Code prior to it.

And we do have provisions, and Chris has them with him and I suppose we might as well submit them so we don't waste the paper, of the land development regulations that are in effect for HR-8.

It's not like the County has a vacuum if you don't have a planned development. They have quite a stringent set of regulations as to what one must do in order to develop that property.

And we'll put that into evidence.

I don't think I'll belabor it, but, you know, it's a good, I don't know, ten, 12, 14 pages of property development regulations, that the world won't come to an end if somebody develops a straight zoned piece of property. It's happened before.

CHAIRPERSON KONYK: I need a motion to accept.

MR. PUZZITIELLO: So moved.

CHAIRPERSON KONYK: Motion by Mr. Puzzitiello.

MR. CUNNINGHAM: Second.

CHAIRPERSON KONYK: Second by Mr. Cunningham.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

MR. HERTZ: And I understand -- I'm sorry, Madam Chair.

CHAIRPERSON KONYK: That's okay.

MR. HERTZ: I understand that it's probably in the minds of many or at least some, you know, that from a policy perspective there should be a threshold that at some point a project in size or nature is so large that it should be a planned development. I'm not arguing the policy of that.

I don't know whether the County Commission would choose 50, 100, ten, five or two, but what I'm telling you is, they didn't have the opportunity, they did not have the opportunity to decide if there should be one and if there were to be one, what that size would be because what was presented to them did not include such a threshold.

So I don't know what the County Commission would have done, whether they would have stuck with the 50, whether they would have gone to 100, whether they would have turned it back to the current ten. Understand that the ten is now inconsistent with the prior Code.

If staff is saying, hey, we made a mistake, okay, but why aren't they telling me that if it's more than 50, then I need to be a planned development because that was the supposed mistake that dropped out of the prior Code. Why is it now ten?

Well, I'll tell you why it's now ten. It's ten because they didn't have anything else to hang their hat on except saying well, if the minimum's ten, then you got to be ten to be a PUD, let's just say that if you're more than ten you need to be a PUD, even though the old Code said 50 and this Code doesn't say anything.

So I'm kind of mystified and frankly I'm just a little -- I mean I think that there was -- I don't know if it was intentional, but I think that the staff report was so confusing that it didn't really focus on the issue, whether that was intentional or unintentional, I don't know, but to

me it's pretty simple.

That's why there are -- it's so simple, they can fix it in three lines although I'm not sure this is good policy, that's a different issue. So why isn't it 50? I don't know.

Why is it now ten when it was 50 in the old Code, but we really didn't mean to change it from the old Code and now it doesn't say -- I don't know the answer.

I just know what the Code says and what it doesn't say. And I think it's your job in connection with a Code interpretation, not a policy decision, what does the Code say. Does it say what the Zoning Director says it says or does it say something else?

And I would argue that the ULDC does not give one shred of competent substantial evidence for the position taken by the Zoning Director in this case because he can't point to a provision other than ones that have expired that support the interpretation.

He could point to an application where maybe an applicant was misled, he could point to old Codes, he can talk to a million other things but what the real issue is.

And I feel bad Jon. I mean, I don't know why he made the interpretation that he made, I'm not going to speculate on what other motives people might have in connection with this matter, and I won't bore you with what I think they are because I think that would be unfair.

But I don't necessarily think that this is what it appears to be in terms of why staff took the position it took, and I just think the Code is so damn clear that I can't believe that I'm here.

Thank you for your patience and your consideration.

That's nice.

MR. RUBIN: Pay me \$40 and you can have it.

Thank you very much. Very briefly, if I might.

Mr. Hertz has made reference to the fact that he can't find in our Code the section in Standard III of the staff report which talks about the presumption of the Zoning Director's decision being presumed correct. I only have one copy of it, but obviously this is of record, I'll reference the particular Code section for the record, and with Mr. Hertz' permission I'll give that to the Chair.

MR. HERTZ: In view of that, I'd like to address that issue one last time, if we're getting new stuff that I haven't seen before.

MR. RUBIN: I wouldn't say this is new, this is specifically referenced and quoted in the staff report.

MR. HERTZ: I thought the staff report said something about -- the staff report said something totally different.

CHAIRPERSON KONYK: Is this already in the staff report?

MR. RUBIN: Yes. It's in section --

CHAIRPERSON KONYK: So we don't have to have a motion to accept this. It's already in the report.

MR. RUBIN: It's in Section III under justification, it's the last -- "The interpretation of the Zoning Director shall be presumed to be correct and the applicant shall have the burden to demonstrate the error." And that's pulled from that particular section of the Code.

MR. HERTZ: What's the first part?

MR. RUBIN: The first part is also from that same section but precedes this.

MR. HERTZ: Okay. I need to speak about that, I'm sorry. I'll be very brief.

MR. RUBIN: With that said, again, it's not for this Board to come up with its own interpretation of the Code. It's not for the applicant to come up with its interpretation of the Code.

The issue is whether the interpretation made by the County's Zoning Director is supported by competent substantial evidence and is not contrary to the plan, the ULDC or the Official Zoning Map. That's the issue. And the presumption in fact is there as I have just pointed out to the Chair in our own Code.

What does that mean? The standard in my opinion and I think based upon the case law is that in terms of competent evidence, what type of evidence can a reasonable person rely upon, we're not in a Court of law but obviously we have to observe fundamental due process.

What substantial evidence is, is there enough evidence for the Zoning Director to have made a decision based upon the evidence that he had before him.

Our opinion is, our argument is is that in fact based upon the exhibits that we have in the staff report, there was both substantial evidence and competent evidence that has been presented and put in the record to support Mr. MacGillis' interpretation. And that in fact at this moment it should be presumed correct and it's the applicant's burden to show that it's not.

The applicant of course admits that there's been no expert testimony on the applicant's behalf to show that the Zoning Director's decision is ambiguous, it's wrong under the Code.

So there's a lack of evidence in my opinion to meet the burden that the applicant has to show that the Zoning Director's decision was incorrect. It's not a matter of the applicant having a reasonable interpretation of the Code. That's not the standard.

So Mr. Hertz can suggest what the applicant believes is reasonable, but if the Zoning Director's decision is also reasonable based on substantial competent evidence, you have to go with the Zoning Director's interpretation.

That's his authority. That's what the BCC says governs when there's some type of ambiguity or some issue with the Code.

Obviously, as I agree with Mr. Hertz, the Code is a very complicated document. It's impossible for the BCC to address every issue, to have every amendment so crystal clear that all you need to do is look at the language contained in the Code and you come up with an answer. There wouldn't be a provision in the Code to allow the Zoning Director to interpret the Code if that were the case.

And I think this is one of those cases where the Zoning Director is utilizing his authority properly to interpret this section of the Code. And I think it's proper to use legislative history, which we have attached as Exhibits 13, 14 and 15, to show what the Code provided before, and the fact that no major revisions or any revisions at all were intended when that went before the BCC to eliminate that as a minimum threshold requirement.

We have evidence in the staff report before you that in fact it has been consistently applied since the 2003 Code amendment to require a PUD rezoning any time that threshold is met.

And of course we have in this particular instance the Meadowbrook application which is an 83 acre development with 610 units, which clearly meets the ten acre HR-8 threshold under any set of circumstances.

We had Mr. MacGillis testify what the purpose of the minimum thresholds are, and that is there's a requirement to rezone to a PUD to get certain amenities, certain requirements that the Board of County Commissioners wants to see in projects of this size and scope.

Under the applicants interpretation that there are no minimum thresholds anymore, essentially you could have a 1,000 acre, 2,000 acre or whatever, unlimited acre parcel come before the Zoning Commission and the applicant would then have the option of whether or not to rezone to a PUD.

I think that's contrary to the Comp Plan which talks about densities and contrary to the other sections of the ULDC and the Official Zoning Map. I don't believe that would be a reasonable interpretation and in essence it takes this Table and shows that it shouldn't be there at all for consideration if there's no -- there would be no purpose for the Table if it wasn't a minimum threshold Table.

We have also shown to you the portion of the applicant's own rezoning petition. I won't comment on what the applicant said in terms of why it was there in terms of the staff forcing it upon them because no one wants to be contrary to staff.

Even if that were the case, they submitted an interpretation of this very same Code section, there's been no change to the zoning application.

You have before you Exhibit 17 where the

applicant is attesting to the fact that it's true, accurate and complete.

And our position is that in fact there was a concession or agreement by the applicant at that point in time before the public opposition to their application came up at the Zoning Commission Meeting.

That in fact that is the correct interpretation of the Code, and it's completely consistent with Mr. MacGillis' interpretation of the Code.

And for those reasons and based upon the evidence in the record, I'd ask the Board to affirm the Zoning Director's decision.

Thank you.

CHAIRPERSON KONYK: Thank you.

MR. HERTZ: I'm just going to stick to the standard of review as promised and not rehash. I think both sides have probably said their peace at least twice.

If the Zoning Director's interpretation is not supported by the ULDC, you may nullify it.

While there's been lots of evidence put in the record, there hasn't been one shred of evidence that supports a Code interpretation, not a policy interpretation, but there's no provision in the Code that has been pointed to in fact that supports that interpretation.

We're here on Code interpretation, Comp Plan interpretation. This is so simple. There is not one shred of evidence that supports a Code interpretation that there is a threshold maximum set if you exceed it in the Code that you must be a PUD. It's just not there and they haven't shown it to you.

And as a matter of fact, they even said it was in the old Code, 50 acres, but got dropped out. That's the whole issue. It was there, it's gone.

Where is the competent substantial evidence in the ULDC to support the decision?

Thank you.

CHAIRPERSON KONYK: Any Board member have any questions?

VICE CHAIRMAN BASEHART: Yes.

MS. HELFANT: Excuse me.

VICE CHAIRMAN BASEHART: Go ahead.

MS. HELFANT: At this time if any Board members had any type of ex parte communications, if you could disclose that and state whether or not those communications are going to affect your -- reflect on your decision.

VICE CHAIRMAN BASEHART: I had -- I did not have any discussion with the applicant. I've had some general discussion with people in the industry that know that the new -- and know that this appeal was coming.

I had discussions with staff about it, too. And none of it has influenced my opinion.

MR. PUZZITIELLO: I was called by the applicant's attorney, trying to set up a meeting to talk about it. I did not accept the meeting.

Told him we'd just deal with the hearing in an open forum, so nothing that he did would sway my vote.

MR. JACOBS: I also had a request by the applicant's attorney for a meeting, which I declined, and it has no influence whatsoever on my decision.

CHAIRPERSON KONYK: I don't think you really have to -- well, I was called and I returned the call and said I wouldn't have the meeting, but it wasn't by the applicant's attorney. It was by Chris.

MR. CUNNINGHAM: I also received a call from the applicant.

And I would like to go on record once again with staff that I don't want my telephone number given out to be disturbed at work.

MR. MacGILLIS: Madam Chair. I'm looking at Bunny over there, we've been going on for a long time.

CHAIRPERSON KONYK: Should we go for a five minute break? Okay. Just don't talk about this while we're on our break. We'll talk about it when we come back.

(Whereupon, a short break was taken in the proceedings.)

CHAIRPERSON KONYK: All right. Then we'll continue where we were, which was Bob was going to ask -- somebody was asking questions; right?

MR. PUZZITIELLO: It was Bob.

VICE CHAIRMAN BASEHART: Yes.

CHAIRPERSON KONYK: Mr. Basehart.

VICE CHAIRMAN BASEHART: Thank you. I think this is a really important issue, so I -- I mean I did a lot of review. I completely reviewed your staff report and made all kinds of notes and markings and went through the Code, which I guess we're allowed to do independently since you gave us all a copy of the Code as members of the Board.

I got a lot of questions and some opinions. First thing that was discussed I think several times by both sides in this argument, and staff, as well, is the issue of how this change occurred in the Code.

I mean it's clear in -- and I would just like to say for the record, you know, my experience with the Palm Beach County ULDC and zoning Code goes back like 30 years, you know, and as you know, I served as the Zoning Director for the County for a couple of years and as the executive director, and since I left government, I've been working with the Code continually for the last 20 years.

One thing that was stated was that this issue about PUD thresholds and mandatory and minimum standards was, you know, not intended to be a major change. You intended to keep the maximum threshold in there, but if you go through the Code, there isn't a single provision in the entire Code that -- for PUDs. I know there is for MXPDs and PIPDs and TNDs, but for PUDs, you know, there is no acreage threshold that's printed in

the Code that specifically says if you meet this threshold, you have to be a PUD.

And I would think that when this went to the Board for adoption, if you intended to change the threshold, the mandatory threshold, that that would have been considered a major change, and it would have been something that was, you know, specifically highlighted.

You know, going back -- let's go back to the '57 Code. All right. In 1957 there was no PUD. In '59 it was added to the -- the PUD was added to the Code, and it had a minimum acreage, all right, and it was always treated as something that if you met the threshold, it was your option.

You could seek a PUD approval, you know, or you could do a conventional straight zoning approval.

The '73 Code was the same way, three-acre minimum, and there was no -- there was no threshold that ever said if you exceed this threshold, you have to be a PUD.

In the '92 Code that mandatory threshold was added, and you've got the chart in your staff report, and what that did is it created a range of property where people had a choice. If you're under 10 acres, you couldn't be a PUD. Actually, it was 12, I think, in the old Code, and at one point I think it was 20.

It said if you meet -- if you don't meet this threshold, even if you want to, you can't be a PUD, but then this other chart that says but if you exceed this number of units or this number of acres, then you have to be a PUD, all right, and that's in your staff report, and that prevailed 'til January 1st of 2004 when the, you know, 2003 adoption went into effect, and it would seem to me if it was intended that there be a change in what the mandatory threshold was going to be, it would have been highlighted, and it would have been discussed, but it wasn't.

It's my conclusion that it was an oversight, and I think that faced with that oversight, I think the staff, you know, basically came to a conclusion that well, maybe we should better treat the minimum and the maximum thresholds to be the same thing, but that's -- I don't see that being supported by the Code.

The staff report does include a chart of all the PUDs that have been through since the new Code was adopted. One piece of, I think, valuable information that I'd like to see wasn't in here, and that is how many of these, if any, were not asking for a density bonus, 'cause, clearly, the Code and the Comp Plan clearly provide that if you're asking for a density bonus, you have to be a PUD.

How many of these asked for density bonuses and how many went with standard densities? Do you know offhand?

MR. MacGILLIS: Not offhand. I don't -- I don't unless -- I don't think Maryann could answer that.

MS. KWOK: No, actually I can do a quick

research of that if you want that piece of information. It could be done in five minutes.

VICE CHAIRMAN BASEHART: Well, it's -- I mean I think it's something that would be very interesting to find out, not that that -

MS. KWOK: Maryann Kwok, for the record. The -- actually, the prefix in front of the numbers under the second column, the application number --

VICE CHAIRMAN BASEHART: Right.

MS. KWOK: Where you see PDD/TDR, those will indicate that a TDR request is being asked for at the time of application that's been approved.

VICE CHAIRMAN BASEHART: Okay. But we --

MS. KWOK: But we don't have the actual numbers, you know. Is that what your question is?

VICE CHAIRMAN BASEHART: Well, my presumption in a PUD if you're asking for TDRs, you're already asking for the density bonus, and then on top of that you want additional. That's why you would do a TDR.

Otherwise, you know, if you had a piece of property that was zoned HR-8 and you wanted to do seven or eight units to the acre, then the PUD bonus would give you that, and you wouldn't ask for TDRs 'til you got actually beyond the density bonus; right?

MS. KWOK: That's correct.

VICE CHAIRMAN BASEHART: Okay. So anything that shows TDRs was not only a density bonus but units on top of the density bonus, but what about the other ones?

MS. KWOK: The other one is just requesting for the -- some of them may ask for the maximum PUD densities.

VICE CHAIRMAN BASEHART: Uh-huh.

MS. KWOK: Others may just be -- again, I don't have that information in front of us, but they are asking for the density, for the PUD density.

VICE CHAIRMAN BASEHART: Okay. So you -- one could then presume that the reason why all of these projects that came in were PUDs weren't because of the acreage threshold. It was 'cause they wanted density bonuses.

MR. MacGILLIS: I wouldn't presume that on the record unless I have someone on staff go back and research that.

VICE CHAIRMAN BASEHART: Okay. You know, also -- I also looked in the Comp Plan. You know, staff report says that this threshold is supported by the Comp Plan. Well, I don't find that anywhere in the Comp Plan.

In the Comp Plan, you know, you have the provision, you know, in the staff report. It just says that to obtain maximum density for a property of LR-2 or greater you have to be a PDD, all right, but what about the -- it doesn't say anything about the guy that wants standard density.

I mean the fact is, is that I think

there's a great -- you know, and this doesn't have a whole lot to do with, you know, the decision on the interpretation, but there are a whole lot of people around the county development -- in the development industry and residents that would -- don't want to do a PUD.

You know, I live in -- well, so do you -- live in College Park. One of the main reasons I'm there, I didn't want to be in a PUD with mandatory homeowners association and all the other restrictions and requirements that go along with it and homeowners association dues. You know, I just want to live in a conventional subdivision, and there's a lot of people out there that would like to do that.

I mean the Board of County Commissioners in the last month has, several times, you know, and I think they've even directed staff into looking at ways to keep the price of housing down.

Well, if you're going -- you know, if everybody has to be a PUD, you've got major soft cost additions to the project because of the process of getting a PUD approved. You know, you've got more design and fluff requirements, you know, that drive the price of housing up.

So, you know, I think there's a lot of room for -- and a lot of demand and desire on the part of people that want to, you know, buy homes to just live in a standard subdivision. And I don't -- you know, and one of the things that was mentioned is, you know, one of the reasons why you want, you know, as many projects as possible to be PUDs is because, you know, then you can get the recreation requirements. You get those anyway.

The recreation requirements, you know, that you have to meet in terms of improvements and acreage dedicated for recreation use is in the Subdivision Code and the Zoning Code and is required in a conventional development just as it is with a PUD.

You know, the main differences in terms of what has to be given up, you know, are the dedications of civic sites. Well, in small projects, and this maybe justifies a larger threshold requiring mandatory PUD approval is because the two percent requirement in a small project, let's say 15 or 20 acres, which would be above the minimum threshold, you know, would yield a civic site that it would be so small that it would be totally useless.

So what the staff has been doing is mainly just making them -- throwing them into an extra recreation requirement.

You know, I think it's clear in the intent, and it's clear in the language of the PUD ordinance that the PUD vehicle is something, you know, where you guys now require exemplary standards, you call them, for PUDs, all right, and the reason for those, you make the developer give something extra, you know, focal points, other amenities, brick streets, you know, brick sidewalk, you know, all kinds of different things

that make a project exemplary in trade for a density bonus.

But if a guy doesn't want a density bonus, then, you know, you come in with a 15-acre or a 20-acre piece of property, all right, and you're told well, you have to be a PUD because you exceed the 10-acre minimum, but in order to get that zoning you've got to do something exemplary.

Well, where does that leave the standard affordable development for a large portion of the home-buying, you know, public, you know, to try to locate?

But a lot of that's more philosophical than it has to do with the evidence on the record.

It's just, you know, just in going through, you know, all of the things in the staff report, in going through the Code myself, I don't see a single provision in here or in the Comprehensive Plan that says if you exceed, you know, this -- this minimum standard -- that's what it says.

It says these are the minimum acreage requirements that you have to be able to meet to be a PUD. I don't see anywhere in writing where it says that if you meet these requirements you have to be.

CHAIRPERSON KONYK: Okay. So, Bob, let me get this straight.

VICE CHAIRMAN BASEHART: Okay.

CHAIRPERSON KONYK: You are discussing the fact that the -- first of all, I have to ask a question before I get into what he said.

Normally when the Code is changing and you're going to take a major provision out of the Code, you would highlight it, and you would set it aside and make sure that whoever has to vote on that would be aware that that was coming out, and in this instance that did not happen.

MR. MacGILLIS: Correct. I mean I was the staff person presenting the amendments to the Board.

CHAIRPERSON KONYK: Okay. So -- but the point is, is that what your argument is then is that this should never have come out of the Code to begin with, that requirement for 50 -- above 50 acres should have never come out of the Code? It wasn't your intention?

MR. MacGILLIS: Our contention is it may not be as clear as the Zoning Director thought it was. The Zoning Director's goal of redoing the Code in 2003 was to reduce redundancy and consolidate stuff, but, unfortunately, for some people he may have gone too far.

In my opinion it's in there. We're just going back and clarifying it --

CHAIRPERSON KONYK: Okay.

VICE CHAIRMAN BASEHART: Let's blame Bill.

CHAIRPERSON KONYK: All right. Yeah, that sounds good. And then -- we blame him for everything else, so why not this.

Then, Bob, what you're talking about now is not this issue but the fact that they're reintroducing this item into the Code, and

they're --

VICE CHAIRMAN BASEHART: My issue is that, you know, it was stated that, as Jon pointed out, that the primary intent of the rewrite was to streamline and reduce redundancy and stuff, and any significant or substantial changes to the requirements, you know, were highlighted and openly discussed so the Board knew they were doing something that was a significant change.

Well, I think that eliminating that range between 10 and 50 acres, all right, where somebody had a choice, whether it be a PUD or to be a conventional development, is a major change, and --

CHAIRPERSON KONYK: Uh-huh, but that's what their intention is to do now.

MR. PUZZITIELLO: No, they're putting it back --

VICE CHAIRMAN BASEHART: No.

CHAIRPERSON KONYK: They're putting it in the Code that way now.

VICE CHAIRMAN BASEHART: No, they're not. They're putting in the Code that if you meet the minimum --

CHAIRPERSON KONYK: I know. That's what I'm saying.

VICE CHAIRMAN BASEHART: -- threshold, you have --

CHAIRPERSON KONYK: That's what they're doing now. They're making it worse.

VICE CHAIRMAN BASEHART: Yeah.

CHAIRPERSON KONYK: Right, so -- but that's what you're -- you're arguing about. You're not arguing about this issue. You're arguing about what they're intending to do with this July 13th --

VICE CHAIRMAN BASEHART: No, what we're saying is the official interpretation is that what the Code amendment is going to put in there --

CHAIRPERSON KONYK: I understand that.

VICE CHAIRMAN BASEHART: -- already exists.

CHAIRPERSON KONYK: Right, but the point here is, is that we have a parcel that's over 50 acres which Jon is saying was clear that anything over 50 acres had to be a PUD.

MR. PUZZITIELLO: In '92, but not in '04.

CHAIRPERSON KONYK: And then what you're saying is, is that their intended change is going to make it 10 acres, and you think it should still be an option between 10 and 50.

VICE CHAIRMAN BASEHART: No, actually, I think the way the Code is written if you're not asking for a density bonus, all right, and, you know, you exceed the minimum threshold, all right, you have a choice. I think that's the -- what the Code actually says.

Now, you know, and maybe I'm confused. If this appeal, all right, is only about whether Meadowbrook -- is that what it was -- Meadowbrook should be required to be a PUD, then, you know, that's a no-brainer. Of course it should. They

were asking for a density bonus, you know, that -- so I mean if that was the -- if that's the limited scope of this appeal, then all this other discussion's kind of irrelevant, you know.

But my understanding -- well, your statement here as to what the issue is, is whether a proposed development, not Meadowbrook, a proposed development of a parcel of land equal to or greater than 10 acres in size within the HR-8 should be required to be developed as a PUD, and if that's the question, well, I also think it should apply equally to all other, you know, I mean to the LR-3 and the MR-5, you know, all the other land use categories because it's all based on that chart, you know, that breaks it into the various categories.

If that's the case, my conclusion is that the Code -- the proper interpretation of the Code should be that a project of 10 acres or 12 acres, you know, depending on what land use category that you're in, that meets the minimum requirements for a PUD acreage-wise should be required to be a PUD I think is a wrong interpretation.

CHAIRPERSON KONYK: Okay. Anybody else have any questions?

MR. JACOBS: Yeah, I have a couple of questions.

What has happened with this application at the moment? I mean you filed the application requesting essentially a PUD. Now, what's happened since then?

MR. HERTZ: It's planned -- it's going to the Zoning Commission next week, August 4th for its first public hearing as a Planned Unit Development with 615 units. The application also provides for a million dollar payment to the County fund to assist in relocation and affordable housing, as well as 148 affordable housing units for the project.

The 90-day postponement that we took was essentially to work with County staff in terms of issues of exemplary design, issues of the relocation study that's required by State law and issues relating to what assistance we would be willing to give as a condition of approval if we were to receive the 615 units to the County and the existing residents in the park, and that is the current posture of the petition.

It is our intention to go forward with the petition at this point, and the point I think, when you cut through all the mumbo-jumbo here, is that we believe that we have another option to develop this property outside of the PUD process through the straight zoning process simply because there is no requirement in the Code that we be a PUD because of the change in the Zoning Code that took place in 2003.

VICE CHAIRMAN BASEHART: But you --

MR. HERTZ: That's -- that's the posture of what's going on.

VICE CHAIRMAN BASEHART: But to do -- but to do that you'd have to give up units.

MR. HERTZ: That's correct. Well, the 615 units we're asking for includes about 115 or 120 what I'll call density bonus issued -- units that, if we wanted to give up units and go straight zoning, that would be our option.

I don't think that's an option that we prefer, but we're just trying to establish that that option exists.

CHAIRPERSON KONYK: Okay. Thank --

MR. JACOBS: Have you had any indication that there would be opposition to your petition?

MR. HERTZ: I think that when we went to the last Planning Commission meeting, and that was before some of the issues had been fleshed out, that, certainly, there were residents in the park who are not happy, but if we're going to get this far afield, as we are, I'm not sure this really fits inside our box, but as long as you're asking it, I'll answer it.

The other option that the landowner has now is to simply evict the park residents, give them their six months' notice, empty the park, and whether we come back as a -- withdraw this application or defer it or whatever, come back, you know, six months after all the residents are out with a new PUD application which won't include the million dollars, which won't include the affordable housing units or come back as a straight zoned subdivision of 500 units or more or less and develop in that fashion. So, I mean that is the posture of a larger kind of issue.

My belief today is we're here on the narrow issue of do we have that option to develop this straight zone for what -- you know, six units to the acre times, you know, however many acres we are, and not have to go through the PUD process.

I mean there are a number of options the landowner-petitioner has --

CHAIRPERSON KONYK: Okay.

MR. HERTZ: -- in the underlying case. I'm not sure --

CHAIRPERSON KONYK: But none of that really has to do with what we're here to do here today.

MR. HERTZ: I don't, either, but I wanted to answer the question.

VICE CHAIRMAN BASEHART: Right. Jon --

CHAIRPERSON KONYK: We have to keep the questions to this issue, please.

VICE CHAIRMAN BASEHART: You know, Jon, I'm willing to support the staff's position if somebody can show me one sentence or piece of language in here that says if you exceed the minimum threshold that would allow you to be a PUD, you also have to be a PUD.

Is that language in here somewhere?

MR. MacGILLIS: That specific language is not in there.

VICE CHAIRMAN BASEHART: Okay.

CHAIRPERSON KONYK: Anybody prepared to make a motion on this item?

MR. PUZZITIELLO: I just want some

clarification.

Are we -- is this vote on just this parcel or an interpretation of the whole Code?

MR. MacGILLIS: The whole Code.

CHAIRPERSON KONYK: Okay. Anyone prepared to make a motion?

(No response)

CHAIRPERSON KONYK: I'd do it, but I'm the Chair, so I can't.

VICE CHAIRPERSON BASEHART: All right.

If --

CHAIRPERSON KONYK: Well, I actually can 'cause this is less than a 12-member board, but we've never done that before, so --

VICE CHAIRMAN BASEHART: At the risk of getting myself further in trouble around here, I'll make a motion that we find in favor of the applicant or the appellant that there is -- with the conclusion that there is no provision in the current ULDC that requires any residential project that exceeds the 10 or 12-acre thresholds listed as minimum PUD thresholds to in fact be a PUD, as long as they're not, you know, tripping other thresholds such as density bonus requests.

CHAIRPERSON KONYK: We have a motion by Mr. Basehart. Do we have a second?

MR. PUZZITIELLO: Second.

MR. CUNNINGHAM: Repeat the motion.

VICE CHAIRMAN BASEHART: Repeat it?

CHAIRPERSON KONYK: I thought -- we have to reverse -- you can reverse, affirm or modify Jon's so you really need to --

VICE CHAIRMAN BASEHART: My motion is to reverse the determination that -- or the interpretation that a parcel of land that's equal to or greater than the minimum PUD thresholds -- and I'll even reference the Table -- referenced in Table 3.E.2.C-14, PUD minimum acres, must be a PUD.

CHAIRPERSON KONYK: We have a motion by Mr. Basehart. Do we have a second?

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Second by Mr. Puzzitiello.

All those in favor.

MR. CUNNINGHAM: You're saying reverse instead of modify it?

VICE CHAIRMAN BASEHART: Well, you know, I mean, yeah, I'd like to modify it to reinstall the --

CHAIRPERSON KONYK: You can't.

VICE CHAIRMAN BASEHART: -- the old 50-acre table, and I don't think we can. That's in the old -- can we do that?

CHAIRPERSON KONYK: Well, why can't you modify it to reflect the --

VICE CHAIRMAN BASEHART: 'Cause we'd be amending the Code if we did that. We can't do that.

MR. PUZZITIELLO: But the existing Code doesn't have anything.

VICE CHAIRMAN BASEHART: Right. So we

would be amending the Code if we added that threshold chart back in. That's not in the Code anymore.

So, you know, I'd like to see that chart go back in. I think it was an appropriate thing, you know, but I don't think we have the authority to do that.

CHAIRPERSON KONYK: Well, if we have the authority to modify it, how do we have the authority to modify it?

MS. HELFANT: Well, it depends on the situation which is in front of you. I mean in this instance if you feel as if the Zoning Director's interpretation was -- his interpretation of the Code is correct, then you can affirm it or you can modify it with conditions.

CHAIRPERSON KONYK: Okay. Let me ask your interpretation of the Code then.

Is your interpretation of the Code not the change that you proposed, but in your interpretation are you -- is your interpretation that it was intended that anything over 50 acres definitely be a PUD and anything between 10 and 50 --

MR. PUZZITIELLO: No, he's saying anything over ten.

CHAIRPERSON KONYK: Well, that's the -- that's his revision that he's putting in. That has nothing to do with us today. That shouldn't even be brought up today. That has nothing to do with it.

What we are concerned with today is what his interpretation is of this issue, not what he intends to present to the Board at a later date. So let's stick to what we're -- we're working on here today.

My question to Jon is your interpretation. Could you restate it for us, your interpretation, not your intention down the road, but what is your interpretation of the Code today?

Was it that that 50-acre threshold should have been maintained, and anything between 10 and 50 acres -- was your interpretation that the 2003 Code was what was intended to be in this new Code -- I mean prior to 2003, was what was intended to be in the new Code.

Is that your interpretation?

MR. MacGILLIS: I would refer you to Exhibit No. 3 on Page 8, the chart -- or the Table, 3.E.2.C-14, PUD minimum acreage, those thresholds triggered a planned development.

So in whatever district, whatever land use you're in, those are the acreage that triggered a PUD. The language that -- as far as the threshold that language, a PUD shall meet the minimum acreage, the applicant's contesting that's if you want to be a PUD.

My determination was you have to be a PUD. That's what the language has always said, that you had to be, and you --

CHAIRPERSON KONYK: Between 10 and 50 or

over 50?

MR. MacGILLIS: In HR-8, it would be 10 or over.

CHAIRPERSON KONYK: Okay.

MR. MacGILLIS: In HR-12 it would be 10 acres. In HR-18, 10 acres.

CHAIRPERSON KONYK: That's not what it said.

VICE CHAIRMAN BASEHART: The old Code didn't say that. The old Code gave a minimum PUD acreage, all right, and then a mandatory PUD acreage in --

MR. MacGILLIS: And I know through the -- when the Zoning Director was eliminating those charts, I remember going through those charts with him, and he felt strongly enough that there was enough language in here based on the land use chart, and his reading of drafting this that it was clear and -- I mean it's -- obviously, it's not clear to the applicant or it's not clear to you 'cause you're questioning it here now, and that's why we're here.

MR. PUZZITIELLO: No, he was saying that the maximum of 50 wasn't there, it was a maximum of 10.

MR. MacGILLIS: Exactly. The 50 went away. We've realized the 50 acres was too large, and they came back in with this -- these new standards, and then the language above that should have included the word "you shall."

If you're asking me as the Zoning Director today would I answer yes, I would think yes, but at the time when the Zoning Director wrote the Code, in my application of enforcing it for consistency, which is my job, applications that were coming in here until someone challenged it, then you go through the process, which I would have preferred going back to the Board and clarifying it with an AI.

Said are -- do you realize you're going to have projects coming into the system now because of an interpretation or an application by a prior director to take all these thresholds out. If it is, fine. We can let these applications go forward, or if it's not, I need to go in immediately and fix the Zoning Code before new applications come in.

MR. JACOBS: Seems to me that there's a presumption here of the correctness of the staff interpretation, and at least to my way of thinking, that presumption has not been over -- overturned.

I think there's enough confusion and enough ambiguity in the Code as it now sits, and the attempted changes made in the Code in 1992, that, to me, I would have to go with the staff interpretation.

Also, I have trouble completely disassociating the application, the original application, from a theoretical question on, quote, language, and I really don't think you can totally disassociate them.

I mean this came in as a -- as an over 50-acre application to start with.

VICE CHAIRMAN BASEHART: If the question were should the Meadowbrook PUD, or the Meadowbrook project be a PUD, yeah, I mean it, you know, the way I read the Code there is no threshold in the new Code, and that Jon acknowledged that, that specifically says if you meet a certain acreage, you have to be a PUD. There is none.

But the PUD Ordinance -- but the Code does say if you're asking for any density over and above the standard density, you have to be a PUD, and they tripped it. So there's no question in my mind.

If the question on the table was does Meadowbrook as it currently sits in the County approval system require PUD approval? Absolutely it does, you know.

But the question brought before us, although Meadowbrook has been brought into it, was, you know, does the Code say -- does the Code provide that any residential project over a certain acreage, all right, in this case 10 acres or in other categories 12 acres, does the Code require them to be a PUD.

I see nothing in the Code, nothing in the Comp Plan and nothing in the testimony that supports a decision that that would be the case.

MR. JACOBS: Well, I think it's kind of academic because either the original application goes forward, in which case it's clearly a PUD application, or there's a new application which will be covered by the new Code provision, anyway.

VICE CHAIRMAN BASEHART: Yeah.

MR. JACOBS: I mean it -- if the old application goes forward, it's the only one that has, if you will, grandfathered status, then it's clearly a PUD application.

VICE CHAIRMAN BASEHART: I don't think the decision here is whether or not the Meadowbrook project should be a PUD.

It was -- I don't think it should have been brought in and specifically discussed. It might have been the thing, you know, that brought the question to light, but I don't even understand how that --

MR. JACOBS: Oh, what -- what obviously -- what obviously happened here is they filed an application as a PUD. There were hearings scheduled. The -- it became apparent that there would be substantial opposition at the hearings, and so whoops, let's see if we can find some other way of addressing this rather than as a PUD application, and they came up with this interpretation.

MR. PUZZITIELLO: Addressing it within the Code.

MR. HERTZ: Just maybe -- just to maybe clarify, and I'm sorry that the whole Meadowbrook PUD application has been dragged into this. It certainly wasn't by the applicant.

This is in large part, Mr. Jacobs, you are correct, an academic exercise because the Code is being amended, and there may be a narrow window for applicants to file for straight zoning before the Code is changed.

In addition, the County Commission may reject the Code change. My guess is there is no way in the world the County Commission is going to say 10 acres in every land use and zoning category has to be a PUD. I think you might get 50, 100, 20, depending on what the density allowances are in there.

CHAIRPERSON KONYK: I agree.

MR. HERTZ: But that's not really the issue. What, you know, strategically is being done in the larger world is not the issue before this Board, and let me tell you why Meadowbrook PUD got dragged into it.

Our application said Meadowbrook Mobile Home Park. That's true. It is a Meadowbrook mobile home park. It didn't say Meadowbrook PUD.

Staff is the one that decided to drag the PUD application into this process for their own --

CHAIRPERSON KONYK: Okay. You told us that already.

MR. HERTZ: But understand that the applicant is required to be a contract purchaser or owner --

CHAIRPERSON KONYK: Okay. Really, none of this has anything to do with any of us. Please sit down. We really want to get this over with. Okay.

MR. HERTZ: I'm trying just to explain why the application --

CHAIRPERSON KONYK: We understood. You told us that already. We're really quite intelligent. We got it.

Jon, I have something to ask Jon.

Go ahead, Steve. Go ahead.

MR. RUBIN: I think this is just on the issue on what authority the Board has in terms of dealing with this interpretation. I think you do have the authority clearly to modify the interpretation.

It sounds like the Board is struggling with this 10-acre issue, but it appears from at least the prior Code, and anyone's reasonable interpretation that if it's a 50-acre parcel of land, and it doesn't have to have anything to do with Meadowbrook, it's just 50 acres, that the interpretation reasonably should be that there's a threshold. Otherwise, what you're saying is you can come in with a 5,000-acre parcel, and there'll never be a threshold.

So I think this Board has the authority to consider the Code in '92, what happened in 2003, and to modify the Zoning Director's interpretation to fit your ruling.

CHAIRPERSON KONYK: Okay. Let me ask you a question, Steve.

It doesn't seem appropriate for us to make our decision based on what he -- what the Code

revision is anticipated to be. I would feel that we should make our decision based on the fact that they said something got inadvertently left out in the Code. It's not addressed at all.

My -- can we make the determination that it should follow what the 2003 Code said or -- since it's been left out, since we have that already approved at one point or --

MR. RUBIN: I think that the proposed amendment is in fact irrelevant. I mean what the BCC may do with an amendment you don't know.

CHAIRPERSON KONYK: Right.

MR. RUBIN: It's not part of the ULDC now. It's not what the Zoning Director based his interpretation on.

But I clearly think that the status of the Code in '92 and the legislative history that you've seen, and I think Mr. Basehart seems to conclude that it was an oversight -- the Zoning Director's filling in the gap.

I think that's the whole point is to not have an oversight create havoc with the Code when there's a reasonable interpretation based upon evidence as to what the standard should be, and I think that's what he's provided.

If you disagree --

CHAIRPERSON KONYK: Well, then can we --

MR. RUBIN: -- with the 10 acres, then --

CHAIRPERSON KONYK: Can we go with what the standard has always been, not what the standard may be?

MR. RUBIN: I think, based upon the evidence in the record, you can modify the Zoning Director's interpretation and put, you know, and conclude that the ULDC and the Comp Plan and the Zoning Map really mean today based on those documents it's 50 acres or more for a parcel of land, and that's what triggers the PUD. I think you have the authority to do that.

CHAIRPERSON KONYK: Okay.

MR. RUBIN: Otherwise, the Code would say either affirm or you reject. Does have the modification provision.

MR. MacGILLIS: I need to refer you -- there's two charts that were in the '92 Code.

CHAIRPERSON KONYK: I don't -- I think we need to refer to the 2003, since that was the most currently adopted one.

MR. MacGILLIS: No, we keep going back --

CHAIRPERSON KONYK: Oh, the -- oh, oh, I see. We modified the '92. Okay. I gotcha.

MR. MacGILLIS: Fifty acres on Page 11 --

CHAIRPERSON KONYK: All right.

MR. MacGILLIS: -- was what -- you had to be a PUD. You were triggered by the 250 units or the 50.

There was a further under -- on Page 12, Exhibit 6, that chart. That's once you were -- you were a PUD, there's different -- there's a 10-acre requirement there.

If you look down through that chart, HR-8, you're 10 acres. So this is the chart that Bill

Whiteford --

CHAIRPERSON KONYK: Does that say minimum?

MR. PUZZITIELLO: Minimum. The same thing as the new chart says.

CHAIRPERSON KONYK: Yeah.

MR. MacGILLIS: Yeah. Well, this is the chart that Bill Whiteford amended when we created the new 2003 Code, was to do away with the unit count --

CHAIRPERSON KONYK: Yeah, but that was never voted on --

MR. PUZZITIELLO: That just --

CHAIRPERSON KONYK: -- because it was never presented to the County Commissioners as such, and it was never voted on, and I have a real problem with it, anyway.

I think that the 2003 Code was more than fair -- I mean the 1992 Code was more than fair, and I think that you're overstepping, and this has nothing to do with this hearing, but I think you're overstepping by trying to make everybody with a 10-acre parcel be a PUD. It's just ridiculous. My opinion.

But I think that now that -- I think it's been clarified that we can go back to what has been approved. I think maybe we should look for a motion.

VICE CHAIRMAN BASEHART: I would love to do that, but I need to be -- I'm not a lawyer. I'd need to be made comfortable.

Can we implement or can we add, effectively, the provisions, the mandatory threshold chart from the 1992 Code, insert it as part of our decision into the current Code? Can we do that?

MS. HELFANT: If that's your interpretation of what this Code is intended to do, then yes.

VICE CHAIRMAN BASEHART: You know, I -- I don't think that Jon says that's what he feels the Code intended to do.

CHAIRPERSON KONYK: I don't --

MR. MacGILLIS: At this point what staff -- staff is looking at the entire thresholds of the Code. As the new director that was my intent to do it.

I had it on -- before this even came in, I was going to look, like you're talking about, smaller, three acres for infill PUDs. It was something this department had talked and the Board had told me to do. So I had been -- I have already discussed it with staff, looking at all the thresholds.

It just -- I just didn't have time to get it to the -- to a subcommittee meeting yet, the thresholds we were going to look at.

CHAIRPERSON KONYK: It doesn't matter what you intend to do, though. It matters what's been done to this point.

MR. MacGILLIS: Well, I think his question is if you -- if your direction is to staff to put this back into the Code, maybe it's more

appropriate to direct staff to bring it through the regular procedures to bring it back to the Board, make a recommendation to the Board.

CHAIRPERSON KONYK: I don't think that what we're saying is put it back in the Code. I think what we're saying is we have to base our interpretation of the zoning issue today on the fact that the Code in the past absolutely identified this issue, and the Code today doesn't at all.

So we have to go back to what we had, not to what we might have. We can't -- we can't -- who knows what the County Commissioners are going to approve? We certainly can't base our decision today on a proposed amendment.

And I'm actually surprised that that was even introduced today, so --

VICE CHAIRMAN BASEHART: That didn't -- I still need an answer.

CHAIRPERSON KONYK: She said you can. How many times --

MS. HELFANT: That's where you -- that's how you're interpreting the Code today, and that's how you can base your decision on, what -- if the Zoning Director's interpretation of the Code is correct, that's what --

VICE CHAIRMAN BASEHART: All right. Let me tell you how I feel. All right?

CHAIRPERSON KONYK: Please do.

VICE CHAIRMAN BASEHART: All right.

CHAIRPERSON KONYK: I'm setting the timer, though. Two minutes.

VICE CHAIRMAN BASEHART: I don't -- I think -- my interpretation of the Code today is that there are no thresholds that make you be a PUD, period. They're not anywhere in the Code. All right.

In the old Code you had this chart here that said, okay, if you meet this threshold, you have to be a PUD and the other one that said if you want to be a PUD, you know, and -- but you don't have to be because you don't meet those thresholds. If you meet these other thresholds, you can be a PUD. I wish that was the way it was today.

I think that there should -- I think that the old threshold should be put back in the Code.

All right. I'm trying to get to where I could legitimately make an interpretation that that old Table should be enforced in the Code today, but I don't know how you would do that.

The Board abandoned the old Code when they adopted the new one, right?

MR. MacGILLIS: Correct.

VICE CHAIRMAN BASEHART: So we -- how can we make an interpretation that a chart from the old Code should be put back in, you know, should be enforced today? Somebody could appeal that.

You know, where did we -- how do we -- tell me how I get there, and I'll do it.

MR. PUZZITIELLO: Well, I think Mr. Rubin stated that, you know, we're --

CHAIRPERSON KONYK: Mic, mic.

MR. PUZZITIELLO: -- we can do that based on history and, you know, what the Code was in the past.

VICE CHAIRMAN BASEHART: I mean --

MR. PUZZITIELLO: And then they're --

VICE CHAIRMAN BASEHART: Would you feel comfortable from a legal defense point of view if this Board made a determination or made an interpretation that the old mandatory chart should be interpreted to still be in effect because it was maybe inadvertently, maybe consciously left out, you know, of the new Code?

Can we get there from here, and you feel like you could defend that?

MS. HELFANT: If that is the intention of the Code, and if it was not -- if it was in the previous Code, it's not in this Code now, although it was the intent of all parties involved to have it in there now, and that's what they interpreted, and that's what they are ruling on, that it is what is happening today, then, yes, I mean you can base it on the previous --

VICE CHAIRMAN BASEHART: Right.

MS. HELFANT: -- chart.

I mean if that's not how you're interpreting it, then --

VICE CHAIRMAN BASEHART: Well, I mean I didn't write the new Code so I can't say what the intent was. Jon seems to be saying it wasn't the intent.

CHAIRPERSON KONYK: Bob, can I ask you a question?

VICE CHAIRMAN BASEHART: Right.

CHAIRPERSON KONYK: When the new Code is written, aren't -- people review it, and they don't sit down and they read the book from the front cover to the back cover. They read what has been presented as a proposed change.

MR. MacGILLIS: There are several different people review it.

CHAIRPERSON KONYK: Right.

MR. MacGILLIS: You have the --

CHAIRPERSON KONYK: But I mean --

MR. MacGILLIS: The advisory board reviews it line by line.

CHAIRPERSON KONYK: Okay. But I'm saying most people who are reviewing the Code will look at just the proposed changes, and since my argument here is since you didn't put this in as a proposed change, then it would make -- be more logical to me that your intention was to keep it as it was. I mean that would just --

MR. JACOBS: Well, I think you've got a -- you've got a basis on which this Board can act, which is the presumption in favor of the actions of the Zoning Director, that is, it's true that the 50-acre Table was removed, but the testimony here is that it was not thought important enough to bring to anybody's attention because it was covered by other provisions in the Code.

CHAIRPERSON KONYK: And it's not, though.

VICE CHAIRMAN BASEHART: Well, if your position is true, then why are we considering this?

What you're saying is whatever Jon says is the proper interpretation, that's it.

MR. JACOBS: No. No, I -- I'm -- what I'm saying is that there's a presumption in his favor, and at least in my opinion, that presumption has not been rebutted.

VICE CHAIRMAN BASEHART: Well, did you read it?

MR. JACOBS: Yeah.

VICE CHAIRMAN BASEHART: Okay.

MR. CUNNINGHAM: There's a motion on the floor.

CHAIRPERSON KONYK: Yeah, we have a motion on -- do we still have a motion on the floor?

VICE CHAIRMAN BASEHART: Yeah. I mean I would -- I would love to be able to include in the interpretation -- I think there should be a threshold above which you have to be a PUD. I don't think it should be --

MR. MacGILLIS: If you'd like -- I've asked them to call. I've just spoken to Ann to call Lenny Berger, who's the attorney for the Unified Land Development Code, so if that's --

CHAIRPERSON KONYK: Why?

VICE CHAIRMAN BASEHART: Mister --

MR. MacGILLIS: You're asking if something could go back in the Code when --

CHAIRPERSON KONYK: That's not what we're really asking. I think the interpretation should be based on what was clear in the Code.

I'm not saying to put it back in the Code.

We don't have the authority to put anything back in the Code, but we can base our interpretation of the Code on what was there and what was not changed, intended to be changed, not -- I'm not telling Bob that he should modify the Code.

I'm telling him he should -- he has an opportunity to modify your interpretation of the Code. That's not modifying the Code. I think we're splitting hairs here.

VICE CHAIRMAN BASEHART: Yeah, but what I'm saying Chelle is, is if I'm going to --

CHAIRPERSON KONYK: And I don't think -- I don't think we can ask Lenny a question. He hasn't been here for the whole hearing, and I just don't think we can bring him in on this now because it's going to be totally out of context.

MR. MacGILLIS: I was just thinking because he was asking a question related specifically to --

CHAIRPERSON KONYK: Yeah, but it's going to be totally out of context. He hasn't been here for the whole hearing and I just don't feel comfortable.

MR. MacGILLIS: That's fine.

VICE CHAIRMAN BASEHART: I mean, my concern is, and we have our attorney here.

I mean my concern is, if I'm going to make a decision on a proper interpretation of the Code,

I have to have, you know, competent information or I have to have something to justify that interpretation, you know.

As much as I would love to put this maximum threshold chart back in, I'd need to see something in the Code that related to it so that I could, you know, interpret that it was intended that it be there.

But you know, all the testimony has been that chart was just flat out taken out.

CHAIRPERSON KONYK: Okay. So your motion is to reverse the decision of the Zoning Director?

VICE CHAIRMAN BASEHART: Yes.

CHAIRPERSON KONYK: Okay. Do we have a second?

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Second by Mr. Puzzitiello. Call the role.

Any discussion?

(No response)

CHAIRPERSON KONYK: Okay.

MR. CUNNINGHAM: Reverse the decision --

CHAIRPERSON KONYK: So if you're voting yes, you're agreeing with Bob that we're reversing the decision of the Zoning Director.

If you vote no, you're saying -- then his motion will fail and then we can have an opportunity to have another motion, possibly somebody else will modify it.

MS. STABILITO: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Yes.

MS. STABILITO: Mr. Bart Cunningham.

MR. CUNNINGHAM: Yes.

MS. STABILITO: Ms. Chelle Konyk.

CHAIRPERSON KONYK: I vote last.

MS. STABILITO: Mr. Joseph Jacobs.

MR. JACOBS: No.

MS. STABILITO: Mr. Stanley Misroch.

MR. MISROCH: Yes.

MS. STABILITO: Ms. Chelle Konyk.

CHAIRPERSON KONYK: I vote yes because it doesn't matter anyway.

VICE CHAIRMAN BASEHART: Don't I get a vote?

CHAIRPERSON KONYK: Yeah. You made the motion. We hope you support your own motion.

VICE CHAIRMAN BASEHART: Okay.

CHAIRPERSON KONYK: God only knows. Okay. Anything else?

The motion carries, 5-1. The meeting is adjourned.

MR. HERTZ: Thank you all for your time and patience. Appreciate it.

MR. RUBIN: Thank you.

(Whereupon, the meeting was adjourned at 11:50 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, Sophie M. Springer, Notary Public, State
of Florida at Large,

DO HEREBY CERTIFY that the above-entitled
and numbered cause was heard as hereinabove set out; that I
was authorized to and did report the proceedings and
evidence adduced and offered in said hearing and that the
foregoing and annexed pages, numbered 4 through 66,
inclusive, comprise a true and correct transcription of the
Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 8th day of August, 2005.

Sophie M. (Bunny) Springer