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MARCH 16, 2000

BOARD OF ADJUSTMENT
MINUTES

100 AUSTRALIAN AVENUE SOUTH
WEST PALM BEACH, FLORIDA

APPEARANCES BY BOARD MEMBERS:

STANLEY MISROCH
NANCY CARDONE
ROBERT BASEHART, CHAIRMAN
CHELLE KONYK
RAYMOND PUZZITIELLO
JOSEPH JACOBS

APPEARANCES BY STAFF:

DAVID CUFFE
LAURA BEEBE
JON MacGILLIS
JOYCE CAI
WILLIAM WHITEFORD

1 CHAIRMAN BASEHART: I'd like to welcome
2 everybody to the March 16, 2000, Board of
3 Adjustment meeting.
4 First item on the agenda is roll call.
5 MS. MOODY: Ms. Chelle Konyk?
6 MS. KONYK: Present.
7 MS. MOODY: Mr. Joseph Jacobs?
8 MR. JACOBS: Present.
9 MS. MOODY: Nancy Cardone?
10 MS. CARDONE: Here.
11 MS. MOODY: Mr. Raymond Puzzitiello?
12 MR. PUZZITIELLO: Here.
13 MS. MOODY: Mr. Glenn Wichinsky?
14 MR. WICHINSKY: Here.
15 MS. MOODY: Mr. Stanley Misroch?
16 MR. MISROCH: Here.
17 MS. MOODY: And Mr. Bob Basehart?
18 CHAIRMAN BASEHART: Here.
19 Okay. We have proof of publication, so we'll
20 just accept that into the record.
21 Next item on the agenda is remarks of the
22 chairman. And all I'll say is, for those of
23 you that aren't regulars here, the way we
24 conduct our meetings is that we have two
25 sections to the agenda. The first section is
26 the consent agenda. And that consists of items
27 that staff is recommending approval for; where,
28 if any conditions of approval are recommended,
29 the applicant has agreed with them and has
30 agreed to accept them and where there's no
31 indication by letters of objection or inquires
32 that there is objection on the part of the
33 public. Those items, the staff report has been
34 done, they've been reviewed by members of the
35 board. If any member of the board feels that a
36 full hearing is necessary, then that board
37 member can have it pulled. If there is anybody
38 here to object to any of those items on the
39 consent agenda, then they'll be pulled and a
40 full Hearing will be held also.
41 The second set of applications on the agenda
42 are those that are the regular items. And,
43 because of disagreement with conditions of
44 approval or a staff recommendation for denial
45 or an indication of public opposition, those
46 items have been scheduled for a full public
47 Hearing.
48 With that, I have no other comments.
49 Approval of the minutes. We all got copies of
50 our February 17th minutes, which were huge in
51 volume.
52 I guess everybody's got copies of the minutes.
53 Anybody have any changes that they think need
54 to be made?
55 MS. KONYK: Just a silly correction. On the
56 front page, it says that Nancy was here, and
57 Nancy wasn't here. It says, appearances by
58 board members and it was Nancy. Nancy didn't
59 make it last month.
60 CHAIRMAN BASEHART: She wanted to be here.
61 MS. KONYK: I know she did.
62 MR. PUZZITIELLO: In spirit she was here.

1 MS. KONYK: In the minutes, it's correct, as
2 you get into the minutes. It's just on the
3 cover.
4 CHAIRMAN BASEHART: Okay. So we need to make
5 that correction. With that correction --
6 MS. CARDONE: (Inaudible.)
7 CHAIRMAN BASEHART: Okay. What page?
8 MS. CARDONE: (Inaudible.)
9 CHAIRMAN BASEHART: Three pages from the back
10 on line fifty-five. There's a reference made
11 to a statement made by chair person Wichinsky.
12 And he wasn't chair person.
13 CHAIRMAN BASEHART: So any other changes?
14 Everybody reads them.
15 With those changes, is somebody ready to make a
16 motion to adopt the minutes?
17 MS. KONYK: I'll make a motion to approve.
18 CHAIRMAN BASEHART: We have a motion.
19 MR. PUZZITIELLO: Second.
20 CHAIRMAN BASEHART: And a second.
21 All those in favor, indicate by saying aye.
22 (Panel indicates aye.)
23 CHAIRMAN BASEHART: Opposed, no?
24 (No response.)
25 CHAIRMAN BASEHART: Motion carries.
26 Next item on the agenda is remarks of the
27 zoning director.
28 Jon?
29 MR. MacGILLIS: I just have one comment. The
30 next meeting we will have the annual workshop.
31 Staff is preparing the information. I think
32 our agenda has several items on it. So, if you
33 could be prepared to stay a little bit longer.
34 CHAIRMAN BASEHART: Okay.
35 MR. MacGILLIS: We'll try to have something
36 here for the planning department to go over the
37 -- some of the new stuff that's going on up
38 there to give you an insight growth management
39 system.
40 MR. WHITEFORD: Bob, I just want to find out.
41 The last items is an appeal of the decision.
42 It was delivered under separate cover, and you
43 have it in your packet.
44 CHAIRMAN BASEHART: Right.
45 MR. WHITEFORD: And I'll introduce Wayne
46 Richards at that time. Wayne is going to help
47 us present this item.
48 CHAIRMAN BASEHART: Okay. Very good. With
49 that, we're ready to get into the agenda. And
50 as we indicated, the first section of the
51 agenda is the consent agenda.
52 What I'm going to do is read each one off
53 individually. When the item comes up, if the
54 agent or applicant is here, they need to get up
55 and indicate whether they agree with the
56 conditions of approval or not.
57 We'll start with BofA 2000005. Susanne Wildner,
58 agent for Office Depot.
59 Your name for the record?
60 MS. WILDNER: Susanne Wildner. I'm agent for
61 Office Depot.
62 CHAIRMAN BASEHART: Okay. Staff is

1 recommending approval of this variance with 5
2 -- I'm sorry -- 2 conditions. Have you read
3 the conditions?
4 MS. WILDNER: That's correct. My client agrees
5 with the conditions, with the exception, there
6 is a typo. It should be, on item 2, a hundred
7 and ninety-five square feet.
8 MR. MacGILLIS: Staff agrees with that change.
9 We spoke to the applicant this morning.
10 CHAIRMAN BASEHART: Any letters of objection?
11 MR. MacGILLIS: There were just 2 letters, one
12 from Chuck Gino who owns the Majestic Gas
13 Station and I explained it to him and he was
14 okay. The other person was not -- outside of
15 the three-hundred-foot radius and had no
16 concern once it was explained what the variance
17 was for.
18 CHAIRMAN BASEHART: Okay. Is there any member
19 of the public here to oppose this application?
20 (No response.)
21 CHAIRMAN BASEHART: Seeing none, any board
22 member feel this item should be pulled?
23 (No response.)
24 CHAIRMAN BASEHART: Okay. Since there's no
25 indication there, this will stay on consent.
26

27 STAFF RECOMMENDATIONS

28
29 APPROVAL WITH CONDITIONS, based upon the
30 following application of the standards
31 enumerated in Article 5, Section 5.7.E. of the
32 Palm Beach County Unified Land Development Code
33 (ULDC), which a petitioner must meet before the
34 Board of Adjustment may authorize a variance.
35

36 ANALYSIS OF ARTICLE 5, SECTION 5.7.E 37 VARIANCE STANDARDS

38
39 1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST
40 THAT ARE PECULIAR TO THE PARCEL OF LAND,
41 BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE
42 TO OTHER PARCELS OF LAND, STRUCTURES OR
43 BUILDINGS IN THE SAME DISTRICT:
44

45 YES. The subject property is located at 14539
46 Military Trail, on the north west corner of
47 Military Trail and Atlantic Avenue, in the CG
48 zoning district. The subject structure is an
49 Office Depot within Market Place at Delray (a
50 shopping center). Market Place at Delray also
51 supports a Winn-Dixie, Nova Cleaners, Fidelity
52 Investments, and McDonalds.
53

54 The subject building has a projecting canopy
55 that provides shelter to the users of the
56 store. This canopy, in conjunction with how
57 the sign code is interpreted with respect to
58 wall sign standards of the ULDC, effectively
59 limits the available sign area since wall signs
60 are calculated based on wall size. In this
61 case, since the sign is being proposed will be
62 on the canopy and not the main wall of the

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store, the overall sign area is reduced in size, while the Code would permit a sign of over 179.2 square feet on the main facade, if the building were completely flat however, since the sign is being placed on the canopy a variance is needed. If the canopy were closer to the main building, it would not be considered a building and the allowable square footage could be calculated on the overall building length.

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

NO. The special circumstances are not the result of the actions of the applicant. As previously stated, the interpretation of the Code pertaining to wall signage considers canopies as buildings unto their own, thus the allowable square footage for a sign cannot be taken from the overall Office Depot building length, but rather the area available on the canopy. If the applicant were to place the proposed signage anywhere else on the building, other than the canopy, then a variance would not be required. However, the proposed location provides the best visibility for the customer visiting the site.

The origin of this request is from the evolving services and products offered by Office Depot.

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

NO. Granting this variance will not confer any special privileges upon the applicant denied by the Comprehensive Plan or this Code. Other buildings of this size (30,476 sq.ft.), but lacking the architectural relief of this structure (i.e., canopy), are permitted wall signs of far greater proportions. For example, if the facade to this building were flat, it would be permitted a 219 square foot wall sign. Buildings with nondistinct, flat facades benefit because they can measure their entire "length" to calculate their square footage.

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

YES. A literal interpretation and enforcement of the terms and provisions of the Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same

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design with flat facades to allow a greater sign face area. The proposed sign is in keeping with the existing signage in the surrounding area.

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

YES. The requested variance is the minimum variance necessary to allow a reasonable use of the building. The existing sign (122 sq.ft.) accompanied by the proposed additional signage of 57.2 sq.ft., totaling 179.2 sq.ft. Is the minimum possible size which will permit visibility of the sign from Atlantic Ave. And Military Trail. As previously noted, a wall sign of over 219 sq. Ft. Could be permitted on the building if the building facade was flat.

Granting of the requested variance is the minimum and will not adversely impact the surrounding uses.

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

YES. Granting the requested variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the ULDC.

The intent of the code is to ensure that wall signage is in proportion to the facade of the building and not to adversely impact on the general public's welfare while providing needed identification for the business owners and user. The applicant's proposed signage is being measured according to the area available on the building canopy. The canopy represents only a portion of the overall building facade. Therefore, the proposed signage will be within adequate proportion of the overall building facade. Therefore, the proposed signage will be within adequate proportion to the entire building facade.

This request is in accordance with the ULDC in that it would allow a creative and flexible sign design that protects the aesthetic appearance of the shopping center signage program.

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

NO. Granting the variance will not be

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larger, more obtrusive sign may be located on the building, as is currently permitted by Code.

As previously stated, the proposed wall sign will be located over 925 feet from the Atlantic Avenue right-of-way. This is more than a sufficient distance to mitigate any unwanted obstructions visible from the road. The subject building is also separated a sufficient distance from the surrounding structures to have a minimal impact upon the overall neighborhood.

ENGINEERING COMMENT

No Comment (ENG)

ZONING CONDITIONS

1. By September 16, 2000, the applicant shall obtain a building permit for the five signs on the facade of the office Depot.
(DATE:MONITORING:BLDG.PERMIT)
2. The proposed total sign faces on the Office Depot canopy shall not exceed 144 square feet.
(ONGOING)

CHAIRMAN BASEHART: Next item is BofA 2000010, Julian Bryan & Associates.
MR. MacGILLIS: Mr. Chairman, just for the board's information. This item was postponed for thirty days at the February Hearing. Staff had to readvertise the item because, after reviewing the application, determined there was also an additional variance required for an existing lake that was cutting across one of the property lines. The applicant has amended his application, and the legal ad did go out to correct that.
Staff is recommending an additional condition. I believe the property owner to the south was going to come to this Hearing. She had concerns with the type of buffering that was going to be located along the north property line. And staff has spoken to her. She is in agreement with the new condition that we're

7 hundred forty-two feet in length; alternate
8 between one native shade tree, cluster of 3
9 sable palms planted forty feet on center. A
10 native canopy tree shall be installed at 12
11 feet in height. The Palm tree shall be planted
12 with 8 feet of clear trunk or 12 feet overall
13 height.
14 CHAIRMAN BASEHART: Okay. Do you agree with
15 that?
16 MR. BRYAN: Yes, Mr. Chairman. Julian Bryan on
17 behalf of Transeastern Properties. We've
18 reviewed the staff report, which was very
19 thorough, I might add. And we have no problems
20 with any of those conditions, including the new
21 one just read into the record.
22 CHAIRMAN BASEHART: Okay. Any letters?
23 MR. MacGILLIS: The only letter -- in fact, it
24 was a telephone call I had with the neighbor to
25 the south. I believe the property owner's in
26 the audience. I don't know if she still has a
27 concern.
28 AUDIENCE MEMBER: No. If we're in agreement,
29 if you agree to put the trees as we discussed,
30 then that's fine with me.
31 But I just have one clarification. It's the
32 first I've heard about that lake. And I know
33 we have a lake that's on the edge of that
34 property. I don't -- I didn't receive any
35 notification about that, so I don't know if
36 that is also related to my property or is that
37 totally --
38 MR. MacGILLIS: No. It's on the other side.
39 If you want, somebody can bring a packet over
40 and show you where it is. But it's not -- it's
41 nowhere in relationship to your property.
42 AUDIENCE MEMBER: Okay. Fine. Then I don't
43 have any other problems.
44 CHAIRMAN BASEHART: With that additional
45 condition, you are not objecting?
46 AUDIENCE MEMBER: No.
47 CHAIRMAN BASEHART: Is there anybody here to
48 object?
49 (No response.)
50 CHAIRMAN BASEHART: Seeing none, any member of
51 the board feel a full Hearing is necessary?
52 (No response.)
53 CHAIRMAN BASEHART: Dave?
54 MR. CUFFE: The engineering department would
55 just like to make sure it's understood that on
56 the variance itself, with regard to the lake
57 crossing the PUD boundaries, is that this is a
58 variance from the zoning setback requirement
59 for the lake as a lake. It has to be
60 understood that if this lake is incorporated
61 into and part of the storm water management
62 system of the PUD, it's going to have to be a

9 don't recall the sub basin or area. But we
10 have right now, given that this was a rock pit
11 on the site already. So I wouldn't anticipate,
12 if we need this additional one acre for storm
13 water management purposes. And I recognize
14 that, since it does not have one side of the
15 four sides, that that can't be counted for
16 storage. We have no problem with that.
17 CHAIRMAN BASEHART: That's not an issue
18 related to the variance? It's something he
19 needs to work out?
20 MR. BRYAN: Right. It's for TC. Thank you.
21 CHAIRMAN BASEHART: Okay. Anybody feel this
22 should be pulled?
23 (No response.)
24 CHAIRMAN BASEHART: Seeing none, BofA 2000010
25 is remaining on the consent.
26

27 STAFF RECOMMENDATIONS

28
29 APPROVAL WITH CONDITIONS, based upon the
30 following application of the standards
31 enumerated in Article 5, Section 5.7.E. of the
32 Palm Beach County Unified Land Development Code
33 (ULDC), which a petitioner must meet before the
34 Board of Adjustment may authorize a variance.
35

36 ANALYSIS OF ARTICLE 5, SECTION 5.7.E 37 VARIANCE STANDARDS

38
39 1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST
40 THAT ARE PECULIAR TO THE PARCEL OF LAND,
41 BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE
42 TO OTHER PARCELS OF LAND, STRUCTURES OR
43 BUILDINGS IN THE SAME DISTRICT:
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45 Yes. This 94 acre PUD has obtained the
46 necessary approvals to move forward with the
47 development. The project, which began in the
48 early 1990s, has been revived many times
49 through the BCC process. When the tract of
50 land that supports the PODs F and the
51 recreational pods were incorporated into the
52 the PUD, the existing 1 point 8 acre lake and
53 50 foot access tract were existing. These 2
54 existing features currently creating the need
55 for the 4 requested variances. The landscape
56 buffer variances are being requested since
57 they'll serve no purpose if installed. In the
58 case of variance 1 and 2 adjacent to the 50
59 foot access tract and cannot be installed. In
60 the case of variance 3 where the 1 point 8 acre
61 lake crosses the common property line the
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lake and 50 foot access tract.

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

NO. This project has been under planning and review since the early '90s by the applicant. The original PUD was approved and ready to move forward when the additional land area to the east was added to the PUD. The existing 1 point 8 acre lake and 50 foot access tract have related in a unique application of the buffer code requirement and setback requirement. The applicant is requesting the minimum variances necessary to allow this project to move forward.

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

NO. Literal application of the PUD buffer requirements and excavation setback will deprive the applicant of rights enjoyed by other property owners. The applicant is saying the general intent of the ULDC provisions; and, if the variances are granted, the overall project will be in conformance with the county regulations. The granting of variances, based on unique site features, constraints and application of the code intent is warranted in this situation.

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

Yes. The variances being requested are minor in nature and, if granted, will not circumvent the code. The need for buffers on either side of the 50 foot access easement is not warranted. Also a buffer along the south property line where the lake encroaches the setback is not necessary. The setback variance for the pond is not required since it is in the center of the lake. The lake can be maintained and accessed from the outside perimeter of the

13 VARIANCE THAT WILL ALLOW A REASONABLE USE OF
14 THE PARCEL OF LAND, BUILDING OR STRUCTURE:

15
16 Yes. The granting of the 4 requested variances
17 is the minimum and will allow the project to
18 move forward. The project has been in the
19 planning and approval process since the early
20 '90s. The most recent addition to the acreage
21 to the PUD has resulted in the need for the
22 requested variance because the existing lake
23 and 50 foot access tract place unique design
24 challenges on the applicant.
25

26 6. GRANT OF THE VARIANCE WILL BE CONSISTENT
27 WITH THE PURPOSES, GOALS, OBJECTIVES AND
28 POLICIES OF THE COMPREHENSIVE PLAN AND THIS
29 CODE:
30

31 Yes. The intent of the land use designation of
32 the LR-1 and LR-2 is to ensure low density
33 residential is constructed on this 94 acre PUD.
34 The applicant is proposing two hundred
35 eighty-three units on 94 acres for an overall
36 density of 2.99 units per acre. This is
37 consistent with the land use designation. The
38 zoning classification is PUD/PDD, to allow for
39 a residential subdivision. The BCC has
40 approved the master plan for this project,
41 known as Thoroughbred Lakes Estates. The BCC
42 also imposed BCC conditions that recommend the
43 applicant seek variance relief for the buffers
44 that are being requested.
45 Therefore, the requested variances, if
46 approved, will still ensure all other required
47 buffers and setbacks are complied with by the
48 applicant. The overall project complies with
49 all other county regulations.
50

51 7. THE GRANT OF THE VARIANCE WILL BE
52 INJURIOUS TO THE AREA INVOLVED OR OTHERWISE
53 DETRIMENTAL TO THE PUBLIC WELFARE:
54

55 No. The granting of the 3 buffer variances and
56 the lake setback will not be injurious to the
57 area involved or otherwise detrimental to the
58 public welfare. The landscape buffer variances
59 are related to the 50 foot access tract and the
60 existing lake. In these situations, the
61 installation of buffer would not serve any
62 greater purpose. There is nothing incompatible

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ENGINEERING COMMENT

The engineering department has no comment regarding proposed elimination of landscape buffers. However, with regard to the project boundary adjacent to lake number 7, it should be noted that reconstruction of the existing lake for use as part of the storm water management system will require filling at the project boundary to create a separate lake entirely within the project limits, including construction of the required twenty-foot-wide maintenance berm.

ZONING CONDITIONS

1. The property owner shall provide the building division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. Prior to DRC certification, the applicant shall ensure the BofA conditions are shown on the site plan and reference to the location of the buffer variances and setback for the 1 point 8 acre lake.
3. The variances are limited to the buffers and lake setback as shown on Exhibit 9, in the Board of Adjustment file, B.A. 2000-10 in the zoning division. All other buffers must be installed in accordance with BCC conditions or code requirements. (ONGOING).

CHAIRMAN BASEHART: Next item is BofA 2000011, Superior Home Builders. Is the applicant present?

17 MR. RICHERT: Yes.
18 CHAIRMAN BASEHART: Any letters of objection?
19 MR. MacGILLIS: We just had one letter and it
20 was clarified. They had no concern.
21 CHAIRMAN BASEHART: Okay. Is there any member
22 of the public here to speak in opposition of
23 this request?
24 (No response.)
25 CHAIRMAN BASEHART: Seeing none, any board
26 member feel this item should be pulled?
27 (No response.)
28 CHAIRMAN BASEHART: Okay. We'll leave it on
29 consent.

30
31 STAFF RECOMMENDATIONS

32
33 APPROVAL WITH CONDITIONS, based upon the
34 following application of the standards
35 enumerated in Article 5, Section 5.7.E. of the
36 Palm Beach County Unified Land Development Code
37 (ULDC), which a petitioner must meet before the
38 Board of Adjustment may authorize a variance.
39

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

42
43 1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST
44 THAT ARE PECULIAR TO THE PARCEL OF LAND,
45 BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE
46 TO OTHER PARCELS OF LAND, STRUCTURES OR
47 BUILDINGS IN THE SAME DISTRICT:
48

49 Yes. This vacant legal nonconforming 5 acre
50 lot is located within the Homeland Subdivision.
51 It is lot 1950 and located on the south side of
52 Bald Cypress Lane that were subject to a
53 special exception 87-023 for excavation in the
54 1980s. The excavation left a large lake that
55 covers all these 11 lots. Although there was
56 land area left on each lot to accommodate a
57 single family residence, in some cases
58 variances from setbacks were required. The
59 lake typically encompasses the rear half of the
60 lot. This result is the dwelling having to be
61 shifted to the front setback in order to
62 provide adequate area between the building pad

19 front setback and maintain at least a 50 foot
20 separation to the rear of the dwelling to the
21 lake a variance is necessary.
22 Therefore, there are unique features to this
23 subdivision and lot that warrant special
24 consideration when applying the front setback.
25 The subdivision supports many large estate
26 homes, similar in size to the proposed dwelling
27 on 5 acre lots. Many of the lots support
28 drainage easements and lakes. However, on this
29 lot 195, what is unique is the amount of land
30 taken up by the three point ten acre lake, one
31 hundred foot drainage easement and the
32 additional forty feet of right-of-way for Bald
33 Cypress Lane. When all these numbers are added
34 together, the property owner is limited to the
35 size and location of the dwelling. Other
36 similar size dwellings constructed along the
37 south side of Bald Cypress Lane had to apply
38 and were granted similar front setbacks due to
39 the lot design and constraints.

40
41 **2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE**
42 **THE RESULT OF ACTIONS OF THE APPLICANT:**
43

44 No. The applicant purchased the property in
45 October of 1995, long after the lake was
46 excavated and the easements for drainage and
47 right-of-way were dedicated. In looking at the
48 lot, it would appear that a large estate home
49 could be accommodated on the property.
50 However, due to the lake location and
51 dedication for right-of-way, the lot depth is
52 reduced to a point that, in general, either a
53 front or a rear setback would be required. The
54 owner could construct a 2 story dwelling and
55 meet the setbacks. However, the style and
56 layout of the house is in keeping with the
57 other homes in this equestrian-oriented
58 community. The applicant contracted Superior
59 Home Builders, Inc., to design their home and
60 obtain all necessary permits. When the permit
61 (PR99-042776) was submitted in December 1999,
62 the applicant was informed that the front

21 No. The applicant is requesting only 2 front
22 setbacks that will allow a single family
23 dwelling consistent in size and layout to other
24 homes in the development to be constructed.
25 There have been similar front setback variances
26 granted in the past to property owners who have
27 lots with similar site constraints created by
28 the lake. The granting of this variance with
29 the recommended staff conditions will allow the
30 applicant to construct a home similar in size
31 and character to the homes along Bald Cypress
32 Lane. If the variances are denied, the
33 applicant would have to revise the
34 architectural drawings and building permit to
35 either reduce square footage or go with a 2
36 story building.
37 Therefore, granting the requested variances
38 will not grant any special privileges on the
39 applicant.
40

41 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF
42 THE TERMS AND PROVISIONS OF THIS CODE WILL
43 DEPRIVE THE APPLICANT OF RIGHTS COMMONLY
44 ENJOYED BY OTHER PARCELS OF LAND IN THE SAME
45 DISTRICT, AND WOULD WORK AN UNNECESSARY AND
46 UNDUE HARDSHIP:
47

48 Yes. The applicant is requesting variances
49 that will be consistent with similar variances
50 approved for front setbacks on adjacent lots.
51 Literal intent of the code is to apply a one
52 hundred forty foot front setback to the
53 proposed structures on this lot. However, it
54 should be noted that 3 other lots have been
55 granted variances to reduce their front setback
56 to a dimension consistent with this request.
57 On those lots, the Board of Adjustment approved
58 the variances with conditions to ensure
59 existing under story and mature Cypress trees
60 along Bald Cypress Lane were maintained by the
61 property owner. This would ensure that the
62 modified setbacks for lots along the south side

1 of Bald Cypress Lane would be consistent from
2 the street and mitigated by a common buffer
3 treatment along the street.
4
5

5 THE APPROVAL OF VARIANCE IS THE MINIMUM

23 setback has already been compromised. However,
24 it should be noted that those granted variances
25 have been granted similar front setbacks and
26 with the condition to maintain native under
27 story and Cypress trees along the street, the
28 general intent of the front setback will be
29 satisfied.
30

31 6. GRANT OF THE VARIANCE WILL BE CONSISTENT
32 WITH THE PURPOSES, GOALS, OBJECTIVES AND
33 POLICIES OF THE COMPREHENSIVE PLAN AND THIS
34 CODE:
35

36 Yes. Granting the requested front setback
37 variances will be consistent with the intent of
38 the comp plan and ULDC. The comp plan
39 designation for this subdivision is RR-10.
40 However, the lots were laid out when this area
41 was designated RR-5. The lots are legal
42 nonconforming with respect to lot size. This
43 one thousand four hundred forty-four acre
44 equestrian-oriented residential community
45 supports large estate homes with stables and
46 paddocks. Many of the lots support drainage
47 easements, lakes and stand for mature Cypress
48 trees. As previously stated, the 11 lots along
49 the south side of Bald Cypress Lane were
50 excavated in the 1980s pursuant to an approved
51 excavation. It was only recently that the lots
52 were reclaimed to support single family lots.
53 The intent of the ULDC with respect to
54 establishing a minimum front setback is to
55 ensure continuity along the street, it provides
56 area to accommodate a front yard, landscaping
57 and parking for the dwelling. It also helps
58 maintain property values by ensuring
59 consistency in how the structures are located
60 on the lot. This property owner, like others
61 on the south side of Bald Cypress Lane, have
62 unique lots in that they support a large lake

1 that was excavated many years ago that takes up
2 a large portion of the lot. This results in
3 the house having to be shifted forward on the
4 lot into the front setback. 2 other property
5 owners applied and were granted front setback
6 variances under similar circumstances. The
7 consistency of the houses will meet a minimum

25 DETRIMENTAL TO THE PUBLIC WELFARE:

26
27 No. Granting the requested variances will not
28 grant a special privilege on the applicant.
29 The applicant is seeking the minimum front
30 setback variances that will allow for the
31 construction of a single family dwelling and
32 accessory garage. Other variances have been
33 granted to adjacent property owners who have
34 similar lot constraints. With the recommended
35 staff conditions, the variances can be
36 mitigated and will allow these remaining lots
37 to be built out consistent with the overall
38 development.

39
40 ENGINEERING COMMENT

41
42 No Comment (ENG)

43
44 ZONING CONDITIONS

- 45
46 1. The property owner shall provide the
47 building division with a copy of the Board of
48 Adjustment result letter and a copy of the site
49 plan presented to the board, in order for
50 PR99042776 for a 5,539 square foot single
51 family dwelling to be processed. (BLDG
52 PERMIT-Bldg Intake)
53
54 2. The applicant shall construct the 5,539
55 square foot dwelling and four hundred forty
56 square foot detached garage consistent with the
57 layout presented to the Board of Adjustment on
58 the site plan, Exhibit in B.A. 2000-11 file in
59 the zoning division. (BLDG PERMIT-Bldg)
60
61 3. By December 20th, 2000 or prior to the
62 issuance of a final building permit for the

1 single family dwelling, the property owner
2 shall contact the landscape inspection for a
3 landscape inspection to ensure the native
4 vegetation, both under story and Cypress trees
5 are still remaining along the south side of
6 Bald Cypress Lane. As a condition of the
7 variance approval, the applicant will maintain
8 and enhance this buffer along the length of the
9 property line adjacent to Bald Cypress Lane to

27 corrections to the conditions on this one.
28 CHAIRMAN BASEHART: Okay.
29 MR. MacGILLIS: The conditions are found on
30 page 56 of your back up material. Condition
31 number 5, the second line, it should read, by
32 July 16, 2001. And there's a new condition,
33 number 7 to be added, regarding lighting. This
34 is generated partly because of concerns from
35 surrounding residents of whether or not this
36 decorative tower is going to have lighting that
37 was going to be directed into the surrounding
38 properties.
39 CHAIRMAN BASEHART: Okay.
40 MR. MacGILLIS: The applicant suggested the
41 condition and staff agrees to it. I'll read it
42 into the record, condition number 7. Lighting,
43 number A, all lighting used to illuminate the
44 decorative architectural tower shall be of low
45 intensity, minimum necessary to satisfy the
46 Palm Beach County security code and shielded
47 and directed down the adjacent properties and
48 streets. 2B, the lighting condition above
49 shall not apply to proposed security or low
50 voltage landscape accents to emphasize plant
51 material at the base of the decorative tower or
52 the tower's clock face.
53 7C, no beacon-type lighting shall be
54 permitted on the decorative architectural
55 tower.
56 CHAIRMAN BASEHART: Okay.
57 MS. WALTER: Good morning, Coleen
58 Walter with Kilday and Associates here on
59 behalf of Kahlert Corporation. We've been
60 working with staff on the conditions, and we
61 are in agreement with all of them.
62 CHAIRMAN BASEHART: Okay.

1 As amended?
2 MS. WALTER: As amended.
3 CHAIRMAN BASEHART: Is there any member of the
4 public here to speak in opposition to this
5 item?
6 (No response.)
7 CHAIRMAN BASEHART: Seeing none, any board
8 member feel this item needs a full hearing?
9 (No response.)
10 CHAIRMAN BASEHART: Seeing none, we'll leave
11 this item on the consent agenda for approval.

29 1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST
30 THAT ARE PECULIAR TO THE PARCEL OF LAND,
31 BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE
32 TO OTHER PARCELS OF LAND, STRUCTURES OR
33 BUILDINGS IN THE SAME DISTRICT:
34 Yes. This 5.48 acre site, known as Shoppes at
35 New Albany, is within the 60 acre LSMU project
36 at the southwest intersection of Boynton Beach
37 Boulevard and Enterprise Center Boulevard. The
38 site has all the required approvals for the
39 proposed twelve thousand two hundred square
40 foot retail uses. The site will support 3
41 freestanding buildings and a total of one
42 hundred 86 parking spaces. The applicant is
43 requesting a parking variance to construct
44 ninety spaces more on this site than permitted
45 by code. The extra spaces will generally be
46 added to the area on the site plan adjacent to
47 the retail building number 2, which was
48 previously undeveloped open space. The
49 proposed sixty-foot decorative tower that will
50 encroach the rear setback will be located along
51 the south, central portion of the site. The
52 tower will be for decorative purposes only and
53 will provide a visual linkage for pedestrians
54 visiting the various uses on the overall 60
55 acre LSMU.
56 The site and use of the property has unique
57 conditions that warrant special consideration
58 about applying literal intent of the MUPD
59 parking provision limiting parking and the rear
60 setback for the tower. Literal intent of the
61 parking provision is to encourage more open
62 space and eliminate parking that would not be

1 utilized on a regular basis. However, in this
2 case, the applicant states that this is a
3 relatively small commercial site of 5.48 acres.
4 There are 3 freestanding buildings that will
5 support mixed neighborhood uses that will be
6 used by the residents within the general
7 vicinity. Many of the patrons will be from the
8 "senior only" communities located along the
9 Boynton Beach corridor, and they rely on
10 parking that is close to the buildings for easy
11 access. Therefore, the adequate parking is
12 very important to the tenants and users of the
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2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

No. The applicant has obtained all the necessary approvals for the MUPD. The applicant is proceeding forward to obtain the necessary building permits. The applicant has been approached by several potential tenants who have reservations about the number of parking spaces, 96 spaces, shown on the approved site plan. The tenants are concerned that based on their experience and their specific business, the parking will not be adequate for their needs. The applicant is also concerned that, based on their study of the market, that this site will service, many of the residents are elderly; and, therefore, parking close to the building and adequate number is very important.

Also, after speaking to perspective tenants, they are also concerned that to only provide the 96 spaces required by code, the site will not have adequate parking to ensure the site is safe in terms of on-site parking and circulation. Adequate parking is critical to the overall success of the business and whether or not tenants remain and customers return to the business. The applicant is being proactive and admitting that prior to the final construction of the site, it is necessary to provide more parking on the site.

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The special conditions are not the result of the applicant. The ULDC code provision limiting parking to the minimum necessary for the square footage does not consider the specific tenant mix or users of the specific site. Literal intent of the code is to ensure only the parking required is provided and the other land area is left or developed in open space or landscaped. In this particular situation, the applicant has conditions of approval to upgrade perimeter landscape buffers. In addition, staff is recommending conditions of approval to upgrade the landscaping in the parking lot to mitigate con-

33 and pedestrian linkages within the project.

34
35 The applicant will meet the general intent of
36 the rear setback by providing a
37 twenty-five-foot setback. The property to the
38 rear of this project is owned by the applicant.
39 There is a ninety-foot-wide cul-de-sac that
40 provides access to this project and the project
41 to the south that will mitigate the reduction
42 in the rear setback. Furthermore, the
43 requirement to provide additional setback
44 separation for structures over thirty-five feet
45 is typically intended for habitual structures.
46 It is also intended to ensure the additional
47 height does not create negative impacts on the
48 adjacent property. In this case, both criteria
49 can be satisfied, if the variance is granted.

50
51 Therefore, granting the 2 requested variances
52 is not self created. The uniqueness of the
53 project and intended use of the tower warrant
54 special consideration when applying literal
55 intent of the code.

56
57 3. GRANTING THE VARIANCE SHALL CONFER UPON
58 THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY
59 THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER
60 PARCELS OR LAND, BUILDINGS OR STRUCTURES, IN
61 THE SAME DISTRICT:
62

1 No. The granting of the 2 requested variances
2 will not confer any special privileges on the
3 applicant. The applicant has demonstrated that
4 the project is unique and warrants special
5 consideration when applying literal
6 interpretation of the code provisions. The
7 additional parking being requested is directly
8 related to need of the future tenants and users
9 of the proposed mixed uses. Many tenants have
10 voiced concerns to the owner of the site that
11 the proposed approved 96 parking spaces is not
12 adequate for all the tenants that will occupy
13 this site.

14
15 Each tenant has a need for parking to meet
16 their various staff needs as well as expected
17

35 development. It will not be a habitable
36 structure and will be approximately 10 foot by
37 10 foot wide. The property to the south is
38 owned by the applicant. An existing
39 ninety-foot-wide cul-de-sac exists adjacent to
40 the south property line which provides the
41 additional separation between the structures
42 that would have been accomplished by the
43 fifty-five setback. Therefore, the tower rear
44 setback variance is a reasonable request and
45 will help foster that overall intent of the
46 LSMU.
47

48 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF
49 THE TERMS AND PROVISIONS OF THIS CODE WILL
50 DEPRIVE THE APPLICANT OF RIGHTS COMMONLY
51 ENJOYED BY OTHER PARCELS OF LAND IN THE SAME
52 DISTRICT, AND WOULD WORK AN UNNECESSARY AND
53 UNDUE HARDSHIP:
54

55 Yes. The literal intent of the MUPD parking
56 provisions and the additional setback
57 requirement for the structure over thirty-five
58 feet will place a hardship on the applicant, if
59 applied literally. The applicant can meet the
60 general intent of both provisions. The parking
61 variance can be mitigated by additional
62 landscaping. Also, the additional parking will

1 ensure the parking needs of the tenants and
2 users are met. It will also help to foster
3 safe and efficient on-site vehicular and
4 pedestrian circulation. It is in the interest
5 of the property owner and tenants to ensure the
6 site has adequate parking to encourage users to
7 visit and return to their business without fear
8 of having a parking mishap in the parking lot
9 because there is not adequate parking to meet
10 the demand.
11

12 Literal interpretation of the rear setback of
13 55 feet is intended to address the additional
14 square foot of a building bulk on the adjacent
15 property. As previously stated, the tower is
16 only 10 foot by 10 foot and sixty-foot tall and
17 for decorative purposes only. There is a
18 ninety-foot-wide cul-de-sac on the property to
19 the south which is also owned by the

37 THE PARCEL OF LAND, BUILDING OR STRUCTURE:

38
39 Yes. The granting of the 2 requested variances
40 will allow the project to move forward. The
41 applicant is being proactive in responding to
42 the future tenants needs while at the same time
43 ensuring the final design has adequate parking.
44 The site construction can continue as approved
45 by 96 spaces and wait to see if there are
46 parking problems. However, this is not
47 something that the tenants or property owner
48 desire to do. There will be costs and time
49 delays associated with having to construct
50 additional parking after the site received a
51 certificate of occupancy.

52
53 The tower rear setback variance will allow the
54 tower to be located along the south property
55 line of this parcel to provide a visual
56 pedestrian linkage for the entire project as
57 well as identification marker for people
58 traveling along Boynton Beach Boulevard.

59
60 Therefore, both variances are justified and
61 warranted if the use of the property and
62 structure are carefully reviewed with the

1 general intent of the code provisions.

2
3 6. GRANT OF THE VARIANCE WILL BE CONSISTENT
4 WITH THE PURPOSES, GOALS, OBJECTIVES AND
5 POLICIES OF THE COMPREHENSIVE PLAN AND THIS
6 CODE:

7
8 Yes. The overall project has all the required
9 approvals to comply with the intent of the comp
10 plan LSMU designation and ULDC code provisions.
11 It is the intent of the code to allow
12 developments to move forward that are in
13 compliance with the general provisions of the
14 comp plan and ULDC. The applicant can satisfy
15 all code requirements if the variances are
16 approved. It is the intent of the ULDC to
17 provide adequate parking to meet the needs of
18 the tenants and users of the site. It is also
19 the intent of the MUPD to encourage projects
20 that are pedestrian friendly and foster unity
21 between various users. In this situation, the

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No. If the parking variance is approved, the applicant will provide the parking on-site that the future tenants say they need in order for their needs and customer's needs to be met. The rear setback variance for the tower will allow the tower to be constructed in an area on the site that will provide visual continuity and pedestrian focal point for the entire project.

ENGINEERING COMMENT

None (ENG)

ZONING CONDITIONS

1. The property owner shall provide the building division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the board, simultaneously with the building permit application for the sixty-foot architectural freestanding tower. (BLDG PERMIT-BLDG)

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2. Prior to DRC certification of the revised site plan for the Shoppes at New Albany, the applicant shall reflect the revised parking lot, setback for the proposed sixty-foot high tower and additional landscape required by Board of Adjustment conditions of approval. (DRC-zoning)

3. Prior to DRC certification of the site plan for Shoppes at New Albany MUPD, the applicant shall reflect the upgraded landscape in the parking lot;

A, landscape island shall be constructed every 10 parking spaces or fraction thereof.

B, for each of the proposed additional ninety parking spaces, an additional forty square foot of landscaping shall be provided and shown within the parking lot in proximity to buildings 2 and 3 shown on the site plan Exhibit 9 in B.A. 2000-12 file. This additional landscaping shall be shown on the site plan.

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5. If a final landscape plan has been issued for this site, the applicant shall amend it to reflect the additional three thousand six hundred square feet of landscaping and plant material by July 16, 2000, or prior to issue of the final certificate of occupancy for any of the 3 buildings on-site.
(DATE:MONITORING-LANDSCAPE)

6. The construction of the sixty-foot high tower in the platted conservation easement along the south property line is permitted only if the designated open space is not counted toward the required 6 acres open space for the LSMU project. (DRC-ZONING) COMPLETED SEE NOT ON Site Plan.

ZONING COMMENT

The applicant has administratively amended the site plan to note that the conservation open

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space tract of land area that the tower is to be constructed on shall not count toward the overall 6 acre LSMU, ordinance 96-66, conservation open space acreage. This note was placed on the site plan at staff's request since the applicant chose not to amend the plat to delete the land area under the tower which is within the designated conservation open space easement. The ULDC definition of open space superficially precludes any structure in an open space easement. (ZONING)

CHAIRMAN BASEHART: Okay. That concludes our consent agenda. If anybody's ready to make a motion to adopt the consent agenda, we're

43 CHAIRMAN BASEHART: Show the motion carries
44 unanimously.
45 Okay. That gets us to the regular agenda.
46 First item is BofA 2000008, petition of
47 Donaldson Hearing, agent for Babalouie, Ltd.
48 Is the applicant here?
49 AUDIENCE MEMBER: (Indicating.)
50 CHAIRMAN BASEHART: Okay. Jon, do you want to
51 introduce the item.
52 MR. MacGILLIS: We may not need a full Hearing
53 on this. The only reason staff put this on the
54 regular agenda, we were still waiting for a
55 letter from the Town of Jupiter because this is
56 in the future annexation area. And we were
57 concerned that the requested variances would be
58 consistent with their jurisdiction once it was
59 annexed.
60 There's also been numerous code enforcement
61 violations, not specifically on this property
62 but the property to the south. Which, one of

1 the neighbors who's been calling, Ms. Carol
2 LaBaron, she might be in the audience, who has
3 serious concerns with the types of variance
4 that were being requested here. I spoke to her
5 on the phone, and indicated her parcel is
6 actually to the south of this parcel. And code
7 enforcement is pursuing the parcel that has,
8 apparently, a recreational use on it where they
9 rent kayaks and stuff. And there's a lot of
10 parking problems out on A1A.
11 And on the variance, though, staff feels what
12 the applicant -- the history of what happened.
13 It's a single-family home that the real estate
14 office went in and renovated without getting
15 necessary building permits, which would have
16 then triggered the landscaping and parking to
17 be upgraded at that time. With the parking
18 problems out on the street, it was called in to
19 code enforcement.
20 Code enforcement out there cited the property
21 owner. They applied for a building permit.
22 They cannot get a building permit until they
23 get variances for the queuing and stuff on the
24 site.
25 It's been in the system for almost a year now
26 between building permit review and the variance
27

45 and access to work on this site.
46 Their general comments were three. And I'll
47 just read them into the record so, if this
48 comes up later on, the Division of Planning and
49 Zoning finds that the above changes to the site
50 plan and variance request that is -- is
51 acceptable. If the variance is approved by
52 Palm Beach County, the town recommends the
53 following conditions: The proposed variances
54 shall only be applicable with a nonconforming
55 building and shall be null and void upon
56 redevelopment. 2, the subject property shall
57 be required, upon redevelopment, to meet all
58 applicable development standards. And, number
59 3, the applicant shall be required to annex
60 into the Town of Jupiter pursuant to the
61 ordinance number 10-97 and 7 attached if the
62 property owner requires water service.

28

1 Condition number one and two are actually
2 standard conditions. The variance is only
3 applicable to the site plan that the board
4 approves here today. So, if this site is
5 redeveloped, the variances that are being
6 approved here today will be null and void
7 anyway. So...
8 The third condition, I don't think we should
9 make that a condition of approval. It's an
10 ordinance -- if they're in agreement, the city
11 and the property owner, that's a given anyway.
12 I think with this, staff would recommend
13 approval of the variance.
14 CHAIRMAN BASEHART: Okay. Is the applicant
15 prepared to -- well, is there anybody here to
16 oppose the variance?
17 MR. HEARING: (Indicates.)
18 CHAIRMAN BASEHART: What I'd like to do is have
19 everyone that intends to speak on this item
20 please rise and be sworn in by the clerk.
21 (Audience members sworn by the court reporter.)
22 CHAIRMAN BASEHART: Okay. I guess one thing
23 that we didn't mention that we probably should
24 is that the Board of Adjustment proceedings are
25 quasi judicial proceedings. And that's why
26 we're swearing everybody in.
27 Okay. Mr. Hearing, would you like to present
28 your...
29 MR. HEARING: Yes. Good morning, Chairman. Mr.

47 appropriate fashion and to accommodate the
48 redevelopment plan consistent with the land
49 use, some variances are often required. And
50 that is the case right now. In the present
51 condition, the previous residential structure,
52 as well as this existing use as it is today,
53 backs directly out onto A1A. And, you know,
54 that is the historical condition.
55 And what we're trying to do is to reorganize
56 that, provide a controlled condition and
57 provide a paved parking lot as opposed to the
58 existing basically, open sand lot.
59 Now, one other piece of information that is
60 important for you to understand is that the
61 Town of Jupiter intended development plan for
62 this area -- the Town of Jupiter has spent a

1 long time envisioning for their U.S. 1
2 corridor, their river walk corridor, and the
3 A1A corridor. They are looking to have this
4 area developed into what they refer to in the
5 letter that has been made a part of the
6 record -- and I do have 2 additional copies
7 here -- as their inlet village district. In
8 other words, they're looking for relatively
9 small-scale architecture that has historical
10 context, preservation and renovation of the
11 existing historical structures that are there.
12 And, for that reason, there particular type of
13 development facilitates that. The smaller
14 lots, basically, is more in keeping with the
15 new urbanism type of a concept, a smaller lot
16 facilitates smaller scale development, which is
17 basically what we're proposing here.
18 Further, it's important for you to understand
19 that the Town of Jupiter is going to be, very
20 quickly in the near future, renovating A1A and
21 will be providing on-street parking all along
22 this area consistent with what they've done
23 along the beach front, which would again
24 further facilitate and allow their vision of
25 the village concept to occur.
26 So that's what we're trying to do. The site
27 does -- is in definite need of repair. I think
28 that the neighbor who is here might tell you
29 that, you know, the site needs to be cleaned
30 up. We've been trying to get building permits,
31 and we've been trying to get building permits,

49 provision.
50 With that I'll concluded. I'll answer any
51 questions that you have. I would just like to
52 have the opportunity to respond to any comments
53 that may be made.
54 CHAIRMAN BASEHART: Okay. Thank you.
55 MR. HEARING: Thank you, sir.
56 CHAIRMAN BASEHART: I guess maybe, before we do
57 the staff report, why don't we go to the public
58 and get their input.
59 Any member of the audience here to speak either
60 in favor or in opposition of this application
61 come forward.
62 Sir, if you could give us your name.

1 MR. ZAPARINI: William Zaparini.
2 I have the property that's adjoining this
3 setback that he's talking about.
4 CHAIRMAN BASEHART: To the -- which side?
5 MR. ZAPARINI: Well, it would be the east.
6 CHAIRMAN BASEHART: Okay.
7 MR. ZAPARINI: And the reason I'm opposing it
8 is I've seen what has been going on there, and
9 there's no regard for anybody in the area.
10 This gentleman's wanting to do all of this, and
11 the only interest that it is is business-wise,
12 money.
13 I've been there for thirty-two years, kept the
14 place nice and neat. This gentleman comes in,
15 it's strictly a junk yard. I mean, it is --
16 it's a crime. The county hasn't done anything
17 about it. I can't even put up a tin shed out
18 there. He puts on any kind of piece of
19 property he wants on there. He's got sheds
20 laying all over. He's got kayaks all over.
21 During the hurricane threat, we had -- kayaks
22 were laying all over. Didn't make one attempt
23 to put anything away. I mean, this is strictly
24 -- he has no regard for anybody else's
25 property. And I don't believe in that. He's
26 supposed to be an environmentalist, but I don't
27 see how he can claim that.
28 And, as far as Jupiter is concerned, I don't
29 know -- this is a deal he's making with
30 Jupiter, disregarding the people there that
31 have been opposing going into Jupiter. His
32 interest is his business, to make his money and
33 to back with some of the other in investment

51 Jupiter. And this property -- and there's a
52 number of them along this area, probably close
53 to 10 that have been the subject of -- I guess
54 you could call them a hostile annexation by
55 Jupiter. The county's been trying to work out
56 with Jupiter exactly what is going to be the
57 status of these properties once they're
58 incorporated.
59 We've had numerous meetings with the
60 commissioner and the Town of Jupiter for the
61 last, probably, two years. At this point, the
62 position that Jupiter is taking is that they

1 are not issuing any concurrency for property
2 unless they agree to annex. This piece of
3 property already has concurrency. It has a
4 concurrency recommendation put in the
5 correspondence subject to annexation agreement.
6 Also there is disagreement among the property
7 owners about their wishes to annex. I would
8 say the majority of the them probably at this
9 point do not want to be annexed within Jupiter.
10 CHAIRMAN BASEHART: Do it piece meal unless you
11 pick the piece right on the boundary, wouldn't
12 be a possibility.
13 MR. WHITEFORD: That's correct.
14 CHAIRMAN BASEHART: Any other member of the
15 public wish to speak on this item? Sir? You
16 weren't sworn in?
17 MR. SHEPPER: No.
18 CHAIRMAN BASEHART: Well, you're going to have
19 to be.
20 (Mr. Shepper is sworn by the court reporter.)
21 MR. SHEPPER: My name is Robert Shepper. I run
22 a small business just east of the proposed
23 site. And, like the gentleman says, we've been
24 in the area for -- my count we've been there
25 over 50 years. And we've been opposed to any
26 annexation into Jupiter, always have been.
27 Jupiter has nothing to offer us. We've been to
28 Jupiter many many times asked -- talk to us.
29 Give us something. They absolutely refuse.
30 They say it's going to be our way or no way.
31 And they were trying to build a bridge across
32 -- near Baron's Motel there, the river walk, I
33 think. We almost got that shot down because
34 Ms. Marcus thought that was a silly idea to
35 begin with. They can wait until they get the

53 small piece of property. They've got a resort
54 center on this small piece of property. It's
55 like a recreational park. And it just -- the
56 river is too small. There's kayaks -- it's
57 just a matter of when there's going to be a
58 problem because the kayaks don't abide by any
59 rules of the road.
60 They're everywhere. And we have people come
61 around this curve full throttle. They're not
62 supposed to, but they do. And you have kayaks

32

1 -- during the weekends, it's a bad situation.
2 You have a loading ramp right there. Boats
3 have to go out around to the south side. I
4 know that's not what we're here for. We're
5 here for parking. But it just -- it all --
6 it's conglomerate into this whole bad
7 situation. They're just trying to do too much
8 on this small piece of property. And the
9 parking is a big problem.
10 The building that's condemned on the property
11 line, if they would destroy that building and
12 make parking there, that would probably
13 alleviate a lot of the problems on the --
14 Mr. Zaparini's side. There should be a barrier
15 or something put there. If they're going to
16 park right along side the boundary line, there
17 should be a barrier wall put in between the
18 property. Thank you very much.
19 CHAIRMAN BASEHART: Seems to me that the
20 request here is to eliminate what is a direct
21 head-in/back-out parking situation now and,
22 actually, put it -- although, not 15, but a 10
23 foot -- actually nine and a half foot landscape
24 buffer between the roadway and the parking and
25 to create a controlled access point. That's
26 essentially what we have.
27 MR. MacGILLIS: That's correct.
28 CHAIRMAN BASEHART: So it would seem that the
29 request is moving in the direction that this
30 gentleman thinks things ought to go.
31 MR. MacGILLIS: I believe that's what I
32 explained to him when I spoke to him on the
33 phone.
34 The confusion is the parcel to the west is
35 where the kayaks is. The applicant owns it as
36 well. There's where it's generating a lot of
37 the traffic problems out on A1A. And

55 So you've got an existing building on there
56 which they're trying to convert consistent with
57 the trend. It's not really appropriate for a
58 single family home any longer. So the trend is
59 move it in keeping with what the land use and
60 the zoning has for that area.
61 The improvements they're going to have to make
62 to the building will take place once this

1 variance is granted. They'll be able to go in
2 there and bring the whole building up to
3 commercial standards. Hopefully, the issue
4 with the illegal parking and problems they're
5 having, code enforcement is going to be
6 addressing that, and the Sheriff's Office.
7 When people park out there, they're illegal,
8 so...
9 CHAIRMAN BASEHART: Okay. Is there any member
10 of the public that would like to speak on this
11 item?
12 (No response.)
13 CHAIRMAN BASEHART: Okay. We'll close the
14 public Hearing.
15 And give us the staff report.
16 MR. MacGILLIS: The findings of fact -- we'll
17 go over them in detail -- are on page 14 of
18 your back-up material.
19 Staff clearly finds that the applicant has met
20 the seven criteria necessary to grant the
21 variance. The lot does have unique
22 circumstances, the fact that it's a
23 nonconforming lot, 16 acres instead of 1 acre.
24 It's CN zoning, which is neighborhood
25 commercial, which supports this type of use,
26 small neighborhood real estate office which
27 provides services to the people who are looking
28 to buy property in that area.
29 The variance that he's requesting are not
30 related to increased parking or something that
31 would have a negative impact on the area. The
32 landscape that he's reducing, staff is
33 upgrading the plant material that's in those
34 buffers, just reducing the size. The queuing
35 area, which is measured from the property line
36 through the first parking call, because of the
37 nature of this way, you don't want a car out
38 into the street while the other cars are
39 traveling through which is being addressed

57 back and prove hardship because we're dealing
58 with a small nonconforming site with existing
59 buildings which places the hardship on the
60 property owner. We try to bring a site more
61 into compliance with the surrounding land use
62 and zoning trends in that area.

34

1 Granting of the variance will meet the general
2 intent of the code, which the intent of the
3 landscape code is to buffer noncompatible land
4 uses. With the landscaping that's being
5 proposed here -- and, even though they're
6 reducing the landscape strip, it would still
7 provide the necessary buffering in between the
8 uses.
9 And the final one, this will not be injurious
10 to the area. We received a letter from the
11 Town of Jupiter. They're in agreement that the
12 requested variances are minimum in nature and
13 will not affect the actual surrounding property
14 owners. And with the conditions recommended by
15 staff, we feel that the variances are
16 reasonable and minimal in nature.
17 MS. KONYK: May I ask a question?
18 CHAIRMAN BASEHART: Sure.
19 MS. KONYK: Jon, most of the complaints that I
20 heard today are referring to the piece of
21 property which is kayaks.
22 MR. MacGILLIS: Correct, to the west.
23 MS. KONYK: And this is not the piece of
24 property that we're talking about for the
25 variance?
26 MR. MacGILLIS: No. The applicant owns both
27 parcels, so that's why this --
28 MS. KONYK: Those concerns are being addressed
29 by code enforcement?
30 MR. MacGILLIS: Correct.
31 MS. KONYK: Okay. I'm ready to make a motion.
32 CHAIRMAN BASEHART: Anybody have any questions?
33 Comments? Statements?
34 MS. CARDONE: Jon, could you just review for me
35 for a minute the statement that came through
36 from Jupiter where they mentioned annexation
37 with them. What were those? Conditions --
38 MR. MacGILLIS: The conditions?
39 MS. CARDONE: -- from Jupiter?
40 MR. MacGILLIS: Yes.
41 MS. CARDONE: And the first one was --

59 MS. KONYK: In other words, if they get water
60 from the Town of Jupiter, then they have to
61 annex.
62 MS. BEEBE: They're required to under their

1 ordinance.
2 MR. WHITEFORD: They already have water.
3 MS. KONYK: Right. In order to get the water,
4 they have to annex anyway.
5 MR. PUZZITIELLO: They already have water.
6 MS. KONYK: They already have water from --
7 CHAIRMAN BASEHART: I mean, that condition
8 doesn't make any sense, does it? I mean,
9 dealing with situations like this all the time,
10 if you request water from a municipality, then
11 they make you do a water-sewer agreement, which
12 is a clause requiring annexation upon becoming
13 contiguous of -- I mean, even if they didn't
14 have water now, that condition wouldn't be
15 necessary.
16 And it seems to me that -- and, Laura, you can
17 correct me if I'm wrong. But the rule is that
18 any condition placed on any approval that we
19 give has to be -- there has to be a rational
20 relationship between the condition and the
21 variance being requested. And it seems to me
22 that parking and queuing and landscape buffer
23 with the variance doesn't have anything to do
24 with public water. So it wouldn't be an
25 appropriate condition on a variance like this.
26 MS. BEEBE: I think you're correct.
27 MR. WHITEFORD: Even done the annexation issue,
28 considering the history we have had here.
29 MS. KONYK: Does that mean that that condition
30 should be removed?
31 MR. MacGILLIS: It was a suggested condition
32 from the Town of Jupiter. It wasn't a
33 condition recommended by --
34 MS. KONYK: Oh, okay.
35 MR. MacGILLIS: On page 17, I just would like
36 to update condition number 2, because this item
37 was on your February agenda. And, since then,
38 the applicant has submitted a new site plan.
39 Condition number 2 should read: The applicant
40 shall submit a copy of the BofA result letter
41 and -- for the approved variances and a copy of
42 the site plan, Exhibit No. 22, submitted at the
43 Board of Adjustment Meeting on March 16, 2000

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62

Konyk and a second by Mr. Puzzitiello? Oh, Mr. Jacobs. I'm sorry.

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So we have a motion and we have a second. Any discussion?
(No response.)
CHAIRMAN BASEHART: Okay. All those in favor of the motion, indicate by saying aye.
(Panel indicates aye.)
CHAIRMAN BASEHART: Opposed, no?
(No response.)
CHAIRMAN BASEHART: Motion carries unanimously.
MR. HEARING: Thank you very much.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

Yes. The subject lot was developed for residential use in 1954, prior to the 1957 zoning code. Since that time, the use of the site has changed from residential to commercial. This is a .16 acre legal nonconforming lot, CN. Zoning calls for minimum 1 acre lots. This nonconforming size restricts the site layout modifications that the property can accommodate for commercial use. The property is nonconforming due to insufficient lot size and the fact that the existing structure does not meet side setback requirements.
The current property owner would like to bring the site into compliance with zoning regulations to the greatest extent possible.

1 the subject site compliments the type of
2 neighborhood commercial use found in this area.
3 The subject parcel abuts commercial parcels to
4 the east and west. A mobile home park is
5 located directly north of the parcel; and the
6 Intracoastal waterway runs along the rear,
7 (south,) of the parcel.
8

9 **2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE**
10 **THE RESULT OF ACTIONS OF THE APPLICANT:**
11

12 No. The applicant's client purchased the
13 property in 1997, assuming the site could
14 support commercial use as it was zoned
15 commercial. The property is located along A1A,
16 which supports a mixture of conforming and
17 nonconforming commercial and residential uses.
18 The site is within the future annexation area
19 of the Town of Jupiter. The town would like to
20 encourage the continuation of the existing land
21 patterns and uses in this area. This use does
22 not generate significant traffic and maintains
23 the architectural one-story commercial building
24 style predominately found in this area.
25 After having been cited by code enforcement on
26 May 13, 1999, for not having obtained a
27 certificate of occupancy when changing the use
28 of the building to commercial, the applicant
29 has been in contact with zoning staff to
30 explore ways to resolve the outstanding
31 violation by bringing the property into
32 compliance. The parking requirements on the
33 site for the real estate boutique use is the
34 major issue that must be addressed. After
35 accommodating the necessary parking
36 requirements and required variances, the
37 applicant's client may apply to the building
38 division to receive a certificate of occupancy.
39 The applicant is prepared to significantly
40 modify the site to reduce existing
41 nonconformities and bring the site into
42 compliance to the greatest extent possible with
43 current regulations.
44

45 **3. GRANTING THE VARIANCE SHALL CONFER UPON**
46 **THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY**
47 **THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER**
48 **PARCELS OR LAND, BUILDINGS OR STRUCTURES IN**

1 the property owner to accommodate the current
2 parking spaces required for the commercial use,
3 similar to that of other commercial sites in
4 the area. Also the site will be significantly
5 improved to current code. All other options to
6 locate parking on the site, or adjacent site,
7 have been exhausted.

8
9 **4. A LITERAL INTERPRETATION AND ENFORCEMENT OF**
10 **THE TERMS AND PROVISIONS OF THIS CODE WILL**
11 **DEPRIVE THE APPLICANT OF RIGHTS COMMONLY**
12 **ENJOYED BY OTHER PARCELS OF LAND IN THE SAME**
13 **DISTRICT, AND WOULD WORK AN UNNECESSARY AND**
14 **UNDUE HARDSHIP:**

15
16 Yes. The applicant is requesting the minimum
17 variances that will allow this property to be
18 brought into compliance with code. The change
19 in use of the structure from residential to
20 commercial requires compliance with current
21 codes. The property owner is proposing to
22 construct 4 patron spaces. The boutique real
23 estate office is considered a low intensity use
24 pursuant to the CN property development
25 regulations and install additional landscaping.
26 The construction of additional parking space
27 will create a safer situation on-site and will
28 allow the owner to obtain a certificate of
29 occupancy as well as make the site safer for
30 visitors to the real estate office and those
31 traveling by the site. It will also ensure
32 vehicles no longer back out into A1A but leave
33 in a forward motion. The landscaping will also
34 be upgraded to significantly improve the
35 overall aesthetic appearance of this use.

36
37 **5. THE APPROVAL OF VARIANCE IS THE MINIMUM**
38 **VARIANCE THAT WILL ALLOW A REASONABLE USE OF**
39 **THE PARCEL OF LAND, BUILDING OR STRUCTURE:**

40
41
42 Yes. The 4 variances are minor in nature and,
43 if granted, will allow this site to come into
44 compliance with code. If the variance is
45 granted, the applicant will obtain building
46 permits and inspections for the site and use.
47 The site/use have currently been illegally
48 operating since permits were not obtained prior
49 to the establishment of the new use.
50 The overall site plan decreases existing
51

1 WITH THE PURPOSES, GOALS, OBJECTIVES AND
2 POLICIES OF THE COMPREHENSIVE PLAN AND THIS
3 CODE:

4
5 Yes. The requested variances will allow this
6 commercial use to continue by allowing the
7 property owner to obtain all necessary permits
8 and inspections. Bringing nonconforming sites
9 into compliance with the code is a clear goal
10 of Palm Beach County's ULDC. The use is
11 appropriate for this area, which supports
12 similar types of low intensity CN uses. The
13 use also helps foster the land use trend in
14 this area which is to small scale neighborhood
15 uses to serve the local residents. The real
16 estate office boutique is a service the
17 surrounding communities utilize.

18
19 7. THE GRANT OF THE VARIANCE WILL BE
20 INJURIOUS TO THE AREA INVOLVED OR OTHERWISE
21 DETRIMENTAL TO THE PUBLIC WELFARE:

22
23 No. The granting of the requested variances
24 will improve the way the site functions and
25 decrease several nonconformities. Currently
26 vehicles park both on-site and off-site in the
27 right-of-way swale. Vehicles leave the site by
28 backing into traffic. This is no handicapped
29 space, minimum landscaping and the building has
30 never been properly permitted to be converted
31 to a commercial structure. The granting of the
32 variances will correct all these
33 nonconformities and improve the site for the
34 owner, users and traffic traveling along A1A.
35 The proposed modifications to the site will
36 make it less congested and improve
37 functionality.

38
39 ENGINEERING COMMENTS

40
41 The requirement that the base building line for
42 the subject property be forty feet beyond the
43 existing right-of-way of county road A1A is
44 hereby waived in part. Said base building line
45 is hereby established at 7 feet southerly from
46 the existing southerly right-of-way line, being
47 also 7 feet southerly from the existing
48 northerly property line of the subject
49 property.

50 The engineering department objects to any
51 reduction in the on-site queuing distance from
52 the minimum required 20 feet, particularly
53 given the lack of any stacking capacity outside
54 the existing site travel lanes in either

- 1 landscaping, as shown on the site plan, Exhibit
2 22, found in the B.A. file 2000-08
3 (DATE/MONITORING-BLDG PERMIT)
4
5 2. The applicant shall submit a copy of the
6 B.A. result letter for the approved variances
7 and copy of site plan Exhibit 11, submitted at
8 the Board of Adjustment Hearing, February 17,
9 2000, when applying for the parking/drainage
10 permit. (DATE-MONITORING-BLDG PERMIT)
11
12 3. By June 20, 2000, the applicant shall have
13 obtained a final landscape inspection by
14 contacting the landscape section for an
15 inspection. (DATE MONITOR - LANDS)
16
17 4. In order to vest the variance, a paving
18 drainage permit must be obtained by February
19 17, 2001. (DATE/MONITORING-BLDG-ZONING)
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30 CHAIRMAN BASEHART: Okay. The next item on the
31 agenda, which also happens to be the last item
32 on the agenda, is BofA 2000013, the request of
33 Mohamed Arsali, which is an appeal of the
34 zoning director's interpretation. I think
35 maybe we should start with the introduction of
36 the item.
37 MS. BEEBE: Could you put everybody under oath,
38 please.
39 CHAIRMAN BASEHART: All right. Anybody that
40 wishes to speak on this item, please rise and
41 be sworn in.
42 MR. WHITEFORD: I don't normally swear myself
43 in, but that's fine.
44 MS. KONYK: You're not swearing yourself in.
45 MR. WHITEFORD: Not myself, but staff, we don't
46 normally do it.
47 (Audience is sworn by the court reporter.)
48 CHAIRMAN BASEHART: Mr. Whiteford.
49 MR. WHITEFORD: The last item on your agenda is
50 an appeal of a decision that I made regarding
51 the Section 17 C 5 of the code regarding the
52 continuance or abandonment of a nonconforming
53 use. I just wanted to introduce, of course,
54 Mr. Arsali, Mohamed here, seated to my right.
55 He's not so familiar with our procedures today,
56 and I told him that they're relatively informal
57 and that's just plain talk, but that he'll be

1 assistant city attorney with the City of West
2 Palm Beach and worked with their Board of
3 Adjustment and is currently special master on
4 their code enforcement board and is very
5 knowledgeable on these issues and will
6 represent our position.
7 So I guess with that, we'll move forward. And
8 I think you probably want to hear from Mohamed
9 first.

10 CHAIRMAN BASEHART: I think what we'd like to
11 do is maybe introduce the item, or explain the
12 issue to us and staff's position on it and then
13 we'll follow that with testimony from the
14 individual that --

15 MR. WHITEFORD: Okay. In that case, we'll go
16 first.

17 MR. RICHARDS: Good morning, Mr. Chair and
18 board members. My name is Wayne Richards. And
19 that was a very nice introduction. I won't
20 repeat it.

21 The issue here is whether Mr. Whiteford's
22 decision regarding the ULDC section pertaining
23 to nonconforming uses should be upheld. It's,
24 of course, the staff's position that this
25 parcel of land has been abandon for more than
26 the requisite 6 months. Therefore, it has lost
27 its nonconforming status. That's the issue
28 before us. I'm not going to get into our case
29 and chief at this time. I'm going to let Mr.
30 Arsali speak. But that's the issue before you
31 in a nutshell.

32 Thank you.

33 CHAIRMAN BASEHART: Mr. Arsali.

34 MR. ARSALI: Okay. I'm Mohamed Arsali. I'm
35 the owner of the property that you have
36 discussion about. I have prepared in letter
37 format with some attachments to it which comes
38 from the zoning, all from their records. So I
39 would like to give everybody a copy, if it's
40 okay.

41 CHAIRMAN BASEHART: Sure.

42 MR. ARSALI: Then take -- just follow my
43 letter.

44 MS. KONYK: I'll make a motion to accept the
45 items that you're providing into the record.

46 CHAIRMAN BASEHART: Do we have a second?

47 MR. PUZZITIELLO: Second.

48 CHAIRMAN BASEHART: Motion by Ms. Konyk.
49 Second by Mr. Puzzitiello.

50 All those in favor?
51 (Panel indicates aye.)

52 CHAIRMAN BASEHART: Opposed?
53 (No response.)

54 CHAIRMAN BASEHART: The envelope and materials
55 has been accepted into the record.

56 MR. ARSALI: I already spent a lot of money on
57 this.

58 MR. JACOBS: Mr. Arsali, may I ask a question
59 before you start the presentation? There
60 ----- to be a discussion between your present

1 foreclosure proceeding. Your handwritten
2 notice of appeal talks in terms of bankruptcy
3 and a foreclosure proceeding. Was the
4 foreclosure proceeding part of a bankruptcy
5 proceeding under federal bankruptcy law.
6 MR. ARSALI: Based on my knowledge, yes. It
7 was the bankruptcy first and the foreclosure
8 later.
9 But that's not really -- if you'll allow me to
10 go through this letter here where I write it,
11 it's -- even though in my appeal I mention that
12 this is because of the government delay and
13 everything, that there are several documents
14 which I attached here and I would like you-all
15 to consider those and see what the -- I'll just
16 go ahead and read through the letter here that
17 I have to the Board of Adjustment, and please
18 stop me if you have any questions.
19 I go into, as I mentioned, the attachment. I
20 go into the attachment and I just go ahead, and
21 most of them have been underlined. Some of
22 them they might not be, so I get to them.
23 I request zoning approval for continuation of
24 the nonconforming auto sale use for the subject
25 property on October 1, 1999, and was denied. I
26 believe I should be allowed to operate this
27 auto sale business because of facts stated
28 below.
29 1, the law in Florida does not permit the
30 blanket application of a 6 month
31 use-it-or-lose-it provision to any
32 nonconforming use. The zoning department has
33 acknowledged that this use stopped at this site
34 on May 18, 1998, attached as Exhibit 1. If
35 you-all want to go through Exhibit 1. On the
36 second page, I will read from the letter from
37 the zoning director saying a site inspection
38 conducted by the zoning staff indicated that
39 the use have been discontinued and the 6 month
40 period for abandonment is dated from May 18,
41 1998, the date of the code enforcement
42 violation.
43 The case law is clear that if this decision was
44 not voluntary and if the owner or user of the
45 site continues to make efforts to commence the
46 use and never abandon the intent to do so, that
47 the use might continue.
48 I will bring to your attention the next bullet
49 here, which is the case law. In Lewis versus
50 City of Atlantic Beach, 467 So.2d 751 (Florida
51 1st DCA 1985), which I do have as attached as
52 Exhibit 2, I don't like to do that and discuss
53 the whole thing. But that's basically talking
54 about this issue. I just continue with Exhibit
55 3 and 4 and documents stated in Exhibit 5,
56 which I would like to move into those exhibits.
57 Exhibit 3 being the letter to the parking
58 zoning director from the court-appointed
59 trustee for this case. And said property
60 located at 2519 Hypoluxo Road, Lantana,
61 Florida. This is dated November 9, 1998. This
62 is still within the time limit from the May

1 18th. Please note that I serve as the receiver
2 in the case of Beal Bank, S.S.B. vs. Fairway
3 Auto Sales in the Palm Beach circuit court.
4 The property under my receivership is described
5 at 2519 Hypoluxo Road in Lantana.
6 This site was previously utilized for auto
7 sales. Since my appointment, I have been
8 actively attempting to lease the property to a
9 qualified tenant. A lease agreement was
10 entered into and approved by Walter Colbath,
11 Jr., with Auction on Wheels on October 22,
12 1998. I have been informed that the lessee has
13 been unable to obtain the necessary licenses
14 due to an alleged code violation.
15 I just would like to go to -- based on the
16 first attachment we say start on May 18th, and
17 here we're talking about the lease being
18 November -- October 22nd, which is five months
19 and four days later, not six months. And then
20 it goes on the letter saying, I would suggest
21 that the meeting between all the parties would
22 serve everyone's best interest. And I would be
23 happy to coordinate such a meeting with your
24 office, since the tenant is anxious to move
25 forward with plans to open the facility. I
26 respectfully suggest that time is of the
27 essence. And the reason for time being of the
28 essence is because of the 6 months.
29 I would like to move into Exhibit 4. This is a
30 follow-up letter from Mr. Welt to Mr. Hodgkins.
31 As you may recall, I am receiver that was
32 appointed in the case of Beal Bank vs. Fairway
33 Auto Sales in the Palm Beach circuit court.
34 The property under my receivership is located
35 at 2519 Hypoluxo Road in Lantana. I entered
36 into a lease agreement with Auction on Wheels,
37 Inc., on October 22, 1999; and I have been
38 informed by the tenant that he had difficulty
39 in obtaining the proper license on the
40 property. Allegedly, there is a zoning problem
41 which prevents obtaining this licensing from
42 Palm Beach County.
43 In my previous letter dated November 9th, I had
44 suggested that the parties in interest meet
45 with you to discuss the situation and hopefully
46 come to a mutually-agreeable solution. And
47 this is dated November 30th. As of this date,
48 I have not received a response to my request.
49 I'm respectfully requesting that your office
50 respond so I can proceed with the scheduling of
51 this meeting among the parties.
52 And Exhibit 5, this is a letter from me to
53 Mr. Jon MacGillis and that response to Mr.
54 Jacob's question regarding what I stated on my
55 appeal and this is -- you-all can see the date
56 of that. After having a meeting with
57 Mr. MacGillis, I provided him with additional
58 information stating that, even though in my
59 letter of appeal I mention that it's because of
60 the government foreclosure, but here I
61 emphasize on this, I will read the letter.
62 Upon request in our meeting yesterday, attached

1 is a copy of some of the court documents
2 relevant to this case. Please let me know if
3 you need other documents that are being
4 referred in this document.
5 In summary, 7/2/1998, motion for appointment of
6 receiver, Kenneth Welt. 7/14/1998 court order
7 appointed receiver to maintain the property and
8 locate a suitable tenant for the requested
9 limited term use. 10/22/1998, Kenneth Welt,
10 after substantial efforts, succeeded in
11 locating a suitable tenant and executed a
12 commercial lease agreement. These are all part
13 of court records in circuit court. 10/23/1998,
14 filed emergency motion for court's approval of
15 lease. And then on 10/29/1998 court order
16 approving the lease.
17 I believe documents listed above show that the
18 owners' trustees were seeking a suitable tenant
19 for the property since July of 1998. Please
20 call me at 740-1998 if you have any questions
21 or need additional information.
22 All these documents are not attached here, but
23 they have been forwarded to Mr. MacGillis to
24 support that.
25 I would like to move back to and finish up the
26 letter that I have on the first page. I
27 apologize if I'm going back and forth here. I
28 hope I'm not confusing everybody.
29 Exhibit 3 and 4 and documents stated in Exhibit
30 5 shows that the court appointed trustee has
31 been actively attempting to lease the property
32 to a qualified tenant since July 1998. A lease
33 agreement was entered into and approved by the
34 court on October 22, 1998. However, when
35 lessee applied for an occupational license on
36 November 3, 1998, he was told that the 6 month
37 period for reestablishing the use had already
38 expired, which, based on the first attachment,
39 is not the case.
40 Additional documents -- I just put a bullet
41 here. Additional documents to be provided only
42 and if and only if the above facts are not
43 sufficient. Based on these facts, I'm
44 requesting that the Board of Adjustment approve
45 the continuation of the nonconforming use auto
46 sale use for subject property.
47 I would like to add, before I finish, as I
48 stated in one of the letters and I copied to
49 all the commissioners, I -- basically, this is
50 something I wanted to do all the time. I
51 wanted to have a dealership. And, finally,
52 this thing came along. I found it; I bought
53 it. I have a PhD, but this is what I'm
54 interested in doing. And, even before buying
55 it, I spoke with the zoning informally. And I
56 told them basically what I plan to do. And
57 they say, well, if there is an occupational
58 license prior to that, you have no problem.
59 And that was informal. There was no letter.
60 It was not with Mr. Whiteford or anybody. It
61 was some gentleman right there just coming
62 walking saying that.

1 And then I went ahead and pursued this and
2 purchased the property based on the fact that
3 the documents I had that was told me.
4 Then I went to the -- to apply for the
5 occupational license, and provided with a copy
6 of the previous occupational license. I was
7 told that I have to get a dealer license in
8 order to do that. So we're talking back in
9 September of last year. And then -- for last
10 year. Then I went and got the dealer's license
11 in order to do that. So I went through all the
12 expenses. But on October 1st when I apply and
13 I was told no and then -- it's been costing me
14 a lot of money. And I'm hoping that we can
15 resolve this situation today so I don't have to
16 go through anymore litigation, anymore things,
17 because that's really -- I have set my mind on
18 this; and I want to have it done.
19 And I have spoken to commissioner MacArthey.
20 She's the commissioner in my district. And,
21 basically, talked to her because I did send her
22 a letter about this concern and everything.
23 And I have not spoken to anybody else, even
24 though I have left messages -- several messages
25 for commissioner Newell. But I haven't gotten
26 a return call yet.
27 So with that, if you-all have any questions,
28 I'll be glad to answer.
29 CHAIRMAN BASEHART: Does any member of the
30 board have a question?
31 MS. KONYK: I just have a quick question.
32 CHAIRMAN BASEHART: Yes.
33 MS. KONYK: This "Auction on Wheels," that's
34 not your business?
35 MR. ARSALI: No, it's not.
36 MS. KONYK: It was the business of the -- that
37 the receiver found --
38 MR. ARSALI: Yes.
39 MS. KONYK: -- to take over this property?
40 And then, when he attempted to proceed with the
41 lease, we ran into the 6 month delay?
42 MR. ARSALI: Which is not the 6 month delay
43 based on the letter attached here.
44 MS. KONYK: Okay.
45 MR. ARSALI: But then, because of that, it was
46 just a continuation. And I've been involved --
47 I've been talking to a guy for the last --
48 because I wanted to buy it and they wanted to
49 go ahead and sell it at the foreclosure.
50 MS. KONYK: When you purchased this property,
51 you didn't put the condition in the purchase
52 that you had to --
53 MR. ARSALI: It is in the court document as --
54 when they did issue me the certificate of
55 title, which I did provide a copy, and it's --
56 and the certificate of title, it does turn over
57 all the titleship, ownership, any kind of
58 business --
59 MS. KONYK: That's not my question. When you
60 purchased the property, you said you came down
61 here and you asked somebody a question --
62 MR. ARSALI: Yes.

1 MS. KONYK: -- and you received an answer.
2 MR. ARSALI: Yes.
3 MS. KONYK: You didn't put in the purchase
4 agreement that this property had to be able to
5 be used for the use that you wanted or it would
6 void the purchase? That conversation in the
7 hallway was sufficient to assure you that this
8 use was going to be --
9 MR. ARSALI: I wish that was the case because I
10 bought it from the court and the court does not
11 give you any conditional -- either buy or not
12 buy based on what you see the final judgment,
13 what the certificate of title you get. The
14 final judgment is public record, and you can
15 read what you're buying. And, when the final
16 judgment gets stated like a ten-line long that
17 you are getting all the -- you know, whatever
18 goes with the property, either -- I can't think
19 of the word right now.
20 MS. KONYK: I understand. Thank you.
21 MR. ARSALI: It's stated in the --
22 CHAIRMAN BASEHART: What was the date that you
23 closed on the property?
24 MR. ARSALI: The date of auction was September.
25 CHAIRMAN BASEHART: Of '98?
26 MR. ARSALI: September '99, last.
27 MR. JACOBS: And you purchased the property
28 from the trustee in bankruptcy?
29 MR. ARSALI: From the courthouse. Actually,
30 the trustee -- as I say he was a trustee
31 because of the foreclosure -- first the
32 bankruptcy of the company and then the trustee
33 steps, was appointed by the -- to look after
34 the bank who loaned the money. And the bank
35 then went through the stay from the trustee and
36 then they got the -- they got the -- they went
37 through the foreclosure.
38 MR. JACOBS: The value of the property, if you
39 can use it as -- for the purpose you intended,
40 I take it is substantially greater than the
41 value of the property if you use it for
42 nothing?
43 MR. ARSALI: This is what I heard, but I have
44 no idea. I have no idea because, like I said,
45 I did back several months ago back in 1998,
46 again, I came to the zoning and asked --
47 department. And I was provided with a copy of
48 application for a zoning, and the new
49 requirements were so high that there was no way
50 that I could find one three acres and all this
51 other requirements. And then I was told it
52 would be the best way to go and find one which
53 was already in existence. But as far as the
54 value with and without it, I have no idea. I
55 haven't really marketed the property or
56 anything to see.
57 MS. KONYK: It's a pretty small piece of
58 property, isn't it?
59 MR. ARSALI: It is half an acre, yes.
60 MR. JACOBS: If the decision is upheld what
61 then happens to the property?
62 MR. ARSALI: You mean -- upheld? That means

1 denying the...
2 MR. JACOBS: What would you do with the
3 property then ?
4 MR. ARSALI: What would I do with the property?
5 Well, I don't know. I probably will have to
6 sell it at a loss or I have to --
7 MR. JACOBS: Okay. But, essentially, the
8 proceeds of the sale would go towards the
9 creditors in bankruptcy, correct?
10 MR. ARSALI: Oh, yes. They already gone.
11 MS. KONYK: He owns it.
12 MR. ARSALI: I own the property right now. But
13 the question is, if I cannot sell it, I'm not
14 builder; I cannot go ahead and build some other
15 commercial building on it or do anything to it.
16 So I have to let it go as a loss, and that's
17 why I'm determined to fight it unless I can
18 find somebody who's giving away another one,
19 and I can take that one.
20 MR. JACOBS: Has there been a final decision by
21 the trustee settling the bankruptcy?
22 MR. ARSALI: Yes. They're all final. They
23 been final last year. Actually, the trustee
24 when -- when turning to the circuit court, the
25 trustee had not much to do. The only thing, as
26 the judgment provided, he was ordered to find a
27 good, suitable tenant; and he did and he went
28 through a lot of -- there are lengthy there.
29 There are probably fifty, sixty pages of
30 documents that he actual went for the approval,
31 overnight approval and all getting from Judge
32 Colbath and stuff and everybody trying so hard
33 to get this thing going to meet the deadline.
34 CHAIRMAN BASEHART: It appears that -- not
35 appears. But he requested the occupational
36 license in November of '98 based on the
37 assumption that the business that was there
38 before was there until May 18th of '98. But he
39 was turned down?
40 MR. ARSALI: Yes.
41 CHAIRMAN BASEHART: Correct?
42 MR. ARSALI: Yes.
43 CHAIRMAN BASEHART: That was, like, ten months
44 before you purchased the property?
45 MR. ARSALI: Exactly.
46 CHAIRMAN BASEHART: Were you aware of the
47 decision with respect to that application --
48 the application of the trustee when you
49 purchased the property?
50 MR. ARSALI: The decision that it was -- no, I
51 wasn't. The only thing I spoke with the
52 trustee -- actually, I did not. Spoke with the
53 attorney who was representing the bank and
54 asked -- as far as my question, she say, it's
55 auto sale. It has still the sign up there and
56 all that. That's the information she gave me,
57 and she was the representative of the bank.
58 CHAIRMAN BASEHART: But at that time you didn't
59 have any knowledge that the county had denied a
60 occupational license to them?
61 THE WITNESS: No, I was not. I was aware --
62 Yes, I was aware of that, that this was denied.

1 But I was aware of this letter to the other
2 party that stated that, you know, the time
3 clock starts from the May time frame and then
4 put the two and two together. I said something
5 -- and that's why I say that the government
6 really did -- getting back to my appeal is
7 because probably I wouldn't have the property
8 because probably -- because I was talking to
9 these people. Just because they were going to
10 leave it, but I was going to buy it.
11 And Kenneth Welt, the trustee, cannot sell the
12 property without court approval. The judgment
13 on this property was way more than the property
14 was worth. It was in the neighborhood of
15 four-hundred-something thousand dollars. And
16 unless -- if you could sell it for that price,
17 then it could do it without the court help.
18 But because the offer will come in before that,
19 that's when it went through the court. And
20 then, because of the bankruptcy, there was
21 other creditors that were involved.
22 CHAIRMAN BASEHART: Okay.
23 MS. KONYK: So all this paperwork that you
24 provided us today, you're saying that you
25 weren't aware of any of this before you
26 purchased the property?
27 MR. ARSALI: I was aware of some of this. I
28 was aware of some of this.
29 MS. KONYK: You were.
30 MR. ARSALI: There are some of --
31 MS. KONYK: So, I mean, this letter that said
32 that they exceeded the six month time limit,
33 you were aware of that when you bought the
34 property?
35 MR. ARSALI: No. Which -- which -- I'm sorry.
36 MS. KONYK: Well, the letter that says -- you
37 know, the November letter saying that the --
38 where is that one? No, not even that one.
39 MR. ARSALI: Exhibit 3 and 4, you're talking
40 about?
41 MS. KONYK: Okay. In this package you
42 provided us --
43 MR. ARSALI: Yes.
44 MS. KONYK: -- clearly states that the zoning
45 director's position was this property had not
46 been used in the time frame that was required
47 for the purpose that was the nonconforming use
48 so that when they applied for a occupational
49 license, they were denied because the
50 nonconforming use had expired. That's the
51 problem. You're saying you were aware of that
52 when you bought the property?
53 MR. ARSALI: No, I was not.
54 MS. KONYK: This information was available to
55 you?
56 MR. ARSALI: This information?
57 MS. KONYK: Yes, because you could have
58 researched the piece of property before you
59 purchased it and found all of this out. You
60 didn't do any research before you --
61 MR. ARSALI: I have done all the court
62 research.

3 wasn't aware that there is a file here in the
4 zoning on this property.
5 MS. KONYK: But that was available to you.
6 MR. ARSALI: The first time I came here and I
7 talked -- I wish I could remember the
8 gentleman's name up there. I asked if there's
9 anything on that property.
10 MS. KONYK: Did you specifically identify that
11 piece of property?
12 MR. ARSALI: I did --
13 MS. KONYK: Or you just asked in general?
14 MR. ARSALI: -- because the property is -- it
15 so hot that everybody knew about it. He just
16 didn't have even to think about it. He just
17 responded to me. He said, if you can find --
18 he gave me a list of things that he approved.
19 He say, if you can find an occupational
20 license, prior occupational license, dealing
21 license or whatever on that property within the
22 last 6 months, you can bring it over. That's
23 what he told me. And then I went through the
24 tag and tried to get a copy of the previous
25 occupational license. I got copy of the
26 dealer's license, the dealer's license. I got
27 a copy of their expiration on all that stuff.
28 Everything has been provided.
29 CHAIRMAN BASEHART: You were aware that, in
30 order to get an official interpretation from
31 the county, there's a process -- they have the
32 applications right in the lobby there that, if
33 you want an official interpretation and ruling
34 you fill that out and submit it; and then you
35 get a written response.
36 MR. ARSALI: I could not get it before if I was
37 not the owner of the property.
38 CHAIRMAN BASEHART: Sure you can.
39 MR. WHITEFORD: What the code talks about is
40 you can't get an appealable interpretation
41 unless you are the property owner. We give out
42 confirmation letters, as you know, Bob, to
43 anyone who requests it.
44 MS. KONYK: You could have probably required
45 the trustee to provide you with that, though.
46 You could have forced --
47 MR. ARSALI: Believe me, next time, if I have
48 to go through this again, I will do it. But
49 this time is my first time. I did not know any
50 of this. And obviously, I did not even know
51 because, when I went and got a dealer license
52 and everything, I went back to the county -- to
53 the downtown tag and asked for occupational
54 license and they told me -- turned me and, they
55 said, no, no, no. You've got to go to zoning
56 now, get their approval. And then that's
57 what... But I just would like to add,
58 apparently -- I'm not aware of her
59 presentation; but, apparently, this property,
60 which I knew about this, it's been a property
61 which a lot of people been objected to it. And
62 the people they have neglected it before. I

5 it. I would like to take this as well
6 condition of that.
7 This is going to be a, you know, beautifully --
8 landscaped beautifully, you know, everything.
9 I'm not saying that I just want to go ahead and
10 put some junk cars in there. My goals are not
11 for this. The name of the company that I got a
12 tag number is Exotic Cars of Palm Beach; and I
13 am ready to spend money, whatever conditions,
14 to get that thing -- whatever it's required
15 because I understand, back in 1996, there were
16 a lot of conditions put on this property and
17 there were fence put in; there was blockade put
18 in; there was gate put in. There was a lot of
19 expenditure went for it.
20 But, unfortunately, that's -- like I said, if I
21 was the owner back then, I could do that
22 probably I owed all the creditors. What I was
23 going to say to finish up this is a property I
24 understand it's in particular district there's
25 certain people that don't like this to be in
26 their area. I understand the neighbors, I
27 would be the same way. I don't know what their
28 position is. But, if I was the neighbor there,
29 I wouldn't want something like this in my
30 neighborhood.
31 But, like I said, I was not planning to leave
32 it like that. I already talked to fire
33 department about completely demolishing the
34 building and just removing it.
35 Is there a question? The fire department, they
36 do it for the training purposes.
37 MS. KONYK: Oh, you're going to send to
38 demolish the building.
39 MR. ARSALI: They demolish the building, not
40 where the car is. They demolish the building,
41 fence the whole thing, you know, landscape,
42 make it look nice.
43 CHAIRMAN BASEHART: Anyone have any questions
44 of Mr. Arsali?
45 (No response.)
46 CHAIRMAN BASEHART: Why don't we go to the
47 staff's position.
48 MR. RICHARDS: I'm going to try to move quickly
49 and not stay too long. I'm going to give an
50 opening and then I'm going to call code
51 enforcement. This is a very simple case. The
52 address is 2519 Hypoluxo Road. The parcel sits
53 on 0.49 acres. It's just under half an acre of
54 land. And the current code provides that used
55 car lots or auto sale lots must be 3 acres or
56 more. So this parcel is just under one-sixth
57 of the required size to meet the current code
58 requirement.
59 We do admit that the property had nonconforming
60 grandfathered status prior to August 25th '98.
61 And we'll go over that date, the August 25,
62 1998, date. The property was abandoned not in

7 in excess of the 6 months required.
8 This really should have been no surprise to Mr.
9 Arsali. I understand his concern. He's a
10 property owner. He wants the greatest and the
11 best use for his parcel. I can empathize and
12 appreciate that. But the county obviously has
13 to maintain and enforce the zoning requirements
14 for the good of everyone, all the community.
15 Mr. Arsali purchased the property September
16 16th, '99, over 1 year after the use had been
17 lost. The use was lost August 25th, '98; and
18 the purchase was September 16th, '99, from a
19 foreclosure sale. Once Mr. Arsali learned of
20 the problem, he did as most of us would do; and
21 he looked for a loop hole. The ULDC provides
22 in the 6 month status cannot be caused by
23 government action, that's the exception, the
24 government action. The government does
25 something -- if the delay is caused by
26 government activity, government action, the
27 government caused it, caused the delay, you
28 tolle the period, put it on hold. We will show
29 that the abandonment was not caused by
30 government action. We didn't do anything to
31 cause the abandonment.
32 As you know very well, to prevent a government
33 taking, nonconforming uses are grandfathered.
34 The hope and anticipation is that, over time,
35 the nonconforming uses will slowly dissipate.
36 They'll disappear due to attrition for
37 abandonment, hence, the 6 month window. If you
38 stop using it for 6 months, if you abandon it,
39 the grandfathered use goes away. That's the
40 goal.
41 If the 6 month abandonment was caused by
42 government action, then it's tolled. We don't,
43 however, tolle the 6 months when the
44 abandonment was not caused by government action
45 but was caused by a land owner or by in-action
46 of a land owner. In this case, we have a
47 person that had a mortgage. The property owner
48 had a mortgage. For some reason, they did not
49 make the mortgage payments. That's not
50 government action. They didn't make the
51 mortgage payments. The mortgage holder decided
52 to use the judicial system to foreclose. You
53 don't pay the mortgage, I take you to court.
54 Can't shoot you. Can't beat you up. Have to
55 take you to court. That's your judicial
56 system.
57 The property owner closed up shop; and you'll
58 hear evidence today, stopped making the
59 mortgage payments. The used car lot packed up
60 and went across town. They moved. You'll hear
61 that. That's how it was abandoned. The
62 government didn't do anything. The government

9 today. And he told her that he moved his shop,
10 that he abandoned the property because sales
11 were slow. He told her the lot was too small.
12 He couldn't make any money there. He told her
13 that. She'll tell you that today, direct
14 testimony.
15 That's the very same thing that Mr. Whiteford
16 asserts. The lot does not meet current zoning.
17 The lot is too small. It's not three acres.
18 It's less than a half an acre.
19 Mrs. Walden will also tell you that the prior
20 operator told her directly that he called
21 Florida Power & Light and had the electricity
22 turned off February 25th, '98. Mrs. Walden
23 will also say that she contacted FP&L; and they
24 confirmed, yeah, it was turned off on February
25 25th. The guy left. She also took a picture
26 March 1st that we have. The picture will show
27 you that on March 1st nothing's happening.
28 They closed up and they left town.
29 Mr. Whiteford will tell you that the property
30 in question does not meet the current ULDC
31 requirements. And he'll also tell you that the
32 exception for government action deals with
33 eminent domain. It deals with temporary
34 restraining orders requested by the government
35 preventing a person from using the property.
36 He'll tell you it doesn't pertain to a person
37 using the judicial process because a mortgage
38 wasn't paid. The government has nothing to do
39 with that. We'll look at a few cases decided
40 by the federal courts of appeals, the Florida
41 court and the Florida Supreme Court. We'll
42 also look at the case you saw earlier today
43 because I've got to sort of explain that case
44 because it tells you a lot more than you heard.
45 Finally, a property owner's decision to not
46 make the mortgage payments and a mortgage
47 holders decision to use the legal system is not
48 government action. We ask that you please
49 uphold Mr. Whiteford's decision regarding the
50 status of 2519 Hypoluxo Road. At this time I'm
51 going to ask Mrs. Walden to come forward.

52 DIRECT EXAMINATION

53 BY MR. RICHARDS:

- 54 Q. Please tell us your name for the record.
55 A. Aola Walden.
56 Q. And what do you do, Mrs. Walden?
57 A. I'm senior code enforcement officer for the county.
58 Q. And how long have you been doing that?
59 A. Well, twenty years.
60 Q. Okay. How long have you worked in the area of 2519
61 Hypoluxo Road?
62 A. For many years.

11 A. Sometime in February of 1998.
12 Q. And how did you come to realize that?
13 A. Well, there were no more cars. It was empty. It
14 was no activity.
15 Q. Were there any employees or was there anyone on the
16 lot?
17 A. No.
18 Q. Did you have occasion to contact or speak directly
19 yourself with the operator, the prior operator?
20 A. Yes, I did, sometime in March.
21 Q. And how did that come about, please?
22 A. I had been given an occupational license to sign
23 for Choice Motor Cars and that just happened to be the same
24 name as the car lot on Hypoluxo and Eastwood Drive at that
25 time. So, when I called, I asked him if he were the same
26 person. And he said, yes. And I asked him when he turned
27 his electric off, and he told me the 25th of February 1998.
28 Q. Did you contact FP & L to verify that?
29 A. Yes, I did.
30 Q. And please tell the board about that.
31 A. Well, I just -- once I had his name, then I could
32 verify through Florida Power & Light. So they verified that,
33 yes, they had cut the service on the 25th of February.
34 Q. Did you go back sometime shortly thereafter and
35 take a photograph?
36 A. Actually, I took the photograph on March 1st.
37 Q. Is that over here?
38 A. Yes.
39 Q. Would you just show us that photograph.
40 A. Showing that it was totally abandoned.
41 MR. RICHARDS: Okay. You don't have copies of
42 this, Mr. Arsali. I'm going to show you the
43 photo. And, if you could just make sure that
44 it's the right lot and not somebody else's.
45 MR. ARSALI: That's it.
46 MR. RICHARDS: It is the right lot.
47 I'm going to move this in evidence as the
48 County's Exhibit 1.
49 BY MR. RICHARDS:
50 Q. When was that photo taken?
51 A. On March 1st, 1998.
52 Q. And what does that photograph show us?
53 A. It shows the car lot in question as being vacated.
54 MR. RICHARDS: Do you have a question?
55 MS. KONYK: There is no date on the photo.
56 Does she have back-up documentation so she can
57 recall when she took the photo? Is there some
58 notes on record?
59 MR. RICHARDS: Let's look.
60 MS. KONYK: Okay.
61 BY MR. RICHARDS:
62 Q. I'm going to put up here some handwritten notes.

13 concerning the Fairway Auto Sales.
14 Q. Would you read it?
15 A. The property was vacated totally March 1, 1998,
16 with a picture taken on that day. A recent inspection,
17 November 1998, indicates the property remains vacant. I have
18 been by the subject property on numerous occasions over the
19 past eight months. At no time did I ever notice any activity
20 on the property.
21 Q. This says November 23rd, '98. Did you send it on
22 that date? Did you prepare this on November 23rd, '98?
23 A. Yes. That would have been the day Mr. Verner would
24 have gotten it.
25 Q. Let me show you another. And this was from the
26 files. We see some handwritten notes here. Would you please
27 explain what these notes tell us.
28 A. Actually, this was a piece of scrap paper that was
29 on my desk. And, when I -- you'll see First Choice Motor
30 Cars. I wrote these notes because that was the reason that I
31 got in touch with Darryl Smith at his new address. I had a
32 phone number for him because he's applied for an occupational
33 license at his new address. So I called him. And we had
34 this discussion. So these are my notes.
35 Q. When were these notes taken?
36 A. These notes were taken, oh, probably, in the middle
37 of March of 1998, would be my guess.
38 MR. ARSALI: May I ask a question here?
39 CHAIRMAN BASEHART: You'll get a chance to
40 cross-examine the witnesses.
41 THE WITNESS: Because I had already taken the
42 picture then. It was just a coincidence that I
43 would get an occupational license from the same
44 man that moved from this point to another point
45 in my area --
46 BY MR. RICHARDS:
47 Q. Is it your direct --
48 A. -- and use the same name. Pardon me.
49 Q. Is it your direct testimony that you visited the
50 site on March 1st, had -- took the photograph showing that it
51 was vacant?
52 A. Yes.
53 Q. And that you contacted and spoke to Darryl Smith
54 who informed you that he left on February 25th, '98?
55 A. Right.
56 Q. Did you also speak to FP&L to confirm that the
57 power's turned off?
58 A. Yes, I did.
59 Q. And did they confirm that?
60 A. Yes, they did.
61 Q. All right. Thank you very much.
62 MR. RICHARDS: I have a small -- I have this in

15 present them at the end or...
16 CHAIRMAN BASEHART: I think we ought to do it
17 now.
18 MR. RICHARDS: Okay.
19 MR. JACOBS: Mr. Chairman, may I suggest that
20 they be marked Exhibits A and B since we
21 already have exhibits 1 and 2.
22 CHAIRMAN BASEHART: Okay. Let's do that.
23 MR. RICHARD: I think I only have one or maybe
24 two questions for you at this point.
25 BY MR. RICHARD:
26 Q. When you spoke to Mr. Darryl Smith, the former
27 operator, why did he tell you he left the subject site? Why
28 did he tell you that he abandoned the site?
29 A. Well, I asked him if he was the same person that
30 moved from the First Choice Motor Cars on Hypoluxo Road; and,
31 he said, yes.
32 Q. Did he give you any reasons? Did he say anything
33 to you as to why he left?
34 A. Well, he did say that the lot was too small and he
35 couldn't -- he was only supposed to have, like -- he could
36 only get, like, twenty cars on it so.
37 MR. RICHARDS: I don't have any further -- were
38 you finished?
39 THE WITNESS: Yes.
40 MR. RICHARDS: I don't have any further
41 questions. Thank you.
42 CHAIRMAN BASEHART: Okay. I think what we do
43 at this time, Mr. Arsali, if you would like to
44 cross-examine the witness.
45 MR. ARSALI: Please.
46 CROSS EXAMINATION
47 BY MR. ARSALI:
48 Q. I have a copy, only one copy of this document,
49 because Exhibit B it's in reference to, I have a copy of it
50 here. You mentioned that this notes were taken March time
51 frame.
52 A. Yeah, probably a few days after the 1st.
53 Q. Was there anything on the other side of the paper
54 when you took the notes?
55 A. I don't really think so. I think the original is
56 somewhere around here.
57 Q. It's in the code enforcement, and I've got a copy
58 of it. I'll show you the copy?
59 A. I know it was a scrap -- it was just a scrap that I
60 had when I was talking to --
61 Q. There is a date over here --
62 A. Wasn't that a page off a code enforcement hearing

17 THE WITNESS: We need the original.
18 MR. ARSALI: The original is in the file, code
19 enforcement file.
20 CHAIRMAN BASEHART: Could it be that when
21 copies were made, after the fact, they were
22 made on scrap paper? I don't understand.
23 MR. ARSALI: This is the original, not a copy.
24 CHAIRMAN BASEHART: This is the original?
25 MR. ARSALI: No. No. This is a copy of the
26 original.
27 MS. KONYK: What Bob is saying is sometimes
28 they recycle paper to make copies. So when the
29 copy was made of the original, it was made on a
30 recycled piece of paper later on.
31 MR. ARSALI: What I'm saying, this is blue with
32 pen. It's a copy in the file.
33 MS. KONYK: I understand.
34 THE WITNESS: There's a whole file here.
35 MR. ARSALI: If I may see this one which I got
36 from the lady downstairs.
37 THE WITNESS: It was a piece of scrap paper.
38 MR. ARSALI: That's the scrap paper.
39 MS. KONYK: But what we need to find out is
40 that -- does the original have that same
41 document on the back of the paper? If the
42 original has that same document on the back of
43 that paper, that paper on the back wasn't
44 produced until December of 1998. But the
45 question is: Was the copy made on a piece of
46 paper that was being recycled. So we have to
47 look at the
48 original.
49 MR. ARSALI: This is my copy, but the original
50 is on file.
51 CHAIRMAN BASEHART: Do you have the
52 original --
53 THE WITNESS: The original doesn't seem to be
54 in here, for some reason.
55 MR. ARSALI: I get copy from downstairs. I'll
56 be glad to go down there. It's a very small
57 file. This is all we've got. You have to look
58 at the 1999 file to --
59 THE WITNESS: There wasn't any file for 1999.
60 MR. ARSALI: Let me go downstairs.
61 THE WITNESS: This is the last violation that I
62 wrote, right here.

19 your decision.
20 She is looking for an original. Maybe she can
21 find it. Maybe she won't. But that's for the
22 board to decide, whether or not her testimony
23 is credible as to when she wrote those notes.
24 CHAIRMAN BASEHART: Her testimony under oath,
25 though, is that she wrote the notes in March of
26 1998.
27 MR. RICHARDS: That's correct.
28 CHAIRMAN BASEHART: Okay. Mr. Arsali, do you
29 have any other questions to ask?
30 MR. ARSALI: No, Your Honor.
31 If those are the only files from the code
32 enforcement, I would like to review them.
33 I do have another question, if I may?
34 CHAIRMAN BASEHART: Okay.
35 BY MR. ARSALI:
36 Q. Based on these notes here and the letter that you
37 wrote that was dated November 23rd --
38 A. Uh-huh.
39 Q. November 23rd --
40 A. 1998.
41 Q. -- that happened to be just the day -- just after
42 it was denied. Well, it was after the November 3rd that the
43 occupational license was denied. The whole thing started
44 with Ken Welt.
45 A. No. No. No. This another occupational license
46 that I'm referring to. It was one for Darryl Smith.
47 MS. KONYK: No. No. He's talking about the
48 fact that they had denied a new occupational
49 license on November 3rd.
50 THE WITNESS: I would not even be privy to that
51 information because the occupational license
52 comes from up here. And, if it never comes to
53 me, I don't know that there's been anybody in
54 to get one for it. So I wouldn't have been
55 aware of that.
56 MR. RICHARDS: Are there anymore questions, Mr.
57 Chair?
58 CHAIRMAN BASEHART: Any more questions?
59 MR. ARSALI: No, no more questions.
60 THE WITNESS: Could I just interject on thing
61 here. This Florida Power & Light -- I guess
62 they changed their policy since I talked to

21 Q. Mr. Whiteford, are you familiar with the
22 application, the subject application for the 2519 Hypoluxo
23 Road?
24 A. Yes, sir.
25 Q. And what was your decision regarding the
26 application?
27 A. The decision was deny the sign off on the
28 occupational license to reestablish the use for auto sales
29 type of business.
30 Q. What was the basis for your decision?
31 A. The basis was the section of the code which
32 specifically states that, if the nonconforming use is
33 discontinued or abandoned for a period of longer than 6
34 months, that it cannot be reestablished.
35 Q. And what -- I'm going to show you a time line
36 that's been prepared. You might want to sort of jog
37 overhear. With the court see this time line?
38 CHAIRMAN BASEHART: Uh-huh.
39 BY MR. RICHARDS:
40 Q. What date was the use discontinued and what date --
41 what was the end of the 6 month period?
42 A. I primarily relied on the correspondence that were
43 in the file and the date indicated as the beginning period
44 was, I believe, May 18th. And there is some documentation,
45 as you've heard today, that prior to that time, the property
46 had ceased to operate vehicle sales, but they also relied on
47 another correspondence in the file, a letter signed by Marty,
48 dated November 25th stating the -- specifically the use had
49 ceased for over 6 months and could not be re-established.
50 Q. Tell us please -- explain to the board why -- what
51 qualified for government action. That's the one thing that
52 -- as you've heard also today that the government caused
53 delay is not considered to be part of that 6 month delay;
54 that if there's a government caused delay, you are not
55 penalized during that period. And government caused delay,
56 as you may or may not be aware, is some had eminent domain
57 proceeding or, perhaps, a road closure or some other county
58 or government initiated, government closure.
59 You could, perhaps, even have a temporary
60 restraining order that may prohibit the operation of a use.
61 Those types of things are government caused delay.
62 Q. Was there any government action that prevented the

1 property owner from operating the subject site as a used car
2 lot?
3 A. No, not to my knowledge.
4 Q. In order to meet the current code requirements,
5 what -- to have a used car lot what size lot is necessary?

23 MS. KONYK: Mr. Hodgkins letter dated June
24 10th, 1998, he says that the site inspection by
25 zoning staff indicates that the use has
26 discontinued, a 6 month period from
27 abandonment. That's indicated May 18th of
28 1998. June, July, August, September, October,
29 November 18th. November 3rd responded and said
30 that the 6 month period had expired. According
31 to Marty's first letter, it hadn't -- wouldn't
32 that be the government action, not the
33 bankruptcy, not missinformation that was
34 received. I mean, I didn't know about this
35 before. But on this letter here, when it says
36 that the lease was denied in November -- on
37 November 3rd because the 6 month period had
38 expired. Now you're saying the 6 month period
39 began in February. But the documentation from
40 the zoning director at the time says it began
41 in May.
42 MR. WHITEFORD: Marty also wrote a letter which
43 I don't believe you have dated November 25th to
44 Ken Welt, I believe, which was followed up to
45 this letter which -- in that letter it
46 specifically states -- I don't think you have
47 it. We have copies of it for you if you need
48 it -- that the use had ceased for 6 months and
49 could not be reestablished. I think that if,
50 perhaps, the occupational license wasn't issued
51 in November third for example, it was more
52 likely due to other issues, such as the
53 property not being in compliance with code. It
54 was in code enforcement or subject to code
55 enforcement action. There had priorly been
56 issued an occupational license for the property
57 in which there were a number of improvements
58 which needed to be done to the property which
59 weren't done. And, again, we're not able to
60 sign off on occupational licenses which are
61 essentially not in compliance. And there had
62 been a number of things that were required that

1 the property owner had not completed. The site
2 was essentially in disrepair.
3 MS. KONYK: Okay. So --
4 MR. RICHARDS: May I approach?
5 CHAIRMAN BASEHART: Certainly.
6 MR. RICHARDS: This is the letter that Mr.
7 Whiteford speaks of. It's a November 25th

25 evidence as well.
26 CHAIRMAN BASEHART: We'll assign the next
27 exhibit -- the County's exhibits are being
28 marked A, B, C, et cetera starting with A being
29 this photograph. And Mr. Arsali's are marked
30 1, 2, 3, 4, et cetera.
31 MR. WHITEFORD: I think to answer the question.
32 I think the May 18th date was used out of an
33 abundance of caution on Marty's part. On May
34 18th, there's actually a citation in the file
35 from code enforcement indicating that the
36 property is in disrepair, windows are broken,
37 the place needs to be boarded up. You know,,
38 obviously it was not in use.
39 MS. KONYK: My only concern with the May 18th
40 date was that if that's when the calendar
41 started ticking and if the November -- the
42 October 22nd lease was denied because of the 6
43 month time frame. If the October 22nd lease
44 was denied because of another reason, then that
45 May 18th date doesn't mean anything.
46 MR. WHITEFORD: I think we're able to justify
47 and to document and to go back further in time
48 that the use was not in operation and had been
49 abandoned previous to that date.
50 MS. KONYK: Anyway, in this letter here, I
51 think it clears it up. It says, I've been
52 informed that the lessee has been unable to
53 obtain the necessary licenses due to alleged
54 code violation. It wasn't due to the fact that
55 the 6 month time period had expired. So that
56 was not the reason used for denying it.
57 MR. RICHARDS: May I show you this, please.
58 MS. KONYK: Okay.
59 MR. RICHARDS: It's dated May 18th, '98, and
60 it's a code enforcement violation, which is
61 just what you're speaking of. It's dated May
62 18th, '98, and that's the code infraction. And

1 here it says property open and accessible,
2 broken windows and doors. It's abandoned. And
3 that may be why they grabbed that date. But
4 I'll put this in evidence as the next letter.
5 MS. KONYK: Okay. It doesn't mean anything
6 unless the denial for that auto --"Auction on
7 Wheels" was because of the time frame. It was
8 not because of the 6 month time frame. It was
9 because of code enforcement violations. On the

27 9/16/99 and earlier you spoke of the court
28 pleadings. And right in the pleadings -- right
29 in the emergency motion to determine approval
30 of lease, yadda, yadda, yadda --
31 MS. KONYK: Is that official?
32 MR. RICHARDS: I'm sorry.
33 CHAIRMAN BASEHART: That's a legal term.
34 MR. RICHARDS: It's dated October 23rd, '98,
35 and in there it says that, basically, be aware
36 that as a minor nonconforming use, the auto
37 sale may continue unless the use ceases for a
38 period in excess of 6 months. So even in the
39 court document, which really doesn't care about
40 zoning, because they're just concerned with the
41 judiciary process, they're putting folks in
42 bold and on notice.
43 MR. JACOBS: But the question is when did the 6
44 months start to run from? To me, the fact that
45 there's a foreclosure procedure doesn't mean
46 anything because the company that was in
47 bankruptcy wouldn't have been permitted to make
48 payments to the bank anyway because it would
49 have been a preference.
50 I mean, and that's the basis of the question I
51 asked initially. I've got an entirely
52 different view of this matter, if it's a
53 federal bankruptcy proceeding than I do in it
54 were a simple foreclosure.
55 MR. RICHARDS: I believe the foreclosure
56 proceeding was abandoned on February 25th, '98,
57 as evidenced by testimony and photographs. And
58 three months later, the foreclosure proceeding
59 began. And quite frankly, if a person is not
60 paying their bills and mortgage, a foreclosure
61 starts. Then, if they want to cry uncle, they
62 file for bankruptcy. But that's not caused by

1 the county. The county didn't tell a person,
2 don't pay your bill. The county didn't take
3 any action. This is a mortgage holder using
4 their judicial right to say, I'm going to take
5 you to court. Then it's a person saying, cry
6 uncle, ouch, I can't pay my debts. I'm going
7 to file for bankruptcy protection. That's not
8 the county.
9 MR. JACOBS: Yeah. But the purpose of the
10 bankruptcy laws is to allow a government period
11 of relief for the debtor. I mean, that's the

29 wet a license from the county.
30 MS. KONYK: Because there was code enforcement
31 violations --
32 MR. RICHARDS: There was code enforcement
33 violations. When did he make the attempt?
34 When did he make the attempt?
35 MR. JACOBS: He made the attempt within a
36 period which would have been 6 months from May
37 18th, 1998.
38 CHAIRMAN BASEHART: I guess what it's going to
39 boil down to is whether you feel that the
40 activity that the court appointed receiver was
41 doing was sufficient to cause a -- you know, a
42 continuing use of the property.
43 MR. PUZZITIELLO: On 71498, the court ordered
44 the receiver to maintain the property.
45 MS. KONYK: Correct.
46 MR. PUZZITIELLO: He obviously didn't maintain
47 the property if there were code
48 enforcement.
49 CHAIRMAN BASEHART: I mean, I've been
50 appointed as court appointed receiver for
51 properties before. I mean, and the instruction
52 is that it's the job of the receiver --
53 whatever they call them, to do everything
54 that's necessary to maintain -- at least
55 maintain the level of approvals and the status
56 that it had before. And it's obvious that he
57 didn't do that. But the thing that strikes me
58 here about this whole thing is that we're
59 talking about the November deadline to get back
60 in there --
61 MR. RICHARDS: August deadline.
62 CHAIRMAN BASEHART: All right. August,

1 November. I mean, I think it -- the real issue
2 is that there was a turn down of an
3 occupational license application in November
4 and the receiver didn't appeal that. He didn't
5 do anything. They put it in the file. All
6 right. The gentleman that purchased the
7 property purchased the property ten months
8 later, you know, and -- and what was it?
9 MR. RICHARDS: 9/16/99. Here's the time line.
10 CHAIRMAN BASEHART: Yes.
11 MS. KONYK: From November, ten months later --
12 CHAIRMAN BASEHART: Yes.
13 MS. KONYK: From November --

31 going. He got a letter saying --
32 MR. RICHARDS: Denied.
33 CHAIRMAN BASEHART: -- denied, and didn't do
34 anything about it. And I would think for
35 anyone pursuing that property, you know, they
36 would have to -- you know, they had the ability
37 to find out about that. They had the ability
38 to consider that as part of their purchase
39 offer and the period of inaction even from -- I
40 mean, from November of '98 to September of '99,
41 there was no effort to use the property as auto
42 sales.
43 MR. RICHARDS: When you buy something at a
44 judicial sale, you know you're buying it with
45 question marks surrounding it, and you have to
46 use your due diligence because you're buying
47 whatever there is. You're getting whatever
48 there is and no more. No warranty, no
49 representations --
50 MS. KONYK: Right.
51 MR. RICHARDS: -- just buying it.
52 MS. KONYK: Even if the May 18th date was
53 correct and the lease was denied on November
54 3rd, he still had 2 weeks to clear up the code
55 enforcement issue to get that lease in effect,
56 and he didn't do it. And, again, all of this
57 was part of public record. Anybody could have
58 looked at this file if they had come down and
59 requested to read this file. And then it may
60 have set off the questions that can't be
61 addressed because you know, this issue is very
62 clear to me.

1 MR. RICHARDS: Let me ask a quick question
2 because I don't want to take too much -- I have
3 cases here that discuss government action. Do
4 you want me to go over those.
5 MS. KONYK: Huh-uh.
6 CHAIRMAN BASEHART: Not for my benefit.
7 Anybody else?
8 MR. RICHARDS: The case that was presented, it
9 speaks of the government going after the liquor
10 license holder and revehicling their license,
11 and that was the government action if you read
12 the whole case. It took away the license so
13 they could not run a liquor store.
14 MS. KONYK: The only government action that I
15

33 MR. RICHARDS: -- as the main document, it
34 says that the court action are the bankruptcy
35 and the foreclosure proceedings.
36 MS. KONYK: But they're not.
37 MR. RICHARDS: No. That's a person using the
38 judicial system to collect money.
39 CHAIRMAN BASEHART: Okay. Just to be fair
40 and proper, we're going to give you a few
41 minutes to do a rebuttal, and then we're going
42 to vote.
43 MR. ARSALI: Okay. Very good. On that exhibit
44 letter dated November 25. I'll go back in
45 response to your question. First of all, the
46 trustee did repeatedly sent 2 letters after
47 November 3rd, which they're Exhibit 3 and 4 in
48 mine, saying that, why I don't hear from you
49 guys, why I don't -- tell me why. Finally,
50 after November 25th, which happens to be after
51 November 18th, which is the deadline, they get
52 the letter saying that -- the letter stated
53 specifically, it said, code compliance staff
54 has stated that they have documentation showing
55 the subject property has been vacant since
56 March 1998, when objection on Beal to apply for
57 an occupational license on November 3rd at the
58 above location, the 6 months period for
59 reestablishing the use has already been
60 expired. And this is exactly the letter,
61 November 18th. But follow ups and signed by
62 the same person who signed the letter saying

65

1 that the clock starts, the 18th, May 18th.
2 That's one.
3 As I stated in my letter there, I don't really
4 -- I don't want to spend the whole day here. I
5 have additional information here which I can
6 bring in here. This is another letter, which
7 is not part of the exhibit. And I just mention
8 it here for the record. This is the letter a
9 follow-up meeting that Mr. Welt had with the
10 zoning --
11 MR. RICHARDS: I'm going to object. This is
12 rebuttal --
13 CHAIRMAN BASEHART: Right.
14 MR. RICHARDS: -- it's not closing. If this
15 is something new, I guess we can open it up
16 again.
17 MR. ARSALI: This is rebuttal, basically, based

35 discuss a possible solution to the problem
36 associated with the property captioned above.
37 This is a letter to Mr. Whiteford. As the
38 receiver in the case, I am keenly interested in
39 any development relating to the property.
40 Although it appears that, quote, the ball is in
41 whether Kaleita's court, I would greatly
42 appreciate getting copies of any correspondence
43 regarding the property. In regard to the
44 possible solution to the said situation we are
45 presented with, please be assured that as a
46 receiver, I will certainly enforce any
47 stipulation in my control over the property.
48 CHAIRMAN BASEHART: That sounds like the
49 receiver was basically accepting the decision
50 of the county and that's what it says and
51 hoping that there was some you know,
52 alternative solution. But that was dated what
53 November 30th.
54 MR. ARSALI: January 25th.
55 CHAIRMAN BASEHART: Okay. January. But
56 there was no action to pursue the use of the
57 property from January to September.
58 MR. WHITEFORD: Not until the day that mow ham
59 medicine walked into the my office.
60 MR. ARSALI: Because the cards procedure, they
61 couldn't. They would want to sell it sooner
62 and they get their money off. But because of

1 the bankruptcy and the foreclosure, they had to
2 go through the step which took about 6 or 7
3 months.
4 CHAIRMAN BASEHART: Okay.
5 MR. ARSALI: Because the owner trustee, they
6 were on this. And everybody wanted to settle
7 this. But it's just a court formality.
8 CHAIRMAN BASEHART: Okay. Anybody have any
9 questions? Comments?
10 Nancy?
11 MS. CARDONE: I've got a couple of them. First
12 of all, my first question is in our decision
13 today -- and I do want to say, Mr. Arsali, that
14 what we're looking at here is specifically, as
15 I understand it, to uphold or not to uphold an
16 interpretation. I do very much sympathize with
17 all you've been through. To not be an expert
18 and go through this is not easy. And I
19

37 MS. BEEBE: I think I can address that. First,
38 your role is in -- I'll go ahead and read the
39 standard of review that you should be
40 considering. In making its decision, the
41 interpretation of the zoning director shall be
42 presumed to be correct and the applicant shall
43 have the burden to demonstrate error. The
44 board shall not modify or reject the county
45 officials interpretation if it is supported by
46 substantial competent evidence unless the
47 interpretation is found to be contrary to the
48 comprehensive plan, this code, the zoning map,
49 whichever is applicable. You do not have the
50 authority to determine the legality or
51 constitutionality of county ordinances or
52 codes. However, you -- your job today is to
53 determine whether the zoning director's
54 interpretation of that code was accurate and
55 supported by competent substantial evidence.
56 MS. CARDONE: Just one last question. Under
57 the findings of fact, I saw that to reestablish
58 this use should this ^ general ^ gentleman
59 decide that he would like to continue to try to
60 do what he had intended to do, that he could
61 apply for a use variance. My misunderstanding
62 that? He could not?

1 MR. WHITEFORD: A use variance can't be granted
2 by the Board of Adjustment.
3 MS. CARDONE: Not but us, but that's what he
4 would do?
5 MR. WHITEFORD: He would not have an ability to
6 apply for a use variance. We would not accept
7 the application.
8 CHAIRMAN BASEHART: Basically, if he wants to
9 -- if your decision is upheld, his alternative
10 would be to acquire adjacent property to
11 accumulate a minimum of 3 acres an then make a
12 conditional use application to have that 3
13 acres approved for use as an auto sales
14 facility; is that correct?
15 MR. WHITEFORD: It might even be more extensive
16 than that. He may need commercial land use
17 plan changes, rezoning, the whole 9 yards.
18 CHAIRMAN BASEHART: The property is zoned CG,
19 right.
20 MR. WHITEFORD: I'm not sure about the adjacent
21 -----

39 Ms. Cardone. Do we have a second.
40 MS. KONYK: I'll second.
41 MR. PUZZITIELLO: Second.
42 MS. KONYK: Go ahead Mrs.
43 MR. PUZZITIELLO:
44 CHAIRMAN BASEHART: Mr. Puzzitiello seconded
45 the motion. Any discussion?
46 (No response.)
47 CHAIRMAN BASEHART: Okay. All those in favor
48 of the motion, indicate by saying aye.
49 (Panel indicates aye, except for Mr. Jacob's.)
50 CHAIRMAN BASEHART: Opposed saying no.
51 MR. JACOBS: No.
52 CHAIRMAN BASEHART: There's 6 of us here.
53 Show the motion carries 5 to 1.
54 MR. JACOBS: Mr. Chairman, I'd like to state
55 for the record my reasons for my no vote.
56 CHAIRMAN BASEHART: Okay.
57 MR. JACOBS: I believe that a proceeding in
58 federal bankruptcy court is government action
59 which would effectively tolle the running of
60 the 6 month period.
61 CHAIRMAN BASEHART: Okay. And for the
62 record, I just like to state that, you know, I

1 believe that when a receiver or a
2 representative for the property is appointed by
3 the court and charged with doing all necessary
4 things to maximize the value or the use of the
5 property, protect it, that I think, in my
6 opinion, removes the potential of the court
7 proceedings being considered governmental
8 delay. And I think in this particular case, I
9 think not only is the decision valid that Mr.
10 Whiteford made with respect to the November
11 deadline, but when you look at the record after
12 that and find the person that appealed this
13 decision didn't buy the property until
14 September of 1999, after all this had gone on
15 and decisions had been made and letters had
16 been written and nobody appealed that decision
17 in timely fashion in a potential purchaser of
18 the property, in this case Mr. Arsali, could
19 have or should have known about the status of
20 the property when he made the offer to the
21 court and he closed in September of '99. So I
22 think that's a key factor in my mind as well.
23

41 hopefully I will prevail. And I just want this
42 to go to the record so I did inform you-all
43 what my intention, my cost, my emotional damage
44 to my family, to my kids and all that. And the
45 people that are behind all this decision, based
46 on the memos and all that is -- they are people
47 that are in the District. They don't want this
48 place to be there and I have proof that. I
49 will get to that.
50 CHAIRMAN BASEHART: Okay. And just for the
51 record, I'd like to point out, this Hearing was
52 scheduled to provide all relevant evidence one
53 way or the other. And if you didn't bring it
54 and present it, we couldn't consider it.
55 MR. ARSALI: I'll be glad -- I did mention -- I
56 did mention I have additional element in the
57 letter. I have it in my file I'll be glad to
58 provide it right now --
59 CHAIRMAN BASEHART: The vote has been taken.
60 MR. ARSALI: If it's not sufficient to vote in
61 my favor, I would be pleased to go ahead.
62 Another thing is that memo, the memo writing

1 from the code enforcement. I would like the
2 board to look into, get the original and see
3 what I'm saying about.
4 MS. KONYK: I think the point here is though
5 is that although there was a photocopy of the
6 memo presented and not the original, the memo
7 had nothing to do with our decision. The fact
8 that almost two years have expired is what our
9 decision was based on.
10 MR. ARSALI: I believe the memo had a lot to do
11 with this decision and also there were prior --
12 prior -- I don't want to make names. I have
13 memos dated going back to July from Mr. Newell
14 to the different code enforcement officer. I
15 just want to say this stuff for the record.
16 I'd like to get a copy of the record. There
17 are other information. I'd be glad to provide
18 you right now. I have those information for
19 your decision. If you are not --
20 CHAIRMAN BASEHART: The hear is closed. The
21 decision was made. You know, I suppose if
22 you're going to pursue this and appeal the
23 decision to circuit court --
24 MR. ARSALI: I will pursue this, as I
25 mentioned. But I did offer all the other --

43 information.
44 CHAIRMAN BASEHART: The way these proceedings
45 occur and are conducted, the people that are
46 involved, the 2 sides, it's their
47 responsibility to provide whatever evidence
48 they feel is necessary to prove their point.
49 It's not our responsibility to request further
50 information --
51 MR. ARSALI: Mr. Basehart, I'm trying to save
52 some faces here. I don't want to -- this
53 records is going to go there and stay forever.
54 The reason I didn't bring those records --
55 bring up and didn't include it in my package
56 because I didn't think we're going to get to it
57 but for the record I did offer.
58 CHAIRMAN BASEHART: Okay.
59 MR. MacGILLIS: Do you just want me to go over
60 the exhibits just to make sure we're all clear
61 if this goes further? It just takes a second.
62 These are the 4 exhibits that were submitted by

1 the attorney representing county staff that
2 were submitted on March 16, 2000.
3 CHAIRMAN BASEHART: Okay.
4 MR. MacGILLIS: Exhibit A is the photograph
5 that was taken by Aola Walden, code enforcement
6 officer. Exhibit B is the memo drafted by Aola
7 Walden to Terry Verner the director as dated
8 November 23rd, '98. The exhibit C is the
9 handwritten notes from Aola Walden, code
10 enforcement officer, dated February 10th in
11 relationship to her contacting the previous
12 owner and FP&L. The third exhibit is the code
13 enforcement notice of violation exhibit related
14 to the property at 1201.
15 CHAIRMAN BASEHART: Fourth, right? That
16 would be the fourth one.
17 MR. MacGILLIS: Right. Exhibit D.
18 MS. BEEBE: The appellant's exhibit, we just
19 need one for your folder.
20 MS. KONYK: You have one. Bill has it.
21 CHAIRMAN BASEHART: He has marked his exhibit
22 and that's why we went to letters for the
23 county's. He's marked, I think one through 5
24 in his file.
25 MS. WALDEN: Did you mark it in yours, Bill?
26 MR. WHITEFORD: His was already enumerated.
27 CHAIRMAN BASEHART: Right or will just submit

45 MS. KONYK: Unadjourned.
46 CHAIRMAN BASEHART: Let's unadjourn for a
47 second. Absences last month. Nancy, you were
48 --
49 MS. CARDONE: I was earning my fifteen dollars
50 a day at jury duty.
51 CHAIRMAN BASEHART: I think that -- are we
52 just all willing to unanimously agree that's an
53 used absence.
54 MS. KONYK: Well it could be an excused
55 absence and I don't have a problem with it.
56 But it's important that Mary knows when you're
57 not coming so that they can make arrangements
58 with the alternates to be here. And I think
59 she thought you were coming that day. I think
60 she got the impression that you were going to
61 be here. Is that correct Mary.
62 MS. MOODY: Yes.

71

1 MS. CARDONE: Sorry Mary.
2 CHAIRMAN BASEHART: Okay. That was it now
3 we're adjourned.
4 (Thereupon, the proceedings were
5 concluded.)
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15 C E R T I F I C A T E

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17
18 THE STATE OF FLORIDA)
19 COUNTY OF PALM BEACH)

20
21 I, Rachele Lynn Cibula, Notary Public, State of Florida
22 at Large,
23 DO HEREBY CERTIFY that the foregoing proceedings were
24 taken before me at the time and place stated herein; that I
25 administered unto the witness their oath to testify the
26 truth, the whole truth, and nothing but the truth; that they
27 were there and then orally examined and testified as herein
28 set forth; and that this transcript of said proceedings,
29 numbered 1 through 70 inclusive, constitutes a true and
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