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PALM BEACH COUNTY  
BOARD OF ADJUSTMENT

Thursday, January 20, 2005  
9:06 a.m. - 10:40 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:  
  
Ed Flaxman  
Court Reporter  
York Stenographic Services, Inc.

ATTENDEES

Robert Basehart, Vice Chairman

Raymond Puzzitiello

Stanley Misroch

Bart Cunningham

Joseph Jacobs

Alan Seaman, Senior Site Planner

Annie Helfant, Esq., Asst. County Attorney

David Cuffe, Civil Engineer II, Land Development

Miradieu Aubourg, Planner II

Izabela Aurelson, Planner I

Annette Stabilito, Secretary

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P R O C E E D I N G S

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2  
3 VICE CHAIRMAN BASEHART: I'd like to welcome  
4 everybody to the January 20, 2005, Board of Adjustment  
5 meeting. The first thing on the agenda would be the roll  
6 call.

7 MS. STABILITO: Mr. William Sadoff.

8 (No response)

9 MS. STABILITO: Mr. Raymond Puzzitiello.

10 MR. PUZZITIELLO: Here.

11 MS. STABILITO: Mr. Bart Cunningham.

12 MR. CUNNINGHAM: Here.

13 MS. STABILITO: Chairperson Ms. Chelle Konyk.

14 (No response)

15 MS. STABILITO: Vice Chairman Mr. Robert  
16 Basehart.

17 VICE CHAIRMAN BASEHART: Here.

18 MS. STABILITO: Ms. Nancy Cardone.

19 (No response)

20 MS. STABILITO: Mr. Joseph Jacobs.

21 MR. JACOBS: Here.

22 MS. STABILITO: Mr. Stanley Misroch.

23 MR. MISROCH: Here.

24 MS. STABILITO: Mr. Donald Mathis.

25 (No response)

26 VICE CHAIRMAN BASEHART: Okay. We have a  
27 quorum. The next item on the agenda is proof of  
28 publication. I don't think we need a vote on this. I'll  
29 just -- oh, I'm sorry. Before we do that, we have the  
30 opening prayer and the Pledge of Allegiance, and Mr.  
31 Cunningham has agreed to lead us in both of those this  
32 morning.

33 (Whereupon, the opening prayer was given by Mr.  
34 Cunningham)

35 MR. CUNNINGHAM: Join me in the Pledge.

36 (Whereupon, the Pledge of Allegiance was  
37 recited.)

38 VICE CHAIRMAN BASEHART: Okay. The next item  
39 is the proof of publication. I have a copy, a certified  
40 copy, in front of me so we'll just enter that into the  
41 record. Remarks of the Chairman. For those of you who  
42 are not familiar with the proceedings of this Board, we  
43 break our agenda into two parts. The first part is the  
44 consent agenda. Items on the consent agenda are matters  
45 that the staff has recommended approval, if there are  
46 proposed conditions of approval where the applicant has  
47 agreed to accept those conditions, and where there's been  
48 no indication of opposition to the application from the  
49 public.

50 Each of the Board members have received their  
51 staff reports. We've read them, and if all the other  
52 things hold and no member of the Board feels that the  
53 item needs to have a full hearing then it will remain on  
54 the consent agenda. We will go through the consent  
55 agenda before we vote on it and address each item, and  
56 then all the items that remain on consent will be voted  
57 on as a group.

58 When we finish the consent agenda before we  
59 start the regular agenda the staff I believe has letters  
60 confirming the approval available for each and every  
61 applicant that stays on consent. The regular agenda  
62 items where there's a recommendation of denial or a

1 partial denial and/or where conditions of approval are  
2 recommended that the applicant does not agree with and/or  
3 where there's been an indication of opposition from the  
4 public. Those items each will have a full hearing with a  
5 staff presentation and a presentation by the applicant,  
6 and we'll have an opportunity for anyone here today  
7 either in favor or in opposition to those items to speak  
8 and present their case.

9 On the consent agenda if you are here to oppose  
10 something on consent agenda please let that be known when  
11 we address the item and it will be pulled and put on the  
12 regular agenda. Other than that, I don't have any  
13 comments this morning. Any other member of the Board  
14 have anything they'd like to address?

15 (No response)

16 VICE CHAIRMAN BASEHART: Seeing none, we have  
17 approval of the minutes. We've all received the minutes  
18 of the November meeting and the December meeting on disk.  
19 I assume everyone has had the opportunity to look at  
20 them. Does anyone have any changes or corrections that  
21 need to be made to the minutes?

22 (No response)

23 VICE CHAIRMAN BASEHART: Okay. Then we'll  
24 entertain a motion.

25 MR. PUZZITIELLO: Motion to approve.

26 VICE CHAIRMAN BASEHART: Okay. Motion by Mr.  
27 Puzzitiello.

28 MR. JACOBS: Second.

29 VICE CHAIRMAN BASEHART: Second by Mr. Jacobs.  
30 All those in favor?

31 BOARD MEMBERS: Aye.

32 VICE CHAIRMAN BASEHART: Opposed?

33 (No response)

34 VICE CHAIRMAN BASEHART: Motion carries. So  
35 the minutes of both the November and the December meeting  
36 are adopted. The next item on the agenda is the remarks  
37 of the zoning director. Alan.

38 MR. SEAMAN: Well, I would like to welcome Mr.  
39 Puzzitiello, Mr. Sadoff and Mr. Jacobs again for another  
40 three-year term ending January of 2008. They have been  
41 reappointed to the Board of Adjustment.

42 VICE CHAIRMAN BASEHART: All right. The next  
43 item on the agenda is the approval of the agenda. Before  
44 we go through it, are there any changes you recommend,  
45 Alan?

46 MR. SEAMAN: Yeah, we have five corrections to  
47 the staff report. If you'll turn to the next page to  
48 BA2004-01000 where it reads Bechtel Communications,  
49 agent, for Tower Asset Sub. Inc., owner, to allow a  
50 proposed communication tower, it's not a tower. It's  
51 equipment structure.

52 And on page 007 the code section at the top of  
53 the page is correct but the required setback is 25 feet  
54 from the base building line, and the proposed setback is  
55 20.15 feet, and the variance remains the same, 4.85 feet.

56 VICE CHAIRMAN BASEHART: Okay.

57 MR. SEAMAN: The third correction is for SD-  
58 123. We've just received a request to postpone that  
59 petition for 30 days.

60 VICE CHAIRMAN BASEHART: Is that a postponement  
61 by right or do we need to vote on that?

62 MR. SEAMAN: It is by right.

1           MR. CUFFE: This is the third postponement.  
2           MR. SEAMAN: This is the third postponement, so  
3 we need to vote on that.  
4           VICE CHAIRMAN BASEHART: Okay.  
5           MR. SEAMAN: And the fourth correction is that  
6 BA2004-789, which does not show up on your agenda as a  
7 postponed item, should so BA2004-00789, Land Design South  
8 for DS Realty Corporation has requested a 30-day  
9 postponement to February 17. So that was not included  
10 under your postponed items so that needs to be inserted.  
11           The fifth and last correction is on page 22.  
12 At the top of your cover sheet under code section it  
13 reads per BCC conditions, Exhibit C condition I.2.  
14 Approved on October 28, 2004, zoning petition 2003-0098,  
15 we need to add, applicant may request variance from BCC  
16 landscape condition. And those are the corrections.  
17           VICE CHAIRMAN BASEHART: Okay. Does everyone  
18 have that?  
19           MR. SEAMAN: I'm being told something here by  
20 -- well, we probably would get that as we go through the  
21 agenda but since you brought it up Petition 2004-00651,  
22 we also received a request to postpone it 30 days, and  
23 it's by vote, to February 17.  
24           VICE CHAIRMAN BASEHART: 00651?  
25           MR. SEAMAN: Yes. On the regular. It's in the  
26 regular items.  
27           VICE CHAIRMAN BASEHART: Okay. Is that a  
28 postponement by right?  
29           MR. SEAMAN: This is by vote.  
30           VICE CHAIRMAN BASEHART: Okay.  
31           MR. SEAMAN: And it actually is in tandem with  
32 SD-123, so SD-123 and 2004-00651 relate to the same...  
33           VICE CHAIRMAN BASEHART: And that's for 30  
34 days?  
35           MR. SEAMAN: 30 days to February 17.  
36           VICE CHAIRMAN BASEHART: Okay. Is that it?  
37           MR. SEAMAN: Well, we have some more  
38 postponements. I think it's probably easier, as you get  
39 to it I'll say it's been postponed.  
40           VICE CHAIRMAN BASEHART: Okay. Well, let's  
41 address the changes first. We've got requests to  
42 postpone SD-123 and BA2004-00651 for 30 days. Is the  
43 applicant present?  
44           (No response)  
45           VICE CHAIRMAN BASEHART: The applicant is not  
46 here. Has anyone come today to speak in favor or in  
47 opposition to either of these applications?  
48           MR. SEAMAN: I'll tell you that we did talk to  
49 Anna Cottrell this morning on the phone and she was not  
50 aware that she had to be here but she's aware that she  
51 should be here, and she's faxing us a letter to request  
52 postponement for the SD-123.  
53           VICE CHAIRMAN BASEHART: Okay. Does any member  
54 of the Board want to make a motion?  
55           MR. PUZZITIELLO: Motion to postpone for 30  
56 days.  
57           VICE CHAIRMAN BASEHART: Okay. Motion by Mr.  
58 Puzzitiello.  
59           MR. CUNNINGHAM: Second.  
60           VICE CHAIRMAN BASEHART: Second by Mr.  
61 Cunningham, and that's for a 30 day -- I guess we better  
62 do these individually. For SD-123, all those in favor

1 indicate by saying aye.  
2 BOARD MEMBERS: Aye.  
3 VICE CHAIRMAN BASEHART: Opposed, no.  
4 (No response)  
5 VICE CHAIRMAN BASEHART: Okay. That's 30 days.  
6 And then the next item, BA2004-00651.  
7 MR. PUZZITIELLO: Motion to approve it or...  
8 VICE CHAIRMAN BASEHART: No, to postpone.  
9 MR. PUZZITIELLO: Postpone. Yes.  
10 VICE CHAIRMAN BASEHART: Okay. Motion by Mr.  
11 Puzzitiello.  
12 MR. CUNNINGHAM: Second.  
13 VICE CHAIRMAN BASEHART: Second by Mr.  
14 Cunningham. All those in favor?  
15 BOARD MEMBERS: Aye.  
16 VICE CHAIRMAN BASEHART: Opposed?  
17 (No response)  
18 VICE CHAIRMAN BASEHART: Okay. Those two items  
19 are postponed.  
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26 VICE CHAIRMAN BASEHART: Okay. Then that takes  
27 us to the postponed items, and we have two requests under  
28 that. First we'll deal with 2004-00789, and that was the  
29 one that was added to the agenda.  
30 MR. PUZZITIELLO: Motion to postpone.  
31 VICE CHAIRMAN BASEHART: Motion by Mr.  
32 Puzzitiello.  
33 MR. CUNNINGHAM: Second.  
34 VICE CHAIRMAN BASEHART: Second by Mr.  
35 Cunningham. All those in favor?  
36 BOARD MEMBERS: Aye.  
37 VICE CHAIRMAN BASEHART: Opposed?  
38 (No response)  
39 VICE CHAIRMAN BASEHART: Motion passes.  
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46 VICE CHAIRMAN BASEHART: And then the last  
47 consent item, BA time extension -- I'm sorry, that's not  
48 -- BA2004-00994. Is the applicant here?  
49 (No response)  
50 VICE CHAIRMAN BASEHART: Okay. Anyone else  
51 here to speak on this matter?  
52 (No response)  
53 VICE CHAIRMAN BASEHART: Seeing none.  
54 MR. PUZZITIELLO: Motion to postpone.  
55 VICE CHAIRMAN BASEHART: Motion by Mr.  
56 Puzzitiello to postpone and second by Mr. Cunningham.  
57 All those in favor?  
58 BOARD MEMBERS: Aye.  
59 VICE CHAIRMAN BASEHART: Opposed?  
60 (No response)  
61 VICE CHAIRMAN BASEHART: Motion carries.  
62 MS. HELFANT: How long was the postponement on

1 the BA2004-00994?

2 VICE CHAIRMAN BASEHART: 30 days.

3 MS. HELFANT: Okay.

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10 VICE CHAIRMAN BASEHART: Now we're going to  
11 start the hearing section of the meeting so I'd like to  
12 go back to an item that I skipped, swearing in. Would  
13 all persons in the audience that intend to speak on any  
14 item on the agenda this morning please rise and be sworn  
15 in?

16 (Whereupon, the speakers were sworn in by Ed  
17 Flaxman.)

18 VICE CHAIRMAN BASEHART: Okay. That takes us  
19 to the consent agenda. We're going to go through these  
20 items one at a time and see if anybody needs to have the  
21 item pulled. If not, they'll remain on consent. The  
22 first item is BATE2004-00991. Is the applicant here?

23 MR. AUBOURG: No, she's not. I spoke to her  
24 yesterday and it's a time extension.

25 VICE CHAIRMAN BASEHART: Right. And time  
26 extensions are not advertised so I assume there's no one  
27 in the audience to speak on these.

28 (No response)

29 VICE CHAIRMAN BASEHART: Okay. So anybody have  
30 a problem with leaving this on consent?

31 (No response)

32 VICE CHAIRMAN BASEHART: Okay. That item will  
33 remain on consent.

34

35 BOARD OF ADJUSTMENT CONDITIONS

36

37 1. By January 15, 2006, the applicant shall obtain a  
38 building permit for the proposed addition in order to  
39 vest the variance approved pursuant to BA2003-00892.  
40 (DATE:MONITORING-BLDG PERMIT)

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47 VICE CHAIRMAN BASEHART: The next item is  
48 BA2004-00992, Vista Business Park. Is the applicant  
49 here? Would you please approach the podium? Your name  
50 for the record?

51 MS. TRIMBLE: Edna Trimble. And you're aware  
52 that staff is recommending approval with one condition?

53 MS. TRIMBLE: Correct.

54 VICE CHAIRMAN BASEHART: You're familiar with  
55 the condition?

56 MS. TRIMBLE: I am.

57 VICE CHAIRMAN BASEHART: And you agree with it?

58 MS. TRIMBLE: I do.

59 VICE CHAIRMAN BASEHART: Okay. Any letters in  
60 opposition?

61 MR. SEAMAN: One letter and it's approval.

62 VICE CHAIRMAN BASEHART: Okay. Anyone here in



1 the audience to speak against this item?  
2 (No response)  
3 VICE CHAIRMAN BASEHART: Seeing none, any  
4 member of the Board?  
5 (No response)  
6 VICE CHAIRMAN BASEHART: Okay. This item will  
7 stay on consent.

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9 BOARD OF ADJUSTMENT CONDITIONS

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11 All plant materials as required by Article 7 Landscape  
12 Code shall be installed within the 15 ft Right-of-Way  
13 Buffer.

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20 VICE CHAIRMAN BASEHART: The next item is  
21 BA2004-00993, Dror Tregar. Is the applicant here? If  
22 you could.

23 MR. KNIGHT: Good morning. Jerry Knight. I'm  
24 an attorney and I represent the applicant.

25 VICE CHAIRMAN BASEHART: Okay. The staff is  
26 recommending approval of this with one condition. Are  
27 you familiar with it?

28 MR. KNIGHT: Yes, we are, and we agree with the  
29 condition.

30 VICE CHAIRMAN BASEHART: Okay. Any member of  
31 the public here to speak in opposition to this item?  
32 Apparently we do.

33 MR. SLUGGETT: Good morning, Mr. Chairman,  
34 members of the Board, for the record Geoffrey Sluggett  
35 representing Conrad Makulick, the adjacent property owner  
36 to the north. We would ask that this item be pulled off  
37 consent for discussion so we could address it, please.

38 VICE CHAIRMAN BASEHART: Okay. This item will  
39 be pulled, and it will become the first item on the  
40 regular agenda.

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47 VICE CHAIRMAN BASEHART: The next item is  
48 BA2004-00999, Joel & Carol Wieder. For the record, your  
49 name.

50 MR. WIEDER: Joel Wieder.

51 VICE CHAIRMAN BASEHART: Okay. Mr. Wieder, the  
52 staff has recommended approval with one condition. Are  
53 you in agreement with that condition?

54 MR. WIEDER: Yes, I am.

55 VICE CHAIRMAN BASEHART: The hedge.

56 MR. WIEDER: Yes.

57 MR. AUBOURG: There's nothing about the hedge.

58 MR. WIEDER: Six feet.

59 MR. AUBOURG: I spoke to you over the phone  
60 about that but I didn't put a condition because you  
61 already have an existing hedge.

62 MR. WIEDER: Okay. So what's the condition?

1           MR. AUBOURG: It's only to submit a copy of the  
2 letter that we give you.

3           MR. WIEDER: Yes.

4           VICE CHAIRMAN BASEHART: No problem?

5           MR. WIEDER: No problem.

6           VICE CHAIRMAN BASEHART: Okay. Anybody here to  
7 speak in opposition to this item?

8           (No response)

9           VICE CHAIRMAN BASEHART: Seeing none, are there  
10 any letters?

11          MR. SEAMAN: There is one letter and it's --  
12 sorry. Just three letters for clarification.

13          VICE CHAIRMAN BASEHART: Okay. Any member of  
14 the Board feel this item needs to be pulled?

15          (No response)

16          VICE CHAIRMAN BASEHART: Okay. This will stay  
17 on consent as well.

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19                                   BOARD OF ADJUSTMENT CONDITIONS

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21 Prior to January 20, 2006, the applicant shall submit the  
22 Board of Adjustment letter and a copy of the approved  
23 survey/site plan to the Building Division.

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30          VICE CHAIRMAN BASEHART: The next item is  
31 BA2004-01000, Bechtel Communications. Is the applicant  
32 here?

33          MR. HEGGY: Yes, sir. John Heggy, representing  
34 the owner.

35          VICE CHAIRMAN BASEHART: Okay. Mr. Heggy, the  
36 staff has recommended two conditions of approval on this  
37 application. Are you in agreement with those?

38          MR. HEGGY: Yes, sir.

39          VICE CHAIRMAN BASEHART: Okay. And remember  
40 this is the one with the corrections to the staff report.  
41 Right. Any member of the public here to speak in  
42 opposition to this item?

43          (No response)

44          VICE CHAIRMAN BASEHART: Okay. Seeing none, is  
45 there anybody -- well, Alan, are there any letters?

46          MR. SEAMAN: There are two letters and no  
47 comment.

48          VICE CHAIRMAN BASEHART: Okay. Any member of  
49 the Board feel this needs to be pulled?

50          (No response)

51          VICE CHAIRMAN BASEHART: Seeing none, we will  
52 leave this on consent as well.

53  
54                                   BOARD OF ADJUSTMENT CONDITIONS

55  
56 1. Prior to Certificate of Completion for the equipment  
57 building, the applicant shall install a 72 inch. high  
58 hedge planted 30 inches on center, along the entire west  
59 property line; and along the south property line  
60 beginning at the SW corner of the property, continuing 23  
61 ft eastward to the gate. The applicant shall contact a  
62 Landscape inspector at 233-5283 for an inspection and

1 provide Zoning Staff with a copy of the inspection  
2 result.

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4 2. By July 20, 2006, the applicant shall obtain a  
5 building permit for the equipment building in order to  
6 vest the front setback variance approved pursuant to  
7 BA2004-1000.

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14 VICE CHAIRMAN BASEHART: The next item on the  
15 agenda is BA2004--01002, Land Research Management. Is  
16 the applicant here?

17 MR. MCGINLEY: Good morning. Kevin McGinley  
18 for the record.

19 VICE CHAIRMAN BASEHART: Okay. Mr. McGinley,  
20 the staff has recommended approval with one condition.  
21 You're familiar with it?

22 MR. MCGINLEY: Yes, I am.

23 VICE CHAIRMAN BASEHART: Do you agree with it?

24 MR. MCGINLEY: Yes, I do.

25 VICE CHAIRMAN BASEHART: Any member of the  
26 public here to oppose this item?

27 (No response)

28 VICE CHAIRMAN BASEHART: Seeing none, any  
29 letters?

30 MR. SEAMAN: One for clarification only.

31 VICE CHAIRMAN BASEHART: Okay. Any member feel  
32 that this item needs to be pulled?

33 (No response)

34 VICE CHAIRMAN BASEHART: Okay. It will remain  
35 on consent.

36 MR. MCGINLEY: Thank you.

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#### BOARD OF ADJUSTMENT CONDITIONS

40 All conditions of approval required by the BCC for the  
41 landscaping along the North 126.90 ft of the east  
42 property line shall be provided on the interior side of  
43 the required wall. (ONGOING)

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50 VICE CHAIRMAN BASEHART: Next item on the  
51 agenda is BA2004-01003, Ellen Smith, agent, for Folke  
52 Peterson.

53 MS. SMITH: Good morning, Mr. Chairman. Ellen  
54 Smith, for the record, for the Folke Peterson Center for  
55 Animal Welfare.

56 VICE CHAIRMAN BASEHART: Okay. Ellen, you're  
57 familiar with the staff recommendation and one condition  
58 of approval?

59 MS. SMITH: We'd like to hear the condition of  
60 approval.

61 MR. AUBOURG: The condition should read by  
62 January 20, 2007, the access easement shall be complete

1 and functional. That's the only condition that we put.

2 MS. SMITH: Is that subject to extension?

3 VICE CHAIRMAN BASEHART: Sure. Anything that's  
4 granted here is subject to getting an extension.

5 MS. SMITH: Thank you, Mr. Chair. That is  
6 acceptable.

7 MR. SEAMAN: And there's a total of two more  
8 one-year extensions assuming that your justification is  
9 appropriate.

10 MR. AUBOURG: But in this case it's 2007 so  
11 that means they have one more year.

12 VICE CHAIRMAN BASEHART: I think my feeling  
13 about this, Ms. Smith, is probably just looking at the  
14 time it takes to get a project approved these days and  
15 figure maybe 2007 might not be enough.

16 MR. AUBOURG: That's why usually we give one  
17 year, we give two years, and she can come back to ask for  
18 one more year.

19 VICE CHAIRMAN BASEHART: Okay.

20 MS. SMITH: Thank you, sir. That's acceptable.

21 VICE CHAIRMAN BASEHART: Okay. Any member of  
22 the public here to speak in opposition?

23 MR. COLEMAN: Good morning, Mr. Chairman and  
24 the Board. My name is Frank Coleman. I live about 1,000  
25 feet from Folke Peterson. The real reason for this  
26 variance as some of us know is to start the process to  
27 get a bridge built from the parcel of land just north of  
28 the wildlife center out to Southern Boulevard and to  
29 build 86 homes divided between that parcel and the parcel  
30 just east of the wildlife center.

31 I'm opposed to this variance, the proposed  
32 bridge, and the building of these homes that will follow  
33 this variance unless people from the wildlife center and  
34 Hughes Development or whoever the developer is behind  
35 this meet with all the Acme Ranches homeowners and fully  
36 explain their future plans for these properties.

37 VICE CHAIRMAN BASEHART: Okay. One thing I  
38 think we need to point out, the purpose of this Board is  
39 very narrow. Our purpose is only to consider requests  
40 for variances. Whether or not a subdivision or a  
41 residential development or any other type of development  
42 is approved on this property is a zoning issue that will  
43 be decided by the Board of County Commissioners. So my  
44 question is to you do you want this item pulled or are  
45 you just putting Ms. Smith on notice? The only thing  
46 that we're going to discuss today is the variance  
47 regarding the easement.

48 MR. COLEMAN: Right. One thing flows into  
49 another though.

50 VICE CHAIRMAN BASEHART: Well, I understand  
51 that but if you're here and you want us to have a full  
52 hearing on the easement then I'm going to pull this item.

53 MR. COLEMAN: No, that's okay.

54 VICE CHAIRMAN BASEHART: You don't feel that's  
55 necessary?

56 MR. COLEMAN: Not at this time. I mean I'll be  
57 back for the zoning.

58 VICE CHAIRMAN BASEHART: Okay. Thank you. All  
59 right. Any letters, Alan?

60 MR. SEAMAN: There are none.

61 VICE CHAIRMAN BASEHART: Okay. Well, under the  
62 circumstances does anybody feel this item needs to be

1 pulled?

2 MR. CUNNINGHAM: Just comment.

3 VICE CHAIRMAN BASEHART: Go ahead.

4 MR. CUNNINGHAM: Even though it's early in the  
5 stage obviously the gentleman stated that he's going to  
6 be back. Just to encourage the applicant to have  
7 dialogue with him.

8 MR. CUNNINGHAM: That's a yes?

9 MS. SMITH: Yes, sir. We will continue to  
10 visit with the neighbors.

11 VICE CHAIRMAN BASEHART: Okay. All that being  
12 said no one feels this item needs to be pulled so it'll  
13 remain on consent.

14

15 BOARD OF ADJUSTMENT CONDITIONS

16

17 By January 20, 2007, the access easement shall be  
18 complete and functional. (DATE:MONITORING:Zoning)

19

20

21

22

23

24

25 VICE CHAIRMAN BASEHART: All right. Then the  
26 next item, the last item on the consent agenda has  
27 already been postponed for 30 days so that leaves the  
28 consent agenda intact except for we will pull BA2004-  
29 00993, so the items remaining on consent are BA2004-  
30 00991, 00992, 00999, 01000, 01002, and that's the consent  
31 agenda. I guess we're ready for a motion for adoption.

32 MS. HELFANT: What about 01003?

33 VICE CHAIRMAN BASEHART: I'm sorry. Yeah, and  
34 01003 because we didn't pull it. Okay. Motion.

35 MR. PUZZITIELLO: Motion to approve the consent  
36 agenda with the staff report becoming the record.

37 VICE CHAIRMAN BASEHART: Okay. Motion by Mr.  
38 Puzzitiello.

39 MR. CUNNINGHAM: Second.

40 VICE CHAIRMAN BASEHART: Second by Mr.  
41 Cunningham. All those in favor of the motion indicate by  
42 saying aye.

43 BOARD MEMBERS: Aye.

44 VICE CHAIRMAN BASEHART: Opposed, no.

45 (No response)

46 VICE CHAIRMAN BASEHART: Okay. The consent  
47 agenda has been approved. We're going to take a break  
48 for about two minutes while everybody that's been  
49 approved can file out of the room quietly and pick up  
50 your letters.

51 (Break)

52 VICE CHAIRMAN BASEHART: Okay. I think we can  
53 reconvene now. We've got out quorum back, and all the  
54 people on the consent agenda have left so we're on the  
55 regular agenda now. The first item was postponed.

56 MR. SEAMAN: If I can interject.

57 VICE CHAIRMAN BASEHART: Another postponement?

58 MR. SEAMAN: Yeah. 2004-01001 has also asked  
59 for a 30-day postponement to February 17, and it will be  
60 by vote.

61 VICE CHAIRMAN BASEHART: Okay. The applicant  
62 is here. For the record, your name.

1           MS. POLSON: Good morning. For the record, my  
2 name is Jan Polson with Kilday & Associates, and we are  
3 requesting a 30-day postponement on this item.

4           VICE CHAIRMAN BASEHART: Okay. Is there any  
5 member of the audience that's here to speak in opposition  
6 to this item?

7           (No response)

8           VICE CHAIRMAN BASEHART: Seeing none. There  
9 aren't any letters, Alan?

10          MR. SEAMAN: We have -- there are no comments.  
11 We got three phone calls that just simply wanted  
12 clarification but that was all.

13          VICE CHAIRMAN BASEHART: Okay. Any member of  
14 the -- well, there's been a request for a postponement.  
15 Is there a motion to postpone?

16          MR. PUZZITIELLO: Motion to postpone for 30  
17 days.

18          VICE CHAIRMAN BASEHART: Motion by Mr.  
19 Puzzitiello.

20          MR. CUNNINGHAM: Second.

21          VICE CHAIRMAN BASEHART: Second by Mr.  
22 Cunningham. All those in favor?

23          BOARD MEMBERS: Aye.

24          VICE CHAIRMAN BASEHART: Opposed?

25          (No response)

26          VICE CHAIRMAN BASEHART: Postponed for 30 days.

27          MS. POLSON: Thank you.

28  
29  
30  
31  
32  
33  
34          VICE CHAIRMAN BASEHART: Okay. That leaves us  
35 with one item -- two items. That's right. The first  
36 item will be the item that we pulled, which is BA2004-  
37 00993, Dror Tregar. Is the applicant here? If you'd  
38 approach the microphone. Staff, can you introduce this  
39 item into the record?

40          MR. AUBOURG: Yes. BA petition number 2004-  
41 00993, Dror Tregar, agent for Anya Group, Inc., owner, to  
42 allow a single family dwelling to encroach into the  
43 required front setback. LOC: 3445 N. Federal Highway, on  
44 the NE corner of US Highway 1 and Turner Road, in the RS  
45 Zoning District.

46          VICE CHAIRMAN BASEHART: Okay. For the record,  
47 your name.

48          MR. KNIGHT: Again, my name is Jerry Knight.  
49 I'm an attorney and I represent the applicant, Anya  
50 Group, Inc.

51          VICE CHAIRMAN BASEHART: At this time if you  
52 would make a presentation, provide us with your  
53 justification for the granting of the variance, and then  
54 we'll open the item to the public.

55          MR. KNIGHT: Thank you. With me this morning  
56 is Dror Tregar, one of the principals of the Anya Group,  
57 and the Anya Group is the owner of this property.  
58 They're constructing a home on the property and I believe  
59 you all have seen photos of the home, is that correct?

60          VICE CHAIRMAN BASEHART: We've got them in the  
61 staff report.

62          MR. KNIGHT: Okay. The home is under

1 construction. It is substantially completed. It has the  
2 roof on it as you can see. It's a new two-story home.  
3 It's being built on property zoned for single family use.  
4 When the home was -- permitting was initially being done  
5 there were discussions between the county staff and the  
6 builder as to the setback on Federal Highway U.S. 1. And  
7 the agreed to setback or the setback that the county  
8 indicated that this home had to be set back from U.S. 1  
9 was 35 feet, and the way they arrived at that is the base  
10 building line is 10 feet east of the property line.

11 In other words, I think the federal highway  
12 through here has a 60-foot half right-of-way, and there's  
13 50 feet of right-of-way existing so the base building  
14 line was 10 feet into the property. I have kind of a  
15 little exhibit that might help you get a picture of this.

16 VICE CHAIRMAN BASEHART: Thank you.

17 MR. PUZZITIELLO: Motion to accept the exhibit.

18 MR. CUNNINGHAM: Second.

19 VICE CHAIRMAN BASEHART: Okay. Motion and  
20 second to accept the site plan that was submitted for the  
21 record, and we'll pass copies to each member.

22 MR. KNIGHT: As you can see on this exhibit the  
23 line to the right, which is the eastern most line is the  
24 setback that was required by the county for this  
25 construction. And again the setback, the reason it's 35  
26 feet is because the setback is measured from the base  
27 building line which is 10 feet into the property. The  
28 code setback requirement is 25 feet so if you set back 25  
29 feet from the 10-foot base building line you're at 35  
30 feet.

31 Also, I showed on here the 25-foot code setback  
32 requirement if you measured it from the property line and  
33 then the 10-foot base building line. When the building  
34 was -- the foundation was being staked the person who was  
35 staking the foundation and the surveyor made an error in  
36 the location of the stakes for the foundation. As a  
37 result, as you can see on this survey this is an as-built  
38 so it shows that the building actually intrudes into the  
39 35-foot setback approximately 4-1/2 feet at a couple of  
40 locations.

41 The front of the house is in a regular shape or  
42 a regular wall. It's not a flat wall so the intrusions  
43 are at a couple of locations along the front of the  
44 house. The house does face west. It faces Federal  
45 Highway, and you can see that from your photos. I think  
46 you have this photo already but let me...

47 VICE CHAIRMAN BASEHART: Thank you. We're  
48 going to just accept this with the rest of the stuff.

49 MR. KNIGHT: I think it's in your package. So  
50 as you can see, the front of the house is on a regular  
51 wall and so it intrudes into the setback at a couple of  
52 locations. Again, this is due to an error in the way the  
53 foundation was staked. This error was not discovered  
54 until -- in fact, there was a building inspection of the  
55 foundation. The house was constructed to the point you  
56 see it, and at the time the roof inspection was done, I  
57 think. The mistake was discovered that the house does  
58 encroach into the 35-foot building setback.

59 It doesn't -- obviously, it does not encroach  
60 into the 25-foot setback. It's still well beyond the 25-  
61 foot setback measured from the property line. The staff  
62 is recommending approval of this request for variance. I

1 think one of the considerations is the plans for Federal  
2 Highway are such that the 10-foot area will probably  
3 never be used. There's no plans to expand Federal  
4 Highway through this area. There are other buildings, a  
5 number of other buildings, along Federal Highway in this  
6 area, both in the City of Del Ray and in the  
7 unincorporated area that are much closer to Federal  
8 Highway than this building is even with its encroachment  
9 into the 35-foot setback.

10 So as far as consistency with other buildings  
11 in the area this house is no closer than the other  
12 buildings to Federal Highway, and in fact it's  
13 substantially further back from Federal Highway than the  
14 other buildings along Federal Highway.

15 I want to go to the seven conditions or seven  
16 requirements for the variance. I'll go through them  
17 quickly. The special conditions and circumstances that  
18 exist, again there was requirement for this 35-foot  
19 setback from the 10-foot base building line. The code  
20 required 25 feet. There was a mistake in the way the  
21 foundation was staked out, the form boards. The county  
22 building inspector didn't catch it. Nobody caught it  
23 until the roof was on.

24 The other buildings along Federal Highway are  
25 closer or much closer than this house is. The other  
26 buildings along there include a lift station, and other  
27 non-commercial -- or non-residential buildings, and so  
28 the setback on this house will not be inconsistent with  
29 the setbacks in the area.

30 The special conditions or circumstances do not  
31 result from the actions of the applicant. Again, this  
32 was due to human error in terms of the way that the  
33 foundation was staked out. It doesn't confer on the  
34 applicant any special privilege. This variance would  
35 not. Again, there are new and old buildings along  
36 Federal Highway that are even less than 15 feet from the  
37 setback. We are only requesting the variance for the  
38 actual encroachment into the setback, no more.

39 The land is zoned for single family. We're not  
40 asking for -- this will not allow us any greater use of  
41 the property than a single family home which is what  
42 we're building. As far as the literal interpretation in  
43 creating an undue hardship, again the approved setback of  
44 35 feet is for the purpose of the future expansion of  
45 Federal Highway. If you measure it from the base  
46 building line there are many buildings along Federal  
47 Highway that are constructed closer than 35 feet, and  
48 there is no plans to widen Federal Highway through this  
49 area.

50 Even with this variance the house will be built  
51 well within the building envelope allowed by the code if  
52 the setback is measured from the highway. Also, if the  
53 variance is granted this would allow the applicant to  
54 locate the house, in fact, that's where it is located, in  
55 the same or even at least no closer to Federal Highway  
56 than other buildings in the area.

57 As far as the minimum variance that we're  
58 requesting is the variance only for the house that's  
59 actually constructed, which is 4-1/2 feet into the 35-  
60 foot setback. The variance will be consistent with the  
61 Comprehensive Plan. Again, it's compatible with the  
62 surrounding area along Federal Highway. We have a larger



1 setback than most new or old residential construction  
2 setbacks on the area.

3 Even with this variance, we will not exceed the  
4 25-foot setback required by the code when measured from  
5 the property line. This will not be injurious to the  
6 area involved. Again, we're compatible with the  
7 surrounding area. It does not have a negative impact on  
8 any adjacent property. You'll hear from the property  
9 owner to the north, and I'll talk about that in a second.  
10 And the surrounding uses, and will not be a detriment to  
11 the public welfare.

12 As I indicated earlier, we do agree with the  
13 conditions recommended in the staff report. The  
14 opposition that you'll hear in a few minutes, I think is  
15 from the property owner to the north. That's not the  
16 property that's adjacent to the setback obviously. The  
17 property that's adjacent to the setback is U.S. 1 or  
18 Federal Highway, and there's no homes adjacent to the  
19 western boundary of this property so there's no property  
20 owner that's immediately impacted by this request.

21 The property owner to the north will not be  
22 impacted by this request. I believe the property to the  
23 north is actually zoned non-residential in a non-  
24 residential category, has a different setback. This is -  
25 - so there's no impact on the property to the north as a  
26 result of this request.

27 There are other issues relating to this  
28 property, which we are working to resolve. There's an  
29 issue on the northern boundary. Again, as I view it, it  
30 doesn't impact the property owner to the north because we  
31 are still -- the house is the proper distance from his  
32 property line per the code. The code says the setback  
33 from the property line is 7-1/2 feet. This house is more  
34 than 7-1/2 feet from his property line so it really  
35 doesn't -- the issue on the northern side doesn't impact  
36 him either.

37 That issue has to do with the fact that after  
38 this house was under construction it was determined that  
39 there was a possible existing right-of-way for a drainage  
40 pipe along the northern boundary of the property. We  
41 have been working to resolve that issue with Palm Beach  
42 County and with the Florida Department of Transportation.  
43 FDOT thought that the right-of-way was FDOT right-of-way  
44 but as it turns out it's probably not. It's probably  
45 something Palm Beach County owns.

46 But we're still working with Palm Beach County.  
47 We're still working with FDOT to try to resolve that  
48 issue. There's also an issue regarding the sea wall on  
49 the east side, I understand, which we are also working  
50 with Palm Beach County to resolve. But we're here today  
51 on this particular variance, and as was indicated  
52 previously the focus here is on this variance and whether  
53 we meet the requirements for the variance on this side of  
54 the property, on the west side.

55 And, again, we have no impact on adjacent  
56 neighbors. We're consistent with other buildings in the  
57 area. We're asking for the minimum setback allowed  
58 required to allow this house to exist as it does today,  
59 and the applicant is not the cause of the problem in  
60 terms of the encroachment.

61 So I would like an opportunity, if possible, to  
62 rebut any remarks from the opposition. And I'll be glad

1 to answer any questions you might have.

2 VICE CHAIRMAN BASEHART: Certainly. Thank you.

3 MR. PUZZITIELLO: I have a quick question.

4 What's the rear yard setback for this property?

5 MR. KNIGHT: Fifteen feet.

6 MR. PUZZITIELLO: So they're already

7 encroaching on the rear yard setback too. We have 12.91

8 on the rear yard setback -- on the rear yard right now.

9 If they move the house back they only have eight feet so

10 do we have a problem on the rear yard too if there's a

11 15-foot rear yard setback?

12 MR. KNIGHT: Because of the irregular shape of

13 the lot the county took the position that the rear yard,

14 you see the dimension of 19-1/2 feet.

15 MR. PUZZITIELLO: The straight piece, right.

16 MR. KNIGHT: They consider that a side yard.

17 MR. PUZZITIELLO: Okay. So you'll still meet

18 -- okay.

19 MR. KNIGHT: The builder had a lot of

20 discussions with the county at the outset before he built

21 this house and laid it out on the site and determined

22 what the setbacks were going to be.

23 VICE CHAIRMAN BASEHART: A question. Is the

24 applicant eligible for a base building line waiver?

25 MR. CUFFE: He received a base building line

26 waiver. The base building line by code for U.S. 1 or for

27 any thoroughfare or road is 40 feet beyond existing

28 right-of-way. He received a base building line waiver

29 waiving 30 of that 40 feet setting it at 10 feet from the

30 right-of-way line.

31 MR. JACOBS: Mr. Chairman.

32 VICE CHAIRMAN BASEHART: Yes.

33 MR. JACOBS: I have a question and that is with

34 respect to the first of our seven criteria it seems to me

35 if I'm hearing correctly that the special condition that

36 the applicant is talking about is that a building

37 inspector made an error.

38 VICE CHAIRMAN BASEHART: No. The surveyor made

39 an error.

40 MR. JACOBS: The surveyor made an error. Okay.

41 The building inspector didn't catch the error.

42 MR. KNIGHT: Didn't catch it at the survey.

43 MR. JACOBS: Correct. But doesn't the first

44 criteria refer to special conditions that are inherent in

45 the piece of property not human error?

46 MS. HELFANT: Yes. I mean if the special

47 conditions to the property, whatever that -- it can be

48 based on any type of condition, whatever -- it doesn't

49 necessarily have to be to the land. I mean it just

50 depends. It's a case by case basis as to what the

51 special condition would be.

52 MR. SEAMAN: I think you might want to add that

53 the lot is an irregular shaped lot itself which again can

54 be considered circumstances that weren't something that

55 were created by the property owner.

56 MR. JACOBS: I guess my question is as a

57 general proposition is human error a special condition or

58 does the term special condition in our seven criteria

59 mean something inherent in the parcel of land itself.

60 MS. HELFANT: Generally it would just be the

61 parcel of land although you have to look at all of the

62 circumstances of the condition as well.

1           MR. SEAMAN: I believe there's an opportunity  
2 to mitigate one of the seven criteria that's also a  
3 possibility through conditioning, and most of the time  
4 when we do mitigate it's through landscaping or  
5 additional buffering if there's some kind of a visual  
6 problem on the property. We also had to look at all  
7 seven criteria. We need to consider all the aspects of  
8 the property, all the unique circumstances that surround  
9 a property or an issue.

10           MR. JACOBS: Well, I'm not speaking with  
11 respect to this particular application. My question is a  
12 more general one in interpreting the first of our seven  
13 criteria. Is human error a special condition or is a  
14 special condition something that is inherent in the  
15 property site itself?

16           MS. HELFANT: It's generally the property site  
17 itself.

18           MR. JACOBS: Thank you.

19           MR. KNIGHT: I might add to that your criteria  
20 -- and they're fairly standard criteria, variance  
21 criteria, for other jurisdictions as well that the  
22 special condition could relate to the land as your  
23 standard says, building or structures. So because of the  
24 -- as indicated, because of the irregular shape of this  
25 particular lot there was a lot of discussion, what would  
26 be the front, what would be the side, what would be the  
27 back. The front was fairly easy because you can look at  
28 it and see where the front of the house is but the  
29 orientation was up for discussion.

30           As we understood it, and I heard the comment  
31 earlier, but if you look at the last page where the  
32 agency comments are on the staff report it talks about,  
33 it says the base building line for the property abutting  
34 U.S. 1 is hereby confirmed as being 10 feet easterly from  
35 the westerly property line of the subject property being  
36 also 60 feet from easterly from the center line of  
37 existing U.S. 1 right-of-way as long as the Comprehensive  
38 Plan thoroughfare right-of-way identification map calls  
39 for 120 feet of ultimate right-of-way width for this road  
40 segment.

41           So in any event we ended up with a 10 foot base  
42 building line so that 25 feet would be measured from  
43 that, and the encroachment is what you see in the  
44 diagram.

45           VICE CHAIRMAN BASEHART: Okay. I think before  
46 -- well, let's do the staff report, and then we'll go to  
47 the public.

48           MR. AUBOURG: Staff is recommending approval  
49 with condition based on the seven criteria. Staff felt  
50 that the applicant met the seven criteria based on what  
51 the applicant submitted to the staff. Again, the  
52 building official did not notice the setback error until  
53 the roof inspection. The applicant was moving forward.  
54 And human error was made by several individuals during  
55 the construction. Also, on Federal Highway there are  
56 other buildings with similar setback or lesser setback.

57           Also, the required setback for residential  
58 single family is 25 feet. If there was no base building  
59 line on this piece of property the applicant will be able  
60 to meet the 25 feet which meets the intent of the code  
61 for the front setback for this specific piece of  
62 property. So based on all those -- like Alan was saying

1 the irregular shape of the lot also is one of the  
2 additional considerations that staff looked at in order  
3 to grant a variance. So based on all those seven  
4 criteria staff felt like the applicant is meeting the  
5 seven criteria.

6 We just want to add that I met with Mr. Conrad  
7 Makulick, I don't know if I'm pronouncing their name  
8 right, but I met with the applicant yesterday for the  
9 specific variance to provide us with a survey showing  
10 there's like a drainage easement issue on the property.  
11 Staff was not aware of this issue so basically if the  
12 other side is bringing that up staff needs time to review  
13 the survey and talk to Glen Marks, Service Section, and  
14 also to Linda Rothman and Dave Croft to see if there's  
15 something that we can do about that because the building  
16 cannot encroach into the easement unless they get a  
17 variance.

18 MR. SEAMAN: In other words, the property to  
19 the north, which is not the applicant's, brought to our  
20 attention that there may be utility or drainage easement  
21 that affects the applicant's property, and the way it  
22 would affect it is that the location of the residential  
23 structure would be encroaching into that drainage  
24 easement. We haven't had time to look into that to  
25 determine if that's true or not. It's a 10-foot drainage  
26 easement and they're showing...

27 MR. AUBOURG: 2-1/2 feet.

28 MR. SEAMAN: So if in fact, and we haven't  
29 verified it, if in fact that were true we'd also have to  
30 add additional perhaps variances for encroachment into  
31 the...

32 VICE CHAIRMAN BASEHART: My understanding is we  
33 don't have the authority to grant a variance to encroach  
34 an easement. The easement would -- there would have to  
35 either be a release arrangement done or an abandonment of  
36 a portion of the easement in order to solve that problem.

37 MR. SEAMAN: We can grant variances to encroach  
38 into easements as long as we have the release agreements  
39 from the easement holder.

40 VICE CHAIRMAN BASEHART: Okay.

41 MR. KNIGHT: Just to clarify that particular  
42 issue. That's what I mentioned a few minutes ago. Along  
43 the northern boundary, not only western boundary, if you  
44 look at the diagram I handed out you'll see along the  
45 northern boundary of the property there's a CL drain  
46 pipe. The survey shows the house does not encroach over  
47 the drain pipe but apparently unbeknownst to the  
48 applicant at the time they bought the property because  
49 their title insurance policy didn't show it and their  
50 survey didn't show it.

51 There was an old right-of-way that was owned by  
52 Palm Beach County as it turned out. DOT thought they  
53 owned it. Subsequently we found all this out. DOT  
54 thought they owned it but as it turns out Palm Beach  
55 County owns it, condemned it back in 1958. It didn't  
56 show up on any title insurance policies or in the deed to  
57 the property owner, et cetera, et cetera, so when this  
58 was brought to the applicant's attention they immediately  
59 started to -- they searched the title. They did an  
60 immediate title search but they've also been in  
61 continuous discussions with DOT about how to resolve this  
62 and Palm Beach County, so we're working on resolving that

1 issue.

2 The northern wall of the house would encroach  
3 into the easement. As far as we know it doesn't encroach  
4 over the pipe but it would encroach a couple of feet into  
5 the easement. So again we are working with DOT to try to  
6 resolve that in Palm Beach County. However, what we're  
7 saying today at least on that issue is that's a separate  
8 issue which would not affect whether this variance should  
9 be granted or not on the merits of this particular  
10 variance. We have to solve all of these issues including  
11 this issue that's here today so that this house can  
12 continue on.

13 Right now it's shut down, work is shut down,  
14 and we're not proceeding until all these issues are  
15 resolved. But we need to resolve on each one at a time,  
16 and we're trying to do that.

17 VICE CHAIRMAN BASEHART: Has it been determined  
18 if there is an easement there and if there is an easement  
19 who owns it?

20 MR. KNIGHT: The best evidence we have right  
21 now in Palm Beach County as we understand it is still  
22 conducting a title search but as we understand it the  
23 documents that have been provided to us in the last  
24 couple of weeks by DOT there was an eminent domain  
25 condemnation action in 1958 by Palm Beach County to  
26 acquire additional right-of-way for U.S. 1 on behalf of  
27 DOT.

28 As part of that they took a 10-foot wide,  
29 distant foot wide easement or right-of-way, whatever it  
30 is, from the right-of-way for Federal Highway U.S. 1 out  
31 to the canal or out to the out fall, and there's a  
32 drainage pipe in it obviously to drain U.S. 1. Again,  
33 this didn't show up on any title information that was  
34 provided to the applicant or the owner before he bought  
35 the property. So we're having to deal with that. That's  
36 an after the fact thing too. So we're working on it.

37 MR. PUZZITIELLO: Your biggest issue is when  
38 they go in to dig up that pipe and replace it some time  
39 in the future they're going to be undermining your house.  
40 The fact that your house isn't sitting directly on the  
41 pipe doesn't mean anything.

42 MR. KNIGHT: I understand. You can be close to  
43 a pipe and have a problem. Hopefully that isn't the  
44 case. We're going to send a camera down to see if  
45 there's any problem and we may end up having to, you  
46 know, one solution is possibly relocating the pipe but  
47 again we're in a dialogue with DOT about that and Palm  
48 Beach County, and we're trying to resolve that issue. In  
49 the meantime even if we resolve that one we still need  
50 the variance we're asking for today.

51 MR. JACOBS: Suppose that this variance were  
52 denied. You have the shell of the house up. What would  
53 happen then?

54 MR. KNIGHT: A very bad thing probably.

55 MR. JACOBS: Well, I mean do you have a  
56 contingency plan if that were to be the case and what  
57 would it cost?

58 MR. KNIGHT: Well, the owner has about \$200,000  
59 into this structure before this issue came up.

60 MR. JACOBS: Right. Is there a plan B?

61 MR. KNIGHT: Well, seeking -- you know how  
62 difficult it is to go after people, you know, and try to

1 recover something in terms of the engineer, the surveyor,  
2 whoever, so we don't want to go that way. We're  
3 interested in pursuing that possibility but really, no,  
4 we don't have a plan B.

5 MR. JACOBS: What about modification of the  
6 structure, is that possible?

7 MR. KNIGHT: I don't know. You know, as you  
8 can see, it could have been a flat wall and it would be  
9 less appealing from an esthetic standpoint probably but  
10 that's a possibility I assume architecturally but it  
11 would have some substantial cost to do that but it would  
12 be a less desirable structure for sure.

13 MR. JACOBS: Thank you.

14 VICE CHAIRMAN BASEHART: Yes.

15 MR. SEAMAN: Mr. Chairman, I just want to make  
16 a point that staff -- we didn't realize that you had a  
17 potential problem to the north with there may be  
18 encroachment of the structure into the drainage easement  
19 until yesterday, and consistently we would not have  
20 suggested that you go forward until everything is  
21 resolved. And I think Ann might elaborate but if, for  
22 example, the front variance is approved and you continue  
23 construction and you come back in here for a variance to  
24 encroach into the easement with the release agreements  
25 but you don't get it for some reason perhaps we put the  
26 county in jeopardy because we've assumed and allowed you  
27 to continue constructing. We don't entertain your  
28 variance until everything is worked out. That's just  
29 staff's opinion.

30 MR. KNIGHT: We cannot go forward with  
31 construction until the issue on the northern boundary is  
32 worked out and until the drainage easement issue is  
33 worked out. We've been shut down by the building  
34 department for that reason. Not for this reason, not for  
35 this variance but for that one, for that problem. They  
36 knew we were going for this variance so they didn't -- as  
37 I understand it, they didn't make us stop work because of  
38 this. Is that right?

39 The reason the letter from the building  
40 department for stopping work was due to the encroachment  
41 into the easement on the north side so we can't go  
42 forward until that's resolved.

43 MR. SEAMAN: So knowing what I know today,  
44 which I didn't yesterday, we would have recommend that  
45 you take a 30-day postponement or 60 days until this is  
46 all worked out so all these variances can be addressed at  
47 the same time with support from the agencies that would  
48 give you the release agreements and DOT.

49 MR. KNIGHT: Well, in our view -- I hear what  
50 you're saying, and I can understand what you're saying.  
51 To a certain extent our view these stand or fall on their  
52 own in terms of the merits of them. We need all of them  
53 to make this house legal so that it can go forward. I  
54 would -- that's all I can say about that. We need each  
55 one of them. They are independent to some extent. Even  
56 if we get that resolved we still need this.

57 MR. PUZZITIELLO: But if you come back to us  
58 for another variance we'd rather see all the variances at  
59 one time so we're seeing the whole picture, not  
60 piecemealing it. It just makes our ability to evaluate  
61 the whole situation much better instead of piecemealing  
62 one thing at a time and coming back three or four times

1 to us.

2 MR. KNIGHT: We don't know what the resolution  
3 of that is going to involve, you know, so I don't know if  
4 we'll be back for a variance for that or not.

5 VICE CHAIRMAN BASEHART: The bottom line though  
6 is until you resolve it and having been involved in some  
7 things like this it could be tomorrow that it's resolved,  
8 it could be a year. I mean you have no idea how quickly  
9 this is going to be resolved, do you?

10 MR. KNIGHT: No, I don't.

11 VICE CHAIRMAN BASEHART: And in the meantime  
12 you cannot continue with construction because your stop  
13 work order is based on that issue.

14 MR. KNIGHT: That's right.

15 VICE CHAIRMAN BASEHART: So do you feel it  
16 would be a hardship on you to delay the consideration of  
17 this variance until that issue is resolved?

18 MR. KNIGHT: Well, only if it works out where  
19 we do resolve that issue fairly quickly, and we're shut  
20 down now, we can't work. If we were to get this variance  
21 and that got resolved pretty quickly then we could start  
22 work again. If this is continued for 30 or 60 days then  
23 even if that was resolved quickly we wouldn't be able to  
24 start work until we came back here again. So that would  
25 be the only consideration. I don't know that that's  
26 going to happen, you know. We're continuing to have  
27 discussions with DOT and Palm Beach County about it. I  
28 don't know how long that's going to take to resolve.

29 VICE CHAIRMAN BASEHART: Okay. Is it the  
30 recommendation -- I know it's the staff's recommendation  
31 that we postpone this item. Is that what you're saying?

32 MR. SEAMAN: That's what I'm saying.

33 VICE CHAIRMAN BASEHART: How does the county  
34 attorney feel?

35 MS. HELFANT: We feel the same way also in  
36 order to protect the county's liability even if the  
37 variance is issued and the construction is -- it does  
38 actually proceed. We can be open to liability as well.

39 MR. KNIGHT: Can we do it for 30 days and see  
40 what happens, and if we come back in 30 days and it still  
41 isn't resolved, we'll deal with it again, I guess.

42 MR. SEAMAN: You have up to six months. You  
43 can keep postponing up to six months.

44 MR. KNIGHT: I hear what you're saying and we  
45 want to accommodate what your concerns are.

46 VICE CHAIRMAN BASEHART: I don't think we'd be  
47 inclined to postpone this for 90 or 120 days. It would  
48 be a month to month kind of a thing.

49 MR. SEAMAN: Postpone it for 30 days and then  
50 if you need more time we can postpone it for another 30  
51 days, you know, so your worse case is 30 days or less of  
52 time.

53 MR. PUZZITIELLO: Well, I think before we make  
54 a decision we ought to hear from the gentleman to speak  
55 in opposition.

56 VICE CHAIRMAN BASEHART: That was the next  
57 item. Mr. Sluggett was the individual that caused this  
58 item to be pulled from consent. Under the circumstances,  
59 do you feel there's anything you need to add to the  
60 discussion at this point?

61 MR. SLUGGETT: I know you've spent a lot of  
62 time on this this morning. Mr. Chairman, just for the

1 record again Geoffrey Sluggett, representing Mr. and Mrs.  
2 Makulick, who are the property owners to the north. I  
3 just wanted to just take a couple seconds and make the  
4 Board aware that there are a couple other issues with  
5 this property. Obviously, the variance that's before you  
6 today, you have the front setback issue.

7 The applicant's attorney touched on the issue  
8 with the Palm Beach County or DOT right-of-way to the  
9 north, that 10-foot right-of-way. My client has gone out  
10 there. He's measured from the property line. The  
11 encroachment feels that there's an encroachment of four  
12 feet into that right-of-way, which he has a concern with  
13 because if you look on your aerial his property is  
14 immediately adjacent to that right-of-way on the north  
15 and is on the corner of Chukker and U.S. 1 right there as  
16 you can see.

17 MR. PUZZITIELLO: You're talking about the  
18 easement, not the right-of-way, right?

19 MR. SLUGGETT: I'm sorry?

20 MR. PUZZITIELLO: You're talking about the  
21 easement, not the right-of-way?

22 VICE CHAIRMAN BASEHART: We don't know, I  
23 guess, if it's a right-of-way at this point.

24 MR. SLUGGETT: Actually we believe it is  
25 actually a right-of-way. My clients had a survey done of  
26 their property in 2003, and the survey does show that it  
27 is an actual right-of-way, and the research that's been  
28 done shows that it's actually owned by Palm Beach County  
29 because it was actually never turned over to FDOT. So  
30 obviously that's the concern they have with the north  
31 side. Obviously, the applicant's attorney indicated that  
32 there's some potential human error on how the structure  
33 got constructed but there are many problems here  
34 obviously as we've talked about.

35 But one I wanted to add that has not been  
36 discussed as well is on the east side there appears to be  
37 an encroachment as well with the sea wall that was  
38 constructed. Our understanding is that a building permit  
39 was not ever obtained for that sea wall and actually  
40 encroaches into the property owner located to the east.  
41 And Ms. Nancy Ford is here as well. She's the property  
42 owner immediately to the east there. And obviously  
43 there's about a four-foot encroachment of the sea wall  
44 which no building permit was approved for so it seems  
45 like there are numerous issues with this piece of  
46 property with the structure that's been completed.

47 We were here before you today to at least ask  
48 for a postponement because my clients just got me  
49 retained because he has just found out about it, and we  
50 just needed some more time to look at all these issues  
51 but I think as we look in here about more of these issues  
52 this morning it's very clear there are problems and  
53 obviously we would object to the variance that's before  
54 you today. If it's the Board's desire to take a  
55 postponement for 30 or 60 days, we would support that to  
56 try and work with them to try and address these issues  
57 but we would appreciate your support. Thank you.

58 VICE CHAIRMAN BASEHART: Okay.

59 MR. CUNNINGHAM: I have a question for the  
60 applicant. This new bit of information about the sea  
61 wall. There is no permit?

62 MR. KNIGHT: If you recall in my initial



1 presentation I did mention that there was an issue  
2 regarding the sea wall on the east side of the property  
3 as well, and we're working with Palm Beach County to  
4 resolve that as well, and we think we have a solution  
5 that we're working on with the county to fix that. It  
6 has to do with that little triangular piece if you look  
7 on the map there adjacent to the eastern property line.  
8 There's a little triangular piece there. We're working  
9 with the county. It's our understanding that the county  
10 actually owns that but anyway we're trying to figure out  
11 a solution to that problem as well.

12 So there's there issues. There's not a myriad  
13 of issues but there are three. There's the setback, the  
14 pipe on the north side, the easement on the north side,  
15 and the sea wall on the east side. We're trying to  
16 resolve all those.

17 VICE CHAIRMAN BASEHART: Okay. I think we're  
18 ready for a motion on this item.

19 MR. PUZZITIELLO: I make a motion on BA2004-  
20 00993, postponement for 30 days.

21 MR. CUNNINGHAM: Second.

22 VICE CHAIRMAN BASEHART: Motion by Mr.  
23 Puzzitiello, second by Mr. Cunningham to postpone this  
24 item for 30 days, and we'll look at it on a month to  
25 month basis, I guess, until those other issues are  
26 resolved.

27 MR. AUBOURG: I would like to add that the  
28 applicant needs to give staff some time if they have new  
29 surveys and new documents so staff can revise documents  
30 before we go to the Board of Adjustment.

31 VICE CHAIRMAN BASEHART: Yeah, we recommend  
32 that you keep in pretty continual touch with the Board of  
33 Adjustment staff so they know what's going on and can  
34 adjust as a result of that.

35 MR. SEAMAN: We may have to re-advertise  
36 differently than the way we advertised you for this  
37 variance, which is why you need to give us plenty of time  
38 whenever you know because we have to do it in a cycle.

39 VICE CHAIRMAN BASEHART: Well, especially if  
40 variances are added.

41 MR. SEAMAN: Yes.

42 VICE CHAIRMAN BASEHART: It seems to me that if  
43 that's actually a right-of-way then actually the house is  
44 encroaching onto somebody else's property. It's just not  
45 an easement encroachment, and it's then a major setback  
46 variance.

47 MR. CUFFE: Just for the record, and it doesn't  
48 have to do specifically with the variance but this  
49 property was combined, that northern portion of the  
50 property was combined into an existing lot in Trade Winds  
51 Estates by a plat waiver just several months ago, and in  
52 fact there was no indication at the time that the  
53 property owner that made the application did not have fee  
54 title to the entire property. If that is not the case  
55 then I just want to advise you that that plat waiver  
56 itself and the validity of this as a building lot is in  
57 jeopardy.

58 MR. JACOBS: I'm wondering if 30 days is long  
59 enough to straighten out all these problems. I think  
60 maybe it should be 60 days.

61 VICE CHAIRMAN BASEHART: I think we've already  
62 voted on it anyway so I think we owe it to the applicant

1 to let him have the flexibility to get back here quickly  
2 once those issues are resolved if they ever can be.  
3 Thank you.

4  
5  
6  
7  
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9  
10 VICE CHAIRMAN BASEHART: That leaves us with  
11 one petition, BA2004-00776, Eleanor Halperin, for  
12 Antiquer's Aerodrome.

13 MS. HALPERIN: Good morning. Ellie Halperin,  
14 as you said, for the record, representing Antiquer's  
15 Aerodrome.

16 VICE CHAIRMAN BASEHART: Have you been sworn  
17 in?

18 MS. HALPERIN: I have.

19 VICE CHAIRMAN BASEHART: Okay.

20 MS. HALPERIN: I will try and be as concise as  
21 I can since you've just had a lengthy hearing. In 2001  
22 the county initiated an eminent domain taking case to  
23 take part of Hagen Ranch Road that ran in front of this  
24 unrecorded subdivision that is a private airport that has  
25 been in existence for quite some time. In 2001, December  
26 of 2001, that case was dismissed. There were some  
27 problems, I believe, with the survey and the amount of  
28 property they wanted to take.

29 It was re-instituted in 2002 and settled at the  
30 end of -- the middle of 2003. As part of the cost to  
31 cure for the taking when they removed the fence and the  
32 landscaping that was along the Hagen Ranch right-of-way  
33 the cost to cure recommended by the appraisal was the  
34 installation of an eight-foot wall. The settlement was  
35 based on the installation by the homeowners and they were  
36 paid for an eight-foot wall.

37 During that condemnation there was never any  
38 discussion about the need for a variance to the eight-  
39 foot wall nor that there would be landscaping required in  
40 front of that wall. They weren't paid to apply for a  
41 variance and they weren't paid for any irrigation or  
42 landscaping to go within that right-of-way. So to begin  
43 with I think it's sort of a travesty that the homeowners  
44 association has to pay for a variance for something that  
45 resulted in a condemnation.

46 If in fact they knew that they had to apply for  
47 a variance and a six-foot wall was what was permitted by  
48 code they may have negotiated another settlement but  
49 that's not the settlement they negotiated. If in fact  
50 they were just going to put in a six-foot wall there  
51 would also be no need for the landscape variance because  
52 the six-foot wall is permitted by code. So the only  
53 variance that was asked for initially was to the eight-  
54 foot height.

55 We were postponed last month because in  
56 reviewing it staff felt like there needed to be a  
57 landscape buffer since we were asking for a variance.  
58 I'm not condemning staff at all. Staff did a great job  
59 in pointing this out to us and they've been very  
60 cooperative in trying to move this along in a timely  
61 fashion. A couple of weeks ago, not even quite that  
62 long, I was directed to speak with John VanLenup who I

1 have with me who was the president of the association at  
2 the time of the condemnation.

3 We've only gotten to speak fairly recently and  
4 he has some information, additional information, that  
5 I've been supplied and I will present to you. He's here  
6 to confirm it if you'd like. And I apologize, some of  
7 this I've only learned very recently. It may have  
8 changed staff's opinion, it may not. The eight-foot wall  
9 serves -- the reason for the negotiation of the eight-  
10 foot wall was for a couple of purposes.

11 One was to replace what was a six-foot fence  
12 with a two-foot barbed wire top and 14-foot areca palms  
13 which serve to buffer the noise from Hagen Ranch Road to  
14 the property owner adjacent to Hagen Ranch Road. In  
15 addition, the eight-foot wall was to keep animals and  
16 children out of the private airport. The potential  
17 danger of anybody running on to that or getting on to  
18 that runway whether it be an animal, a pet or a child is  
19 obviously devastating.

20 The property to the north, the development to  
21 the north, the homeowners intervened and negotiated with  
22 that developer to in fact put up an eight-foot chain link  
23 fence to keep their children and pets within their  
24 development so that they could not get out and run on to  
25 the runway. There is a six-foot fence with two-foot  
26 barbed wire on top to the south where there happens to be  
27 the county fire rescue station, again to keep animals and  
28 to keep children out.

29 There is a gate because the homeowners  
30 association allows the trauma hawk training to take place  
31 on their runway and the fire station accesses the  
32 property through that gate. The landscaping, the issue  
33 with the landscaping, along the right-of-way in addition  
34 to the fact that they weren't paid for it and nor for  
35 irrigation is the concern about the view. There's two  
36 concerns about putting in landscaping. One is traffic  
37 safety. If you look at -- and I don't know if you have  
38 the staff report in front of you, but if you look at the  
39 picture of Hagen Ranch Road looking down to the south,  
40 which is where traffic is coming from, if landscaping  
41 were installed within that right-of-way there is a  
42 serious concern about line of sight because the road  
43 curves at that point.

44 And, secondly, Mr. VanLenup just pointed out to  
45 me that he understands there's cable and there's  
46 underground wiring that may also prevent landscaping from  
47 being put in there. Most importantly, this was the  
48 result of an eminent domain action. This was not caused  
49 by the applicant. The settlement only included the  
50 construction of an eight-foot wall and they believe that  
51 special circumstance as well as the fact that they are  
52 putting in a wall that is consistent with the surrounding  
53 it looks like stone, it's a very attractive wall, will  
54 not detract from any of the neighborhood does not give  
55 them special treatment. They did not create this  
56 circumstance themselves.

57 The code does allow for an eight-foot wall  
58 surrounding golf courses, and I think this is a very  
59 similar circumstance surrounding a private airport so  
60 it's not out of compliance with the code or the spirit of  
61 the Comprehensive Plan. And I can answer any other  
62 questions. I don't want to take more of your time than

1 is necessary, and again I have Mr. VanLenup here if you  
2 have any questions for him.

3 VICE CHAIRMAN BASEHART: Okay. Before the  
4 Board discusses that, I need to ask a question of the  
5 county attorney's office. Ms. Halperin mentioned that  
6 there were actually two eminent domain suits on this  
7 issue. The first one, which was withdrawn because there  
8 were some errors on the part of the county surveying and  
9 stuff, I was retained by the attorney representing  
10 Antiquer's Aerodrome to be an expert witness in that  
11 case. There was really not much work done before the  
12 case was withdrawn, and then when it was re-filed it was  
13 determined by the attorney that there really weren't any  
14 planning issues and so I did not participate in the  
15 second case which ultimately resulted in this settlement.

16 So I don't think I have a conflict, number one.  
17 I have nothing personally to gain or lose by the results  
18 of the variance. And, secondly, I didn't even  
19 participate in the eminent domain case the second time  
20 where the agreement was reached. So I don't believe that  
21 I need to abstain on this item under those circumstances.  
22 I'd like your guidance.

23 MS. HELFANT: Are you currently under contract  
24 with them?

25 VICE CHAIRMAN BASEHART: No.

26 MS. HELFANT: Okay. Everything is okay. You  
27 can vote on the issue.

28 VICE CHAIRMAN BASEHART: Very good. Thank you.

29 MR. JACOBS: Has anybody objected to this  
30 variance? Do we have any...

31 MR. SEAMAN: There was only one woman who  
32 called in for clarification.

33 VICE CHAIRMAN BASEHART: Okay. Go ahead.

34 MS. HELFANT: I would just like to say that it  
35 is the applicant's responsibility to know whether or not  
36 a variance is required. It's not the county's  
37 responsibility. The applicant did have experts to know  
38 whether or not a variance is going to be required during  
39 the settlement negotiations. That's when either they  
40 should have applied to get a variance prior to the  
41 settlement negotiations or they should have actually  
42 requested a higher settlement price during the  
43 negotiations with the lump sum in accordance with the  
44 settlement negotiations. I mean it's not the fact that  
45 -- it's not the county's responsibility.

46 MS. HALPERIN: I would strongly beg to differ  
47 with that.

48 VICE CHAIRMAN BASEHART: All right. Well,  
49 before we do any further discussion and vote, and  
50 obviously there's no public interest here, we need to get  
51 the staff report.

52 MS. AURELSON: The staff report for BA2004-  
53 00776, Ms. Eleanor Halperin, agent, for Antiquer's  
54 Aerodrome, owner, to allow a proposed wall along Hagen  
55 Ranch Road, and a portion of the Skyline Drive, to exceed  
56 the maximum height requirement and to eliminate the  
57 required right-of-way buffer and landscape. Located on  
58 the southwest corner of Lake Ida Road and Jog Road,  
59 within the Antiquers Aerodrome Subdivision, in the AR  
60 Zoning District.

61 And staff recommends approval in part and  
62 denial in part based on the criteria that are contained

1 in your staff report. Staff recommends approval for the  
2 right-of-way buffer reduction, and the reason being that  
3 right-of-way taken already did occur in 2002, and Palm  
4 Beach County paid the applicant the amount of \$176,450 as  
5 a result of that action.

6 Also, that the width of the existing right-of-  
7 way was limited as a result of the eminent domain taking  
8 initiated by Palm Beach County. However, this action  
9 warrants a grant of a variance for the right-of-way  
10 buffer reduction from the required 15 feet to the  
11 proposed 7 feet tapering at south and north property  
12 corners.

13 The staff recommends to not approve a variance  
14 for total elimination of the landscape. The reason being  
15 is that there is approximately 7 feet along the right-of-  
16 way available for the applicant to install landscaping  
17 material there, and the required landscaping must be  
18 provided as specified in the code. Also, the staff does  
19 not approve the 8-foot high wall. The way the applicant  
20 argued initially or presented the case to us was that the  
21 8-foot wall will actually serve as a sound barrier and  
22 protect the neighboring communities from the noise  
23 pollution generated by the aircraft.

24 We never received any scientific evidence or  
25 report in support of that. Therefore, we cannot justify  
26 that this 8-foot high wall as opposed to the 6-foot high  
27 wall would abate the noise generated by the aircraft. Is  
28 there anything else?

29 MR. SEAMAN: And also if you look on your staff  
30 report on page 46 and 47, particularly 47, staff's point  
31 is that there is land there. There's about seven feet.  
32 We're looking for consistency with the surrounding area,  
33 which you can see on page 46 there's a 6-foot wall with  
34 attendant landscaping as well on the west side a 6-foot  
35 wall with attendant landscaping. So we're simply saying  
36 let's be consistent with the neighborhood with a 6-foot  
37 wall and some landscaping needs to go in that 7, 7-1/2  
38 foot strip. But we are willing to recommend approval for  
39 reduction in the right-of-way buffer because of eminent  
40 domain taking.

41 VICE CHAIRMAN BASEHART: I got a question for  
42 you. What you're doing is you're measuring these  
43 requests against the current code.

44 MR. SEAMAN: Basically by putting in a new wall  
45 you would be required to meet the current code.

46 VICE CHAIRMAN BASEHART: I mean I've been here  
47 forever, and when I got here Antiquer's Aerodrome already  
48 was there so it's been there longer than forever. I  
49 think Antiquer's Aerodrome was originally put in what,  
50 was it back in the '60s?

51 MS. HALPERIN: Yes.

52 VICE CHAIRMAN BASEHART: It seems to me when it  
53 was put in there was no buffer requirement in the code  
54 period. But they had a fence and they had some  
55 landscaping that they put there I guess on their own  
56 initiative to screen the runway from view and all that  
57 stuff. So I have a thing about this because I run into  
58 this all the time doing expert witness work. So they had  
59 a situation where, you know, whatever they had they  
60 exceeded the code requirement because at the time they  
61 built their project there was no code requirement. Then  
62 the county comes along and takes right-of-way, takes

1 their fence down, and says, well, we're going to give you  
2 money to build a new wall and now you're saying, yeah,  
3 but now you got to meet current code and you got to put  
4 this buffer in.

5 They didn't want to do any of it in the first  
6 place. The property in their existing situation, their  
7 longstanding fence and hedge and whatever it was, was  
8 taken from them by the county to widen the road. Why  
9 should they even need to get a variance to correct a  
10 deficiency from the current code? I thought that the  
11 special provisions in the code for, you know, following  
12 an eminent domain action protected you from all this  
13 stuff.

14 MR. SEAMAN: The eminent domain section recites  
15 that basically if you can at least provide a 5-foot  
16 landscape strip and your ingress-egress is still  
17 maintained that's all you need to do during eminent  
18 domain taking. That's the basic stuff.

19 VICE CHAIRMAN BASEHART: Well, if they could  
20 still have a 7-foot one then they wouldn't even need a  
21 variance, would they?

22 MR. SEAMAN: Well, actually they wouldn't need  
23 one at all. They could just put a 6-foot fence up  
24 because the code allows them to do that.

25 MS. HALPERIN: And then we wouldn't have needed  
26 any landscaping but we're only implementing -- I'm sorry.  
27 I didn't mean to interrupt.

28 VICE CHAIRMAN BASEHART: No, go ahead.

29 MS. HALPERIN: There's just a couple things  
30 that I want to add. The appraisal, which I have copies  
31 of just the summary pages, which is part of the record, I  
32 don't know if you want to see it, I will read and it  
33 totaled the amount that was paid to Antiquer's Aerodrome  
34 since...

35 VICE CHAIRMAN BASEHART: Whose appraisal is it,  
36 the county's or the...

37 MS. HALPERIN: It was prepared for Palm Beach  
38 County Department of Engineering right-of-way.

39 VICE CHAIRMAN BASEHART: Okay.

40 MS. HALPERIN: And the summary concludes since  
41 the landscape buffer cannot be fully restored the only  
42 alternative is to construct a decorative buffer wall  
43 which will esthetically blend into the newly constructed  
44 entry wall and run along the entire length of the common  
45 area fronting Hagen Ranch Road. We are proposing a  
46 decorative post and slate concrete wall system that will  
47 be eight feet in height with a footing that will not  
48 encroach onto the adjacent private property and also  
49 esthetically blend with the design of the new entry walls  
50 and gate.

51 And in fact they needed to get an easement from  
52 that lot one property owner because there was inadequate  
53 property left to even install the wall where it curves  
54 along into the front entrance, and I concur obviously  
55 that -- and again I'll say the expense they're going  
56 through to even get this variance that they were not paid  
57 for. They did not employ nor do I think it's a property  
58 owner's responsibility to employ experts to advise them  
59 through an eminent domain taking. I believe that the  
60 government entity doing the taking has a responsibility  
61 to compensate them for all damages incurred as a result  
62 of the taking.

1           MR. SEAMAN: I have a question. I still see a  
2 chain link fence along there. Isn't that the fence  
3 you're referring to that was taken down?

4           MS. HALPERIN: No. That was replaced by DOT,  
5 and it is a 6-foot fence which they had before with two  
6 foot of barbed wire to keep that 8-foot height.

7           MR. PUZZITIELLO: So you want to get rid of  
8 that fence and put up a block wall?

9           MS. HALPERIN: Correct. A pretty block wall  
10 that looks like stone.

11           MR. PUZZITIELLO: And that height is by all the  
12 hedges to promote the pretty block -- the pretty stone.

13           MR. JACOBS: I frankly don't see much  
14 difference between a 6-foot fence with 2 feet of barbed  
15 wire and an 8-foot wall that's physically attractive.

16           MR. SEAMAN: It was recommending that we  
17 maintain continuity in the area because to the north  
18 there's a 6-foot wall, and to the west there's 6-foot  
19 walls, and they all have attractive landscaping in front  
20 of them.

21           VICE CHAIRMAN BASEHART: And those walls are  
22 adequate to protect their runways?

23           MR. SEAMAN: If it's approved that noise will  
24 be abated over the 8-foot versus the 6-foot, and that  
25 children won't jump over a 6-foot any -- over an 8-foot  
26 any easier or harder than a 6-foot. It's just staff's  
27 recommendation but of course it's the Board that makes  
28 the decision.

29           MS. HALPERIN: Pardon the interruption one more  
30 time. The 8-foot is just added security as far as  
31 preventing animals and children from getting over it just  
32 like the 2 foot of barbed wire. And we understand -- and  
33 it's beautiful landscaping and a fence if you look at  
34 your pictures headed to the north, but if you also look  
35 at that you'll see where the wood poles are for the over  
36 wire for the power lines, and if you look on the view  
37 headed south those power lines are directly in the view  
38 of oncoming traffic. And that's where the road curves,  
39 and there is just not adequate sight vision. And, again,  
40 we believe there are cables in there to put in  
41 landscaping that they were not compensated for.

42           VICE CHAIRMAN BASEHART: Any member of the  
43 Board have more questions?

44           (No response)

45           VICE CHAIRMAN BASEHART: Any member of the  
46 Board want to make a motion?

47           MR. JACOBS: I'll make a motion that we approve  
48 the variance.

49           VICE CHAIRMAN BASEHART: All three parts?

50           MR. JACOBS: All three parts.

51           VICE CHAIRMAN BASEHART: Okay. Motion by Mr.  
52 Jacobs. Do we have a second?

53           MR. PUZZITIELLO: Second.

54           VICE CHAIRMAN BASEHART: Second by Mr.  
55 Puzzitiello. Any further discussion?

56           (No response)

57           VICE CHAIRMAN BASEHART: All those in -- oh, I  
58 didn't ask is there any member of the public here to  
59 speak on this item?

60           (No response)

61           VICE CHAIRMAN BASEHART: Seeing none, all those  
62 in favor of the motion signify by saying aye.

1           BOARD MEMBERS: Aye.  
2           MR. SEAMAN: Can we have conditions if you're  
3 going to approve it?  
4           VICE CHAIRMAN BASEHART: Do you want to  
5 withdraw the motion and a second to listen to a  
6 recommendation from staff or not?  
7           MR. JACOBS: I'll listen to the recommendation.  
8 I don't know if it'll change my motion.  
9           VICE CHAIRMAN BASEHART: Okay. Alan, do you  
10 want...  
11           MR. SEAMAN: We had two conditions and one was  
12 that the wall be constructed with materials consistent  
13 with those used on the walls located on the north and  
14 west of the property. And the third condition was that  
15 there be at least hedge material planted along the wall  
16 30 inches on center and 30 inches overall.  
17           MR. PUZZITIELLO: She told us she's doing a  
18 stone-looking wall which is not consistent with stucco  
19 and paint.  
20           MR. SEAMAN: That's staff's recommendation. If  
21 you choose not to...  
22           MS. HALPERIN: I'm afraid we couldn't agree to  
23 that condition.  
24           MR. JACOBS: I'll let my motion as originally  
25 made stand.  
26           VICE CHAIRMAN BASEHART: Okay. Does the second  
27 stand?  
28           MR. PUZZITIELLO: Yes.  
29           VICE CHAIRMAN BASEHART: Okay. All those in  
30 favor of the motion indicate by saying aye.  
31           BOARD MEMBERS: Aye.  
32           VICE CHAIRMAN BASEHART: Opposed, no.  
33           (No response)  
34           VICE CHAIRMAN BASEHART: Motion carries  
35 unanimously.  
36           MS. HALPERIN: Thank you.  
37           VICE CHAIRMAN BASEHART: And that concludes our  
38 agenda today so I guess we're ready for a motion to  
39 adjourn.  
40           MR. JACOBS: So moved.  
41           VICE CHAIRMAN BASEHART: Okay. We have a  
42 unanimous motion. All those in favor?  
43           BOARD MEMBERS: Aye.  
44           VICE CHAIRMAN BASEHART: Opposed?  
45           (No response)  
46           VICE CHAIRMAN BASEHART: Motion carries. We're  
47 adjourned.  
48           (Whereupon, the meeting was adjourned at 10:40  
49 a.m.)