

**ZONING COMMISSION
OF PALM BEACH COUNTY**

Thursday, August 7, 2008
9:02 a.m. - 11:00 a.m.
Jane M. Thompson Memorial Chambers
301 North Olive Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Frank Barbieri, Jr., Chairman
William F. Anderson, Vice Chairman
Alexander Brumfield, III, Commissioner
Allen Kaplan, Commissioner
Joanne Davis, Commissioner
Al Zucaro, Commissioner
Kelley Armitage, Alternate Commissioner
Richard E. Bowman, Alternate Commissioner

Leonard Berger, Assistant County Attorney

Jon Mac Gillis, Zoning Director

Wendy Hernandez, Zoning Manager

Autumn Sorrow, Senior Site Planner, Zoning

Ron Sullivan, Senior Site Planner, Zoning

Carol Glasser, Site Planner II, Zoning

Ora Owensby, Site Planner II, Zoning

Donna Adelsperger, Site Planner I, Zoning

D. G. McGuire, Site Planner II, Arch Review

Bill Cross, Senior Site Planner, Code Revision

Sussan Gash, Planner II, Planning

Jim Choban, Land Development

Joanne Koerner, Land Development

Ken Rogers, Director, Land Development Div.

Nick Uhren, Senior Professional Engineer, Traffic Div.

Kenny Wilson, Health Department

Bob Kraus, ERM

Melanie Borkowski, Facilities Compliance

Terry Verner, Director of Code Enforcement

Michael Owens, School Board Rep.

Robin Parker, Zoning Secretary

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P R O C E E D I N G S

CHAIRMAN BARBIERI: All right. We'd like to get started. If everybody would please take your seats.

Good morning. Would you please take the role.

MS. HERNANDEZ: Commissioner Armitage.

COMMISSIONER ARMITAGE: Here.

MS. HERNANDEZ: Commissioner Brumfield.

COMMISSIONER BRUMFIELD: Present.

MS. HERNANDEZ: Commissioner Davis.

COMMISSIONER DAVIS: Here. MS. HERNANDEZ: Commissioner Anderson.

VICE CHAIRMAN ANDERSON: Here.

MS. HERNANDEZ: Commissioner Barbieri.

CHAIRMAN BARBIERI: Here.

MS. HERNANDEZ: Commissioner Bowman.

COMMISSIONER BOWMAN: Here.

MS. HERNANDEZ: Commissioner Zucaro.

COMMISSIONER ZUCARO: Here.

MS. HERNANDEZ: Commissioner Kaplan.

COMMISSIONER KAPLAN: Here.

MS. HERNANDEZ: We have a quorum.

CHAIRMAN BARBIERI: All right. We have a quorum. Would everybody please stand and for the opening prayer and Pledge of Allegiance.

(Whereupon, the opening prayer and Pledge of Allegiance were given.)

CHAIRMAN BARBIERI: The Zoning Commission of Palm Beach County has convened at 9:00 a.m. in the Jane M. Thompson Memorial Chambers, 6th Floor, 301 North Olive Avenue, West Palm Beach, Florida, to consider applications for Official Zoning Map Amendments, Planned Developments, Conditional Uses, Development Order Amendments, Type II variances and other actions permitted by the Palm Beach County Unified Land Development Code and to hear the recommendations of staff on these matters.

The Commission may take final action or issue an advisory recommendation on accepting, rejecting or modifying the recommendations of staff. The Board of County Commissioners of Palm Beach County will conduct a public hearing at 301 North Olive Avenue, West Palm Beach, Florida, in the Jane M. Thompson Memorial Chamber, 6th Floor, at 9:00 a.m. on Thursday, August 28, 2008, to take final action on the applications we'll be discussing today. Zoning hearings are quasi-judicial and must be conducted to afford all parties due process. This means that any communication with the commissioners which occurs outside of the public hearing must be fully disclosed at the hearing.

In addition, anyone who wishes to speak at the hearing will be sworn in and may be subject to cross-examination. In this regard, if any group of citizens or other interested parties wish to cross-examine witnesses, they must appoint one representative from the entire group to exercise

this right on behalf of the group. Any person representing a group or organization must provide written authorization to speak on behalf of the group or organization.

Public comment continues to be encouraged, and all relevant information should be presented to the Commission in order that a fair and appropriate decision can be made.

Staff, do we have proof of publication?

MR. Mac GILLIS: Yes, Mr. Chairman.

CHAIRMAN BARBIERI: We need a motion to receive and file.

COMMISSIONER BRUMFIELD: So moved.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Brumfield, second by Commissioner Anderson.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

The record should reflect that

Commissioner Armitage, one of our alternates, will be voting today. Commissioner Bowman will not be voting today.

Those of you who wish to address the Commission, would you please stand and be sworn in by the court reporter.

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

COURT REPORTER: Thank you.

CHAIRMAN BARBIERI: All right. Are there any disclosures, starting with Commissioner Bowman -- Armitage?

COMMISSIONER ARMITAGE: No disclosures.

CHAIRMAN BARBIERI: Commissioner --

COMMISSIONER BRUMFIELD: No disclosures.

CHAIRMAN BARBIERI: Commissioner.

COMMISSIONER DAVIS: Yes. I met with -- I spoke with one applicant.

CHAIRMAN BARBIERI: Okay. Commissioner Anderson.

VICE CHAIRMAN ANDERSON: Yes, I met with agent for Agenda Item No. 3.

CHAIRMAN BARBIERI: And I spoke with the agent for Item No. 3.

COMMISSIONER BOWMAN: No disclosure.

COMMISSIONER ZUCARÓ: No disclosures.

COMMISSIONER KAPLAN: No disclosures.

MR. BERGER: Mr. Chair. Ms. Davis, could you just tell us which agenda item the -- your discussion was with in case somebody wants to speak to that issue?

COMMISSIONER DAVIS: It was the kids -- the school, the foster care kids. I don't know.

MS. HERNANDEZ: Kid Sanctuary.

MR. Mac GILLIS: Item 6.

MR. BERGER: Kid Sanctuary. Okay. Thank you.

COMMISSIONER DAVIS: Yeah.

CHAIRMAN BARBIERI: All right. Staff.

MR. Mac GILLIS: That would bring us to Page 2 of your agenda, the postponed items.

Beginning with Item 1, PDD-2006-1682, 112th/Northlake Office, a request by the applicant to postpone 30 days to September 4th, 2008.

We need a motion.

CHAIRMAN BARBIERI: All right. Is there anybody here to speak on Item No. 1, PDD-2006-01682?

(No response)

COMMISSIONER KAPLAN: Not hearing any, Mr. Chairman, I'll move to postpone Item 2006-1682 to 30 days, Thursday, September 4th, 2008.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion was made by Commissioner Kaplan, seconded by Commissioner Anderson.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 2, Z/DOA/CA-2007-1185, Winners Church, request to postpone 30 days to September 4th, 2008.

CHAIRMAN BARBIERI: Do we have anybody here to speak on Item 2, Z/DOA/CA-2007-01185?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I'll move to postpone Z/DOA/CA-2007-1185, 30 days to September 4th, 2008.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner

Anderson.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: We had a request that didn't get on your add and delete for Item 15, which is DOA/R-2008-303, the Lantana Civic Pavilion.

There's a request to postpone this 30 days to September 4th, 2008.

The applicant is working out issues with architecture with COBWRA.

CHAIRMAN BARBIERI: Mr. Moglill (ph), Harold Moglill?

MR. MOGUL: Mogul.

CHAIRMAN BARBIERI: Mogul. I'm sorry. There's a request by the petitioner to postpone this, and you've requested to speak on this item.

Do you have any objection to the postponement?

MR. MOGUL: I have no objection to postpone and will be appearing at the date that they will be having the next meeting.

CHAIRMAN BARBIERI: Okay. And for purposes of the court reporter, would you put your name on the record and your position.

MR. MOGUL: Yes. Harold Mogul. I'm representing Lacuna Homeowners Association, which surrounds the subject property.

CHAIRMAN BARBIERI: Okay.

MR. MOGUL: Except for Lantana Road.

CHAIRMAN BARBIERI: All right. Thank you. Is there anybody else here to speak on Item No. 15?

(No response)

COMMISSIONER KAPLAN: Staff, how long a postponement they're requesting?

MR. Mac GILLIS: Thirty days.

COMMISSIONER KAPLAN: Thank you. Hearing no members of the public speak, I move to postpone DOA/R-2008-303 for 30 days.

MR. Mac GILLIS: September 4th, 2008.

COMMISSIONER KAPLAN: September 4th.

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Davis.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: This will bring us to Page 3, the consent agenda, beginning with Item 3, DOA/R-2008-285.

Staff is recommending approval of this item, subject to 28 conditions.

There are two motions on this application.

We'd ask the applicant to come to the podium, state their name and whether they agree to the condition.

MR. TERRY: Good morning. Brian Terry, with Land Design South, representing Weinbaum Yeshiva High School, and we are in agreement with the conditions of approval.

CHAIRMAN BARBIERI: All right.

I had several calls about this, since it's in my district, from the Boca Lago community, and I spoke with you, Brian, and you indicated that the closest Boca Lago -- I guess they got notice because their community is adjacent to the JCC?

MR. TERRY: That's correct.

CHAIRMAN BARBIERI: But --

MR. TERRY: We're approximately 1,000 feet to the nearest resident within Boca Lago.

CHAIRMAN BARBIERI: So that's where the distance between where the new school will be built and --

MR. TERRY: That's correct. That's -- that's correct.

CHAIRMAN BARBIERI: Okay.

Is there anybody here from the public to speak on Item No. 3?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I'll move to recommend approval of a development order amendment to reconfigure the master plan on DOA/R-2008-0285.

COMMISSIONER BRUMFIELD: Second.

VICE CHAIRMAN ANDERSON: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries.

COMMISSIONER KAPLAN: On the same issue I'll move to recommend approval of requested use to allow a secondary school.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Anderson.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 4, PDD-2007-1792, MPC III Turnpike Business Park.

Staff is recommending approval, subject to 27 conditions.

There's one motion on this item.

MR. JACOBSON: Yes. Good morning. Andrew Jacobson for MPC III.

Regarding the 27 conditions, and I have Mr. McCraney here, who is the president of the company, with us, there are four conditions that we'd like to put on the record that we are currently discussing with County Engineering staff, those being Engineering Items 1.c, 2, 3 and 4, and I'll just briefly state what they are.

The first one being a requirement that no building permits for the site may be issued after January 1, 2013.

In light of the CRALLS on Belvedere which is integral to this project, which sunsets on December 31st, 2017, we were under the impression that these requirements would be co-terminus with that, and we're discussing that with the County.

Second item is a requirement to landscape the median along Belvedere Road adjacent to the portion of our site.

We're looking at this because this is an area where Belvedere crosses over the Turnpike, and it's a bridge, and it's basically a descending area with apparently no visible means to support a median, so we're looking at that also with the County.

Third item is a requirement for a five-

foot pedestrian pathway along the west side of Cleary Road, which exists adjacent to our site, but they want it to be extended all the way south to Southern Boulevard, and we're in discussions about the advisability of this since this runs through a very, very heavily industrial neighborhood where a pedestrian path would be basically illogical and possibly unsafe.

Fourth and final item is the requirement to post a bond for a traffic signal at Cleary and Belvedere.

We believe that there is already a bond posted by the Terracina developer, the residential community, which was a requirement of their zoning change, and we think there is a bond already posted.

So we're looking with the County to avoid a duplicitous bond posting.

We believe that over the next week or so we'll get these four issues ironed out satisfactorily with the County Engineering staff.

So what we're requesting is a motion to approve, subject to the modification or elimination of those four conditions pursuant to an agreement between the County and ourselves, those being Conditions 1.c, 2, 3 and 4.

CHAIRMAN BARBIERI: Engineering.

MR. ROGERS: We -- I'm sorry. Excuse me. I just found out about the objection to these conditions yesterday, have not had enough time to thoroughly research all of them.

I believe that we have -- we'll be able to -- I'm sorry.

We will be able to resolve all of these within the next three or four days, and so we will be either sticking with the same conditions of approval or recommendation to the Board of County Commissioners, or we will be making revisions to these conditions as this research will be -- will be resolved, so --

COMMISSIONER KAPLAN: Mr. Chairman --

MR. ROGERS: We recommend that the conditions stay in as they are and subject -- with the understanding that if there's anything that can change within the next several days, we will change that in our recommendation to the Board of County Commissioners.

COMMISSIONER KAPLAN: I'd like to ask the petitioner.

In the event the County doesn't go along with you, are you willing to accept those conditions?

MR. JACOBSON: Well, we can't answer that in advance because we want to see where the research goes.

But, obviously, before this gets to the County Commission, we'll have either accepted them as is or in whatever compromise form they come to.

COMMISSIONER KAPLAN: Without a commitment that you will accept, I'm going to move we postpone it.

I can't keep this an open-ended motion.

CHAIRMAN BARBIERI: All right.
Before we take Commissioner Kaplan's motion, is Kimley-Horn one of your advisers? Okay.

Kimley-Horn -- Kenneth Jacobs -- Jackson, I'm sorry, you've asked to speak on this? Are you in opposition to this?

MR. JACKSON: No, sir. My name's Kenneth Jackson. Address is 4431 Embarcadero Drive in West Palm Beach.

We are the design engineers for Florida Turnpike Enterprise widening project.

The Turnpike asked me to come and make the Commission aware of the fact that the Turnpike is proposing to widen the main line from Lake Worth Road to Okeechobee Boulevard, and that will include some modifications at the State Road 80 or Southern Boulevard interchange, and there are right-of-way requirements that may impact this parcel.

A portion of the parcel along the Turnpike may need to be taken for right-of-way for the interchange modification.

Those requirements are not finalized yet.

The plans are in a preliminary design phase, and we will be working with County Engineering to minimize the impacts the impacts to the parcel.

But the Turnpike asked me to make the Commission aware of that project and the fact that it may impact the ultimate site plan for this parcel.

CHAIRMAN BARBIERI: If we postpone this, as Commissioner Kaplan is suggesting, would you be able to work with County Engineering in the next 30 days to figure out where those impacts are at on these conditions?

MR. JACKSON: Yes, we can.

MR. JACOBSON: I'd like to make a comment on that, about what he just said, and I hate to be -- I hate to find things out like this at a public forum, but, obviously, we've had this -- this is not just a zoning approval.

This is -- effectually will approve our site plan once we get the zoning 'cause the site plan has been in, and our company has spent thousands and thousands of dollars of time and effort designing a site plan, and from what I just heard the whole thing may be ineffective as a result of a potential taking by the Turnpike, and it certainly would have been nice to have found this out during the past several months that we've been before the County here.

I mean it's kind of shocking to be blind-sided like this, but, you know, we're -- we're at a loss for words upon hearing this news.

I mean I'd like to ask this gentleman how long he's known about this, and why hasn't he notified the County or us or someone.

CHAIRMAN BARBIERI: Well, you know, this is not the -- this is not the venue to take this up.

I mean we have nothing to do with the --

the Turnpike Authority.

MR. JACOBSON: I agree with you completely. It's just a little shocking to be hit like this in front of you, you know, with this statement.

CHAIRMAN BARBIERI: But I understand that yesterday is the first time you let our County staff know that you had objections to the conditions so it looks like they were kind of --

MR. ROGERS: Mr. Chairman --

CHAIRMAN BARBIERI: -- blind-sided yesterday, also.

MR. JACOBSON: Well, we just received --

MR. ROGERS: In all --

MR. JACOBSON: -- the conditions.

MR. ROGERS: In all candor, we did inform Mr. McCraney about this yesterday within hours of our hearing about this for the first time.

I don't want anybody get the impression that this is the first time that they have heard about this this morning, although it was probably about 18 hours ago when they heard about it the first time, but it was not this morning.

As soon as we found out about it, we did inform the petitioner.

COMMISSIONER KAPLAN: But I agree, Mr. Chairman, with the petitioner.

As much as petitioner doesn't like to be surprised, we, too, on the Zoning Commission don't like to be surprised with these last-minute changes, pro and con, and particular now I think my motion would be appropriate.

COMMISSIONER BRUMFIELD: And I would second it.

COMMISSIONER ZUCARO: I agree.

CHAIRMAN BARBIERI: All right. We have a motion by Commissioner Kaplan, a second by Commissioner Brumfield.

Before we vote on the motion, is there anybody here -- else here from the public that wants to speak on this item?

(No response)

CHAIRMAN BARBIERI: All right. Seeing none, we'll take a vote on the motion.

This is a postponement for 30 days to September 4th, 2008.

All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. JACOBSON: For the record, we'd like to just reflect that we would have preferred to have been approved, subject to the conditions.

I think we voiced that to you earlier.

CHAIRMAN BARBIERI: Well, probably you might have had a better chance of that until the Turnpike Authority showed up and said they're going to make -- might be substantial changes to your conditions, and so we need to have an opportunity to see what those changed conditions are.

MR. JACOBSON: Which we're obviously not happy about.

Thank you very much.

MR. Mac GILLIS: Item 5, Z-2007-1808, Military Medical.

Staff's recommending approval, subject to 22 conditions.

There's one motion on this item.

CHAIRMAN BARBIERI: Do we have a petitioner here on No. 5?

MR. FROGNER: Good morning. My name is Jim Frogner. I'm an agent for the owner.

We reviewed the 22 conditions. We agree with the conditions.

There's one conditions I would like to further discuss with County staff in the next couple weeks, but, in essence, we do agree to all the conditions.

CHAIRMAN BARBIERI: All right.

Is there anybody here from the public to speak on Item No. 5, Z-2007-01808?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I'll move -- recommend approval of an official zoning map amendment from the Agricultural Residential Zoning District to the Community Commercial Zoning District with a Conditional Overlay Zone.

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: Motion was made by Commissioner Kaplan, seconded by Commissioner Davis.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Brings us to Page 4 of the agenda, Item 6, ZV/Z/CA-2007-852, Kid

Sanctuary.

Staff is recommending approval, subject to 18 conditions.

There are three motions on this item.

CHAIRMAN BARBIERI: Good morning.

MR. SCOTT: Good morning. For the record, Russell Scott, with Urban Design Studio, representing the applicant.

And, yes, we are in agreement with all the conditions of approval as posted.

CHAIRMAN BARBIERI: All right. Is there anybody here to speak on Item No. 6, ZV/Z/CA-2007-00852?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I'll move to adopt a resolution approving a Type II zoning variance to allow a reduction in the right-of-way buffer, a reduction of the incompatibility buffer, a reduction of the dimension of access ways and a reduction of the pedestrian walk and a reduction of the continuous walkway from the street to the building entrance on ZV/Z/CA-2007-852.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion was made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: On the same petition I recommend approval of an official zoning map amendment from the Public Ownership Zoning District to the Single Family Residential Zoning District.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: On the same petition I recommend approval of a Class A conditional use to allow a Type III congregate living facility.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion again made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. SCOTT: Thank you.

MR. Mac GILLIS: Item 7, Z-2008-610, Rodriguez Rezoning.

Staff is recommending approval of this rezoning subject to two conditions, one motion.

CHAIRMAN BARBIERI: This Luis Rodriguez?

MR. RODRIGUEZ: Yes.

CHAIRMAN BARBIERI: That's you. Good morning.

MR. RODRIGUEZ: Good morning.

CHAIRMAN BARBIERI: Do you agree to the conditions?

MR. RODRIGUEZ: Yes, I do.

CHAIRMAN BARBIERI: All right. State your name for the record, please.

MR. RODRIGUEZ: Luis A. Rodriguez.

CHAIRMAN BARBIERI: All right.

Is there anybody here from the public to speak on Item No. 7?

(No response)

COMMISSIONER KAPLAN: Not hearing any opposition, Mr. Chairman, I move on Z-2008-00610 to recommend approval of an official zoning map amendment from the Agricultural Residential Zoning District to the Residential Single Family Zoning District with a Conditional Overlay Zone.

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: All right. Motion made by Commissioner Kaplan, seconded by Commissioner Davis.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. RODRIGUEZ: Thank you.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: Next item, had a request by staff to move this item to the regular agenda.

Apparently there's some issue they're still trying to work out on a condition with the applicant that they won't agree to.

So I'd request we move Item 8 to the regular agenda.

CHAIRMAN BARBIERI: All right. Do we have a motion to reorder the agenda?

COMMISSIONER KAPLAN: So moved.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Anderson.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries.

Item No. 8 will be the first item on the regular agenda.

MR. Mac GILLIS: Bring us to Item 9, Z/CA-2007-1618, Westgate One.

Staff is recommending approval, subject to 14 conditions.

There are two conditions.

MR. BROPHY: Good morning. Jeff Brophy, with Land Design South, agent for the petitioner.

We are in agreement with all the conditions of approval.

CHAIRMAN BARBIERI: All right.

Is there anybody here to speak on Item 9, Z/CA-2007-1618?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I recommend approval of official zoning map amendment rezoning from Neighborhood Commercial Zoning District to the General Commercial Zoning District.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONER DAVIS: I have a question.

CHAIRMAN BARBIERI: I'm sorry.

Commissioner Davis.

COMMISSIONER DAVIS: One of the conditions

was to exchange palms for canopy trees. I had a question why you're doing that.

MR. BROPHY: This is -- this is in the Westgate CRA, and this is along the -- actually along Westgate Avenue, an area where they're trying to encourage kind of this kind of urban redevelopment, and what is allowed is -- we're actually allowed to go to a zero setback and no buffers.

But since this is going to be the first six-story building along this corridor, we wanted to be able to provide some landscape.

So instead of providing the full suburban buffer, which is usually about 20 feet, we provided a five-foot buffer, and in that five feet, because the building is so high, we can actually include the canopy trees.

It's a -- so what we're doing is we're planting palms in lieu of that.

Now, realistically what we could do is we could actually go to a zero setback and provide no buffer at all.

These were actually included in variances I think that were voted on probably about two months ago.

COMMISSIONER DAVIS: Thank you.

CHAIRMAN BARBIERI: All right. Is there any other discussion on the motion?

(No response)

CHAIRMAN BARBIERI: All right. All those in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

We need another motion on this.

COMMISSIONER KAPLAN: Second motion on the same item, to recommend approval of a Class A conditional use to exceed 10 dwelling units per acre within the Westgate Overlay.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. BROPHY: Thank you.

MR. Mac GILLIS: This brings us to item 10, Z-2008-624, Fire-Rescue Station No. 32.

Staff is recommending approval, subject to six conditions with one motion.

CHAIRMAN BARBIERI: Good morning.

MS. CUETARA: Good morning. Michelle Cuetara, with Kilday and Associates, representing the applicant. Also with me today is Melanie Borkowski, with Facilities Compliance, who is the applicant for the petition.

We agree to all of the voluntary commitments; however, we are working with Land Development on some minor tweaks of the wording for the two Engineering conditions, but we agree with the intent of the conditions.

CHAIRMAN BARBIERI: Okay.

Is there anybody here to speak on 10, Z-2008-624?

(No response)

COMMISSIONER KAPLAN: Not hearing any members in opposition, I'll move recommend approval of official zoning map amendment from the Agricultural Residential Zoning District to the Public Ownership Zoning District on Z-2008-624.

COMMISSIONER BRUMFIELD: Second.

MS. CUETARA: Thank you.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Next three items are on -- that we've added onto the consent agenda are on your add and delete.

Item 13, ZV/DOA/R-2007-1596, Fountains East MUPD.

CHAIRMAN BARBIERI: Good morning.

MS. GLAS: Good morning. Dodi Glas, with Gentile, Holloway, O'Mahoney, representing the petitioner, and we're generally in agreement with all of the conditions.

We've had a lot of cooperation with COBWRA and staff. We appreciate the opportunity.

CHAIRMAN BARBIERI: Generally in agreement?

MS. GLAS: There's a -- there's a couple minor typo-type things --

CHAIRMAN BARBIERI: Okay.

MS. GLAS: -- but we're good. We're excited we're at this point.

CHAIRMAN BARBIERI: Okay. All right.

Is there anybody -- is there anybody here from the public to speak on Item 13, ZV/DOA/R-2007-1596?

(No response)

COMMISSIONER KAPLAN: Not hearing any members in opposition on ZV/DOA/R-2007-1596, I move to adopt a resolution approving a Type II zoning variance to allow a reduced setback for a decorative tower and to allow a 24 hour operation for commercial adjacent to residential for the drugstore drive-through.

VICE CHAIRMAN ANDERSON: Second.

COMMISSIONER KAPLAN: Motion made by Commissioner Kaplan, second by Commissioner Anderson.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: Second motion on the same petition, to recommend approval of a development order amendment to reconfigure the site plan, amend conditions of approval, to add an access point and to revise the development time line, restart the commencement clock.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Anderson.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: Third motion on the same petition, to recommend approval of a requested use to allow for a daycare, general, and Type I restaurant.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Anderson.

Is there any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. GLAS: Thank you.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: Next item is Item 14, ZV/DOA-2008-458, Water Treatment Plant No. 3.

Staff is recommending approval of three motions, subject to 11 conditions.

MS. DOLAN: Good morning. Jean Dolan (ph), JPR Planning Services, agent for Palm Beach County Water Utilities, and we're in agreement with all the conditions.

CHAIRMAN BARBIERI: All right.

Is there anybody here from the public to speak on Item 14, ZV/Z/DOA-2008-458?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, I'll move to adopt a resolution approving a Type II zoning variance to allow reduction of the width in the perimeter buffer and the number of interior landscape islands on ZV/Z/DOA-2008-458.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: Second motion, the same petition, to recommend approval of an official zoning map amendment from the Single Family Residential Zoning District to the Public Ownership Zoning District with a Conditional Overlay Zone.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: On the same petition, third motion to recommend approval of a legislative abandonment of Resolution R-89-944, Control No. 1988-062.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion again made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: This will bring us to Item 16, ZV-2008-1033, Morikami Park Nursing

Center.

Staff is recommending approval, subject to six conditions.

There's one motion.

MR. MILLER: Good morning. Bradley Miller, Miller Land Planning Consultants, representing the applicant.

We are in agreement with the conditions.

CHAIRMAN BARBIERI: Not generally?

MR. MILLER: Not even generally.

CHAIRMAN BARBIERI: Okay.

Is there anybody here from the public to speak on Item No. 16, ZV-2008-1033?

(No response)

COMMISSIONER KAPLAN: Not hearing any, Mr. Chairman, I'll move on ZV-2008-1033 to adopt a resolution approving a Type II zoning variance to allow the elimination of the frontage and legal access on arterial or collector street.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. MILLER: Thank you.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: That'll bring us to the regular agenda, and the first item we pulled off was Item 8, DOA/R-2007-1401, Grove Center Office, Planned Office Business Park, found on Page 132 through 155.

Bill Cross will discuss the -- specifically the one condition unless you want a full presentation on this.

CHAIRMAN BARBIERI: No.

MR. Mac GILLIS: Okay.

You could just focus in on the condition.

MR. CROSS: Good morning, Commissioners.

We have one minor item as a condition of approval here that's up for discussion as requested by the applicant.

This, in essence, is development order amendment to an existing developed site. It has an existing office building on it.

If you would, looking at Pages 139 and 140 of your packet, you can see the aerial photograph, as well as a site plan for the site, that shows an existing three-story office building on the northern portion of the site.

The southern portion of the site is somewhat undeveloped. It has an existing parking lot and an existing drive-through facility.

The applicant is simply proposing to demolish the existing drive-through facility, do some minor reconfigurations to the landscaping and the sidewalks and the parking lot and install or construct a place of assembly or a place of worship.

The issue at hand here is that the Zoning Code protects existing developments through our Article 1, and that means that we can't require unaffected areas of a site to be amended if it results in the loss of density, intensity or in some cases parking.

However, this reconfiguration of the south portion of the site, the application for a brand new building triggers all new code requirements to the maximum extent feasible. That requires pedestrian connectivity.

As indicated on Page 135 there's a one-paragraph write-up that cites two portions of the code that requires that this new building must connect to an existing pedestrian circulation system.

In addition to that, I want to point out that we allow the applicant to use the current code requirement for parking calculations for not just the affected area of the site, but the entire area of the site.

So whereas they previously had 261 parking spaces, which is what they were required for that office building, under the new code they're only required to have 237 parking spaces.

They are proposing 262 because of the minor reconfiguration; however, they don't want to lose any parking, and I think for past case history on projects in that area parking is at a premium. We, too, don't want to see them lose any parking.

Therefore, at the development review officer process we agreed to certify this project to move forward by meeting its pedestrian connectivity requirements through the application of a condition.

The condition requires that a sidewalk be constructed along Powerline Road from the front of this place of assembly northward up to the nearest road intersection that has a sidewalk.

That is the issue before you today.

Staff feels that this is not a debatable issue. They either need to not get the approval for the site. They either need to figure a way to reconfigure the site to put the sidewalk in, or they need to agree to the condition to allow for and pay for the construction of this sidewalk to provide for the required connectivity.

With that, unless there's any more questions on the use, I'll turn it over to the applicant.

MS. MISKEL: Good morning. My name is Bonnie Miskel, and I'm here on behalf of the applicant.

I'm just going to get in front of the aerial if you don't mind.

We don't disagree with staff's comments, but we do disagree with staff's interpretation of the connectivity section of the code.

Very briefly, I'd just like to give you some background.

First of all, to give you some history on the location or the siting of the temple, Mike -- the business office owner was approached by a group of residents in Boca Grove, Boca Grove being this (indicating) community to the west.

They wanted a facility near their homes so that when they worship, they can walk to the temple.

This particular location was not being utilized at the time. It's a -- it was a remote drive-through that is not being used at the moment and some green area.

We started this process solely designing it for their intended use. It's a 209-seat facility, and it will be an orthodox facility.

The -- it was not intended although there may be other users, it really was intended for the community.

The issue at hand is whether the sidewalk is required. First of all, there is no sidewalk requirement on Powerline on any plan in the county.

It's not an Engineering condition. It is related to the whole pedestrian connectivity, and we believe that we can meet that without the sidewalk on Powerline Road.

This is the overall site plan.

The affected area, I think we're in agreement with, it is this (indicating) portion of the site where the temple is intended to be sited.

This area here is developed. It's been used for over 20 years. It has its own internal sidewalks, and there is sidewalk along Boca Grove.

We have, by design, fed into and connected ourself into their sidewalk system, the existing sidewalk system, thereby we believe we are complying.

We don't think this is an issue of you have to do it. You either have to build it on Powerline or you haven't complied.

We are connecting. We're just not connecting through the Powerline connection.

I'd also like to add there is presently no sidewalk on Powerline, either in front of the existing and vested property, and there is none to the south of us.

So the sidewalk that they're talking about would start here and dead end here (indicating). There'd be no connection here, as there are no

sidewalks south of us. So it doesn't make a lot of sense.

We do believe we do connect, and as you can see here, if there is ever any future sidewalk planned on any plan in Palm Beach County, we obviously can connect to it, but we are connecting to the sidewalk system that'll bring us out over to Boca Grove Boulevard, which we believe complies with your code.

I'm happy to answer any other questions you may have, but I think that is the issue.

We're interpreting it differently than staff is. We do think we meet connectivity.

The other thing that I might add, since we -- at this point all of the members of this future facility are coming from Boca Grove, you know, if you require something like that, it's not going to be used.

They are going to be coming from the west, and they're going to enter onto the property, which I might add are off hours from the existing use, and they're going to be coming through the connection system that I've just described. They are not going to be using this.

So that's why we're asking you to eliminate that as a condition today.

And I thank you for your attention.

I'm happy to answer any other questions that you may have.

CHAIRMAN BARBIERI: Staff, if there's room for interpretation here, certainly, it seems sensible to allow them to do it the way they're doing it.

I mean what's the point of putting a sidewalk in a section of the road that doesn't connect to anywhere, and nobody's going to use it?

If the people in Boca Grove are going to use the temple and they're connected to the Boca Grove through that interior pedestrian walkway, what's the point in putting a sidewalk out on Powerline Road?

I mean is there -- unless there's no room for -- I guess the County Attorney needs to tell us.

Is there any room for interpretation here?

MR. BERGER: Without the words of the code in front of me, it's sort of hard to -- without the words of the code in front of me, it's hard to make that call.

Typically, according to the code, though, the job of interpreting that language falls to the Zoning Director, and I mean we typically defer to what that interpretation is.

I mean if you have the language in front of you, we could read it and talk about it here now, but this is new to me, also.

MR. Mac GILLIS: There is no sidewalk --

MS. MISKEL: We actually have a copy of it if you want to see it.

CHAIRMAN BARBIERI: Commissioner Zucaro.

COMMISSIONER ZUCARO: I thought that this young man, and I don't know your name so I

apologize for that --

MR. Mac GILLIS: Bill.

COMMISSIONER ZUCARO: -- did a wonderful job of making that presentation. It was quite articulate, and it was logical.

What I would like you to do is, if you would, respond to the question that's raised by Ms. Miskel.

She convinces me, at least on the surface, that she meets connectivity by hooking into the existing sidewalk system within the property that comes out at the top right-hand corner.

Why isn't that sufficient?

MR. CROSS: If this were a brand new site and those portions -- if you would look at her picture -- where there's no pedestrian striping or sidewalk or pedestrian area that goes to the parking lot, that is the missing link.

And that would not even be allowed to be brought forth to you today if that were a new site unless we either conditioned a sidewalk along Powerline or waited until they were willing to install striping and other sidewalk improvements that didn't interfere with parking or landscaping in that parking lot area that you see to the north of the office building up to the roadway.

So it's just one small missing link.

Secondly, I'd like to point out that by all means we applaud uses that encourage or require walking, but we cannot guarantee from a zoning perspective that they won't sell this site in the future and that people from other neighborhoods to the northeast of the site may not end up walking to that facility.

So we can't look at it as if this is the sole and only use or owner of the property. We have to apply the code so that all the future users, whomever the owners may be, meet the pedestrian connectivity requirements.

COMMISSIONER ZUCARO: So your issue -- your comments suggest that if we were to exercise discretion and concur with the applicant's interpretation, we would be compromising the code.

MR. CROSS: That is what I have double checked with my supervisors and those who are responsible for interpreting the code, yes.

COMMISSIONER ZUCARO: Mr. Attorney, do we have discretion to make a -- to take a discretionary action here?

MR. BERGER: If it's contrary to the plain language of the code, no.

COMMISSIONER ZUCARO: Okay. Is it?

MR. BERGER: That's what we're finding out.

MR. Mac GILLIS: I'm looking at the code here now.

I wasn't involved, unfortunately, with the decision so I'm not -- I don't want to contradict staff, but when we look at circulation, we're obviously, like you indicated, looking internal to the site, and then you're looking how to get people to the circulation outside the site.

I wouldn't have a problem interpreting that they do meet it internally, and as Ms. Miskel has indicated, there is no external sidewalk system along Palmetto Park Road now --

MS. MISKEL: Powerline, there is not --

MR. Mac GILLIS: Powerline.

MS. MISKEL: -- and it is not on any plan.

There is one on Boca Grove, and we will be connecting to that.

MR. Mac GILLIS: Okay.

MS. MISKEL: Internally.

MR. Mac GILLIS: Do you have a problem agreeing to something that if in the future there ever was a sidewalk put in --

MS. MISKEL: We'll even do a deed restriction that if this should ever change to some other use, that we'll -- that it will have to come back before the Zoning Commission or any other body that is required by staff.

MR. Mac GILLIS: And we can word the condition --

MS. MISKEL: Yeah, that's fine.

MR. Mac GILLIS: -- so that you wouldn't have to come back before us.

As long as they agree that if there ever is something put out on the main road, that they'll provide connectivity to bring somebody out, but I think --

MS. MISKEL: Well, actually, we'd even agreed to build the connection to Powerline if there is ever a connection to Powerline in the future, but we will certainly add a deed restriction that should the use change, that we'd be required to -- and if it did change, we'd have to come back to you, anyway.

MR. Mac GILLIS: I wouldn't have a problem adding -- amending that condition to include that language then. I think that would meet the intent of the code of both internal and external interconnectivity.

COMMISSIONER ZUCARO: Well, these were both well-presented arguments. Thank you very much.

CHAIRMAN BARBIERI: Commissioner Anderson.

VICE CHAIRMAN ANDERSON: What is the property just to the south of that? It's a little teeny -- real small triangle.

MS. MISKEL: It's retail. There is a Dunkin' Donuts in there and a little sub shop.

It has a very funky entrance in front in order to get there. It's a very narrow triangle.

VICE CHAIRMAN ANDERSON: And there's no sidewalk in front?

MS. MISKEL: There is no sidewalk there.

VICE CHAIRMAN ANDERSON: If they came back to reconfigure that, they'd have to put a sidewalk in?

MR. Mac GILLIS: Well, I --

VICE CHAIRMAN ANDERSON: I mean this --

MR. Mac GILLIS: Depends on how much improvements they're making to the site.

Engineering may require it 'cause it's --

you're talking the sidewalk that's in the ultimate right-of-way?

VICE CHAIRMAN ANDERSON: Right. I'm just saying this improvement plan that you're talking about, it would affect any project in this whole area that would come back in and tear down and start over with a new development?

MR. Mac GILLIS: Yeah. Usually what's triggering it is the tear-down of the site.

As Bill indicated in his presentation, you're vested for what you have. If you're not -- if you're going to lose intensity, density or parking, the -- Article 1 of the Zoning Code vests the applicant on that, not to put them out, that they'd have to take square footage off the building just to comply with our landscape or other code requirements that are current now.

So if they were demolishing everything on the site and they had the potential to redesign it, yes, our -- we would be applying interconnectivity and sidewalks and everything that's -- would be under a new project.

VICE CHAIRMAN ANDERSON: Okay. Thank you.

CHAIRMAN BARBIERI: All right. Is there anybody here from the public to speak on Item No. 8?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, on DOA/R-2007-1401, I move to recommend approval of a development order amendment to add square footage and reconfigure site plan with conditions as amended.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. MISKEL: Thank you very much.

COMMISSIONER KAPLAN: On the same petition I'll move to recommend approval of a requested use to allow a place of worship.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. MISKEL: Thank you.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: Okay. That'll bring us to the regular agenda, next item -- Item 11, Z/CA-

2008-294.

Staff is recommending approval of the rezoning and the Conditional A use for a place of worship, subject to 12 conditions.

I understand the reason this is not on the consent, there's apparently opposition, and we have Terry Verner, the Director of Code Enforcement here.

There's -- there was questions from the residents regarding the past violations on this property.

MS. GLASSER: Good morning. Carol Glasser, project manager.

Before you is the petition of Florida Sevashram Sangha. They propose the rezoning from residential transitional urban zoning district to the residential single family zoning district to allow a place of worship on a 1.65-acre parcel of land.

That land currently has a single family residence on it which they propose to demolish.

The site plan indicates a 6,672 square foot building consisting of a 4,672 square foot sanctuary with a maximum of 309 seats and a 2,000 square foot office.

Site plan indicates 113 parking spaces, and access to the site is from Bentbrook Boulevard.

The reason for the rezoning is to provide consistency with the Comprehensive Plan.

Staff is also recommending a Conditional Overlay Zone to imply -- to apply an Engineering condition of approval to the rezoning request.

There is also an active Code Enforcement complaint on the subject site, and that's why Mr. Verner is here in case there is any question.

We have received, in your report, 22 letters in opposition. There were also four e-mails to the Board of County Commissioners. That's 26 in opposition and one in support.

Staff is recommending approval, subject to the conditions in Exhibit C and C.1, one tied to the rezoning and the remaining tied to the conditional use.

COMMISSIONER ARMITAGE: Mr. Chairman, I just have a question.

What is the existing zoning variance -- zoning violation?

MS. GLASSER: They have -- I would ask Mr. Verner --

CHAIRMAN BARBIERI: Yeah, Mr. Verner, would you come up.

MS. GLASSER: -- and Mr. Garcia to come up and go into that.

That was the focus of a lot of the opposition to this project is their attempt to rectify this code violation.

MR. VERNER: Good morning, Commissioners.

Terry Verner, Director of Code Enforcement.

The project before you today was prompted by a violation notice that we issued back in November of '07 for operating a place of worship

without proper approvals. That's why they're here, to get that violation corrected.

CHAIRMAN BARBIERI: All right.

You're on.

MR. BARRY: Good morning. Chris Barry, agent for the applicant.

We have a full presentation we can go through at your pleasure, or we can be brief and just say we agree to the conditions of approval.

CHAIRMAN BARBIERI: Why don't you give us a brief presentation, then we'll call up --

MR. BARRY: Okay.

CHAIRMAN BARBIERI: -- the people that are opposed so we can see what their issues are.

MR. BARRY: We're having a little bit of technical difficulty.

CHAIRMAN BARBIERI: While we're doing that, why don't we get the people that are in opposition up here so we can hear what your issues are.

Mr. Farnhill, Philip Farnhill, would you please come up and state your name for the record, please.

MR. FARNHILL: Philip Farnhill, and I'm here to speak for --

MS HERNANDEZ: He needs to be sworn in.

MR. FARNHILL: -- Countrywood Homeowners Association.

CHAIRMAN BARBIERI: Okay. Mr. Farnhill, were you sworn in when you first got here?

MR. FARNHILL: Yeah, when you -- when you did right at the beginning I did that.

Do I need to be sworn in separately?

CHAIRMAN BARBIERI: No, you don't. Go ahead. Yes, sir.

MR. FARNHILL: I'm here to speak for the homeowners of Countrywood Homeowners Association who are right next door to this place, and they have two main concerns. One is traffic. The other is noise.

As was stated previously, it's been suggested that this place of worship will hold 309 -- will have 309 seats.

There are 113 parking spaces, so the homeowners feel immediately that there is some -- something of a danger in the way that people travel to these places, individually, or perhaps in ones and twos.

A hundred and thirteen parking spaces isn't going to do it, and that will lead to a considerable amount of overflow parking in the streets around the place of worship.

Those streets are where the homes of this homeowners association are located. So they have got a problem over the number of cars, also, the amount of traffic that would be going through their side streets to get to this place.

The other thing that they were concerned about is the -- it may be a generalization, but they have some association between a place of worship and rather more noise emanating from the building than perhaps you might get from a single

family home.

They did make a suggestion that perhaps if there was a wall erected on the rear of the lot so that it was between the homes and the place of worship, then that perhaps might, at the very least, alleviate that problem.

But the main problem is that they feel that if this were to be built, there would be a considerable amount more traffic going through their streets, and there would be overflow parking from this place where they feel that there aren't sufficient parking spaces onto the side streets all the way around there.

Thank you.

CHAIRMAN BARBIERI: Thank you.

MR. BARRY: Okay. I think we're up and running now.

Like I said, again, Chris Barry, with Jon Schmidt and Associates, agent for the applicant.

And we'd just like to address some of the compatibility issues with the proposed use.

As you can see and as Carol went through before, this site is only bounded by single family residential on the east side. To the north is a recreation facility and club. To the south is a vacant piece of property that is currently in ag production, and then to the west is a retention pond.

The ULDC, as well as the Comprehensive Plan, addresses this as a civic use, and I know in some of our discussions with the neighborhoods that there is some concern about this being a commercial use, and it's actually defined as a civic use, and we'd just like to point out that there's Comp Plan implementation strategies that suggest that a place of worship is a characteristic of a liveable community, being that it is within, you know, a residential area, and that it allows for people that live in the residential neighborhood to utilize the facility.

Also, institutional use is designed to serve a residential area, such as schools, houses of worships, are uses permitted within residential future land use designations as detailed in the Comp Plan.

As you can see up on the screen, this is the proposed site plan. The site plan has been designed to internalize the structure to the greatest extent possible.

We've got the buffers on all four sides, right-of-way buffers on the west and the south with the incompatibility buffer to the east, as well as an increased buffer to facilitate vegetation preservation on the north.

The entrance and the exit is from Bentbrook.

And this just shows, you know, that the structure's been internalized, that it -- we've tried to minimize the impact on the surrounding properties to the greatest extent possible so you can see on this slide how much the building where it's proposed exceeds minimum setback requirements

for the RS Zoning District.

Just one of the other things we'd like to point out is other non-residential uses that are in close proximity to this site.

You can see the site in green, in yellow is the recreation club facility that's directly to the north of this property.

In blue you'll see a non-residential MUPD that was approved in 2004, and then in red you'll see another place of worship that is similar in size, it's 300 seats, that was approved in 2006.

And this is just showing you the proposed architecture. This is the interior layout. The majority of the facility will be the sanctuary, and then on the west side there will be accessory offices, as well as a small kitchen and multipurpose room.

And here are the proposed elevations for the site.

And we're here to answer any questions.

COMMISSIONER ZUCARO: I have a question, Mr. Chair.

MR. BARRY: Sure.

CHAIRMAN BARBIERI: Commissioner Zucaro.

COMMISSIONER ZUCARO: Actually, I have two questions.

MR. BARRY: Okay.

COMMISSIONER ZUCARO: It appears to me that you're here with a recommendation for approval.

MR. BARRY: Correct.

COMMISSIONER ZUCARO: Okay. So what you showed us is very nice in the way of background.

The opposition suggests two items. The first item is you've got 309 seats and 131, I think, parking spaces.

Do any -- does any of your evidence suggest that there is going to be that overflow parking that the residents are concerned about?

And I know that you don't have to make their case in terms of evidence, but I suspect that you have some opinion in your documentation on that parking question.

MR. BARRY: I think the majority of the parking concerns, as the site exists today, is that they're -- it's a single family house, and it doesn't have any pavement, so a lot of the parking is on the site so it actually looks like overflow parking because it's not paved whatsoever.

The other issue, as well, is that the facility just to the north has a fairly small parking lot, and we've heard some concerns that when they have activities, that they also have overflow parking that may spill out into the right-of-way or even onto our property.

But the way that the site is designed we have the code requirement, 113 spaces for the 309 seats, and we don't expect to need any overflow parking.

COMMISSIONER ZUCARO: Okay. The second question that was raised by the opposition is a noise factor, and they suggest that some kind of a

wall or a buffer between your facility and the neighborhood, the impacted neighborhood.

Your comment to that?

MR. BARRY: The neighborhood to the east is, like I said, the only properties that we have single family residential abutting this property.

Again, the history goes back on the noise issues that our client currently operates out of a single family house which isn't very efficient in terms of what their activities are and what their needs are. So they do have activities outside.

And the way that the site is designed now you can see the majority of the site will be pavement, other than the building, so there will really be no area for outdoor activities, and the building will be built in a manner that serves their needs not to have outdoor activities.

COMMISSIONER KAPLAN: Mr. Chairman, if I may?

It seems to me that the noise issue is minimal when we consider this is a place of worship with no daycare or school.

The same thing for traffic. I've never seen a place of worship that limits the traffic on a daily basis. There's 69 trips permitted.

Under normal conditions a church, a temple, synagogue, always has more parking than required because on certain high holy days they have more people, but other than that, on a daily basis it's a minimal amount, and I don't see, and I agree with Engineering that it does not have any serious impact upon traffic.

Based upon that, I would certainly approve this petition.

CHAIRMAN BARBIERI: Commissioner Davis.

COMMISSIONER DAVIS: Just, you know, to clear up the -- maybe some of the neighbors' concerns about noise and traffic, where I live -- I live in an urban area, and there's a church, a pretty good size church, less than a block away from me.

They have a very small parking lot. They do, you know, they have big events sometimes. They have a Halloween festival, and they have a Christmas party for folks, but what we have found in our neighborhood is that the church there, are very good neighbors. They invite the neighborhood.

And I would not suggest putting a wall up to a place of worship because I think maybe some folks that live nearby might want to go visit.

So I'm just saying that churches can be very good neighbors.

MS. GLASSER: May I clarify for the record?

CHAIRMAN BARBIERI: Yes.

MS. GLASSER: This is in a Residential Zoning District, and you would need a special permit for an outdoor activity, and they're not granted in a residential zoning district.

So there will be no outdoor festival on this property.

CHAIRMAN BARBIERI: All right. We had another card from Yolanda Sneed. Would you please come up.

MS. SNEED: Hi. I'm Yolanda Sneed. I am here to read a letter from the homeowner association of Country Lakes West property, so I'll just read it. It's written by the president, Amy Brown.

"At our board of directors meeting held on July 23rd, 2008, our owners expressed concern in reference to the proposed rezoning on the property located on the northeast corner of Lantana Road and Bentbrook Boulevard.

"There was extreme concern about the impact on the traffic that this proposed project would create. The application states that the access to this site is from Bentbrook Boulevard, which will severely impact the flow of traffic in and out of the community to the homes in Country Lakes West, as this is the only entrance to our community.

"The size of the proposed project and the number of parking spaces indicates that there will be a considerable number of cars entering and exiting this property.

"Another concern is that the schoolbus stop is on the corner and will increase traffic to the property. This could increase other dangers.

"In the past the owners of this property have not complied with zoning regulations or code enforcement. The property is not maintained for weeks at a time.

"As representatives of the 513 homes in the Country Lakes West Property Owners Association, we, the board of directors, hope that you will consider these issues when voting on this rezoning proposal.

"Thank you for your consideration.
Sincerely, Amy Brown, President, Country Lakes West Property Owners Association."

I also wanted to state that as a resident of this community I was present at an initial public meeting that was held and to address Mr. Kaplan's comment, I believe, regarding the traffic, it is true that typically there is not a lot of traffic, you know, during the week at a house of worship; however, at the initial public meeting there were several hours of operation during the week that were mentioned.

I cannot recall them right now, but there were going to be days and times of operation, services, that the house of worship would be open during the week.

So that's why it was a -- the traffic was a concern, other than the typical days of worship.

Additionally, although it is mentioned that there is a clubhouse on the north side of this property, that clubhouse, or rec center, as he stated, is more of a clubhouse.

It is used for special events. It has to be scheduled, reserved for use. It is not a rec center that is used on a regular basis.

If at all, it's used maybe once a month, if that often, and it's typically on a Friday or Saturday evening for a wedding or a party of some kind.

It is not in regular use so that has never been a concern. If there's ever any overflow parking from that particular rec center, it is maybe once a month at the most, maybe not even that often.

Thank you.

COMMISSIONER ARMITAGE: Mr. Chairman.

CHAIRMAN BARBIERI: Commissioner Armitage.

COMMISSIONER ARMITAGE: I'd ask that the letter that was read be submitted to the Commission.

I move that we approve and accept the letter.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: Okay. Motion made by Commissioner Armitage. Second by Commissioner Anderson to receive and file.

All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Ms. Sneed, while you're still there, where's the schoolbus stop?

MS. SNEED: Actually, it's right at where the entrance to this house of worship will be.

Right now the schoolbus stop, as you enter Country Lakes West off of Lantana on Bentbrook, there is a small island or median there at the entryway, which is a lighted intersection.

At the end of that median there is a schoolbus stop. Of course, that tends to be in the morning, afternoon, but I -- as I said, I don't know if that will fall during the hours that the -- that it will be open and that it will be operating.

CHAIRMAN BARBIERI: Does the schoolbus come into your community and pick up the kids? Does it circulate through?

MS. SNEED: Yes. Yes, and there are a couple of other stops, but that is the first one right at the -- right at the entry of the --

CHAIRMAN BARBIERI: And you said that intersection is lit with a traffic light?

MS. SNEED: Yeah, there is a light on Lantana Road and Bentbrook. There is no right-hand turn lane on Lantana Road into our community, and if you're familiar with Lantana Road going east-west, that has become very much a thoroughfare between the western communities and Lake Worth, West Palm and so on. It's a very high traffic area, Lantana Road is.

CHAIRMAN BARBIERI: Thank you.

Yes, ma'am.

MS. GLASSER: May I clarify?

Staff does not limit hours of operation for a place of worship. They meet all traffic requirements, so it's not an issue.

They have placed the hours of operation on

their site plan, but they meet the traffic and parking based on the full sanctuary use and the office use.

COMMISSIONER KAPLAN: Ready for a motion, Mr. Chairman?

CHAIRMAN BARBIERI: Commissioner Anderson first, discussion.

VICE CHAIRMAN ANDERSON: Just couple questions, one getting back to the parking.

What is the parking requirement for a place of worship? I mean how many spaces per --

MS. GLASSER: One space per three seats. That's a code requirement.

VICE CHAIRMAN ANDERSON: So they are exceeding that by --

MS. GLASSER: They're meeting code requirement, one space per three seats, plus one space per 200 square feet for the office, and they meet code requirement.

VICE CHAIRMAN ANDERSON: But I mean do they exceed it, or are they right on?

MS. GLASSER: They're -- they meet it. They're right on it.

VICE CHAIRMAN ANDERSON: They're right on it? Okay.

MS. GLASSER: It's required and provided.

VICE CHAIRMAN ANDERSON: Okay. As far as the traffic, you know, as far as the residents go, I think there's a lot of other uses that probably could go on this site that would generate more traffic during a period of time when it would be a problem, and maybe having the parking lot there, you know, the bus stop, the kids can maybe get off the road a little bit. Maybe that'll help with any situation there.

The landscaping, I am a little concerned.

Those homes that are a little bit to the east, if I was living there and there was a parking lot 10 feet away, is there any way that the landscaping could be increased a little bit in the area between where the backs of the homes are and where all those parking spaces would be?

MS. GLASSER: Would the applicant agree to increased landscaped screen or wall on the east buffer?

MR. BARRY: So talking maybe more large to medium shrubs just to block the headlights?

VICE CHAIRMAN ANDERSON: Yeah, just to help with the noise and the lights and the commotion if, you know, early on a Sunday morning cars are coming in there and someone in the home, you know, they won't feel like they're being invaded by all these cars driving in and out, just --

MR. BARRY: Yeah, that'd be fine.

VICE CHAIRMAN ANDERSON: Just to mitigate it a little bit. That's all.

MS. GLASSER: The code language is typically, I think, six-foot high continuous vegetative screen, opaque, with landscape material, and that's the preferred method.

VICE CHAIRMAN ANDERSON: Okay. And then

just lastly, you know, is a church moving into the area being good neighbors?

It sounds like if that there ever is a parking issue here and maybe at the clubhouse, maybe the two could get together and work something out that if there is a special Christmas-type event or something, that they could use the parking from the clubhouse, and then maybe when the clubhouse has a big event and they're having overflow parking, contact the church, and maybe the community could park in the church lot if it's a night when the church doesn't have any facilities, so maybe get the two working together.

And that's it. I support the project.

Thank you.

COMMISSIONER KAPLAN: Mr. Chairman.

CHAIRMAN BARBIERI: Is there anybody else here from the public to speak on Item No. 11?

(No response)

COMMISSIONER KAPLAN: Hearing none, Mr. Chairman, and after listening to members of the public, on Z/CA-2008-294, I move to recommend approval of official zoning map amendment from the Residential Transition Urban Zoning District to the Residential Single Family Zoning District with a Conditional Overlay Zone with conditions as amended.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: All right. There's a motion by Commissioner Kaplan, seconded by Commissioner Brumfield.

Staff, would you read that new condition into the record for the vegetative fence.

MS. GLASSER: In addition to code requirements, the property owner shall provide a six-foot high continuous vegetative screen of landscape material on the east -- within the east landscape buffer.

CHAIRMAN BARBIERI: Petitioner, are you --

MR. BARRY: Yeah.

CHAIRMAN BARBIERI: Okay. You're okay with that? All right.

All in favor of the motion.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: On the same petition, Mr. Chairman, I recommend approval of a Class A conditional use to allow a place of worship.

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Davis.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. BARRY: Thank you.

MR. Mac GILLIS: That brings us to Item 12, ZV/DOA/R-2007-1597, Pratt and Orange MUPD, found on Page 216 through 269.

Staff is recommending approval of the three motions, subject to 88 conditions.

I believe the only reason this, unless you have cards, staff did not put this on the consent agenda 'cause there was -- two people had called and said they were coming to the meeting to object to the use.

CHAIRMAN BARBIERI: Is there --

MR. Mac GILLIS: I don't know. We don't see --

CHAIRMAN BARBIERI: Is there anybody here from the public to speak on Item No. 12?

(No response)

CHAIRMAN BARBIERI: Is the Commission in favor of moving this back to consent?

COMMISSIONER ZUCARO: We've already done consent. Why don't we just approve it?

COMMISSIONER BRUMFIELD: Either way.

COMMISSIONER ZUCARO: I make the motion -- I make a motion to adopt a resolution approving a Type II zoning variance to allow a reduction of the foundation planting along all sides of the proposed auto service station.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Before we vote on the motion, petitioner, state your name for the record, and are you in agreement with all the conditions?

MR. WORSHAM: Yes, Mr. Chairman. Lee Worsham, Ruden, McClosky, on behalf of the petitioner, Publix, and we've reviewed the conditions, the backup, and we're in agreement with all the conditions, staff conditions, are fine.

CHAIRMAN BARBIERI: All right.

All those in favor of Commissioner Zucaro's motion.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER ZUCARO: Same item, I make a motion to recommend approval of a development order amendment to reconfigure the site plan and modify conditions of approval, those conditions relating to the building and the site design,

planning and use limitation.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Zucaro, second by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER ZUCARO: Same item, I make a motion to recommend approval of a requested use to allow an auto service station.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Zucaro, second by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. WORSHAM: Thank you very much.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: This will bring us to the last item on the agenda, Item 18.

CHAIRMAN BARBIERI: Seventeen?

MR. Mac GILLIS: Right. I'm sorry, 17, PDD/R-2007-1770, Gardens CLF.

Staff is recommending approval of the two motions, subject to -- denial? Okay. I'm sorry, denial, subject to the 14 conditions.

I'll have Autumn Sorrow, the project manager, explain why staff is recommending denial on this item.

CHAIRMAN BARBIERI: And actually, we have one more item after this one, 18.

MR. Mac GILLIS: Yeah.

Autumn.

MS. SORROW: Good morning. For the record, Autumn Sorrow, with the Zoning Division.

This project as submitted meets all the requirements of the ULDC for their rezoning and for the requested use; however, this project is subject to a concurrent small scale amendment, and the Planning Division has recommended denial of

the proposed land use amendment because the amendment is inconsistent with the Comp Plan, specifically, Housing Policy Element 1.4-C, which states that the allowable density of special needs facilities such as this CLF would only be determined based on the densities of the surrounding residential uses.

However, Planning staff has transmitted text amendments to the State as part of the 08-1 amendment round that would limit the additional density to institutional land uses in the future.

Contingent upon the approval of the concurrent future land use amendment and the proposed text amendment, the proposed zoning map amendment and requested use would be consistent with the Comp Plan.

It is important to mention that the proposed text amendment will be going for adoption to the BCC on August 21st, which is a week before this petition would be scheduled for the BCC approval.

If the text amendment is approved on August 21st, then Zoning staff will be changing our recommendation from denial to approval.

The applicant was advised to postpone this petition for one month so that the text amendment could get adopted and staff could recommend approval at this point in time.

COMMISSIONER KAPLAN: Thank you, because I have a question which I couldn't understand where you recommend approval, and then you recommend denial.

So now it's approval?

MR. Mac GILLIS: It's -- no, it's still denial.

We've requested the applicant to take a 30-day postponement in order for the Comp Plan text amendment get adopted later this month; therefore, Planning would recommend approval on the small scale, and Zoning could recommend approval.

It's a timing issue. Mr. McGinley could explain why he couldn't take a 30-day postponement to have a recommendation of approval on everything.

CHAIRMAN BARBIERI: Mr. McGinley.

MR. McGINLEY: Good morning. Kevin McGinley, for the record.

First of all, we have faith in this body here that they can see what is going on with the intended Comprehensive Plan change. That's that's the first reason we didn't take a postponement, and the second one is --

CHAIRMAN BARBIERI: That's not what you said about us last month.

MR. McGINLEY: I didn't know you were listening.

And the second reason is this is a contract purchase, and it's -- the owner/operator of this is really eager to get going and not have another delay with this.

So knowing that the County Commission has

already transmitted this language to DCA, and now it's come back, and they're just waiting for the final adoption.

We had faith in it all that we could get through this.

I won't make the arguments that we would have made that we are consistent with the Comprehensive Plan because I realize that's not the purview of this body here today.

So I will just focus on the fact that we meet all of the requirements, we're consistent with it, and we could go on with a presentation.

I noticed in the staff report there are no letters or phone calls, and yesterday when I checked, there weren't any objections from neighbors, but we're prepared to go ahead with a presentation on the project if the board wishes.

CHAIRMAN BARBIERI: Mr. Berger, can the Zoning Commission make a recommendation to the County Commission that we approve this, subject to that change being made sometime between --

MR. BERGER: Yeah, the -- your recommendation would be contingent on the Department of Community Affairs ultimately finding the Comp Plan amendment to be in compliance with the State law.

CHAIRMAN BARBIERI: Okay. All right.

COMMISSIONER DAVIS: Mr. Chair.

MR. MCGINLEY: Again, we'll --

CHAIRMAN BARBIERI: Commissioner Davis.

COMMISSIONER DAVIS: I'm uncomfortable, Kevin, with that.

You know, having done a lot of Comprehensive Plan work, I can't support it. I would request that you ask your client to postpone so that everything is in place because you never know what can happen in between now and then.

MR. MCGINLEY: Well, if -- if I may respond?

CHAIRMAN BARBIERI: Sure.

MR. MCGINLEY: The issue of the inconsistency with the Comprehensive Plan, the language says that the density, bed based densities for institutional uses shall be based on the density of adjacent residential.

We have commercial directly to the north of us, commercial directly to the east of us. It all -- and that formula they have doesn't take into account any intensive commercial.

So it really isn't a balance of whether or not the 144 beds that we're proposing in this facility is compatible or consistent.

The second is it says it's based on, it doesn't say equal to.

COMMISSIONER DAVIS: But that's not what I'm concerned about.

MR. MCGINLEY: Right, but -- so I think there's an argument.

COMMISSIONER DAVIS: What I'm concerned about is following the law.

MR. MCGINLEY: Yes, and I think there's an argument to be made on the consistency with the

Comprehensive Plan, and I would -- I would make that argument, but I realize that this board doesn't -- and staff and I differ.

COMMISSIONER DAVIS: If it hasn't been approved, it's still inconsistent.

I'm sorry, I just -- I can't support it.

MS. GASH: Commissioner Davis, if I may.

COMMISSIONER DAVIS: Yes.

MS. GASH: Staff has offered an alternative recommendation of approval with conditions for the BCC for the -- for the concurrent amendment that will be -- that's running with the zoning petition.

MR. MCGINLEY: The -- and if I could elaborate, the intent here is to limit the Comprehensive Plan change which will bring this to an HR-8. The idea behind that is to make sure it's used for institutional purposes.

There's a condition in our approval that we agree to that it can -- that it can only be used for institutional, for the CLF purposes.

Once we're granted the HR-8, it cannot be used for apartments, for increased density, for housing or anything like that.

So, basically, the condition is what the Comprehensive Plan change is taking effect. They're both in play.

COMMISSIONER DAVIS: So you're actually going to do what you say you're going to do?

MR. MCGINLEY: Yes, we are.

COMMISSIONER DAVIS: Very good.

MR. MCGINLEY: I usually do.

COMMISSIONER DAVIS: Well, you might, but others don't.

CHAIRMAN BARBIERI: Commissioner Zucaro.

COMMISSIONER ZUCARO: What my -- I don't see a downside to us as a Commission to approve it, subject to the change in the language on that timing question.

It's his risk if that language change for some reason doesn't actually take place.

There is some reason that the applicant is moving forward. I don't think he's given us the bottom line reason for why they're not willing to take the postponement for 30 days, but it may be -- in my mind that's probably a business decision that may not be our -- we don't have a need to know.

But since there's no downside to us and only risk to the applicant, I don't see why we would ask them to delay or postpone for 30 days when we can move forward, conditioned upon the change in language becoming effective.

So I mean if there's -- if this is an appropriate time, I'd -- I make the motion to approve it, subject to the change in the language, and I'll read it appropriately if this is the appropriate time.

CHAIRMAN BARBIERI: Commissioner Zucaro, I have -- I have to go to the public.

COMMISSIONER ZUCARO: Okay.

CHAIRMAN BARBIERI: Blake Harmon, are you

here?

MR. HARMON: Good morning, members of the Commission.

My name is Blake Harmon. I'm an attorney with the law firm of Patterson and Harmon located in Pompano Beach, Florida -- of course, sorry, and I'm here on behalf of Eric Annonson (ph), who is the owner and operator of A and W Annuals, which is located immediately adjacent to the east of the subject property.

Mr. Annonson also happens to reside a few hundred feet east of that in the adjacent residential community to the east. His residence address is 9720 Palomino Drive.

Mr. Annonson, you know, wanted me to come here on his behalf and just to voice his concern with respect to the project.

We did write a letter to the Planning Commission, I brought a copy to furnish to this Commission, just expressing our concerns. This is when the proposed amendment to the future land use plan was submitted to the Commission back in February.

The main concern is, of course, the whole compatibility issue, which is the -- also the subject, of course, of the proposed text amendment to the future land use that they're talking about, will be submitted next month.

The -- and as far as the proposed use, Mr. Annonson has no problem at all with the proposed use in concept. I mean he thinks it would be a, you know, excellent use as far as a transition area from commercial to residential, but that would be more the case if the access were directly from State Road 7 or from the north.

Where his concern arises as to compatibility and its impact upon the adjacent low density residential areas is the fact that this project is actually gaining access from two access points, both on Palomino Drive, which is a predominant, if not almost exclusive, residential two-lane roadway as it exists right now.

Mr. Annonson's business, A and W Annuals, he is a wholesale seller of flowers, annual flowers. It's a very seasonal business. Probably 90 percent of his business is delivery. He doesn't -- again, it's wholesale. It does not sell retail.

Because it's 90 percent delivery it's generally his truck leaving and going, and when it leaves, it goes to multiple delivery points. So he generates minimal, extremely minimal traffic himself.

His concern is the proximity of the entrance, what would be the eastern entrance to the development, to his entrance and the entrance to the adjacent development, residential development to the south. They will all be in somewhat close proximity to each other.

And then his other concern would be, you know, what the impact will be with the working of the, you know, the intersection, with Palomino

Drive and State Road 7 as far as to what extent, you know, traffic may be backing up onto Palomino Drive, which could potentially interfere with traffic turning in and out of this development.

So, again, those are -- those are his main concerns with respect to this development.

Again, it's -- you know, he would welcome the use. He think it's, again, a nice transitional use if it were not for the fact that this is really a development that's really, for all intents and purposes, it's fronting on Palomino Drive. It's not fronting on State Road 7.

CHAIRMAN BARBIERI: Okay. Thank you.

MR. MCGINLEY: If I may?

CHAIRMAN BARBIERI: Yes.

MR. MCGINLEY: Thank you very much.

The site is located at the intersection of an eight-lane arterial, which is State Road 7, and Palomino Drive, which serves as a collector road at this location.

We have an -- we originally submitted a plan showing a direct connection to State Road 7 in the hopes that we would get one.

Staff held our feet to the fire and said you get DOT to approve that bridge, and then we'll go ahead and allow you to leave it on the site plan.

Well, it wasn't going to happen because of the proximity to this intersection here (indicating). They weren't going to allow a bridge crossing here, but they have allowed a bridge crossing to the commercial development to the north of us.

We have entered into and recorded a cross-access agreement with the commercial development to the north of us to have our traffic, that needs to, go north through theirs. That's been recorded and taken care of already.

Secondly, the entrance back to this -- to this side, the eastern end of our property close to the nursery, which is right over here (indicating), was to allow traffic to come in and stack in a turn lane which we are going to be installing on Palomino to stack our traffic, so the other traffic can continue to move eastward on Palomino.

I don't think there's any project or any kind of development that generates less a.m./p.m. peak traffic than a CLF, maybe a self-storage or possibly a church.

With our shift changes we have basically from the hours of 7:00 a.m. to 9:00 a.m. four people leaving the site. We have people coming into the site, but that's not a problem.

We have our turn lane. We can go into our site as we see fit. We have two entrances, and we'll use this entrance over at this side (indicating). We don't have a conflict with coming out on Palomino because of the way this operates.

We only have the 11:00 to 7:00 shift of

very minimal people because everyone's sleeping during that time so we have four workers leaving.

If we were to develop this at residential density, which we're allowed to, we'd have at least twice, if not five times as many cars leaving in the morning coming out on Palomino.

So this is probably the best thing that could happen to those that are concerned about traffic on Palomino, it is such a low traffic generator.

And I know that the representatives of the nursery have talked about letters of -- that they've written. We also have letters from Wellington Regional Medical Center which I'll introduce to the record and also the Alzheimer's Association saying this is, you know, severely needed in this area, that there are no opportunities for CLF, and this is a great opportunity and location.

Thank you.

CHAIRMAN BARBIERI: Any questions from the commissioners?

(No response)

CHAIRMAN BARBIERI: Is there anybody else here to speak on this item, No. 17?

(No response)

CHAIRMAN BARBIERI: Mr. Harmon, did you want to --

MR. HARMON: No. The only thing I would just like to add is -- and, again, it's not so much the traffic issue as much as the entrances, the alignment of the entrances, his, you know, whether or not it would -- it'd work for this project. He doesn't know.

But if there were one main entrance and exit that was located more towards the center of the property which would access the property, and then, you know, the traffic would head either east or west, depending upon, you know, which route they were going to go, then he felt that would create more distance, you know, between his entrance, the entrance immediately -- basically immediately across from him, which is the residence -- residential area to the south.

That was his main concern. Again, it's not the use, it's not the overall traffic generated, it's -- it's the fact that there's the one entrance/exit that's somewhat close in proximity to his entrance.

CHAIRMAN BARBIERI: Mr. Rogers, did Engineering look at the possibility of putting one there to keep the entrance to this property farther away from the other two?

MR. ROGERS: No, we have not, but just thinking about what the gentleman has said, would not provide any real benefit.

I mean the easterly entrance, we expect very few vehicles coming from the east turning right into this project. Those would be the only vehicles that would be possibly interfering with the driveway to the property to the east.

Certainly, vehicles turning left into a

driveway are not going to interfere with vehicles coming in and out of a driveway further to the east of this property.

The other comment the gentleman made about potential back-up at the intersection of State Road 7 and Palomino would have no real impact on the operation -- sorry, the location of this driveway.

As a matter of fact, from that standpoint if in fact the traffic ever did backup that far, which we don't think that it will, but if it did, it would be more beneficial to the traffic on the road to have that driveway as far east from State Road 7 as possible, such that one driveway in the middle of the property would exasperate [sic] that situation.

We have no problem with the driveways being located as shown on the site plan.

CHAIRMAN BARBIERI: All right. Thank you.

COMMISSIONER KAPLAN: Mr. Chair, you want to take a motion?

At this point I'm -- I personally am in favor of this application, provided the two conditions discussed, the concurrent FLU amendment and proposed text amendment, is approved.

It leaves the petitioner sort of in limbo.

If the two approvals are not approved as such, then they have no place to go, and they'll have to come back and change their plan.

So if the petitioner understands that it's conditioned upon that --

MR. MCGINLEY: Well, we understand that your recommendation is conditioned on that taking place, yes.

COMMISSIONER KAPLAN: Based upon that, Mr. Chairman, I'll move to recommend approval of an official zoning map amendment to a Planned Development District, rezoning from the Residential Transitional Zoning District to the Multiple Use Planned Development Zoning District, provided there is a approval of the concurrent FLU amendments and the proposed text amendment.

VICE CHAIRMAN ANDERSON: Second.

CHAIRMAN BARBIERI: All right. We have a motion by Commissioner Kaplan, second by Commissioner Anderson.

Is there any discussion?

COMMISSIONER DAVIS: I just want to say, Kevin, I have no objection at all to the use. I just have objection to the timing. That's all it is, and I don't believe that you're going to generate or create traffic difficulties, and you're probably doing a public service, but I'm going to vote no.

CHAIRMAN BARBIERI: All right. Any other discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

Aye.

COMMISSIONER KAPLAN: Aye.

VICE CHAIRMAN ANDERSON: Aye.

COMMISSIONER ZUCARO: Aye.

COMMISSIONER ARMITAGE: Aye.
COMMISSIONER BRUMFIELD: Aye.
COMMISSIONER KAPLAN: On the same petition, Mr. Chairman --
CHAIRMAN BARBIERI: Wait a minute. Let me finish the vote.
 Opposed.
COMMISSIONER DAVIS: Aye.
CHAIRMAN BARBIERI: Motion carries, 6-1, with Commissioner Davis voting no.
COMMISSIONER KAPLAN: On the same petition I'll recommend approval --
MR. MCGINLEY: Thank you.
COMMISSIONER KAPLAN: -- of the requested use to allow a Type III congregate living facility, provided there is approval of the concurrent FLU amendment and proposed text amendment.
COMMISSIONER ZUCARO: Second.
CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Zucaro.
 Any discussion?
 (No response)
CHAIRMAN BARBIERI: All in favor.
 Aye.
COMMISSIONER KAPLAN: Aye.
VICE CHAIRMAN ANDERSON: Aye.
COMMISSIONER ZUCARO: Aye.
COMMISSIONER ARMITAGE: Aye.
COMMISSIONER BRUMFIELD: Aye.
CHAIRMAN BARBIERI: Opposed.
COMMISSIONER DAVIS: Aye.
CHAIRMAN BARBIERI: Motion carries, 6-1, with Commissioner Davis voting no.
MR. MCGINLEY: Mr. Chairman, maybe I should have done this before.
 The letters that I referenced, can I make them part of the record and hand them to her?
CHAIRMAN BARBIERI: Do we have a motion to receive and --
VICE CHAIRMAN ANDERSON: Motion to receive and file.
COMMISSIONER BRUMFIELD: Second.
CHAIRMAN BARBIERI: We have a motion to receive and file by Commissioner Anderson, second by Commissioner Brumfield.
 Any discussion?
 (No response)
CHAIRMAN BARBIERI: All in favor.
COMMISSIONERS: Aye.
CHAIRMAN BARBIERI: Opposed.
 (No response)
CHAIRMAN BARBIERI: Motion carries, 7-0.
VICE CHAIRMAN ANDERSON: We need another motion on --
MR. HARMON: I'm sorry. Could I just -- the letter that I referenced that we wrote to the Planning Commission.
VICE CHAIRMAN ANDERSON: I make a motion to accept that letter.
COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Anderson, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

The record should reflect that Commissioner Kaplan will be leaving, and Commissioner Bowman will be voting in his place on Item No. 18.

MR. Mac GILLIS: Item 18, ZV-2008-1019, Mini Assemblage PUD, Pages 398 through 415.

This is a Type II variance to allow aluminum fences and hedges instead of the opaque wall and fence.

Just before I turn it over to Carol for a brief presentation, I just -- this is one of those variances where it doesn't seem like a big deal.

Unfortunately, staff, when you look at the seven criteria, it's our position the applicant hasn't met it except there's no -- he's demonstrated that he can comply with code 'cause he's already got the aluminum fences up.

He's just looking for an alternative, and, unfortunately, the code doesn't give us the authority to allow alternatives on the zero lot line side as far as it's -- requires that opaque fence or wall to provide the minimum privacy on the zero lot line and ensure it through time that somebody doesn't either remove the hedges or they die, and then it becomes a code enforcement issue.

So with that said, I'll turn it over to Carol to go over staff's denial on the variance request.

MS. GLASSER: Carol Glasser, project manager.

The request is for a Type II variance to allow an aluminum fence and hedge for the privacy walls or fences provision in the Unified Land Development Code, ULDC requirement.

Can you turn the lights down a little bit?

The subject property is the Mini Assemblage Planned Unit Development. It's Control No. 2005-008.

On your aerial you can see kind of a sideways view that is the perimeter boundary of

the PUD.

It's located between the Florida Turnpike and Hagen Ranch Road south of Boynton Beach Boulevard and theoretical Woolbright Road.

It was approved by the Board of County Commissioners in 2005 and with the development order amendment now consists of 157.88 acres, approximately.

It is approved for 488 zero lot line homes, 64 townhomes and a school.

On that aerial the space in the center of the U, so to speak, is a tower site that is not included.

If you go to the next slide.

That is a site plan that the applicant provided for this petition. It's not the approved site plan but just for demonstration of it.

You can see that the tower site is omitted, and the smaller space to the right is the Hagen Ranch Elementary School, a new school that is currently under construction. That's also part of the Planned Unit Development.

The entrance to the development is at the intersection of Woolbright Road and Hagen Ranch towards the bottom right of your screen there.

The variance applies to the entire Planned Unit Development wherever a privacy wall or fence is required, which typically occurs at the corners, which is indicated by those shaded areas.

Next slide, please.

The privacy walls or fences, a ULDC requirement for zero lot line homes, is there.

On the rear lot line a minimum five-foot high opaque wall or fence shall be provided along the rear lot line between lots abutting rear lot lines and between lots abutting side and rear property lines, happens between two residential properties.

Next slide.

The code further indicates some design requirements. You're allowed a wall or a fence, and if a wall is constructed, the key words there are "structurally sound, opaque and permanent material."

You have some photos, some examples. Next slide.

You can also provide a PVC white vinyl fence. If a wall is provided, it must match the style, the color, the surface texture of the home. Landscaping is not required as part of the wall.

Next slide.

The applicant is proposing an aluminum fence in ornamental picket style and a hedge maintained at five feet on both sides of the fence to satisfy the opaqueness requirement.

Next slide.

Staff is recommending denial on the first five of the seven criteria.

Number one, the applicant has already met code requirements for the privacy walls or fences on some of the lots in the Planned Unit

Development.

Two, the applicant has complied with the requirement on other properties within the same development. Hedges can be planted adjacent to a code-compliant wall or fence.

Number three, the applicant can provide the code-required opaque wall or fence, deviation from the code is unnecessary. Simply, the applicant has already met code requirements for the privacy walls or fences on some lots in the PUD.

So staff is recommending denial.

If the Zoning Commission recommends approval, we have included some recommended conditions in Exhibit C.

I'll turn it over to the applicant.

CHAIRMAN BARBIERI: Mr. Kilday.

MR. KILDAY: Thank you. Kieran Kilday, representing GL Homes, and I'll try to be brief and to the point.

We all know where the property is, and going back to this graphic, we've identified -- excuse me -- we've identified in red the affected lots.

These are the only lots which have a requirement for this fence, and that's where this is, again, is a project which has very few back-to-back situations, and these are the back-to-side ones where we've requested for the variance.

The variance really came up as a matter of us trying to do something that costs more money, but we think is more aesthetic, and that's using the aluminum railed fence versus the white fence.

The situation is, and I'll be brief because I know you have cards up there, is that we have divergent viewpoints.

We have some residents who want to see the aluminum rail with the landscaping as a preferable. We have some residents who prefer the white PVC solid fence as their preference, and we have at least one residence who doesn't want either, no fence at all. That's not an option that's on the table today. The other two are.

What we have done is we've contacted the 29 owners that are affected and got their opinions, and they were divergent, and then a certain number of these lots are still owned by GL Homes.

What I have passed out, and, excuse me, let me pass one down to staff, is an alternative condition, and basically, because each condition is separate, that if you deign to approve the variance, what we would require is that proof be given that all affected property owners, and in many cases it's three property owners, sign on that they're in agreement to the alternative that we're asking for.

If any one of those three don't sign on, then it sticks with the PVC fence, and that's the way -- again, this petition is a small petition, but it was to try to accommodate the views of some of the residents as wanting an alternative to what

was being provided as was shown in the picture of the PVC fence.

And so we'd ask that approval. I don't disagree at all with Jon regarding it's a difficult variance because it's a variance that you can do something, and the question is can you get a variance if you're trying to do something, what we consider a little better and higher quality.

CHAIRMAN BARBIERI: Kerry, who would be responsible for maintaining the hedge? Would the HOA?

MR. KILDAY: No. The hedge is -- all landscaping on the lots are the responsibility of the property owners, and that's why we would require that the property owners sign on they want to take on that responsibility because that would be part of -- we would install it, but they would have long-term maintenance.

CHAIRMAN BARBIERI: We have some cards. Mr. and Ms. Hagermann, state your name for the record, please.

MS. HAGERMANN: Good morning. My name is Constance Hagermann, and I live in one of the affected areas, and I just wanted to let you know that I do like my white fence, and I would like to keep it that way, and I oppose the change.

That's it.

CHAIRMAN BARBIERI: Okay. Thank you. Did Gaetan Hagermann want to speak?

MR. HAGERMANN: Yes. My name is Gaetan Hagermann.

I just wanted to just reiterate what my wife just said, and there's a reason why it's code, and if that fence is not there, it's not going to create the privacy that's needed.

And when they construct -- when they construct homes, they put a privacy -- a five-foot concrete wall on the right side, and we don't have that to our left.

So, you know, I feel that the fence needs to be there to create the privacy in our back yard.

CHAIRMAN BARBIERI: You're a smart man. You certainly don't want to put on the record you're disagreeing with your wife.

MR. HAGERMANN: That's right. Thank you.

CHAIRMAN BARBIERI: Andrea Kalkstein.

MS. KALKSTEIN: Good morning. My name is Andrea Kalkstein, and I'm actually the neighbors of the gentleman and lady that just spoke.

I am actually -- I'm the person that they're referring to that's opposed to the fence sort of at all.

I've actually asked -- I contacted the Commission requesting that the fence be shortened because we were not notified prior to closing on our property that this fence was going to be required, and we purchased a lot with a lake easement and an angled view of the lake, which we no longer have.

We didn't find out about this until one week after we closed on our property, and the builder claimed that they didn't know about this until after we closed on the property; however, I have documented proof that they filed for a permit nine days before we closed on our property, and they just never notified us, which didn't allow us the due process of dealing with the situation and making the decision on whether we were going to close on our house or not.

And so we have asked that the fence be shortened slightly just to give us our lake view back, not to completely eliminate the privacy to the next home, but to shorten the panels so that we would have the lake view that we purchased at the time of our closing.

COMMISSIONER DAVIS: I have a question. When you're -- when you say shorten the fence, do you mean in length or in height?

MS. KALKSTEIN: In length.

COMMISSIONER DAVIS: Okay.

MS. KALKSTEIN: So that it doesn't go as far out towards the lake, that it comes back to the property line of the neighboring patio.

If we did that, we would have our lake view back, and they would still have the proper privacy up to their patio. It just would give us our lake view back.

VICE CHAIRMAN ANDERSON: Which lot are you on?

MS. KALKSTEIN: We're on Lot 12, so we're on the side of -- 112 on the side of Picklewood Park, so their house goes on on Parson Pine this way, and our house goes on Picklewood Park this way (indicating).

MS. GLASSER: On Page 401, if you can see where I'm pointing, this is about perhaps one-fourth of the rear property line of that light -- lot is open to the lake, and the balance abuts the side property line of another lot and has the privacy fence.

MS. KALKSTEIN: And I do have a copy of the permit showing that the application was submitted nine days prior to our closing if you'd like to --

CHAIRMAN BARBIERI: All right. Thank you.

MS. KALKSTEIN: Thank you.

CHAIRMAN BARBIERI: Is there anybody else here to speak on this item?

(No response)

CHAIRMAN BARBIERI: Mr. Kilday.

MR. KILDAY: Regarding the last speaker, the only thing I can say is this is that situation because we knew it was, and, again, this is that -- why I said if you're going to agree to any change, it would require all three property owners to agree because this owner would like it shortened, which isn't part of this variance request.

CHAIRMAN BARBIERI: Right.

MR. KILDAY: So it's really -- she and the builder need to get together, and then that would

be a separate variance, if agreed to, but, again, that variance would then be -- if she was to apply for that, the next door neighbor, of course, could object to it and may well object to it.

So that's what that situation is as relates there.

CHAIRMAN BARBIERI: All right. Well, based on the fact that you said you would only do this if you had the approval of all the homeowners affected, and Mr. and Ms. Hagermann say they don't want you to do this, you wouldn't be doing it, anyway; correct?

MR. KILDAY: In that particular spot; correct.

CHAIRMAN BARBIERI: All right. Any other commissioners have any comments? Commissioner Bowman.

COMMISSIONER BOWMAN: Yeah, I just feel that with the fact that all homeowners affected would have to approve -- agree to this, that I would vote to support it.

MR. Mac GILLIS: If I may, I need to have clarification.

I'm not clear what Mr. Kilday is proposing in his condition.

Is he implying that when they come in to get a building permit, that the Building Division staff would have to have been presented documentation that this property owner's coming in, the other two affected properties are signing off on it?

Because I think this would be a nightmare for staff to monitor.

I think -- if they're all part of this application now, I would recommend we need to take a postponement on this to figure out -- if the Board's going to approve this, which particular lots we're talking about in this variance, because it was presented as a blanket variance, and if we're going to limit it to the lots that are in red, they should have authorization from those owners ahead of time so when you grant this variance, we know the three -- any affected property owners know they're removing the wall, not to leave it up to us a year from now because it's all -- the onus is going to go back on staff, why did the Board approve this.

CHAIRMAN BARBIERI: Okay.

MR. Mac GILLIS: So if that's the way I'm reading this condition -- 'cause this was just presented to staff now.

COMMISSIONER DAVIS: I have a question.

Is it going to be an undue hardship for the applicant who is requesting the variance to provide full disclosure to whatever residents or, you know, people who live in the vicinity of the affected areas and then come back here in 30 days?

MR. RATTERREE: To answer your question, no. We have met and contacted every one of the affected owners in this particular case.

COMMISSIONER DAVIS: The other thing that I'd like to ask for disclosure on is the type of

plant material that you will be requiring these people to maintain, because there are some that are very onerous for maintenance, like those ficus hedges that you showed in that picture.

People are going to have to be out there every two weeks in this heat, you know, to keep that thing looking good.

MR. RATTERREE: Well, and that's why -- and just to kind of go back to something Kerry said.

When we contacted the residents because we were having to put these fences in to get the COs on the houses, some of the residents said we don't like the PVC fence. We want something better than the PVC fence. You require us, being GL, to do aluminum rail fencing for enclosure of our rear yard, can we get the same type of fencing.

The only way to do that is to get a variance from the code to allow us to do something other than the opaque white -- or the opaque fence or wall. That's why we're here.

In doing all of that work with the owners it became apparent to us some did, some didn't.

The reality of the situation is it's what -- what Kerry's referring to is when we go in to permit that fence, we are going to have to show that all three of the abutting owners have agreed to the type of fence that's getting permitted, or we wouldn't be able to seek that permit. We'd have to go to the PVC permit. That's what we're referring to.

COMMISSIONER DAVIS: But what I'm -- what I'm asking you for, though, is to take a look at your plant material.

If you're going to ask people to maintain this stuff or if they're going to be required to, you need to get with your landscape architects and put in easier maintenance material that's still going to look nice and will stand up to drought and all of that stuff.

MR. RATTERREE: Well, we were trying to -- just to get to your point, we were trying to go with a material that is a high growth material so it'll get to the required height and stay full, which is why we speced ficus.

Obviously, those owners would know in consenting to the type of permit that we were seeking in the Building Department --

COMMISSIONER DAVIS: I'm asking you to go a step further and put in material that is easier for the people to maintain if you're asking for this kind of variance.

MR. KILDAY: Such as wax myrtles.

COMMISSIONER DAVIS: Well, no, I mean any slower growing material, cocoplums, orange jasmine, chalkus (ph), podocarpus, you know. There -- ask your landscape materials. I'm, you know, not going to sit up here and name plants. Ask your landscape architects.

There are slower growing, easier maintaining type material than ficus.

MR. RATTERREE: We will agree that it not

be ficus. It'd be cocoplum or --

COMMISSIONER DAVIS: And, you know, there's a wide selection of natives.

MR. KILDAY: Right.

CHAIRMAN BARBIERI: Mr. Ratterree, we all know who you are, but I don't think you put it on the record.

MR. RATTERREE: Oh, I'm sorry. I apologize.

For the record, Kevin Ratterree.

By the way, it's been a couple months since I've been here. It's really confusing. Is it a -- is it a time delay or something where this monitor is about three seconds behind what's going on. I'm getting nauseous sitting back here watching. Just FYI in case you didn't know that was going on.

So somebody's up here pointing at something and people are out there watching it and don't know what they're pointing at so, it's been awhile.

For the record, Kevin Ratterree, with GL Homes.

CHAIRMAN BARBIERI: Okay.

MR. KILDAY: But we're not complaining.

MR. RATTERREE: I'm not complaining.

COMMISSIONER ZUCARO: May I ask a question?

What was the original -- the original approvals required the PVC, the white PVC fence.

MR. RATTERREE: The code actually requires the fence. It's not the approval. The code requires on situations where you have sides abutting rear that there be an opaque fence or wall separating those lots.

The PVC fence that you're seeing in the pictures is actually code-compliant fencing. We're just looking for the alternative option for if the owners agree that they be allowed to do the alternative instead of the code.

If they don't agree, they're going to get the code-required fence.

COMMISSIONER ZUCARO: Setting aside the argument made by the last speaker in terms of shortening the fence, all buyers were aware that there would be an opaque fence?

MR. RATTERREE: Mr. Zucaro, I can't speak to that personally. I wasn't there on the sales floor.

COMMISSIONER ZUCARO: Well, you --

MR. RATTERREE: I do know --

COMMISSIONER ZUCARO: -- got to be --

MR. RATTERREE: I do know that the documents that the homeowner signed as part of their closing documents clearly stipulate that anything that is required by the County to comply with code is an obligation of GL Homes, whether it is pre-closing or post-closing.

COMMISSIONER ZUCARO: My point is not to raise the question of whose responsibility it is to disclose or whether there was disclose. It's part of the public record. They are disclosed.

I concur with staff. I mean you put this variance in here, and now you've got a -- you've got a situation that has absolutely no code enforcement concern to it at all right now because once the fence is built, it's there, and now you put in a condition that may have Code Enforcement to have to go back to trim the hedge.

I mean Commissioner Davis raises a legitimate point. You know, that -- so I for one think that this is a *de minimis* argument, and I'm not going to support it.

MR. RATTERREE: And we agreed to process this application on behalf of those owners that wanted an alternative, and we have done that.

So we are here, and your vote is your vote.

CHAIRMAN BARBIERI: Kevin, I just -- for the record, I just want to point out that GL Homes has always worked well with the County, and we realize that you're not here asking for something that's going to save you money.

You're actually here that's going to cost you something, and so we don't want to be sounding like we're on the attack here.

We appreciate your trying to do this for the homeowners that wanted something they thought would be nicer, and -- but staff is recommending that we don't meet the seven criteria for the variance, and so we'll see what the other commissioners would want to do, but I certainly can't support a variance if we haven't met the legal justification for that variance.

COMMISSIONER ZUCARO: Therefore -- I'm sorry.

VICE CHAIRMAN ANDERSON: And I just wanted to make a question to staff.

I know when you -- I understand the reasoning for the fences backing up, but I know in our development when someone wants to put a fence and it's going to block somebody else's view, it can't be an opaque fence if it's blocking a view down to the lake.

And it just seems like these two things are in -- are diametrically opposed to each other, trying to prevent blocking of a view, but then also giving the privacy to the neighbor.

And when the code was written, maybe they didn't really take into account these type of circumstances where a fence is going to be put right between, you know, someone's home and directly into the lake.

So --

MR. Mac GILLIS: I think we've amended the code over the years that -- used to be people were coming in getting variances all the time 'cause the fence used to extend from the rear of the house to the rear property line, and then it did obstruct a lot of views.

Then we changed it, and it used to have to be concrete, so we changed that to allow an alternative like the aluminum or in this case, the panel fence, plus we -- it only had to be 10 feet

in length.

And the whole intent was to at least give -- 'cause these are zero lot lines.

VICE CHAIRMAN ANDERSON: Right.

MR. Mac GILLIS: They're 6500 square foot lots. The outdoor space is minimal, and we don't --

VICE CHAIRMAN ANDERSON: Right, but I'm just saying in this situation how long is that fence and the one that the two people are discussing?

MR. KILDAY: It runs, as code requires when you have this condition, the length of the side to rear setback. So it runs across it.

It does stop short. It doesn't then turn the corner, but because that's then two sides, but where you have that rear to side, it does have to run across that.

MR. Mac GILLIS: And that's where you have a unique layout in a development.

This is not a common occurrence.

VICE CHAIRMAN ANDERSON: Right.

MR. Mac GILLIS: In a large development you may have -- like they're saying, there's only a couple of occurrences where this happens, but in general, when the developer's laying it out, the designer, they keep flipping, moving everything around 'til it all meets the code and you get the best views.

I mean the lady that spoke, I mean her concern is, is because there just happens to be the wall from the other zero, and the way they're designed, unfortunately, to meet code, unless somebody comes in and gets a variance --

VICE CHAIRMAN ANDERSON: Well, I think --

MR. Mac GILLIS: -- for those two owners to support it.

VICE CHAIRMAN ANDERSON: I think as far as the criteria that it does create a special circumstance because of the fact that it's blocking a lake view, and if there was a situation where both homeowners were in agreement to shorten the fence, let's say, five feet so that it doesn't interfere -- if the people, you know, on the right-hand side, if they didn't think shortening the fence was a problem, and it helped the other people allow them to have a view of the lake and not be looking right at a fence, I think that could create a special situation where if all parties involved would want to shorten it.

I don't know if -- what this petitioner's doing is the correct venue for that 'cause I understand the problems with --

MR. Mac GILLIS: Yeah, I don't -- I don't think what they're doing is the -- she has a different problem. I mean, if she would like, she can apply for her own variance and propose it to staff what her hardship is, that her lake view is being cut off, and she talked to her neighbors and they agree that they would like a shorter wall, and that's a -- that would be a single variance on its own.

What they're asking you today is, is to --
VICE CHAIRMAN ANDERSON: But I think what they're --

MR. Mac GILLIS: -- substitute the paneled wall for a wall that's got openings through it with a hedge material that, even if you put cocoplum in, that would have to be installed at --

VICE CHAIRMAN ANDERSON: Then it's going to block the view, anyway.

MR. Mac GILLIS: -- the six-foot high or five feet to meet the code still with the visual requirement.

VICE CHAIRMAN ANDERSON: Okay.

MR. Mac GILLIS: And then even a cocoplum, you're -- I mean you still, unless somebody keeps it well maintained, you're going to see right through that.

I mean ficus is really the only thing or some type of fir that is absolutely solid where you're not going to see --

COMMISSIONER DAVIS: I would like to show you a cocoplum hedge that you cannot see through.

MR. Mac GILLIS: Well, that's what I'm saying, yeah, I agree, if it's well maintained. I have neighbors who --

COMMISSIONER DAVIS: Even if it's not maintained.

MR. Mac GILLIS: They don't maintain it, and it's all wiry, and you can see through it.

And that gets back to my issue. It's going to turn into a code enforcement, and the biggest complaint Zoning and Code Enforcement gets on zero lot line are their privacy and drainage.

VICE CHAIRMAN ANDERSON: Right. I understand.

Okay. Thank you.

CHAIRMAN BARBIERI: All right.

We need a motion on this.

COMMISSIONER ZUCARO: I'm going to move to recommend denial of an official zoning map amendment to the planned development direct -- district, rezoning from the Residential Transitional --

CHAIRMAN BARBIERI: No.

MS. GLASSER: No. This is --

CHAIRMAN BARBIERI: You're on --

COMMISSIONER ZUCARO: I'm on the wrong one?

CHAIRMAN BARBIERI: Eighteen.

COMMISSIONER ZUCARO: Oh, I'm sorry.

I make a motion to adopt a -- to deny a resolution -- a motion to adopt a resolution denying a Type II variance to allow an aluminum fence and hedge instead of the opaque wall or fence.

CHAIRMAN BARBIERI: Motion was made by Commissioner Zucaro, seconded by --

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: -- Commissioner Davis. Any discussion?

COMMISSIONER DAVIS: Discussion.

I think what we see here is an example of

the code being extremely rigid, and a definition of opaque is very subjective.

You know, as I said before, Jon, you can -- I can show you a bunch of hedges that are not particularly well maintained, but you can't see through them, which would meet the definition of opaque.

I think, you know, personally, I like the aluminum fence.

I'm going to vote against this because it doesn't meet the criteria, but if it had met the criteria, I would be in favor of it.

I think diversity is a wonderful thing, and given the right landscape material, it could be very beautiful.

So, you know, that's all.

Maybe we ought to look at the code.

MR. Mac GILLIS: I wouldn't disagree with you. If it was in a buffer maintained by the homeowner association, so if it's not maintained, County staff can go after one person.

When we have to deal with individual property owners on a hedge, first call goes to the County Commissioners that --

COMMISSIONER DAVIS: Right.

MR. Mac GILLIS: -- it's a ridiculous requirement to send a Code Enforcement officer out to --

COMMISSIONER DAVIS: Right.

MR. Mac GILLIS: -- tell somebody to maintain a hedge that as soon as they get it maintained, within six weeks it's back to the condition when you have two neighbors arguing with one another.

COMMISSIONER DAVIS: Yeah, it's a difficult situation, and, you know.

CHAIRMAN BARBIERI: Commissioner Anderson.

VICE CHAIRMAN ANDERSON: I was going to say in this situation where if the -- where the wall is interfering with the lake view, if the way to give some discretion to the developer in the code so that they could determine what the proper length should be ahead of time, so when they're laying it out, they say no, we shouldn't go the whole length.

We should stop it back five feet that maybe, you know, when you're revising the code, you could look into that where -- special circumstances, as long as the developer is putting it in, and there's -- 'cause in this situation if the fence were shortened five feet, the people that are looking out to their back, they still wouldn't be able to see the home next door, but the people with that home would then be able to see the lake.

So it just -- in this circumstances it does create -- it kind of boxes in a homeowner, so just something that maybe should be looked at.

CHAIRMAN BARBIERI: Any other discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.
Staff, do you have anything else?

MR. KILDAY: Thank you.

MR. Mac GILLIS: No.

CHAIRMAN BARBIERI: Do we have a motion to adjourn?

COMMISSIONER BRUMFIELD: So moved.

COMMISSIONER DAVIS: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Brumfield, second by Commissioner Davis.

All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Meeting's adjourned.

(Whereupon, the meeting was adjourned at 11:00 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

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

DO HEREBY CERTIFY that the above-entitled
and numbered cause was heard as hereinabove set
out; that I was authorized to and did report the
proceedings and evidence adduced and offered in
said hearing and that the foregoing and annexed
pages, numbered 4 through 59, inclusive, comprise
a true and correct transcription of the Zoning
Commission hearing.

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

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 15th day of August, 2008.

Sophie M. Springer, Notary Public