



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES Board of County Commissioners Zoning Board

Board of County Commissioners

Stephen P. Clark Government Center
Commission Chamber
111 NW 1st Street
Miami, Florida 33128

Meeting Date:

October 06, 2005
9:30 A.M. Commission Chambers

Prepared by:

Harvey Ruvin, Clerk
Board of County Commissioners

Kay Madry Sullivan, Director
Clerk of the Board Division

Reporter:

Jill Thornton, Commission Reporter
(305) 375-2505



Zoning Meeting, Miami, Florida, October 06, 2005

The Board of County Commissioners met in regular session in the County Commission Chambers on the Second Floor of the Stephen P. Clark Government Center, 111 NW First Street, Miami, Florida at 9:30 a.m., October 06, 2005, there being present upon roll call, Chairman Joe Martinez, Commissioners Natacha Seijas, Jose "Pepe" Diaz, Dorrin D. Rolle, Dennis Moss, Carlos Gimenez, Katy Sorenson, and Sally Heyman; (Commissioners Barbara Carey-Shuler, Barbara J. Jordan and Bruno Barreiro were late; Commissioners Javier Souto and Rebeca Sosa were absent); Assistant County Attorney Joni Armstrong-Coffey; Department of Planning and Zoning Director Diane O'Quinn Williams; Department of Planning and Zoning, Land Use Development Division Chief Maria Teresa Fojo; and Deputy Clerks Kay Sullivan and Jill Thornton.

Chairman Martinez opened the meeting with a moment of silent prayer followed by the pledge of allegiance.

ALL WITNESSES WERE SWORN IN BY THE CLERK BEFORE MAKING THEIR PRESENTATIONS BEFORE THE BOARD.

The interpreters were sworn in by the Clerk.

Department of Planning and Zoning Director Diane O'Quinn Williams announced, in accordance with the Code of Miami-Dade County, all items on today's zoning agenda were legally advertised, all notices were mailed and all properties were posted within prescribed timeframes. She stated that additional copies of the agenda were available in the Chambers and presented the procedures to be followed during today's proceedings.

Chairman Martinez called for any changes to the day's agenda.

2. IRENE G. ATHANS (05-7-CZ10-5/04-435)

Mr. Simon Ferro, 1221 Brickell Avenue, attorney representing the applicant, appeared before the Board and requested the foregoing application be deferred for 30-days to allow the applicant to meet with the neighbors to review the revised site plan that addressed their concerns.

Chairman Martinez called for persons in opposition to the request for deferral, and the following individual(s) appeared and voiced concern in opposition to the request:

1. Mr. Julio Burgos, 12095 NW 5 Street, Miami, Florida, appeared before the Board and spoke in opposition to the requested deferral. He noted he represented 90 residents who were unable to attend today's hearing, but who had signed a petition opposing this application. If the Board determined that a deferral was necessary, Mr. Burgos asked that this application be deferred for consideration at a time certain in the afternoon so those neighbors could attend the hearing. He also requested that the applicant be required to clean up the subject property.

Commissioner Diaz suggested that since this was a first-time request, the foregoing application be deferred. He asked Mr. Ferro to meet with the neighboring residents to try to resolve their concerns before November 17th.

Chairman Martinez asked Mr. Ferro to take the appropriate steps to ensure that the grass was cut on the subject property.

It was moved by Commissioner Diaz that the foregoing application be deferred until November 17, 2005, with no further advertisement. This motion was seconded by Commissioner Seijas, and upon being put to a vote, passed by a vote of 10-0. (Commissioners Souto, Sosa and Barreiro were absent)

At the request of Chairman Martinez, Assistant County Attorney Joni Armstrong-Coffey read the Rules of Decorum into the record.

E. THE HAVEN CENTER (05-8-CC-2/05-44)

Director O'Quinn Williams, Department of Planning and Zoning (DP&Z), requested the foregoing application be deferred to allow staff to determine the proper forum for which to hear this application, noting a further review of the application and its request #2, to delete a declaration of restrictions, revealed that the covenant was accepted at a legislative hearing and that staff felt this matter should be heard before the full BCC.

Chairman Martinez asked whether the law would permit a covenant to be changed at a zoning meeting if it was entered into at a BCC meeting.

Assistant County Attorney Joni Armstrong-Coffey explained that if this matter were considered in a zoning context, the Board's discretion would be limited to criteria used in a zoning hearing and a decision by the zoning board (a quasi-judicial body) would be subject to appeal.

Chairman Martinez noted that Commissioner Souto, the District Commission representing the subject area, was not present today and that he would like to hear from him. He suggested this matter be deferred in order to allow Commissioner Souto to participate in the hearing.

Chairman Martinez called for any opposition to the request for deferral.

Mr. Jeffrey Bercow, 200 South Biscayne Boulevard, attorney representing Homer Meruelo, the potential contract purchaser, appeared before the Board and urged the Board to hear the foregoing application in a quasi-judicial capacity. He noted he was prepared to argue the merits of the application and address the procedural and legal issues raised by the County Attorney's Office and the Department of Planning and Zoning today. However, in light of Commissioner Souto's absence, he would respectfully request that this application be deferred for two weeks.

It was moved by Commissioner Moss that the foregoing application be deferred.

Chairman Martinez asked if this application were deferred, could it be advertised and placed on the next BCC meeting agenda, October 18, 2005.

Discussion ensued between the Board members and staff concerning request #2 within the foregoing application and whether that request must be considered by a legislative body versus a quasi-judicial body.

Following comments by Ms. O'Quinn-Williams, Assistant County Attorney Armstrong-Coffey recommended the legislative process be initiated within the next two weeks and that staff be instructed to submit a recommendation to the Board at the next BCC meeting, October 18, 2005.

Mr. Bercow requested that this application be deferred for consideration to the next zoning meeting, October 20, 2005 for consideration by the County Commission as a quasi-judicial body.

Following discussion and comments by Chairman Martinez, it was moved by Commissioner Moss that the foregoing application be deferred to the October 20, 2005 Zoning Meeting and that a report be brought back before the BCC on October 18, 2005 with staff recommendations on the proper forum for considering the deed restrictions and that Mr. Bercow, attorney for the applicant, be allowed to present his argument during that BCC meeting. This motion was seconded by Commissioner Gimenez, and upon being put to a vote, passed by a vote of 9-2. (Chairman Martinez and Commissioner Barreiro voted No), (Commissioner Souto and Sosa were absent).

There being no objection, the Board heard the following application, Wottsamatta Co. & Pahokee Lumber Company, out of turn as requested by Mr. Craig Sherar, attorney representing the applicant.

Ms. O'Quinn Williams presented the following application:

1. WOTTSAMATTA CO. & PAHOKEE LUMBER CO. (05-4-CZ8-2/04-295)

Mr. Craig Sherar, 2701 S. Bayshore Drive, attorney representing the applicant, appeared before the Board in support of the foregoing appeal and application. He noted the original request for a zoning change to BU3 was withdrawn by the applicant because it was inconsistent with the CDMP and that request was modified to request a zoning change to BU1A. He further noted the neighbors had expressed opposition to the Community Zoning Appeals Board's (CZAB) decision to designate two of the parcels for BU-1A use, and that it was his belief that the objections stemmed from concerns that subject property would be used as a lumber yard. Mr. Sherar noted a lumber yard was not permitted under a BU-1A zoning and the applicant would proffer a covenant stating that this property would not be used as a lumber yard, a junk yard or a used-car lot.

Director O'Quinn Williams, Department of Planning and Zoning (DP&Z), confirmed that lumber yards, junk yards and used-car sales lots were not permitted under BU1A zoning.

In response to Chairman Martinez' inquiry regarding the site plan, Mr. Sherar advised that a site plan had not been submitted because the applicant intended to complete the process and sell the property.

Commissioner Rolle asked that those residents present, who participated in the CZAB hearing regarding this application, be allowed to testify.

Chairman Martinez opened the public hearing on the foregoing application, and the following individuals appeared in opposition to the appeal and application:

1. Ms. Christeen Walden, 3130 NW 67 Street, Miami, Florida
2. Mr. Earl Graham, 7090 NW 29 Avenue, Miami, Florida
3. Mr. Donald Blocker, 3020 NW 69 Terrace, appeared on behalf of the neighbors, and stated residents would prefer to keep this community residential and have affordable homes built on the subject property.

There being no other persons to appear before the Board in connection with this matter, the public hearing was closed.

Mr. Sherar appeared before the Board in rebuttal and noted that one of the parcels had been a junk yard previously but had since been taken off the list of lands and cleaned up. He noted that although no site plan had been developed, he would include in the proffered covenant, an agreement that egress/ingress to any potential businesses on the subject property be placed on 32nd Avenue.

Commissioner Rolle stated he believed the residents of Glade View felt that the name of the company would invite lumber trucks into their community and they needed some protection.

Ms. O'Quinn Williams stated a provision could be incorporated into the covenant to prohibit trucks or the delivery of lumber materials to this area. She noted the BU-1A zoning, if approved today, would require another public hearing for a use variance or a rezoning to BU-3 in order to permit a lumber company to operate on this property.

Congresswoman Carrie Meeks, resident from the surrounding area, appeared before the Board and spoke in opposition to the appeal and application.

Following discussion, it was moved by Commissioner Rolle that the decision of the CZAB be vacated and the foregoing application be remanded to the CZAB with instruction that the applicant proffer a covenant. This motion was seconded by Commissioner Seijas for discussion.

In response to Commissioner Seijas' question whether gas stations would be permitted on this property under BU-1A zoning, Ms. O'Quinn stated gas stations would be permitted under BU-1A zoning as long as Department of Environmental Resources Management (DERM) requirements were met.

At the request of Commissioner Carey-Shuler, Ms. O'Quinn read into the record all the uses for BU-1A Zoning.

Following discussion, The Board proceeded to vote on the foregoing motion as moved by Commissioner Rolle, and upon being put to a vote, the motion passed by a vote of 11-0. (Commissioners Souto and Sosa were absent).

The foregoing resolution was adopted by the Board and is set forth in the Record of Resolutions and assigned resolution #Z-17-05.

Ms. O'Quinn Williams presented the following application:

A. ANTONIO SANCHEZ (04-11-CZ8-1/04-113)

Mr. Forrest Sigman, 8603 South Dixie Highway, attorney representing the appellant, appeared before the Board in support of the foregoing appeal and application. He noted requests #3, 5, 6 and 8 in the application were withdrawn by the applicant and numerous requests for changes to the plan had been made.

Chairman Martinez opened the public hearing on the foregoing application. There being no persons to appear before the Board in connection with this matter, the public hearing was closed.

Commissioner Rolle expressed concern that the applicant's request #1 to allow a used auto/truck sales on a lot area of .77 acre did not meet the required one acre.

In response to Commissioner Rolle's concern, Mr. Sigman argued that the BCC Zoning Board approved a similar application request for used auto/truck sales along the NW 27th Avenue corridor that had only .46 of an acre.

Ms. O'Quinn clarified that the CZAB approved the request referenced by Mr. Sigman in May 2005, not the Zoning Board and that it included a proffered covenant with several restrictions on the operation of the facility.

Mr. Sigman stated his client, the applicant, proffered a declaration with restrictions that limited the type of business and hours of operations. He further stated that the subject parcel in the foregoing application was fenced-in, maintained and currently licensed for Boat repair and sales and that his client would like to go back into business.

Following further comments, Commissioner Rolle presented and moved a resolution which denied the appeal and application. This motion was seconded by Commissioner Sorenson, and upon being put to a vote, passed by a vote of 11-0. (Commissioners Souto and Sosa were absent).

The foregoing resolution was adopted by the Board and is set forth in the Record of Resolutions and assigned resolution #Z-18-05.

Ms. O'Quinn Williams presented the following application:

B. DADELAND BREEZE APTS., LLC (05-3-CZ12-2/04-366)

Chairman Martinez opened the public hearing, and clarified the procedures to be followed by participants.

Mr. Kent Harrison Robbins, 1224 Washington Ave, Miami Beach, Fl, attorney representing Kings Creek South Condo Association and Village of Kings Creek Condo Association, appeared before the Board and informed the Board that three expert witnesses were present on behalf of the objectors, and that he anticipated their presentations would last about 25 minutes.

Chairman Martinez requested that both sides limit their time of presentations to equal amounts and that there be no repetitious speaking from the opposing speakers.

Mr. Juan Mayol, Holland & Knight, 701 Brickell Avenue, attorney representing the applicant, appeared before the Board in support of the appeal and the application. He presented three options for infill and redevelopment that the Board could consider should it grant the appeal.

Mr. Robbins noted, for the record, that he had some procedural objections which he would raise during his presentation.

Mr. Guillermo Olmedillo, 330 Greco Avenue, Suite #107, Coral Gables, an expert witness on behalf of the applicant, appeared before the Board and presented a brief overview of the three Fundamental Principles of Land Use adopted by the Commission, noting the proposed project was consistent with these three principles and with the CDMP, as determined by the Department.

Upon conclusion of the foregoing, Mr. Kent Harrison Robbins, attorney representing Kings Creek South Association and the Village Kings Creek Association appeared before the Board in opposition to the appeal. He argued that the proposed project would result in the breaking of density zoning that could set a precedent affecting areas extending as far as the Urban Development Boundary (UDB) line and that it would substantially increase density that was inconsistent with the surrounding neighborhood.

Responding to Mr. Robbins' request, Ms. O'Quinn Williams noted that staff had received signatures from 1,017 people in opposition to this application and one (1) waiver of objection.

Mr. Robbins objected to the additional proposals presented by counsel for the applicant, and contended that the applicant was attempting to circumvent the Community Zoning Appeals Boards (CZAB) through the DIC process. He noted the Planned Area Development (PAD) zoning ordinance specifically delegated authority to the CZAB to determine the density.

Following his argument, Mr. Robbins called the following expert witnesses to make presentations regarding the foregoing application:

Mr. Tom Dixon, 2600 Douglas Road, non-paid expert, appeared before the Board and addressed density and zoning relating to the neighborhood surrounding the site of the proposed project.

Mr. Henry Iler, 11211 Prosperity Farms Road, Ste #215B, Palm Bch Gardens, Principle Planner, appeared before the Board and addressed the appropriate planning for the neighborhood relating to the proposed project.

Dr. Ralph Erinberg, 1304 SW 160 Avenue, Suite #220, Ft. Lauderdale, Consulting Engineer, appeared before the Board and addressed traffic generation from the proposed project.

Mr. Richard Perez, co-counsel for the applicant, cross examined expert witness Dr. Erinberg.

The following persons appeared in opposition to the appeal and application:

1. Mr. Juan-Carlos "JC" Planas, 7920 Camino Real, member of Village of Kings Creek Condo
2. Mr. Alfredo Manrara, 8821 SW 86 Street, President, Kings Creek South Condo Association
3. Ms. Astrid Buttari, President of the Village of Kings Creek Condo Association
4. Mr. McHenry Hamilton, 7860 SW 86 St, President of the Kendall Glen Condo Association
5. Mr. Alberto Alvarez, 7998 SW 98 Terrace, resident of Kendall Park and member of the Downtown Kendall Steering Committee
6. Mr. Jim Patterson, 8889 SW 78 Court
7. Mr. Steven Davis, 8055 SW 92 Street
8. Ms. Augusta Missale, 9300 SW 77 Avenue, President of Kingston Square Association
10. Ms. Myrna Wheatman, 9455 SW 92 St, President of Cherry Grove Neighbors Association
11. Ms. Marilyn Dernis, 8137 SW 86 Terrace, Director of Dadeland Walk Association
12. Mr. Lance Pascowich, 7805 Camino Real, Director of Kings Creek Village Association, Inc

Mr. Manrara asked those residents present who wore red in opposition to the foregoing application to stand and be recognized.

There being no other persons to appear before the Board in connection with this matter, the public hearing was closed.

In response to a comment made by Mr. Manrara, Commissioner Seijas noted she listened to a radio program in connection with the foregoing application. She asked staff to clarify the "Jennings Rule" and asked if it applied in this situation.

Assistant County Attorney Joni Armstrong-Coffey explained the "Jennings Rule" and clarified that Commissioner Seijas could vote on this application provided she stated on the record that her decision was not influenced by the comments made on the radio.

Commissioner Seijas stated, for the record, that the comments she heard on the radio program did not influence her decision.

Mr. Robbins concluded his presentation by asking Board members to uphold the decision of the CZAB and deny this application.

Mr. Juan Mayol reappeared before the Board in rebuttal.

Commissioner Gimenez stated he could not support the increased density proposed in this application, noting the developer could still build to capacity of 398 units with the current zoning.

Commissioner Sorenson pointed out that affordable housing was a concern for this community and that affordable housing now existed on the subject site but was not included as part of this proposed project. She also noted the issue with transportation must be weighed carefully, suggesting a charrette be implemented to study plans for dedicated transit. She stated the applicant would have another opportunity to increase the density slightly but not overwhelming with the Severable Use Rights (SUR).

Commissioner Gimenez presented and moved a resolution which denied the appeal and application. This motion was seconded by Commissioner Diaz, and upon being put to a vote, passed by a vote of 11-0. (Commissioners Souto and Sosa were absent).

The foregoing resolution was adopted by the Board and is set forth in the Record of Resolutions and assigned resolution #Z-19-05.

Ms. O'Quinn Williams presented the following application:

C. JOSE A. ORTEGA TRUSTEE, ET AL (03-12-CZ14-3/03-194)

Commissioner Sorenson asked the Assistant County Attorney to explain whether the foregoing application was before the Board today just as a procedural matter.

Assistant County Attorney Joni Armstrong-Coffey advised that the Circuit Court remanded the foregoing application back to the County Commission with an instruction that the Commission grant the applicant's petition. She noted that the Court determined there was insufficient evidence to support the Board's decision to deny this application.

Responding to Commissioner Sorenson's inquiry concerning the Board's discretion in this matter, ACA Armstrong-Coffey explained that the Commission had no discretion except that it may accept the applicant's voluntarily proffered covenant.

In response to Vice-Chairman Moss' question concerning the Commission's ability to appeal the Circuit Court decision, ACA Armstrong-Coffey noted the Commission certainly had the option to appeal; however, in this case, it was the County Attorney's opinion that the Board not appeal this decision.

Chairman Martinez opened the public hearing to persons wishing to voice their opposition to the foregoing application and the following individual appeared:

Mr. Gary Dufek, 20285 SW 177 Avenue, appeared before the Board and spoke in opposition to the foregoing application. He stated he believed that the language in the CDMP clearly stated that the proposed development was prohibited within an agricultural area.

Commissioner Sorenson explained that the County Commission's discretion was limited pursuant to the Court's ruling. She asked the applicant's attorney to state on the record, the concessions that were being proffered by the applicant.

Mr. Richard Perez, 701 Brickell Avenue, attorney for the applicant, stated the applicant proffered a voluntary covenant that would substantially limit its uses under the BU-1 classification to less intense uses that do not generate liquid waste. He also stated the covenant would restrict access to Krome Avenue and include a 15 foot landscape buffer.

Commissioner Moss asked what type of threshold could be established for rulings on matters like this in the future.

In response to Commissioner Moss' inquiry, Assistant County Attorney Armstrong-Coffey noted the provisions in the CDMP that restrict development in agricultural areas were not applicable to this particular site because it was designated commercial business. She also noted the Court found the testimony presented to be insufficient to uphold the Commission's decision.

Hearing no further comments or questions, Commissioner Sorenson presented and moved a resolution which approved the application with a proffered covenant. This motion was seconded by Commissioner Heyman, and upon being put to a vote, passed by a vote of 10-0. (Commissioners Souto, Sosa and Seijas were absent).

The foregoing resolution was adopted by the Board and is set forth in the Record of Resolutions and assigned resolution #Z-20-05.

Ms. O'Quinn Williams presented the following application:

D. BELL SOUTH TELECOMMUNICATIONS, INC (05-8-CC-1/04-365)

There being no objection, the Board allowed opposing counsel to present argument first as requested by Mr. Juan Mayol, attorney for the applicant.

Ms. Mary Kramer, 20637 NE 9 Place, (an immigration lawyer and resident of Greenbrook) appeared before the Board on behalf of Dr. Messiah, President of Greenbrook Neighborhood Association, and neighbors in and near the California Club who were opposed to the proposed zoning change. She spoke in opposition to the proposed foregoing application, stating that it would result in increased density, traffic congestion, and contribute to the overcrowding of schools in the surrounding area.

Mr. Juan Mayol, attorney for the applicant, appeared before the Board and spoke in support of the application. He noted the applicant was seeking to rezone the subject property from IUC industrial to residential and requested that a covenant restricting the uses of the property be removed in order to develop it in accordance with the proposed site plan. He also noted the community outreach process involved collecting 2,000 signatures from the neighborhood and that the CZAB supported the foregoing proposal. He pointed out that the neighborhood was not a single-family resident community and the development would be multi-family in keeping up

with the neighborhood. He further noted a companion item was forthcoming and the applicant would continue to work with the CZAB.

Chairman Martinez opened the public hearing on the foregoing application, and the following individual appeared in opposition to the foregoing application:

1. Mr. Raphael Elimelech, 594 NE 199 Terrace, Secretary of Sandpiper Condo Association.

There being no other persons to appear before the Board in connection with this matter, the public hearing was closed.

Mr. Juan Mayol noted the applicant proffered four covenants of which 6 acres of land would be set aside for construction of a school by the school district or built by the developer should construction not commence within two years of conveying the property. He also noted that 5 acres of land would be set aside for a public park that was adjacent to a 15 acre endangered land, for a total park of 20 acres.

Ms. Patricia Good, Miami-Dade County School District, appeared before the Board and stated that although the proposed development would have an impact on schools, the School District felt that the set aside land would provide a benefit to the school district by providing 9,000 additional stations. She noted that within the School District's five year capital plan, a provision was made for two K-8 facilities that would provide direct relief for middle schools in the area. She also noted the District had flexibility to utilize the 6 acre land for a K-8 however, she believed that the district had considered an Elementary Learning Center for this site.

In response to Carey-Shuler's question concerning the build-out and maintenance of the park, Mr. Mayol noted the applicant would make improvements to the park as a credit for impact fees.

In response to Commissioner Jordan's inquiry whether the mitigation would provide relief to the 6th graders residing in the California Club who were currently being schooled at a nearby K-Mart, Mr. Mayol noted he did not believe that the school district was occupying the K-Mart at this time and that the 6 acre set aside would be sufficient land to build a K-8 school.

In response to questions by Commissioner Heyman and Chairman Martinez, Ms. Goode noted the proposed project would not take funding from a project to retrofit an existing retail facility to house middle school students but would be an addition to all the schools slated in the five year capital plan and that 9,000 student stations were budgeted for in this plan. She also noted it would provide an immediate relief to students who were currently in overcrowded conditions.

In response to Commissioner Jordan's request for clarification concerning what was before the Commission today, Mr. Mayol noted that phase 1 was before the Commission today and that phase 2 would be coming forth before the Board for a zoning change request.

Ms. Kramer appeared before the Board in rebuttal and noted the County Line Road could not absorb traffic from another school. She also noted that the small acreage now stretched out to a

20 acre park was a misnomer because 15 acres of it was a nature preserve of brush for wild plants and animals.

Responding to Ms. Kramer's comments, Mr. Mayol noted the Department of Park and Recreation had indicated they would use the 15 acres as passive recreation and the 5 acres for active recreation.

In response to a question by Commissioner Jordan, a representative of Public Works Department appeared before the Board and advised that although the roads were very crowded, there still existed capacity to sustain the development of this particular project. He noted the DIC memo included a request that some improvement be made to the streets and adjacent areas.

Mr. Mayol asked that the applicant be allowed to withdraw request #4.

Commissioner Jordan presented and moved a resolution which approved requests # 1, 2, 3 & 5 of the application and accepted the applicant's proffered covenant. This motion was seconded by Commissioner Heyman, and upon being put to a vote, passed by a vote of 9-0. (Commissioners Souto, Sosa, Rolle and Seijas were absent).

The foregoing resolution was adopted by the Board and is set forth in the Record of Resolutions and assigned resolution #Z-21-05.

All deferral dates on applications considered during the day's meeting were publicly announced.

All exhibits submitted for the record at the day's meeting were transferred to the care, custody and control of the Department of Planning and Zoning.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the zoning meeting was adjourned at 2:09 p.m.

Chairperson

ATTEST: HARVEY RUVIN, Clerk

By: _____

Kay Sullivan
Deputy Clerk