BOARD OF ADJUSTMENT MEETING
City of Fort Lauderdale
Wednesday, October 14, 2009 – 6:30 P.M.
City Hall City Commission Chambers – 1st Floor
100 North Andrews Avenue
Fort Lauderdale, Florida

		Cumulative Attendance 6/2009 through 5/2010	
Board Members	**Attendance**	**Present**	**Absent**
Diane Waterous Centorino, Chair	P	2	2
Caldwell Cooper	P	4	0
Gerald Jordan	P	4	0
Michael Madfis	P	4	0
Bruce Weihe	P	4	0
Birch Willey	P	4	0
Henry Sniezek	P	3	1
Alternates			
Mary Graham	A	2	1
Karl Shallenberger	P	3	1

Staff
Bob Dunckel, Assistant City Attorney
Cheryl Felder, Service Clerk
Terry Burgess, Zoning Administrator
Mohammed Malik, Chief Zoning Plans Examiner
B. Chiappetta, Recording Secretary, ProtoType Services

Communication to the City Commission

None

Purpose: Section 47-33.1.

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

Index

Call to Order

Chair Centorino called the meeting to order at 6:36 p.m. She introduced Board members and described the functions of the Board and procedures that would be followed for the meeting.

Approval of Minutes – August 2009

Motion made by Mr. Jordan, seconded by Mr. Cooper, to approve the minutes of the Board's August meeting. In a voice vote, motion passed unanimously.

Board members disclosed communications they had regarding items on the agenda.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

Index

1. Appeal No. 09-26

APPLICANT: **SVP Las Olas Limited Partnership**

LEGAL: **"NEW RIVER CENTER" 151-15,B POR PAR A DESC AS BEG AT WLY MOST NW COR SAID PAR A NE 42.47 E 220.28 SE 42.43, S 110, W 280.05 N 109.94 TO POB**

ZONING: **RAC-CC (Regional Activity Center-City Center District)**

ADDRESS: **100 E. Las Olas Blvd.**

DISTRICT: **4**

APPEALING: **Section 47-20.22.C.3.c (Temporary parking lots-*Standards)***
Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing perimeter landscaping where Code requires landscape materials shall be installed and continuously maintained around the entire perimeter of the lot.

APPEALING: **Section 47-20.22.C.3.d (Temporary parking lots-*Standards.)***
Requesting a variance to allow overflow parking of valet vehicles on vacant property without complying with the minimum landscaping along all perimeters where code requires landscape area shall have a minimum depths of five (5) feet and an average of ten (10) feet along all perimeters.

APPEALING: **Section 47-20.22.C.3.e (Temporary parking lots-*Standards.)***
Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing surface water/drainage plans where code requires surface water/drainage plans shall be in accordance with the requirements of the Broward County Department of Natural Resource Protection permitting requirements.

APPEALING: **Section 47-20.22.C.3.g (Temporary parking lots-*Standards.)***
Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing light fixtures where code requires any temporary parking lot which will be in operation at any time during the period of one-half (½) hour after dusk to one half (½) hour before dawn shall provide a minimum maintained foot candle illumination of two (2) foot candles throughout the lot during this period of time.

Mr. Dunckel reported that the Board did not have jurisdiction to grant a variance for item three because this item required compliance with Broward County Code.

Mr. Justin Toal, representative of the applicant, explained his client had purchased the property in 2007 and the adjacent River House building had been completed in 2004. He believed the River House builder intended to create a later-phase project to provide additional parking to River House, but no project had ever been built. From 2004 to 2007, River House residents had been allowed to park their cars on this site. When SVP purchased the site, it was on the premise that SVP would work with River House regarding the parking situation.

Mr. Toal explained that when purchasing the property, his client had met with City staff, the former Mayor and Planning and Zoning staff, who had stressed that the new owner must work with River House because their buildings would be contiguous. City representatives had stressed River House's overwhelming need for additional parking

because they had been delivered a building that was insufficiently parked. SVP had allowed River House residents to park on the site free of charge and stipulated the insurance River House must have and procedures and responsibilities they must maintain to be allowed continued use of the site.

After five years, SVP had received a code violation informing them they could no longer allow River House to use the site for parking. The City had made no suggestions how this could be resolved, and Mr. Toal pointed out that the complaint had come through the City Manager's office, which had previously been encouraging SVP "to a very great extent" to work with River House.

Mr. Toal described how the property was maintained and run, and noted that there had never been an incident on the property because there was always activity on the site. Mr. Toal had also informed FAU, DDA and the Museum of Art that the lot would be available for their special events. The City itself had taken advantage of this offer for a Dolphins pep rally.

Mr. Toal said they looked forward to someday developing the property, and they wanted to continue to provide the parking relief to many River House residents. He stated they had considered what could be done to improve the situation and tried to determine if this presented a hardship to someone else. He pointed out that removing the parking would not get their building built faster, and would lessen safety in the general vicinity.

Mr. Cooper asked what permissions River House had to use the property for parking from 2003 to 2007. Mr. Toal explained that prior to SVP's ownership, River House had used the lot and not been cited for it. When SVP purchased the property, the City asked them to keep working with River House regarding their lack of parking.

Mr. Toal explained to Mr. Madfis that they were requesting exemption from the landscaping and lighting requirements for financial reasons. Mr. Toal reminded the Board that SVP made no money on the lot and River House had no money to pay.

Mr. Willey remembered that River House had originally promised stores, not parking, on this site. He took issue with the statement that no one cared that the lot remained a dirt lot for years; he knew of one person on City staff who had wondered why they allowed a prime lot to be undeveloped for so long. Mr. Willey felt Mr. Toal was indicating that if the variances were not granted, they would not consider bringing the lot up to code. He reminded Mr. Toal that cost was not considered a valid hardship to the Board of Adjustment. He said SVP had not done what was required to get a temporary permit for a parking lot.

Mr. Toal stated their target date for construction onset was early 2011, and they were working with the River House to evaluate accommodating their parking needs in the

new structure. Regarding the hardship, Mr. Toal remarked that the City had allowed the River House to be developed without sufficient parking for its use, and SVP was trying to help the residents out.

Mr. Weihe observed that SVP was "bending over backwards to help out a neighbor; the neighbor is victimized, essentially, by what happened" and it made sense to him that there was a hardship and the variance should be approved.

Mr. Madfis explained that the City had allowed the River House to built because that was how the zoning code was written: to create a Regional Activity Center, so the City could develop mixed-use buildings without relying on parking garages in every one of them, provided there was enough parking in the Regional Activity Center. Mr. Madfis reminded everyone that there was a City garage nearby, and "part of the deal" with a downtown Regional Activity Center was that residents might need to "pay a lot for your parking." Mr. Madfis was unsure why Mr. Toal felt River House residents should have free parking. He explained, "The intention was…to create a parking problem, almost, downtown so we would have an activity center." He felt that to "try to mitigate this by using a surface that's very valuable land, without improving it appropriately in our downtown, I don't think matches anything that our code is trying to move toward and I think it's going to de-value the rest of the properties in the area…"

Mr. Toal felt it was a misconception that refusing to allow the parking would lead SVP to develop the lot faster. Mr. Madfis wondered why Mr. Toal did not charge River House residents to park on the lot, noting that if Mr. Toal were required to make improvements on the property to help River House, charging for parking would offset those costs. Mr. Madfis felt the City might facilitate the improvements by expediting the processes for improving the property, not that SVP should be permitted to avoid them in order to "give away this valuable property…" Mr. Toal remarked that he believed "the government should work for the people, not against them, and in this case there is absolutely nobody being disenfranchised or suffering as a result of this." Mr. Madfis remarked that they were taking away business from the City center garage.

Mr. Sniezek asked Mr. Toal to explain what "temporary" meant in this case. Mr. Toal stated, "The timing of how long this will be is a good question, and one I certainly can't answer." Considering the economy, he could not provide a concrete timeframe. Mr. Dunckel referred to the City Code, which specified that temporary parking lots could be approved for 18 months, and this time could be extended by the City Commission in consideration of "demonstrated exceptional circumstances." He clarified that this request was to be excused for the requirements for a temporary parking lot, such as lighting and landscaping.

Chair Centorino remarked that the applicant did not have the hardship; the neighbor had the hardship. She reminded everyone that the Board must consider the welfare of the

residents of River House and the entire community. She pointed to the construction fence that looked less appealing than landscaping would. Chair Centorino felt if they were to grant the temporary parking, the Rover House should contribute to the landscaping. Mr. Toal said City staff had remarked that if this fence were removed, the property would become a haven for the homeless.

Mr. Willey suggested the fence could be camouflaged with landscaping. Mr. Toal said they were considering moving the fence and brining in artwork. Mr. Willey said these ideas should be presented to the Board for approval. He noted that this request was to be exempted from "every single thing that make a parking lot at least reasonable on one of the prime corners in our downtown where … we all have to look, and they just don't want to spend a cent…" Mr. Toal said, "We simply don't have the money to do this."

Chair Centorino opened the public hearing.

Mr. John Quaintance, President of Las Olas River House Condominium Association, said they supported the concept of zoning and were not looking for a free ride; they were seeking accommodation on an issue "that I think really harms no one." In response to Mr. Madfis' comments, Mr. Quaintance stated the original developer had promised River House residents that another building to be constructed next door would have 300 parking spaces.

Mr. Quaintance remarked that parking was scarce in Downtown Fort Lauderdale, and very few lots permitted valet access. He stated they kept garage-keepers insurance for the valet plus $50 million in liability insurance, but garages still turned them down. The owners understood that this lot would be built upon someday and they would get parking in that building. They were requesting accommodation until then. Mr. Quaintance felt the City should prefer this use to an empty, unused lot.

Mr. Madfis remarked that the parking lot was not environmentally designed to absorb the chemicals leaked from the cars parked there, and this was one of the violations existing on the property.

Ms. Summer Greene, River House resident, thought it was "amazingly idealistic' of Mr. Madfis to be concerned about car chemicals when the Las Olas Riverfront was "absolutely an embarrassment and is a creator of a lot of the homeless problem that we have downtown." Ms. Greene felt that parking in the government parking lot would amount to residents' risking their lives walking home. She said they needed parking for 18 months until the next-door building was constructed. Ms. Greene said, "It is unrealistic for us to have go to the public spots until you can guarantee safety for the residents in out part of Las Olas."

Mr. Joe Bellavance, Fort Lauderdale resident, remarked that he did not object to the

parking, but said the site was unattractive and it should meet all City code requirements.

Mr. Bill Pennell, CFO and Vice President of Facilities at Broward College, said they wanted to work with SVP to enhance the area. He expressed concerns with the current state of the property, such as the lack of landscaping and dirt and dust that reached the college offices. Mr. Pennell said they had never met with Mr. Toal regarding parking use of the site. He added there was also a lack of light on the site, which presented a safety issue. Mr. Pennell recommended that the revenue generated by valet parking and funds from the developer be combined to erect appropriate lighting and landscaping.

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Willey suggested if the case were tabled, all interested parties could meet to discuss a resolution of the issues. Mr. Toal said they would be happy to work with the community, but the limitation was money.

Mr. Madfis commented that the burden had been on the applicant to present a proposal to the Board this evening. He acknowledged that the solution would probably not be code-compliant, but Mr. Toal must return with a compromise that was workable and acceptable.

Motion made by Mr. Weihe, seconded by Mr. Jordan, to table this item to the Board's January 2010 meeting. In a voice vote, motion passed 7-0.

Index

2. Appeal No. 09-27

APPLICANT: **Millennium Plaza Acquisition LLC**

LEGAL: **MELVA PLAT 113-34 B TRACT A**

ZONING: **B-1 (Boulevard Business District)**

ADDRESS: **1535 North Federal Highway**

DISTRICT: **2**

APPEALING: **Section 5-26(b) (Distance between establishments)**

Requesting a special exception to allow a restaurant to sell alcohol that is incidental to the sale of food at a distance of 71 feet from an establishment (Florida Cigar Bar) that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sell alcoholic or intoxicating beverages.

Mr. Dunckel explained that this item was being heard for a special exception, not a variance; the applicant was not required to meet the same criteria as for a variance. Per the code, an applicant was entitled to a special exception unless it could be shown that the request was contrary to the public interest.

Mr. Matt Lofgren, representative of the tenant, explained they wanted to add a nice restaurant to the plaza. Mr. Jordan had driven by, and said he had no objection to this; he did not feel it was contrary to the public interest.

Chair Centorino opened the public hearing.

Mr. Caleb Gunter, son-in-law of the restaurants' owner, said they looked forward to doing business in Fort Lauderdale.

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Weihe, seconded by Mr. Madfis, to approve. In a roll call vote, motion passed 7-0.

Index

3. Appeal No. 09-28

APPLICANT: **KK Gardens LLC**

LEGAL: **HOLLY HEIGHTS 60-18 B**

ZONING: **RMM-25 (Residential Mid Rise Multifamily/ Medium High Density District)**

ADDRESS: **900 NE 14 Street**

DISTRICT: **2**

APPEALING: **Section 47.5.36 (Table of Dimensional Requirements for the RMM-25 district)**

Requesting a variance to permit an existing development to maintain an 18 feet front yard setback, where the code requires a minimum front yard setback of 25 feet.

Mr. Michael Weiner, attorney for the applicant, distributed an information packet to Board members. He explained that Dixie Park had been platted in 1926 and this property had been platted in 1965, an apartment complex had been built and granted a Certificate of Occupancy issued in 1968. At the time, "everybody" realized that the 1925 plat seemed to overlap the 1965 plat. Mr. Weiner noted that the survey that accompanied the building plans showed the issue. He drew the Board's attention to an enlarged diagram of the survey showing the overlap area, which was approximately 5 feet wide on one side and 1.7 feet wide on the other side.

Mr. Weiner said a 2006 survey also showed the overlap area, and explained that this was open area between houses and his property. He was requesting to put these pieces of property in a different owner's name, but this triggered new 25-foot setback requirements. Mr. Weiner stated the property had changed hands five times and this had never been addressed, but now the practices for mortgage lending prohibited loans on properties that might have overlap issues. They therefore wanted to place the property in separate ownership.

Regarding the first criteria for a variance:

a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property

Mr. Weiner explained the answer was clearly yes; the special circumstances were the difficulties with the overlap that could prevent a mortgage from being put on the property, interfering with reasonable use.

Regarding the second criteria for a variance:

b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district

Mr. Weiner stated this issue was unique to these two plats.

Regarding the third criteria for a variance:

c. That the literal application of the provisions of the ULDR would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same zoning district

Mr. Weiner reiterated that this could prevent a mortgage on the property, which would hamper an owner's ability to sell the property.

Regarding the fourth criteria for a variance:

d. That the unique hardship is not self-created by the applicant or his predecessors, nor is it the result of mere disregard for, or ignorance of, the provisions of the ULDR or antecedent zoning regulations

Mr. Weiner explained that the error had been in the platting, which was not under the owner's control.

Regarding the fifth criteria for a variance:

e. That the variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare.

Mr. Weiner explained they would place only ownership of the disputed areas in another entity. This would be the minimum that would allow them to sell the property in the future without having to explain it to a mortgage lender.

Mr. Weiner invited the Board's questions.

Mr. Dunckel asked if the property would be conveyed to the neighboring property; Mr. Weiner said, "We're actually just conveying it to an entity" and because it was unable to be developed, it would stay there. Mr. Dunckel asked that a condition be put on the variance that if an adjacent building were damaged or destroyed more than 50% the variance would go away and new construction would comply with setback requirements in effect at that time. Mr. Weiner said under the circumstances, new construction could be built to this building's setback and still be 25 feet away because the other property could not be developed.

Mr. Cooper disclosed that he owned two properties that abutted this property. Mr. Dunckel advised Mr. Cooper to recuse himself, and called Mr. Shallenberger to take his place on the Board for this case.

Mr. Shallenberger took Mr. Cooper's place on the Board for this case.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Willey, seconded by Mr. Weihe, to approve. In a roll call vote, motion passed 7-0. [With Mr. Cooper recusing himself and Mr. Shallenberger voting in his place]

[The Board took a break before hearing the next case]

Index

4. Appeal No. 09-29

APPLICANT: Archdiocese of Miami/Cardinal Gibbons School

LEGAL: 13-49-42 W/34 OF N1/2 OF SE1/4 OF SE1/4 LESS N 25 FOR ST, & LESS E 40 FOR RD R/W, W1/2 OF SW1/4 OF SE1/4 OF SE1/4

ZONING: CF-HS (Community Facility-House of Worship/School

ADDRESS: 2900 NE 47 ST and/or 4601 Bayview Drive

DISTRICT: 1

APPEALING: Section 47-24.12.A.6.a (Temporary nonconforming use permit)
Requesting a Temporary Nonconforming Use Permit pursuant to Section 47-24.12.A.6.a, to permit the operation of four (4) lights on Cardinal Gibbons High School football field.

Mr. John Shubin, representative of the applicant, asked everyone in the audience who supported the application to stand. He also presented a petition that had been signed by 145 people living in the general vicinity of the school that stated they supported the application, lived in the surrounding neighborhood, and believed the lights were compatible with the neighborhood and the existing use and activities of Bayview Park. Mr. Shubin remarked that the 145 signatures represented at least 72 homes.

Mr. Shubin clarified they were seeking a temporary nonconforming use permit, not a variance. Chair Centorino re-read the request.

Mr. Shubin explained that the playing field was adjacent to Bayview Park and the zoning category of the Cardinal Gibbons site was CF-HS which referred to community facility, house of worship and school, and it did not have a future land use designation for residential.

Mr. Shubin referred to a 1982 variance request from Cardinal Gibbons and explained that in 1982 there had been a residential zoning/land use designation, but in 1997 the designation had been changed and the new ULDR had come into effect, which defined compatibility requirements.

Mr. Shubin stated in 2007 Cardinal Gibbons, through its contractors, submitted plans for approval of the lights. He specified that two of the lights were at 65 feet and two were at 95 feet, and this had been clearly represented on the plans. The permit had been issued and the lights were later purchased for $250,000 and installed in January 2008. The lights had been inspected and approved on February 14 2008, with formal approval issued on March 10, 2008. Four days after the approval [and five months after issuance of the permit] the City issued a rejection notice informing the school that use of the lights must be discontinued and stating the City's opinion that the lights were structures and as such were subject to the 35-foot height limitation, and were inconsistent with the City's ULDR.

Mr. Shubin stated Cardinal Gibbons disagreed with the decision of the City to reject the lights; they believe the lights were permissible and did not require a temporary nonconforming use permit. Mr. Shubin said they also took the position that they should not need to apply for a variance, but they had done this under protest as an accommodation. The request for a variance had been rejected, the school had preserved its rights in the appeals court and taken advantage of a statute enacted in the mid-1990s called the Florida Land Use Environmental Dispute Resolution Act. Instead of going to court, this process included mediation and a Special Master hearing to determine if the differences could be resolved.

Mr. Shubin informed the Board that mediation had taken place and many who were present this evening in opposition to the lights had been represented at mediation by Mr. Tucker Gibbs. The mediation had resulted in a mediated settlement agreement, which had not been signed but was public record. One of the terms of this agreement was that Cardinal Gibbons would come before the Board of Adjustment to seek a temporary use permit to allow them to use the lights for one year.

If this application were approved, Mr. Shubin reported the mediated settlement agreement contemplated that the City Commission would approve the mediated settlement agreement. He noted that prior to the agreement, the City had announced it would be going through a rewrite of the ULDR, and as part of this rewrite, a process might be created to allow application through the site level 3 process for this type of application.

If these ULDR changes went through in the next year, Cardinal Gibbons would be required to apply for and go through the public process again. Mr. Shubin believed it was critical for the Board to focus on the standards set forth in the code and whether or not there was competent substantial evidence to support the standards.

Mr. Willey asked if the mediated agreement included the caveat that they would agree to limited use of the lights during that one year. Mr. Shubin stated they had agreed to this as part of the mediated agreement, but they could have sought this without it. He

explained that Cardinal Gibbons had agreed to a number of conditions regarding use of the lights during the settlement agreement process. These conditions included limitations on parking, security, landscaping, cleanliness, maintenance, frequency of events and a limit of 30 events. He explained they had requested an exception in the event of playoff games. They had also agreed to have a full-time liaison to work with the neighbors, to limit use of the public address system, to keep seating exactly the same, to maintain lighting pursuant to the plans on file and to work with the City to adjust lights in the adjacent Bayview Park. They had also agreed to provide additional parking for Bayview Park.

Mr. Shubin related that the exact language of the conditions had changed a little during finalization of the agreement; he assured the Board that nothing material had been changed.

Mr. Shubin stated the standard was set forth in 47-24.12.A.5, which said, “A temporary nonconforming use permit may be granted upon demonstration by a preponderance of the evidence of the following criteria: A: granting of the temporary nonconforming use permit shall not be incompatible with the adjoining properties or the surrounding neighborhood or otherwise contrary to the public interest.”

Mr. Shubin remarked that he had never seen language written in the double negative as this was, i.e.: “shall not be incompatible with.” He said he might have a dispute with Mr. Gibbs regarding what standard the Board should use when they heard the evidence. He maintained that because the football field, school and church were permitted uses, lit softball and football fields were accessory uses. He believed the underlying use was a permitted use, and the standard for this was enunciated in Metropolitan Dade County vs. Fuller. With a permitted use, Mr. Shubin explained the burden was on the applicant, but the court said an “application may not be denied unless it is shown by the opposition that the public interest will not be served or the result will be incompatible with the surrounding area it if it is granted.”

Mr. Shubin believed this would be an easy decision for the Board. He reminded them they were here regarding only the lights and the code had one very specific criterion for lighting. The code stated that when trying to determine whether a use that had lighting was compatible with the surrounding area, the Board should look to whether or not certain objective criteria for foot-candles were met. Mr. Shubin believed the lights as presently situated and tested met all objective foot-candle criteria set forth in the code. Any argument against compatibility should begin with the lighting criterion.

Mr. Shubin remarked it was impossible to play football with 35-foot tall lights. He said the height was required to meet the foot-candle requirements at ground level. He felt it was undisputed that they could never meet the foot-candle requirements for what they maintained was a permitted use if the lights were limited to 35 feet tall.

Mr. Shubin said this was the essence of the argument they had made to the City that their rights had been abridged: since they had a right to a football field, and since games were typically played at night due to the heat, they could not have a properly lit field with 35-foot lights.

Mr. Shubin reminded the Board that in a quasi-judicial hearing, anyone seeking to challenge the Board's decision must demonstrate he/she had "standing." Mr. Shubin said he did not want to cross-examine anyone speaking in opposition to the request regarding his or her standing, but he did not want to waive his rights. He therefore suggested that anyone wishing to speak should state his name, the location of his residence in relation to the lights and fields, when he had purchased his home, and how he believed he was affected by this application, and why his injury was different from the next person or from someone who did not have standing to challenge this.

Mr. Shubin reminded the Board that the neighbors also lived next to a park with lights that were left on until 10 p.m. 365 days a year. He recommended anyone speaking against the application should also "try to describe for you the existing lights and why they think these flights are going to make their particular status worse."

Mr. Shubin referred to a report filed by Dr. Robert Prager on behalf of himself and his neighbors, and said he agreed on the criterion, but disagreed with Dr. Prager's conclusions. He related that compatibility provisions had been added and the land had been rededicated in his 1997 and no longer had residential zoning designation.

Mr. Shubin said there was also talk about the park and how the lights may be dangerous; he stated there was no question that the lights met applicable code and building code provisions. Dr. Prager's report included a lot of evidence regarding noise pollution, and Mr. Shubin believed Dr. Prager had an acoustic engineer perform tests during a football game. The tests showed that the noise levels violated the City's noise ordinance, but Mr. Shubin reminded the Board that noise was not the issue when it came to lighting.

Dr. Prager had also discussed general aesthetic concerns and the fact that the lights would be visible throughout the neighborhood. Mr. Shubin believed this was not the correct standard, because even a flashlight on a 35-foot pole could be seen from some of the homes; the criterion must be the foot-candles.

Mr. Shubin explained the facts of the Yancy case in North Carolina were very similar to this. In that case, the school wanted permission to construct a 4,000-seat stadium with lights next to a residential community. The court had said the residents conceded that education included improvement of physical faculties and the use of an athletic field had become an integral part of the school curriculum. The court found no authority which

held that athletic facilities were excluded in zones where schools were permitted. The court added that it was a rare thing for a high school baseball or football game to be played in the daytime, so lights must be used, and while these lights might be disturbing to those living close by, “it must be recognized that when they purchased their property that a school, together with its attendant and necessary adjuncts, was permitted within the zoning ordinance.”

Mr. Shubin explained to Mr. Weihe that there were no lighting restrictions in place in Gaston County, North Carolina at the time of the Yancy case. Mr. Shubin said they were proffering lighting restrictions as a condition of the application. They were also complying with foot-candle criteria in the compatibility requirements.

Mr. Madfis stated the temporary nonconforming use application bothered him, because it appeared Mr. Shubin was banking on a future change in the zoning code. He worried what would happen after one year.

Mr. Shubin did not feel there was any other way around the one-year requirement. He offered to add a condition that if at some point prior to one year the City Commission did not approve or rejected what was in the ULDR, this permit would evaporate. Mr. Madfis acknowledged many people had issues with the zoning code, and wanted to build things that were not in conformance with them. There was the option for these individuals to petition for a zoning change, and Mr. Madfis wondered why Mr. Shubin was not following this procedure. Mr. Shubin said this was part of that process. Mr. Madfis thought the zoning change should come forward first.

Chair Centorino opened the public hearing.

Mr. Vincent Kelly, Pastor of the St. John the Baptist Catholic Church and Supervising Principal of Cardinal Gibbons High School, described Bayview Park and activities that went on there, sometimes until 11 o'clock at night. Pastor Kelly stated Cardinal Gibbons had made a tremendous contribution to the northeast section of Fort Lauderdale and stabilized the entire area. He asked the Board to see these lights as a part of the program of enrichment for the future.

Mr. Dan Perry stated he was speaking on behalf of the Coral Ridge Homeowners Association, and a majority of those responding to an email stated they favored a compromise. He said these residents favored a compromise because of the 50-year history of the relationship between the Church, the school, the City and the neighborhood. Mr. Perry believed this was an instance when cooperation was necessary.

Ms. Sarah Motta, junior at Cardinal Gibbons High School, said there had been at least three instances when a game had to be called early because of lack of light. She said

they were not asking for special privileges; they were asking for what most Broward County public schools and most private schools already had.

Ms. Colleen Slattery, senior at Cardinal Gibbons High School, remarked that attending games on Friday nights provided teens a positive alternative to drinking or smoking pot.

Mr. Drew Zloch, senior class president of Cardinal Gibbons High School and member of the football team, said, “Playing under the lights is special; it gives you that special feeling, it's exceptional.” He believed that playing under the lights at Cardinal Gibbons would “enhance not only my athletic life, but spiritual and mental life and help me grow as a person.”

Mr. Nicholas Picon, Cardinal Gibbons student, senior class valedictorian and member of the Cardinal Gibbons Boys Lacrosse Team, pointed out that lacrosse season took place in the first four months of the year when the days were shorter, and games must be scheduled at 3:30 in order to finish them before dark. He remembered an important game played last year that had finished in almost complete darkness because of the lack of lights. Mr. Picon noted how dangerous it was to play lacrosse in the dark. He stated teams from Palm Beach and Miami could not play games at home because light restrictions would require them to pull students out of school at 1:30. Mr. Picon informed the Board that every other school they played at had lights.

Mr. Jim Zloch said he was very excited to tell the Board he supported this application. He stated it would be a very positive thing to allow the lights to go on for Friday night football at Cardinal Gibbons High School.

Mr. Harry Durkin stated his home was the closest to home plate on Cardinal Gibbons’ baseball field. He knew of no reason whatsoever that this application should be denied and asked the Board to grant this request.

Mr. John Kelly said his family had moved into the neighborhood knowing that there was a high school down the street and Bayview Park was nearby. He stated he was an attorney, a youth coach for various nonprofits and an assistant girls’ lacrosse coach at Cardinal Gibbons. Mr. Kelly reported he could see the glowing lights from Bayview Park every evening. Regarding the compatibility issue, Mr. Kelly said they knew lights were compatible in Coral Ridge because of Bayview Park. Mr. Kelly explained that for some games they were in a race against sunset that required them to take fewer timeouts and brief half times.

Mr. Tim Hernandez said he had lived in the Coral Ridge Country Club neighborhood for 17 years, and he could see lights from both Bayview Park and Cardinal Gibbons from his house. Mr. Fernandez said he supported this request. He believed the code was clear that the football field was an accessory use to the school, and the code

established objective criteria regarding foot-candles for lights in conjunction with that accessory use. Subjectively, Mr. Fernandez remarked that Cardinal Gibbons had been a good neighbor and should be supported by the neighborhood and the community. Mr. Fernandez presented his resume into evidence.

Mr. Pat Curry stated he lived 100 feet or less from the Cardinal Gibbons football field fence. He admitted he was biased because he and two of his daughters had already graduated from Cardinal Gibbons High School and he had two more girls attending Cardinal Gibbons. Mr. Curry said recently the lights at Cardinal Gibbons had been tested using generators, and they only illuminated the football field. Mr. Curry said he was looking forward to watching high school football on Friday nights.

Mr. Weihe said he was waiting to hear input regarding the height restriction rather than the light spillage.

Mr. Michael Piper, representative of Coral Ridge Little League, said this was not a height restriction or light spillage issue; the Board must determine whether what was requested was compatible with the neighborhood. Mr. Piper said Cardinal Gibbons' request for a variance in June of last year had been denied because the City had led Cardinal Gibbons to believe the lights would be permitted but had changed its mind when the lights were turned on.

Mr. Piper stated there was no better neighbor than Cardinal Gibbons. They had probably been the Little League's most productive volunteer by opening parking lots for Bayview Park games, allowing them to meet in their classrooms at night for free and allowing them to use the gymnasium for practices. Mr. Piper believed this was an easy decision regarding compatibility. Since there was already a park in the area with lights, there was no incompatibility and it would be intellectually suspect to claim otherwise.

Mr. Peter Holden said he currently lived in Pompano Beach, but he was actively looking for a home in the area of Bayview Park because of Cardinal Gibbons High School and the park.

Mr. Dave Benson explained his backyard abutted Cardinal Gibbons' property. He said when he moved into the neighborhood he was aware he would be living next to a high school. Mr. Benson remarked Cardinal Gibbons had been a fantastic neighbor. He said he would support anything that would help youth and give them a productive place to go.

Mr. Charles Shealy said he had coached football and girls softball for 26 years and he knew firsthand what it meant to be able to play sports in the evening. He noted that parents could rarely attend games before five or six o'clock in the evening, and he wanted them to have the opportunity to see their kids perform.

Mr. Paul Ott, Cardinal Gibbons Principal, listed some of the ways Cardinal Gibbons was a good neighbor: it provided a testing center for SATs and ACTs, open to all students; it hosted power squadron classless; it was a polling place for state and national elections, and it hosted college night for college representatives to provide information to kids and their parents.

Regarding compatibility, Mr. Ott said four lights at Cardinal Gibbons compared to the 12 lights at Bayview Park were compatible. Night football games at Cardinal Gibbons compared to night baseball and soccer games at Bayview Park were compatible. The soccer and lacrosse games, which made up the majority of the games they had mediated to hold, usually ended between 7:00 and 8:30 p.m. Use until 9:30 or 10 p.m. would occur perhaps five times per year.

Mr. Tucker Gibbs stated he was representing Dr. Robert Prager, and Edward Deeb, neighbors of Cardinal Gibbons High School. Mr. Gibbs clarified this was not a temporary use permit request, it was a temporary nonconforming use permit request. He stated that the code provision was clear, and explained that the applicant [not the opponent] must demonstrate by a preponderance of the evidence that granting the temporary nonconforming use permit was not incompatible with the adjoining properties and neighborhood and was not otherwise contrary to the public interest.

Mr. Gibbs reminded the Board that neither of the cases cited by Mr. Shubin regarded lights that had the limitation of 35 feet. He stated they were here because the school had erected light poles that violated the City's height restriction. The cases cited by Mr. Shubin were therefore irrelevant.

Mr. Gibbs noted many people had discussed Bayview Park, and pointed out that the zoning on Bayview Park was Community Facilities with a P, which meant that the height limitation in the code was 60 feet.

Mr. Gibbs stated his clients objected to this application to allow two 95-foot light poles and two 65-foot light poles where the height limit in the applicable CF-HS zoning district was 35 feet. Mr. Gibbs said the application did not meet the requirements for a temporary nonconforming use permit as set forth in Section 47-24.12.A.6. His clients objected for the following reasons: the poles were not nonconforming uses because these were structures, not uses, and the height of the light poles was incompatible with the adjoining property. Mr. Gibbs said the mediated agreement could not require what the code did not; it could not redefine what a temporary nonconforming use was in order to get the Board to approve an illegal structure. He said the Board had no authority to be hearing this request.

Mr. Gibbs said Section 47-3.1 of the ULDR defined nonconforming use and structures

and specified that non-conforming use was any use which was not in compliance with the zoning regulations applicable to that use at the time the use was established and for which all required permits were issued, which use would be prohibited, restricted or would otherwise not conform with the ULDR. This meant that an owner was not required to change a previously built structure to conform with new laws. Mr. Gibbs stated these light poles had been built illegally and were never approved by the City. This "use" was not temporary, and the applicant was using this provision to allow them to use the illegally built light poles while they tried to amend the code and get approvals that allowed them to use the lights on a permanent basis. Mr. Gibbs believed this was putting the cart before the horse.

Mr. Gibbs reminded the Board that in 2007 and 2008 Cardinal Gibbons had built outdoor lights without permits, and in 2008 in response to neighborhood complaints, the City advised Cardinal Gibbons to apply for a variance, which the Board had denied with a 1 – 6 vote. Mr. Gibbs informed the Board that the mediated settlement agreement had not been approved by the City Commission, and that the agreement did not require the City to approve the temporary nonconforming use permit, so there was no requirement for the Board to approve it or for the City to change its laws to allow the higher light poles.

Mr. Gibbs pointed out that the section of the code dealing with temporary nonconforming uses did not define compatibility, but the zoning code had a section entitled neighborhood compatibility and the applicant had failed to address the specific compatibility items in the code. Mr. Gibbs stated the compatibility portion of the code said that "no source of incandescent or mercury vapor illumination shall be directly visible from any abutting residential property." The lights were visible, which meant they were not compatible with the neighborhood.

Mr. Gibbs pointed out that the 65-foot and 95-foot poles were set back 30 feet from the residential property line, and while the poles were hurricane, rated the light fixtures were not. Mr. Gibbs explained that the City Planning Department had created an urban design plan for Federal Highway between Sunrise and McNab that talked about the scale of development adjacent to the residential property and determined that low-rise development was more compatible with single-family properties. The study permitted development abutting single-family homes up to 35 feet in height within 100 feet of residential properties.

Mr. Gibbs referred to the Board of Adjustment's denial of Cardinal Gibbons' variance request in September 2008 and said the Board had rejected the request because the lights, at their greater than allowed height, were not a reasonable use for school, nor were they required for the property to be used as a school.

Mr. Gibbs stated this was about the correct application of the ULDR, and the Board only

had the authority under the ULDR to approve a temporary nonconforming use. The lights were not temporary, were not nonconforming and were not a use, and Mr. Gibbs' clients urged the Board to reject this attempt to approve these illegal lights and to deny the application.

Mr. Willey asked if the lights had ever been used since Cardinal Gibbons was told not to use them, other than on July 29 when they were tested. Mr. Gibbs believed they had not been used.

Mr. Henry Iler, President of Iler Planning Group, had reviewed the consistency of this application vis-à-vis the City's comprehensive plan, the ULDR and the criteria for neighborhood compatibility. Mr. Iler distributed a summary of his comments to Board members. He explained he had over 35 years experience in urban planning in South Florida.

Mr. Iler said he had examined the City's comprehensive plan, the ULDR and neighborhood compatibility standards and had determined that this application was inconsistent with four significant neighborhood compatibility policies. Policy 1.19.8 in the comprehensive plan indicated the mass and scale of new development shall be consistent with existing neighborhoods. Mr. Iler stated the 95-foot light structures were 170% higher than the tallest permitted house in the neighborhood, which put them completely out of scale with the Coral Ridge neighborhood.

Mr. Iler continued that in the comprehensive plan, the future land use element objective 1.2 indicated that residential neighborhoods should be protected from impacts created by adjacent nonresidential uses. Cardinal Gibbons was a nonresidential use and the lights were one to two times higher than the highest permitted Coral Ridge houses and obstructed the natural clear sky view. The nighttime lights created intense visual pollution in most of the neighborhood.

Mr. Iler informed the Board that the future land use element policy 1.20.2 stated that nonresidential uses adjacent to residential areas shall be planned with setbacks and buffer landscaping and traffic patterns leading away from residential areas. He noted that three of the four light structures substantially violated setback standards for the CF–HS zoning district in which the school was located. Mr. Iler added that the 95-foot tall light structure on southeast corner of the field was required to be set back 68 feet but was set back only 30 feet. The two 65-foot poles on the west side of the field were supposed to be set back 45 feet, but were set back only 30 feet. The comprehensive plan policy 1.20.7 indicated that the ULDR shall protect, whenever possible, existing and planned residential areas, including single-family neighborhoods, from disruptive land uses and nuisances. Mr. Iler summarize that the light fixtures' height and setbacks were out of scale with the abutting neighborhood, and were disruptive to residential tranquility both day and night.

Mr. Iler explained that for structures over 40 feet tall, additional setbacks were required. The total setback required for the 95-foot pole would be 68 feet but it currently had a 30-foot setback. The two 65-foot poles should have a 45-foot setback, but they currently had a 30-foot setback.

Mr. Iler referred to the definition of accessory uses, and acknowledged that athletic fields were an accessory use, but lighting for the fields was not customary and incidental. Mr. Iler had compiled a list that indicated 32% of schools in the Fort Lauderdale area had athletic fields with high-mass lighting such as these.

Mr. Iler paraphrased the neighbor compatibility section 47-25, which stated, "Development will be compatible with and preserve the character and integrity of adjacent neighborhoods. The development shall include modifications to mitigate adverse impacts such as traffic, noise, odor, shadow, scale, visual nuisances to adjacent neighborhoods, including buildings placement, parking areas, buffer yards, alteration of building mass and addition of landscaping to ameliorate such impacts." He remarked that the height and setbacks clearly showed that the constructed high mass light structures violated key aspects of this requirement; they were not compatible with the neighborhood. Additionally, no modifications had been made to address the visual nuisance and over-scale features of the poles.

Mr. Iler referred to the City's urban design plan for Federal Highway between Sunrise and McNab, which stated that in CF zoning the first hundred feet from a residential parcel should be restricted to 35 feet in height.

Mr. Weihe asked about Fort Lauderdale schools that Mr. Iler stated had high mass lighting. Mr. Iler clarified that these were all levels of schools in the Fort Lauderdale area; he did not know the percentage of high schools that had high mass lighting.

Mr. Shubin stated Dillard High School was located in Fort Lauderdale, was adjacent to a residential neighborhood and had four field lights at 70 feet and two lights at 100 feet. He stated St. Thomas Aquinas High School was located in Fort Lauderdale, was adjacent to a residential neighborhood and had four 80-foot lights. Mr. Shubin referred to Bayview Park, which was adjacent to this residential neighborhood and had twelve 60-foot light structures. Mr. Iler explained that there were residential lots closer to the Cardinal Gibbons football field than to Bayview Park. Mr. Shubin asked Mr. Iler to define the word "adjacent" and Mr. Gibbs objected, stating the issue was not other schools; the issue was what was compatible in this case. Mr. Shubin asked Mr. Iler if any of his conclusions would be different if he were analyzing the lights at Bayview Park. Mr. Iler stated he had not examined the lights at Bayview Park, but agreed they were over 35 feet tall and were near a residential area.

Chair Centorino asked Mr. Dunckel if this was relevant testimony. Mr. Dunckel

explained that this cross-examination was intended to address the credibility of this expert's testimony and he believed it was proper.

Mr. Iler testified he did not have expertise as a lighting engineer, and he had not performed any independent lighting analysis regarding the lights Cardinal Gibbons, including foot-candle analysis.

Mr. Edward Deeb, president of the Coral Ridge Preservation Association, stated his group opposed this application. He confirmed they were not an anti-Cardinal Gibbons group, noting that members of this group had sent their children to school there. Mr. Deeb said the neighborhood had dealt with the expanding school campus and attendant environmental issues that affected the surrounding residential community, but they felt the school had exceeded what was acceptable with the installation of these lights. Mr. Deeb's group felt "enough is enough."

Mr. Deeb noted that the lights in Bayview Park were properly scaled, set back from residential homes and were camouflaged by foliage. Unlike Cardinal Gibbons, Bayview Park did not host events that included loudspeakers, bands, thousands of fans, hundreds of cars and all the noise and commotion that ruin of the peace and tranquility of the neighborhood.

Dr. Robert Prager stated that when most neighbors purchased their homes, they knew that most outdoor school activities would take place during the daytime hours and not after dark when they were trying to relax at home. Dr. Prager presented a book of photos of the lights and events on the athletic field and described them. He pointed out that having a 95-foot concrete structure within 60 feet of a home was not safe, reasonable or compatible regardless of its wind certification. Dr. Prager remarked on the gridlock, illegal parking and noise that neighbors endured during games at Cardinal Gibbons.

Dr. Prager did not believe that the environmental impacts of 65 and 95-foot field lights had been or could be reasonably mitigated. He asked the Board to deny the application for the temporary nonconforming use permit based on the criteria in the ULDR.

Ms. Theresa Gonzalez, neighbor, said she was shocked at the hubris of Cardinal Gibbons to think they could disrespectfully erect the lights when they were in violation of the City code. Ms. Gonzalez could not believe the school, the lighting contractor, the person who issued the permit, the inspectors and other could have completely overlooked the fact that these lights did not comply with the code. She wondered why they were going through discussions, mediation and public hearing as if there was something to negotiate with Cardinal Gibbons. Ms. Gonzalez remarked that the lights were a violation of City code and were incompatible with their surroundings.

Ms. Elva Bielejeski, neighbor, believed Cardinal Gibbons had outgrown its current location; they were very short on parking, even during the average school day, and Ms. Bielejeski stated they needed a larger site.

Ms. Teresa Shapiro, neighbor, said one of the reasons they had moved into the neighborhood in 1975 was that she wanted her son to go to Cardinal Gibbons school; four of her relatives had graduated from Cardinal Gibbons. Ms. Shapiro opposed the lights and stated they were unsightly.

Ms. Margo Possenti, neighbor, said she opposed the lights poles because they were illegal and she was concerned about the lights because they were not hurricane rated. Ms. Possenti was also concerned about lack of parking at Cardinal Gibbons, and the gridlock this would create during games.

Mr. John Darling, neighbor, stated he and his wife were vehemently opposed to the lights. He presented his own photo of the lights, admitted this issue had polarized the community, and explained he objected to the poles more than the lights. Mr. Darling had seen the lights when they were turned on and remarked that they looked like moons, and there was no question they were not compatible with the neighborhood.

Mr. Gus Hilmoukos, neighbor, said he had nothing against the church or the school and described his family's relationship with the Catholic Church. His daughters had attended Pine Crest School, and he had attended many of their games at that school. Mr. Hilmoukos pointed out that near Pine Crest the residences were separated from the athletic field by streets, canals, railroad tracks and Dixie Highway. He asked Board members not to following emotional arguments but to follow the law.

Mr. James Ambrose, member of the Coral Ridge Country Club Estates Homeowners Association, said this was a quiet neighborhood at night, with little traffic, but if Cardinal Gibbons had 95-foot stadium lights and 30 nighttime games, this could change. Mr. Ambrose presented his own photos of the athletic field and the lights. He stated 95-foot tall lights did not comply with code, and asked the Board not to approve them.

Mr. James Colonel, neighbor, urged the Board to vote against the temporary, nonconforming use permit. He felt this was about school’s imposing its presence upon the community. He remembered residents expressing opposition to nighttime games when the athletic fields were being constructed in 1970, and they had been told there would be no nighttime games at the school. Mr. Colonel stated the school used Bayview, a public park, to conduct daily athletic classes and workouts for their organized team sports. The school also generated revenue by renting out public parking spaces at Bayview Park for its students to use, which created a huge problem for other park patrons. Mr. Colonel referred to the previous attempts the school had made to have the lights permitted and wondered how many times they would try before

realizing that the lights did not belong in this neighborhood. Mr. Colonel remarked that these lights, and all of the additional traffic, noise, trash, and increased crime issues the nighttime games would bring did not belong in a residential community. He asked the Board to save their residential neighborhood and vote against this request.

Mr. Shubin said some had suggested that this application was improperly before the Board, but the City had recognized that this application was properly before the Board. Mr. Shubin clarified that there would be 30 events per year, and described them. He asked the Board to consider the criteria, not the fear of crime, noise and other disturbances that the residents had mentioned.

Mr. Shubin said the applicant had submitted a site report that included readings from the lights, and assured the Board that the lights would only be used during events.

Mr. Shubin stated a quasi-judicial body must act in a way that was not arbitrary or capricious, and one of the fundamental elements of this was to be sure they were treating similar property owners similarly. The purpose of his comparison of Cardinal Gibbons' lights to Bayview Park's lights was to question how the use of Cardinal Gibbons' lights could be deemed incompatible if the use of the lights at Bayview Park had not been deemed incompatible. Mr. Shubin explained that the reason behind this application to amend the code was that there were other districts in the Community Facilities designation having provisions allowing heights above 35 feet, and there were discrepancies. Mr. Shubin said they had played by the rules and the mediation had taken place with authorized City representatives.

Mr. Shubin advised the approval of the temporary nonconforming use permit would allow the City to gauge whether the residents' fears surrounding the nighttime events was occurring when they were limited by the agreed-upon conditions. He requested the Board approve the application.

Mr. Weihe remarked that the Board was not here to address light readings; they were here to see if the poles were compatible with the neighborhood. Mr. Shubin said they were not applying for a variance; the specific criterion was compatibility. Mr. Weihe stated things other than height came into consideration when accessing compatibility.
Mr. Weihe said he had been confused by Mr. Gibbs' arguments for determining the difference between a use and a structure. Mr. Weihe said the poles seemed like a structure, but Mr. Shubin applied for the permission as a use.

Mr. Dunckel said the argument on "use" versus "structure" was intriguing, but it "didn't get the requisite traction with me." He believed that the ULDR used these terms sometimes interchangeably. Regarding the code requirement to protect residential neighborhoods from impacts by adjacent non-residential uses, Mr. Dunckel suggested that a 45-story condominium immediately adjacent to a one-story building was a use,

but Mr. Shubin's argument would be that this was not a use; it was a structure.

Mr. Dunckel read from the ULDR: When any side of a structure greater in height than 40 feet is contiguous to residential property, that portion of the structure should be set back one foot for each one foot of building height over 40 feet, up to a maximum width equal to one half the height of the building, in addition to the required setback, as provided in the district in which the proposed nonresidential *use* is located. Mr. Dunckel felt this paragraph obviously referred to a structure, not a use.

Mr. Gibbs said he agreed except for the fact that there was a provision in the ULDR that was titled "Nonconforming use, nonconforming structure and nonconforming lot," and it specifically defined a nonconforming use and a nonconforming structure. Mr. Gibbs said a light pole was not a use of land. He reminded Mr. Dunckel that the issue was the height of the poles; if they were 35 feet or less, this request would not have been necessary. Mr. Dunckel argued that Mr. Gibbs was referring to a title of a section of the ULDR, and the text was not precluded from being applied to structures.

Mr. Madfis added that the setback was also an issue. He pointed out that neighborhood compatibility was not solely about being compatible with what was next door; it also involved mitigating the incompatibility. Mr. Madfis discussed the square footage of the school compared to the site, and noted the school occupied 15% of the lot, compared to homes in the area, which might occupy 24% of their lots. Mr. Madfis said he would like to see a way the Board could approve this nonconforming use, but he did not believe it complied with the compatibility requirements.

There being no other members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Weihe, seconded by Mr. Cooper, to approve the request because the temporary nonconforming use permit request was not incompatible with the adjoining properties or the surrounding neighborhood or otherwise contrary to the public interest.

Mr. Dunckel distributed copies of the 12 conditions of the mediated settlement agreement to Board members. Ms. Amy Huber, representative of the applicant, explained that the 12 conditions of the settlement agreement had been agreed to by the Coral Ridge Country Club Homeowners Association Board, and were therefore included in the application. Mr. Dunckel stated his interpretation was that the 12 conditions were not attached.

Mr. Dunckel confirmed for Mr. Willey that the 12 conditions document was separate from the permit request and the City Commission could choose not to agree to the 12 conditions. Mr. Dunckel said if this occurred, mediation would enter the formal hearing

parts of the process. Mr. Dunckel added that this also anticipated the Commission would go forward with an amendment to the code to legitimize this. Mr. Shubin said the code amendment was required for them to have the opportunity for this to become permanent. They would then engage in a site plan level 3 process.

Mr. Dunckel confirmed that Mr. Weihe's motion was made independent of the 12 conditions.

In a roll call vote, the vote was as follows: Mr. Madfis - no; Mr. Sniezek – no; Mr. Jordan – no; Mr. Cooper – yes; Mr. Willey – no; Mr. Weihe – yes; Chair Centorino – no. Motion **failed** 2 - 5.

Index

Report and for the Good of the City

Mr. Burgess announced that the tentative date for the Board's November meeting was November 12 at 7:00 p.m.

Motion made by Mr. Willey, seconded by Mr. Madfis, to accept the November 12 at 7:00 p.m. date and time for the Board's next meeting. In a voice vote, motion passed unanimously.

Mr. Willey believed that if a Board member drove by a site but did not speak to anyone this did not need to be mentioned during Board members' disclosures. If they had verbal contact they should disclose it. Mr. Dunckel confirmed that Board members did not need to disclose if they just went by a site.

There being no further business to come before the Board, the meeting was adjourned at **11:54 p.m.**

Chair:

_____

Chair Waterous Centorino

Attest:

_____

ProtoType Inc.

A digital recording was made of these proceedings, of which these minutes are a part, and is on file in the Planning and Zoning offices for period of two years.

Minutes prepared by: J. Opperlee, Prototype Services