

**CITY OF FORT LAUDERDALE, FLORIDA
REGULAR MEETING OF THE PLANNING AND ZONING BOARD
CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE**

**WEDNESDAY, MARCH 17, 2004
6:30 P.M.**

<u>Board Members</u>	<u>Attendance</u>	(P)	(A)
Barbara Curtis, Chair	P	22	0
Gerry Cooper	P	20	2
Carolina Wiebe	A	19	3
Kenneth Hawkins	P	18	4
Mary C. Fertig	P	22	0
Alan Gabriel	P	20	2
James McCulla	A	18	4
Charlotte Rodstrom	P	12	2
Judith Hunt	P	5	0

Planning Staff: Chris Barton, Liaison to the Board
Bruce Chatterton, Planning and Zoning Services Manager
Jimmy Koeth, Principal Planner
Liz Holt, Planner III
Don Morris, Planner III
Sheryl Stolzenberg, Planner III
Angela Csinsi, Planner II
James Cromar, Planner II

Other Staff: Tim Welch, Engineering Design Manager

Legal Counsel: Sharon Miller, Assistant City Attorney

Court Reporting Service: Margaret D'Alessio

NOTE: ALL INDIVIDUALS WHO PRESENT INFORMATION TO THE BOARD DURING THESE PROCEEDINGS AFFIRM TO SPEAK THE TRUTH

Chair Barbara Curtis called the meeting to order at approximately 6:36 p.m. with Kenneth Hawkins leading in the Pledge of Allegiance.

Chair Barbara Curtis proceeded to introduce the Board Members, along with City staff present at tonight's meeting.

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

4. R. Saporiti/Riverland Village Plat Don Morris 3-P-03
Request:** Plat Approval/"Riverland Village"

Location: Rohan Acres, P.B. 22, P. 43
Block 1, a Portion of Lot 6
East Side of SW 29 Ave. immediately
South of SW 19 St., if extended

Chair Barbara Curtis announced that this item had been withdrawn from tonight's agenda.

Chair Barbara Curtis proceeded to ask if Mary Fertig wanted Presentation Procedures to be discussed this evening under "For the Good of the City." Mary Fertig confirmed and stated if there was sufficient time this evening to do so.

Chair Barbara Curtis stated that she wanted the Board to discuss the institution of statute limitations on the prior zoning ordinance 47-26A, as reflected in Memorandum 4-302, page 3.

Mary Fertig stated that two meetings ago she had asked the Board to discuss issues about their ability to address environmental issues on the Barrier Island, along with the manner in which presentations were made to the Board. She further stated that a third item was mitigation of the School Board issue.

Chair Barbara Curtis stated that Mary Fertig had requested copies of the minutes regarding presentation procedures, and asked if that item should be discussed any further. Mary Fertig stated that she wanted to receive an update on her request during "For the Good of the City" regarding the Barrier Island issue.

Chair Barbara Curtis further stated that the next scheduled meeting of the Planning and Zoning Board would be held on Wednesday, April 21, 2004.

Approval of Minutes – February 18, 2004

Motion made by Gerry Cooper and seconded by Kenneth Hawkins to approve the minutes of the February 18, 2004 Planning and Zoning Board meeting.

Charlotte Rodstrom stated that she had a question for the Assistant City Attorney. She proceeded to ask who had set up the phone vote for her fellow Board member to attend the previous Planning and Zoning Board Meeting by telephone.

Sharon Miller, Assistant City Attorney, stated that the Planning staff had set up the equipment and the technology.

Ms. Rodstrom stated further that she wanted to go on record stating that she was insulted that she had not been afforded the same courtesy, and stated she had been on the Board for almost one year and had called in twice, and both times could have attended the meeting using such technology. She remarked that she had not been aware that such an option existed. She felt if it was an option, she would like to have the procedure explained.

The Assistant City Attorney explained that the matter arose out of a request from a Board member that had never been received previously. She stated they had been asked from a legal point of view whether this would be permissible, and had made a determination that it was, and in light of that they had looked at the practical aspect as to how to proceed. Since that time, the matter went before the City Commission for further discussion, and they asked that this option not be afforded to any Board members until a policy could be established and approved by the Commission. She stated that the Commission had asked the Legal Department to further explore the issue and that was presently being done.

The Assistant City Attorney further explained that this was not because it was an option, but because the question had arisen as to the possibility of doing this. The matter had been done at the Commission level a couple times by request.

Ms. Rodstrom reiterated that she wanted to go on record stating that the same courtesy should have been offered to her.

Judith Hunt stated that on page 19, paragraph 6, it stated: "...clarification of the wording due to her having difficulty reading what had been placed on the Elmo," and it should read: **"...clarification of the wording due to her having difficulty reading the cursive on the document which had been placed on the Elmo."**

Board unanimously approved the minutes as corrected.

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| 1. | <u>Robert Martin Lee/Bob's Speed Products</u> | Jimmy Koeth | <u>53-R-03</u> |
| | Request:** | Parking Reduction/I Progresso,
P.B. 2, P. 18, Block 281,
Lots 25 & 26 | |
| | Location: | 702 NW 6 Avenue | |

Chair Barbara Curtis stated that this item was quasi-judicial.

Sharon Miller, Assistant City Attorney, explained that certain items on the agenda were considered quasi-judicial which meant that the items were treated similar to Court matters, but with less formality. She further stated that the case would be presented, and individuals wishing to speak on such items would be sworn in, and the Board would disclose any communications or site visits in regard to the property. She also advised that anyone testifying could be cross-examined, and that exhibits used in the presentations would remain as part of the record.

The Board made their disclosures as follows: Charlotte Rodstrom stated that she had been to the site. Gerry Cooper stated that he had been to the site. Kenneth Hawkins stated he had been to the site. Mary Fertig stated she also had been to the site. Judith Hunt stated she had been to the site. Barbara Curtis stated that she also had been to the site.

Chair Barbara Curtis stated that there had been an issue regarding the signs at this site. She explained that the sign on the street had been partially covered with vines, and the other sign located on the front of the building facing the avenue was partially covered by

the bars on the windows of the building. She asked if such signage could be deemed appropriate notice.

The Assistant City Attorney stated that she would defer to staff to determine if those were the 2 signs required, and if any others were needed according to Code. She did not think the Code addressed issues of vines and bars. She felt the intent was so that the signs could be viewed by the public, and if they were not, then she thought there could be basis for an objection.

Jim Koeth, Planning and Zoning, stated that 2 signs were needed, and one each was to be placed at the public right-of-ways, and were to be visible to the public.

Alan Gabriel proceeded to ask if it was appropriate for the applicant to show pictures to the Board due to the rules and regulations that had been discussed. He felt further clarification of the procedures was needed.

Chair Barbara Curtis stated that it was her understanding of the rules in accordance with the minutes of this Board dated August 23, 2003 and September 9, 2003 regarding this issue. Chair Barbara Curtis asked if there had not also been one other meeting where this matter had been discussed. Mary Fertig stated that she had thought that the Board had agreed that if the photographs were reflecting what had been distributed, then they were permissible.

Alan Gabriel further stated that this was a policy issue and he wanted to make sure they were in accordance with the policies.

Chair Barbara Curtis continued stating that the memo dated September 9, 2003 stated:

“After that time (which was 6 days prior to the scheduled meeting) should the applicant offer any supplemental information other than letters of endorsement regarding the proposal or seek to propose an alternative design, the Board may consider an immediate deferral of the project until such time that the staff and the Board members had adequate time to review those supplemental materials or the proposed alternate design.”

Chair Barbara Curtis remarked that this referred to only the applicant. She stated that photographs from staff, board members, or the public were not to be precluded. She further stated that they had held a discussion regarding power point at their August, 2003 meeting. She continued stating that if they followed that ruling, then it meant that the applicant could not submit further photographs.

Alan Gabriel stated that he believed photographs should be accepted from the applicants, but he wanted to use this situation as an opportunity to make the point that the rules were confusing to not only the Board, but also to the applicants. He felt they needed to clarify the rules so everyone had a clear understanding what was involved. He further stated it did not hurt for photographs to be presented, whether individuals had been to the site or not.

Charlotte Rodstrom stated that the last time this applicant had come before the Board some of them had not been to the site, and she felt that prompted the applicant to bring forth the photographs at this time.

Mary Fertig stated that she felt they should clarify the policies later on, and now they should just proceed with the presentation. She added that these matters could be discussed under "For the Good of the City." Meantime, she stated that they should proceed under the Chair's interpretation.

Gerry Cooper stated that he agreed that this matter should be discussed under "For the Good of the City," and that a determination be made as to what the Board would or would not accept, and in the meantime, they should move forward.

Motion made by Alan Gabriel and seconded by Gerry Cooper to approve the photographs and materials being presented by the applicant in this matter. Board unanimously approved.

Don Arpin stated that they had submitted an application on February 4, 2004, and then had rewritten their request. He explained that the problem had been with on-site parking of cars not belonging or connected with Mr. Lee. He explained further this project allowed his parking spaces to be in a fenced compound, and there would not be any access to his property. He stated that the fence would go to the sidewalk. He explained that the photographs being shown were cars parking on the site that did not belong to him, along with a statement by Mr. Lee that those were cars which he did not control at the site. Mr. Arpin further stated that photographs were also being shown of the construction in the area and the problems Mr. Lee was having due to such construction.

Mr. Arpin further stated that the application had been revised after February 4, 2004. The original application had stated that Mr. Lee was doing race engines, but he was doing those, along with customer car engines and those for street use. He explained that Mr. Lee was disassembling such cars in a bay north of the site. He stated they were attempting to clarify the issues that had previously arisen. He reiterated that the project would provide a significant improvement to the area.

Mr. Arpin explained that the second floor was not accessible for working on cars and was only going to be used for storage of race car and engine parts.

Jim Koeth, Planning and Zoning, stated that this matter was being continued from the January 22, 2004 meeting, and since that time Mr. Arpin had done a revised parking reduction study. He stated that the City's DRC engineering representative had looked at the revised parking reduction study, and did not conclude with its judgment. He explained they were requesting a 30% reduction. He stated 10 parking spaces were required, and the applicant was providing 7 spaces. He stated further they were proposing to construct a 322 sq. ft. first floor addition, and a 4,796 sq. ft. second floor addition. Currently, the building consists of 2,388 square feet.

Mr. Koeth continued stating that if this Board approved the application, staff requested the following conditions:

1. Parking reduction order be executed and recorded in the Public Records of Broward County.
2. The applicant apply for a permit within 18 months and obtain one within 24 months.

Chair Barbara Curtis proceeded to open the public hearing.

Chair Barbara Curtis asked if the department had received any complaints in regard to Mr. Lee's facility. Mr. Koeth replied that he was not aware of any complaints. Chair Barbara Curtis asked how long the construction in the vicinity had been going on. Mr. Koeth stated that Tim Welch had informed him that the construction had been taking place for the last 6 months.

Tim Welch stated that the Wastewater Program was putting in new sewers in the area and there had been some problems with the slopes on some of the runs. Therefore, the contractor had to evaluate those and possibly relay some pipe. Then, the roads would have to be restored and he was not sure of the completion date, but it could take as long as a year.

Charlotte Rodstrom asked if they were going to put up a new building or just a second floor addition on the existing building. Mr. Arpin stated it was predominantly a second floor addition that would go over the top of the existing building, and extend south over the parking area. He explained the existing building did not cover the entire site, but the new section would do so. He explained there was 321 sq. ft. proposed addition in the rear. He added that there would be smooth stucco over the building, thereby not giving it an industrial look.

Mr. Arpin stated if there was still a problem with the activity at the site, then possibly they could do away with the 321 sq. ft. addition on the ground floor.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Gerry Cooper and seconded by Alan Gabriel to approve the application as submitted per staff's conditions.

Gerry Cooper stated that there were cars all over the site and testimony had been given that they were beyond the owner's control, but he did not agree with such statement. He stated that the cars could be towed off the property. He stated that last time this application had been presented, it only involved race cars, and now it was to include race and street cars. He reiterated that this project did not meet the Code, and they were requesting a 30% parking reduction in an area that needed all the parking possible. Therefore, he stated that he was against this project.

Roll call showed: YEAS: Charlotte Rodstrom and Barbara Curtis. NAYS: Judith Hunt, Mary Fertig, Alan Gabriel, Kenneth Hawkins, and Gerry Cooper. Motion failed 2-5.

2. Ronan Kelley/Rookery Park Estates Jimmy Koeth 115-R-03
Request:** Site Plan Review/Mixed Use

Development/Conditional Use/
William A. Trueman Plat, P.B.
137, P. 31 – Portion of Parcels
“A” and “B”
Location: 5100 NW 31 Ave. (NE Corner of NW
31 Ave. and Commercial Blvd.)

Chair Barbara Curtis announced that this matter was quasi-judicial.

Alan Gabriel announced that he had a conflict of interest in regard to this item due to there being issues related to the work he did with the School Board.

The Board Members proceeded to state their disclosures as follows: Judith Hunt stated that she had been to the site. Mary Fertig stated she had been to the site. Gerry Cooper stated he had been to the site. Kenneth Hawkins had been to the site. Charlotte Rodstrom stated she had also been to the site. Barbara Curtis stated she had been to the site.

All individuals wishing to speak on this item had been sworn in.

Dick Coker, attorney, stated that this item had been deferred from last month, and he wanted to address the questions which had been raised at that time. He continued stating that there had been some issues regarding townhouses versus multi-family dwellings. He advised that Greg Brewton, Zoning Administrator, had written a memorandum stating that this had been reviewed as a multi-family project and that was what it was going to be. He stated they would comply with the City's definitions and requirements.

Mr. Coker further stated that a question had arisen in regard to the School Board's mitigation review. He stated they had gone through such review, and had received a letter from the School Board which he proceeded to submit to the Board. He explained this was to show that the School Board Mitigation Committee had agreed to Option #2 which was paying for 13 student stations with a credit for high school. He stated they had also written a letter to the School Board asking them to also consider Option #1, but they were going to withdraw that request and just accept Option #2.

Mr. Coker continued stating that there had also been a question regarding the access easement owned by the County. He proceeded to show its location on the map. He stated that they had received an Easement and Use Agreement from the County, and proceeded to submit such document to the City. He stated there were minor issues regarding some of the wording in the agreement, but the matter would proceed with the plat note amendment. He advised that he had received a call from Broward County Engineering and stated there was an access line opened that had to be closed on the plat, and the County wanted them to go before the County Commission with all 3 agreements at the same time.

Jim Koeth, Planning and Zoning, stated that this item was being continued from the Board's last meeting. He stated that Mr. Coker had addressed the issues which had been raised at the previous meeting. He explained this was a request for a mixed-use

development, multi-family with 67 units, and consisting of 10 buildings. He advised further that 148 parking spaces were needed and they were being supplied. The public plaza requirement had been met regarding mixed-use, and one of staff's conditions had been that shadow-box fencing along the northeast and southern perimeters of the project be changed to a non-opaque decorative fence. He believed that the applicant had agreed to that condition at the previous meeting. Mr. Coker confirmed.

Mr. Koeth further stated that he wanted to read the DRC comment from the City's Airport Representative, Alex Erskine, which read as follows:

"While the proposed project is outside of the anticipated noise exposure contours, the property is in close proximity to both runways at Fort Lauderdale Executive Airport and may be exposed to direct over-flights and close fly-bys conducted by aircraft approaching and departing the Airport operating in the traffic pattern and simply moving over the area. These flights might cause annoying or intrusive noise levels on an event-by-event basis."

Mr. Koeth felt that this had been an FYI for Mr. Kelley at the DRC meeting.

Gerry Cooper stated that in the past sometimes this Board had approved a multi-family project, but when completed it ended up as a condominium or vice-versa. He stated that he had been told that once they approved a residential project, it was that regardless of the form of ownership, and therefore, asked if that statement was correct.

Mr. Koeth replied that they did not regulate ownership. Mr. Cooper stated that in reality even though the applicant had stated in good faith that this was to be a multi-family project, they could return to their townhouse plan and would not have to return before this Board for approval for a different form of ownership. Mr. Koeth reiterated that staff had reviewed this project as a multi-family project, and if it was changed to something different, it would then be a violation of the site plan approval as a conditional use. Mr. Cooper further asked if they decided to do a condominium project, then it would no longer be multi-family. Mr. Koeth stated they referred to the project as multi-family.

Chris Barton, Planning and Zoning, stated that a condominium was a form of multi-family ownership. He reiterated that they did not approve condominiums, but approved multi-family projects. He stated this project was to be treated as a condominium or multi-family building.

Mr. Cooper stated that matter concerned him because at the previous meeting there had been questions regarding the form of ownership, and those questions had been by-passed by stating that the project was to be multi-family.

Mr. Cooper further stated that his other concern was that the letters from the School Board from Tanya Wilson and Chris Accabusso both referred to townhouses. He stated that the mitigation policies were for townhouses and he did not know if the student generation rate was the same for rental multi-family as for townhouses, unless they planned on doing townhouses anyway.

Mr. Coker stated they were dealing with definition issues. He stated that the County did not look to the form of ownership, but they looked at the type of buildings. He explained that the buildings contemplated for this project looked like a townhouse, and it generated traffic and students just like a townhouse. He advised that was how the County and the School Board looked at the structure for trip purposes and school generation purposes. He explained further that for Broward County Land Use purposes, they did not distinguish between townhouses, apartments and condominiums, but considered them all multi-family.

Mr. Coker further stated that the City had different definitions in the ULDR. He stated that multi-family specifically excluded townhouses, but they were specifically defined as fee simple lot ownership. Therefore, this could not be a fee simple lot ownership, and would have to be a project that had a townhouse type structure, but had to be a condominium under the interpretation given by the Zoning Administrator. He stated there were 3 different levels of definition, but the bottom line was that the School Board treated this project as a townhouse because of the structure that had a larger generation rate of traffic and everything else. He explained that the City looked at this as a multi-family because it could not be a fee simple ownership in terms of the land. Under the City's definition, a townhouse had to have ownership of the land. In condominium, one did not own land but only air space. He explained that in accordance with the City's Code, these would be multi-family, but treated as townhouses in terms of impacts.

Gerry Cooper asked if it was going to be an apartment house for rent or was it going to be a condominium for sale. Mr. Coker stated they were going to sell the units. Gerry Cooper asked if the applicant was going to deliver title in fee simple. Mr. Coker stated the answer was yes because they would be delivering a condominium unit.

Gerry Cooper stated that last month there had been some discussion on this issue, and that in this type of project they could not deliver title in fee simple. Mr. Barton replied there was some discussion to that effect, but he did not think that was what had been said. Mr. Cooper asked if the applicant had the right in this project to deliver title in fee simple. Mr. Barton explained they had the right to deliver title to a condominium ownership in fee simple.

Gerry Cooper stated further that he disagreed as to how student generation rates were done by the School Board. He advised that he also sat on the Broward County Planning Council, and it was his recollection that multi-family was looked at differently than townhouses. Mr. Coker advised that they split up multi-family into garden apartments and high-rise. He further stated that a 3-bedroom garden apartment had the highest school generation rate of any type unit, but he did not have those figures with him tonight. He explained that a garden apartment was a defined building, and was not a two-story apartment.

Charlotte Rodstrom stated if the garden apartments were the highest and consisted of 3 bedrooms, the plan before the Board also consisted of 3 bedrooms. Mr. Coker confirmed. Ms. Rodstrom further stated that she was not aware as to how the School Board arrived at the figure of 13 students out of over 200 people in a multi-family dwelling. Mr. Coker replied that was for the elementary and middle schools. He advised there was a high school impact, but because it was under enrolled it had not been a

concern. He further stated that the School Board studies had shown that the type of building made the difference.

Chair Barbara Curtis stated that in regard to the DRC comments and the School Board Mitigation Plan, she asked if those could be appropriate conditions to be applied if desired by this Board.

The Assistant City Attorney explained that this Board could either approve or deny this plan based on the criteria in the ULDR. She stated that any conditions should relate to meeting such criteria or not. If the Board could state a basis for including such conditions and the criteria it related to in protecting to make sure that happened, then that could be done.

Mary Fertig asked if there had been a full menu of options provided by the School Board, and asked if such options could be provided to the Board for their review. She also asked if the Board had any say in this matter or was it solely their determination as to how the mitigation occurred, and was it a requirement upon them to accept it.

Mr. Barton explained that the mitigations that were possible had been developed by the School Board by the development mitigation group that had been referenced in the letter. He advised that Sheryl Stolzenberg was present this evening and stated she had made contact with the School Board representative and could possibly answer any questions.

Sheryl Stolzenberg, Planning and Zoning, stated that the School Board had been doing such studies for some time because of the compatibility reviews done for the County. She advised there was a committee who had developed a list of mitigation measures who met individually with each applicant and discussed the possible mitigation measures. She stated that the Interlocal Agreement that the cities, County and School Board had entered into basically stated that they would agree to discuss. It, therefore, was not that the School Board presented the option, but the committee and School Board would discuss with the applicant as to the options, and the applicant could even propose a compromise if it met the requirements of the mitigation. She stated that the Interlocal Agreement was to be a voluntary working out of the situation. She advised it was not concurrency, but was a voluntary approach to coordinating land use and school planning.

Mary Fertig further asked if it was mandated that the City take their determination. Ms. Stolzenberg explained that the City did not have this area of expertise within its purview, and the planning for schools was given to the School District in accordance with State law. Therefore, essentially in the Interlocal Agreement, it was saying the City would work with the School Board but since City staff were not experts in the area, City staff could not say a particular mitigation option would meet the School Board's plan. The School Board and Committee were the ones who had to propose the initial options to work with, and then the applicant would work with them. Ms. Fertig further asked if they were required to accept what they were requiring for mitigation. Ms. Stolzenberg explained further they were asked to consider it.

Mr. Barton stated that before the Board's next meeting, they would contact them and see if they could not get a list of the possible options they had considered, and then they would enter into discussions as to whether or not or how the City could recommend or opt for one over the other. He felt that possibly they could at least express a preference before they made their determination.

Mr. Barton stated he believed they needed to go with their recommendation of the development mitigation group that had been worked out between the developer and the School Board. He believed the School Board was satisfied that the payment for the student stations was adequate.

Ms. Fertig stated that she felt they were increasingly going to be faced with this issue, and she did not feel it was wise to wait until they ran into a problem. She felt they had worked out a mitigation agreement, but her concern was that when it was impacting schools in the center of the City where there were lots of projects going on, they needed to discuss what was going to happen when these schools became critically overcrowded.

Chair Barbara Curtis asked if the Airport noise contours were available at this time. Mr. Koeth proceeded to show the site on the noise contours map. Chair Barbara Curtis asked how far from the southern line was the property located. Mr. Koeth stated they had scaled it to the center line of the runway perpendicular which was 3,050 feet. Mr. Barton explained it was the nearest portion of the proposed site to the center line of the runway. Chair Barbara Curtis asked where the property recently voted on by the Planning Council was located. Mr. Koeth proceeded to show the location on the map. Chair Barbara Curtis asked if that site abutted the 65 LDN contours. Mr. Koeth confirmed.

Chair Barbara Curtis clarified that the Airport had not recommended an easement as they had done regarding the property abutting the contour, but had stated that the applicant needed to be aware of possible over-flights. Mr. Koeth confirmed. Chair Barbara Curtis further asked if the DRC comment indicated that new owners should also be aware of such facts. Mr. Koeth confirmed and stated it had been addressed to R. Kelley who had signed the application. Copies were distributed to the Board.

Chair Barbara Curtis stated that she was concerned that individuals who might be subsequent purchasers should be aware of the situation. She asked how that was going to be done. Mr. Coker stated he had seen this situation in other circumstances, and cities and counties had required disclosures in their contracts, and was to be approved by the City Attorney's Office. Chair Barbara Curtis asked the Assistant City Attorney if that would be agreeable to their office if that was the desire of this Board. The Assistant City Attorney confirmed.

Judith Hunt stated that she once again wanted to suggest that the agreements relating to the Executive Airport include indemnifications regarding third-party liability from the developer to the City.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Mary Fertig and seconded by Judith Hunt to approve the application as submitted with staff's conditions, and that indemnifications regarding third-party liability be included in the agreements from the developer to the City regarding airport noise as it relates to the purchasers of the buildings.

The Assistant City Attorney stated that the agreement was between the buyer and the owner which did not apply to the City. She stated they would have to review the matter, and see how such things could be included. She suggested that possibly they could be included in condominium documents.

Mr. Coker reiterated that they would work with the City Attorney's office regarding the language.

Gerry Cooper stated that if the developer agreed to indemnify the City, and then the developer sold all the units, what liability would the developer then have or was it forever. Mr. Coker replied that it would be included in the documents providing that the Association would take over the responsibility, and with the notice provision would provide that purchasers would assume the risk regarding the noise. Mr. Cooper stated that he felt this was a broad responsibility for the buyer.

Gerry Cooper continued stating that his real concern was that the future of this small airport could be a quick growth item because everyone was pushing for smaller planes, and it appeared more jets would be pushed out of Fort Lauderdale/Hollywood Airport into this small airport. He continued stating that he felt they were unfairly burdening the purchasers and he felt they had a responsibility to look out for their citizens. He felt it was properly zoned as B-1, but he could not support additional residential next to this airport.

Chair Barbara Curtis asked if the liability condition would be appropriate to include. The Assistant City Attorney stated that similar to the Calvary Chapel situation, the applicant had approached the City and stated the condition of their property, including the declaration. In this sense, since this was a restriction they were placing on themselves, then she felt it would be appropriate.

Chair Barbara Curtis asked if the applicant would agree to the condition. Mr. Coker confirmed.

Charlotte Rodstrom stated that the Board would not be seeing the language that they were going to approve. Chair Barbara Curtis confirmed.

Mary Fertig stated that the Board did this all the time and set conditions, and then they were worked out afterwards. She did not feel it could hurt the City to have an applicant accept the liability.

The Assistant City Attorney stated that the applicant was voluntarily assuming liability with regard to any third party claims relating to the Airport, and they were simply going to make sure that it was in proper legal terms and would be added to the application.

Chair Barbara Curtis asked if the maker of the Motion would consider including the notice regarding future purchasers from the DRC comments. The maker and second of the motion agreed.

The motion read as follows:

Motion made by Mary Fertig and seconded by Judith Hunt to approve the application as submitted with staff's conditions, as well as the School Board mitigation as stated in the March 17, 2004 letter from the School Board to Ms. Clare Vickery, and that indemnifications regarding third-party liability be included in the agreements from the developer to the City regarding airport noise as it relates to the purchasers of the buildings.

Roll call showed: YEAS: Mary Fertig, Judith Hunt, and Barbara Curtis. NAYS: Kenneth Hawkins, Gerry Cooper, and Charlotte Rodstrom. Motion failed 3-3.

Mr. Coker asked if this item could be tabled.

Chair Barbara Curtis asked if this request could be entertained during the middle of the vote. The Assistant City Attorney stated that she would have to check Roberts Rules of Order.

Mary Fertig asked if she could now change her vote and stated she would be on the prevailing side.

The Assistant City Attorney stated that the prevailing side would be the denying side, and therefore, someone who had voted no could make a motion to reconsider. She further stated that she was not aware of any option allowing a change of vote.

Alan Gabriel returned to the meeting.

3.	<u>Bass Rezoning</u>	Angela Csinsi	<u>4-Z-04</u>
	Request:***	Rezone from RC-15 to RM-15 Beverly Heights, P.B. 1, P. 30, Block 21, Lot 1	
	Location:	221-229 S.E. 12 Avenue	

Chair Barbara Curtis announced that this item was quasi-judicial, and the Board would also serve as the Local Planning Agency.

The Board made the following disclosures: Judith Hunt stated that she had been to the site and had received a fax from William Dunlap. She added that she had also spoken with Commissioner Hutchinson. Mary Fertig stated that she had received faxes from William Dunlap and Bill Shumpert. Kenneth Hawkins stated that he had been to the site and had received notification from William Dunlap. Gerry Cooper stated that he had

been to the site and he had spoken with Valerie and also received a fax. Charlotte Rodstrom stated that she had been to the site and received a fax from William Dunlap and also received a phone call. Barbara Curtis stated that she had been to the site, and had spoken with Marvin Sanders and received a fax from William Dunlap. Alan Gabriel stated that he had been to the site and received faxes from some residents. He stated that he had also received a phone call from a resident.

All individuals wishing to speak on this item were sworn in.

Caroline Bass stated that she was the owner and proceeded to show photographs of the building. She reiterated that their objective was to save the building that they felt had some architectural significance. She explained the building had been built in the 1940's and was a modern art deco building. It was currently zoned RC-15 which was the only building of its type surrounded by offices. She stated that originally the property had been part of the RC zoning, and when the City closed off SE Second Street, it isolated the building from the other RC-15 structures in the area. She advised that RM-15 was directly to the east which was the zoning they were seeking. She stated their major goal was to move their real estate office into the building and seek a mixed-use. She remarked that it did not make sense to leave it in its present zoning. She proceeded to show an aerial of the site and explained the buildings that were in the area. She also proceeded to show photographs from the Las Olas Bridge and from SE Second Street after it had been blocked off.

Ms. Bass continued stating that to the south they shared a vacated alley for parking. She stated they currently had 5 on-site parking spaces on the north side of the building with 2 on-site parking spaces due to the alley vacation, along with 2 city meter parking spaces in front of the building, plus one non-metered space.

Angela Csinsi, Planning and Zoning, stated that the applicant proposed to rezone from RC-15 to RM-15. She explained the surrounding zones included B-1, XBOR which was exclusive use business with optional residential, RC-15 and RM-15. The applicant stated and staff concurred that the rezoning criteria found in ULDR Section 47-24.4 had been met. She stated that the zoning district was consistent with the City's Comprehensive Plan, and that substantial changes in the character of development in or near the area under consideration support that proposed rezoning, and the character of the area was suitable for the uses permitted in the proposed zoning district and was compatible with the surrounding districts and uses. She stated that the Board's options were to recommend the rezoning to the City Commission, recommend a more restrictive zoning district, or deny the application.

Charlotte Rodstrom asked if there were different required parking spaces for RC-15 and RM-15. Ms. Csinsi stated that it would not change the requirements for parking because it was based on use, but it would add more uses permitting such things as a bed and breakfast and a mixed-use development.

Chair Barbara Curtis asked what would be the use variance that was being applied for with the Board of Adjustment. Ms. Csinsi explained that they wanted to do a mixed-use development, but there was an additional limitation in that it could only be done on

certain streets, and neither 12th Avenue nor Second Street were included. Therefore, a variance would have to be applied for in that regard.

Mr. Barton stated that one street that was allowed was Las Olas Boulevard, but this site did not directly front onto Las Olas, but was one property away. He stated they would be seeking a use variance waiving that particular requirement on the grounds that this site was only one block away or one property away from Las Olas, and be permitted to then apply the mixed-use provision.

Chair Barbara Curtis stated that she had been informed that use variances did not exist. The Assistant City Attorney stated that the City's ULDR recognized such variances and authorized them.

Mary Fertig asked why the rezoning was necessary in order to preserve the property. Ms. Bass explained that in its current use as an apartment building, the rents did not support the property and consisted of one bedroom units. She explained further that if they were able to move their office into the building, then they could charge a higher rent. She stated they would actually be charging themselves rent and would be able to cover the debt service, but if they could not move in their office, then they would have no choice but to demolish the building and do something that would be economically feasible. She reiterated that their goal was to save the building due to its architectural and historical significance.

Gerry Cooper stated that a statement had been made that the rents did not cover the debt service, and asked when they had purchased the building. Ms. Bass replied they had been partners in 2001 and they had bought that entity out in April, 2003. Gerry Cooper reiterated that the debt service was known when the property was purchased. Ms. Bass confirmed.

Charlotte Rodstrom asked where the real estate office was presently located. Ms. Bass replied they were located at the corner of Broward Boulevard and SE 8th Avenue in the Washington Mutual Building. She explained they were a very small office, and the majority of the individuals worked from home. She reiterated that sometimes only the secretary was present in the building.

Chair Barbara Curtis stated that assuming this moved forward, how many parking spaces would the mixed-use building require. Mr. Barton stated he did not know the size of the existing building, and reminded the Board that tonight's request was for a rezoning, and should they then obtain the use variance, then they would have to apply for a mixed-use in order to have their real estate office and residence at the location. Then, they would have to return before the Board who would review the setbacks and parking. He suspected that there was not enough parking on the site because the parking as it currently existed was largely back-out parking into Second Street. He felt they would probably have to also request a parking reduction for 1-2 spaces depending on the size of the office, plus the number of bedrooms in the residence.

Charlotte Rodstrom asked if they were to obtain the variance for only a real estate office would there be sufficient parking. Mr. Barton stated the Board of Adjustment would not approve the office, and would only grant a use variance to permit retail on the site that

was not on one of the designated streets. Then, they would come before this Board and ask for the mixed-use provision and the issues of size, landscaping, parking and other code provisions for mixed-use would be reviewed.

Chair Barbara Curtis proceeded to open the public hearing.

Joe Felmuth, Beverly Heights resident, asked when there was a change from RC-15 to RM-15, if they could not preserve the building or a future owner did not preserve it, would that enable them to build a larger building at the site. Mr. Barton felt that would not be possible and if the building was demolished and it was redeveloped under RC-15, then it would have to be within such setback requirements and the uses permitted which were limited. Mr. Felmuth asked if the setbacks were the same in each zoning district, along with height restrictions. Mr. Barton replied he believed they were very similar, if not exactly the same. He looked up some information and stated that for a single-family home density was the same, along with minimum lot size, structure height at 35', and lot width. He explained further that the minimum floor area in RM-15 was greater than RC-15. He stated they would have to have a 1,000 sq. ft. building instead of a 750 sq. ft. building. Therefore, it would be slightly larger. He further stated that the setbacks appeared to be the same.

Mr. Felmuth further stated that when the photographs of the parking area had been shown, he believed they stated that there were 5 spaces to the north. He asked if that number was correct especially since there was a dumpster in the area. Ms. Bass confirmed there were 5 spaces.

Tom Welsh, Colee Hammock Homeowners Association, stated that he wanted to take this opportunity to state that the residents in the area were opposed to a parking reduction. He stated that parking was becoming a bigger and bigger issue in their neighborhood. On behalf of the Association, he stated if this project stair-stepped into a parking reduction or variance request, the Association would be opposed. He also stated that if there was a zoning change and a use variance, then the applicants could return and state that they would demolish the building and erect a smaller structure that would have its own parking and use it for their real estate office. He stated this was how he viewed this situation, and he felt the neighborhood could lose in the long run because a 1940 art deco building could be torn down. He stated that he felt any permit that would be granted, be done so in conjunction with historic designation.

Mary Fertig asked if any conversations had been held with the applicant in regard to the suggestion Mr. Welsh had just made. Mr. Welsh stated that he had a previous conversation and they had discussed historic designation at one point, but then decided to pursue this request at this time. Mary Fertig asked if the Association's concern was with the parking reduction or the change in use. Mr. Welsh replied the concern was in regard to the parking reduction. He stated that other Board members had expressed interest in regard to the historic designation.

Gerry Jordan, Colee Hammock Homeowners Association, stated that they were opposed to any parking reduction. He stated that 5 years ago the neighborhood had been maxed out in regard to parking. He announced that he had lived in the area for the

last 25 years. He further stated that what happened a couple years ago regarding zoning in the City was very depressing.

Bert Bass, owner, stated that one of the reasons they had requested the mixed-use was that by having their offices there and the residence, it would decrease the parking at night which would help the neighborhood. He advised that they had already applied for historic designation, and they would continue to pursue that issue as long as it remained economically feasible. He stated they were looking at the reality of the construction in the area, and that they were isolated from the rest of the zoning that had like use as their building. He advised that the present site of their real estate offices was being leased.

Mary Fertig asked if they were going to request a parking reduction. Mr. Bass confirmed and stated it appeared they were going to be 1 spot short. He announced there was a metered parking spot which did not presently have a meter in front of the building, and if they would be permitted to use that spot then they would probably have just about enough.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Gerry Cooper and seconded by Kenneth Hawkins to approve the application as submitted.

Roll call showed: YEAS: Alan Gabriel, Kenneth Hawkins, Gery Cooper, Charlotte Rodstrom, Judith Hunt and Barbara Curtis. NAYS: Mary Fertig. Motion carried 6-1.

The Assistant City Attorney stated that she had the information available regarding Item #2 regarding the Motion to Table made by Mr. Coker. She explained that according to Roberts Rules of Order, it stated: "Interruptions during the taking of a vote are permitted only before any member has actually voted."

The Assistant City Attorney stated that the other issue was that Mary Fertig had asked about changing her vote. Roberts Rules of Order stated as follows: "A member has the right to change its vote up to the time the results were finally announced." She further explained that the change could only be made afterwards by unanimous permission of the assembly.

Mary Fertig stated that her purpose in changing her vote had been to be on the prevailing side so the matter could be reconsidered and tabled as a courtesy to the applicant. She stated that since the applicant had other remedies they could seek, she would just drop the issue.

5. **City of Fort Lauderdale/
Central Maintenance Shop** **James Cromar** **1-R-04**
Request:* ** Public Purpose Use/Security
Fencing/Twin Lakes, Section 2,
P.B. 30, P.1, Block 27 South 144 ft.
And Block 27-A, North 156 ft.
Location: 4250 NW 10 Avenue

Chair Barbara Curtis announced that this item was quasi-judicial and that the Board was also acting as the Local Planning Agency. She stated since they had not previously explained the purpose of the Local Planning Agency in the previous item, she asked the Assistant City Attorney to do so at this time.

The Assistant City Attorney explained that by State Statute the City had to designate a body to act as the Local Planning Agency that reviewed Land Development Regulations to see if they were consistent with the Comprehensive Plan. She advised that the City Commission had appointed the Planning and Zoning Board to act as the City's Local Planning Agency.

All individuals wishing to speak on the next 4 items were sworn in.

The Board made the following disclosures in regard to this matter: Judith Hunt stated that she had been to the site.

Sheila Aberin stated that she was going to give some background information that was applicable to the next 4 items on the agenda. She advised that the project pertained to security enhancements for the utility sites identified. She stated that in accordance with new legislation that had gone into effect after September 11th, along with the Bio-Terrorism Act that amended the Safe Drinking Water Act, the Homeland Security Department had mandated the City to conduct various assessments to determine where their infrastructure had vulnerabilities. As a result of that assessment, this project proposed to make security improvements to 4 sites, which included a central maintenance shop, two water treatment plants and a waste water treatment site. She explained that this project would be done in phases. She advised that at this site there was to be a perimeter fencing project that would protect from unauthorized intrusions. She stated that this would also include an electronic protection project.

Ms. Aberin explained that the Code required specific items for perimeter fencing, and in this case there would be chain link fencing around the maintenance shop that was adjacent to the Fiveash Water Treatment Plant. She advised they were located at I-95 and Powerline Road. She further stated that they were seeking a variance because Code required that where fencing was visible from the street, there needed to be an average of 3' setback requirement met, along with prescribed landscaping and no barbed wire included. She explained that for security purposes they were requesting relief from the barbed wire requirement because they felt it was necessary at this site, and they were also requesting relief from the landscape requirement primarily to provide a clear line of site not only for trespassers, but for any unidentifiable objects that might be left at the site's perimeter. She stated they were providing a 30' setback. She stated there was also vehicle access at this site and asphalt parking, where it would be difficult to provide such landscaping.

Ms. Aberin stated that for aesthetic purposes, they were proposing a vinyl coated black chain link fence for this site, along with the others mentioned. She stated there were also going to be special conditions in regard to the historic site that would be discussed later on.

Kenneth Hawkins clarified that they were seeking relief from the barbed wire and landscaping requirements, and asked if the fence setback would still be 3'. Ms. Aberin confirmed and stated they would be 30' back from the property line.

Charlotte Rodstrom asked if the landscaping included sod. She reiterated that coverage could be supplied that would not interfere with security. Ms. Abrams stated that the Code required trees that provided access for climbing fences, and shrubs could hide packages and other items left at the site. She stated that new standards were being developed very quickly in regard to the requirements for such sites.

Alan Gabriel clarified that the sod would remain and a new fence would be installed with barbed wire. Ms. Aberin confirmed. He asked what would happen when FPL came before the City stating that they needed further protection for their substations regarding the landscaping issues. He stated those substations were landscaped to death so as not to be visible to the public.

James Cromar, Planning and Zoning, stated that the application was requesting a public purpose use designation, and had requested a waiver of ULDR requirements regarding barbed wire and landscaping. He stated that staff had reviewed the request and the arguments provided for the use and found it acceptable. He added that the request was in compliance with the ULDR and the Comprehensive Plan.

Chair Barbara Curtis opened the public hearing. There being no individuals who wished to speak the public hearing was closed and discussion was brought back to the Board.

Motion made by Alan Gabriel and seconded by Gerry Cooper to approve the application as submitted per staff's conditions. Roll call showed: YEAS: Kenneth Hawkins, Gerry Cooper, Charlotte Rodstrom, Judith Hunt, Mary Fertig, Alan Gabriel, and Barbara Curtis. NAYS: None. Motion carried 7-0.

6. City of Fort Lauderdale/ **James Cromar** **2-R-04**
 Fiveash Water Treatment Plant
Request:* ** Public Purpose Use/Security
 Fencing/Acreage in 21-49-42
Location: 4321 NW 9 Avenue

Chair Barbara Curtis announced that this item was quasi-judicial, and that this Board would be acting as the Local Planning Agency in this matter.

The Board made the following disclosures: Alan Gabriel stated that he had been to the site. Judith Hunt stated that she also had been to the site.

Sheila Aberin stated that this site was bordered in part by 2 roads that were Powerline Road and NW 38 Street. I-95 is not applicable in this case. She stated there were 3 items according to Code that regulated fencing that had to be visible from the roadways, including setbacks, landscaping and barbed wire. She stated that they were requesting relief from the barbed wire requirement along Powerline Road and NW 38 Street in order to provide security measures to prevent intrusion. She advised they were providing adequate setback along the areas, but they were also requesting relief from the

the State Historic Preservation Board and had received their approval for the project, as well as for the electronic upgrades that are also being proposed as a separate project.

Ms. Aberin further stated that at the southern portion of the site, there was a 60' setback. At the northern portion, they were proposing the fence to be along the property boundary due to an existing water storage tank that was underground and were proposing a zero setback. She stated they were also proposing landscaping for the front of the property without barbed wire on the fence due to aesthetic requirements.

James Cromar, Planning and Zoning, stated that this building had some different features and also was a request for a public purpose use designation. He explained they were requesting slightly different waivers in this case from the setback requirements and landscaping. He stated that he was also liaison to the Historic Preservation Board and had also reviewed this plan in that regard, and the two different design groups were working well in order to upgrade the site. He stated that he wanted to point out that in the area near the residential neighborhood, they were going to provide picket fencing.

Alan Gabriel stated that in the previous cases, there were concerns about site views, but here they were discussing solid walls and blocking the views. He felt this was contrary to past proposals.

Ms. Aberin stated that it sounded contrary, but this was the only utility site where it bordered directly to residential property, and the Code required a barrier in order to protect the residents from noise, dust, light, and visibility of the equipment.

Charlotte Rodstrom asked for some clarification as to the location of the site. Ms. Abrams stated that Davie Boulevard was to the north. Ms. Rodstrom stated she did not understand why the fencing was going to be different at some of the sites, and therefore, did not feel it was being consistent with the plan. Ms. Aberin stated it was not consistent, but stated it was an historic site and protected by the City and State. She stated there were specific requirements in connection with construction at this site.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Alan Gabriel and seconded by Judith Hunt to approve the application as submitted per staff's conditions. Roll call showed: YEAS: Judith Hunt, Mary Fertig, Alan Gabriel, Kenneth Hawkins, Gerry Cooper, Charlotte Rodstrom, and Barbara Curtis. NAYS: None. Motion carried 7-0.

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| 9. | <u>City of Fort Lauderdale</u> | Don Morris | <u>4-T-04</u> |
| | Request: * | Amend ULDR Section 47-1.12
<i>Effect of annexation</i> on property to
Allow legally permitted existing uses
On annexed properties to remain legal
And permitted after rezoning to a City
Zoning classification, subject to certain
Restrictions regarding reconstruction and | |

Prohibiting the use if discontinued or changed
to a permitted use in the new City zoning district.

Don Morris, Planning and Zoning, stated that he was going to provide a brief background in regard to this matter. He explained that on August 27, 2003, this Board had reviewed the number of rezonings that were being proposed along the State Road 84 corridor. He stated that the properties had been annexed in 1994, land use done in 2000, and no rezonings as of this date.

Mr. Morris stated that some questions had been raised at the meeting regarding existing uses on the properties, and whether rezoning would make those uses legal non-conforming. He stated that the Board had asked staff to review and see what could be done through the ULDR amendment process to address those issues. He stated that revisions had been made by the Legal Department and proceeded to show those to the Board. Chris Barton stated that copies of those revisions had already been distributed to the Board.

Mr. Morris continued stating that Section B had language added as follows:

“In existing uses or uses that had been legally permitted by a unit of local government prior to annexation into the City on or after March 5, 1994, and rezoned to a City zoning district that does not permit the use or uses as permitted, or conditional uses.”

Mr. Morris explained that they wanted to tighten up the language. He stated this would make it clear that they were referring to properties that had been rezoned into the City. He felt it was important to make these distinctions. He remarked that it was theoretically possible for a property coming in to request a County zoning classification, and therefore, they wanted to be clear that they were referring to properties that had been rezoned to a City zoning district. He also stated that #3 under Section B, they were going to add the following language: “The use prior to the change.” He stated they had used the term existing use, but if the use was abandoned, then it was not existing and was the use prior to the change.

Mr. Morris stated that in regard to #6, it was a new section that would read as follows:

“Notwithstanding the provisions of Subsection 1 through 5 of this Subsection B, for those residential structures that had been zoned unplanned and submitted to the City during the time period ending December 31, 2003 pursuant to the process established by the Building Department, the building and structures in such plans were in accordance with Resolution No. 02-27 or Resolution No. 02-28, as applicable. Structures may be rebuilt in accordance with the dimensional and other requirements shown on such plans.”

Mr. Morris further stated that they wanted to figure out a way to amend the ULDR without going through and amending every zoning district that could be rezoned. He stated there was a section in the ULDR, Section 47-1.12 – The Effect of Annexation on Property, which would address the issues raised in 2003. Essentially, he stated that the language was to explain that if one was in the County and had received a legal permit

for a project, and then annexed into the City, there was land use and rezoning, and the rezoning would not permit the existing use, it would still be a legal use in that district. If there was an Act of God demolishing the structure, then they could rebuild in the same location provided the new building code standards were met. He explained they were attempting in this section to deal with the issue of legal non-conforming. No matter what is done in the ULDR, if the use was not allowed under the Comprehensive Plan, they could not approve it and make it a legal use. It would still be legal non-conforming.

Gerry Cooper stated that he wanted to compliment Don Morris on this issue and he felt it had come a long way.

Chair Barbara Curtis clarified that Paragraph 6 would replace 4B in the backup. The Assistant City Attorney confirmed. Chair Barbara Curtis asked if the 50% rule needed to be added into the language. The Assistant City Attorney stated that she was not aware that this would apply and referred the matter to staff. Chair Barbara Curtis stated that she felt the words "Act of God" should be added to the language. The Assistant City Attorney stated that if that would make things clearer for the Board, then it could be done. She suggested that the words "no matter how" destroyed could be used.

Mr. Morris stated that it was regardless of how the structure had been damaged or demolished. The Assistant City Attorney added that it had been removed from #4 because it had not been clear and was now standing on its own.

Alan Gabriel stated that one of the reasons they now had the rules that materials could not be distributed to the Board at the time of the meeting was so they could have a chance to review such materials. He reiterated that he had not seen the new language being discussed. He stated they were asking him to approve something that he was not familiar with, and the questions now being asked made him think as to whether he should approve this.

Chair Barbara Curtis acknowledged that everyone had received it late today. Mr. Gabriel reiterated that if the material had been distributed by an applicant, the Board would not have accepted it. He asked if this matter needed to proceed forward at this time.

Mr. Morris explained that they had a number of people who were ready to do things there, and this item had been pulled three times previously due to making sure that all issues were addressed. He stated that staff had received calls in regard to this issue due to projects being ready to move forward. He reiterated that some individuals were awaiting this language anxiously to proceed with their projects.

Mr. Morris stated that he would attempt to clarify #6 for the Board. He explained that it addressed the Annexation Agreement they had in place with the Riverland area. He believed the term used was "Save Our Homes." He explained further that there was an agreement that if property was registered by a certain date, the property would be deemed to be legal and conforming. Therefore, in #6 they wanted to address the resolution recognizing that it existed, and they wanted to address only that resolution and not other annexations that might be coming forward. He stated they were not sure if this would be appropriate in every instance.

Mr. Gabriel stated that #6 was clearly not intended to have any Acts of God limitations.

Chair Barbara Curtis stated that the ones received in backup were 4B, and that section was not specific and was very vague. She stated that #6 provided more specifics, and her question was that since B was part of 4 it had stated: "...damaged or destroyed by fire, explosions, or other casualties or Acts of God, or public entity by more than 50%," but in #6 it was a stand alone. She reiterated that she had assumed it was to be part of the 50%.

Mr. Morris stated that they were talking about 14 registered properties. Mr. Gabriel stressed that the Code had to be clear.

Chair Barbara Curtis stated that the concept was good and gave other opportunities, but the question was whether it was to be an Act of God, and if people were planning things for their properties then it would not fall under "Act of God."

Charlotte Rodstrom commended staff for their work on this item. She further stated that she felt the wording "notwithstanding" would help out in #5 because it would give those people more flexibility, but the people after December 31, 2003, which could include new individuals, would have to succumb to the 50%. Mr. Morris confirmed that those individuals would have to meet the requirements of the Code.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Gerry Cooper and seconded by Mary Fertig to approve as submitted. Roll call showed: YEAS: Judith Hunt, Mary Fertig, Alan Gabriel, Kenneth Hawkins, Gerry Cooper, Charlotte Rodstrom, and Barbara Curtis. NAYS: None. Motion carried 7-0.

10. **City of Fort Lauderdale** **Liz Holt** **6-T-04**
Request:* Amend ULDR Sections 47-5.38 *Table of Dimensional Requirements for the RMH-60 zoning District, 47-6.20 Table of Dimensional Requirements-Business Zoning Districts (CB, B-1, B-2 & B-3) and 47-12.5 Central Beach Districts, Districts requirements and limitations*, including PRD, ABA, SLA, IOA, NBRA and SBMHA to codify the current zoning in progress (ZIP) Provisions on the Barrier Island by reducing Height and Density; and providing a maximum density for residential Uses in PRD and SBMHA districts.

Chair Barbara Curtis stated that this Board would act as the Local Planning Agency in this matter.

Liz Holt, Planning and Zoning, stated that the summary read by the Chair explained the key points in the item. She stated that portions of the ordinance presented this evening

had been in effect since June and July of 2002, when the Commission enacted the zoning in progress which essentially reduced by 20% the height and density of the zoning districts listed where the height was 150' or more. She further stated that the ordinance did not affect the CB district north of Oakland Park Boulevard. That had been a specific request by the Commission at that time that it be excluded because of the Galt Shops who were embarking on their own master plan initiatives. She advised that 2 of the zoning districts did not currently have a maximum density and those would be established to be the same as the other zoning districts of 150' or taller which would be 48 units per acre. She stated that the density units were taken from the pool of residential dwelling units allocated to the Beach RAC under the Comprehensive Plan.

Ms. Holt stated that the Commission had approved this ordinance on first reading at its March 2, 2004 meeting. She explained the final reading would be scheduled after this Board made their recommendation.

Charlotte Rodstrom asked for some further clarification regarding #10. Ms. Holt explained they did not presently have a maximum density in the ULDR for SBMHA and PRD zoning districts right now and they were establishing one similar to the other high density districts.

Chair Barbara Curtis noted a correction in the attachments to the memorandum. Memorandum No. 02-920 dated February 12, 2004 should read February 12, 2002.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Miranda Lopez stated that in her opinion the height permitted was too high for the Barrier Island, and she felt it should be less. She felt the height should be lowered by 50%.

Courtney Crush, attorney, stated that she was representing several developers on the Beach. She continued stating that she did not believe that this Board could sit as the Local Planning Agency and adopt ZIP which had lapsed in January, 2003. She stated that in 1999 the City had imposed zoning in progress, and the consensus on October 5, 1999, was that staff was to come back which did not happen. She stated that the 20% had been plucked out of the air and staff was to see if any of the planning studies had addressed reduction in density. She stated that staff had concluded that the two existing studies which had been done in 1995 and 1998 that the "planning studies did not support the recommendations...." Therefore, staff was going to go forward with the 20% and study this further, but that had not yet been done. She stated further that the ULI had been asked during their whether the City was moving in the right direction regarding the 455 acres. The ULI findings had not supported the 20%. She stated that personally she did not think the 20% reduction was appropriate for the Beach RAC.

Ms. Crush stated she hoped this Board would take some action and look at the approved projects for the area.

Gerry Cooper asked why Ms. Crush felt the Board did not have legal authority regarding this matter. Ms. Crush replied that ZIP had gone away a long time ago by case law and

through the City's policy. Gerry Cooper stated if that statement was accurate, then they should not proceed any further if they did not have such authority. Ms. Crush reiterated that there was no ZIP to vote on.

Gerry Cooper asked for an opinion regarding this matter from the Assistant City Attorney. The Assistant City Attorney stated that the Board could act on this ordinance whether it was ZIP or a proposed ordinance.

Mary Fertig stated that Ms. Crush had remarked that she did not agree with how this matter was being handled, but there was another way to do it. She asked what was Ms. Crush's recommendation. Ms. Crush stated that she did not recommend down zoning for the Beach area, but if they desired to do it then they would have to notice the property owners. She remarked that she did not believe any of her clients had received notice about the issue on the Commission's agenda. She was aware of the item because she always read the agendas.

The Assistant City Attorney stated that notice had been provided according to the Statute under the ULDR. She added that there had been notice in the newspapers. Ms. Crush stated that due to the severity of the situation and the huge number of property owners that would be impacted, she felt better notice should have been given. Ms. Crush suggested that a workshop should be held regarding this item and a planning study should be done regarding the proposed change, and whether it was appropriate or not.

Mary Fertig stated that Ms. Crush wanted this to be grandfathered in. Ms. Crush confirmed.

Charlotte Rodstrom stated that since the developers did not live in town, she imagined it would be the job of their representatives to notify them of the matter. Ms. Crush reiterated that she felt the notice should go to the property owners, and believed that the landowners on the Beach had not received such notice.

Gerry Cooper remarked that the idea of a workshop was a good first step, and asked if a motion to send this to a workshop would be out of order at this time.

The Assistant City Attorney stated that the Board had been asked to review this matter as the LPA and make a recommendation to the City Commission whether or not this was consistent with the Comprehensive Plan. She stated that a workshop would not fall within that direction.

Mary Fertig stated the City had already voted on this once, and asked if that had any effect on this Board. The Assistant City Attorney explained that this Board was to follow their own guidance in determining whether this was consistent with the Comprehensive Plan or make any other recommendations they desired to forward to the Commission.

Charlotte Rodstrom asked if everything would continue at this time if a workshop was to be held or would things cease. The Assistant City Attorney stated that the zoning in progress would continue. She further stated that the State Statute said that if the LPA

made no decision, it would proceed forward to the City Commission within 2 months without this Board's recommendation.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Alan Gabriel and seconded by Kenneth Hawkins to approve the application.

Gerry Cooper asked if the maker of the motion would consider the existing property owners and make them legal. Alan Gabriel stated he would not make such a consideration.

Ms. Holt stated that if the Board approved the grandfathering, they would have to clarify if it would only include the buildings made non-conforming by the zoning in progress or was it to include all non-conforming buildings on the Beach.

The Assistant City Attorney stated they would only be applying this particular change. Chair Barbara Curtis asked how this would affect setbacks. The Assistant City Attorney further stated that it would stay as it was today, and this would only affect density and height. She further stated that any project approved prior to this adoption regarding density and height would remain permitted and could be rebuilt. She stated that other non-conformity or setback problems would be separate issues. She stated that with the adoption of this ordinance, she felt they were saying they would write a provision stating that anything approved prior to the adoption with regard to density and height would remain.

Alan Gabriel stated that he would entertain an amendment to the motion as stated by the Assistant City Attorney. The Assistant City Attorney clarified that it would apply to already built structures damaged by an Act of God only. Kenneth Hawkins stated that he would again second the motion.

Mary Fertig asked if there would be a problem if this item was tabled and worked on for another month. The Assistant City Attorney stated that it was due to go back to the Commission on April 7, 2004.

Motion made by Alan Gabriel and seconded by Kenneth Hawkins to recommend approval to the City Commission and grandfather in those structures which had a final Certificate of Occupancy (CO), and which were demolished or otherwise destroyed by more than 50% through an Act of God, and that the grandfathering was for the purpose of height and density only.

Roll call showed: YEAS: Alan Gabriel, Kenneth Hawkins, Gerry Cooper, Charlotte Rodstrom, and Barbara Curtis. NAYS: Judith Hunt and Mary Fertig. Motion carried 5-2.

"For the Good of the City"

Procedures and Presentations

Chair Barbara Curtis stated that they had a problem regarding photographs that depict what something looked like. Alan Gabriel stated they were necessary for the applicant to make their point and explain the issue.

Chris Barton stated that in reviewing the minutes of the August, 2003 meeting and staff's memorandums and reports, the intent was to prohibit applicants from introducing redesigns or additional designs or changes in the designs at the meeting. He added that they were using the words other supplemental information that was not well-defined. He stated that photographs of existing conditions did not necessarily fall into the category of a redesign of a proposed structure. He stated that this arose due to applicants attempting to build their case and improve their situation by supplying additional drawings at the meetings. In some cases, those drawings were exactly what had been previously reviewed by the Board, but sometimes they were different from the plans previously submitted. Therefore, there were discrepancies in the plans. He felt photographs should be accepted in all cases. He explained that they had excluded letters of endorsement and letters of concerns from interested parties, such as civic associations.

Chair Barbara Curtis stated that the second reason was to prevent large amounts of information being placed before the Board at the meeting with the intent that the Board members review them at that time.

Mr. Barton further stated that the information that had been presented at the last minute to the Board could have been consistent with the earlier submittal, but it was unreasonable to ask the Board to digest such information at the eleventh hour.

Chair Barbara Curtis reiterated that staff also had not had the opportunity to review the material.

Alan Gabriel stated he did not think drawings were an issue, but the materials, pictures, and renderings were the problem. He stated that he had been trying to make the point that if someone appeared before the Board who had a photograph of an existing site, that they needed to consider such material.

Motion made by Mary Fertig and seconded by Judith Hunt to add "photographs" to the language. She felt that would clear up the issue.

Chair Barbara Curtis asked if powerpoint presentations would be excluded. Alan Gabriel stated that powerpoints could not be submitted in advance. Mary Fertig stated that it could be printed, but she did not know if that was necessary. She stated if the powerpoint had new material which had not been reviewed by staff, then that should not be accepted by the Board. Chair Barbara Curtis clarified that powerpoints were permitted as long as the material had been previously submitted to the Board.

Mr. Gabriel stated that the Board might have seen the material, but the public might not have, and if they prohibited powerpoint presentations, then they would be preventing the public from seeing such information. Therefore, powerpoints should be permitted.

Judith Hunt stated that when things were placed on the Elmo the public was able to see such information, and she felt it was important for the public to see such information. She reiterated that many people did watch these meetings.

Mr. Barton stated that as long as the display the applicant was using was consistent with what had previously been submitted, it would be allowed.

Gerry Cooper left the meeting at approximately 9:40 p.m.

Ms. Hunt stated it was similar to the "storyboards" that artists put together. Mr. Barton further stated that landscaping was a good example because many times when renderings were shown, they found that the renderings of the landscaping did not match the actual landscape plan. He stated that made things very confusing and then the applicant was asked to return with a drawing of a representation of what was actually in the plan.

Mary Fertig reminded the Board that the intent of this was to ensure that people were prepared in advance of the meeting. She felt since such procedures were being instituted that the meetings were becoming shorter and the applicants were more prepared.

Chair Barbara Curtis stated that they were going to require that all items submitted by the applicants be delivered no later than 6 days prior to the scheduled meeting, and after that time the only items which would be accepted by the Board would be photographs of the existing property or letters of endorsement. Powerpoints would be permitted of the materials already submitted.

Chair Barbara Curtis further stated that she was concerned when staff recommended denial of an application, and the applicant did not know such recommendation in advance. Mary Fertig stated that staff might need to submit their report more timely in order to be fair to the applicant.

Mr. Barton stated that since August, 2003, they were getting staff's reports out at least 6 days prior to the scheduled meeting. He added that many times they knew that staff was going to object to some aspect of the proposed design.

Motion made by Mary Fertig and seconded by Judith Hunt to permit photographs and powerpoints at the meeting, as long as the powerpoints did not contain new materials that had not yet been submitted to either staff or the Board. Board unanimously approved.

Mitigation/School Board

Mary Fertig reiterated that she felt the Board needed to see all the School Board's options, and she felt there needed to be further discussion in the City because it was not mandatory that they accept such options. She felt they needed to make it clear that the money was not going to the City, but was going into the General Fund for the district.

Alan Gabriel stated that the money went to the School Board and was designated to the general area it was addressing and was similar to an impact fee. He explained that the formula they were using was a larger fee than the school impact fee.

Chris Barton clarified that the monies paid by the developer were earmarked to go to the schools designated. Mr. Gabriel further clarified that there were designated areas for such fees.

Sheryl Stolzenberg, Planning and Zoning, stated that it was not an impact fee but came from the interlocal agreement.

Mr. Gabriel stated there were some cities doing interlocal agreements with the School Board directly and the County. Ms. Stolzenberg stated that they would probably have to do that, and explained that the law allowed them to amend the interlocal. She stated that she had been advised by the DCA that they could go back as an individual city and negotiate with the School Board if necessary. She further stated that the material shown was in an underline form and was not final. Therefore, there could be additional mitigation measures, and such measures would come out of the School Board's plan and would be related to the State laws that they had to work with. She further stated that while the City might have desires at this point, the Interlocal Agreement was not open to include those. Therefore, the City needed to sit down with them and see how they could renegotiate the interlocal agreements.

Mary Fertig stated that this was important and should not be delayed. She stated that in regard to the topic of the School Board being a County School Board, she stated they had been a donor city for many years and they knew the concept of tax dollars. She stated there was no guaranty that the City would see these dollars to mitigate what could be a problem. She felt further discussion was necessary on this matter. She further stated that if they did not have the ability to require that something be done, then they had to be careful so they would not become challenged.

Mr. Gabriel stated that what was happening throughout the County was that developers were being told to deal with the issue before returning to their city for approval. Those developers were voluntarily going to the School Board and discussing the matter and reaching some sort of resolution.

Chris Barton stated that tonight the developer had been asked to respond to the report that had been issued by the School Board regarding deficiencies. Mr. Gabriel stated that this Board should not be doing that and the developer should be addressing the situation.

Mr. Barton further stated that the report showed there was a shortage of capacity, and they had worked with the School Board and had received the letter saying if they paid a certain amount of money per student station, it would be mitigated. He stated they might want to look into what mitigations were available and when this Board approved such a project, they could offer preference as to the options available before they negotiated with the School Board.

Mr. Gabriel stated that the choices were available because the concept was in place. Ms. Stolzenberg reiterated that they were basically evolving them at the School Board. She stated they would be based on the School Board's plan. She suggested that if the City found there were other measures the City wanted, then they needed to go back and renegotiate the interlocals to include such mitigations.

Mr. Barton stated that due to all the proposals made to the cities, the cities might want to add some options to the list. Ms. Stolzenberg felt they needed to pursue this issue and possibly the Board might want to recommend to the Commission that they go back and revisit the interlocal agreements for the purpose of tailoring it to meet the needs of the developing cities. She stated the interlocals looked at the issues on a County-wide basis. She further stated that in the meantime these would be new to the School Board because up to now they were dealing with the unincorporated areas that were simple increases in density due to the accessibility of rezoning. Now, they would have to deal with things in the RAC and it would be the first time they dealt with mixed-use. She did not know if they would have instruments to mitigate in those areas. She stated the reality was that the School Board issued a report that was sent to the applicant, and then City staff would encourage the applicant to put things in writing. She stated that the City could not mandate that the applicant do anything.

Mary Fertig stated that they were using the word "voluntary" a lot, and what if a developer was not agreeable, therefore, who would be the subject of litigation. The Assistant City Attorney stated that no one would be liable because no one could force the issue unless there was an adopted ordinance stating it was part of the criteria.

Mr. Gabriel stated that the County had an ordinance requiring school impact fees to be paid, and also provided for other fees and similar agreements. He stated that in the City of Dania they had attempted to put through a land use amendment for the Downtown RAC, and as part of it conditions were placed on the City. In order for them to issue building permits, they had to pay impact fees to the School Board.

Ms. Stolzenberg stated further that she had been told by the County that what they were dealing with now was not the same thing as impact fees. Mr. Gabriel reiterated that this was in lieu of impact fees. Ms. Stolzenberg explained that impact fees were mandatory, but this was not. She reiterated that this was not concurrency.

Motion made by Mary Fertig that the City come up with some sort of plan. Mr. Gabriel stated he did not know if it needed to be done in a motion because this was still being developed.

Ms. Stolzenberg reiterated that they did not know how this was going to work out until some had been done.

Mary Fertig asked if the City was participating by default or were they participating in the discussions. Mr. Barton stated that in the discussions earlier this evening, he had stated that before the next meeting they would talk to the School Board and receive a list of the options available regarding mitigation. Then, the City would ask how they could express a preference for any of those mitigations or propose ones that were not being considered at this time.

Section 47-26A

Chair Barbara Curtis stated that in regard to Section 47-26A which was a request for application of prior zoning regulations, she asked how long they would have this since it permitted for someone to rely on zoning regulations in effect since September 4, 1996.

The Assistant City Attorney stated that this corresponded with the State Statute called the Bert-Harris law, and until that law was changed they recommended that this one stay in effect. She further stated that it allowed the City to review and do something before they were pressed into Bert-Harris litigation.

Motion made by Kenneth Hawkins and seconded by Alan Gabriel to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 10:09 p.m.

CHAIRMAN

Barbara Curtis

ATTEST:

Margaret A. D'Alessio
Recording Secretary

A mechanical recording is made of the foregoing proceedings, of which these minutes are part, and is on file in the Planning & Zoning Offices for a period of two (2) years.