

**PLANNING AND ZONING BOARD  
CITY OF FORT LAUDERDALE  
CITY HALL COMMISSION CHAMBERS – 1<sup>ST</sup> FLOOR  
100 NORTH ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA  
WEDNESDAY, JULY 15, 2009 – 6:30 P.M.**

**Cumulative**

<b>Board Members</b>	<b>Attendance</b>	<b>June 2009-May 2010</b>	
		<b>Present</b>	<b>Absent</b>
Tom Welch, Chair	P	2	0
Catherine Maus	P	1	1
Rochelle Golub	P	1	1
Maria Freeman	A	1	1
Fred Stresau	P	2	0
Patrick McTigue, Vice Chair	P	2	0
Mike Moskowitz	P	2	0
Michelle Tuggle	P	2	0
Peter Witschen	P	2	0

**Staff**

Greg Brewton, Director of Planning and Zoning  
Wayne Jessup, Deputy Director of Planning and Zoning  
Sharon Miller, Assistant City Attorney  
Ella Parker, Principal Planner  
Thomas Lodge, Planner II  
Michael Ciesielski, Planner II  
Randall Robinson, Planner II  
Malik Mohammed, Structural Plans Examiner  
Cheryl Felder, Service Clerk  
Terry Burgess, Chief Zoning Examiner  
Dennis Girisgen, City Engineer  
Frank Snedaker, Chief City Architect  
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

**Communications to City Commission**

- Ms. Golub felt, and there was a general consensus of the Board, that the City Commission should be aware that the Board desires “some kind of direction” regarding whether or not the City Commission wishes the Board to proceed with regard to the Bahia Mar project.

### Index

	<u>Case Number</u>	<u>Applicant</u>
1.	7-Z-09 ** *	Broward County Board of County Commissioners
2.	5-ZR-09 ** *	Riverbend South, LLC/Riverbend South I – Supervisor of Elections
3.	2-P-09	Riverbend South, LLC/Riverbend South I – SW 26 <sup>th</sup> Avenue
4.	4-P-09	City of Fort Lauderdale/Flagler Heights Park
5.	5-P-09	TSC Lake Ridge, LLC
6.	3-ZPUD-08 ** *	Rahn Bahia Mar, Ltd./Bahia Mar Park
7.	9-Z-09 ** *	City of Fort Lauderdale

For the Good of the City

### **Special Notes:**

**Local Planning Agency (LPA) items (\*)** – In these cases, the Planning and Zoning Board will act as the Local Planning Agency (LPA). Recommendation of approval will include a finding of consistency with the City's Comprehensive Plan and the criteria for rezoning (in the case of rezoning requests).

**Quasi-Judicial items (\*\*)** – Board members disclose any communication or site visit they have had pursuant to Section 47-1.13 of the ULDR. All persons speaking on quasi-judicial matters will be sworn in and will be subject to cross-examination.

### **Call to Order**

Chair Welch called the meeting to order at 6:32 p.m. He introduced the Board members, and Director Brewton introduced the City Staff in attendance. Attorney Miller explained the quasi-judicial process used by the Board.

Chair Welch stated it has been requested that Items 1, 2, 3, and 4 be deferred until the August 19, 2009 meeting. The Board voted unanimously to approve these requests.

Ms. Golub asked that some consideration be given to the length of the August 19, 2009 meeting, as these four Items will be added to its Agenda. Director Brewton agreed that the Planning and Zoning Department will look into this matter, and if they feel it is beyond the Board's ability to complete the Agenda, they will make a recommendation.

Mr. Witschen asked a procedural question regarding Item 6, which he clarified was not based upon the merits of the project. He felt it was "untimely" to discuss

the project at this time, as negotiations regarding the lease have not been concluded and the financial terms and length of the lease are both functions of the structures on the property. He felt the proposal "isn't solidified," and did not believe it was appropriate to go through a public hearing at this time.

Ms. Maus pointed out that the lease is not before the Board and will not come before them, and if the lease is not the issue, she did not see a reason to defer at this time. Director Brewton clarified that the lease agreement will not come before the Board for approval.

Mr. Witschen stated that the lease itself is "totally in the purview of the City Commission;" however, its terms would dictate what development will be requested before the Board. He felt this is a sufficiently "symbiotic" relationship with the lease that the Board should not hear it, but should know what the realistic expectations are for development before discussing it, along with its various compatibility issues.

Ms. Golub asked whether the current zoning district or current lease permit residential units. She was not sure if the Board could consider changing a "special zoning district" to a PUD, or if this change would require an amendment.

Director Brewton advised that the current zoning district allows residential units. The PUD process is requesting other items within that district that are currently not permitted but would be part of the project.

Mr. Stresau asked if the presentation provided to the Board refers to the lease extension of 99 years; he also noted, however, all the decisions the Board may make must be based on the current lease, which is for approximately 50 years. His question was whether it is appropriate for the Board to hear a case and provide a solution that would only be in effect for "half the time" of the prospective new lease. He agreed the Board should not hear the Item either, on the basis of this alone.

He added that he had asked the City's traffic consultant who had approved the Applicant's study to attend tonight's meeting, although that individual was not present. Mr. Stresau stated he was not inclined to vote affirmatively for the project without being able to ask questions, which include concerns regarding access to and from the site, of the traffic consultant. He stated again that he would also not wish to hear the Item tonight, due to the absence of the traffic consultant.

Director Brewton addressed Ms. Golub's earlier concern regarding residential units allowed by Code. He advised that SBMH does allow these units for "multi-family and apartment use."

Ms. Golub asked if these units are permitted by the district but not in the lease, which standard would be appropriate for the Board to use. Attorney Miller explained that the Application is subject to conditions, and approval of an Application is based on certain facts, such as the lease not being the subject. She pointed out that the lease is not part of the Board's concern; they must consider the proposal based upon whether or not it meets the ULDR.

Attorney Miller continued that if any facts the Board may not have are "tied up" with the decision of whether the project meets PUD criteria, it would then be relevant to tonight's proceeding. She felt this could be left to the discretion of the Board.

Chair Welch also expressed concern that the City traffic consultant was not present. Attorney Miller noted that this concern could also be taken into consideration by the Board regarding how it proceeds with the meeting.

Mr. Witschen added that he shared this concern regarding the traffic analysis in addition to the concerns he had previously expressed.

Ms. Golub asked if it was permissible to hear the witnesses and members of the public who had attended with the intention of speaking on the Item in question, but delay a vote until the traffic consultant is present to testify. Attorney Miller replied that the Board may choose to hear some testimony tonight and finish at another time, also at their own discretion.

**Motion** made by Ms. Golub that, given the insight provided the Board by Staff and Counsel, they commence the hearing so the public has an opportunity to go on the record, but with the understanding that they will continue the hearing and require the attendance of witnesses the Board believes should be given the opportunity to speak on the Item.

Attorney Miller advised that this should be a deferral until a date certain.

Ms. Maus felt the Board would be entertaining "two hearings" if this is done, and requested a show of hands from the audience to determine how many members of the public were present to address the Bahia Mar Item. She then asked how many of those individuals would return to a second Board meeting on the same

issue. Ms. Maus noted that “a majority” raised their hands. She advised that she would not be in favor of the **motion**.

Mr. Stresau suggested it would be best to finish any hearing the Board might choose to start. Otherwise, if some of tonight’s testimony was heard, a later resumption of the hearing about this Item would mean not all the public, or the Board, might have had the benefit of hearing the original testimony. He felt starting the hearing but not concluding it would be “a drastic error.”

**Motion** made by Mr. Witschen to defer the public address of Item 6 until there has been a conclusion on the lease terms, which may not be substantial at the meeting but could impact the Board, and have clear direction from the City as to the development plan they are endorsing, so they may make an informed decision.

Ms. Golub withdrew her **motion**, as it had not been seconded.

She felt the entire legal foundation of tonight’s hearing on Item 6, and of the Applicant’s presentation, was of concern. While she would like to defer the Item, she expressed further concern that without impediments to hearing the Applicant’s request, the Board is obligated to hear it, as there has been sufficient notice and members of the public are present to speak on it. However, as Mr. Stresau had specifically requested the presence of a Staff member who was not here, she felt this becomes “a whole different issue” and was not sure it was possible to delay the hearing based on this absence.

She suggested the Applicant’s traffic consultant, who has met with Staff, might be able to supply some of the information that would have normally been supplied by the City’s traffic consultant. Should Mr. Stresau feel this individual’s information is not sufficient, the Board could then vote accordingly.

Mr. Witschen asked if there has been any equivocation by Staff that the Application is endorsed by the property owner, pointing out again that there is a lease-holding interest.

He expressed concern that the Board could go through a “protracted hearing” when the actual issue is that the Application or design might change, which could be cause for another public hearing.

Attorney Miller advised that Staff cannot address the likelihood of a change in the development, although she noted perhaps the Applicant had authority to speak to this issue.

Chris Smith, representing the Applicant, explained that when the Application was submitted, they had met with the City Attorney's Office, who directed them to "go ahead and file." Attorney Miller clarified that the Applicant had actually asked the City Commission whether or not they could apply, and it was the City Commission that provided this direction, based upon a letter sent to them by the project's developer.

Mr. Smith agreed that there has been "a lot of interpretation" on this issue, but the fact remains that the Application has been placed on tonight's Agenda, and the City Commission did not direct the Applicant or the City to act otherwise. He felt the City Commission, acting "in trust for the City," had acquiesced to the Applicant's moving forward.

Attorney Miller advised that the letter to which she had referred was from "several City Commissions ago" and prior to Mr. Smith's involvement in the case. Mr. Smith stated he was referring to a City Commission meeting approximately two weeks prior, at which it was brought up that the Application would come before the Board on this date. The City Commission, he repeated, had not directed the Applicant not to move forward.

Chair Welch asked if the Board wished to vote on whether or not to hear the Item. It was noted that Mr. Witschen's **motion** had not been seconded.

Mr. Witschen restated his **motion** that the Item be deferred until a date certain and until the City Commission has addressed the lease concerns that would impact the development entitlements the Applicant is seeking, and at that point come before the Board for a compatibility determination.

Vice Chair McTigue seconded the **motion**.

At this time Chair Welch recognized that Ms. Freeman had joined the meeting (7:10 p.m.).

In a roll call vote, the **motion** carried 6-3 (Chair Welch, Ms. Tuggle, Ms. Maus dissenting).

Attorney Miller clarified that if a date certain was not specified, the Item must be re-advertised as a new Application; if deferred to a date certain, it would not have to be re-advertised.

Ms. Golub suggested that the Item be deferred until the September 2009 meeting. Chair Welch deferred to Director Brewton in this matter. Director Brewton advised that the cutoff date for adding items to the August meeting would be Friday, July 17, after which time he would have more information. He anticipated there would be "at least three or four more items" in addition to those deferred from today's meeting.

Mr. Smith stated he had wished to speak to the motion before the vote, as members of the public are present for this Item as well as other traffic engineers who could have given testimony. He hoped if the Item is deferred, it should be moved to August with the other deferred items, and "push [other items] back to September." He felt a deferral to September would be unfair to the Applicant.

Attorney Miller pointed out that some Board members had expressed a desire to postpone the Item until the City Commission had addressed it, and reminded Mr. Smith that the City Commission does not meet in August. Their final July meeting will be Tuesday, July 22, and the Item in question is not included on that meeting's Agenda.

Mr. Smith felt the traffic engineer could be present in August, and reiterated it would be unfair to the Applicant to "keep pushing this item back."

Mr. Moskowitz felt the City Commission might need more time to reassess the development and provide more input before the Item returned before the Board. He suggested deferring until a date uncertain.

Mr. Smith asked if deferral until a date uncertain would constitute a denial. Attorney Miller stated it would not, and would only mean the issue had been tabled until the Board wished to bring it back. It would also need to be readvertised.

Mr. Stresau asked if the item might appear as "Old Business" on the July 22 City Commission Agenda, as, if the City Commissioners felt the Application could move ahead without further discussion of the lease, they could decide whether they want the Board to hear the case without the lease being discussed; they could direct the Board to hear the case; or they could refuse to hear the item.

Attorney Miller advised that in this case, she would recommend deferral to a date certain in August, as the Board would retain the option of deferring the Application again.

Mr. Smith stated that, after consulting with the Applicant, September would be an appropriate date certain.

Mr. Stresau added that if the City Commission provided direction on the lease, the Application would be the first Item on that month's Agenda.

He continued that he had received an email from City Engineer Dennis Girisgen, who had responded to Mr. Stresau's request for the traffic consultant's presence with the following: "Pursuant to the Commission's directive last week, I have asked Keith and Schnars to follow up on the resident's concern on the traffic and the parking studies. They have indicated that this will take some time and will not be able to have anything conclusive at the Planning and Zoning Board meeting."

Director Brewton felt this added "another layer" to the discussion. Mr. Stresau asserted he would not vote on this Item until the traffic had been "thoroughly discussed." He felt there are traffic concerns that must be addressed both by the Applicant's and the City's traffic consultant.

Director Brewton stated he knew the City Commission had directed Staff to do more analysis on certain aspects of the project, some of which are unrelated to the Application before the Board. If the Board is looking for the same information that will be provided to the City Commission when available, he felt September would be the more appropriate time, as there may have been time to gather this information and present it. However, this would most likely not appear on the first September City Commission meeting Agenda, but might not occur until the second meeting that month.

He concluded that he wished the Board to be aware the information the City Commission has requested is not information the Board has requested; if the Board is saying that they would prefer to hear this Application after the requested information has been presented to the City Commission, "that's a different story." He hoped this information would be available by the September meeting, but could not guarantee it at this time. If this were the case, the deferral would be until October.

Chair Welch advised if the date certain is September, and information is still unavailable, the Board could defer the Item again.

Courtney Crush, representing the Applicant, recalled that questions had been raised by the City Commission, which the Applicant's traffic consultant had reviewed and submitted a draft response. She felt if there were further questions,



the Applicant would be willing to “coordinate with Staff” and would appreciate coming before the Board in September.

Mr. Stresau explained his concern is the City traffic consultant’s absence. Should the City Manager decide the consultant’s presence is not necessary, the Board would move ahead; however, he felt this individual’s response is indispensable.

Ms. Tuggle requested clarification regarding the deferral, asking if it is based upon the status of the lease or the failure of the City’s traffic consultant to appear. Mr. Stresau felt it was due to both these instances, although he noted Mr. Witschen’s motion had specifically referred to the lease.

Attorney Miller requested clarification that the motion had not specified a date certain. Mr. Witschen replied that his original motion had not included a date certain, although he was not opposed to establishing a “realistic” date certain at this time.

Attorney Miller pointed out that the date certain would not be based upon clarification regarding the lease, but would be “somewhat based” on further direction from the City Commission regarding that issue.

Mr. Smith addressed Ms. Golub’s original question regarding residential units, stating that under Article 19, residential units are allowed, with no distinction drawn between condominiums and apartments. He asked if the question regarding the lease was whether the Applicant “had the lease totally negotiated” or if residential units were allowable under the lease.

Attorney Miller stated that this was not under the Board’s authority and should not be an issue before them. In addition, it may or may not be relevant to the decision.

**Motion** made by Ms. Golub, seconded by Ms. Maus, to modify the previous motion by setting the deferral to a date certain of September 16, 2009. In a roll call vote, the **motion** carried unanimously.

Chair Welch clarified that the Board planned to hear the Item in September, unless otherwise directed by the City Commission.

**Motion** made by Ms. Maus, seconded by Vice Chair McTigue, to approve the minutes of the June 17, 2009 meeting. In a voice vote, the **motion** carried unanimously.

5. **TSC Lake Ridge, LLC**

**Thomas Lodge**

**5-P-09**

**Request:**

**Vacation of Alley**

**Legal Description:**

That portion of the 15-foot Alley in Block 3, "AMENDED PLAT OF BLOCKS 1-2-3-4-5-6-7-8-25-26-27-28-29-30-31 AND 32 OF NORTH LAUDERDALE," according to the plat thereof, recorded in Plat Block 1, Page 182, of the public records of Miami-Dade County, Florida. Lying North of the South line of lot 4 of said block 3; All less the North 20.00 feet thereof.

**Address:**

310 NE 6 Street

**General Location:**

Located on the Southeast corner of NE 6 Street and NE 3 Avenue

**District:**

2

Nectaria Chakas, representing the Applicant, presented an aerial view of the property in question, which she described as "a remnant piece of alley." It was formerly part of a larger alley, which was vacated in the 1980s upon construction of a shopping center. At the time, the property owner did not own the "leftover" piece of alley; he has since acquired the property and wishes for this unused area to be vacated as well.

There is no ingress/egress to the alleyway, Ms. Chakas pointed out, showing an additional rendering of the property. The City will retain a utility easement over the area for the overhead power and cable lines. The Applicant has agreed to repair a curb at street level.

Thomas Lodge, Planner, noted that the buildings on either side of the alley are owned by the same individual and plans to vacate the alley in order to unify the property. Conditions of approval for the Application are as follows:

1. A utility easement shall be retained within the vacated segment of the alley;
2. Removal of the dropped curb and bring the sidewalks into ADA compliance;
3. DRC approval.

As there were no further questions from the Board at this time, Chair Welch opened the public hearing.

Rixon Rafter, President of the Lake Ridge Civic Association, stated this group had no issue with vacating the alley as long as nothing is built on it and no vegetation is destroyed. He explained that the alley “presents a screen” to U.S.1, and the residents of 18<sup>th</sup> Avenue would like to retain this feature.

He added that the property owner had previously cut down some trees in the alley, and the residents had made the case that the trees served as a place for birds to breed, particularly an endangered species. He concluded that they did not wish these trees to be cut down again.

Mr. Stresau noted that a nearby resident in the area had once been made to cut down trees, and affirmed Mr. Rafter’s request to “leave the vegetation alone.”

There being no other members of the public wishing to speak on this Item, Chair Welch closed the public hearing and brought the discussion back to the Board.

Ms. Golub pointed out that the Board could not act in any way to prevent the removal of the vegetation in question, and advised that Mr. Rafter and the Civic Association “remain vigilant” following tonight’s vote.

**Motion** made by Ms. Maus, seconded by Mr. Stresau, to approve the Application with Staff conditions. In a roll call vote, the **motion** carried unanimously.

Director Brewton asked at this time if the Board was in favor of returning the Bahia Mar information packages to the Applicant so they may be presented to the members at the September 2009 meeting. The members agreed to keep these documents, and did not feel it would be necessary for the Applicant to re-submit their information “unless something has changed.”

- |  |  |
|--|--|
| <b>7.     <u>City of Fort Lauderdale</u></b> | <b>Mike Ciesielski     9-Z-09</b>  |
| <b>Request:***</b>                           | <b>Rezone from S-2 (County Zoning) to P (City Zoning)</b>  |
| Legal Description:                           | Parcel “A,” Osswald Park, P.B. 143, P.29, less the Tyrone Bryant Branch Library and less the additional Right-of-Way as dedicated by Broward County Resolution #90-3490 as |

recorded in the Official Records Book #17975,  
Page 962 of Broward County

Address: 2220 NW 21 Avenue  
General Location: East side of NW 21 Avenue between NW 22  
and NW 26 Streets  
District: 3

Disclosures were made, and any members of the public wishing to speak on this Item were sworn in.

Frank Snedaker, Chief Architect for the City, explained that the request is for a rezoning of Osswald Park from County to City zoning. The property was previously in the County, but was annexed by the City roughly five years ago. The Parks and Recreation Department is currently making improvements to the park; as part of this, and to become consistent with the City's Comprehensive Plan, the City wishes to zone the property in accordance with the City.

They are asking that the property be zoned "P" for parks and open space, which is appropriate for the use. The facility's use will not change, Mr. Snedaker noted. In addition, the local homeowners' association has included a letter of recommendation of the rezoning in the members' packets.

Mr. Stresau emphasized that it is vital for this property to be rezoned; if it does not occur, any development plans for Osswald Park must meet County zoning criteria rather than City criteria.

Mike Ciesielski, Planner, added that the proposed rezoning is consistent with the Comprehensive Plan, as well as the character of development in or near the area under consideration. He reiterated that the Park's uses will remain the same.

As there were no further questions from the Board at this time, Chair Welch opened the public hearing.

There being no other members of the public wishing to speak on this Item, Chair Welch closed the public hearing and brought the discussion back to the Board.

**Motion** made by Mr. Witschen, seconded by Vice Chair McTigue, to approve the Application for rezoning. In a roll call vote, the **motion** carried unanimously.

**8. For the Good of the City**

Ms. Golub stated that she would like to ensure the proper asterisks denoting quasi-judicial proceedings are included on the front page of the Board's minutes. Mr. Stresau stated that he had suggested for years that City Staff should tell Applicants where their signs should be posted when their Applications are to be heard before this Board or the Board of Adjustment. Regarding the Bahia Mar property, which has been deferred, he pointed out that only one sign was posted at that location, and it was located "halfway down in front of the charter boats." Mr. Stresau felt the sign should have been posted on or near the entrance to the parcel in question. He asserted that its actual location, while meeting the necessary legal requirements, was "deceptive," and added that he had driven past the site multiple times before he had seen the sign.

He emphasized that Staff should make "every effort" to educate Applicants regarding where their signs should be placed, and noted that the sign was placed where it was not visible to the general public.

Director Brewton responded that Applicants are advised, when they pick up their signage, that signs should be placed in an area that is "readily available and visible to the public."

Chair Welch felt the parcel is sufficiently large that it should have required additional signage.

Director Brewton agreed to relay Mr. Stresau's concern to the Applicant.

Ms. Golub stated the same is true for the Board of Elections building. Director Brewton replied he would address this property with Staff as well.

Ms. Golub continued that she would like to ensure the proper asterisks denoting quasi-judicial proceedings are included on the front page of the Board's minutes. She felt the City Commissioners should be aware that the Board desires "some kind of direction" regarding whether or not the City Commission wishes the Board to proceed with regard to the Bahia Mar project.

Director Brewton stated Staff would make sure this was done; however, he added that he hoped this information would reach the City Commission before the minutes were sent to them.

Chair Welch stated it was brought to his attention that the Board should retain their materials for the Riverbend South Item, which was deferred until August.

Mr. Witschen asked if there was a way to prevent the “intrusion of private emails,” as he stated had occurred with the Bahia Mar project. He asked that Staff discourage anyone from contacting him personally in this manner regarding Board business. Mr. Stresau objected strongly to this as well, and stated this was due to a District Commissioner passing the email of all Board members to constituents. He had asked that his email be removed from the City record, and had been told the Planning and Zoning Department may not remove the email address, as that must be done by the City Clerk.

Attorney Miller stated that “anything in writing on City records” is considered public record. Mr. Stresau felt this was “ridiculous.”

There being no further business to come before the Board at this time, the meeting was adjourned at 7:34 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]

---

Chair

---

Prototype

