

07.12.06 Excerpts of Planning & Zoning  
Board Meeting Minutes

Exhibit



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1 MS. KEON: By September?

2 MS. MORENO: Yeah, City-wide.

3 CHAIRMAN KORGE: City wide, using criteria  
4 like this.

5 MR. BEHAR: Yes.

6 CHAIRMAN KORGE: Our next item on the  
7 agenda is Application Number 06-06-44-P, Building  
8 Site Separation. Separation of a building site,  
9 pursuant to Zoning Code Section 12-5, requesting that  
10 Lots 17 through 19 and 40 through 42 of Block 127,  
11 Riviera Section Part 10, located at 5705 Riviera  
12 Drive, be separated into two building sites,  
13 consisting of Lots 17 through 19 and Lots 40 through  
14 42.

15 MR. CARLSON: Before I begin, I'd like to  
16 indicate to you that there were some comments that  
17 were submitted for this application, and they were  
18 included in your package. We have some recent  
19 comments which -- for this application, also, some of  
20 the old comments which were submitted for this  
21 application when it was last submitted.

22 Also in your package, at the request of the  
23 Board last month, we have put some background  
24 information on building site separations. A previous  
25 memo which was prepared by the City Attorney has come

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1 before the Commission in the past, and also past  
2 legislation, including the most recent legislation  
3 regarding this, which was Ordinance Number 2003-11,  
4 in which Staff has highlighted the intent of that  
5 last legislation, which was to provide greater notice  
6 and public participation, to establish new written  
7 administrative review criteria for the Building &  
8 Zoning Department, and to clarify for the Planning &  
9 Zoning Board the process and application review  
10 criteria for the separation or establishment of  
11 building sites.

12 That background information was included for  
13 you in your package, and since that time, another  
14 memorandum has been prepared by the City Attorney's  
15 Office, which we e-mailed to you this afternoon, and  
16 I would like to provide to you a hard copy up here  
17 for your review during the discussion.

18 The application which is before you this  
19 evening is a request for a building site separation  
20 for a property which is located on Riviera Drive.  
21 This is the same request that was presented at a  
22 Planning & Zoning Board in May of 2005, but has not  
23 proceeded forward since that time.

24 The property has since been sold, and the  
25 applicant -- and the application resubmitted by the

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1 new property owner. The application remains the same  
2 as originally proposed, and Staff's recommendation of  
3 denial remains the same, as well.

4 The facts of this application are documented  
5 in the Staff Report, which is included in your  
6 package and dated May 11th. This application  
7 satisfies only three of the six criteria which are  
8 outlined in the Zoning Code for building site  
9 separation, and a minimum of four criteria are  
10 required.

11 At the May 11th meeting, the Board required  
12 the applicant to address some specific issues and  
13 return to the Board once they had been addressed.  
14 Those issues included the removal of all existing  
15 encroachments on the proposed building site, the  
16 reconfiguration of the existing residence to conform  
17 to Code requirements, and submit a draft of  
18 restrictive covenant which would allow only -- would  
19 allow no further separation of the property, allow  
20 the construction of only single-family residences on  
21 the property, limit the height of the new residence  
22 to one story, and provide specific massing and design  
23 provisions for the new residence.

24 A draft restrictive covenant has been  
25 submitted by the applicant and is included in your

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1 package, and that draft addresses those concerns,  
2 except that the proposed new residence is a two-story  
3 structure, and the applicant has submitted conceptual  
4 plans for the new residence, instead of massing and  
5 design provisions.

6 Also, the existing residence would only have  
7 a five-foot setback, rear setback, and the new Zoning  
8 Code provisions for single-family residences would  
9 require a 10-foot setback, the rear setback.

10 The applicant is here today with the  
11 proposed drawings for the new residence and is  
12 prepared to present them to you.

13 MR. GUILFORD: Good evening, Mr. Chairman,  
14 Members of the Board. For the record, again, Zeke  
15 Guilford, with offices at 400 University Drive. I  
16 have the great pleasure of representing Guillermo and  
17 Connie Huergo, the owners of property at 5705 Riviera  
18 Drive.

19 This matter was before you a little bit over  
20 a year ago. It was heard in May 2005. This matter  
21 was deferred, pending a site plan and, obviously, the  
22 things that Walter just discussed.

23 What I'd like to do is kind of -- some of  
24 the Board Members are new, so I'd like to walk  
25 through a little bit of this application with you.

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1 What we have is San Vicente on this side,  
 2 Riviera Drive down here. The house sits on these  
 3 three lots. The principal structure sits on these  
 4 three lots. We have a swimming pool here. It is  
 5 tied together as one building site.  
 6 The picture is the front of the house, the  
 7 rear, and these are the two properties that abut the  
 8 rear of the -- the rear portion of the property, the  
 9 San Vicente side.  
 10 When we did the analysis of the property, we  
 11 did over 23 properties along Riviera Drive, and what  
 12 we found, that there was only one residence that was  
 13 equal to the size of the building site that is being  
 14 proposed. On the rear section, we did 10 blocks, and  
 15 of those, there were 134 building sites. Seven of  
 16 them were equal to the site that we are proposing.  
 17 There were zero that were larger. So, basically,  
 18 what happens is, the site we are proposing is 95  
 19 percent larger than the houses in the area.  
 20 Now, what we did, and based upon the  
 21 comments from, actually, you Board Members, a year  
 22 ago, we prepared a site plan and an elevation, and we  
 23 also had an opportunity to go and talk to the  
 24 neighbors. What we actually came up with is a one  
 25 and two-story structure. We have a 15-foot setback

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1 here. This section here remains one story. So we  
 2 have approximately 37 feet, almost 40 feet, of a  
 3 one-story structure, almost a lot size, where the  
 4 house is one story. On this side, we have  
 5 approximately 20 feet, again, where it is one sto  
 6 in height, and it pops up in the middle.  
 7 In addition, we also broke up the massing.  
 8 This section here, which is two stories,  
 9 approximately 40 feet back on the site, 20 feet, and  
 10 then we get to approximately 30, 35 feet. So we  
 11 basically broke up the massing, front and back, and  
 12 also tiered the house, so it's one story and then  
 13 builds up to two.  
 14 You can see this in the elevation. We've  
 15 got the setback, the one story. We go up to two.  
 16 This section is pushed back, this comes out, and then  
 17 this section is pushed back again.  
 18 What we did is, between last year and this  
 19 year, we went and spoke to the neighbors. One of the  
 20 conditions that was of concern -- oh, I'm sorry.  
 21 MR. CARLSON: That's all right.  
 22 MR. GUILFORD: One of the conditions was of  
 23 concern of one of the neighbors -- actually, let me  
 24 just take this -- the neighbor right here. His name  
 25 is Dean -- Constantine Nickas, and he requested

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1 originally that the house be one story in the rear.  
 2 We went and we met with Dean. Dean has no objections  
 3 to this application. As a matter of fact, I've been  
 4 working with him on the restrictive covenant. He  
 5 asked for a couple additional matters, and I'd just  
 6 like to read those matters, which are acceptable to  
 7 us, and then I'll give it to Staff.  
 8 One of the issues that he had was, he did  
 9 not want any tree over 10 feet in height within 15  
 10 feet of the property line. Obviously, what he didn't  
 11 want is a large oak with the limbs hanging over onto  
 12 his property. We have no objections to that.  
 13 He also wanted to have a specific reference  
 14 to a height restriction that is contained on the  
 15 plans. That's 29 feet. That is consistent with the  
 16 interim Building Code and the new Building Code.  
 17 I also put in there that if he ever wanted  
 18 to change the plans, which obviously he would have to  
 19 come through this Board, but we have a separate  
 20 restrictive covenant with the neighbors. What I put  
 21 in is that we needed 75 percent of those neighbors to  
 22 sign off, actually three out of the four. He said  
 23 four out of the four. You know, I did 75 percent  
 24 because there's always somebody who doesn't want to  
 25 get involved. He wants four out of four. That's

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1 fine. We can change 75 percent to 100 percent.  
 2 I think there's a paragraph in there that  
 3 talks about, "This instrument may be recorded." He  
 4 wants that, "It shall be recorded." Again, there is  
 5 no objections to that.  
 6 I believe we've met the concerns that this  
 7 Board has discussed. As a matter of fact, what's  
 8 kind of interesting, and Walter kind of touched on  
 9 it, is that there was a question from Ms. Keon, at  
 10 the last meeting. She said, "Well, are these an  
 11 owner or a developer of these properties?" And at  
 12 the time, it was a developer who was renting out this  
 13 site on Riviera and was going to develop the back.  
 14 Well, I'm proud to tell you, the Huergos are  
 15 the owners of the property. They intend to live on  
 16 that piece of property. They will sell off the back  
 17 portion. So they are clearly affected and concerned  
 18 about what is going to be built behind their house.  
 19 So, in fact, we have the two neighbors to the rear  
 20 and Mrs. Huergo, who are the most directly affected  
 21 neighbors, in favor of this application.  
 22 Again, I can go back and reiterate that my  
 23 standing objection -- which is kind of pertaining to  
 24 the City Attorney's memorandum, which is, I believe  
 25 we meet four of the criteria out of the six. Again,

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1 we go back to the same thing. We have two criteria,  
2 Criteria 3 and Criteria 4. The plain language of  
3 Criteria 3 says, once separated, do these violate the  
4 setback requirements, the land -- the open space, the  
5 lot coverage, et cetera. I'm holding firm, it does  
6 not. What 3 talks about is, does it encroach.

7 I've read the City Attorney's memorandum. I  
8 do not disagree with her memorandum as written, which  
9 is that once you have a situation like this, it is  
10 one building site. I agree with you, it is one  
11 building site. If I did not believe it was one  
12 building site, I would have appealed the decision of  
13 the Building & Zoning Department, their letter saying  
14 it is one building site.

15 I don't believe her memorandum discusses  
16 Section 3 and Section 4, as they relate to each  
17 other, or the background or intent of those  
18 provisions when they were enacted.

19 Mr. Chairman, Members of the Board, if you  
20 have any questions, I'm more than happy to answer  
21 them at this time, and I'd like to reserve a few  
22 minutes for rebuttal, if necessary.

23 CHAIRMAN KORGE: Sure.

24 Any questions? Anybody?

25 MS. KEON: I have one question. The house

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1 that's existing will remain; is that what you're  
2 saying?

3 MR. GUILFORD: Correct.

4 MS. KEON: That house will remain as it is?

5 MR. GUILFORD: As -- yes, the owners are  
6 living there now. They intend to live there.  
7 There's one -- do you want to get that board, Pedro?

8 What they would do is, the garage, which is  
9 encroaching over here, would be removed. We'd have a  
10 10-foot setback, and the pool would be turned,  
11 essentially, sideways, to fit, and we'd meet the  
12 setback requirements.

13 MS. KEON: Well, would they be the new  
14 Zoning Code setbacks --

15 MR. GUILFORD: No, actually --

16 MS. KEON: -- or the existing Zoning Code  
17 setbacks?

18 MR. GUILFORD: This section, which is  
19 existing, will meet the existing Code, right now.

20 MS. KEON: The five feet?

21 MR. GUILFORD: The five feet. We've got  
22 five feet seven.

23 MS. KEON: Okay. It's not 10 feet, though?

24 MR. GUILFORD: It is not 10 feet --

25 MS. KEON: Not within the proposed?

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1 MR. GUILFORD: -- but that's not what the  
2 Code is today.

3 MS. KEON: Okay.

4 MR. GUILFORD: The new portion, we have no  
5 problems making that to 10 feet. So we have a small  
6 portion here that will remain five feet.

7 MR. RIEL: Zeke, maybe if you put the other  
8 plan, so that will be on the back parcel --

9 MR. GUILFORD: Which?

10 MR. RIEL: The proposed plan.

11 So that's basically what would be going in  
12 in the back, correct? Okay.

13 MR. GUILFORD: This is going to fall, I  
14 know.

15 MS. KEON: And the proposed plan is under  
16 the new Building Code?

17 MR. GUILFORD: Meets under the new Building  
18 Code, yes.

19 MS. KEON: It's a 10-foot setback from the  
20 property line?

21 MR. GUILFORD: Yes, absolutely.

22 CHAIRMAN KORGE: So the old portion, if the  
23 new Building Code -- the new Zoning Code change is  
24 adopted, would then be legally nonconforming?

25 MR. GUILFORD: Correct. Absolutely.

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1 CHAIRMAN KORGE: Okay.

2 MR. BEHAR: And the size of these proposed  
3 lots are comparable to the --

4 MR. GUILFORD: Well, it's larger. Even  
5 separated, we are as -- we're still the largest lot,  
6 separated. We have a 150-foot frontage. A majority  
7 of the houses along Riviera are 100-foot frontage.  
8 So we're over 50 percent greater on Riviera. Again,  
9 it's a mix. There's a lot of 50s, 75s --

10 CHAIRMAN KORGE: Why don't you show the  
11 building site analysis? I think it's clearer, to  
12 understand, than that.

13 MS. KEON: Yeah.

14 MR. GUILFORD: You actually, in your  
15 package, have a breakdown of the sites and the area  
16 that was actually looked at. So that's actually in  
17 your package. So you can actually see what's 75,  
18 what's 100, et cetera.

19 CHAIRMAN KORGE: What you're telling us is  
20 that the existing lot, the six lots combined, the  
21 existing site, is double the size of the largest lots  
22 fronting Riviera and the largest lots fronting San  
23 Vicente?

24 MR. GUILFORD: Oh, yes.

25 MS. KEON: What's that double? You said --

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1 MR. GUILFORD: I guess double -- the six  
2 lots together, the size-wise, it is double -- it is  
3 double any of the other lots, the six lots together,  
4 area-wise. You're not looking at frontage anymore.  
5 MS. KEON: Oh, right. Right, but --  
6 MR. GUILFORD: Frontage-wise --  
7 MS. KEON: Frontage wise --  
8 MR. GUILFORD: Frontage-wise, about 50  
9 percent greater than the lots -- at a minimum, 50  
10 percent greater than the lots on Riviera, and more  
11 than 50 percent based upon the lots -- I lived a half  
12 a block away from this site.  
13 MS. KEON: Right.  
14 MR. GUILFORD: I drove by it every day. As  
15 a matter of fact, I wish I'd bought this site.  
16 MS. KEON: Right.  
17 MR. GUILFORD: But the fact of the matter  
18 is, there's a lot -- it's a mixed neighborhood, a lot  
19 of 50s, a lot of 75s, some 100s.  
20 MS. KEON: A lot of 100s.  
21 MR. GUILFORD: And it's just a mix.  
22 MS. KEON: Right. Right.  
23 CHAIRMAN KORGE: Any other questions?  
24 Does anybody wants to speak from the  
25 audience?

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1 now gone into the domino effect of tearing down the  
2 old ones and building McMonster houses, and that's  
3 compatible with the Riviera Drive area on the west  
4 side.  
5 On the Vicentian area, most all those houses  
6 are single-story, and they built some two-story  
7 houses on smaller lots.  
8 I'm directly opposed to giving this  
9 variance, because the buyer bought the lots and the  
10 house with full knowledge, one, that there was a  
11 covenant, and the covenant is something given for  
12 something received. They've already had the  
13 variances when they built the pool and whatever.  
14 We're going to give them another covenant now, and in  
15 eight or 10 more years, when things change in the  
16 City of Coral Gables, they're going to come right  
17 back to you and ask you to void that covenant, to let  
18 them do something else.  
19 If we had had the Building & Zoning Code  
20 changed -- which they talked about five years ago  
21 doing, and right now they're doing it, finally -- we  
22 would not have all this McMonster houses in areas  
23 that are not compatible. I don't believe that when  
24 they change that zoning, that that house is going to  
25 be compatible with the rest of the neighborhood,

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1 Yes, sir.  
2 MR. RIEL: Mr. Chair, you're going to need  
3 to swear everybody in.  
4 MS. KEON: You need to swear them in, Tom.  
5 Tom --  
6 CHAIRMAN KORGE: Yeah?  
7 MR. RIEL: He needs swearing in.  
8 MS. KEON: You need to swear him in.  
9 CHAIRMAN KORGE: Oh, we need to swear you  
10 in. State your name and address for the record,  
11 please.  
12 (Thereupon, James Hartnett was duly sworn by  
13 the court reporter.)  
14 MR. HARTNETT: Will you repeat that again,  
15 please, a little bit slower? I do, yes. Right.  
16 My name is Jim Hartnett, born and raised in  
17 the City of Coral Gables. I live at 510 Marmore  
18 Avenue. I've lived there for 42 years. The house  
19 has only had two owners, the one that built it and  
20 myself.  
21 I travel this area, where we're talking  
22 about right now. In May, you rejected or deferred  
23 this, based on Staff recommending against it.  
24 On the Riviera Drive, that faces the canal,  
25 those houses that used to be mostly single-story have

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1 which are mostly single-stories.  
2 They have, in certain streets, already  
3 allowed the monster house, in certain areas, short of  
4 Hardee and down some of the side streets, and they  
5 are, in most cases, out of place and out of  
6 compatibility with the houses that exist there prior  
7 to the change.  
8 They knew what they were buying. If the  
9 lots are good enough, they can sell them off and let  
10 them build within restrictions, without a covenant,  
11 without any variances, and let's just hold to what  
12 they already agreed to when they bought the house.  
13 MR. BEHAR: Let me ask you a question or --  
14 We're doing this as a lot separation. We're not  
15 approving anything on the proposed residential  
16 project, right?  
17 MR. GUILFORD: Right.  
18 MR. RIEL: Correct.  
19 MR. GUILFORD: What I'm willing to do, and  
20 what I'm asking to do, because it was really the  
21 issue that came up before, I do not want you to  
22 approve a style of this house. I want you to approve  
23 a site plan and a massing. I mean, you have the  
24 right to reject or not reject it.  
25 MR. BEHAR: But maybe I'm a little bit

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1 confused. Are we doing a lot separation?

2 MR. GUILFORD: You are doing a lot

3 separation ordinance.

4 MR. RIEL: You're doing a lot separation.

5 You're not approving a site plan. The site plan is

6 only provided for illustration purposes.

7 MR. COE: That's informational.

8 MR. GUILFORD: But what I'm saying is --

9 MR. COE: The legal issue is the lot split,

10 and nothing else.

11 MR. RIEL: Correct.

12 MR. COE: That's the only thing before this

13 Board tonight.

14 MR. GUILFORD: That's the only thing before

15 you, is the lot separation.

16 MR. COE: Correct.

17 MR. GUILFORD: If you want to condition it

18 upon that, that is yours, but what the application

19 before you is, is a building site separation.

20 MR. BEHAR: For any particular style of

21 house, they have to go through the whole process of

22 the Board of Architects, to make sure it's

23 compatible --

24 MR. RIEL: Absolutely. Absolutely.

25 MR. BEHAR: And we're not going there.

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1 approval. That's the vesting.

2 MS. KEON: Before that day.

3 MR. RIEL: Before October 1st, correct.

4 MS. KEON: So, then, we could condition this

5 lot separation -- we could condition it on its

6 being --

7 MR. RIEL: You could condition --

8 MS. KEON: -- in compliance with the Code,

9 the new Code?

10 MR. RIEL: You could.

11 MS. KEON: Can we?

12 MR. RIEL: You could do that.

13 MS. KEON: Okay.

14 MR. RIEL: And if the applicant agrees to

15 that. Or, if it, obviously, happens that they don't

16 secure that approval before October 1st, obviously,

17 they need to meet the new Code, so --

18 MS. KEON: The new Code, but if they happen

19 to have new plans ready, we could condition the

20 separation on it being subject to the new Code?

21 MR. RIEL: We've certainly discussed that on

22 other lot separations.

23 MS. KEON: Okay.

24 MR. RIEL: Yes, you could.

25 MS. KEON: Okay.

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1 MS. ALFONSIN: You're only here today on the

2 lot separation.

3 MR. GUILFORD: That's it.

4 MR. BEHAR: Okay.

5 CHAIRMAN KORGE: Right. That includes

6 setback requirements, too.

7 MR. GUILFORD: Absolutely.

8 CHAIRMAN KORGE: And height --

9 MR. GUILFORD: Absolutely.

10 CHAIRMAN KORGE: -- and massing.

11 MR. GUILFORD: This new house will have to

12 comply -- and right now, which it's not going to be

13 built, but with the interim regulations, but by the

14 time it gets there, with the new regulations that are

15 in place at the time, that the City has put in, which

16 is the 10-foot setbacks, the 29-foot height

17 restrictions, et cetera, you know, counting the

18 garage as full unless it's detached, and all the

19 other items that the new regulations have provided.

20 MR. RIEL: Just as a side note, the City

21 Commission passed, on first reading, the new

22 single-family regulations. The effective date is

23 going to be October 1st of 2006, and they will be

24 vested -- properties will be vested if they've

25 secured preliminary Board of Architects review and

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1 MR. HARTNETT: May I ask a question?

2 The previous owner, which was a developer,

3 and the current owners, is there any relationship to

4 those two people, those two buyers?

5 MR. RIEL: I don't know. You'd have to --

6 MR. HARTNETT: Are they independent of each

7 other, in any capacity?

8 MR. RIEL: I think you have to direct your

9 question to the Chair, and then the Chair can have

10 the applicant respond.

11 CHAIRMAN KORGE: Yeah. Mr. Guilford?

12 I think Mr. Guilford --

13 MR. GUILFORD: I just spoke to my clients.

14 The answer is no, there is no relationship between

15 the two.

16 CHAIRMAN KORGE: Thank you.

17 MR. COE: Even if there was, what's the

18 relevance?

19 CHAIRMAN KORGE: Any more questions or

20 discussions? Anybody else wish to speak?

21 Yes?

22 MR. HARTNETT: Mr. Chairman, in closing, I

23 ask you that you don't void the covenant, that you

24 leave the properties as they are, let them build to

25 conformity of what those lots will take.

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1 CHAIRMAN KORGE: So, if they build an  
2 11,000-square-foot house there, because the lots  
3 allow it, six lots, you'd be --  
4 MR. HARTNETT: What?  
5 CHAIRMAN KORGE: Currently, there are six  
6 lots for that building site. Right?  
7 MR. HARTNETT: On each street?  
8 MR. BEHAR: No.  
9 CHAIRMAN KORGE: No. The total building  
10 site is six lots. It's not three lots. The house is  
11 located on the front three.  
12 MR. HARTNETT: I know that.  
13 CHAIRMAN KORGE: Yeah. So they could build  
14 an eleven -- maybe ten or eleven-thousand-square-foot  
15 house, if they build on the entire building site, as  
16 opposed to dividing the lots.  
17 MR. HARTNETT: But that --  
18 MR. COE: But they'll have more green space.  
19 MR. HARTNETT: Are you saying that that's  
20 what they can do now?  
21 MS. MORENO: Yes.  
22 MS. KEON: Yes.  
23 MR. BEHAR: Yes.  
24 MS. KEON: Yes.  
25 MR. BEHAR: Now, they can build a McMansion

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1 on that lot, the way that they have the rights to do  
2 it today.  
3 CHAIRMAN KORGE: Because of the unique  
4 characteristics of the depth of that lot.  
5 MR. HARTNETT: Can you build that with the  
6 covenant in force?  
7 MS. KEON: Yes.  
8 MS. MORENO: Yes.  
9 MR. BEHAR: Of course.  
10 MS. MORENO: All the covenant says is that  
11 the lots are tied together.  
12 MS. KEON: Yeah.  
13 MR. HARTNETT: But you're going to untie it.  
14 MR. BEHAR: Not if you build --  
15 MS. MORENO: If we don't do anything, he  
16 could build there a 12,000-square-foot house.  
17 MR. HARTNETT: As I understand it, the  
18 existing house, they gave a covenant in order to  
19 build the pool, that went from west to east, from  
20 Riviera to San Vicente, and in doing that, he agreed  
21 to tie them all together.  
22 CHAIRMAN KORGE: Right.  
23 MR. HARTNETT: Correct?  
24 MR. BEHAR: That's correct.  
25 MS. KEON: Right.

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1 MR. HARTNETT: Now, what they're asking you  
2 to do is, hey, let's undo that, and now we're going  
3 to give them another shot at doing something else.  
4 MR. BEHAR: Not necessarily.  
5 MS. KEON: Right, they're saying that, but  
6 what they're also saying is, when those -- the  
7 covenant that exists now, that ties the six lots  
8 together --  
9 MR. HARTNETT: Right.  
10 MS. KEON: -- gives them also the ability to  
11 build an about 11,000-square-foot house on those six  
12 lots together, because it's one building site, and  
13 the current Code, as it's written, would allow them  
14 to build a huge home on those lots, as they exist  
15 today, as-of-right.  
16 If their request to separate those two  
17 lots -- you know, so that three lots face San  
18 Vicente, the other three lots would face Riviera  
19 Drive, then they would have two building sites and  
20 they would have to build in conformance with what the  
21 existing building Code today is. So they couldn't  
22 build such a huge house today, if the lots were  
23 separated. They wouldn't be able to build it.  
24 But now, with the covenant in place, with  
25 those six lots, they could build a very, very big

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1 house.  
2 MR. HARTNETT: Yeah, but the design that  
3 they presented here, that's going to face San  
4 Vicente, is not actually compatible with the  
5 single-story houses that are there.  
6 MR. BEHAR: We're not approving that.  
7 CHAIRMAN KORGE: We won't approve that.  
8 MR. BEHAR: We're not approving the design.  
9 MR. COE: This is just the lot split --  
10 MS. KEON: This is the lot split. That  
11 would --  
12 MR. COE: -- and we could condition the lot  
13 split.  
14 MR. HARTNETT: Isn't the lot split a  
15 prerequisite to what's going to happen? That's what  
16 he's telling you, right here.  
17 MS. KEON: Well, they're telling him that  
18 they could build, but it would still have to go  
19 through -- and they will build.  
20 MR. HARTNETT: They will.  
21 MS. KEON: Absolutely, they will build, but  
22 it has to go -- if it's conditioned on the new  
23 Building Code, it won't -- it would not be as big as  
24 what could be built there today.  
25 What you're seeing in your neighborhood,

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1 what you're seeing now being built, it could not  
2 be -- you will not be able to build as big a house,  
3 once the new Zoning Code goes into place, if they  
4 adopt it as it's been written. They can't -- they  
5 wouldn't be able to build it as big as they could  
6 under the existing Zoning Code.

7 MR. BEHAR: The option now is, if you leave  
8 it the way it is today, they could get up to 11,000  
9 or so square feet. So that would be a significant  
10 size structure.

11 With the lot separation, it means that they  
12 have to decrease the overall massing of those two  
13 homes, to be more compatible with what you -- in my  
14 opinion, what you're trying to preserve.

15 MR. HARTNETT: But in all probability, the  
16 massive part is going to be on Riviera, facing across  
17 the street, with massive houses. They are not going  
18 to put the mass back on San Vicente and all the  
19 streets perpendicular to it. So I'm saying that the  
20 Board has an opportunity to say no to this  
21 application, leave it as it is, and the buyer knew  
22 what he was getting. Don't disturb the covenant.

23 MR. BEHAR: But -- and, Mr. Chairman, you  
24 may want to elaborate on the specific of the  
25 covenant, because the covenant is just tying the six

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1 properties together, right?

2 CHAIRMAN KORGE: That's correct.

3 MS. MORENO: That's all it is, right.

4 MS. KEON: It doesn't say how long big you  
5 can build.

6 MR. BEHAR: If they want to do, today, an  
7 addition on the San Vicente side, they could do the  
8 same two-story addition back there and increase the  
9 size of that house to ten, twelve thousand square  
10 feet.

11 MR. COE: They still have 22,000 square feet  
12 of green space.

13 MR. HARTNETT: You mean, on the Vicente  
14 part?

15 MR. BEHAR: They could do that today,  
16 maintaining the six lots.

17 CHAIRMAN KORGE: The practical application  
18 of splitting is to make these lots, basically, fit --

19 MS. MORENO: The neighborhood.

20 CHAIRMAN KORGE: -- within the whole  
21 neighborhood. That's the real practical application,  
22 because you can see from the building site analysis,  
23 there are no lots greater than 150 feet of frontage  
24 on either Riviera or San Vicente, and there's only  
25 one of those lots fronting Riviera, and seven

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1 fronting San Vicente.

2 So, practically speaking, what they're  
3 asking is not to -- is not out of conformity with the  
4 neighborhood, but it really fits within the confines  
5 of the neighborhood.

6 MR. HARTNETT: Okay.

7 MR. CARLSON: When this was last discussed  
8 by the Board, what the Board asked was that the  
9 applicant go back, consider a one-story house on the  
10 proposed new lot, and also provide design and massing  
11 criteria which would regulate how that house would be  
12 constructed on the lot. That was what the Board  
13 asked to go back and consider.

14 CHAIRMAN KORGE: Uh-huh.

15 MR. CARLSON: And that's what has been -- a  
16 plan has been submitted, instead of those massing and  
17 design criteria.

18 MR. BEHAR: But they came back with a  
19 two-story proposal.

20 MR. CARLSON: That's exactly right.

21 CHAIRMAN KORGE: Exactly.

22 MR. CARLSON: The Board originally asked for  
23 a one-story. They have come back with a two-story.

24 MR. COE: Substantially larger now.

25 MS. MORENO: But I think -- I think that the

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1 answer to the whole problem is what Pat said. Let's  
2 just split the lots, and say the new house has to  
3 conform with the new Code. Why would we impose  
4 anything different on them?

5 MS. KEON: Right.

6 MR. BEHAR: Right.

7 MS. MORENO: That, to me, is clear.

8 MR. BEHAR: I don't disagree with you. I  
9 agree.

10 MS. KEON: Right, yeah.

11 MR. HARTNETT: I just want you to know that  
12 the previous Board -- and there were other, different  
13 people on there -- they did address the covenant  
14 issue, very seriously.

15 CHAIRMAN KORGE: Yes.

16 MS. KEON: Well, I think the covenant is  
17 that they would tie the three lots together so that  
18 they couldn't further separate those into three  
19 different building sites, that -- you know, if you  
20 split it in half. So the three lots that face San  
21 Vicente would remain as one building site, so you  
22 couldn't -- you couldn't make it smaller than the  
23 150-foot frontage, was the discussion that was had  
24 before about --

25 MR. HARTNETT: You mean, on San Vicente?

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1 MS. KEON: Right, that it would have to stay  
2 at the 150. They couldn't break it up into three  
3 50-foot lots, that you would remain -- it would have  
4 to be --  
5 CHAIRMAN KORGE: There would only be one  
6 house on San Vicente built, not three.  
7 MS. KEON: Right.  
8 MR. BEHAR: If you look at the exhibit that  
9 they provided us, there are a couple lots of probably  
10 less than --  
11 MS. KEON: Yeah.  
12 MR. BEHAR: -- 75 feet.  
13 MS. KEON: Sure. This is -- yeah.  
14 MR. BEHAR: This would allow no further lot  
15 splittage, either on San Vicente or Riviera Drive.  
16 MS. KEON: Right.  
17 MR. HARTNETT: This year. This year.  
18 MS. KEON: Well, that's true. But we  
19 could -- but this Board could ensure that, for now,  
20 that it would be 150.  
21 MR. HARTNETT: As a matter of observation,  
22 Pat, you have changed certain members, and they had a  
23 very great concern about the covenant. You had an  
24 hour's discussion --  
25 MS. KEON: Right.

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1 attention.  
2 CHAIRMAN KORGE: Thank you.  
3 Anybody else who'd like to speak?  
4 If you want them to speak -- if you want,  
5 you need to be sworn in.  
6 (Thereupon, Consuelo Huergo was duly sworn  
7 by the court reporter.)  
8 MS. HUERGO: My name is Connie Huergo. My  
9 husband, Guillermo; Sara and Daniel, my kids.  
10 We've been living in the Gables for the past  
11 10 years, and we used to live three houses away from  
12 the one that we have right now. Our lot was also the  
13 biggest in the neighborhood, three houses away from  
14 that one. It was a beautiful house. Our children  
15 grew up there. It was great, but it was too small.  
16 It was 1,500 square feet. And in order for me to  
17 expand, we needed to knock down the house, and I  
18 didn't want to do that. So we decided to go into  
19 Riviera, which had a bigger square footage and it had  
20 a bigger yard, like the one that we used to have.  
21 The one that we have right now is great, but  
22 we cannot put anything in the back, so the kids  
23 cannot have the freedom of playing back there or take  
24 out the dog, and everybody uses our lot to cross away  
25 from San Vicente to Riviera.

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1 MR. HARTNETT: -- of the covenant and the  
2 value of it, the relationship of it, and what they --  
3 what they got for what they gave away.  
4 MS. KEON: Absolutely.  
5 MR. HARTNETT: So --  
6 MS. MORENO: But since then, we've had a  
7 number of architects come before us and discuss the  
8 possibility of lot splits being able to be used to  
9 preserve the character of the neighborhood, and I  
10 think that has educated us, because we don't want a  
11 12,000-square-foot house --  
12 MS. KEON: Right.  
13 MS. MORENO: -- in your neighborhood. We  
14 think it is more appropriate to have two homes that  
15 are consistent with the other homes in the  
16 neighborhood than to have this huge house in your  
17 neighborhood.  
18 MR. HARTNETT: We already have some of  
19 those. They've already let the dominos begin.  
20 MS. KEON: Right, and we'd like to --  
21 MR. HARTNETT: If you drive around that  
22 area --  
23 MR. BEHAR: But if we could stop that --  
24 MS. KEON: We'd like to stop it now.  
25 MR. HARTNETT: Okay. Thank you for your

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1 So I agree with you, you know, we could  
2 build a humongous house. That is not our idea. We  
3 want to live within the neighborhood. We really like  
4 it, and, you know, we want to just split it, be able  
5 to have our kids playing in our yard and split the  
6 lot so that the back, you know, fits into the  
7 neighborhood.  
8 I feel that that would be the right thing,  
9 and I agree with you guys, you guys cannot commit to  
10 something right now. Let it -- whoever decides to  
11 build there, you know, commit to the covenant or to  
12 the restrictions that are in place in October or  
13 whenever it is that -- but we are planning to live  
14 there. We're not willing to affect the neighborhood,  
15 and the direct affected will be us. So that's all I  
16 wanted you guys to know.  
17 CHAIRMAN KORGE: Thank you.  
18 Mr. Guilford, did you have some further  
19 comments?  
20 MR. GUILFORD: I'm just going to make --  
21 really very, very, very brief.  
22 Talking about the restrictive covenant  
23 that's on the property, it really did not have to do  
24 with the pool. It had to do with the screen  
25 enclosure. And the screen enclosure has been gone



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1 for years. It was also that -- that covenant was  
2 also proffered in 1959, almost 20 years before the  
3 lot separation ordinance even came into effect.

4 Now, I'm not here to say that the woman who  
5 bought the house or owned the house, you know, didn't  
6 want to keep it together. She was willing to do it  
7 for the screen enclosure. Clearly, in today's time,  
8 no one would have tied six lots together for a screen  
9 enclosure. It just would not have happened.

10 We have no problems proffering that we will  
11 comply with the new Code that is being developed by  
12 the City, and we ask that you support this  
13 application. Thank you.

14 CHAIRMAN KORGE: Thank you.

15 MS. MORENO: I'm sorry, let me just check.  
16 We would have a restrictive covenant that would say,  
17 first, that the property will be not further  
18 separated, with the existing property divided into  
19 building sites with three platted lots.

20 MR. GUILFORD: Correct.

21 MS. MORENO: Each building site shall be for  
22 a single-story residence, and then instead of these  
23 two other, 3 and 4, the residence, et cetera, it  
24 would be, the new residence to be constructed will  
25 comply with the new Zoning Code?

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1 MR. GUILFORD: Correct.

2 MS. KEON: Well, the one -- the  
3 single-story --

4 MR. GUILFORD: No, it's supposed to be  
5 single-family. It's not one-story, it's  
6 single-family. You kind of read single-story versus  
7 single-family.

8 MR. RIEL: Single-story or single-family?

9 MR. GUILFORD: It's single-family. Each one  
10 will be a single-family.

11 MS. MORENO: Each building shall be for one  
12 single-family residence.

13 MR. GUILFORD: There you go.

14 MS. MORENO: And then we're eliminating 3  
15 and 4, which had to do with the one story --

16 MS. KEON: Right.

17 MS. MORENO: -- in height and special --  
18 specific massing and design provisions, and instead  
19 of that, we're saying that the new home to be  
20 constructed will comply with the new Zoning Code  
21 provisions.

22 MR. RIEL: Correct.

23 MS. MORENO: Is that -- does everybody  
24 understand?

25 MR. RIEL: And only one suggestion, that Mr.

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1 Guilford prepare the restrictive covenant and get it  
2 finalized and have it available for when the  
3 Commission considers it, if the Board is desiring to  
4 recommend approval.

5 MS. MORENO: Okay, I make a motion to that  
6 effect.

7 CHAIRMAN KORGE: Is there a second to that  
8 motion?

9 MS. KEON: I'll second it.

10 CHAIRMAN KORGE: Mr. Guilford, do you accept  
11 all those conditions?

12 MR. GUILFORD: Yes, I do.

13 CHAIRMAN KORGE: Is there any discussion,  
14 further discussion, on this motion?

15 Let's call the roll -- oh, I'm sorry.

16 MR. RIEL: I'm sorry. Did -- Mr. Guilford  
17 proffered some of his neighbors' conditions. Is that  
18 included in those, as well --

19 MR. GUILFORD: That's --

20 MR. RIEL: -- in your motion?

21 MR. GUILFORD: If you want to quote them or  
22 if you want me to quote them again, I'm more than  
23 happy to do so.

24 MR. RIEL: He proffered some additional  
25 conditions from the neighbor.

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1 CHAIRMAN KORGE: Yeah.

2 MR. GUILFORD: There's two restrictive  
3 covenants. Obviously, there's going to be a  
4 restrictive covenant with the City, and then one with  
5 the four neighbors, which actually gives Mr. Hartnett  
6 additional assurances, because then we cannot split  
7 it without the approval of those four neighbors.  
8 Even though the City is not involved, it's between  
9 those neighbors. So there's the additional  
10 protection for Mr. Hartnett.

11 MR. RIEL: I just wanted to know how --

12 CHAIRMAN KORGE: The restrictive covenants  
13 included everything that had been proffered, is that  
14 correct, in your motion?

15 MS. MORENO: I can add it. Is that the  
16 City's concern at all?

17 MR. RIEL: Well, I mean, if he's proffering  
18 that he agrees to that, you know, it would probably  
19 be better to have it in our restrictive covenant.

20 MS. MORENO: Okay. All right, include it  
21 in my motion.

22 MR. RIEL: Okay. I just want to be clear.  
23 Thank you.

24 MS. MORENO: And include it in your second.

25 MS. KEON: Is it also included, then, that

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1 the pool is going to be removed? I mean, the  
2 conditions on the other lot.

3 MR. GUILFORD: Right. That is one of the  
4 conditions that was already in Staff's  
5 recommendation, that those encroachments be removed  
6 within one year.

7 MS. MORENO: Yeah, I --

8 MR. GUILFORD: That is, in fact, one of  
9 the conditions.

10 MS. MORENO: I'm only addressing -- I'm  
11 assuming that we are --

12 MR. GUILFORD: We're fine -- you're just  
13 going with the new ones.

14 MS. MORENO: We're adopting Conditions 1 and  
15 2.

16 MR. GUILFORD: Correct.

17 MS. MORENO: And then Condition 3, which  
18 was -- I guess I didn't do my motion properly. On  
19 Condition 3, we're making the revision on the new  
20 Zoning Code, instead of 3 and 4, and we're also now  
21 including the restrictive covenant that you proffered  
22 to the neighbors.

23 MR. GUILFORD: Correct.

24 MS. MORENO: So my motion is that we allow  
25 this lot split, based on the Staff conditions, 1 and

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1 2, the revised restrictive covenant with the City,  
2 and the proffered restrictive covenant with the  
3 neighbors.

4 MS. KEON: Second.

5 MR. HARTNETT: Before you vote, Mr.  
6 Chairman, could I request a clarification? The four  
7 neighbors, is that defined as the four owners of the  
8 property?

9 CHAIRMAN KORGE: This would be the four  
10 adjacent --

11 MR. GUILFORD: Do you want me to answer  
12 that? It's the four property owners, the two on  
13 Riviera that abut the existing house, and the two  
14 property owners that abut the proposed building site  
15 in the rear, on San Vicente.

16 CHAIRMAN KORGE: On San Vicente.

17 MS. KEON: On San Vicente.

18 MR. GUILFORD: And those are actually --

19 MR. HARTNETT: You're referring -- you're  
20 referring to neighbors as owners of the property --

21 MR. GUILFORD: Yes, they are property  
22 owners.

23 MR. HARTNETT: -- at any given time?

24 MR. GUILFORD: Absolutely.

25 MS. MORENO: At the time a change is sought.

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1 MR. GUILFORD: Absolutely. As a matter of  
2 fact, those neighbors in the restrictive covenant, if  
3 you see, are not identified by name. They're  
4 identified as --

5 CHAIRMAN KORGE: Property owner.

6 MR. GUILFORD: -- owner of X -- Lot  
7 so-and-so, and so-and-so, and so-and-so.

8 MS. KEON: Yes.

9 MR. RIEL: Thank you.

10 CHAIRMAN KORGE: Thank you.

11 Okay. Would you call the roll, please?

12 MS. MENENDEZ-DURAN: Robert Behar?

13 MR. BEHAR: Yes.

14 MS. MENENDEZ-DURAN: Jack Coe?

15 MR. COE: For the record, I'm going to vote  
16 no on this. It's clearly, in my mind, in violation  
17 of 12-5(b) of the Zoning Code. They only meet three  
18 of the six requirements as set forth in the Zoning  
19 Code. They do not meet four, which is a minimum  
20 requirement for passing a lot split. I see no legal  
21 justification for granting a lot split in this case,  
22 and therefore, I'm voting no.

23 MS. MENENDEZ-DURAN: Pat Keon?

24 MS. KEON: Yes.

25 MS. MENENDEZ-DURAN: Cristina Moreno?

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1 MS. MORENO: Yes.

2 MS. MENENDEZ-DURAN: Tom Korge?

3 CHAIRMAN KORGE: Yes.

4 MR. GUILFORD: Thank you very much.

5 CHAIRMAN KORGE: Thank you.

6 MR. RIEL: Just for the record, this item  
7 will go on the August 22nd City Commission meeting,  
8 if Mr. Guilford can get the restrictive covenant in  
9 time.

10 MS. KEON: Can we talk a little bit about  
11 this memo from the City Attorney?

12 CHAIRMAN KORGE: Well, we can, but I don't  
13 know why we would talk about it now. We just  
14 finished the issue.

15 MS. KEON: Well, no, because it goes back  
16 to -- it really just deals with this administrative  
17 review criteria, and it's the same thing we talked  
18 about on another item that was before us a few days  
19 ago.

20 CHAIRMAN KORGE: Well, I think this memo  
21 will come into play when that other lot split comes  
22 back before us.

23 MS. KEON: But that's why -- I only have  
24 just -- Can I make a couple comments? I'll be very  
25 quick.

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CHAIRMAN KORGE: Yeah, sure.

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MS. KEON: Okay. In reading the administrative determination review criteria, and then reading the memo from the City Attorney, the City Attorney's memo makes it abundantly clear that the intent was whether any building ever existed on that site, for the lot split, anything ever existed there.

Your administrative criteria doesn't say that. I mean, I'm sort of surprised that there isn't -- one of your criteria is that there was ever a building on that site, because that's the point that we keep arguing. That's the point that Mr. Guilford has put forth, that's the point that made it sort of confusing when we talked about it, and it doesn't -- one of your --

CHAIRMAN KORGE: It's not clear.

MS. KEON: It isn't clear. I mean, you really --

MR. COE: What's not clear about it?

MS. KEON: It isn't clear at all, and, you know --

MS. ALFONSIN: If I may address that, when we discussed this last time and I told you that I was going to review the building site section -- which I

did, and it's referred to there --

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MS. KEON: Right.

MS. ALFONSIN: -- the five criteria are for review purposes, if you don't meet the other sections, and you must take every section together. When you're talking about existing building, if there is an existing building -- and I'll give you a hypothetical. You have three lots, it's a triple lot, and the existing building begins in Lot 1, goes through Lot 2 and enters into Lot 3, and in order to separate those three lots, they have to demolish the house, then they're not meeting Criteria 3 and 4, because you have to look at the six criteria under 12-5 along with 12-2(c).

MS. KEON: Right, but you know what? That's not clear.

MS. ALFONSIN: However, if you have three lots, and you have one home sitting on Lot 1, but Lots 2 and 3, there's nothing on them, and they're coming in under these criteria, they would meet the criteria for 3 and 4.

MS. KEON: And I -- exactly. But that -- but when you -- when you're presenting that information to us here, it's almost like, if they didn't meet the first one, then --

MS. ALFONSIN: They wouldn't be meeting it -- in this situation, they wouldn't be meeting it --

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MS. KEON: Right.

MS. ALFONSIN: -- because they're going to be removing the pool, and the pool is encroaching on the other half of the property.

MS. KEON: Right. But when you present this to us, and it says administrative determination review criteria -- when this is presented to us, as it's stated here, that issue, the historical -- the issue that you just talked about, as there ever being one there, I mean, ever being a building on that site, isn't -- it's not -- it's not clear here.

MS. ALFONSIN: There's also another issue. There's an issue of unity of title. Once there's unity of title and there's six lots --

MS. KEON: Right.

MS. ALFONSIN: -- then you look at that criteria along with all of the other matters under 12.

MS. KEON: Right.

MS. ALFONSIN: Section 12-2(c), for example, what I just said.

MS. KEON: Right.

MS. ALFONSIN: But that comes in with unity of title, and you have to look at unity of title along with everything else in that section.

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Whenever you have any section of the Code, and there are different parts per section, you've got to review them all together. The criteria here is perfect when you have what I said before, as an example, a triple lot, and the home sits on one of the lots only.

MS. KEON: Right, but that's -- you know what? And that's really not such an issue. The issue becomes when there are encroachments onto the lot --

MS. ALFONSIN: Exactly.

MS. KEON: -- and the way that it's written here and presented to us here, it isn't -- it's not clear that this criteria is being applied in conjunction with the other --

CHAIRMAN KORGE: Sections.

MS. KEON: -- sections that you have included in your memo.

MS. MORENO: Okay, why don't I make a suggestion? Eric, why don't you have --

MS. KEON: It isn't clear.

MS. MORENO: -- Charlie Siemon and the City

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1 Attorney's office work to make sure that that's  
2 clear, as part of their --

3 MS. ALFONSIN: It's already been done.

4 MS. KEON: Yeah. I really don't think that  
5 it is clear, and I think, you know, Zeke's argument  
6 makes sense, when you look at it.

7 MR. RIEL: Okay, we'll do that.

8 MS. ALFONSIN: It has actually --

9 MR. RIEL: Okay.

10 CHAIRMAN KORGE: We're adjourned, meeting  
11 adjourned?

12 MR. RIEL: Yes.

13 CHAIRMAN KORGE: Okay.

14 MS. ALFONSIN: We've actually addressed that  
15 with Charlie already.

16 MS. KEON: Okay, but I think -- I really  
17 think that should be folded into anything that's  
18 done.

19 (Thereupon, the hearing was adjourned at  
20 8:00 p.m.)  
21  
22  
23  
24  
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CERTIFICATE

1  
2  
3 STATE OF FLORIDA:

4 SS.

5 COUNTY OF MIAMI-DADE:  
6

7 I, JOAN L. BAILEY, Registered Diplomat  
8 Reporter, and a Notary Public for the State of  
9 Florida at Large, do hereby certify that I was  
10 authorized to and did stenographically report the  
11 foregoing proceedings and that the transcript is a  
12 true and complete record of my stenographic notes.  
13

14 I, JOAN L. BAILEY, a Notary Public in and  
15 for the State of Florida at large, do hereby that all  
16 witnesses were duly sworn by me.  
17

18 DATED this 21st day of July, 2006.  
19  
20

21 JOAN L. BAILEY,  
22 REGISTERED DIPLOMATE REPORTER

23 Notary Commission Number DD 190412.  
24 My current notary commission expires 6/14/07.  
25