

12.10.08 Verbatim Excerpts of PZB Meeting Minutes

Exhibit C

1 MR. AIZENSTAT: And this has gone
2 through the Legal Department, and the
3 City Attorney and --
4 The City Attorney has approved the
5 language and everything; we're okay with
6 this?
7 MS. HERNANDEZ: Yes.
8 MR. AIZENSTAT: I'll go ahead and
9 move.
10 MR. BEHAR: Second.
11 CHAIRMAN KORGE: There's a motion
12 and a second. Any discussion on the
13 motion?
14 None?
15 Let's call the roll, please.
16 MS. MENENDEZ: Jeff Flanagan?
17 MR. FLANAGAN: Yes.
18 MS. MENENDEZ: Eibi Aizenstat?
19 MR. AIZENSTAT: Yes.
20 MS. MENENDEZ: Robert Behar?
21 MR. BEHAR: Yes.
22 MS. MENENDEZ: Tom Korge?
23 CHAIRMAN KORGE: Yes.
24 Any other one that's --
25 MR. RIEL: If you want to proceed

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1 through 8, 9 and 10.
2 CHAIRMAN KORGE: Okay, let's do
3 that as quickly as we can. If we get
4 bogged down, then we can switch over so
5 that we have Robert -- we don't lose
6 Robert in the middle of the
7 discussion of the --
8 MR. BEHAR: Please.
9 CHAIRMAN KORGE: -- big one.
10 The next one is Item 8, Zoning Code
11 Text Amendment, Article 2, Division 7,
12 "Administrative Decision Makers and
13 Enforcement Officers."
14 Eric?
15 MR. RIEL: The City Attorney's
16 Office is going to present this item.
17 Actually, they're going to present
18 Number 8, 9 and 10.
19 CHAIRMAN KORGE: 8, 9 and 10?
20 MR. RIEL: Yeah.
21 CHAIRMAN KORGE: Well, then -- All
22 together?
23 MR. RIEL: No, separate.
24 MS. ALFONSIN: Separate.
25 MR. RIEL: We need separate

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1 motions, though.
2 CHAIRMAN KORGE: Okay.
3 MS. ALFONSIN: The first one is an
4 amendment to Section 2-702, which is
5 City Attorney's appeals. The section
6 only provided for the City Attorney to
7 serve as the final authority on
8 interpretation and implementation of the
9 Zoning Code. It did not find -- it did
10 not have a section on where appeals of
11 the City Attorney's determinations go,
12 and the addition is to review the
13 rulings, any person may take this
14 decision -- any aggrieved party may take --
15 the decision by presenting it to the
16 Circuit Court in the manner prescribed
17 by the Florida Rules of Appellate
18 Procedure.
19 CHAIRMAN KORGE: Any discussion,
20 questions?
21 MR. FLANAGAN: I have some
22 questions.
23 I'm trying to understand. The
24 Code, even as it's written today, says
25 that the City Attorney serves as the

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1 final authority with regard to legal
2 issues involving interpretation and
3 implementation of these regulations --
4 MS. HERNANDEZ: Right.
5 MR. FLANAGAN: -- which to me seems
6 to be a modifier as -- rather than
7 saying you're the final authority with
8 regard to or involving interpretation
9 and implementation of these regulations,
10 it says legal issues.
11 MS. HERNANDEZ: Right.
12 MR. FLANAGAN: Is there a
13 differentiation?
14 MS. HERNANDEZ: Yes, what we're
15 trying to accomplish is that what we've
16 seen is a lot of applicants and
17 developers attempting to skip Staff on
18 technical issues and attempting to craft
19 issues as legal issues, to receive
20 rulings from the City Attorney's Office,
21 and then going back to Staff and making,
22 basically, the City Attorney's Office an
23 extension of Staff.
24 We're attempting to circumvent that
25 process, stop them from doing that and

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1 staying within Technical Staff's
 2 provisions, which is, you get an
 3 interpretation from Staff, you go to the
 4 Board of Adjustment; you get an
 5 interpretation from the Planning
 6 Director, you deal with an issue with
 7 the Planning Director, you go to the
 8 Planning and Zoning Board. You don't
 9 try to skip and have the City Attorney's
 10 Office impose legal determinations, or
 11 what they're trying to craft, these
 12 hybrid hypotheticals, and in an
 13 effort -- What we're trying to do is not
 14 have individuals forum-shop within the
 15 City, is basically what we're doing.

16 MR. FLANAGAN: But what would a
 17 legal issue involving interpretation and
 18 implementation be?

19 MS. HERNANDEZ: What we did, for
 20 example, on one of the cases, we had an
 21 issue involving a mooring behind
 22 property, and that was purely an
 23 interpretation of the Building and
 24 Zoning Director.

25 They were trying to bring in issues

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1 from the Corps of Engineers and push the
 2 issue into a legal determination of
 3 which regulations were applying or what
 4 are not applying, and attempting to take
 5 Legal Staff's positions and impose those
 6 on the City's Professional Staff.

7 So what we were trying to do
 8 through this amendment is, if you're
 9 going to skip Staff and you're going to
 10 come to Legal, your appellate rights are
 11 not to go right back to the Board of
 12 Adjustment, but rather to go straight
 13 into court through a Pec action, or
 14 depending on the circumstances, because
 15 unfortunately we don't have one set of
 16 rules that are applying across the
 17 board. We're getting a whole mix of
 18 different hypotheticals from applicants.

19 MR. FLANAGAN: Okay, because when I
 20 read this, I was concerned that if you
 21 were the final arbiter of the Zoning
 22 Code --

23 MS. HERNANDEZ: No, no.

24 MR. FLANAGAN: -- then your
 25 decision then had to be appealed to

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1 court, I just -- I thought right away, I
 2 said, that's an inordinate burden --

3 MS. HERNANDEZ: Right.

4 MR. FLANAGAN: -- on the
 5 constituents. So, as long as -- if it's
 6 going to you, as you called it,
 7 forum-shopping, but --

8 MS. HERNANDEZ: And what we want to
 9 do is to say, "This is not legal,
 10 leave."

11 MR. FLANAGAN: Okay.

12 MS. HERNANDEZ: And, you know, we
 13 have done that.

14 MR. FLANAGAN: Or, if it is legal
 15 and you take your chance with you, and
 16 they're --

17 MS. HERNANDEZ: Exactly.

18 MR. FLANAGAN: -- unhappy with your
 19 response, then you effectively suffer
 20 the consequences --

21 MS. HERNANDEZ: Exactly.

22 MR. FLANAGAN: -- and pay -- take
 23 the time to go through Circuit Court,
 24 but you still have the authority or the
 25 option of determination of a

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1 departmental director, which then is
 2 appealable within the City.

3 MS. HERNANDEZ: But what we had
 4 seen is, after the Zoning Code rewrite,
 5 it just was -- you know, the floodgates
 6 opened. People were skipping Staff,
 7 coming right to Legal, which is not our
 8 role. It's not our function.

9 MR. FLANAGAN: Right.

10 MS. HERNANDEZ: We're not the
 11 technicians of the Code. It's not our
 12 position to be interpreting those
 13 provisions. It's really the
 14 responsibility of Staff, with a whole
 15 host of appeal rights to the Board of
 16 Adjustment and ultimately to the City
 17 Commission, where it belongs, as the
 18 legislative body.

19 MR. FLANAGAN: Okay.

20 CHAIRMAN KORGE: Well, then, I got
 21 confused here, because the process is,
 22 it goes to the Staff --

23 MS. HERNANDEZ: Right.

24 CHAIRMAN KORGE: -- the Board of
 25 Adjustment and then the Commission.

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1 MS. HERNANDEZ: Right.
 2 CHAIRMAN KORGE: So why would there
 3 be anything in here dealing with your
 4 final -- you as final authority?
 5 MS. HERNANDEZ: Because only on
 6 specific -- there are certain specific
 7 legal issues that are raised by the
 8 Code, and then what happens is, if they
 9 stick just to the legal issue, then they
 10 can go into court and appeal it, you
 11 know, just like at the County, just like
 12 at the City of Miami, and the other
 13 cities. But what's happening is, we're
 14 seeing that because we didn't put in
 15 what the remedy was once the City
 16 Attorney's Office ruled on the legal,
 17 what they were doing was getting
 18 piecemeal information from our office,
 19 then going back to Staff, then coming
 20 back to Legal, and we just want that to
 21 stop.
 22 CHAIRMAN KORGE: Okay.
 23 MS. HERNANDEZ: Thank you.
 24 CHAIRMAN KORGE: Any more
 25 discussion? Is there a motion?

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1 MR. FLANAGAN: I'll move it.
 2 CHAIRMAN KORGE: Second?
 3 MR. AIZENSTAT: Yes.
 4 CHAIRMAN KORGE: It's been seconded
 5 by Bibi.
 6 Any discussion? None?
 7 Let's call the roll.
 8 MS. MENENDEZ: Eibi Aizenstat?
 9 MR. AIZENSTAT: Yes.
 10 MS. MENENDEZ: Robert Behar?
 11 MR. BEHAR: Yes.
 12 MS. MENENDEZ: Jeff Flanagan?
 13 MR. FLANAGAN: Yes.
 14 MS. MENENDEZ: Tom Korge?
 15 CHAIRMAN KORGE: Yes.
 16 Number 9, Item Number 9, Zoning
 17 Code Text Amendment, Article 8,
 18 "Definitions," relating to the
 19 definition of "Family" to reflect the
 20 appropriate constitutional requirements.
 21 MS. ALFONSIN: It is by adding into
 22 the definition of Article 8, "Family,"
 23 adding that three or less persons that
 24 are unrelated may also live in
 25 single-family residences.

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1 CHAIRMAN KORGE: What does it
 2 provide now?
 3 MS. ALFONSIN: Now it provides that
 4 one or more persons occupying a single
 5 residential unit when all members are
 6 related by blood, adoption, marriage or
 7 foster care. It did not have any
 8 section talking about unrelated people.
 9 In our old Code, before January of
 10 2007, we did, in fact, have a section
 11 that said three or more -- more than
 12 three unrelated people are not allowed
 13 to live in single-family residential
 14 areas.
 15 CHAIRMAN KORGE: Okay. Any
 16 discussion on this, any questions?
 17 Is there a motion to approve?
 18 MR. FLANAGAN: Moved.
 19 CHAIRMAN KORGE: A second?
 20 MR. BEHAR: Second.
 21 CHAIRMAN KORGE: Seconded. Any
 22 more discussion? None?
 23 Let's call the roll on this one,
 24 please.
 25 MS. MENENDEZ: Robert Behar?

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1 MR. BEHAR: Yes.
 2 MS. MENENDEZ: Jeff Flanagan?
 3 MR. FLANAGAN: Yes.
 4 MS. MENENDEZ: Eibi Aizenstat?
 5 MR. AIZENSTAT: Yes.
 6 MS. MENENDEZ: Tom Korge?
 7 CHAIRMAN KORGE: Yes.
 8 Item Number 10, Zoning Code Text
 9 Amendment, Article 8, Division 19,
 10 "Signs."
 11 MS. ALFONSIN: This, again, goes to
 12 the constitutionality of signs on --
 13 political signs on residential
 14 properties, and we have been following
 15 the Miami-Dade County ordinance and we
 16 wanted to have something in place in the
 17 City's ordinance.
 18 It also goes beyond that by giving
 19 a duration period for the maintaining of
 20 signs, both in campaign headquarters and
 21 in residential properties.
 22 CHAIRMAN KORGE: Does this
 23 generally conform to the County
 24 ordinance?
 25 MS. ALFONSIN: Yes, it does.