

1 CITY OF CORAL GABLES  
2 BOARD OF ADJUSTMENT MEETING  
3 VERBATIM TRANSCRIPT  
4 CORAL GABLES CITY HALL  
5 405 BILTMORE WAY, COMMISSION CHAMBERS  
6 CORAL GABLES, FLORIDA  
7 MONDAY, OCTOBER 6, 2014, COMMENCING AT 8:00 A.M.

8 Board Members Present:

9 Jorge E. Otero, Chairperson  
10 Susan Fuhrman  
11 Oscar Hidalgo  
12 Gustave Perez  
13 John M. Thomson

14 City Staff Present:

15 Elizabeth Gonzalez, Zoning Tech Lead  
16 Charles Wu, Assistant Development Services Director  
17 Craig E. Leen, City Attorney

18 Case No. BA-13-12-2654

19 132 Paloma Drive  
20 COCOPLUM SECTION 2, PLAT F,  
21 PB/PG: 133/30, LOT: 18, BLK: 24

22 Ocean Consulting, LLC - Applicant  
23 Luis Isaias and Alexis Isaias - Owners  
24 John Omslaer, P.E. - Engineer

25 Also Participating: Brie Cokos

Case No. BA-14-09-2984

121 Alhambra Plaza  
CORAL GABLES SECTION L, PB/PG: 8-85, ALL BLK 23

Thomas W. Graboski - Applicant  
121 Alhambra Tower LLC - Owner  
Thomas W. Graboski/TGA Design - Designer

1 THEREUPON:

2 The following proceedings were had:

3 CHAIRMAN OTERO: Good morning. The Board  
4 of Adjustment is comprised of -- defective  
5 equipment -- is comprised of seven members.  
6 Four members of the Board shall constitute a  
7 quorum. Today we have five. The affirmative  
8 vote of four members shall be necessary to  
9 authorize or deny a variance or grant an  
10 appeal. A tie vote shall result in the  
11 automatic continuance of the matter to the next  
12 meeting, which shall be continued until a  
13 majority vote is achieved. If only four  
14 members are present -- It's irrelevant; they  
15 shall be entitled to a postponement.

16 Lobbyist issues. Any person who acts as a  
17 lobbyist pursuant to the City of Coral Gables  
18 Ordinance Number 2006-11 must register with the  
19 City Clerk prior to engaging in lobbying  
20 activities or presentations before City Staff  
21 Boards, Committees and/or the City Commission.  
22 A copy of the ordinance is available in the  
23 Office of the City Clerk. Failure to register  
24 and provide proof of registration shall  
25 prohibit your ability to present to the Board.

1 I now officially call the City of Coral  
2 Gables Board of Adjustment Board meeting of  
3 October 6th to order. The time is 8:02 a.m.

4 Liz, will you take the roll?

5 MS. GONZALEZ: Mr. Hidalgo?

6 MR. HIDALGO: Here.

7 MS. GONZALEZ: Ms. Fuhrman?

8 MS. FUHRMAN: Here.

9 MS. GONZALEZ: Mr. Galvez notified the  
10 Board that he was going to be absent today.

11 Mr. Perez?

12 MR. PEREZ: Here.

13 MS. GONZALEZ: Mr. Thomson?

14 MR. THOMSON: Here.

15 MS. GONZALEZ: Mr. Sotelo also notified the  
16 Board that he could not make it today, he would  
17 be absent today.

18 Mr. Otero?

19 CHAIRMAN OTERO: Here.

20 Do I hear a motion to excuse the two absent  
21 Board members?

22 MS. FUHRMAN: I so move.

23 MR. HIDALGO: Second.

24 CHAIRMAN OTERO: Second. All those in  
25 favor?

1 (Thereupon, all members voted aye.)

2 CHAIRMAN OTERO: Opposed?

3 Notice regarding ex-parte communications.  
4 Please be advised that the items on the agenda  
5 are quasi-judicial in nature, which requires  
6 Board members to disclose all ex-parte  
7 communications and site visits. An ex-parte  
8 communication is defined as any contact,  
9 communication, conversation, correspondence,  
10 memorandum or other written or verbal  
11 communication that takes place outside a public  
12 hearing between a member of the public and a  
13 member of a quasi-judicial Board regarding  
14 matters to be heard by the Board. If anyone  
15 made any contact with a Board member regarding  
16 an issue before the Board, the Board member  
17 must state on the record the existence of such  
18 ex-parte communication and the party who  
19 originated the communication. Also, if a Board  
20 member conducted a site visit specifically  
21 related to the case before the Board, the Board  
22 member must disclose such visit. In either  
23 case, the Board member must state on the record  
24 whether the ex-parte communication and/or site  
25 visit will affect the Board member's ability to

1        impartially consider the evidence to be  
2        presented regarding the matter. The Board  
3        member should also state that his or her  
4        decision will be based on substantial competent  
5        evidence and testimony presented on the record  
6        today.

7                Does any member of the Board have such a  
8        communication and/or site visit to disclose at  
9        this time?

10               MR. THOMSON: I have nothing to disclose  
11        except that on Item Number 2, on the Allen  
12        Morris Company, Allen Morris is my son-in-law,  
13        married to my daughter, June, and I've  
14        indicated to the City Attorney that that's the  
15        case and have asked him to research what I  
16        should do.

17               MR. LEEN: Yes. It's my opinion that you  
18        should not participate in that matter. You  
19        should walk out of the room while it's  
20        considered, so you -- How many matters today?

21               MS. GONZALEZ: Two.

22               MR. THOMSON: Two matters.

23               MR. LEEN: So you would stay for the first  
24        matter and then you would exit the room for the  
25        second matter, and there may be a form you need

1 to fill out. I can talk to you about that  
2 afterwards.

3 MR. THOMSON: All right.

4 CHAIRMAN OTERO: Okay, so Mr. Thomson will  
5 be excused for the second matter. That means  
6 we will only have four Board members.

7 MS. GONZALEZ: That is correct, and the  
8 applicants do have the option to defer at this  
9 time.

10 CHAIRMAN OTERO: So, when that comes up,  
11 I'll try to remember to give them that option.

12 Everyone who speaks this morning must  
13 complete the roster on the podium. Has  
14 everyone done that? Well, when you come up,  
15 just fill in your name and address. We ask  
16 that you print clearly so the official records  
17 of your name and address will be correct.

18 Now, with the exception of attorneys, all  
19 persons who will speak on agenda items before  
20 us this morning, please rise to be sworn in.

21 (Thereupon, all who were to speak were duly  
22 sworn by the court reporter.)

23 CHAIRMAN OTERO: In deference to those  
24 present, we ask that all cell phones, pagers  
25 and other electrical devices be turned off at

1 this time. Now we will proceed with the  
2 agenda.

3 Before we do, minutes for the April 7th,  
4 2014, and June 2nd, 2014, you've all been  
5 provided minutes. Is is there a motion to  
6 approve?

7 MS. FUHRMAN: I so move.

8 CHAIRMAN OTERO: Second?

9 I second.

10 All those in favor of approval?

11 (Thereupon, all members voted aye.)

12 CHAIRMAN OTERO: Anyone opposed? Minutes  
13 approved.

14 Yes, Liz?

15 MS. GONZALEZ: I'm sorry, Mr. Otero. Let's  
16 do each one separately, please. A motion to  
17 approve the April --

18 CHAIRMAN OTERO: Motion to approve the  
19 minutes of April 7th, 2014.

20 MS. FUHRMAN: I move.

21 MR. PEREZ: Approve, I'll second.

22 CHAIRMAN OTERO: All those in favor?

23 (Thereupon, all members voted aye.)

24 CHAIRMAN OTERO: All those opposed?

25 The June 2nd, 2014, minutes, move to

1 approve. A second?

2 THE COURT REPORTER: I'm sorry, who moved?

3 CHAIRMAN OTERO: I moved.

4 MS. FUHRMAN: I'll second.

5 MR. LEEN: Mr. Chair -- Mr. Chair, in the  
6 future, you can just say, "Is there unanimous  
7 consent," and if there is unanimous consent,  
8 you can say, "So ordered."

9 CHAIRMAN OTERO: Thank you.

10 MS. GONZALEZ: I'm sorry, I didn't see.  
11 Who made the motion?

12 CHAIRMAN OTERO: I made the motion.

13 MR. LEEN: It's better to do that than  
14 waiting for the Chair to make the motion. It's  
15 just better to say, "Is there unanimous consent  
16 for this to be approved," and then you say,  
17 "It's ordered."

18 CHAIRMAN OTERO: We'll practice.

19 Is there unanimous consent to approve the  
20 June 2nd, 2014 minutes?

21 (All Board members agreed)

22 CHAIRMAN OTERO: So moved.

23 MR. LEEN: Ordered.

24 CHAIRMAN OTERO: So ordered. I've got the  
25 wrong verbiage.



1           Okay, first case. We'll do the Paloma  
2           Drive case first, Liz, if you could.

3           MS. GONZALEZ: I'm sorry?

4           CHAIRMAN OTERO: The Paloma Drive case.

5           MS. GONZALEZ: Yes.

6           The first case is Case Number  
7           BA-13-12-2654. The address is 132 Paloma  
8           Drive.

9           Oh, we need the swearing in.

10          THE COURT REPORTER: I did.

11          MS. GONZALEZ: Oh, you did swear in?

12          The applicant is requesting a variance to  
13          install a dock, extend outward from the  
14          property line 32 feet, versus 10 feet as  
15          allowed by the Zoning Code.

16          This property is located in the subdivision  
17          known as Cocoplum Section 2. There is a  
18          specific restriction regarding installation of  
19          the dock, wharves or mooring piles or any  
20          similar structures, and only allowing them to  
21          extend 10 feet from the property line.

22          They are proposing -- This is an aerial  
23          view of the property. This is the property.  
24          It appears as a vacant lot, but there is a home  
25          under construction at this moment. They are

1 proposing a T-shaped dock, consisting of four  
2 feet in width by 52 feet in length, access  
3 walkway, and then five feet in width by 40 feet  
4 in length terminal platform. The waterward  
5 edge of the dock will be located a maximum 32  
6 feet from the property line as platted. This  
7 was necessary due to the presence of red  
8 mangroves, white mangroves and buttonwoods  
9 along the shoreline. It was also required by  
10 the Department of Regulatory and Economic  
11 Resources, in order to avoid impact to the  
12 water and to obtain the necessary depth.

13 This curved line here is the actual platted  
14 property line. So from this point to the  
15 waterward edge of the dock is 32 feet. From  
16 this point to the dashed line would be the only  
17 10 feet allowed. This entire area here has  
18 protected mangroves which cannot be disturbed.

19 This is a side plan view of the dock.  
20 Across this property is a conservation area.  
21 There's also been variances granted to the  
22 property to the north and to the south, with  
23 similar types of designs for these -- this type  
24 of dock.

25 It has received DERM approval. It has

1 received Board of Architects approval. Coral  
2 Gables City Marine Patrol and Public Works have  
3 no objection. It meets all of the standards as  
4 required by Section 3-806 of the Zoning Code.

5 Due to the special waterway conditions, due  
6 to the resources, Staff recommends approval at  
7 this time.

8 MS. COKOS: Good morning. My name is Brie  
9 Cokos. I'm from Ocean Consulting and I  
10 represent Mr. and Mrs. Isaias, the applicant  
11 for this project, and I'll answer any questions  
12 the Board may have.

13 CHAIRMAN OTERO: First, does the Board have  
14 any questions from the City?

15 Does the Board have any questions of the  
16 applicant?

17 MR. THOMSON: No, no particular questions,  
18 but I did notice, I took note of the fact that  
19 once the dock is in, the remaining navigable  
20 waterway width is approximately 80 feet, which  
21 allows for the safe navigation of vessels, and  
22 that's really all I'm interested in. Once you  
23 meet that criteria, I believe the variance  
24 should be granted.

25 CHAIRMAN OTERO: Liz, could you put up the

1 picture again, where the property is?

2 MS. COKOS: This is also a schematic of the  
3 plan here.

4 MS. GONZALEZ: If you look in your packet,  
5 you'll see the conservation area or the area  
6 around, and that is correct, there is the ample  
7 waterway distance. The Code only requires 75  
8 feet, and they do have 80 feet after all of the  
9 structures are being proposed.

10 CHAIRMAN OTERO: Are there docks on the  
11 adjoining --

12 MS. GONZALEZ: Yes, there's a dock here and  
13 also a dock here, who did obtain variances for  
14 the same condition.

15 CHAIRMAN OTERO: So this dock, could you  
16 point that red dot -- Right there, right?

17 MS. GONZALEZ: Yes.

18 CHAIRMAN OTERO: It would basically be  
19 linear --

20 MS. GONZALEZ: It's perpendicular, with a  
21 T-shape, with a terminal platform. If you --

22 MS. COKOS: This is the --

23 MS. GONZALEZ: There it is.

24 CHAIRMAN OTERO: But it would go no farther  
25 out than the adjoining property?

1 MS. GONZALEZ: It may be -- It's not  
2 exactly the same, because each property has  
3 different dense mangroves, but it's very  
4 similar, and again, it's consistent and in  
5 harmony with the adjacent docks.

6 This, as you can see, is the walkway, and  
7 this is the terminal platform.

8 MR. HIDALGO: Is the mangrove condition  
9 unique to that piece of property or does it  
10 extend throughout several lots?

11 MS. COKOS: The mangroves extend across the  
12 lots on that particular tract of land, so  
13 there's mangroves along all the different  
14 properties.

15 CHAIRMAN OTERO: So each one of  
16 the neighbors had to get a variance?

17 MS. GONZALEZ: Yes, that's correct.

18 CHAIRMAN OTERO: For the same reason that  
19 we're here today?

20 MS. GONZALEZ: For the same exact reason,  
21 yes.

22 CHAIRMAN OTERO: Any other questions,  
23 comments?

24 Thank you.

25 So the public hearing is now closed. Any

1 discussion, or is there a motion to approve or  
2 deny? And any motion to approve or deny must  
3 follow the language.

4 MR. THOMSON: I'm ready to make a motion.

5 MR. PEREZ: I move that the Board of  
6 Adjustment grant Application BA-13-12-2654, a  
7 request by Kirk Lofgren, Ocean Consulting, LLC,  
8 on behalf of Luis and Alexis Isaias for a  
9 variance for the residence at 132 Paloma Drive,  
10 to allow the proposed dock to be installed and  
11 extend outward from the property Line 32 feet.  
12 The motion is based upon the testimony  
13 presented along with the application submitted  
14 and Staff Report, which constitute competent,  
15 substantial evidence. The Board hereby makes  
16 findings of fact that each of the standards in  
17 Section 3-806 of the Zoning Code have been met.

18 MR. THOMSON: Second.

19 CHAIRMAN OTERO: There's a motion and a  
20 second. Any discussion?

21 MS. GONZALEZ: Who seconded?

22 CHAIRMAN OTERO: Mr. Thomson.

23 Liz, could you call the roll?

24 MS. GONZALEZ: Ms. Fuhrman?

25 MS. FUHRMAN: Yes.

1 MS. GONZALEZ: Mr. Perez?

2 MR. PEREZ: Yes.

3 MS. GONZALEZ: Mr. Thomson?

4 MR. THOMSON: Yes.

5 MS. GONZALEZ: Mr. Hidalgo?

6 MR. HIDALGO: Yes.

7 MS. GONZALEZ: Mr. Otero?

8 CHAIRMAN OTERO: Yes.

9 Thank you.

10 MS. COKOS: Thanks. Have a good day.

11 MR. LEEN: Could you hold the next item for  
12 two minutes? I'm just checking with our ethics  
13 counsel, just to see.

14 (Thereupon, a brief recess was taken.)

15 MR. LEEN: Just let me put something on the  
16 record. So I was asked the question by  
17 Mr. Thomson whether he could vote on this  
18 matter, because Allen Morris, who's the  
19 principal of this company that's going to be  
20 before you, obviously, is his son-in-law.

21 Now, I checked with outside ethics counsel,  
22 and I've also looked into the Code. Here's  
23 what the issue is, and this is good, anyway, to  
24 talk about, more generally. As a general  
25 matter, a son-in-law would be considered a

1 family member, so -- but there's two prongs to  
2 the test, is what the ethics counsel told me,  
3 and I agree with them, from my understanding of  
4 State, County and City law, as well. The  
5 second prong of the test is, is there a  
6 financial interest involved.

7 Now, this is a sign variance, so ethics  
8 counsel felt that it would not meet the test  
9 for a required recusal, and outside ethics  
10 counsel is Robert Meyers, who is a former  
11 executive director of the Commission of Ethics.  
12 He said the way that they apply the County  
13 Code, and in his opinion the way that the State  
14 would apply its Code, would be to not require  
15 recusal. Nevertheless, he suggested recusal  
16 because of the family connection.

17 But ultimately, what he told me was that  
18 you have to make a decision -- this is a  
19 quasi-judicial Board -- whether you believe you  
20 could be completely fair here, in light of,  
21 this is your son-in-law. However, because  
22 there's no financial interest involved, you can  
23 decide to vote on it, if you want.

24 Now, one reason why, in quasi-judicial  
25 matters, we do try to see if there's a way for



1       there to be a vote, because as you know, you  
2       need a majority of the entire Board to pass any  
3       motion, and in fact, if only four members of  
4       the Board vote on a particular item and one of  
5       you disagrees, the matter basically has to be  
6       continued to the next meeting, and also the  
7       applicant has the right to request a deferral.

8               So I think the way that we should handle  
9       this is, first I would ask Mr. Thomson if he  
10      would like to recuse or not, and then second,  
11      to see if there's any objection from the Board  
12      members, and then third, we would just check  
13      with the applicant to see if there's an  
14      objection, as well, because ultimately if this  
15      is appealed or challenged, they're the ones who  
16      are receiving the variance. That's the way I  
17      recommend that you handle it.

18             MR. THOMAS: Okay, I prefer to stay in the  
19      meeting and vote on this matter. I feel that I  
20      can be fair and impartial. I've been in the  
21      City, on the development boards for years and  
22      years. I know the sign ordinances. I've dealt  
23      with these issues, and this issue is no  
24      different than those that I've addressed in the  
25      past.

1 CHAIRMAN OTERO: Okay. Does anyone on the  
2 Board have any -- Anyone on the Board?

3 MR. PEREZ: Yeah.

4 All of us have known you, and we know  
5 you're going to be impartial, but sometimes  
6 perception could weigh in, and being your  
7 son-in-law, I think that you should recuse  
8 yourself.

9 MR. LEEN: Mr. Thomson?

10 MR. THOMSON: The fact of the matter is  
11 that I didn't know this was on the agenda until  
12 I read it last night, so we haven't talked  
13 about it at all.

14 MR. LEEN: Ultimately, it's the decision of  
15 the Board member. Mr. Thomson has the highest  
16 standard of ethics. I know him well, so --  
17 but, you know, ultimately, it's his decision.

18 Is there an objection?

19 MR. GRABOSKI: No.

20 MR. LEEN: So it's up to you, Mr. Thomson.

21 CHAIRMAN OTERO: Okay, decision made.

22 Mr. Thomson is not recused.

23 Just to have the record clear, even though  
24 it's on a different matter, because this is  
25 ex-parte, if -- just for the record, are you

1       able to make your decision based on  
2       substantial, competent evidence and testimony  
3       presented on the record today?

4               MR. THOMSON:   Yes.

5               CHAIRMAN OTERO:   Okay.

6               The second item on the agenda.

7               MR. LEEN:   And also, for purposes of the  
8       record, to be clear, it's the company that's  
9       coming before us today, not Allen Morris  
10      itself, which does make a little bit of  
11      difference.

12              CHAIRMAN OTERO:   Liz?

13              MS. GONZALEZ:   Yes.   This is Case Number  
14      BA-14-09-2984.   This is a variance application  
15      for the property located at 121 Alhambra Plaza.  
16      We have two variances before you on the same  
17      property, considering the same sign.   The first  
18      variance is to allow a proposed tenant sign,  
19      Allen Morris, to be located adjacent to the  
20      existing tenant Fidelity Investment sign,  
21      versus the Zoning Code which only allows one  
22      sign per street level tenant per street  
23      right-of-way frontage.

24              The second variance is to allow the same  
25      sign to be installed at a maximum height of 20

1 feet and four inches, versus a maximum height  
2 of 18 feet as allowed by the Zoning Code.

3 This is the property in its entirety. This  
4 is an entry porte-cochere that exists at the  
5 building at the moment. The sign is being  
6 requested to be installed at this location.  
7 The Allen Morris Company is manager and owner  
8 of this building and occupies the space on the  
9 ground floor by its employees and staff,  
10 concierge, the security desk, and engineering  
11 management office, which fronts on Alhambra  
12 Plaza. In addition, the Allen Morris Company  
13 occupies a separate full floor in the building.  
14 The design of this building isn't common, by  
15 numerous ways. It has its entry porte-cochere,  
16 which already has two -- several signs, one on  
17 the east side, one on the west side, and a  
18 number sign in the front, thereby limiting the  
19 location where the tenant sign could be  
20 installed, right in front of the doors. This  
21 is why they're requesting a sign to be located  
22 adjacent to the Fidelity sign.

23 In your packet you do have photos, which  
24 I'll bring up in a moment, and you can see the  
25 Fidelity sign.

1           The proposed sign complies with the maximum  
2           overall area. The length and the letter height  
3           is allowed by the Zoning Code. The street  
4           frontage, also occupied by Fidelity Investment,  
5           easily accommodates the two signs. It's  
6           aesthetically in harmony with the building and  
7           with the adjacent signs.

8           This is the elevation of the building. In  
9           your packet, it's a little bit clearer. Right  
10          there is the Fidelity sign, over here.

11          MR. GRABOSKI: The other one. Ours is to  
12          the left.

13          MS. GONZALEZ: I'm sorry, I can't see over  
14          here.

15          MR. GRABOSKI: Yeah.

16          MS. GONZALEZ: This is the entry that I was  
17          referring to. That's a little bit better.

18          Okay, so again, as I said, here is the  
19          Fidelity sign and here would be the Allen  
20          Morris sign. Here is the entry porte-cochere,  
21          which already has a sign on this side, on the  
22          west side, and the number sign on the front of  
23          the entry porte-cochere.

24          This existing Fidelity sign is about the  
25          same height and would be in line with the

1 proposed Allen Morris sign. There's another  
2 unique feature on this building. It is an  
3 architectural band, which also, as you can see  
4 there, exists on the building, and this is what  
5 actually prompts the height of the sign. So  
6 applying that section of the Zoning Code would  
7 be impractical in this moment.

8 Due to the existing architectural features  
9 and the configuration of the building, Staff  
10 recommends approval of both variances.

11 CHAIRMAN OTERO: Any -- Thank you.

12 Any questions to the City?

13 MS. FUHRMAN: Could you go over why it has  
14 to be 20 feet instead of 18 feet?

15 MS. GONZALEZ: Sure. As you can see,  
16 there's an architectural band right here, which  
17 that's about -- I'm going to say 17 feet, 17  
18 feet and change, so that would -- This, the  
19 Fidelity sign, also got a variance --

20 MS. FUHRMAN: Okay.

21 MS. GONZALEZ: -- at one point, for the  
22 height, and in order to keep it in line and  
23 keep it aesthetically in harmony with the  
24 existing sign, to have enough space from the  
25 architectural band, that is why it's required

1 in that place.

2 MS. FUHRMAN: Thank you.

3 CHAIRMAN OTERO: Liz, is it possible for  
4 any other applicant to come in and ask for a  
5 sign, to the right of Fidelity or to the left  
6 OF Allen Morris?

7 MS. GONZALEZ: There is no other tenant. I  
8 believe Fidelity occupies that entire street  
9 frontage, and let me bring this back up one  
10 more time.

11 Okay, this section, portion here, is all  
12 occupied by Fidelity; is that correct?

13 MR. GRABOSKI: Correct.

14 MS. GONZALEZ: This whole section is  
15 occupied by Fidelity.

16 CHAIRMAN OTERO: And where is Allen Morris?

17 MS. GONZALEZ: Allen Morris, you come in  
18 through these doors, and I believe the  
19 concierge service, the security and the  
20 management office occupy space here, and in  
21 addition to an entire full floor.

22 CHAIRMAN OTERO: But they don't have  
23 floor -- street level? I guess my question is,  
24 this is a multi-tenant building, right?

25 MR. GRABOSKI: That's correct.

1           CHAIRMAN OTERO: Can Tenants 3, 4 and 5  
2 come to us and ask for the same variance?

3           MR. GRABOSKI: No, because there's no --  
4 There is no other space on the ground floor  
5 that's unoccupied at this time.

6           CHAIRMAN OTERO: So Allen Morris does  
7 occupy the ground floor?

8           MR. GRABOSKI: They occupy an office -- two  
9 office spaces there. One is a concierge, one  
10 is a management office, on the ground floor.

11          CHAIRMAN OTERO: I have a question, and  
12 maybe this is to Craig, also.

13          MR. LEEN: Yes.

14          CHAIRMAN OTERO: Who is the applicant for  
15 this? Because it says here Allen Morris is the  
16 manager and owner, but in the same paper, in  
17 the same document, it says the owner is 121  
18 Alhambra Tower LLC. Is the applicant a tenant  
19 or is the applicant the owner?

20          MR. LEEN: The applicant is who's applying  
21 on behalf of the owner, so -- but the applicant  
22 has usually the owner's authority to apply, so  
23 it's like an agent.

24          CHAIRMAN OTERO: The sentence, Allen Morris  
25 Company, as manager and owner, at the bottom of



1 the first page --

2 MR. LEEN: May I see the first page?

3 CHAIRMAN OTERO: My only concern is,  
4 besides the standing issue as to who the  
5 applicant is, is how many other tenants can  
6 apply? And I see these signs being two  
7 different styles, too. I don't want a Nascar  
8 building.

9 MR. GRABOSKI: That will not occur. To the  
10 right of the porte-cochere, Fidelity occupies  
11 all of the space that fronts on the east and  
12 south side of the building. To the north side  
13 of the building is a loading dock, behind that  
14 area, so there's no room for signage, and  
15 Fidelity kind of comes out to that back  
16 northeast corner. On the west side of the  
17 lobby, basically, is a bank, Capital Bank, and  
18 to the west of that is the entire space, all  
19 the way to the corner, and at the point of the  
20 building is a restaurant.

21 CHAIRMAN OTERO: Does Capital Bank have a  
22 sign?

23 MR. GRABOSKI: Yes, they do.

24 CHAIRMAN OTERO: Does the restaurant have a  
25 sign?

1 MR. GRABOSKI: The restaurant sign is not  
2 up on the sign band. It is down on a column on  
3 sort of the west corner of the building.

4 MR. LEEN: Mr. Chair, so the way I look at  
5 this is, the owner is 121 Alhambra Tower LLC.  
6 Most likely, and I don't know this, but because  
7 they mention the Allen Morris Company is the  
8 owner and manager, probably they have a  
9 controlling interest in that entity. But that  
10 entity is the the official one that owns the  
11 property. And it just may be the language was  
12 used a little more informally about who the  
13 owner was, but I would take it as 121 Alhambra  
14 Tower LLC.

15 Another point. When looking at how many  
16 signs a building can have under the Zoning  
17 Code, obviously, it sounds like you're  
18 concerned that there may be other tenants that  
19 could have signs. Ultimately, though, the  
20 owner has to agree to any signs. The tenant  
21 cannot, by themselves, have a sign put on the  
22 building, and that's based on their lease and  
23 their contract, and then also whether they're  
24 allowed to under the Zoning Code. It's both  
25 the owner and the City would have to basically

1 approve that.

2 CHAIRMAN OTERO: Which brings me back to my  
3 question as to who the applicant is, if the  
4 applicant is the tenant with the consent of the  
5 owner, or is it both the owner and the tenant,  
6 or is it only the owner?

7 MR. GRABOSKI: The owner is making this  
8 application. They happen to occupy a space  
9 within their own building.

10 MR. LEEN: Well, Mr. Chair, the issue I was  
11 going to raise, which is different than the one  
12 you raised, is -- just for your awareness, is,  
13 I have given some interpretations to the Board  
14 of Architects and to Staff that the movement of  
15 a sign for aesthetic purposes is something that  
16 actually the Board of Architects can do, I  
17 believe, if it serves the aesthetic purpose,  
18 and that's one the conditions of the approval.  
19 This one has come to you, but ultimately -- for  
20 a variance, but in my view, I wouldn't -- You  
21 should be concerned if it sets a precedent,  
22 although I think the precedent here is a small  
23 one and it's basically one that serves an  
24 aesthetic purpose, so it's a good precedent, in  
25 the sense of the City and what the City's view

1        would be. But in addition, I think all you  
2        can -- I wouldn't make it a condition, but you  
3        could make it clear that any additional signs  
4        would need to comply with the Zoning Code, both  
5        in terms of quantity and location.

6                Liz, you had a point?

7                MS. GONZALEZ: The Board of Architects did  
8        approve the signage. So any signs or any  
9        applicant that comes before you that requires  
10       Board of Architects approval does get that  
11       before the application is presented to you.  
12       The applicant in this case, to present the  
13       case, was Mr. Tom Graboski, who is representing  
14       121 Alhambra LLC.

15               MS. FUHRMAN: My concern would be, let's  
16       say Fidelity no longer is there and two new  
17       places come in to take the Fidelity space. I  
18       mean, are we going to have a line of signs  
19       because we approved this?

20               MS. GONZALEZ: Again, that would be  
21       presented to the Board of Architects. If they  
22       deemed that it's aesthetically in harmony with  
23       the building and adjacent property, then if  
24       that space were to be divided into two tenant  
25       spaces, is what I believe you're asking me,

1 correct?

2 MS. FUHRMAN: Uh-huh.

3 MS. GONZALEZ: Then they would adhere to  
4 the Zoning Code, which obviously the height  
5 would be an issue, because we'd have the same  
6 problem all along. Then they would be allowed  
7 to have those signs as of right, except for the  
8 height variance.

9 MR. LEEN: Although ultimately the sign --  
10 It's the owner that gets all these signs. I  
11 understand that it's for a tenant, and by our  
12 Code, each tenant who has a storefront has a  
13 sign, but ultimately, you know, you can impose  
14 a condition that you wish. They're here in  
15 front of you, requesting a variance.

16 CHAIRMAN OTERO: I think Ms. Fuhrman's  
17 concern is that the owner has an incentive to  
18 lease out the space. Part of the incentive to  
19 a prospective new tenant who may take half of  
20 Fidelity's space, XYZ, is to put up a sign of  
21 XYZ, to entice that tenant, XYZ, to come and  
22 lease space. Perhaps that can be addressed  
23 with a condition. I'm not sure. But let me  
24 ask you a question, because I just want to --

25 MR. GRABOSKI: Okay.

1 CHAIRMAN OTERO: -- put this other issue I  
2 have to bed. Is it fair to say that you  
3 represent 121 Alhambra Tower LLC and you also  
4 represent Allen Morris, and any confusion is  
5 irrelevant?

6 MR. GRABOSKI: Yes, that's correct. My  
7 office, Tom Graboski Associates, is a design  
8 firm. I'm not a lawyer and I'm not, you know,  
9 a lobbyist by profession here. I'm a designer.

10 We have worked with this building since it  
11 was built, working with them for the signage.  
12 We're a graphic design -- environmental graphic  
13 design firm, and we have worked, like I say, on  
14 every sign that's been on this building to  
15 date.

16 In 2003, this variance Board granted a  
17 variance for Allen Morris to have a sign west  
18 of the porte-cochere. It was taken down about  
19 five years ago, when Capital Bank occupied that  
20 space and came in and used that area.  
21 That's -- you know, we had a variance and that  
22 was legally installed, it was removed, and now  
23 they want to -- would like to have the identity  
24 back in place.

25 The concern you have about splitting the

1 Fidelity space, if you looked at the floor plan  
2 of the building, where Fidelity is occupying  
3 space, it's pretty much like that. And I  
4 seriously doubt they would split this in two.  
5 They might split it this way, but they wouldn't  
6 split it that way, because there's not enough  
7 depth or width of a space, which would indicate  
8 that whoever gets this space would have the  
9 Fidelity sign and whoever gets this space would  
10 have a sign on this facade, because they would  
11 not have the frontage to the Alhambra that  
12 would allow them signage. So I don't think  
13 you'll ever see that happening there, and I  
14 don't think that the Allen Morris Company, and  
15 our office as a consultant, would allow that to  
16 happen. You know, we're very conscious about  
17 doing that kind of thing. We've been working  
18 within the City for a very long time. Keeping  
19 that picture of the criteria that we set up for  
20 an owner at the beginning is met throughout the  
21 course and life of the projects we work on.

22 CHAIRMAN OTERO: A requirement to have a  
23 sign on Alhambra Plaza, it was not a  
24 requirement that the tenant occupy space facing  
25 Alhambra Plaza, in your mind?

1 MR. GRABOSKI: There is a requirement in  
2 the Code that said that you need to front on  
3 the space, and our frontage that we're  
4 referring to for this sign, basically, would  
5 give us the right to put a sign on the  
6 porte-cochere. There are two signs that name  
7 the building, on the east and west side of the  
8 porte-cochere, as Ms. Gonzalez has pointed out,  
9 and there's the 121 numeral on the south side.  
10 There's also a lot of -- You can see, there's a  
11 lot of architectural detail on that  
12 porte-cochere that makes putting any kind of  
13 sign very difficult. This is very small. So  
14 that's why we've, you know, requested to move  
15 it to the east side. The sign itself is going  
16 to be probably 10 percent smaller than this  
17 board, in terms of square foot. It's seven and  
18 a half square feet. It's a very small sign.

19 CHAIRMAN OTERO: I think this Board is hard  
20 pressed to deny it, given that Prudential (sic)  
21 was granted the variance for the same seven  
22 elements.

23 MR. GRABOSKI: Yes, sir.

24 CHAIRMAN OTERO: But I think it would be  
25 prudent for this Board to put some conditions



1 on the granting of this variance, so we're not  
2 flooded with signage. A potential condition  
3 could be that the sign would correspond to a  
4 tenant occupying space fronting Alhambra Plaza.  
5 It could not -- or, there could be no  
6 condition. I think some conditions should be  
7 put on to minimize the risk of three, four,  
8 five, six, seven signs.

9 MR. GRABOSKI: I don't think there would be  
10 any objection to a restriction of a sign for  
11 someone that -- you know, if there was a tenant  
12 that didn't front on the street. I mean,  
13 there's a potential, I suppose, if you wanted  
14 to discuss it, that the restaurant space could  
15 be subdivided, and they would be perfectly  
16 within their legal rights, they wouldn't have  
17 to come to the Board, they wouldn't have to  
18 come for a variance, except for the height  
19 issue. They could have a sign. But anything  
20 other than that, I don't think there would be  
21 an objection.

22 CHAIRMAN OTERO: Craig, are there any  
23 objections in the Code to multiple signs, any  
24 limitations?

25 MR. LEEN: Yes, there's limitations on how

1 many signs you can have, but my recollection is  
2 one per tenant, basically, that fronts --

3 MS. GONZALEZ: It is one per tenant. I'd  
4 like to point out that if this sign is removed,  
5 the Allen Morris sign, and your concern is  
6 that, let's say, another tenant on the third  
7 floor wishes to use that, that would not be  
8 allowed, because that tenant is not occupying  
9 ground floor space.

10 CHAIRMAN OTERO: Well, we have many tenants  
11 occupying ground floor place. We have the  
12 restaurant, we have the bank, we have Allen  
13 Morris, and we have Prudential.

14 MR. GRABOSKI: You have the bank, the  
15 restaurant, Allen Morris, and Fidelity.

16 CHAIRMAN OTERO: Fidelity.

17 MR. GRABOSKI: Yes. Four tenants.

18 CHAIRMAN OTERO: Four tenants, and  
19 currently one sign for each of them.

20 MS. COKOS: The restaurant has a sign on  
21 the column, Fidelity has a sign on the building  
22 right now, and the bank.

23 CHAIRMAN OTERO: Yeah.

24 Any other discussion, questions, comments?

25 MR. PEREZ: I don't think a restriction

1 would be required, based on what I've heard.  
2 Also, we have approved because of the  
3 architectural band before, to go over it.  
4 There was another case, I believe, that we  
5 approved. Maybe that would be the precedent.

6 MR. GRABOSKI: Yeah, the height, there's  
7 been a variance for every sign that's gone on  
8 that building.

9 MS. FUHRMAN: Are we voting on this  
10 separately?

11 MR. LEEN: Well, you can choose to vote on  
12 them together or separate them. They relate to  
13 the same sign, so the variance could be handled  
14 together. It probably would not help them to  
15 approve one and deny the other.

16 MS. FUHRMAN: That's true.

17 CHAIRMAN OTERO: I leave it up to the  
18 discretion of the movant. Otherwise, it's --  
19 If there's no more questions, the public  
20 hearing is now closed and the Board can discuss  
21 and make a motion to approve or deny.

22 MR. PEREZ: I move that the Board of  
23 Adjustment grant Application BA-14-09-2984, a  
24 request by Thomas W. Graboski, TGA Design, on  
25 behalf of 121 Alhambra Tower LLC, for the

1 variance for the commercial building at 121  
2 Alhambra Plaza to allow the proposed tenant  
3 sign "Allen Morris" to be installed adjacent to  
4 the existing tenant sign "Fidelity Investment."  
5 The motion is based upon the testimony  
6 presented along with the application submitted  
7 and Staff report, which constitute competent  
8 substantial evidence. The Board hereby makes  
9 findings of fact that each of the standards in  
10 Section 3-806 of the Zoning Code has been met.

11 CHAIRMAN OTERO: Motion made. Is there a  
12 second?

13 MR. HIDALGO: Second.

14 CHAIRMAN OTERO: Discussion?

15 Liz, or Craig, if this motion is passed, a  
16 third sign needs to be approved by this Board?  
17 Does a third sign need to be approved by  
18 this -- Does an additional sign need to be  
19 approved by this Board?

20 MR. THOMSON: Yeah.

21 MR. LEEN: No.

22 MS. GONZALEZ: An additional sign?

23 MR. LEEN: No. You mean, because it's the  
24 Allen Morris sign, does that need to be  
25 approved, in terms of quantity?

1 CHAIRMAN OTERO: Well, any sign needs to be  
2 approved.

3 MR. LEEN: Any additional sign?

4 CHAIRMAN OTERO: Any additional sign.

5 MR. LEEN: No, only if it was not another  
6 tenant sign.

7 MS. GONZALEZ: If it -- Exactly. If it was  
8 a section that it did not comply with the Code,  
9 such as height, or if it was an additional  
10 sign, but that, it would be because they would  
11 not have tenant -- ground floor tenant space  
12 or, as the hypothetical situation, if Fidelity  
13 moves out and now we have two tenant spaces.

14 CHAIRMAN OTERO: But isn't the reason we're  
15 here is because a sign needs a variance because  
16 of the limitations --

17 MR. LEEN: Yes.

18 CHAIRMAN OTERO: -- inherent in the  
19 construction of the building?

20 MR. LEEN: This sign, but if you pass this  
21 without condition, then the future signs that  
22 are authorized by the Code would not have to  
23 come back before you.

24 MS. GONZALEZ: Yes. In response, yes. The  
25 tenant space is only allowed to have one tenant

1 sign.

2 MR. LEEN: Yeah, so Allen Morris cannot  
3 have a second sign.

4 MS. GONZALEZ: No.

5 CHAIRMAN OTERO: I didn't articulate it  
6 well. We're here because this sign needs a  
7 variance --

8 MR. LEEN: Yes.

9 CHAIRMAN OTERO: -- because of the size,  
10 because of the nature of the building, right?

11 MR. LEEN: Yes.

12 CHAIRMAN OTERO: So, if another tenant  
13 comes in for another sign, because of the fact  
14 that this is a unique situation, they would  
15 still have to come before the Board for a sign?

16 MR. LEEN: Oh, I understand. So you mean  
17 another -- Well, they would -- What would  
18 happen is, the way I've interpreted the  
19 variance is, you know, they're still going to  
20 have to go through the Board of Architects and  
21 everything like that, but I generally -- I'm  
22 not sure how Staff has interpreted these, but  
23 I've generally viewed them to be basically  
24 of-rights, so a future --

25 MS. GONZALEZ: If they comply with the

1       Zoning Code, it would not be before you for a  
2       variance.

3           MR. LEEN: But they're saying, though, so  
4       let's say -- Let me see if I'm correct. If a  
5       new owner comes into the building, and instead  
6       of it being Allen Morris, it's Walt Disney, and  
7       they want to put "Walt Disney" in the same  
8       exact place; would they have rights to do that?  
9       Is that what you're asking?

10       CHAIRMAN OTERO: No. No new owner. Same  
11       owner.

12       MR. LEEN: Same owner?

13       CHAIRMAN OTERO: Identical. The  
14       hypothetical previously posed a sub-- a space  
15       is divided and a new tenant comes in. Do they  
16       need to come before this Board to put up a sign  
17       because the sign would not conform to zoning  
18       because of the nature of the building?

19       MR. LEEN: Yes.

20       CHAIRMAN OTERO: They would.

21       MR. LEEN: Yes.

22       CHAIRMAN OTERO: Right?

23       MR. LEEN: Yes.

24       CHAIRMAN OTERO: Any new sign would have to  
25       come before this Board. Otherwise, we

1 shouldn't be granting a variance, because they  
2 don't meet the seven conditions.

3 MS. GONZALEZ: Oh, I understand what he's  
4 saying. He's saying if Fidelity moves out and  
5 you have Jim Jones come in and put up a sign in  
6 lieu of Fidelity, would he have to come in for  
7 a variance, because now you still have two  
8 tenant -- you have two signs on one tenant  
9 frontage. Is that your question?

10 CHAIRMAN OTERO: Let me ask it another way.  
11 Are we setting a precedent by granting this  
12 variance so any new sign does not have to come  
13 before this Board because of the uniqueness of  
14 the building?

15 MR. LEEN: Why don't you express your  
16 intent? It would be good -- Actually, that's  
17 sort of a complicated legal question. I'd have  
18 to take a look at it. Why don't you express,  
19 what does the Board prefer? You can make that  
20 part of the motion.

21 MR. THOMSON: Yeah. I think the concern  
22 is -- the concern is, if you split up the  
23 ground floor, and instead of three tenants, now  
24 you've got four tenants, do we have another  
25 sign problem coming in?



1 CHAIRMAN OTERO: The question is, if that  
2 happens --

3 MR. THOMSON: Right.

4 CHAIRMAN OTERO: -- Mr. Thomson, does the  
5 fourth tenant need to come here for a variance,  
6 and the answer --

7 MR. THOMSON: I'd say that same issue, like  
8 why wouldn't they be forced to do that?

9 CHAIRMAN OTERO: Because I thought I heard  
10 the answer was, they would not need to come  
11 here. I agree with you that they would need to  
12 come here. Otherwise he wouldn't be here --

13 MR. THOMSON: Exactly.

14 CHAIRMAN OTERO: -- in essence.

15 MR. PEREZ: Doesn't the Board of Architects  
16 have to have approved that sign?

17 MR. LEEN: Yes.

18 MR. PEREZ: To me, that's the answer. I  
19 mean, you can complicate things -- attorneys  
20 normally do -- but being a lay person, I think  
21 that if the Board of Architects can approve it,  
22 they don't have to come to you or me or anybody  
23 here. That's what it calls for.

24 MR. LEEN: So you're -- I'm sorry. It's  
25 important we understand this exactly. So

1       you're saying, because they're coming before  
2       you for a variance now for this sign, would  
3       every future sign in the building have to come  
4       before you for a variance? Is that what the  
5       question is?

6               CHAIRMAN OTERO: That's my question.

7               MR. LEEN: That's -- It's not been  
8       interpreted that way in the past.

9               CHAIRMAN OTERO: I guess --

10              MS. GONZALEZ: Any other sign in any other  
11       location, or just referring to this location?

12              CHAIRMAN OTERO: Okay. I don't mean to  
13       take up the time, but here's my question --

14              MR. LEEN: But it is an important question.  
15       Why don't you ask a legal question, and I'll  
16       bring it back at the next meeting. I can  
17       research that.

18              CHAIRMAN OTERO: Mr. Graboski is here  
19       because he can't -- his client can't just put  
20       up a sign. Why can't he put up a sign?  
21       Because it doesn't meet the Code.

22              MR. LEEN: Yes.

23              CHAIRMAN OTERO: It needs a variance to  
24       meet the Code.

25              MR. LEEN: Exactly.

1 CHAIRMAN OTERO: That's a given.

2 MR. LEEN: Yes.

3 CHAIRMAN OTERO: Mr. Jones comes up next  
4 month to put up a sign.

5 MR. LEEN: Yes.

6 CHAIRMAN OTERO: It does not meet the Code.  
7 He needs to meet the seven requirements to get  
8 a variance.

9 MR. LEEN: True.

10 CHAIRMAN OTERO: Does he need to come  
11 before this Board, for Mr. Jones to put up a  
12 sign?

13 MR. LEEN: Under that hypothetical, yes.

14 MR. THOMSON: Yeah.

15 CHAIRMAN OTERO: That was my question.

16 MR. THOMSON: That's our concern.

17 CHAIRMAN OTERO: That was the question.

18 MR. LEEN: I'm sorry.

19 CHAIRMAN OTERO: That was my question.

20 MR. LEEN: Yes. That's a yes.

21 CHAIRMAN OTERO: By the nature of the  
22 beast, we're here --

23 MR. GRABOSKI: Yes.

24 MR. LEEN: Yes.

25 CHAIRMAN OTERO: -- because --

1 MR. LEEN: You're absolutely right. I'm  
2 sorry about that.

3 MR. PEREZ: Why didn't you ask it like  
4 that?

5 CHAIRMAN OTERO: I wanted to confuse you.

6 MR. LEEN: It's a good question.

7 MR. PEREZ: (Inaudible).

8 MR. LEEN: It's a very good question, an  
9 excellent question.

10 CHAIRMAN OTERO: It was Mr. Jones, I can  
11 tell.

12 MS. GONZALEZ: Excuse me.

13 CHAIRMAN OTERO: Yes, Liz?

14 MS. GONZALEZ: Mr. Perez read the granting  
15 of the motion for Number 1. If you're going to  
16 vote on it together or separately, will you  
17 read the motion to grant the variance details  
18 for Number 2?

19 MR. PEREZ: I'm sorry. He was harassing me  
20 here. Would you say it again, please?

21 MS. GONZALEZ: Can you please read the  
22 granting of the variance script motion on the  
23 second page for the Item Number 2, as far as  
24 the height is concerned?

25 MR. PEREZ: You mean, read if we impose a

1 condition?

2 MS. GONZALEZ: No, the granting of the  
3 variance for Item Number 2, the same one that  
4 you read but for Item -- If you look on the  
5 second page, attached to your folder --

6 MR. PEREZ: Okay, I'm sorry.

7 MS. GONZALEZ: Keep going to the back.

8 MR. PEREZ: Item Number 1 --

9 MS. GONZALEZ: Okay, there you go.

10 MR. PEREZ: Okay.

11 MS. GONZALEZ: That's it.

12 MR. PEREZ: Okay, okay, okay.

13 I move that the Board of Adjustment grant  
14 Application BA-14-09-2984, a request by Thomas  
15 W. Graboski, TGA Design, on behalf of 121  
16 Alhambra Tower LLC, for a variance for the  
17 commercial building at 121 Alhambra Plaza to  
18 allow the proposed tenant sign "Allen Morris"  
19 to be installed at a maximum height of 20 feet  
20 four inches. The motion is based upon the  
21 testimony presented along with the application  
22 submitted and Staff report, which constitute  
23 competent, substantial evidence. The Board  
24 hereby makes findings of fact that each of the  
25 standards in Section 3-806 of the Zoning Code

1 has been met.

2 MR. LEEN: Mr. Chair?

3 CHAIRMAN OTERO: Yes, sir.

4 MR. LEEN: Mr. Chair, it is my view that  
5 those are being read together so should be  
6 interpreted together, and you would be voting  
7 on them together, unless you decide in your  
8 discretion not to.

9 CHAIRMAN OTERO: Unless there's an  
10 objection, I would say they are to be read  
11 together as one motion.

12 MR. LEEN: Okay. So they will be read and  
13 interpreted together.

14 CHAIRMAN OTERO: Yes.

15 MS. GONZALEZ: Ms. Fuhrman?

16 MR. LEEN: Is there a second? Was there a  
17 second on the -- That was the motion.

18 MS. GONZALEZ: Mr. Hidalgo had seconded.

19 CHAIRMAN OTERO: On the second motion, I'll  
20 second the second motion.

21 MR. LEEN: Someone other than the Chair  
22 should second, generally. Sorry.

23 MR. HIDALGO: I second the first item and  
24 Item Number 2, also.

25 MR. LEEN: And you second them together?

1 MR. HIDALGO: Together.

2 MS. GONZALEZ: Ms. Fuhrman?

3 MS. FUHRMAN: Yes.

4 MS. GONZALEZ: Mr. Thomson?

5 MR. THOMSON: Yes.

6 MS. GONZALEZ: Mr. Hidalgo?

7 MR. HIDALGO: Yes.

8 MS. GONZALEZ: Mr. Perez?

9 MR. PEREZ: Yes.

10 MS. GONZALEZ: Mr. Otero?

11 CHAIRMAN OTERO: Yes.

12 MR. GRABOSKI: Thank you.

13 MR. PEREZ: You're welcome.

14 CHAIRMAN OTERO: So the motion passes  
15 unanimously. If there are no further items on  
16 the agenda, if there's no more business, is  
17 there a motion -- There's one more item on the  
18 agenda.

19 MS. GONZALEZ: No, no, just some informal  
20 business. Thank you. Our next meeting is on  
21 Monday, November the 3rd. At that time, I'm  
22 going to try to schedule the election of the  
23 Chairperson and Vice-Chairperson, as required  
24 by the Zoning Code, and also, I should have  
25 some preliminary dates for next year's

1       hearings, so expect that in your packet, and  
2       hope to see you there. Thank you.

3           MR. LEEN: I also just wanted to say one  
4       other thing for purposes of the record. You  
5       know, based on my talking with outside counsel,  
6       the ethics counsel, you know, we had the  
7       discussion today, but once I give that  
8       opinion -- and my opinion, ultimately, based on  
9       ethics counsel once you disclosed, is that you  
10      could vote, both based on the City, State and  
11      County codes, and that was shared by ethics  
12      counsel. He interpreted it as to the County  
13      and State. So whatever the debate is over that  
14      sort of issue, it's ultimately up to the Board  
15      member, but you can rely on the interpretation  
16      of counsel. I can't control what other  
17      entities do, but I would back what you did in  
18      terms of the City as valid, that you were able  
19      to do that and we asked those questions. I  
20      want to be clear with you today, regardless  
21      of -- When I give an opinion, I always stand by  
22      it. So, in my view, it was proper for you to  
23      vote, in terms of the law.

24           MR. THOMSON: All right, thank you.

25           MR. PEREZ: I have another question.



1 MR. LEEN: Yes.

2 MR. PEREZ: It's got nothing to do with  
3 this, but basically, at another conflict, when  
4 the other Board member asked for --

5 THE COURT REPORTER: I'm sorry, Mr. Perez,  
6 I'm having trouble hearing you.

7 MR. PEREZ: If you have a conflict, you  
8 step outside and then you come back inside.

9 MR. LEEN: Yes.

10 MR. PEREZ: But you represented or I was  
11 told that no, that's not required, that you can  
12 actually stay at the meeting --

13 MR. LEEN: No. Who told you that?

14 MR. PEREZ: That was -- How long ago was  
15 that?

16 MS. GONZALEZ: That was --

17 MR. PEREZ: I think it was Mr. Hidalgo who  
18 had a conflict because he was also the  
19 contractor, and it was decided -- and I have no  
20 doubt that he didn't influence --

21 MR. LEEN: When was that? How long ago was  
22 that?

23 MS. GONZALEZ: That decision was determined  
24 by the -- The Deputy City Attorney was not  
25 here. It was the Assistant City Attorney.

1 MR. LEEN: When did she make that decision?

2 MS. GONZALEZ: That was, I want to say,  
3 back in March or April, I'm not a hundred  
4 percent certain, of this year.

5 MR. LEEN: Well, the tradition in the City  
6 has been that you can -- The tradition in the  
7 City is that you can leave the room and that  
8 you don't have to disclose the conflict. Some  
9 people will disclose and stay. The Ethics  
10 Commission has given a circular interpretation,  
11 and by Ethics Commission, I mean the County  
12 Ethics Commission, that what you generally  
13 should do, unless it's a special circumstance,  
14 but generally you should -- and they probably  
15 would say there's no special circumstance. I  
16 can imagine situations where it's not a true  
17 conflict, but you just don't feel comfortable  
18 voting, under the State law, or maybe it  
19 wouldn't apply, but any time there's an actual  
20 conflict, what you've supposed to do is, you  
21 disclose the conflict and then you leave the  
22 room, and then you fill out the form.

23 The reason why sometimes you can't stay in  
24 the room is, there's also another law that says  
25 that if you're in the room, you have to vote.

1       There's a State Statute that says you have to  
2       vote unless you comply with one of these other  
3       provisions. It's actually a fairly complicated  
4       issue, as well, because sometimes there's  
5       quasi-judicial reasons why you may not be able  
6       to vote which don't rise to the level of State  
7       law. But anyhow, I'm sure that that was fine  
8       in that particular case, and he did rely on the  
9       advice of counsel, so I wouldn't worry about  
10      that.

11           MR. HIDALGO: I recall, also, that I had to  
12      fill out a form after --

13           MS. GONZALEZ: He did.

14           MR. PEREZ: Yes.

15           MR. HIDALGO: -- and disclose my  
16      relationship with the case.

17           MS. GONZALEZ: He did.

18           MR. PEREZ: Yeah, you did. You did  
19      everything they asked you for. It's just that  
20      I go to meetings, and one time, on Graziano,  
21      years ago, my son was one of the attorneys. I  
22      disclosed it and I left the room. I feel more  
23      comfortable leaving the room, because sometimes  
24      by your mannerisms, you open your eyes,  
25      whatever it is, that you're better off walking

1 outside and then when it finishes, walk back  
2 inside.

3 MR. LEEN: Something else that we've seen  
4 is that someone's disclosing a conflict so  
5 everyone knows, but it's not a disqualifying  
6 conflict. They'll disclose it and then they'll  
7 stay and they'll vote. And I'll give an  
8 opinion that they can vote, like what happened  
9 today. If it's a disqualifying conflict, in  
10 the future, you should state the conflict on  
11 the record, leave the room, and then vote. It  
12 used to be in the City that sometimes people  
13 would just leave the room, under the theory --  
14 That was before the Ethics Commission came out  
15 with their new interpretation. So that was  
16 perfectly fine, too, because that wasn't  
17 justified at the time. All this is based on  
18 the Ethics Commission. They've come out with a  
19 relatively new interpretation, that you have to  
20 do both things, and I generally recommend that  
21 you follow what the Ethics Commission says in  
22 those sort of matters.

23 But the one thing I would ask you is, in  
24 the future, if you have a matter and you think  
25 that there is a -- and I know Mr. Thomson only

1 found out about this today, but if you think  
2 that there's a potential conflict, notify me in  
3 advance. You have the right, by Code, for me  
4 to write you an opinion which protects you.  
5 I'll actually sit down, I'll research it and  
6 I'll write you a written opinion, I'll tell you  
7 whether you can vote or not, and then you can  
8 have that, and it protects you. So just  
9 remember, that service is available for you,  
10 any time.

11 MR. THOMSON: That's good.

12 (Thereupon, the meeting was adjourned at  
13 9:00 a.m.)  
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C E R T I F I C A T E

STATE OF FLORIDA:

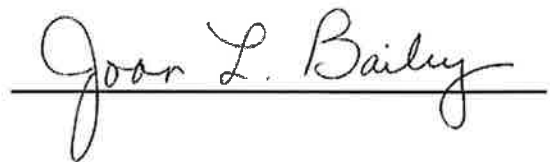
SS.

COUNTY OF MIAMI-DADE:

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

I further certify that all public speakers were  
duly sworn by me.

DATED this 8th day of October, 2014.

A handwritten signature in cursive script that reads "Joan L. Bailey". The signature is written in dark ink and is positioned above a solid horizontal line.

JOAN L. BAILEY, RDR, FPR

Notary Commission Number EE 083192.  
My Notary Commission expires 6/14/15.