

CITY OF CORAL GABLES  
PLANNING AND ZONING BOARD MEETING  
ZONING CODE REWRITE  
VERBATIM TRANSCRIPT

CORAL GABLES CITY COMMISSION CHAMBERS  
405 BILTMORE WAY, CORAL GABLES  
APRIL 13, 2005, 6:10 P.M.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Board Members Present:

- Cristina Moreno, Chairwoman
- F. Michael Steffens, Vice-Chair
- Eibi Aizenstat
- Pat Keon
- Tom Korge
- Michael R. Tein

City Staff:

- Eric Riel, Jr., Planning Director
- Richard Cannone, Principal Planner
- Jill Menendez-Duran, Administrative Assistant
- Elizabeth M. Hernandez, City Attorney
- Dona Lubin, Historic Preservation Director

Also participating:

- Charles Siemon
- Joyce Newman
- Waldo Toyos

- - -

1       THEREUPON:

2               The following proceedings were had:

3               CHAIRWOMAN MORENO: Are we ready for the  
4 roll call?

5               All right, we'll call the meeting to order  
6 and ask Jill to do the roll call.

7               MS. MENENDEZ-DURAN: Eibi Aizenstat?

8               MR. AIZENSTAT: Present.

9               MS. MENENDEZ-DURAN: Pat Keon?

10              MS. KEON: Here, present.

11              MS. MENENDEZ-DURAN: Tom Korge?

12              MR. KORGE: Present.

13              MS. MENENDEZ-DURAN: Bill Mayville?

14              Michael Tein?

15              MR. TEIN: Present.

16              MS. MENENDEZ-DURAN: Michael Steffens?

17              MR. STEFFENS: Here.

18              MS. MENENDEZ-DURAN: Cristina Moreno?

19              CHAIRWOMAN MORENO: Here.

20              Okay, we need to approve the minutes of the  
21 meetings of January 19th, February 23rd and March the  
22 16th.

23              MR. STEFFENS: Not March 9th? March 9th and  
24 March 16th?

25              CHAIRWOMAN MORENO: Well, first, these are

1 the Zoning Code Rewrite minutes of January 19, March  
2 23 and March 16th.

3 MR. STEFFENS: Move for approval.

4 CHAIRWOMAN MORENO: Do I have a second?

5 MR. AIZENSTAT: Second.

6 CHAIRWOMAN MORENO: Okay. Call the roll,  
7 please.

8 MS. MENENDEZ-DURAN: Pat Keon?

9 MS. KEON: Yes.

10 MS. MENENDEZ-DURAN: Tom Korge?

11 MR. KORGE: Yes, but I was not present for  
12 the meeting on the 16th, so I'll abstain from the  
13 minutes of the 16th.

14 MS. MENENDEZ-DURAN: Michael Tein?

15 MR. TEIN: Yes.

16 MS. MENENDEZ-DURAN: Michael Steffens?

17 MR. STEFFENS: Yes.

18 MS. MENENDEZ-DURAN: Eibi Aizenstat?

19 MR. AIZENSTAT: Yes.

20 MS. MENENDEZ-DURAN: Cristina Moreno?

21 CHAIRWOMAN MORENO: Yes.

22 Okay, the next one is the approval of the  
23 Planning & Zoning Board minutes of March 9th, 2005.

24 MR. STEFFENS: Move for approval.

25 MR. KORGE: Second.

1 CHAIRWOMAN MORENO: Call the roll.

2 MS. MENENDEZ-DURAN: Tom Korge?

3 MR. KORGE: Yes.

4 MS. MENENDEZ-DURAN: Michael Tein?

5 MR. TEIN: Yes.

6 MS. MENENDEZ-DURAN: Michael Steffens?

7 MR. STEFFENS: Yes.

8 MS. MENENDEZ-DURAN: Eibi Aizenstat?

9 MR. AIZENSTAT: Yes.

10 MS. MENENDEZ-DURAN: Pat Keon?

11 MS. KEON: Yes.

12 MS. MENENDEZ-DURAN: Cristina Moreno?

13 CHAIRWOMAN MORENO: Yes.

14 Okay, then, we're going to take up the  
15 Zoning Code Rewrite, continued from the March 16th,  
16 2005 meeting, Article 3, Development Review.

17 MR. RIEL: Okay, while Mr. Siemon is coming  
18 up to the podium, I just want to highlight a couple  
19 of things that I put in front of you.

20 I revised and updated the Zoning Code  
21 Hearing Schedule, which is in front of you. A couple  
22 items have moved a little bit further down on the  
23 list, mainly the telecommunications and the  
24 University of Miami provisions. Those will be  
25 considered on May 18th.

1           Also in front of you, what Staff has  
2 prepared is a tracking chart, which highlights the  
3 Board's action on each of the articles that you all  
4 have completed to date, and it summarizes, and it's  
5 not in great detail, but it just summarizes generally  
6 what the Board's actions were, and as we go through  
7 each meeting, we will update it and post it on the  
8 web, to make sure, obviously, that the public is  
9 involved.

10           That's all I have. With that, I'll turn it  
11 over to Mr. Siemon.

12           MR. AIZENSTAT: That's actually very nice,  
13 to do this.

14           CHAIRWOMAN MORENO: Yes.

15           MR. AIZENSTAT: It's a nice way for us to  
16 look at it.

17           MR. RIEL: It helps us make sure that we do  
18 what you asked us to do, as well as -- as we work  
19 through, and if you notice, on Page 2, where it  
20 starts on -- or actually, Page 3 -- I'm sorry, Page  
21 2, it starts on the white, the white portion, that's  
22 what you'll be considering today.

23           CHAIRWOMAN MORENO: I didn't catch that.  
24 That's pretty nifty, so we can write on the white.

25           MR. RIEL: So you can write in.

1 CHAIRWOMAN MORENO: Okay.

2 MR. AIZENSTAT: Just out of curiosity, on  
3 Page 3, itself, Division 10, TDRs, why is that  
4 highlighted in orange?

5 MR. RIEL: Because that's going to be at a  
6 future date.

7 MR. SIEMON: There's some consideration --  
8 some research is being done, and it will be presented  
9 at a later date.

10 Good evening, Madam Chairman and Members of  
11 the Board. We're going to go through Article 3  
12 first, which is the Development Review Process, and I  
13 want to make a general comment, at the outset. Our  
14 objective, primary objective, in this article, was to  
15 bring all of the procedures that are currently  
16 scattered all through your Code and to bring them  
17 into a single section, so someone who wants to know,  
18 how do I get an approval and look in one article and  
19 find each of the approval processes that exist, and  
20 there were provisions scattered all through your  
21 Codes and variations in each one of them about how  
22 the text was presented, and so that is the primary  
23 change, is that there were a bunch of different kinds  
24 of approvals. We've consolidated all that we can as  
25 conditional uses, so we now have one kind of

1 discretionary approval that doesn't -- other than  
2 rezonings and Comprehensive Plan amendments, and  
3 we've tried to harmonize them, and then we've tried  
4 to establish uniform processes so that the notice  
5 requirements are all evident in a single place, so  
6 that who the actors are, et cetera.

7           So the substantive changes are not  
8 significant. I'll try to point them out, but 90  
9 percent of this is simply reformatting,  
10 consolidation, definitions. But, nevertheless, we  
11 want to go through them.

12           There is also the use of charts. We told  
13 you all, when we started this project, that we find  
14 charts that help guide you through the Code, to find  
15 things where I'm looking for, are useful and we've  
16 included those everywhere we can, and also, because  
17 when we come to a community we've never worked in,  
18 the first thing we do in the development review  
19 process is, we chart it out, to find which steps come  
20 first, who do you go to, what's the sequence, and so  
21 we've prepared, as you have now, charts like this, in  
22 each of the provisions.

23           I assume, Madam Chairman, that we're just  
24 going to go through the article, division by  
25 division?

1                   CHAIRWOMAN MORENO:  However you think it's  
2   best for us to understand it.

3                   MR. RIEL:  That's what we've done in the  
4   past, so --

5                   MR. SIEMON:  Yeah.  Division 1 is simple.  
6   It's just the purpose.  It's a general statement of  
7   purpose for it, and it's found on Page 1 of 2, and  
8   then 2 of 2 is a guide chart that tells you, if you  
9   need a particular kind of approval, which division  
10  it's in, so you can find your way.  And that's really  
11  all that's included in the -- in this.

12                   We've done this in alphabetical order, so if  
13  someone wants to take an appeal from a Historic  
14  Preservation District decision or a landmark  
15  decision, looks under appeal, comes down to appeals  
16  from the Historic Preservation Board, and finds that  
17  he should go to the City Commission.  The final  
18  decision is made by that person.

19                   So that's Division 1, very simple, and  
20  nothing substantive.  Are there any questions?

21                   MR. AIZENSTAT:  When you go ahead and write  
22  down, you use certain abbreviations.  For example,  
23  for appeals from City officials other than HPO.  
24  Would the people be able to readily know what that  
25  stands for, or would they have a question on that and

1 have to refer to somebody to explain it?

2 MR. SIEMON: No, the only thing, BA is  
3 included here in this chart, and it's not labeled as  
4 Board of Architects, and it should be.

5 MR. AIZENSTAT: Okay.

6 MR. SIEMON: And I don't know why. Oh, I  
7 know. It didn't fit in. That's why they didn't put  
8 it.

9 MR. AIZENSTAT: Since you're trying to  
10 simplify it and make it so easy, I'm just afraid that  
11 some people might not know what some of the  
12 abbreviations might be.

13 MR. SIEMON: Yes. Agree.

14 Any other input?

15 CHAIRWOMAN MORENO: When you said Historic  
16 Preservation, it says final decision made by the  
17 Historic Preservation Board. There's no appeal from  
18 that, right?

19 MR. SIEMON: Right. The final decision is  
20 made by the --

21 CHAIRWOMAN MORENO: Okay, so on Historic  
22 Preservation, they never go to the Commission; it  
23 stays there?

24 MR. SIEMON: Right.

25 CHAIRWOMAN MORENO: Okay.

1 MR. SIEMON: There's no appeal from the  
2 Commission. That's the final order.

3 MR. STEFFENS: On this chart that you gave  
4 us --

5 MR. SIEMON: The next -- you moved on to --

6 MR. STEFFENS: This one.

7 MR. SIEMON: Article 3, Division 2, at the  
8 top?

9 MR. STEFFENS: Yeah.

10 MR. SIEMON: Yep.

11 MR. STEFFENS: Are we talking about that  
12 now, or we're not yet?

13 MR. RIEL: Madam Chair, as we did in the  
14 past, if we could get a motion on each division, that  
15 would be very helpful.

16 CHAIRWOMAN MORENO: All right. So let's do  
17 Division 1, then?

18 MR. RIEL: Yes.

19 CHAIRWOMAN MORENO: Okay. Motion to approve  
20 Division 1?

21 MR. AIZENSTAT: I would make a motion to  
22 approve, with that change.

23 MR. KORGE: I'll second that.

24 CHAIRWOMAN MORENO: Call the roll, please.

25 MS. MENENDEZ-DURAN: Michael Tein?

1 MR. TEIN: Yes.

2 MS. MENENDEZ-DURAN: Michael Steffens?

3 MR. STEFFENS: Yes.

4 MS. MENENDEZ-DURAN: Eibi Aizenstat?

5 MR. AIZENSTAT: Yes.

6 MS. MENENDEZ-DURAN: Pat Keon?

7 MS. KEON: Yes.

8 MS. MENENDEZ-DURAN: Tom Korge?

9 MR. KORGE: Yes.

10 MS. MENENDEZ-DURAN: Cristina Moreno?

11 CHAIRWOMAN MORENO: Yes.

12 MR. SIEMON: Now we go to Division 2. You

13 had a comment or question about the chart?

14 MR. STEFFENS: Were you going to tell us

15 about it?

16 MR. SIEMON: Yes. This is just a general

17 review chart which is intended to try to illustrate

18 where certain approvals fit in the overall process,

19 who do you go to first, and it is intended to say

20 that the general process is, you have a

21 pre-application conference. If an application -- if

22 it does involve Historic Preservation review, at that

23 point, that's when it goes to that.

24 A determination of completeness.

25 Development Review Committee, if the review

1 committee -- there's a building site determination  
2 that's required, then it goes at that point.

3 After the Development Review Committee is  
4 when it goes to the Board of Architects for review,  
5 and then if a conditional use approval is required,  
6 that's what follows. If no discretionary review is  
7 involved, then it goes to either certificate of use  
8 and building permit, or if there are other reviews  
9 that are unique or special, they go that path.

10 But it's just intended to show the general  
11 organization of the various kinds of reviews that are  
12 involved, and in particular, where the Board of  
13 Architects and where Historic Preservation fit into  
14 that.

15 MR. KORGE: Is this only for illustrative  
16 purposes, or is this binding? In other words, I  
17 presume there are really no potential conflicts  
18 between the text and this flow chart, but if there  
19 were, which would --

20 MR. SIEMON: I believe that there's a  
21 provision in the Article 1 that says that where  
22 there's a conflict between text and graphics, that  
23 the text controls.

24 MR. KORGE: Okay. Thank you.

25 MR. SIEMON: But we're unaware of any. I

1 mean, this is the general --

2 MR. KORGE: I assume there are none, but --

3 MR. SIEMON: Well --

4 MR. KORGE: I just want to make sure there  
5 was a clarification in the text about which  
6 controls.

7 MR. STEFFENS: On this chart --

8 MR. SIEMON: Yep.

9 MR. STEFFENS: -- after the Board of  
10 Architects, you can go to three places, possibly, or  
11 maybe more.

12 MR. SIEMON: Yes.

13 MR. STEFFENS: Would it be good to tell  
14 people where they would be going, so they could look  
15 to those places, like directly below the Board of  
16 Architects, it's the discretionary review process.  
17 Where would that take place? That's the Planning &  
18 Zoning Department?

19 MR. SIEMON: The conditional use procedure  
20 is -- involves two levels, minor and major. And the  
21 minor goes to the -- the major goes to the City  
22 Commission and minor does not, but it has an appeal  
23 to the Commission. We --

24 MR. STEFFENS: Then --

25 MR. SIEMON: The way this is organized, to

1 identify each of the places you go next, really  
2 didn't fit in. I suppose we could list, in a bigger  
3 box, each of these three. It's actually the central  
4 one, the discretionary review, and -- but we -- our  
5 ambition was not to have every single review process.  
6 For example, variances are shown only as an "other"  
7 here. They're not called out.

8 MR. STEFFENS: That would be, "Proceed to  
9 other"?

10 MR. SIEMON: Yes, if required.

11 MR. STEFFENS: Because that is one of my  
12 biggest gripes about going through these processes,  
13 is never being able to see the entire process in one  
14 place. And here, we can see part of a process, but  
15 in -- after the Board of Architects, in two of the  
16 categories, there's subprocesses under those that, if  
17 you're not going to completely spread out the routes,  
18 it would at least be nice to know where to go to look  
19 for those things.

20 MR. RIEL: But if you go into each of the  
21 articles in the further divisions, as you go back,  
22 there's other charts that talk about conditional use,  
23 minor review. So, basically, what you're suggesting  
24 is to put all these charts on one, which I think  
25 would be --

1 MR. STEFFENS: Or --

2 MS. KEON: Pretty big.

3 MR. RIEL: -- a long chart.

4 MR. STEFFENS: Or in the two boxes  
5 underneath the Board of Architects, that have other  
6 places to go to, at least put in those boxes the  
7 other places to go to look for those other --

8 MS. KEON: Right.

9 MR. SIEMON: I think your idea is a good  
10 one, a list of each of those discretionary reviews  
11 and what the section -- division number --

12 MR. KORGE: Section, yeah.

13 MR. SIEMON: -- is in this article.

14 MS. KEON: Right.

15 MR. SIEMON: And I think that would be to  
16 others and conditional -- and the discretionary,  
17 both.

18 MR. STEFFENS: Right.

19 CHAIRWOMAN MORENO: Where would site plan  
20 approval fall here?

21 MR. SIEMON: It actually follows through to  
22 the Board of Architects to review, and then goes to  
23 the -- well, it depends on whether it's a minor --  
24 involves a minor conditional use or not. If it  
25 doesn't, then it goes through --

1                   CHAIRWOMAN MORENO: So everything would  
2 fall -- be either a minor conditional or a major  
3 conditional?

4                   MR. SIEMON: No, there are some uses that  
5 are permitted as of right.

6                   CHAIRWOMAN MORENO: But like a site plan.  
7 Some of that would be permitted as of right?

8                   MR. SIEMON: It's possible that some of  
9 those uses would be permitted as of right and would  
10 not involve a discretionary review, and they would go  
11 down through the Board of Architects and then go to  
12 the certificate of use and building permit.

13                   CHAIRWOMAN MORENO: Okay, but the way we're  
14 setting it up, everything that comes before us would  
15 be under a conditional use?

16                   MR. SIEMON: That's correct.

17                   MR. RIEL: Correct.

18                   CHAIRWOMAN MORENO: Okay, so -- okay, so  
19 that's a change, I guess.

20                   MR. STEFFENS: Let me ask a big question.  
21 If we fix this Code the way we're looking to fix the  
22 Code, and include in the North Gables new setbacks  
23 and new definitions for the housing up there, and we  
24 have the mixed-use districts that say you can have  
25 retail and housing and -- et cetera, et cetera, we

1 have this whole Code revised to what we're talking  
2 about -- are all of those, then, as-of-right projects  
3 and then they do not come to us? All these projects  
4 that we're seeing now, all these major apartment  
5 buildings and major --

6 MR. RIEL: I think that's a decision that we  
7 will make a recommendation as what process they need  
8 to go through, after we create the regulations, and  
9 then look for this Board to give us that input. Some  
10 of them could, some of them could not.

11 CHAIRWOMAN MORENO: But when we go through  
12 those, we'll say, "This needs a conditional use  
13 approval"?

14 MR. RIEL: Yes. Yes.

15 MR. STEFFENS: A conditional use approval  
16 could be based on -- because it's big?

17 MR. RIEL: It could be based on the size.

18 MR. KORGE: Or the use.

19 MR. RIEL: It could be based on location.

20 MR. SIEMON: Size, location, character,  
21 could all be --

22 MR. RIEL: It could be, you know, a  
23 threshold. I mean, there's all kinds of thresholds  
24 we utilize, acreage, square footage, height.

25 MR. SIEMON: And the notion is that there's

1 really a hierarchy of these decisions. There's some  
2 which are, we have adequate standards, they're  
3 vanilla type, and they can go through without any  
4 discretionary review. Then there are two levels  
5 of discretion, some and considerably more. And we  
6 will take -- as we finalize the districts, we will  
7 put uses. So imagine those as three buckets, and  
8 what we will do is put uses and whatever criteria,  
9 whether it's location or size, what bucket.

10 So you might find neighborhood commercial  
11 less than 2,500 square foot is in bucket two, and  
12 above 2,500 is in bucket three. And we'll go through  
13 that process, and we will make a recommendation. I  
14 mean, there is a recommendation in the districts as  
15 to how we do that.

16 Some of the special districts that we've  
17 been talking about recently are going to be a lot  
18 more complex than the districts we've looked at in  
19 the past.

20 The -- We've included a -- we've formalized  
21 a process of determination of completeness. One of  
22 the difficulties that communities and this community  
23 has experienced is incomplete applications, and then  
24 you have the applicant wanting to press forward and  
25 you still haven't gotten the information, and so

1 we've included a formal determination of  
2 completeness, which, when that determination of  
3 completeness is made is when you really have an  
4 obligation to move forward in a timely fashion to  
5 complete the application. But if you don't get that,  
6 then the applicant isn't entitled to move forward.

7 Our experience is, that's a very important  
8 rule, because if you impose it and enforce it, you'll  
9 get good applications that are complete, because they  
10 want to get through the process, and we think it will  
11 save some Staff time and improve the quality of the  
12 materials you all have to review.

13 MR. AIZENSTAT: What time frame are you  
14 giving?

15 MR. SIEMON: Excuse me?

16 MR. AIZENSTAT: What time frame is that?

17 MR. SIEMON: The -- It depends on the nature  
18 of the application. There are time frames in some of  
19 the development review provisions, and they relate  
20 from the determination of completeness.

21 In the provision on Page 2 of 7, the  
22 Determination of Completeness, the time periods are  
23 not included there. It's just -- it describes the  
24 legal significance of that determination. The  
25 Development Review Committee, its responsibilities,

1 and then one of the things on Page 3 of 7 that we --  
2 in fitting together the various procedures, we have  
3 the -- in 3-205 are the things that are reviewed as a  
4 matter of right, by the Board of Architects, and we  
5 have just brought that out of the provision it was  
6 and put it in, so it describes their jurisdictional  
7 responsibility outside of conditional uses, outside  
8 of Historic Preservation matters, et cetera, and so  
9 that's why there appears to be a list of things that  
10 could be considered to be uses that really are  
11 structures and things that people are designing the  
12 kinds of things they do, and B provides a full -- a  
13 list of items which could be delegated to the City  
14 Architect, when a City Architect --

15 MR. AIZENSTAT: So you're going to free up  
16 the Board of Architects to take on more important  
17 or --

18 MR. SIEMON: More significant matters.

19 MR. AIZENSTAT: -- more significant matters?

20 MR. SIEMON: If you go to their meetings --

21 MR. AIZENSTAT: Yeah, they're general --

22 MR. SIEMON: -- they deal with fences all  
23 the time, and it's the same outcome, and there's no  
24 reason that can't be codified and administered by the  
25 City Architect.

1           MR. AIZENSTAT: Or paint colors, for  
2 example.

3           CHAIRWOMAN MORENO: What happens if -- I'm  
4 sorry. What happens if there's no City Architect?

5           MR. SIEMON: Well, then, there won't be a  
6 delegation. At least I assume there will be no  
7 delegation.

8           MR. AIZENSTAT: For example, if you take a  
9 look at painting, paint colors would now go before  
10 the City Architect, but it says by approved color  
11 pallet. If somebody varies from that color, for  
12 whatever reason, what's the procedure?

13          MR. SIEMON: They would have to go to the  
14 Board of Architects to obtain approval.

15          MR. KORGE: Can the board write regulations,  
16 for example, setting forth the criteria for fences or  
17 whatever that would apply for the uniformly -- would  
18 be applied uniformly by the City Architect, or by the  
19 Board of Architects, should the City Architect not be  
20 appointed?

21          MR. SIEMON: The way we've contemplated that  
22 works, there are a series of design standards in  
23 Article 5, and those design standards would be  
24 administered. They are currently administered in a  
25 fashion that reflects practices and acceptable

1 standards and norms, and we accept -- we expect that  
2 those standards and norms will continue, even though  
3 they are expressions of what the design code means,  
4 and we have not intended to codify everything. We  
5 create those standards, and they will be guided by  
6 the patterns of practice and the past decisions that  
7 have been made.

8 MR. KORGE: Yeah, but would the board be  
9 authorized to write their own set of standards that  
10 would be written guidelines they could apply  
11 uniformly?

12 MR. SIEMON: If they're regulatory standards  
13 that they're going to give legal effect, they would  
14 probably either have to have a clear delegation of  
15 authority to do that and parameters that describe the  
16 contours of their discretion. If they're guidelines,  
17 to help memorialize decisions they've made,  
18 interpretations, how they've gone forward, put this  
19 in the book -- many communities, for example, keep a  
20 book, and when there's an interpretation of what such  
21 and such a standard means in the context of a  
22 particular fence or something, that goes into the  
23 book, and so --

24 MR. KORGE: Would it be helpful to delegate  
25 that authority to them?

1           MR. SIEMON: I think that I have some  
2 sensitivity to that being -- that delegation.  
3 It's -- The authority to legislate is really rarely,  
4 in local government, delegated to nonelected  
5 officials, and I have some sensitivity to that.

6           On the other hand, it's not possible to  
7 legislate a body -- you know, to fully articulate  
8 every element of the design standards, and our  
9 experience is, over time, there evolves -- it's not a  
10 body of law, but it's a body of experience about what  
11 is, and what that does not mean in certain  
12 circumstances.

13           MR. KORGE: Well, it could be regulations  
14 that the authorities delegated to them subject to,  
15 you know, approval, final approval by the Commission,  
16 for example, if that's a concern.

17           But the reason I suggest it is that, at  
18 first it may be more burdensome for the Board to  
19 prepare regulations setting forth clearly the  
20 standards they want to apply, but once they've done  
21 that, it might be easier for everybody, for future  
22 applicants, for the City Architect and for the board  
23 itself, to apply standards, and people could just  
24 get, you know, the book of regulations and look at  
25 it, and it pretty much would lay out for them what's

1 expected -- generally expected. It's something  
2 that's worth considering, I would think.

3 MR. SIEMON: My instincts are, the best way  
4 to do that, from my experience, is to have the design  
5 standards adopted by the legislative body. If there  
6 are new points, new concerns, new learning that need  
7 to be incorporated in that Code, then our Board of  
8 Architects ought to recommend that as amendments that  
9 go to the Code.

10 In terms of the interpretations, the  
11 decisions underneath it, I do think it's appropriate  
12 to keep those that are decisions that are made about  
13 categories, because I think they are useful  
14 information to guide the applicant to what's  
15 expected, what the application of this shows, but I  
16 would not -- I would -- I think I would recommend  
17 that it not be codified, that things that require to  
18 be codified ought to be recommended to the governing  
19 body for amendment to the design standards.

20 MR. STEFFENS: On --

21 MR. KORGE: No regulations, is what you're  
22 saying.

23 MR. SIEMON: That's correct. That would be  
24 my recommendation.

25 MR. STEFFENS: On these items, if the City

1 Architect doesn't feel comfortable providing an  
2 approval for something, then he would take it to the  
3 Board of Architects, or require them to go to the  
4 Board of Architects?

5 MR. SIEMON: I'm going to have to look at  
6 the --

7 MR. STEFFENS: And along with that, if an  
8 applicant came in with one of these items and the  
9 City Architect made a recommendation on that item and  
10 the applicant didn't agree with the City Architect's  
11 recommendation, could he then go to the Board of  
12 Architects?

13 MR. SIEMON: The answer to the second  
14 question is yes. There is no explicit provision in  
15 this draft that says that the City Architect can  
16 click it up to the Board of Architects, but there  
17 would be no reason not to do that. That's a common  
18 provision.

19 MR. STEFFENS: I can see that -- One of the  
20 items in here, fountains, we have a very famous  
21 fountain on North Greenway Drive that was very  
22 controversial, and I would imagine that, you know, a  
23 City Architect might not want to make a determination  
24 on something like that. He would want to have the  
25 board do that.

1           MR. SIEMON: Well, should 8 be deleted, or  
2 should we include a provision that the Board of  
3 Architects may, and the City Architect may, in his  
4 professional judgment, where it's appropriate to be  
5 considered by the full board, forward it to the  
6 board?

7           CHAIRWOMAN MORENO: I like the second one  
8 better --

9           MR. STEFFENS: Yeah.

10          CHAIRWOMAN MORENO: -- because 99 percent of  
11 the fountains are going to be innocuous.

12          MR. STEFFENS: Right, but there's going to  
13 be something that is controversial.

14          MR. SIEMON: Okay.

15                I just want to say, I can't recall -- there  
16 may be somewhere a provision in this that says  
17 generally, when authority has been delegated, that  
18 that person may decide to kick it up. I just need to  
19 check that. I don't think it's there, but I -- so  
20 I'll make sure, when this comes back, we make that  
21 amendment, either here or explain to you, let you  
22 know that we didn't make it, because it was otherwise  
23 covered.

24          CHAIRWOMAN MORENO: Okay, because when we  
25 can't reach a decision here, we just send it to the

1 Commission with no recommendation, but he doesn't  
2 have that ability.

3 MR. SIEMON: Right. There is a provision  
4 somewheres about the City Manager and his designee  
5 have the right to call up, and I just need to go  
6 check that. I think it's an appeal process and it's  
7 not this.

8 The building site determination is a  
9 process. The substantive standards for that are in  
10 the district code, the single-family code, where it's  
11 always been. All this is, is the procedure for a  
12 building site determination.

13 As you recall, we had an extensive  
14 discussion about whether this should be subject to a  
15 public hearing, and as presented here today, it is  
16 the process you use today. We have not changed  
17 that.

18 MR. TEIN: Charlie, where is the substantive  
19 standards for permitting, the last section?

20 MR. SIEMON: I'm sorry, where's your  
21 reference to?

22 MR. TEIN: On the last section, 3-205, what  
23 we were just discussing.

24 MR. SIEMON: I don't know. That title  
25 can't be right.

1 MR. TEIN: I'm asking, where are the  
2 substantive standards for that?

3 MR. SIEMON: The substantive standards for  
4 these uses are in Article 5, and there are two  
5 divisions that have design standards in them.

6 MR. TEIN: So, for B, the substantive  
7 standards would be in Article 5?

8 MR. SIEMON: Yes, that's correct.

9 MR. TEIN: Should we put a reference to  
10 that?

11 CHAIRWOMAN MORENO: Maybe what you need to  
12 do is change the title to the whole thing.

13 MR. SIEMON: The title is not good, yeah.  
14 It needs to --

15 CHAIRWOMAN MORENO: Yeah, because this is  
16 not the permitted use.

17 MR. SIEMON: It's not permitted use.  
18 It's -- but -- yes, pursuant to Article 5, and I  
19 can't remember the -- I can actually tell you.

20 MR. TEIN: So it should be by Board of  
21 Architects or --

22 MR. SIEMON: Yes, Board of Architects  
23 review.

24 CHAIRWOMAN MORENO: The problem is that  
25 they're using permitted and permitted in the next --

1 in A. It is two meanings.

2 MR. SIEMON: Right.

3 CHAIRWOMAN MORENO: So I think when it's  
4 saying here permitted, we're reading it as permitted  
5 uses, and what it means is, where you can issue a  
6 permit or how you can get a building permit.

7 MR. SIEMON: It's development as of right,  
8 is what it's supposed to mean.

9 CHAIRWOMAN MORENO: Yeah.

10 MR. SIEMON: And it's Division 5 -- Division  
11 7.

12 MR. TEIN: So you'll reference that at the  
13 end of B?

14 MR. SIEMON: Yes, in B.

15 MR. TEIN: This is just a nit-picky thing.  
16 In B, do we mean that the Board of Architects shall  
17 review and approve plans for additions, et cetera, et  
18 cetera, except for the following, which shall be  
19 reviewed and approved -- We mean to say that the  
20 Board of Architects has to review and approve  
21 everything other than what's in the below list,  
22 right?

23 MR. SIEMON: Yes.

24 CHAIRWOMAN MORENO: Right.

25 MR. TEIN: And that when the Board of

1 Architects reviews everything other than what's in  
2 the below list, they have to approve it prior to the  
3 issuance of a certificate of use or a building  
4 permit, right?

5 MR. SIEMON: That's correct.

6 MR. TEIN: Okay. I just think maybe we  
7 should add -- just tighten the language up a little,  
8 so it's a little bit more obvious to the lay reader,  
9 like myself.

10 MR. SIEMON: Okay.

11 CHAIRWOMAN MORENO: It says they review it.  
12 It doesn't say whether they approve or disapprove.

13 MR. TEIN: Right, and that clause that  
14 says, "prior to the issuance of a certificate of use  
15 or building permit" applies to both types of review.

16 MR. SIEMON: Both. Both reviews.

17 MR. TEIN: So maybe you should just put that  
18 clause at the beginning --

19 MR. KORGE: The beginning, yeah.

20 MR. TEIN: -- and it will be more obvious.  
21 I don't mean to sound like a lawyer, but that's been  
22 my assigned fate.

23 CHAIRWOMAN MORENO: Okay, let's go back,  
24 though. Should we have been approving, Eric, first  
25 the Division 2 and --

1 MR. RIEL: This is still --

2 MR. SIEMON: We're still doing 2.

3 CHAIRWOMAN MORENO: This is all Division 2?

4 MR. RIEL: This is all Division 2.

5 CHAIRWOMAN MORENO: Okay.

6 MR. STEFFENS: Charlie, in that same two  
7 items, Item A and Item B, why do you talk about  
8 obtaining a certificate of use?

9 MR. SIEMON: I believe that if there's a  
10 change, if there's an addition, exterior alteration  
11 or proposed new construction, before a certificate of  
12 use will be issued, it has to be subject to Board of  
13 Architects review.

14 MR. STEFFENS: Right, but any change that  
15 you're coming to the City Architect or the Board of  
16 Architecture for requires a building permit before  
17 any certificate of use would be issued, so the  
18 process is, you go to them first, then you apply for  
19 a building permit. Then, after you complete your  
20 permit, then you would get a certificate of use.

21 MR. KORGE: Even for a fence, when you have  
22 an existing property you're using?

23 MR. STEFFENS: Well, you need a permit for  
24 your fence, so you go for approval of the fence.

25 MR. AIZENSTAT: But you don't need a

1 certificate of use.

2 MR. KORGE: You don't get a certificate of  
3 use for a fence, do you? I'm asking. I don't know.

4 MR. STEFFENS: I don't think so, but you  
5 would have to get a building permit first.

6 MR. KORGE: A permit, right.

7 MR. STEFFENS: So I don't know why you would  
8 mention the certificate of use, which is something  
9 further down the line, that wouldn't even occur  
10 unless you got a building permit.

11 MR. AIZENSTAT: But not all building permits  
12 require a certificate of use.

13 MR. STEFFENS: I don't think so.

14 CHAIRWOMAN MORENO: So what you're  
15 suggesting is, delete the certificate of use  
16 language?

17 MR. KORGE: Well, what does it hurt to have  
18 it in there?

19 MR. AIZENSTAT: I don't know if I would  
20 delete it.

21 MR. STEFFENS: It sounds confusing to me.

22 MR. AIZENSTAT: You might want to structure  
23 it differently or word it differently.

24 MR. KORGE: Well, what -- I mean, I don't  
25 understand why it's confusing. Either one. You

1 can't get either a certificate of use or a building  
2 permit until these criteria --

3 MR. STEFFENS: Well, the way it's written --

4 CHAIRWOMAN MORENO: But, really, what  
5 happens is, to get a building permit, you've got to  
6 get approval, and then you get a certificate of use  
7 if you've built in accordance with your approval.

8 MR. KORGE: Right.

9 CHAIRWOMAN MORENO: So the way that this is  
10 written doesn't say that. It says subject to getting  
11 a certificate of use and a building permit.

12 MR. SIEMON: The simple answer is, that's  
13 what the old Code provides, and we didn't change it.

14 MS. KEON: Well, maybe --

15 MR. RIEL: You could probably delete at the  
16 end of "Zoning," just delete everything else, because  
17 if you go back further in Division 2, you'll see what  
18 a building permit, and it says what you need to do  
19 for a zoning permit, and then a certificate of use.  
20 It's referenced in there, what actions you need to  
21 take first, so you can actually delete that, the last  
22 part of that sentence.

23 MR. STEFFENS: I think I would just remove  
24 the certificate of use from both of those paragraphs,  
25 because you have to get a building permit first, and

1 in the process of getting a building permit, you're  
2 going to get a certificate of use if it's required at  
3 the end of the building permit.

4 MR. SIEMON: After you get your CO --

5 MR. STEFFENS: Yeah.

6 MR. SIEMON: -- you hope.

7 MR. STEFFENS: I mean, you don't reference  
8 CO in here.

9 MR. RIEL: That's why I would suggest you  
10 just put a period after "Zoning."

11 MR. AIZENSTAT: Say that again.

12 MR. RIEL: Just put a period after "Zoning,"  
13 because there's a section that deals with building  
14 permits on Page 5 of 7, and zoning permit and  
15 certificate of use on Page 7 of 7, that says what  
16 actions you need to do prior to getting that, so --

17 MR. STEFFENS: Well, it's referenced in Item  
18 A, also, A and B, so if you just deleted --

19 MS. KEON: Right.

20 MR. STEFFENS: -- after "Zoning" in B, you  
21 still have it in A.

22 MS. KEON: You have it in A.

23 MR. RIEL: Right. You delete it in A, after  
24 the word "review."

25 MR. STEFFENS: "Board of Architects review."

1 MR. RIEL: Yep.

2 MR. STEFFENS: I thought maybe I could just  
3 go to the Board of Architects and then get a  
4 certificate of use.

5 CHAIRWOMAN MORENO: Swift.

6 MS. KEON: So, after "review"? You're  
7 striking everything after "review"?

8 MR. RIEL: We're striking, in Paragraph A,  
9 after "review," striking everything after that. In  
10 Paragraph B, on Line 17, after the word "Zoning,"  
11 striking everything after that.

12 MR. KORGE: And in Paragraph B, Line 15,  
13 after the word "review" and before the word "plans,"  
14 inserting "and approved," is that right, Mike? Oh,  
15 he left.

16 MR. STEFFENS: No, that wasn't my comment.  
17 That was the other Mike's comment.

18 MR. KORGE: The other Mike's comment.

19 CHAIRWOMAN MORENO: "And approved."

20 MR. SIEMON: I don't think I have anything  
21 else affirmative to point out through Section 3-206.  
22 Those are all provisions that are in your existing  
23 Code, and building permit is edited from your  
24 existing Code and I think there's not any substantive  
25 change. There have been some consolidation of terms

1 and definition of terms, but I'm not aware -- I don't  
2 recall any material changes that have been made to  
3 the existing Code.

4 We defined terms, like person, building  
5 structure, applicant and development approval, which  
6 had not been previously defined, so each -- the text  
7 used to explain it there, often inconsistent with an  
8 explanation elsewhere. We've consolidated those  
9 terms. And the Paragraph B, describing procedure, is  
10 what happens now, but was not in the old Code. It  
11 was just what had been used.

12 MR. KORGE: Were there any -- Excuse me for  
13 interrupting, but were there any reconciliations of  
14 material inconsistent definitions that you mentioned?

15 MR. SIEMON: Yes.

16 MR. KORGE: There were?

17 MR. SIEMON: Yeah. That's in Article 8, I  
18 believe it is.

19 MR. KORGE: Article 8. So you'll deal with  
20 it there?

21 MR. SIEMON: That's the last thing we do --

22 MR. KORGE: Okay.

23 MR. SIEMON: -- is show you what all the  
24 definitions are, but we -- all those terms I just  
25 described to you -- you know, sometimes person was

1 used, sometimes applicant was used, sometimes  
2 individual was used. We have consolidated that into  
3 person or persons, whatever they're referred to, and  
4 if you were an applicant, you are an applicant, no  
5 matter what it is, and we've defined that in a --  
6 There was, in the certificate of use language, which  
7 is Section 3-208 -- in the original draft, which was  
8 previously submitted to you, there was some language  
9 about how violations were enforced, and that has all  
10 been moved into the enforcement. So there were four  
11 or five different places where it described how  
12 enforcement would be carried out. We've consolidated  
13 that into a single provision.

14 But other than that, I think everything else  
15 is substantively the same. I know we discussed the  
16 reapplication provisions, but I don't think we  
17 changed them, as I recall, the limitations on  
18 reapplication, which are at 210.

19 MR. KORGE: The same time periods as exist?

20 MR. SIEMON: Correct. And so that's  
21 Division 2.

22 MR. KORGE: Do you need a motion on that?

23 CHAIRWOMAN MORENO: Are we done with  
24 Division 2?

25 MR. SIEMON: Yes.

1                   CHAIRWOMAN MORENO: Because I had a question  
2 on certificate of use.

3                   MR. SIEMON: Okay.

4                   CHAIRWOMAN MORENO: It says, "No person  
5 shall commence any use of any property until an  
6 application of certificate of use has been filed."  
7 Then it says, "All certificates of use shall be  
8 renewed by the applicant each year." Does that mean  
9 that I'm supposed to have a certificate of use for my  
10 house and be renewing it every year?

11                   MR. SIEMON: No, there's no certificate of  
12 use required for a residential use.

13                   MR. RIEL: I don't believe so.

14                   CHAIRWOMAN MORENO: So should it be, "No  
15 person shall commence any use of any nonresidential  
16 property"?

17                   MR. SIEMON: No, because there are some --  
18 we need to have some language that says where the  
19 certificate of use ordinance -- all uses subject to  
20 the certificate of use ordinance.

21                   CHAIRWOMAN MORENO: Yeah, because otherwise  
22 this sounds like you need it for your house.

23                   MR. KORGE: Do you want to say, "except as  
24 otherwise set forth in this Code"?

25                   CHAIRWOMAN MORENO: Well, let him figure out

1     how to say it.

2             MR. SIEMON:  It's any use of any property  
3     which requires a certificate of use, and we'll have  
4     to get the citation of the Code, pursuant to Section  
5     whatever it is, nor shall any, et cetera, be --

6             CHAIRWOMAN MORENO:  Can I have a motion to  
7     approve, subject to the changes that we've  
8     discussed?

9             MR. STEFFENS:  So moved.

10            CHAIRWOMAN MORENO:  Second?

11            MR. KORGE:  Second.

12            CHAIRWOMAN MORENO:  Call the roll, please.

13            MS. MENENDEZ-DURAN:  Michael Steffens?

14            MR. STEFFENS:  Yes.

15            MS. MENENDEZ-DURAN:  Eibi Aizenstat?

16            MR. AIZENSTAT:  Yes.

17            MS. MENENDEZ-DURAN:  Pat Keon?

18            MS. KEON:  Yes.

19            MS. MENENDEZ-DURAN:  Tom Korge?

20            MR. KORGE:  Yes.

21            MS. MENENDEZ-DURAN:  Michael Tein?

22            MR. TEIN:  Yes.

23            MS. MENENDEZ-DURAN:  Cristina Moreno?

24            CHAIRWOMAN MORENO:  Yes.

25            MR. SIEMON:  Article 4 is, by and large --

1 MR. RIEL: Three, three. Article 3.

2 MR. KORGE: Article 3.

3 MR. SIEMON: I'm sorry, Article -- Division  
4 3 --

5 MR. RIEL: Division.

6 MR. SIEMON: -- is, by and large, simply a  
7 reformatting and presentation of the various notice  
8 provisions. Most of them are governed by State law,  
9 and what we've done is just consolidate them.

10 The general applicability requirements. The  
11 chart which is on 2 of 7 -- sorry about that -- is  
12 intended to try to give you a handy overview of what  
13 the time periods are. It continues over to Page 3 of  
14 7. And then the balance of the provisions identify  
15 what publication is required, what the size and  
16 character of the notice is required, and where  
17 posting of property is required, what is the minimum  
18 requirements for each type of notice, and then  
19 finally, for mail notices, and those are the elements  
20 of the first part of Article -- Division 3, which is  
21 Uniform Notice, and by and large, these are just  
22 presented as State Statute.

23 Again, we've used the same time -- we've  
24 used the same language, and I'm not aware of anything  
25 substantive that we have deviated from.

1           MR. RIEL: I think the biggest change that  
2 it has, this was spread all over the Code, and I will  
3 tell you, probably in terms of reducing the number of  
4 pages in the current Code, by doing this in a chart,  
5 it went from probably 40 pages to 3.

6           MS. HERNANDEZ: May I just interject here a  
7 moment? I have always recommended against, and  
8 continue to hold the legal position that, on the last  
9 section, which ostensibly complies with Chapter 286,  
10 ex parte communication, it's my position and that  
11 have many local city attorneys -- many local city  
12 attorneys differ, but my position is that only the  
13 judiciary can make a due process determination, and  
14 they've done so and held that ex parte communications  
15 shall not be had. I don't believe that, even if we  
16 adopt an ordinance, as this is purporting to do, that  
17 we will be able to overcome any challenge in court.

18           My position would be, if you want to  
19 recommend that the City Commission adopt this, you  
20 know, I will make the same presentation to the City  
21 Commission. I do not believe that we would withstand  
22 a challenge in court, so --

23           MR. KORGE: This would be subdivision --  
24 or subsection C?

25           MS. HERNANDEZ: Right.

1 MR. KORGE: Ex parte communications?

2 MS. HERNANDEZ: Yes.

3 MR. KORGE: The whole thing, 1, 2 and 3?

4 MS. HERNANDEZ: Yes.

5 CHAIRWOMAN MORENO: You're suggesting we  
6 strike all that?

7 MS. HERNANDEZ: I am suggesting that we  
8 strike it and not encourage any ex parte  
9 communications.

10 MR. STEFFENS: Where is this?

11 MR. AIZENSTAT: We actually --

12 MR. KORGE: Right here, Page 7 of 7.

13 MR. TEIN: I think that's Page 7 of 7.

14 MR. SIEMON: 7 of 7, Paragraph C, in the  
15 middle of the page.

16 MR. STEFFENS: You're way ahead of us.

17 MS. HERNANDEZ: 7 of 7.

18 MR. AIZENSTAT: They're ahead of us. We  
19 haven't gotten there.

20 MR. STEFFENS: They're way ahead of us.

21 MS. HERNANDEZ: Well, you know, what can I  
22 tell you? I jumped in.

23 MR. AIZENSTAT: That's why I was --

24 MS. HERNANDEZ: I was ahead of Eibi.

25 MR. AIZENSTAT: We hadn't gotten there yet.

1 MR. STEFFENS: Oh, oh, oh.

2 MR. AIZENSTAT: That's why I was lost a  
3 little bit.

4 MR. SIEMON: Oh, she jumped to  
5 quasi-judicial.

6 MS. HERNANDEZ: I do that.

7 MR. SIEMON: She went right through Notice.

8 MS. HERNANDEZ: Yeah.

9 MR. KORGE: Excuse me, the chart, is this  
10 the only place that the days are specified for each  
11 of these notices?

12 MR. RIEL: Yes. Yes, absolutely.

13 CHAIRWOMAN MORENO: I love this. I think it  
14 looks great.

15 MR. AIZENSTAT: When you speak about  
16 publication --

17 CHAIRWOMAN MORENO: I can't believe he got  
18 all this in one place.

19 MR. AIZENSTAT: -- can you define  
20 publication?

21 MR. SIEMON: Yeah. There are some  
22 statutory provisions that require notice by  
23 publication, and that is publishing in a newspaper of  
24 general circulation.

25 MR. AIZENSTAT: What about presently? We

1 have such vested interest in our E-News. Could we  
2 somehow also get it out there, because there's a lot  
3 of citizens that receive that e-mail or see that.

4 MS. HERNANDEZ: That would be courtesy.

5 MR. AIZENSTAT: That would be more courtesy?

6 MS. HERNANDEZ: That would be courtesy  
7 notice.

8 MR. SIEMON: We would encourage you to do  
9 that by administrative practice and not by  
10 statutory --

11 CHAIRWOMAN MORENO: Requirement.

12 MR. SIEMON: Particularly since I just got a  
13 bunch of e-mails that just showed up in my office  
14 from two weeks ago, and I don't know where they've  
15 been, but they just --

16 MS. HERNANDEZ: Cyberspace.

17 MR. SIEMON: It's just -- it's a fact, about  
18 15 e-mails showed up from about 15 days ago, and just  
19 all in a block.

20 MR. STEFFENS: On this chart, for example,  
21 under variances, you have publication, posting and  
22 mail. So all three are required for a variance?

23 MR. SIEMON: Yes.

24 MR. STEFFENS: So, when you have something  
25 like that, for other ones, all of them are required?

1           MR. SIEMON:  Where it says mail -- whatever  
2   it is.

3           MR. STEFFENS:  Uh-huh.

4           MR. SIEMON:  But yes.

5           MR. STEFFENS:  So, on Historic Preservation,  
6   you have the first one, notification to owners  
7   regarding designation.  That only requires  
8   publication, and then the next one, notice of public  
9   hearing regarding designation of landmark or district  
10  requires posting and mail?

11          MR. SIEMON:  We'll make sure Dona confirms.

12          MS. LUBIN:  I knew I was here for a reason.

13          MR. SIEMON:  Dona and my partner,  
14  Wendy, are --

15          MS. LUBIN:  As it stands now, we post the  
16  properties for designation, we publish it in a  
17  general circulation newspaper, and we send notices  
18  out to a thousand feet.

19          MR. SIEMON:  That's for the public hearing.

20          MS. LUBIN:  That's for the public hearing  
21  for designations, this one.

22          MR. SIEMON:  Right.

23          MR. STEFFENS:  So both notification to  
24  owners regarding designation of landmark or district  
25  and notification of public hearing regarding

1 designation of landmark or district, both of those  
2 require publication, posting and mail?

3 MS. LUBIN: Well, the notification to the  
4 owners has to be 10 days. That's mailed to them 10  
5 days, with a Staff report.

6 CHAIRWOMAN MORENO: Yeah, but that's -- see,  
7 that's --

8 MS. LUBIN: That's a little ambiguous, the  
9 way it's written, because --

10 CHAIRWOMAN MORENO: Yeah.

11 MS. LUBIN: -- what we put in the  
12 publication is the notification of public hearing.  
13 Not the owner, obviously.

14 MR. KORGE: Okay, then mail should be on the  
15 first line, and I guess publication --

16 CHAIRWOMAN MORENO: Posting and mail.

17 MR. KORGE: -- posting and mail, for  
18 the second line?

19 MS. LUBIN: Yeah.

20 MR. STEFFENS: Posting, publication and  
21 mail, or just --

22 MS. LUBIN: For the public hearing, we do  
23 all three.

24 MR. SIEMON: Yeah.

25 MR. KORGE: They mail everybody in the

1 district --

2 MS. LUBIN: Right.

3 MR. KORGE: -- to be designated.

4 MS. LUBIN: Within a thousand feet.

5 MR. SIEMON: So --

6 MR. LUBIN: Now, on the following one,  
7 certificate of appropriateness, if it has a variance,  
8 we send out to a thousand feet. If it does not have  
9 a variance, we just post the property. So that's  
10 certificate of appropriateness. These three apply  
11 only if there's a variance associated with  
12 certificates of appropriateness.

13 CHAIRWOMAN MORENO: The mailing.

14 MS. LUBIN: I don't know how to put that on  
15 a chart --

16 MR. STEFFENS: Publication and posting --

17 MS. LUBIN: -- but that's what we do.

18 MR. SIEMON: Right here.

19 MR. STEFFENS: Publication and posting and  
20 mail.

21 MS. LUBIN: But you can have a special  
22 certificate of appropriateness that doesn't have a  
23 variance along with it.

24 MR. SIEMON: And it doesn't require  
25 publication, posting or mail?

1 MS. LUBIN: We only post the property.  
2 That just notifies people that there's going to be  
3 something done to the property, that it's going to go  
4 to a public hearing, but unless there's a variance,  
5 we don't send out notices to a thousand feet.

6 MR. SIEMON: Okay, so certificate of  
7 appropriate is posting?

8 MS. LUBIN: Right.

9 MR. SIEMON: And if it's C of A, it's all  
10 three?

11 MS. LUBIN: Right.

12 MR. SIEMON: There. Those are your  
13 glasses.

14 MS. LUBIN: My glasses.

15 MR. STEFFENS: Don't leave, Dona, because  
16 you might be able to answer a Board of Architects  
17 question.

18 MS. LUBIN: Okay.

19 MR. STEFFENS: The Board of Architects used  
20 to have two levels of notice, didn't they? If it was  
21 under a certain amount, it could be posted within the  
22 same week, but if it was over a certain amount, it  
23 was like a week ahead or something like that?

24 MS. LUBIN: Yeah.

25 MR. RIEL: That's in here.

1 MS. LUBIN: A threshold. There's a  
2 threshold that there's a two-week delay to apply,  
3 and then the property is posted.

4 MR. STEFFENS: I don't know if that's  
5 application or posting.

6 MR. RIEL: Basically, no posting shall be  
7 required for public hearings before the Board of  
8 Architects unless the value of the proposed  
9 development exceeds \$25,000.

10 MR. STEFFENS: So no posting under --

11 MS. LUBIN: That's where it is.

12 MR. RIEL: Correct.

13 MR. STEFFENS: Okay.

14 MS. LUBIN: I'd better not take anything  
15 with me.

16 CHAIRWOMAN MORENO: Can I suggest, given the  
17 discussion now with Dona, that before you adopt this  
18 chart finally, you check with everybody to make sure  
19 we got it right? Because I love the chart, I think  
20 it's wonderful, but let's just make sure we got it  
21 right.

22 MR. SIEMON: The next subject are the rules  
23 of procedure for quasi-judicial proceedings, and the  
24 City Attorney has indicated her doubts that the  
25 compliance with the requirements that are set out in

1 the statute will -- will, I guess -- I don't want to  
2 put words in her mouth, but necessarily assure you  
3 that you will not --

4 MS. HERNANDEZ: Right.

5 MR. SIEMON: Be subject to a due process  
6 challenge, and I happen to agree with her.

7 MS. HERNANDEZ: Thank you, Charlie.

8 MR. SIEMON: The statute --

9 MS. HERNANDEZ: Can I have a copy of this  
10 portion of the tape, please?

11 MR. SIEMON: The statute does -- is adopted.  
12 I don't believe it's a prudent course. We  
13 universally recommend to our clients that they avoid  
14 ex parte communications, because you do bear a  
15 substantial risk, in our opinion, of ultimately --  
16 the Legislature doesn't seem to agree, but we've  
17 included it. I guess we probably included it because  
18 we recommended it. I'm not sure of the origins. I  
19 can't tell you. Most of our clients do have it in  
20 their Code, in the off chance that Liz and I are  
21 wrong, because the Legislature did adopt it in  
22 response to the case here.

23 MR. TEIN: Can I ask a question about C1 in  
24 the last section?

25 MS. HERNANDEZ: Right.

1           MR. TEIN: Mail notices. I'm sorry. It  
2 says that the mail should be done within a 500-foot  
3 radius, to all properties within a 500-foot radius.  
4 What is that? Is that about a block?

5           MR. SIEMON: Yeah.

6           MS. HERNANDEZ: Where is that? I'm sorry,  
7 what page is --

8           MR. TEIN: C1, Page 6.

9           MR. SIEMON: 6 of 7, C1, at the top.

10          MR. AIZENSTAT: Do you feel that that's not  
11 enough, a 500-foot radius?

12          MS. HERNANDEZ: I thought the Commission had  
13 adopted a resolution, increasing that to a thousand.

14          MS. LUBIN: It's a thousand now.

15          MS. HERNANDEZ: So we should keep it at a  
16 thousand, since we know that that was the desire of  
17 the City Commission.

18          MR. RIEL: I would suggest you delete  
19 "within a 500-foot radius," because that is in  
20 another place in the Code --

21          MS. HERNANDEZ: Okay.

22          MR. RIEL: -- where you will see, it is  
23 recommended at a thousand.

24          MR. AIZENSTAT: So take it out altogether?

25          MR. RIEL: So take out those four words.

1 MR. SIEMON: Within --

2 MR. RIEL: Within a 500-foot radius.

3 MR. KORGE: Where else in the Code would it  
4 be, and why wouldn't it be here instead?

5 MR. RIEL: Because there's another section  
6 that deals with the --

7 MS. KEON: Notice provisions?

8 MR. RIEL: -- notice provisions.

9 CHAIRWOMAN MORENO: Yeah, but the problem --  
10 the problem is, you read it here and it says, "Mailed  
11 to property owners whose addresses are known by  
12 reference to the latest ad valorem," but which  
13 property owners?

14 MS. HERNANDEZ: Right. I think you almost  
15 have to put in the radius.

16 CHAIRWOMAN MORENO: I mean, you have to say  
17 within a 1,000-foot radius unless otherwise provided  
18 elsewhere, or something like that, but you've got to  
19 say what property owners.

20 MR. TEIN: Is this the provision that gives  
21 the instructions for all mail notices?

22 MS. HERNANDEZ: Yes.

23 MR. SIEMON: Yes.

24 MS. HERNANDEZ: That's for all the boards.

25 MR. KORGE: Then this is where it belongs.

1 MR. TEIN: Right.

2 MS. KEON: Do you have definitions, like  
3 affected property owners? Do you use those words?  
4 I mean, is there a place in here where there are  
5 definitions?

6 MS. HERNANDEZ: I'm sorry?

7 MR. SIEMON: Article 8.

8 MR. RIEL: Article 8 is the definitions.

9 MS. KEON: Right. Well --

10 MR. SIEMON: Where are the definitions?  
11 They're in Article 8.

12 MS. KEON: Right. So, if you use affected  
13 property owners, do you define that as affected  
14 property owners someplace else, and you include that  
15 with the number of whatever it is --

16 MR. SIEMON: Yes, it says affected property  
17 owner. That is --

18 MS. KEON: I know, but could you just --  
19 here, just use affected property owners, and then you  
20 would define it under your definitions, or no?

21 MR. SIEMON: This is a courtesy notice and  
22 it is to a property owner, and we don't take a  
23 position and don't intend to take a position, one way  
24 or not, whether they qualify as an affected person.

25 MS. HERNANDEZ: Right. Affected property

1 owner is really a question of fact in each case.

2 MS. KEON: Okay, so it's not within --

3 MR. SIEMON: It's not the defined --

4 MS. HERNANDEZ: Right.

5 MS. KEON: So, if you're going to -- if we  
6 have a radius, then the radius should be included  
7 here in this provision?

8 MS. HERNANDEZ: I think it should be. I  
9 think you need to, because especially --

10 MS. KEON: Yeah.

11 MS. HERNANDEZ: -- if we're trying to be  
12 clear, it doesn't matter that we say it twice.

13 MS. KEON: Right, right, but I think we  
14 should say it here, yes.

15 MS. HERNANDEZ: Uh-huh.

16 CHAIRWOMAN MORENO: I think, otherwise, you  
17 don't know who you're --

18 MS. KEON: Right, you don't know who the  
19 property owner is. Okay.

20 MR. KORGE: Well, when we get to the other  
21 place in which it is set forth, we can look at it and  
22 see if it makes sense there.

23 MS. HERNANDEZ: Okay.

24 MS. KEON: Okay, but here, it should say a  
25 thousand.

1                   MR. AIZENSTAT: How is that determined? Is  
2 there some kind of a map that you have, or how do you  
3 tabulate your thousand?

4                   MS. HERNANDEZ: Well --

5                   MR. RIEL: It's based on the perimeter  
6 property boundaries of the parcel or parcels.

7                   MR. STEFFENS: There's a company that does  
8 it. You tell them the address of the property and --

9                   MR. RIEL: There's a company that does it,  
10 and internally, we use a GIS system --

11                   MR. AIZENSTAT: Okay.

12                   MR. RIEL: -- and it just plots out a  
13 thousand feet, and all the labels are automatically  
14 printed.

15                   MR. AIZENSTAT: So, as long as that property  
16 touches within that radius, it qualifies.

17                   MS. HERNANDEZ: Right.

18                   MR. RIEL: Exactly.

19                   MS. KEON: Can I ask a question? Does  
20 this, for -- does this apply to like public  
21 properties, if the City was going to commence --

22                   MR. RIEL: Absolutely.

23                   MS. KEON: All right, so -- I thought that  
24 there -- I remember, at some point, hearing a  
25 discussion on the notice for public properties, that

1 people wanted --

2 MS. HERNANDEZ: The County requirement?

3 MS. KEON: No, no, no. Here in the City,  
4 that -- I remember, one time, residents talking about  
5 wanting --

6 MS. HERNANDEZ: Greater notice?

7 MS. KEON: -- greater notice for public  
8 properties than just a thousand feet, because it --  
9 and I don't know if it was -- for multiple reasons.

10 MS. HERNANDEZ: Right.

11 MR. KEON: You know.

12 MS. HERNANDEZ: I don't have an exact -- I  
13 mean, I remember a discussion --

14 MS. KEON: I just remember that discussion,  
15 and I tried to remember what it was related to, and I  
16 don't remember, but I just -- I remember it was  
17 public property, and I think it had things to do  
18 with -- maybe with --

19 MS. HERNANDEZ: The Rouse property?

20 MS. KEON: Yeah, I mean, I think it was like  
21 that sort of thing, it was with the Rouse property.  
22 I think it was even here when they proposed, you  
23 know, the changes for building City Hall.

24 MS. HERNANDEZ: It came up during the annex,  
25 it came up during --

1 MS. KEON: Yeah.

2 MR. HERNANDEZ: -- Rouse, and it was --  
3 People were saying, "I didn't get actual notice,  
4 because you're only doing it" -- I'll tell you what  
5 happened.

6 MS. KEON: Yeah.

7 MS. HERNANDEZ: During that time, it was the  
8 500-foot radius.

9 MS. KEON: Right.

10 MS. HERNANDEZ: And the City Commission, at  
11 the time, extended it to a thousand feet.

12 MS. KEON: Right.

13 MR. STEFFENS: After.

14 MS. HERNANDEZ: After the annex, right.

15 MR. STEFFENS: They extended it to a  
16 thousand feet after --

17 MS. KEON: Right, after, but I --

18 MR. STEFFENS: -- because there were  
19 complaints that within 500 feet of those facilities,  
20 there were no residents.

21 MS. HERNANDEZ: Right.

22 MR. STEFFENS: So nobody was really --

23 MS. KEON: Right.

24 MR. STEFFENS: -- in effect, being noticed.

25 MS. KEON: Right. But I thought that there

1 was also discussion that with large public parcels or  
2 public buildings, the policy --

3 MR. KORGE: Mail to everybody in the City?

4 MS. KEON: Well, I don't know that it was  
5 everybody within the City, but there should be --

6 MR. RIEL: Well, there's different types of  
7 applications. Like a DRI requires 1,500 feet.

8 MS. KEON: Right.

9 MR. RIEL: Annexation is 1,500 feet. But  
10 otherwise, the standard that the Commission has  
11 indicated to Staff is, every notice, courtesy notice,  
12 is a minimum of a thousand feet.

13 MR. KORGE: Well, if it varies, we shouldn't  
14 specify just a thousand feet.

15 MR. RIEL: That's why I'm saying, I can't  
16 find it right now, but there's another chart that  
17 indicates in terms of -- because it's in the current  
18 Code, right now, in terms of the notification,  
19 because that -- we just recently amended that, about  
20 two or three years ago.

21 MR. KORGE: We should cross-reference to  
22 that chart.

23 MR. RIEL: That's what I'm saying, is --  
24 that's why I'm saying, eliminate this, because it is  
25 elsewhere in the Code.

1                   CHAIRWOMAN MORENO: You can't. You can't  
2 eliminate it from here.

3                   MR. KORGE: No, but cross-reference to the  
4 chart.

5                   MR. AIZENSTAT: Can you say, "Take a look  
6 at," such and such?

7                   MS. KEON: Right.

8                   MR. KORGE: Yeah, just cross-reference that.

9                   MS. HERNANDEZ: Further clarify it.

10                  CHAIRWOMAN MORENO: To all property owners  
11 entitled to reference under these sections, or  
12 something like that.

13                  MS. HERNANDEZ: Right.

14                  MR. RIEL: And I can tell you, there's also  
15 a provision that allows the secretary or the director  
16 of the department to go beyond that thousand-foot  
17 notice.

18                  For instance, University of Miami, when they  
19 come in, they're only required a thousand, but given  
20 the interest in that type of application, I have  
21 always made them do 1,500 feet.

22                  MS. HERNANDEZ: Right.

23                  MR. RIEL: And that, on a typical  
24 application, just to kind of give you an idea, that  
25 can be notice to about 800 to a thousand people.

1 It's a significant mail-out.

2 CHAIRWOMAN MORENO: Okay.

3 MR. RIEL: We, in the Department, probably  
4 mail out about 2,000 notices a month.

5 MR. STEFFENS: I know that after the annex  
6 issue and they were discussing changing that rule, it  
7 was discussed whether it should be a thousand feet or  
8 1,500 feet, and the determination was made to move it  
9 to a thousand feet --

10 MS. HERNANDEZ: Right.

11 MR. STEFFENS: -- at that time.

12 MR. RIEL: Annexations are 1,500 in the  
13 current Code, right now.

14 MR. STEFFENS: Yeah, but that's --

15 MS. HERNANDEZ: But Michael is correct. Mr.  
16 Steffens is correct. That's where the discussion  
17 came up.

18 CHAIRWOMAN MORENO: So what are we agreeing  
19 on this?

20 MS. KEON: That it should be referenced --

21 MR. AIZENSTAT: Cross-referenced.

22 MS. KEON: -- instead of within a 500-foot  
23 radius, it should be referenced to where it's  
24 included in the Code, where the applicable --

25 CHAIRWOMAN MORENO: Okay.

1 MS. KEON: -- notice provisions are.

2 MR. RIEL: We'll go back and look at it and  
3 make sure that it's clear in terms of the noticing,  
4 because it's in the current Code right now.

5 CHAIRWOMAN MORENO: Right, but I don't think  
6 you can take it out, Eric. I wouldn't want to see it  
7 taken out. You need to say who gets noticed --

8 MS. KEON: Right.

9 CHAIRWOMAN MORENO: -- and if you do it by  
10 cross-reference, that's fine.

11 MR. RIEL: Okay. We'll clarify it.

12 CHAIRWOMAN MORENO: On the quasi-judicial  
13 procedures, on the part you want deleted, Liz, should  
14 we leave in, however, the 2 and 3, and just delete  
15 1?

16 MS. HERNANDEZ: No.

17 MR. KORGE: Delete 2 and 3, not 1.

18 MR. SIEMON: 2 and 3 is, I think -- C was  
19 what she was talking about.

20 CHAIRWOMAN MORENO: Right. She's talking  
21 about deleting everything. But what happens if  
22 somebody does have an ex parte communication with  
23 you, even though it's not there? I mean, this tells  
24 me what I'm supposed to do.

25 MS. HERNANDEZ: Right. Well, we follow the

1 process, you know, that was stated in Jennings and  
2 Snyder. So, you know, basically, the Jennings ex  
3 parte rule, we follow it, and we make, you know, the  
4 five-question disclosures.

5 If you want to leave some form of it, I  
6 mean, we would have to say, "There shall be no ex  
7 parte communications. In the event that there is,  
8 this is what you do."

9 MR. KORGE: Well, if I understand  
10 correctly, the Legislature has apparently enacted a  
11 statute --

12 MS. HERNANDEZ: Right.

13 MR. KORGE: -- attempting to overturn the  
14 Jennings decision, for some various --

15 MS. HERNANDEZ: Right. We've reconciled the  
16 Jennings decision with due process issues.

17 MR. KORGE: So what you're suggesting is,  
18 just leave it unstated, and we're going to continue  
19 to abide by the Jennings decision. If someone  
20 challenges us, among other defenses would be that the  
21 statute has changed the Jennings decision, and  
22 whether that's constitutional or not, I guess, is an  
23 issue to be decided somewhere else, but you don't  
24 want to make that decision here.

25 MS. HERNANDEZ: I don't want to encourage --

1 MR. KORGE: Right.

2 MS. HERNANDEZ: -- ex parte communications.  
3 I think that that would not be the way we want to go.

4 MR. KORGE: Right. But you don't want to  
5 prohibit it flat out, because it may be legal.

6 CHAIRWOMAN MORENO: Yeah, and if you  
7 prohibit it flat out --

8 MR. KORGE: So just leaving it --

9 CHAIRWOMAN MORENO: -- you've got a  
10 problem.

11 MR. KORGE: Just getting rid of this --

12 MS. HERNANDEZ: We have always prohibited it  
13 flat out.

14 MR. KORGE: So getting rid of this whole  
15 thing obviates the issue?

16 MS. HERNANDEZ: Right.

17 MR. KORGE: Yeah. I see that.

18 MS. HERNANDEZ: Anyway, that's my  
19 recommendation.

20 MR. TEIN: What does -- on Line 12, on that  
21 same page, cross-examination by applicant? Isn't it  
22 the applicant who's going to be cross-examined or  
23 does it contemplate witnesses?

24 MR. SIEMON: Everybody is cross-examined.

25 MR. TEIN: Witnesses being called?

1 MS. HERNANDEZ: Yeah. Supposedly, we  
2 allow -- it's a much more informal process than in  
3 court, but you do allow, you know, an exchange of  
4 questions and answers, and it is described as  
5 cross-examination, so --

6 MR. TEIN: Okay.

7 MR. SIEMON: That's the term the court has  
8 used.

9 MS. HERNANDEZ: Right.

10 CHAIRWOMAN MORENO: Okay, so just so we can  
11 vote on Division 3 --

12 MR. KORGE: Do you need a motion?

13 CHAIRWOMAN MORENO: Well, let's -- I just  
14 want to summarize for myself what we're doing. We're  
15 doing -- on the chart, we're going to double-check to  
16 make sure we've got all of these things right with  
17 all the people who do it. On the --

18 MR. KORGE: And we know that Historic  
19 Preservation needs to be modified, because it doesn't  
20 correctly set forth --

21 MR. SIEMON: Right.

22 MR. KORGE: -- the procedures we're  
23 following right now.

24 MR. SIEMON: But I've entered on my master  
25 the changes that Dona identified.

1 CHAIRWOMAN MORENO: Okay, and then we said  
2 the thing about who gets noticed is going to be  
3 referenced to other sections in the Code that say the  
4 radius, and then the last thing we said is, we're  
5 going to take out all of C --

6 MR. SIEMON: C.

7 CHAIRWOMAN MORENO: -- of Section 303.

8 MS. HERNANDEZ: So then we have to  
9 correct, on Page 6 of 7, sub B -- we just have to --  
10 Number 1 would be, "Disclosure of ex parte  
11 communications and personal investigations," period.

12 MR. KORGE: Right.

13 MS. HERNANDEZ: And take out "pursuant to  
14 Section 3-303."

15 CHAIRWOMAN MORENO: What's a personal  
16 investigation, if you drive by a property?

17 MS. HERNANDEZ: Right. If -- You're not  
18 prohibited from driving by the property, but you need  
19 to disclose, because the idea is that the applicant,  
20 Staff and whoever is affected should know everything  
21 that you're taking into consideration before you're  
22 rendering your decision.

23 MR. KORGE: If you drive by the property  
24 every day on your way to work?

25 MS. HERNANDEZ: No, no, no.

1 CHAIRWOMAN MORENO: Okay, no.

2 MS. KEON: If you go by the property --

3 MR. KORGE: Just if you actually investigate  
4 it.

5 MR. SIEMON: It's an investigation.

6 MS. HERNANDEZ: Right, if it's part of your  
7 investigation.

8 MR. SIEMON: But it might not be the  
9 application. For example, sometimes it's someone who  
10 has developed another project, and you go and look at  
11 that, because it's a finished product. That's not  
12 inappropriate, but you should disclose it.

13 MS. HERNANDEZ: Right.

14 MR. AIZENSTAT: But if you go to the  
15 physical site where they're going to bring up that  
16 project, you need to disclose that you went to look  
17 at the site?

18 MS. HERNANDEZ: Right.

19 MR. AIZENSTAT: Even though nobody was  
20 there, it could a vacant land or anything?

21 MS. HERNANDEZ: Correct.

22 MR. SIEMON: Yes, because that's information  
23 you're going to take into account, no matter what.  
24 If you saw something subliminally -- The applicant  
25 ought to have a right to know that you've seen the

1 property, and to be able to respond if he or she  
2 thinks it's appropriate. That's the whole basis of,  
3 they're entitled to know what's in your head.

4 MS. HERNANDEZ: It's scary.

5 MR. SIEMON: What you're going to use to  
6 consider in making your decision, and that's what the  
7 investigation is. If you drive by it every day,  
8 that's -- I mean, that's part of your background  
9 acquired information, but if you make a special  
10 visit, you look and draw conclusions or perceive  
11 facts, they ought to be disclosed.

12 CHAIRWOMAN MORENO: Okay. Are we ready for  
13 a motion?

14 MR. KORGE: I'll move to adopt Article 3,  
15 Division 3, with the changes that Cristina previously  
16 described, that is, double-checking and correcting  
17 the chart on Pages 2 and 3 of 7, cross-referencing  
18 the section of chart that sets forth the radius for  
19 publication notice -- excuse me, mail notice -- on  
20 Page 6 of 7, at Line 8, also deleting on Page 6 of 7,  
21 from Line 56, the words "pursuant to Section 3-303C,  
22 and on Page 7 of 7, deleting Subsection C, beginning  
23 at Line 22 through Line 48.

24 CHAIRWOMAN MORENO: Very thorough.

25 Do I have a second?

1 MR. STEFFENS: Second.

2 CHAIRWOMAN MORENO: Call the roll, please.

3 MS. MENENDEZ-DURAN: Eibi Aizenstat?

4 MR. AIZENSTAT: Yes.

5 MS. MENENDEZ-DURAN: Pat Keon?

6 MS. KEON: Yes.

7 MS. MENENDEZ-DURAN: Tom Korge?

8 MR. KORGE: Yes.

9 MS. MENENDEZ-DURAN: Michael Tein?

10 MR. TEIN: Yes.

11 MS. MENENDEZ-DURAN: Michael Steffens?

12 MR. STEFFENS: Yes.

13 MS. MENENDEZ-DURAN: Cristina Moreno?

14 CHAIRWOMAN MORENO: Yes.

15 MR. SIEMON: The next division, Division 4,  
16 is Conditional Uses. I said previously, I said that  
17 there are a number of different kinds of special  
18 discretionary reviews. Where they are not governed  
19 by a specific set of rules, we've consolidated them  
20 into minor and major conditional uses, and the minor  
21 conditional use are -- it's what you decide are  
22 bucket two, that I described earlier, and three are  
23 the major conditional uses.

24 As a result of our prior review with you,  
25 the minor conditional uses are made by the

1 Development Review official, subject to an appeal to  
2 this Board. It's a professional Staff determination,  
3 after Board of Architects recommendation, to grant or  
4 approve.

5 The City Manager or the developer can  
6 appeal, whether it's denied or approved with  
7 conditions, and that would then go to this body, and  
8 you would make a determination whether to grant the  
9 appeal and approve it or approve with different or  
10 modified conditions.

11 MR. TEIN: I'm sorry. Can you give an  
12 example of a conditional use?

13 MR. SIEMON: I can. In the limited  
14 commercial district, the CL district, nighttime uses,  
15 that is, things that take place during the night, are  
16 not permitted as of right. They require you to go  
17 through a discretionary approval to ensure that  
18 you've taken certain mitigative steps to address any  
19 potential adverse consequences of the nighttime  
20 operation of that property, and it's where something  
21 is -- involves the exercise of discretion, subject to  
22 standards, and the level of review, is it  
23 professional judgment, subject to an appellate review  
24 by this body, or is it review/public hearing by this  
25 body, final decision by the City Commission, depends

1 on the amount of discretion and the potential for  
2 external impacts.

3 CHAIRWOMAN MORENO: And we're not deciding  
4 here what's minor or what's major?

5 MR. SIEMON: We're not.

6 CHAIRWOMAN MORENO: We're going to do that  
7 when we do -- okay.

8 MR. SIEMON: And I --

9 CHAIRWOMAN MORENO: This is just a  
10 procedure, so we have to keep it in mind when we make  
11 that decision.

12 MR. SIEMON: Right, absolutely, and it's  
13 bucket one, bucket two and bucket three, and just for  
14 historical perspective, we originally recommended  
15 that major conditional uses be the decision of this  
16 body, subject to an appeal to the Commission, and you  
17 all felt that those large decisions should be a  
18 recommendation on your behalf, and go to the  
19 Commission for final action.

20 MR. STEFFENS: That's for major conditional  
21 uses.

22 MR. SIEMON: Major conditional uses.

23 MR. STEFFENS: Minor conditional use only  
24 has one level of appeal, and that's to us?

25 MR. SIEMON: That's correct.

1           MR. STEFFENS: After us, if we deny it, then  
2 they can't --

3           CHAIRWOMAN MORENO: It's over.

4           MR. AIZENSTAT: Is there a time period? For  
5 example, at the Board of Adjustments, you can't come  
6 back for one year or something like that. Or is it  
7 dead in the water?

8           MR. SIEMON: There are time limits for  
9 reapplications, time descriptions for reapplications,  
10 and --

11           MR. STEFFENS: So would that be a  
12 reapplication for the same thing --

13           MR. RIEL: Yes.

14           MR. SIEMON: Yes.

15           MR. STEFFENS: -- or a reapplication by the  
16 same applicant?

17           MR. SIEMON: No. It's for substantially the  
18 same project, a reapplication. If someone gets  
19 turned down, they go back, they listen to what the  
20 concerns were, they modify the project so it's  
21 materially different, they would then not be  
22 proscribed from a second application.

23           Our view of the minor conditional use is  
24 that they do involve judgments, but by and large,  
25 they involve technical and professional judgments

1 that are -- that don't imply matters of policy. They  
2 really have to do with how you're doing it and do  
3 they have the desired effect, and that's why we  
4 think -- our general recommendation to clients is,  
5 that is something best done by professional Staff and  
6 lay decision-makers who are not elected officials,  
7 because they are the body most inclined to judge  
8 things on the merits, because they don't have direct  
9 constituent responsibility.

10 MR. TEIN: So, when it says "Staff  
11 recommendation," in the middle of the first chart,  
12 that's the Development Review Committee staff?

13 MR. SIEMON: That's correct. That's what  
14 the Development Review Committee produces, is a Staff  
15 recommendation that goes to the Board of Architects,  
16 and then, after the Board of Architects, comes back  
17 to the official who issues the decision.

18 Because that decision is potentially final,  
19 we've consolidated the process to make sure we're  
20 getting appropriate decisions that are written  
21 consistently, that are not issued by a bunch of  
22 different people. There are specific  
23 responsibilities delegated by the City Manager, so  
24 that we can ensure what comes out is a decision that  
25 the City is going to stand by.

1           MR. TEIN: And the example you gave us,  
2 nighttime uses, is that like, for example, a  
3 restaurant that has music, or is that not an example?

4           MR. SIEMON: There's a definition. I just  
5 picked that one out of the air, but --

6           MR. TEIN: The reason I ask is, for example,  
7 right around Line 28, this requires, for both minor  
8 and major conditional use, the Board of Architects to  
9 review and make a recommendation, right?

10          MR. SIEMON: The Board of Architects is  
11 involved in both.

12          MR. TEIN: But it might be an issue that  
13 doesn't really involve the Board of Architects,  
14 right?

15          MR. SIEMON: Well, if they have no  
16 jurisdiction, it won't go to them. But where they  
17 have jurisdiction, that's where they fit into the  
18 process.

19          MR. AIZENSTAT: How does it work, let's say,  
20 with the City Architect, if the City Architect makes  
21 a decision, and then that's appealed to the Board of  
22 Architects? Do you show that in your flow chart?

23          CHAIRWOMAN MORENO: The City Architect  
24 wouldn't be involved in the conditional --

25          MR. SIEMON: There is not a flow chart for

1 the application for architectural review that is  
2 subject -- I don't believe.

3 MR. RIEL: Well, that's where -- the first  
4 chart on the second page that we talked about --

5 MR. SIEMON: It's just in general. There's  
6 no specifics.

7 MR. RIEL: -- appeals from the City  
8 Architect.

9 MR. STEFFENS: I think we did that verbally  
10 by saying that if the applicant doesn't agree with  
11 the City Architect's --

12 MS. KEON: Right.

13 MR. STEFFENS: -- recommendation, then he  
14 could go to the Board of Architects.

15 On this chart here, the minor conditional  
16 use, after a decision, if it was approved or approved  
17 with conditions, it says under that, that if  
18 appealed -- and then under that, it says if appealed  
19 by the developer or City Manager. Can a citizen  
20 appeal that?

21 MR. SIEMON: As this Code is drafted, a  
22 citizen may not appeal that. Remember that the DRO  
23 is not going to be holding a public hearing.

24 MR. STEFFENS: The what?

25 MR. SIEMON: The professional who issues the

1 development review. These are discretionary  
2 administrative approvals which are subject to appeal  
3 to the Planning & Zoning Board.

4 MR. KORGE: They don't have the same public  
5 effect as a major --

6 MR. SIEMON: A major conditional use.

7 MR. KORGE: Major conditional use.

8 MR. SIEMON: That's correct.

9 MR. KORGE: In regard to an appeal, you have  
10 an appeal to the Planning & Zoning Board. Why not  
11 the Commission? I mean, you may have answered this  
12 before, but I don't remember the answer.

13 MR. SIEMON: Well, the real answer is the  
14 one I gave earlier, is that these are -- we believe  
15 are largely technical design matters that are best  
16 made by professionals. This Board has requirements  
17 for certain competency and background. All you have  
18 to do to be on the Commission is get elected and be  
19 responsive, and we're trying to create --

20 MR. KORGE: Well, let me just interrupt. I  
21 mean, the Commissioners are responsible for hearing  
22 appeals of major conditional use and for changing the  
23 Zoning Code itself.

24 MR. SIEMON: Right.

25 MR. KORGE: So it just seems to me that

1 they're as qualified as anyone. The reason why I  
2 would suggest that that should be considered, at  
3 least, is that, unlike this Board, they're elected,  
4 so they're more -- they tend to be more responsive to  
5 the public.

6 MR. SIEMON: Well, the --

7 CHAIRWOMAN MORENO: But the public is not  
8 going to appeal any of these. It's going to be the  
9 developer or the City Manager. So that's why he's  
10 saying it doesn't need to go to the Commission. It  
11 isn't a public type issue.

12 I think our problem in dealing with this, at  
13 least for me, is that we don't know what's a minor  
14 conditional use. So, you know, the example you gave,  
15 I think, is probably going to be a major conditional  
16 use, the sleep center type idea.

17 MR. SIEMON: I think that's likely.

18 CHAIRWOMAN MORENO: So if you -- if we knew  
19 what a minor conditional use, we might say, "Yeah,  
20 that makes sense that it goes like this." All of us  
21 are thinking of the types of things that are major  
22 conditional uses, that should go to the Commission,  
23 ultimately.

24 MR. KORGE: Well, the reason why I ask that  
25 is because, if it's an appeal, it means that the

1 final decision was unacceptable, either to the City  
2 Manager or to the person directly affected by the  
3 decision. And if it's that big a deal, why not take  
4 it to the elected officials?

5 MR. STEFFENS: Well, I'm assuming that minor  
6 conditional approvals are some things that were  
7 probably as of right before, but now we're putting a  
8 little bit more review on them, so not just giving  
9 them something as of right, but requiring at least a  
10 Staff review of it. So it wouldn't necessarily be  
11 anything that would ever have a -- you know, a review  
12 before or an appeal process.

13 MR. SIEMON: Let me just give you an  
14 example. In the CL district, restaurants are  
15 permitted as of right, as a permitted use, as a minor  
16 conditional use, and a major conditional use. If it  
17 has greater -- less than 500 or less square feet of  
18 customer service area -- that's the service area,  
19 it's not the cooking area, it's where people who are  
20 getting service are, it's permitted as of right.  
21 Right now, it's permitted as a restaurant. In that  
22 district, it is permitted as of right.

23 If it's less than a thousand square feet of  
24 customer service area, it's a minor conditional use,  
25 and it's only if it goes above that, that it becomes

1 a major conditional use. That one is, the size and  
2 intensity has to do with the impacts, and remember,  
3 the CL district is, by and large, single -- it is a  
4 commercial district along residential neighborhoods;  
5 it's a single lot deep. So that's just an example.

6 And our judgment is that the -- that at the  
7 permitted as of right, no policy issues are ever  
8 implicated, because those are relatively vanilla. We  
9 feel comfortable they can be permitted.

10 The exercise of discretion in the minor  
11 conditional use is largely professional standards  
12 that say, have you mitigated the mass, have you  
13 shielded properly, screened in -- I mean, typical  
14 standards that involve some exercise of professional  
15 and technical judgment.

16 And then the last one, while they are  
17 subject to standards, the major conditional use, they  
18 nevertheless often imply matters of public policy,  
19 and that's where the elected official is responsive.  
20 But just because a neighbor doesn't happen to like a  
21 restaurant of a thousand square feet, if it actually  
22 mitigates all the potential adverse impacts, it ought  
23 to be judged on the merits, not on the policy.

24 MR. KORGE: Well, let me ask the question  
25 this way. Why is there a need for an appeal? I

1 mean, if --

2 MR. SIEMON: From the Staff?

3 MR. KORGE: No, from the Board of  
4 Architects. I mean, if they want to appeal, they  
5 go -- first they go to the Board of Architects, don't  
6 they?

7 MR. SIEMON: Right.

8 MR. KORGE: So, once that board decides, the  
9 board that would hold the specialized expertise for  
10 this decision --

11 MR. SIEMON: Only for the design  
12 considerations.

13 MR. KORGE: I see, okay. So there may be  
14 other nondesign considerations that affect this, as  
15 well, and that would be the reason for coming to this  
16 Board?

17 MR. SIEMON: (Nods head).

18 MR. STEFFENS: I think, Tom, this is adding  
19 another layer of review on something that would have,  
20 in the past, only gone to the Board of Architects.

21 MR. KORGE: Okay.

22 CHAIRWOMAN MORENO: Okay. Anything else?

23 MR. SIEMON: And which many of you all told  
24 us, when we did our first interview process, that  
25 there were a lot of concerns that a lot of things had

1     only Board of Architects review and a whole variety  
2     of matters weren't considered, and that's, in part,  
3     information that we considered in developing this  
4     framework, but the key -- I want to make the point  
5     somebody made, I think Cristina made, it's what you  
6     put in each of those three buckets that will define  
7     the effectiveness and success of this.

8             MR. KORGE:  Oh, that was very clear.

9             CHAIRWOMAN MORENO:  Anything else in  
10    Division 4?

11            MR. SIEMON:  I just want to make sure, the  
12    conditional use procedure is basically the one you  
13    have, but we've articulated the rules and controls  
14    and we've reorganized it into this review process,  
15    but the concept is one that you all have  
16    traditionally used in your Code.

17            MS. KEON:  Can I ask one question?  Where  
18    you have Board of Architects recommendation, should  
19    that be, you know, if appropriate or if needed or  
20    whatever?

21            MR. SIEMON:  Probably.  I said that when I  
22    was describing it to you.

23            MS. KEON:  But you would include that in  
24    this chart --

25            MR. SIEMON:  Yeah.

1 MS. KEON: -- to make that clear, that --  
2 and I would imagine Staff would make that  
3 recommendation, as to whether it belongs with the  
4 Board of Architects?

5 MR. SIEMON: Right.

6 MS. KEON: Okay, if needed, or whatever.

7 MR. SIEMON: It's really "if required."

8 MS. KEON: Yeah, right.

9 MR. SIEMON: And --

10 MS. KEON: So it doesn't automatically go.  
11 It looks, from this, that it would automatically go.

12 MR. SIEMON: Well, it's required for an  
13 awful lot of stuff.

14 MS. KEON: Oh, well, just in case.

15 MR. SIEMON: But I think that's good.

16 With that, I have no further comments on  
17 Division 4.

18 CHAIRWOMAN MORENO: So a motion on Division  
19 4, subject to the change suggested by Ms. Keon?

20 MR. KORGE: I'll make that motion to approve  
21 Division 4, inserting "if approved" --

22 CHAIRWOMAN MORENO: "If required."

23 MS. KEON: "If required."

24 MR. KORGE: "If required," on the box for  
25 the Board of Architects recommended --

1 recommendation, under the minor conditional use  
2 chart, or conditional use minor chart.

3 MR. STEFFENS: What was -- what was that?

4 MR. KORGE: In the conditional use minor  
5 chart, on Page 2 of 7 --

6 MR. STEFFENS: Right.

7 MR. KORGE: -- in the box that contains the  
8 words "Board of Architects recommendation," in  
9 parentheses, I guess, will be -- or with a comma,  
10 will be inserted the words, "if required."

11 CHAIRWOMAN MORENO: In both charts, I  
12 guess.

13 MS. KEON: On both charts, for both minor  
14 and major.

15 MR. KORGE: Okay. They don't always go to  
16 the Board of Architects in a major use, then,  
17 conditional major use?

18 MS. KEON: They're saying there could be  
19 something that -- where it wouldn't have to be, and  
20 then you wouldn't have to delay the application.

21 MR. KORGE: Okay. Well, then, I would  
22 insert "if required" there, too.

23 MS. KEON: Yeah.

24 MR. KORGE: That would be my motion.

25 CHAIRWOMAN MORENO: Okay, do I have a

1 second?

2 MS. KEON: I'll second.

3 CHAIRWOMAN MORENO: Okay. Let's call the  
4 roll, please.

5 MS. MENENDEZ-DURAN: Pat Keon?

6 MS. KEON: Yes.

7 MS. MENENDEZ-DURAN: Tom Korge?

8 MR. KORGE: Yes.

9 MS. MENENDEZ-DURAN: Michael Tein?

10 MR. TEIN: Yes.

11 MS. MENENDEZ-DURAN: Michael Steffens?

12 MR. STEFFENS: Yes.

13 MS. MENENDEZ-DURAN: Eibi Aizenstat?

14 MR. AIZENSTAT: Yes.

15 MS. MENENDEZ-DURAN: Cristina Moreno?

16 CHAIRWOMAN MORENO: Yes. And I'd like to  
17 take a five-minute break, so we can all go stretch  
18 our legs.

19 (Thereupon, a recess was taken.)

20 CHAIRWOMAN MORENO: Okay, are we ready to  
21 start?

22 MR. SIEMON: I am, Madam Chairman.

23 The next division is Division 5, Planned  
24 Area Development. This is a concept that's currently  
25 included in your Code. We have reformed it as a

1 major conditional use, that is, Planning and Zoning's  
2 recommendation goes to the City Commission for a  
3 final.

4           What we've done in this article is taken  
5 your existing standards and edited them, supplemented  
6 them, where recommended by various Staff members, but  
7 I would say to you that what's in this provision,  
8 Page -- all 5 of 5, are basically what's in your  
9 existing Code, the collective experience of your  
10 professional Staff of Building & Zoning and Planning,  
11 and as we went through, they recommended some  
12 substantive changes, but I would submit to you that  
13 it is basically your existing PAD, consistent  
14 language, put in a format that is the same format  
15 used in other areas, and it's a major conditional use  
16 in all districts except for the single-family  
17 district.

18           MR. KORGE: Except for --

19           CHAIRWOMAN MORENO: What does that mean?

20           MR. SIEMON: It's permitted in every  
21 district other than the single-family.

22           MR. RIEL: You can't do a PAD in a  
23 single-family district.

24           MR. SIEMON: You can't do a PAD in a  
25 single-family district.

1 CHAIRWOMAN MORENO: Oh, okay. All right.

2 MR. KORGE: Why not?

3 MR. STEFFENS: What did they use on the  
4 little village behind Doctors Hospital?

5 MR. RIEL: That's multi-family.

6 MR. KORGE: And the Bahamian Village on  
7 Ponce and Riviera?

8 MR. RIEL: The Bahamian Village? That was  
9 multi-family.

10 MR. KORGE: That was multi-family?

11 MR. RIEL: Yes. Yes.

12 MR. KORGE: What about the property in front  
13 of the Biltmore, that's apparently the subject of  
14 discussion about possible acquisition for a park?

15 MR. RIEL: It's my understanding they're  
16 going through a by-right review.

17 MR. KORGE: So there will be no PAD there?

18 MR. RIEL: No. We have not had -- We had  
19 preliminary discussions with that property owner some  
20 time ago, but none recently.

21 One of the -- We've had these PAD provisions  
22 in the Code, I think I've said this a number of  
23 times, since 1980.

24 MR. KORGE: Uh-huh.

25 MR. RIEL: And we only have two or three

1 PADs in the City. It was not utilized, because the  
2 minimum acreage was two acres, and also the FAR,  
3 permitted FAR, was actually lower than what was  
4 permitted by right within the zoning districts. So  
5 no one would come through that process.

6 So what we've done is, we've reduced the  
7 acreage and we also have said that the underlying FAR  
8 is what shall apply.

9 MR. KORGE: Uh-huh.

10 MR. RIEL: In my opinion, this is the best  
11 tool in terms of working with property owners, where  
12 the property owner benefits and the City benefits,  
13 because it provides for basically a one-stop review,  
14 it allows this Board, and it provides findings of  
15 fact and criteria that they have to satisfy, to allow  
16 variations, or variances -- I don't want to say the  
17 word variance, but variances -- variations in  
18 setbacks, height and things of that sort, and you get  
19 to look at a project from the elevation standpoint,  
20 the site plan, and all the parameters, rather than an  
21 application just going before the Board of Adjustment  
22 for a variance. They don't look at the site plan.

23 So I have utilized this in a number of  
24 cities I've worked with, and Charlie can contest  
25 that, almost every city uses this process, and the

1 outcome is a much better project for both the city as  
2 well as the property owner.

3 MR. KORGE: Which, again, raises the  
4 question of, why would we not at least permit it, if  
5 possible, for single-family residential?

6 CHAIRWOMAN MORENO: There's no area in the  
7 City that could be developed as a PAD for  
8 single-family.

9 MR. RIEL: I'd hate to go in and start doing  
10 PADs in single-family areas, especially a minimum one  
11 acre. You're talking about what could be,  
12 potentially, a two-unit, two single-family homes, in  
13 a PAD.

14 MR. KORGE: Okay.

15 MR. RIEL: First of all, I don't think they  
16 want to go through the public hearing process for  
17 that, so --

18 MR. STEFFENS: Did we reduce the size  
19 requirement for a PAD?

20 MR. SIEMON: Yes, two to one.

21 MR. RIEL: We have done it to one acre. It  
22 was two acres; now we've gone down to one.

23 MR. STEFFENS: Why?

24 MR. RIEL: Why? Because if you look at  
25 accumulating one-acre --

1           MR. STEFFENS: Well, you almost have to --  
2 well, I mean, a development site is 20,000 square  
3 feet, the minimum development site. So it's sort of  
4 a big development site. It's not a -- Why -- Are we  
5 trying to encourage PADs --

6           MR. RIEL: Absolutely.

7           MR. STEFFENS: -- rather than using --

8           CHAIRWOMAN MORENO: Yes.

9           MR. RIEL: Absolutely.

10          CHAIRWOMAN MORENO: Yes.

11          MR. RIEL: Absolutely. That was -- The ones  
12 that have gone through the PAD process, I think  
13 you'll agree that product, that final product, rather  
14 than going just through a Board of Architects  
15 review, I think there was a lot of involvement,  
16 obviously, in the neighborhood, because typically,  
17 those projects that have come through here, the PADs,  
18 could have gone by right, and you know the amount of  
19 input we received on those two projects.

20          MR. STEFFENS: But couldn't we just make it  
21 a major conditional use?

22          MR. RIEL: That's what it is.

23          CHAIRWOMAN MORENO: That's what it is.

24          MR. SIEMON: That's what it is --

25          CHAIRWOMAN MORENO: The PAD is a major

1 conditional use.

2 MR. SIEMON: -- in each of the districts.

3 MR. STEFFENS: But the PAD, then, has the  
4 ability to change setbacks and --

5 MR. RIEL: Correct. Yes.

6 MR. STEFFENS: -- all sorts of other  
7 restrictions --

8 CHAIRWOMAN MORENO: Yeah, you do it in  
9 one --

10 MR. STEFFENS: -- rather than just saying  
11 any development over 25,000 square feet, or 40,000,  
12 or 40, 35, 60, whatever we choose, is a major  
13 conditional use and it needs to come for our review.  
14 I mean, without the PAD --

15 MR. RIEL: But the PAD prescribes very  
16 specific standards and criteria in Section 502 that  
17 deals with everything from density, design, street  
18 frontage, perimeter. Then there's also a new  
19 section, actually, which we added, provide findings,  
20 required findings, which is in the latter part of the  
21 provisions.

22 Basically, what we've done is taken our PAD  
23 provisions, strengthened them, tried to -- with the  
24 intent of encouraging, trying to encourage property  
25 owners to come through the process.

1           There's a lot of flexibility right now,  
2 where a lot of parcels could come through and just go  
3 to the Board of Architects, and we would try to make  
4 it much more flexible for someone, rather than go to  
5 the Board of Architects, Board of Adjustment and the  
6 Planning Board --

7           MR. STEFFENS: But this is voluntary. Or  
8 it's not voluntary? Anything that's more than one  
9 acre is automatically --

10          MR. RIEL: No. It's voluntary.

11          MR. STEFFENS: So it's voluntary?

12          MR. RIEL: It's voluntary, yes.

13          MR. STEFFENS: So, then, it's a voluntary  
14 major conditional use.

15          MR. SIEMON: That's correct.

16          MR. STEFFENS: Why not just make it an  
17 involuntary major conditional use, anything over a  
18 certain size is a --

19          MR. KORGE: A PAD?

20          MR. RIEL: I think --

21          MR. STEFFENS: No, is a major conditional  
22 use.

23          MR. RIEL: I would have a problem with that,  
24 because every development over an acre in size would  
25 have to come to this Board. I think you would be

1 very busy.

2 MR. STEFFENS: Why? We wouldn't be seeing  
3 more than we're seeing now.

4 MR. RIEL: I think you would.

5 MR. KORGE: Every house in Gables Estates.

6 MR. STEFFENS: No, it wouldn't be  
7 single-family residences.

8 MR. SIEMON: Single-family.

9 MS. KEON: That's not --

10 MR. STEFFENS: I mean, I don't know why we  
11 wouldn't want to see every project that --

12 MR. RIEL: I mean, I haven't done the  
13 analysis, but I would almost guess your agendas would  
14 be rather full.

15 MR. STEFFENS: Because I can't imagine -- I  
16 can't think of any project that we haven't seen  
17 that's that size, except for Hines.

18 MS. KEON: Was that a DRI?

19 MR. STEFFENS: No, that was as of right.

20 MS. KEON: That was just as of right?

21 MR. STEFFENS: They just -- they snuck that  
22 through. It should have come to us.

23 MR. RIEL: I mean, that's one threshold,  
24 acreage. I mean, if your intent is to try to provide  
25 more public hearing review for larger-type projects,

1 if that's your direction to Staff, I think we need to  
2 come back, because --

3 MR. KORGE: But that doesn't --

4 MR. RIEL: That doesn't --

5 MR. KORGE: -- relate to PADs right now.

6 MR. RIEL: No, that doesn't relate to PADs.  
7 That's a totally different subject matter.

8 MR. KORGE: Why don't we move forward and do  
9 this --

10 CHAIRWOMAN MORENO: Let's adopt the PAD and  
11 then --

12 MR. KORGE: -- and then we can -- you know,  
13 that's another issue to be addressed --

14 MR. RIEL: Basically, what I'm saying is,  
15 this is a vehicle that I like to use, as the Planning  
16 Director, to work with property owners, and we end up  
17 with a better product. It allows a lot of  
18 flexibility, and it's kind of a one-stop shop.

19 MR. STEFFENS: Well, I think it's nice and  
20 good. I just don't think it should be voluntary. I  
21 mean, if it's a project of that scale, then it  
22 should -- these requirements -- these should be the  
23 requirements, then it shouldn't come before us for  
24 review.

25 MR. KORGE: A PAD should be applied in all

1 cases; is that what you're saying?

2 MR. STEFFENS: I mean, if it's -- if we want  
3 to have these buildings be better and we want to look  
4 at them, then we should be looking at these things.  
5 We should require a review. I mean, this is  
6 completely voluntary, and like Hines, you can get  
7 around it and then you can come back and say, "Oh,  
8 wait a minute, I want to change my commercial use to  
9 a residential use, and you can only review my  
10 commercial use, although it's now a mixed-use  
11 project."

12 MR. RIEL: That's a different -- I  
13 understand what you're saying, but that's a different  
14 issue.

15 MR. STEFFENS: No, I know that's a different  
16 issue.

17 MR. RIEL: It wouldn't be called a PAD.

18 MR. STEFFENS: But that project should have  
19 been before us for review.

20 MR. SIEMON: Well, I think what you're  
21 suggesting is that there are -- notwithstanding the  
22 character of the use, projects of a certain size  
23 ought to be subject to major conditional use  
24 approval.

25 MR. STEFFENS: Right.

1           MR. SIEMON: That while on a small parcel of  
2 5,000 square feet, that might be appropriate as of  
3 right or as a minor conditional use, for that  
4 one-acre project, because of its potential impact,  
5 that ought to be a major conditional use, and I think  
6 if that is the decision, the proper place for that is  
7 in the enumeration of a major conditional use, just  
8 like when I went through the restaurant; a parcel of  
9 land, a development involving a parcel of land of one  
10 acre or greater shall be a major conditional use,  
11 regardless of the nature of the uses, subject to  
12 those performance standards. That's how I would deal  
13 with that.

14           MR. KORGE: But you wouldn't enforce them  
15 through the PAD.

16           MR. SIEMON: I -- a PAD is for someone who  
17 wants to skin a cat a better way, and it's to provide  
18 an orderly method of doing that, to enable creativity  
19 and imagination.

20           MR. STEFFENS: So, then, if we say a major  
21 conditional use is anything over an acre, what would  
22 be the review for that? There would be other  
23 standards, other than the PAD?

24           MR. SIEMON: Yeah, there would be different  
25 standards that would be applied, because they are

1 doing the uses that are otherwise available, they're  
2 just doing them at a larger scale, that has a greater  
3 potential impact on a particular area, and that's not  
4 an uncommon phenomenon.

5 MR. STEFFENS: I can live with that for a  
6 little while.

7 MR. SIEMON: We'll look at it. We're going  
8 to come back to you, and I hear that concern, and  
9 certainly, a building like the Hines building should  
10 go through that kind of discretionary review, because  
11 the condition is not just compliance with the  
12 standards, but it's the application of appropriate  
13 conditions to ensure that all external negative  
14 impacts have been mitigated. I mean, that's the  
15 reason for the conditional use process.

16 MR. STEFFENS: Uh-huh.

17 MR. SIEMON: Okay. That's all I have for  
18 the PAD.

19 CHAIRWOMAN MORENO: Okay. Do we have a  
20 motion on Division 5?

21 MR. KORGE: I'll move to approve Division 5,  
22 as is.

23 MR. TEIN: I'll second that.

24 CHAIRWOMAN MORENO: Call the roll, please.

25 MS. MENENDEZ-DURAN: Michael Tein?

1 MR. TEIN: Yes.

2 MS. MENENDEZ-DURAN: Michael Steffens?

3 MR. STEFFENS: Yes.

4 MS. MENENDEZ-DURAN: Eibi Aizenstat?

5 MR. AIZENSTAT: Yes.

6 MS. MENENDEZ-DURAN: Pat Keon?

7 MS. KEON: Yes.

8 MS. MENENDEZ-DURAN: Tom Korge?

9 MR. KORGE: Yes.

10 MS. MENENDEZ-DURAN: Cristina Moreno?

11 CHAIRWOMAN MORENO: Yes.

12 MR. SIEMON: The next article is Division 6,

13 Appeals. We did basically two things in this

14 division. One, we brought appeals, that were

15 scattered throughout the Code, into a single place,

16 and second, every time there was an appeals process,

17 it set out there the process, the procedures, and

18 we've consolidated the appellate procedure in the

19 procedural section that we reviewed earlier. So this

20 is just the consolidation of appeals, and I don't

21 believe we have changed any of the substantive -- who

22 the appellate body is and who has a right to appeal.

23 It's just simply a consolidation of your existing

24 Code into a single section, and so you don't have to

25 search through various provisions to find out if

1 there's an appeal. You can look under A for appeals  
2 and find out if there is one from your matter,  
3 particular issue.

4 MR. STEFFENS: Could you tell me about  
5 negative concurrency determination?

6 MR. SIEMON: It's a determination that there  
7 is inadequate facilities available to allow the  
8 development to go forward.

9 MR. STEFFENS: So, then, if there's -- so  
10 yes means there is a negative concurrency  
11 determination?

12 MR. SIEMON: That's correct.

13 MR. STEFFENS: And then that, if it was a  
14 yes, then it would be appealed to the City  
15 Commission?

16 MR. SIEMON: If it's yes, it goes to the  
17 appeal -- well --

18 MR. KORGE: Why would there be an appeal if  
19 it's no?

20 MR. SIEMON: This "File Notice of Appeal" is  
21 not -- I don't know why it's there. It is not --  
22 That's incorrect.

23 MR. AIZENSTAT: It needs to go directly to  
24 "Appeal to City Commission"?

25 MR. SIEMON: If there's a determination of

1 concurrency, it goes to the board of -- whoever the  
2 appropriate review body, for further review, if  
3 there's no negative determination.

4 If there is a negative determination, you  
5 have a right of appeal to the City Commission, and if  
6 granted, you would then go for further review.

7 MR. KORGE: So what will you put on this  
8 chart to correct that?

9 MR. SIEMON: I'm going to strike the box,  
10 the "File Notice of Appeal," and the Board of  
11 Adjustment, and I'm going to insert after -- if the  
12 negative -- negative concurrency determination is no,  
13 it's further review -- further reviews which are  
14 required.

15 MR. KORGE: I'm sorry, say that again.  
16 Further review?

17 MR. SIEMON: Further review. It's really  
18 this further review --

19 MR. KORGE: If required.

20 MR. SIEMON: Right.

21 MR. AIZENSTAT: Can you give an example?

22 MR. SIEMON: Yeah. Any of these approvals,  
23 if you have a concurrency determination and you have  
24 an adequate -- you have adequate facilities, then  
25 that allows you to go through the development review

1 process.

2 If you're subject to a concurrency  
3 determination, that's a part of the process, and  
4 you've got to get through that threshold, and if you  
5 get through it with a yes, that you have a negative  
6 concurrency determination, then it's an appeal to the  
7 City Commission.

8 MR. KORGE: Shouldn't there be nothing if  
9 it's no? I mean, if there's no -- if it's not an  
10 appeal --

11 MR. SIEMON: There is no further appeal.

12 MR. KORGE: -- then it should just be --

13 MR. SIEMON: Further review.

14 MR. KORGE: There should be -- no, I mean,  
15 what I think is that the lines and the box --

16 MR. SIEMON: I guess, probably, you don't  
17 even need no here.

18 MR. KORGE: No, it should be nothing there,  
19 because there's no appeal involved at that point.

20 MR. STEFFENS: Well, what you should remove  
21 is where it says, "Appeal to the Board of Adjustment,  
22 Planning & Zoning Board -- "

23 MR. SIEMON: Yeah.

24 MS. KEON: Yeah.

25 MR. STEFFENS: You should remove appeal

1 there.

2 MR. SIEMON: Actually, it just goes all  
3 the -- everything --

4 MR. AIZENSTAT: Goes to the board.

5 MR. STEFFENS: Yeah --

6 MR. SIEMON: Everything --

7 MR. RIEL: Goes to the Commission.

8 MR. STEFFENS: It goes to the board, and if  
9 it passes through those boards, would you then appeal  
10 after those boards?

11 MR. AIZENSTAT: Wouldn't it depend who  
12 appeals, though?

13 MR. SIEMON: The appeals -- The material  
14 which is below "Negative Concurrency Determination,"  
15 and to the left of "File Notice of Appeal" and  
16 "Appeal to City Commission" are -- is not about  
17 appeals. It's about the further review, and it just  
18 should be all deleted --

19 MR. AIZENSTAT: Okay.

20 MR. KORGE: All of that.

21 MR. SIEMON: -- from this chart, because all  
22 we're really portraying here are the appeals and who  
23 takes -- where they go, so --

24 MR. KORGE: So we'll delete the box on the  
25 left, that's "File Notice of Appeal," on Line 39.

1 MR. SIEMON: Correct.

2 MR. KORGE: And then the box around 44  
3 through 47, and the --

4 MR. SIEMON: "Further Review Sought" box.

5 MR. KORGE: "Further review" box at the  
6 bottom of the page.

7 MR. SIEMON: And the associated connecting  
8 lines.

9 MR. KORGE: And the associated lines,  
10 including the line that has 10 days.

11 MR. SIEMON: That's correct.

12 MR. KORGE: Okay.

13 MR. STEFFENS: So, after "Negative  
14 Concurrency Determination" --

15 MR. SIEMON: If there is a determination  
16 that there is negative -- that there's not  
17 concurrency --

18 MR. STEFFENS: If it says -- if there is no  
19 negative concurrency determination, then it would go  
20 to --

21 MR. SIEMON: There's no appeal.

22 MR. STEFFENS: Then it would go to further  
23 review --

24 MR. KORGE: No.

25 MR. SIEMON: Yes.

1 CHAIRWOMAN MORENO: Yeah.

2 MR. STEFFENS: Yes.

3 MR. KORGE: But we're not going to put  
4 further review in there.

5 MR. SIEMON: But we're not putting further  
6 review in here. All we're charting here are the  
7 appeals.

8 MR. STEFFENS: But further review might  
9 bring up appeal?

10 MR. SIEMON: Yes. If the City Architect  
11 makes a --

12 MR. STEFFENS: Or if anybody that you would  
13 go to after concurrency --

14 MR. SIEMON: Yeah, after you get there,  
15 makes a determination. But you'll come back, then --

16 MR. STEFFENS: Somewhere on the top.

17 MR. SIEMON: If the City Attorney -- Yeah,  
18 somewhere on the top, you're going to make a  
19 decision.

20 MR. STEFFENS: Okay.

21 MR. SIEMON: There's really a loop back.

22 MR. KORGE: Now I'm confused.

23 MR. SIEMON: Well, let's -- let us leave  
24 this here. I will look and see if we can make it so  
25 that it circles back.

1           Unfortunately, the way this thing is that  
2 there's a circle back, if you get a no under your  
3 negative declaration. You go back to the top, then,  
4 and then go back into this process.

5           MR. KORGE: But this isn't supposed to be  
6 showing where you go next.

7           MR. SIEMON: No. This is just to show where  
8 you go for an appeal.

9           MR. KORGE: So putting you go back, just  
10 confuses the issue.

11           MR. SIEMON: I'm not -- I'm just going to  
12 look at it --

13           MR. KORGE: Okay.

14           MR. SIEMON: -- and see if we can clarify  
15 anything.

16           I think this language is all --  
17 Basically, the only changes, major changes, that  
18 we've made in this are just to use the same language  
19 that's been used in the rest of the Code and to  
20 format it in the same sequence.

21           MR. KORGE: Would you like a motion at this  
22 time?

23           MR. AIZENSTAT: So should we leave this,  
24 just not vote on it, or --

25           MR. KORGE: I'd make a motion to approve it

1 and ask that the chart be returned to us for one more  
2 time, to approve that, so it will be --

3 MR. AIZENSTAT: Can you approve --

4 MR. KORGE: -- approve everything except the  
5 chart, and then we'll vote on the chart when it's  
6 ready for us, when it's revised.

7 MR. AIZENSTAT: Wouldn't you rather just  
8 leave it for --

9 MR. KORGE: Or are you going to just simply  
10 make the revision we discussed?

11 MR. SIEMON: Right now, I'm going to make  
12 the revision that we've discussed, and all I'm saying  
13 is that if we go back and sit down and look at what  
14 we've done and decide that it can be improved --

15 MR. KORGE: You'll bring it back to us?

16 MR. SIEMON: -- we'll bring that back to  
17 you.

18 MR. AIZENSTAT: Then how do you approve it  
19 now? It's coming back to us, anyway, on this section  
20 on the appeal, so how can we approve it?

21 MR. KORGE: No, we approve it, and if they  
22 bring us another chart they think improves it, we can  
23 reconsider it. Anyone who voted for it can move to  
24 reconsider the chart.

25 MR. AIZENSTAT: But we're saying that this

1 chart is not correct.

2 MR. KORGE: We're going to change the chart,  
3 in this motion.

4 CHAIRWOMAN MORENO: Okay, wait. Let's start  
5 out, how are we going to change the chart, Charlie?

6 MR. SIEMON: Everything in the left-hand  
7 center, about Line 37, everything below "Negative  
8 Concurrency Determination" would be eliminated, and  
9 in the center, the "Appeal to the Board of  
10 Adjustment," et cetera, et cetera, would all be  
11 eliminated and so that it would have, "Negative  
12 Concurrency Determination," yes, that's appealed, to  
13 a "File Notice of Appeal" box and to the City  
14 Commission.

15 The "City Architect," "File Notice of  
16 Appeal," "Appeal to Board of Architects."

17 All other appointed boards, the decision  
18 goes to the "Notice of Appeal" and to the City  
19 Commission.

20 MR. AIZENSTAT: And then if there is none,  
21 then you loop it back?

22 MR. SIEMON: We're suggesting -- I think  
23 we're suggesting for -- that it's appropriate to not  
24 address anything other than the appeals part of it  
25 here, and all I said was, when we go back and try to

1 consolidate it, I want to go back now and look at the  
2 general review and see whether, for example,  
3 concurrency needs to be put on that page. I've now  
4 noticed that it's not there, and if it's appropriate,  
5 and we think we ought to come back again to you, we  
6 will. But other than that, I don't intend to change  
7 unless I identify a problem --

8 MR. KORGE: Right.

9 MR. SIEMON: -- that we haven't addressed  
10 yet.

11 MR. KORGE: So let me restate the motion, so  
12 that I think it's clear what we're doing here. I  
13 move to approve Article 3, Division 6, and that the  
14 chart would be changed to eliminate the box "File  
15 Notice of Appeal," between Lines 39 and 40, eliminate  
16 the box "Appeal to the Board of Adjustment, Planning  
17 & Zoning Board or Historic Preservation Board,"  
18 between Lines 44 and roughly 48, eliminate the box  
19 entitled "Further Review Sought," with a question  
20 mark, between roughly Lines 51 and 56, and to  
21 eliminate all lines connecting to those boxes that we  
22 would eliminate.

23 MR. AIZENSTAT: Are you saying to remove the  
24 box --

25 MR. KORGE: They would be gone.

1 MR. AIZENSTAT: -- between 44 and 48, or  
2 change the wording of the box?

3 MR. KORGE: No, remove the boxes.

4 MR. AIZENSTAT: Remove it totally?

5 MR. KORGE: All those boxes would be  
6 removed. The ones I just identified would be  
7 removed --

8 MR. AIZENSTAT: Okay.

9 MR. KORGE: -- and the lines connecting to  
10 them would all be removed, as well. So the only  
11 thing that would be displayed in the chart would be  
12 the flow of appeals, not the flow of what happens  
13 after the appeals, because this chart is --

14 CHAIRWOMAN MORENO: It's just for appeals.

15 MR. KORGE: -- intended to explain where the  
16 appeals go. Putting arrows to other things that  
17 occur afterwards just confuses it, to me.

18 CHAIRWOMAN MORENO: Yes, I agree.

19 MR. AIZENSTAT: I -- to be honest with you,  
20 I can't vote for a yes on that, because I would  
21 rather have the chart drawn out first, for me. I'm  
22 not saying it's the wrong way to do it, but for me, I  
23 can't see it that way.

24 MR. STEFFENS: I think --

25 CHAIRWOMAN MORENO: It's just crossing it

1 out.

2 MR. STEFFENS: Well, I think we should also  
3 change some of the stuff on this chart. Where we  
4 have "Negative Concurrency Determination" --

5 MR. AIZENSTAT: That's correct.

6 MR. STEFFENS: -- we're dealing with a  
7 double negative here to make this path work. Why  
8 can't it be "Concurrency Determination," and then on  
9 the line where it says "Yes," it should say "Denied,"  
10 and if it's denied, you would have, "File a Notice of  
11 Appeal"?

12 Also, up where we have the City Architect,  
13 there are things that would be submitted that would  
14 not necessarily be seen by the City Architect, that  
15 would be seen by the Board of Architects. Rather  
16 than going through the City Architect and an appeal  
17 from the City Architect and then to the Board of  
18 Architects, you'd have stuff that would just go to  
19 the Board of Architects and then would need to be  
20 appealed, or possibly need to be appealed. So you  
21 might have another line that is bypassing the City  
22 Architect.

23 MR. KORGE: Then, if you put in there --

24 CHAIRWOMAN MORENO: Okay, then, I think --  
25 then I think Eibi's suggestion is --

1 MR. KORGE: Well, let --

2 CHAIRWOMAN MORENO: -- realistic, if --

3 MR. KORGE: For the City Architect, you'd  
4 put comma, "if required," right? Is that what we're  
5 saying there?

6 MR. STEFFENS: Possibly, yeah, that or a  
7 line that just bypasses the City Architect.

8 MR. KORGE: Well, it wouldn't always bypass  
9 him.

10 MR. STEFFENS: No.

11 MR. KORGE: So I would put "if required."

12 MS. KEON: Is this box there where it says  
13 "City Architect" and "Appeal to Board of Architects,"  
14 this is just dealing with the appeal from a decision  
15 by the City Architect?

16 CHAIRWOMAN MORENO: Right.

17 MS. KEON: Only. Right? That's only from  
18 the City Architect?

19 MR. STEFFENS: Well, it seems like it's only  
20 from the City Architect, but you could appeal a  
21 decision of the Board of Architects, also.

22 MS. KEON: Right, but here it says "All  
23 Appointed Boards." So it's almost like there's two  
24 things here. It's an appeal from the City Architect,  
25 over here, that's a Staff -- from Staff, and the

1 other is an appeal from a board.

2 MR. KORGE: The way I would express that is,  
3 I would insert, after the words "City Architect,"  
4 "if required," and then I would delete from the box  
5 that shows the Board of Architects the words "Appeal  
6 to."

7 CHAIRWOMAN MORENO: No, no, no, because  
8 that's not right.

9 MR. STEFFENS: That's the first step. You  
10 would appeal to the Board of Architects.

11 CHAIRWOMAN MORENO: If the City Architect  
12 makes a determination that you don't like --

13 MS. KEON: Right.

14 CHAIRWOMAN MORENO: -- you appeal to the  
15 Board of Architects.

16 MS. KEON: Right.

17 MR. KORGE: What if the Board of Architects  
18 makes a decision you don't like?

19 CHAIRWOMAN MORENO: What Pat is saying is --

20 MS. KEON: That's the "All Appointed  
21 Boards."

22 CHAIRWOMAN MORENO: -- that's covered by the  
23 "All Appointed Boards."

24 MR. KORGE: Well, what if -- what I was  
25 going to ask is, what if the Board of Architects is

1 the first decision-maker on that?

2 MS. KEON: Then that's the --

3 CHAIRWOMAN MORENO: Then it's the appointed  
4 board, over here.

5 MR. SIEMON: That's the appointed board.

6 MR. KORGE: Ah, I see. Oh, now I  
7 understand. Okay. Then I stand corrected.

8 MS. KEON: Now, do --

9 MR. STEFFENS: Then you don't need my  
10 bypassing arrow.

11 CHAIRWOMAN MORENO: No, you don't.

12 MR. KORGE: Yeah.

13 CHAIRWOMAN MORENO: It's there. That's what  
14 Pat is saying.

15 MR. STEFFENS: Okay.

16 MS. KEON: Right, so -- but are, now, the  
17 appeals -- the appeal to the Board of Architects, and  
18 the decision by the City Architect, is then the final  
19 determination of that is to the City Commission?

20 CHAIRWOMAN MORENO: Then it goes to the  
21 City -- then it can be appealed to the City  
22 Commission. See that arrow?

23 MS. KEON: Or it could be -- or what? Or --  
24 I thought that was a final decision by the Board of  
25 Architects. No? Any appeal has to eventually go to

1 the City Commission?

2 MR. SIEMON: Right.

3 MS. KEON: And if each --

4 MR. KORGE: That's not correct, because --

5 excuse me for interrupting, but we just heard

6 earlier, when I asked --

7 MS. KEON: Yeah.

8 MR. KORGE: -- that a minor conditional use  
9 would be appealed only to this Board, not to the City  
10 Commission.

11 MS. KEON: No.

12 MR. AIZENSTAT: I've got to be honest. I,  
13 for one, need to see this. Again, to go back to what  
14 I was saying, I cannot, in good conscience -- I feel  
15 that the appeal process is very important, and I, for  
16 one, need to see it to be clear-- to be clear, I'm  
17 sorry, in order to approve it.

18 MR. SIEMON: I concede that.

19 MS. KEON: Yeah. I think you need to redo  
20 it.

21 CHAIRWOMAN MORENO: Okay.

22 MR. SIEMON: No, actually, the appeal from  
23 the -- from the decision by the administrative staff  
24 is -- needs to be added to this section.

25 MS. KEON: Right.

1           MR. SIEMON: So I would ask that we pass  
2   Division 6.

3           MR. KORGE: I'll withdraw the motion.

4           MS. KEON: We'll bring it back.

5           MR. RIEL: Defer it.

6           MS. KEON: Defer? Okay.

7           MR. SIEMON: Defer it, not approve it --

8           MS. KEON: Okay.

9           MR. SIEMON: To pass over it.

10          MS. KEON: Do you need a motion, then, to  
11   defer 6, or not?

12          CHAIRWOMAN MORENO: Yes.

13          MR. RIEL: Please, yes.

14          CHAIRWOMAN MORENO: Is there anyone from the  
15   public that's here, that needs to speak about this  
16   division, on appeals? No?

17          MS. NEWMAN: I don't know. I am --

18          CHAIRWOMAN MORENO: You need to stand up and  
19   talk to us.

20          MS. NEWMAN: I'm sorry.

21          CHAIRWOMAN MORENO: And identify yourself  
22   and give your address.

23          MS. NEWMAN: Okay, well, my name is Joyce  
24   Newman. I'm representing the Riviera Neighborhood  
25   Association, and one reason I have a question is that

1 I wanted to say something about notification, so I  
2 think that -- you know, that was talked about before,  
3 I guess, Division 3.

4 MS. KEON: Right.

5 CHAIRWOMAN MORENO: Yes.

6 MS. NEWMAN: So this is the time for me to  
7 say something about that?

8 CHAIRWOMAN MORENO: Go ahead.

9 MS. NEWMAN: Well, the Riviera Neighborhood  
10 Association feels that -- we would like to request  
11 that there's notification within a two-mile radius.  
12 The reason for this is that in our neighborhood, and  
13 in others, I suppose, it's possible that notification  
14 won't extend beyond commercial areas. It's possible  
15 that no homeowners could receive notification, and we  
16 had that happen in our neighborhood, where the  
17 notifications were within a thousand feet but homes  
18 that were adjacent to commercial areas, a park, also,  
19 did not receive any notices because they weren't  
20 within that area. So --

21 CHAIRWOMAN MORENO: But if you're adjacent,  
22 you've got to be within a thousand feet.

23 MS. NEWMAN: No, because all of the  
24 addresses within a thousand feet were commercial or  
25 park or nonhomeowners. There was one homeowner that

1 was three houses from the commercial area, or from,  
2 in this case, a school and a park, and she did not  
3 receive a notice. So it's possible for almost no one  
4 to receive a notice.

5 MR. KORGE: Well, did the publication notice  
6 advise everybody, or was that inadequate?

7 MS. NEWMAN: I beg your pardon?

8 MR. KORGE: Was there a publication notice  
9 that let everybody understand what was going on, so  
10 they could participate, in the one you -- I guess  
11 you're talking about Merrick Park?

12 MS. NEWMAN: No, this was the San Remo  
13 Plaza, and within a thousand feet of that, there  
14 really -- there might be a handful of houses. We  
15 determined there was one person that we know of that  
16 received a notice, that happened to fall within the  
17 radius.

18 MR. KORGE: But was there also a publication  
19 notice, the newspaper or --

20 MS. NEWMAN: It was a notification of  
21 variances that were required, so I'm not sure what  
22 you mean by publication.

23 MS. KEON: Publication, it can mean --

24 MR. KORGE: Was it published in the  
25 newspaper?

1 MS. KEON: Published in the newspaper.

2 MS. NEWMAN: Oh, I don't know. It wasn't  
3 seen. It wasn't seen. But the notices that are  
4 mailed were not -- you know, would not -- were not  
5 received, and in the future would not be received.  
6 It's possible that the commercial area is so large  
7 that no homeowners --

8 MR. KORGE: Was the variance the sort of  
9 variance that affected the homeowners uniquely?

10 MS. NEWMAN: Well, it was a setback and a  
11 height variance, and we felt, yes, because of impacts  
12 on traffic, that it definitely, you know, affected  
13 the homeowners directly. The streets leading to the  
14 project went through -- you know, go through the  
15 areas of where homeowners live. So, you know, so the  
16 1,000 foot doesn't -- doesn't give us any  
17 opportunity.

18 MR. KORGE: I guess the 1,500 one didn't  
19 apply, either?

20 MS. NEWMAN: Well, the 1,500 one, I think,  
21 at that time, it would have perhaps been a courtesy,  
22 you know, at the Planning Director's discretion, but  
23 it wasn't something that was done.

24 MR. RIEL: First, let me clarify. The  
25 Planning Department is not responsible for the

1 variance notifications. I just want to make sure  
2 you're clear on the record.

3 In terms of that particular one, when was  
4 that done? Was that done a couple years ago?  
5 Because in the past year or so, we did change the  
6 notice requirements up to a thousand feet.

7 MS. NEWMAN: This was a thousand feet  
8 notice.

9 MR. RIEL: And there is discretion of the  
10 department director to increase that, dependent upon  
11 if you have the circumstance, you know, to go beyond  
12 a thousand. So --

13 MS. NEWMAN: But that's, you know, beyond  
14 the circumstances --

15 MR. KORGE: Well, with this, with the  
16 notices here, there would be two notices required, if  
17 it's a major change in use or major conditional use.  
18 One would be mailing within the 1,500 feet, is it?

19 MR. RIEL: On a variance, it's a thousand.

20 MR. KORGE: No, we're talking about major  
21 conditional uses, because we're dealing with  
22 variances.

23 MR. RIEL: Major conditional use is 1,000.

24 MS. KEON: 1,000.

25 MR. RIEL: 1,000.

1                   CHAIRWOMAN MORENO: No, but she's going back  
2 to the notice provisions.

3                   MR. KORGE: I understand, but we're talking  
4 about notices now for --

5                   CHAIRWOMAN MORENO: For anything, for  
6 anything. For anything that's supposed to be done.

7                   MR. RIEL: For a major conditional use,  
8 which comes before this Board, we would post the  
9 property. We would mail a courtesy notice to all the  
10 property owners of record within a thousand feet --

11                   MR. KORGE: Right.

12                   MR. RIEL: -- and then we would obviously --  
13 we'd publish the agenda in the paper, with the item  
14 on it, and then also, the Planning Department  
15 requires the developer or property owner to have a  
16 neighborhood meeting and also mail out the thousand-  
17 foot notice, so --

18                   CHAIRWOMAN MORENO: She's talking about  
19 notices for anything.

20                   MS. KEON: Well, can I --

21                   CHAIRWOMAN MORENO: Yes.

22                   MS. KEON: That's -- I was trying to -- I  
23 was thinking of it before, when we talked about it,  
24 and I do remember that, in the past, it was when  
25 there is -- It isn't the noticing for a particular

1 home that tends to be an issue --

2 MS. NEWMAN: Yes.

3 MS. KEON: -- when there's a problem for a  
4 home. That isn't usually the problem. The problem  
5 is when there is going to be a change to either a  
6 public parcel, which is a park, or like the equipment  
7 yard was, or a commercial building that is adjacent  
8 to a residential area, that that development is very  
9 likely to affect an area --

10 MR. KORGE: Right.

11 MS. KEON: -- to a much greater extent than  
12 whatever the noticing would be with regards to an  
13 individual single-family home. And so, I think, over  
14 the years, there has been, oftentimes, requests from  
15 the public, in neighborhoods where there either are  
16 large public parcels or that are -- or like adjacent  
17 to the country club, or adjacent to the Biltmore  
18 Hotel, adjacent to those -- even churches. I mean,  
19 those types of things that have -- whose impact will  
20 be much greater than what would be -- how --

21 MR. KORGE: Typical.

22 MS. KEON: Yeah, it would be typical if it  
23 was only a house that was being done. That the  
24 notification for those types of parcels would be  
25 different and more extensive than that which is only

1 related to a home.

2 CHAIRWOMAN MORENO: Okay, but Eric, wouldn't  
3 the appropriate place to consider that be in the --  
4 when we do the actual uses, as opposed to now, the  
5 notice provisions?

6 MR. RIEL: No, the appropriate place is the  
7 notice provisions.

8 CHAIRWOMAN MORENO: Because the way you've  
9 done it now is, instead of saying a thousand feet,  
10 you've said --

11 MR. KORGE: Yeah.

12 CHAIRWOMAN MORENO: -- as referenced in such  
13 areas. So, when we get to --

14 MR. KORGE: Variances --

15 CHAIRWOMAN MORENO: -- that type of  
16 permitted use --

17 MR. KORGE: Right.

18 CHAIRWOMAN MORENO: -- that Pat's  
19 describing, there we can say, "Here, you need to give  
20 greater notice."

21 MR. RIEL: Are you talking about a specific  
22 commercial use, or are you talking about all  
23 commercial uses?

24 MS. KEON: Well, it could be more than a  
25 commercial use.

1 CHAIRWOMAN MORENO: Size.

2 MS. KEON: I mean, it's more --

3 MR. RIEL: Because --

4 MS. KEON: I think the noticing provisions  
5 for noticing whatever the activity is on a  
6 single-family residence in a residential area, or  
7 that approximates a residential area, has a different  
8 impact than development that would require noticing  
9 that is on a large public parcel, a building or  
10 whatever that is currently in public use, or an  
11 adjacent, you know, commercial area. That impact to  
12 that residential area is far greater than if it was,  
13 you know, only a house --

14 MR. RIEL: I understand.

15 MS. KEON: -- in that area. So, because the  
16 impact is greater, the notice should be -- also  
17 should be more extensive, because the impact is  
18 likely to also be more extensive.

19 I'm sure that the notice provisions, when  
20 they were first -- or the reasoning behind the notice  
21 provisions is that you're not likely to affect the  
22 conditions more than a thousand feet beyond that  
23 property when you're going to redevelop or use that  
24 property, but if it is likely that the conditions of  
25 that property may spread, will ripple beyond that

1 thousand feet, then that notice should be beyond that  
2 thousand feet, so that people can -- because even  
3 when they have neighborhood meetings, if the  
4 neighborhood is only, you know, a few people, then it  
5 doesn't encompass the -- and what happens to us, I  
6 know, or has happened in the City, is that it  
7 starts -- you say we notice, there's an uproar, you  
8 know, and then eventually everything comes to a  
9 grinding halt, and, you know, everybody goes before  
10 the Commission and they say, "Okay, now we're going  
11 to have the public hearings."

12 But, you know, so much -- and the public  
13 knows that an awful lot has already been done and  
14 decided by the time they get their opportunity to  
15 speak. They're just saying, you know, "We'd like our  
16 opportunity to speak early in the process" --

17 MR. RIEL: I --

18 MS. KEON: -- when it is, you know, that --  
19 when you're affecting that type of property that  
20 could have an effect beyond what we would expect to  
21 happen with a single-family home.

22 MR. RIEL: Let me just give you an example  
23 of a project that would come through, what type of  
24 notice they would be required to do.

25 Say a project came before this Board, one

1 acre in size, commercial. They have to go to the  
2 Board of Architects prior to coming to this Board.  
3 So the Board of Architects would notice it. They  
4 would post the property.

5 The Planning Department, in our review  
6 process, usually a month before it's even scheduled,  
7 before the hearing, we require the developer to have  
8 a neighborhood meeting. They do their own noticing  
9 and everything. And then, about 10 days thereafter,  
10 we send out our courtesy notice. Then we post the  
11 property. Then we also post the agenda.

12 So that was something that we actually put  
13 in, it's not a requirement, but every property that  
14 comes before this Board has a neighborhood meeting,  
15 and human nature is, people don't get interested  
16 until the end. I mean, that's just a common fact.  
17 We've had participation. We've had some developers  
18 that had two and three neighborhood meetings. We've  
19 had some developers that, even before they come in  
20 and talk to me with an application, they go out and  
21 have a neighborhood meeting.

22 So I don't think the answer is going to two  
23 miles. From my standpoint --

24 MS. KEON: Well, I don't know what it is.

25 MR. RIEL: From my standpoint, two miles, we

1 would have to notice every project and almost send a  
2 notice to everyone in the City, because two miles is  
3 a very large distance.

4           If you look at the way the City is oriented  
5 and where the commercial properties are, a thousand  
6 feet, in my opinion, is sufficient. We did have,  
7 years ago, 300 feet, and we went to 500, and then we  
8 went to a thousand. Typically, communities in  
9 Florida do about a 500-foot notice, and again, it is  
10 just a courtesy notice. It's nothing that's, you  
11 know, binding or in that fact. It's just to make  
12 sure we get the word out, and we use E-News and we  
13 use other -- you know, the web. We put all our  
14 information on the web.

15           So we try to do the best job we can, and  
16 there is that -- if that provision is not in there,  
17 we can add that provision to allow the director,  
18 where they see that additional notice is needed. I  
19 can tell you, if we know there's a Riviera  
20 Neighborhood Association, we will contact them and  
21 mail it to the association. I don't think there's  
22 any notice that we haven't sent out that doesn't  
23 impact the single-family residents, because if you  
24 draw thousand-foot circles on the City map, you'd be  
25 surprised how far it goes. You really would be

1 surprised.

2 MS. NEWMAN: Let me just make a couple  
3 comments. In the case of the Publix on Monza, the  
4 neighborhood association, or the neighborhood that  
5 was contacted by Publix, was a condominium, not  
6 homeowners. So, when they had their meetings, it was  
7 with condominium -- where there were actually a lot  
8 of renters, as well, and not with the private  
9 homeowners that were adjacent, literally right next  
10 door, and --

11 MR. KORGE: Excuse me for interrupting, but  
12 if they were literally right next door, wouldn't they  
13 be within a thousand feet?

14 MR. RIEL: Actually, I can tell you, those  
15 provisions, when that came through, it was only 300  
16 feet, at that time.

17 MR. KORGE: Ah.

18 MR. RIEL: And that is what caused the  
19 Commission to say all notices from all departments,  
20 variances, abandonments, vacations, conditional land  
21 use, site plans, a thousand feet.

22 MS. NEWMAN: But in that case -- I was  
23 pointing out the idea that the developer or the  
24 commercial property owner is supposed to have a  
25 neighborhood meeting. In that case, they had a

1 neighborhood meeting, but with a condominium  
2 association.

3 MR. STEFFENS: So they can pick their  
4 neighborhood?

5 MS. NEWMAN: Exactly, they pick their  
6 neighborhood. And in that case, they promised, you  
7 know, painting the building and promised things to  
8 the condominium association.

9 And as far as noticing, as far as the  
10 posting of noticing, in the case of Plaza San Remo,  
11 it would be very possible that neighbors would not --  
12 you really need to walk past the building, and it  
13 would be very possible not to walk past that  
14 building. You might say, yes, you'll walk into  
15 Publix, but even there, you might not notice a  
16 notice, but in another area, you won't walk past it.

17 And just one thought. You know, in our  
18 case, it would serve our purposes if the thousand  
19 feet started at the boundary of the commercial areas.

20 MR. RIEL: It is supposed to.

21 MS. LUBIN: It does.

22 MS. NEWMAN: What?

23 MR. RIEL: It does. It does. It does. It  
24 starts at --

25 MS. NEWMAN: It starts at the boundary?

1 MR. RIEL: -- the perimeter boundaries --

2 MS. NEWMAN: But not of the one property,  
3 but the whole area, so when you have --

4 MR. RIEL: It should be at the parcel edge.

5 MS. NEWMAN: Right, but not the parcel.

6 What I'm saying is that beyond the parcel edge, a  
7 thousand feet, there were a handful, maybe -- only  
8 one that we know -- that got the notice. But if it  
9 was within a thousand feet of the edge of that whole  
10 commercial zone, then homeowners would get notices.

11 I guess the question would be, for me to  
12 ask, is it very important that all the commercial  
13 area owners get the notices? Because in this case,  
14 they all would have gotten notices. They were within  
15 a thousand feet. Or, is it important that the  
16 homeowners get the notices? Because we were not  
17 within a thousand feet.

18 CHAIRWOMAN MORENO: Well, the assumption is  
19 that if you're beyond a thousand feet, the  
20 development is not really affecting you.

21 MR. KORGE: But I think Pat's point --

22 MS. NEWMAN: Right.

23 MR. KORGE: -- is well taken, that maybe in  
24 certain circumstances a thousand feet is inadequate  
25 and we need a larger distance, but we can't determine

1 that now. We have to go through each of the --

2 CHAIRWOMAN MORENO: Each of the uses.

3 MR. KORGE: Each of the uses, and see, in  
4 those uses, are there certain instances, or in their  
5 entirety, should we extend it more than a thousand  
6 feet? But in the abstract, we can't really decide  
7 that.

8 MS. NEWMAN: Yeah. Well, I don't know. My  
9 thought is that since the edges of the commercial  
10 areas are defined, that if you started at the edges  
11 of the commercial areas, rather than at the boundary  
12 of one property --

13 MR. KORGE: That's going to be a pretty big  
14 area. I mean, if you're in North Ponce, that goes  
15 all the way --

16 MR. RIEL: That would mean, if you had a  
17 property anywhere in the CBD --

18 MS. NEWMAN: Perhaps --

19 MR. RIEL: -- you'd have to notice a  
20 thousand foot around the entire City.

21 MR. KORGE: Around the commercial district.

22 CHAIRWOMAN MORENO: You can't do that.

23 MS. NEWMAN: Well, perhaps it could still be  
24 a pie.

25 MR. KORGE: Well, I don't know, but I mean,

1 that's what -- now that you've brought it up --

2 MS. NEWMAN: I think there must be some --

3 MR. KORGE: -- we need to be cognizant of it  
4 and discuss how that, you know, should be --

5 MS. NEWMAN: I think there would probably be  
6 a mathematical answer.

7 CHAIRWOMAN MORENO: I think you need to do  
8 it the way Pat is suggesting, with each project or  
9 the size. You can't just do it for the commercial  
10 district.

11 MS. NEWMAN: Right, uh-huh. Well, you know,  
12 there might be, again, you know, some mathematical  
13 arrangement that would take into consideration the  
14 border of the actual property and the end of the  
15 commercial area, where the homeowners started.

16 Thank you. I just have one other thing, and  
17 I'm not sure -- I think it's there somewhere, but it  
18 relates to alleyway vacation and street closure, and  
19 the Riviera Neighborhood Association would just like  
20 to say that we are opposed to alleyway vacation and  
21 to street closure, and in the case of alleyway -- in  
22 the case of both, but alleyway vacation in  
23 particular, with our experience, it increases,  
24 naturally, the developed -- the size of the building  
25 that is allowed, and in view of the accident on

1 U.S. 1, we felt it was appropriate to say that when  
2 you increase a building's size and increase that type  
3 of density, that you are increasing the danger to  
4 pedestrians, and particularly students and elderly.  
5 So that's another consideration of closing streets  
6 and alleyways.

7 CHAIRWOMAN MORENO: Thank you.

8 MS. NEWMAN: And just one more thing. We  
9 are conducting a charrette right now. It started  
10 last weekend and it's going to continue and the final  
11 recommendations from the University of Miami, who the  
12 Riviera Neighborhood Association has hired to conduct  
13 the charrette, will be received on April the 25th,  
14 and we are going to ask that those -- the  
15 neighborhood plan that is developed there is given  
16 consideration in the zoning rewrite.

17 So thank you for your attention.

18 CHAIRWOMAN MORENO: Thank you.

19 MR. KORGE: Where's the boundary of the  
20 association, generally?

21 MS. NEWMAN: The boundaries -- well, our  
22 bylaws say that it can be anyone in Coral Gables, but  
23 our association and their main area of interest is  
24 the wedge between U.S. 1, Red Road and Sunset Drive.  
25 So it includes all of those -- the commercial, you

1 know, the second commercial area of Coral Gables.

2 And, you know, we've hired the University to conduct  
3 a charrette of that area and it's --

4 MR. AIZENSTAT: Where's the fourth boundary?

5 MS. KEON: Where's your north boundary?

6 MS. NEWMAN: The boundaries, then we go to  
7 Publix --

8 MR. AIZENSTAT: So it's U.S. 1, Red Road,  
9 Sunset, and then --

10 MS. NEWMAN: And if you think of the Mahi  
11 Canal and Caballero, South Alhambra --

12 CHAIRWOMAN MORENO: Uh-huh.

13 MS. NEWMAN: We use the canal and those  
14 streets, Caballero and South Alhambra, as borders,  
15 and then --

16 MR. AIZENSTAT: So up to Granada?

17 MS. NEWMAN: We go down -- when we conduct  
18 most of our mailings and walking, we go to Maynada,  
19 but like with the charrette, we went to Granada, and  
20 we went into Unincorporated Dade County and into  
21 South Miami and over up to -- well, up to Granada,  
22 so -- but people can -- we have 75 families right  
23 now, and most of them are within the smaller area  
24 that's in that U.S. 1, Red Road, Sunset Drive area.  
25 But some are coming from other areas.

1 CHAIRWOMAN MORENO: Thank you very much.

2 MS. NEWMAN: Thank you.

3 MS. KEON: So, then, we can look at notice  
4 provisions when we look at major uses?

5 CHAIRWOMAN MORENO: When we look at each of  
6 the uses.

7 MR. KORGE: Each use, yeah.

8 MS. KEON: Yeah.

9 MR. STEFFENS: Can we defer Appeals?

10 MR. KORGE: So we defer --

11 CHAIRWOMAN MORENO: Okay, let's have a  
12 motion to defer Appeals.

13 MR. AIZENSTAT: I'd like to make that  
14 motion.

15 MR. KORGE: Second.

16 CHAIRWOMAN MORENO: Call the roll, please.

17 MS. MENENDEZ-DURAN: Michael Steffens?

18 MR. STEFFENS: Yes.

19 MS. MENENDEZ-DURAN: Eibi Aizenstat?

20 MR. AIZENSTAT: Yes.

21 MS. MENENDEZ-DURAN: Pat Keon?

22 MS. KEON: Yes.

23 MS. MENENDEZ-DURAN: Tom Korge?

24 MR. KORGE: Yes.

25 MS. MENENDEZ-DURAN: Michael Tein?

1 MR. TEIN: Yes.

2 MS. MENENDEZ-DURAN: Cristina Moreno?

3 CHAIRWOMAN MORENO: Yes.

4 Moratorium.

5 MR. SIEMON: Division 7. Your existing Code  
6 has a provision governing moratoriums. After  
7 conversations with the City Attorney, we concluded  
8 that we needed to be more explicit about the process  
9 and procedure and initiation, the effect of zoning in  
10 progress, and so we have drafted, in conjunction with  
11 her review, new provisions, and effectively, 701  
12 through 705 are the new provisions that have been  
13 added, and what they really reflect is how you've  
14 done it in the past. It's just that it hasn't been  
15 written down, and so there's been some  
16 inconsistencies in some of the actions. And there is  
17 a provision that has been added. 3-11 (sic) is also  
18 new, that provides for exceptions.

19 MR. TEIN: 711?

20 MR. RIEL: 3-711.

21 MR. SIEMON: 3-711, and also, above, there  
22 is a provision on waivers. Oftentimes, in a  
23 moratorium, there's some development proposal which  
24 is really consistent with the change which is  
25 contemplated or the program that's going on, and

1 it's -- it may be appropriate for the Commission to  
2 make a determination on a case-by-case basis, based  
3 on these provisions, that that particular development  
4 ought to be freed from their moratorium limitations.

5 MR. KORGE: In 703, it says -- specifies  
6 that the City Manager may file a request for the  
7 resolution. Could anybody else file the request?  
8 Could the Commission initiate it, on its own? I  
9 assume they could, but it doesn't say that. Or could  
10 this Board file a request?

11 MR. RIEL: Yes. Your recommendation -- you  
12 would make a recommendation to the Commission and  
13 then the Commission --

14 MR. SIEMON: No, that's not as it's  
15 drafted.

16 MS. KEON: No.

17 MR. SIEMON: It would have to -- 703 would  
18 have to be changed to say the Planning & Zoning Board  
19 or the City Manager may, if that's your wish.

20 MR. RIEL: Okay.

21 MR. KORGE: We wouldn't have to say that for  
22 the Commission, if it was initiated at the Commission  
23 level.

24 MR. SIEMON: No, the City Commission has the  
25 authority to do that themselves.

1           MR. STEFFENS: Is zoning in progress the  
2 same thing as a moratorium?

3           MR. SIEMON: The zoning in progress really  
4 is a determination --

5           The law says that when you are seriously  
6 contemplating a change, an application that is filed  
7 is with notice of that change, and so city attorneys  
8 have been providing for adoption of a zoning in  
9 progress resolution, to put them on notice. You  
10 still have to go through the notice and provisions  
11 and ultimately adopt the moratorium, but between the  
12 decision to pursue and implement a moratorium, there  
13 is this interim step of the zoning in progress, and  
14 it is intended to help the court understand that when  
15 the process of change started was when they voted for  
16 zoning in progress.

17           MR. STEFFENS: So does zoning in progress  
18 itself have any implications?

19           MR. SIEMON: Yes. The applicant is on  
20 notice that there is a change and that he may not --  
21 he or she may not be approved under the existing  
22 Code, if the moratorium is adopted.

23           MR. STEFFENS: He may or may not?

24           CHAIRWOMAN MORENO: And if the change is  
25 subsequently adopted.

1           MR. SIEMON: And the change is subsequently  
2 implemented.

3           MR. STEFFENS: He may or may not be  
4 approved, or he may not be approved?

5           MR. SIEMON: Yeah, because you don't know  
6 whether the moratorium is going to be adopted, and  
7 you don't know whether there will be a change.

8           MR. STEFFENS: So, if you have zoning in  
9 progress, is that -- would that, then, be the  
10 effective date of the zoning if it passed,  
11 theoretically?

12           CHAIRWOMAN MORENO: Yes.

13           MR. SIEMON: In effect, that is the case.  
14 There's several cases that say, when you file an  
15 application for development approval and there is no  
16 contemplated change, you're entitled to be judged on  
17 the basis of the rules in effect when you have  
18 applied. It's a real fuzzy line, when there's  
19 general discussion, and the courts have held that a  
20 general discussion, that, "We need to do something  
21 some day," isn't enough to put them on notice that  
22 they may not be approved under the existing  
23 regulations, and so that's why this zoning in  
24 progress is -- It was originally a judicial  
25 determination that looked at all kinds of evidence,

1 and so what city attorneys have been doing and we  
2 recommend is, make it a formal process, adopt that  
3 resolution. It clearly evinces a decision by the  
4 City Commission to give serious consideration to  
5 that, and the consequence of that is that if there's  
6 a change, that change will effectively be retroactive  
7 to the date --

8 MR. STEFFENS: To that date.

9 MR. SIEMON: -- that that zoning in progress  
10 was put in play.

11 MR. STEFFENS: Okay.

12 MR. KORGE: I hate to dwell on this point in  
13 Section 703, but it occurred to me that there are  
14 instances where the City Commission doesn't --  
15 requires -- a zoning change is required to go through  
16 this Board before it goes to the City Commission, for  
17 example, and the way I read this, and maybe I'm  
18 overly reading it or, you know, reading it too  
19 strictly, but it reads as if it has to be a request  
20 to the City Commission, it can't originate there. I  
21 just can't get over that. And if there are other  
22 instances where something must originate with the  
23 Board before it goes to the City Commission, then I  
24 just wouldn't want that to be misinterpreted, because  
25 the Commission -- you know, most of these moratoriums

1 actually originate at the Commission. They don't

2 originate with the Manager or this Board.

3 MR. AIZENSTAT: And then just one other  
4 question. Does -- is there a first reading and then  
5 a second reading with the Commission on this, or is  
6 there only one reading? Because it doesn't -- I  
7 don't see it anywhere here.

8 MR. SIEMON: No, a resolution -- This is not  
9 a -- this is a resolution which is adopted,  
10 indicating a serious commitment to analyze this, and  
11 so it is on an expedited basis. It's a single  
12 reading.

13 MR. AIZENSTAT: It's a single reading.

14 MR. SIEMON: It just sets the date. It  
15 doesn't change the rule.

16 MR. STEFFENS: A single reading for the --

17 MR. SIEMON: Resolution.

18 MR. AIZENSTAT: For the resolution.

19 MR. STEFFENS: -- for the resolution of --

20 MR. AIZENSTAT: To adopt the resolution.

21 MR. SIEMON: Of zoning in progress.

22 MR. STEFFENS: Zoning in progress.

23 MR. SIEMON: Right.

24 MR. STEFFENS: Not the moratorium.

25 MR. SIEMON: I propose -- That's correct.

1 I propose to modify it to say, the Planning & Zoning  
2 Board or the City Manager may file a request with the  
3 City Commission, or the City Commission may, on its  
4 own motion, consider an ordinance -- consider a  
5 zoning in progress resolution.

6 MR. KORGE: Right. Thank you.

7 CHAIRWOMAN MORENO: Okay.

8 MR. STEFFENS: Can you have zoning in  
9 progress without a moratorium?

10 MR. SIEMON: Yes, and that's often -- I've  
11 experienced that, where a zoning in progress has been  
12 adopted, the formal moratorium ordinance has been  
13 presented, goes through the public hearing process,  
14 it turns out not to be a serious concern or there's  
15 not the intestinal fortitude to go forward, and it's  
16 not adopted, and at that date, the zoning in progress  
17 no longer has any substance.

18 MR. STEFFENS: But can you have zoning in  
19 progress without a moratorium, and then have a change  
20 in the Zoning Code? I mean, do you have to have a  
21 moratorium, or can you just go from zoning in  
22 progress to some revision to the Zoning Code?

23 MR. SIEMON: Well, it depends -- it depends  
24 on whether you want to be processing applications or  
25 not.

1           CHAIRWOMAN MORENO: Okay, but let's take an  
2 example. Now, we've been talking about this  
3 McMansion issue. The Commission adopts the zoning in  
4 progress resolution to put everybody on notice that  
5 they're going to do that, and instead of going to a  
6 moratorium, they ask us or they ask you to review it  
7 on an expedited basis, and it is, in fact, adopted,  
8 without the moratorium in between. Okay. Is it  
9 effective as of the zoning in progress resolution, or  
10 only upon adoption, because there was no moratorium?

11           MR. SIEMON: It's going to depend on the  
12 amount of time between the zoning -- in my opinion,  
13 it will depend upon the amount of time between zoning  
14 in progress and when the new ordinances are adopted,  
15 and the property owners' reasonable expectations may  
16 well be, if it normally takes three months to do  
17 something, and zoning in progress without a  
18 moratorium has been in effect for a year, a court may  
19 well determine that their rights are -- in  
20 consideration of the prior regulations, is  
21 recognizable.

22           CHAIRWOMAN MORENO: But let's say that we  
23 did it within the three-month period. It would go  
24 back to that?

25           MR. SIEMON: If you -- if, in the normal

1 review process, an application is filed after a  
2 zoning in progress resolution, and the new zoning is  
3 adopted, we would expect that a court would respect  
4 that and would make that application subject to the  
5 new regulations.

6 CHAIRWOMAN MORENO: So does it say that  
7 here?

8 MR. SIEMON: If an application is filed  
9 after a zoning in progress and it is -- and the new  
10 regulations are adopted within what would be the  
11 normal development review period, the court would --  
12 I believe a court of competent jurisdiction would be  
13 likely to sustain the application, the new  
14 regulations to that application, notwithstanding the  
15 fact that it was filed before the actual adoption of  
16 the Code.

17 MR. KORGE: Well, whether it's made  
18 retroactive would have to be set forth in the new  
19 zoning.

20 MR. SIEMON: Well, of course, the effective  
21 date is going to be set forth.

22 MR. KORGE: So that would be a judgment  
23 made -- correct me if I'm wrong -- a judgment made at  
24 the time the new zoning was implemented --

25 MR. SIEMON: Exactly.

1           MR. KORGE: -- so if it was two years later  
2 that the new zoning was implemented, the Commission  
3 would be getting the advice not to try to make it  
4 retroactive.

5           MR. SIEMON: I think that if I can prove to  
6 a court of competent jurisdiction that you normally  
7 review these things within 90 days, and I'm now at  
8 120 days and I went to the court to seek relief, the  
9 court is not going to, I believe, allow the City just  
10 to rope it open. They're going to say, "You've got  
11 to make a decision under your Code. If you want to  
12 adopt a moratorium, then do it, but you can't do one  
13 by administrative fiat and by failure to comply with  
14 your own general standards of performance."

15           MR. STEFFENS: So that by our endless review  
16 of this Zoning Code, are we setting a new standard  
17 for the time period for zoning in progress?

18           MR. SIEMON: No, I don't think so. This  
19 would be considered out of the ordinary.

20           MR. TEIN: Charles, is the issue of how long  
21 the moratorium continues for -- is that something  
22 that's properly the subject matter of this Code, or  
23 is that outside of it?

24           MR. SIEMON: We would not recommend  
25 including that.

1                   CHAIRWOMAN MORENO: Well, here you say the  
2 zoning in progress resolution shall be for a period  
3 not to exceed 120 days.

4                   MR. SIEMON: Right.

5                   MR. TEIN: I'm just talking about the  
6 moratorium, because it says on the chart, "Moratorium  
7 Ordinance Continues for a Reasonable Time."

8                   MR. SIEMON: Right.

9                   MR. TEIN: Is there any Code provision or  
10 any provision anywhere that says how long a  
11 moratorium can --

12                   MR. SIEMON: There's no statutory provision  
13 that governs the length. It's basically drawn from  
14 Supreme Court precedents and with regard to what are  
15 called temporary takings, and the general opinion is,  
16 a period of somewhere between one and three years is  
17 reasonable, depending upon the scope of the  
18 undertaking, the significance of the potential  
19 impact --

20                   In the Lake Tahoe case, a moratorium that  
21 extended -- it actually extended for seven years, but  
22 the one before the court was a three-year moratorium,  
23 and the court sustained that because of the  
24 importance of Lake Tahoe and its environmental  
25 sensitivity.

1                   We generally tell a client that you should  
2 really try to limit it to a year, under current  
3 precedents.

4                   MR. TEIN: So is that a Florida  
5 constitutional issue?

6                   MR. SIEMON: It's really -- the Florida  
7 courts really have always just turned to the federal  
8 constitution and have paid very little attention to  
9 the modest differences between the Florida  
10 constitutional verbiage and the language of the U.S.  
11 Supreme Court. They -- estuary properties follows  
12 U.S. Supreme Court precedents, and that probably  
13 still controls.

14                  CHAIRWOMAN MORENO: But it's analyzed under  
15 taking principles.

16                  MR. SIEMON: Yes, and frankly, our opinion  
17 is, if you go beyond a year, you'd better have a very  
18 good reason, and the courts are -- particularly the  
19 trial courts, are very sensitive to the fact that you  
20 have a -- they're suspicious of declaring a  
21 moratorium. You have to suspend rights, and then you  
22 don't get to it for a year, and it makes -- my  
23 experience is, it makes judges very anxious.

24                  MS. KEON: Can I ask a question? This is in  
25 response -- but it only affects applications that are

1 filed after the resolution is passed --

2 MR. SIEMON: That's correct.

3 MS. KEON: -- or after the moratorium has  
4 been established. So if there is a problem -- let's  
5 say an application has been filed, and as a result of  
6 the filing of that application, concerns are raised.  
7 That isn't affected by this?

8 MR. SIEMON: There are a number of cases  
9 that have held that where the expectations -- the law  
10 allowed what was applied for at the time of the  
11 application -- that a subsequent change in mind,  
12 official mind, is not enforceable against that prior  
13 application.

14 MS. KEON: Okay, because it seems to me --

15 MR. SIEMON: I don't happen to agree with  
16 that --

17 MS. KEON: Right.

18 MR. SIEMON: -- as a principle decision of  
19 law, but there are a series of fairly significant  
20 cases that have come down that way.

21 It used to be, not only did you have to file  
22 an application, you had to get a permit, and then you  
23 had to rely to your detriment on that. But that was  
24 unsatisfying, and there's been sort of an erosion of  
25 that, just because of that condition.

1 MS. KEON: Okay. So, from a practical -- or  
2 the outcome of this, you would, as your zoning  
3 department or your Building & Zoning, or Planning,  
4 would have to be proactive, then, in their  
5 determination as to what areas would need or should  
6 be looked at, so that those applications -- these  
7 resolutions and the moratoriums are in place before  
8 applications are filed.

9 MR. SIEMON: Well, you're always -- from my  
10 experience, there are always going to be a few. You  
11 have an application and something comes, and as a  
12 staff planner, you look at this and say, "This is not  
13 right." It happens again. That's when you ought to  
14 start reacting. If you wait until there are 30  
15 applications, that's where you really have -- and  
16 that's where these issues have always resolved.

17 MS. KEON: Right. I mean, I see it, living  
18 here in this community, that it generally is in  
19 response to an application that there is a great deal  
20 of public concern raised as a result of. But what  
21 you're saying is, you know, for the Zoning Code, you  
22 know, if that is supposed to, you know, protect the  
23 integrity and whatever of the community, then it  
24 needs to be done -- those things need to be done  
25 before development ever takes place.

1           MR. SIEMON:  If you can.  If your Staff has  
2           the resources and identifies a concern, they should  
3           initiate remedial action, and if it's -- if it goes  
4           in the process and there is pressure, you should  
5           adopt a zoning in progress resolution and get it  
6           adopted within 120 days.  Otherwise, you run the risk  
7           that applications will be filed and will not be  
8           subject to the new regulations.

9           MS. KEON:  So, as a result of this, we have  
10          the tools to deal with areas of concern if we have  
11          the initiative by those departments to do so.

12          MR. SIEMON:  That's correct.

13          MS. KEON:  But that, in and of itself,  
14          doesn't provide -- having it here doesn't provide you  
15          with it.  Boy, I hope that's clear to the elected  
16          officials as well as to the public.

17          MR. SIEMON:  Well, we're providing you with  
18          an orderly process that will allow to you protect  
19          yourself --

20          MS. KEON:  Okay.

21          MR. SIEMON:  -- as best you can from newly  
22          discovered difficulties and problems.

23          MR. RIEL:  We're doing such a good job on  
24          the Zoning Code rewrite that we won't need  
25          moratoriums in the future.

1 MS. KEON: If you have a proactive  
2 department, you won't, because you have the tools --

3 MR. RIEL: Seriously, the reason why you do  
4 it is because the regulations are not in place.

5 MS. KEON: That's right. Okay.

6 MR. RIEL: So, I mean, that's --

7 MS. KEON: Okay, yeah.

8 MR. RIEL: That's the outcome.

9 CHAIRWOMAN MORENO: Okay, do I have a motion  
10 on Division 7?

11 MS. KEON: I'll make the motion.

12 CHAIRWOMAN MORENO: I'm sorry, you need to  
13 speak on that one. I should have asked for the  
14 public first.

15 MR. TOYOS: It's getting late.

16 Good evening. I need some clarification on  
17 this, because I --

18 CHAIRWOMAN MORENO: I'm sorry, you need to  
19 state your name.

20 MR. TOYOS: Oh. Waldo Toyos, 823 Cortez  
21 Street.

22 CHAIRWOMAN MORENO: Do we need to swear him  
23 in, Eric? I took the other lady without swearing her  
24 in.

25 MR. RIEL: You might as well. It can't

1 hurt.

2 (Thereupon, Waldo Toyos was duly sworn by  
3 the court reporter.)

4 MR. TOYOS: I was looking at your flow  
5 chart here, and basically, no building permits will  
6 be issued, I guess that's when the zoning in progress  
7 resolution is adopted by the City Commission?

8 CHAIRWOMAN MORENO: When the moratorium is  
9 adopted.

10 MR. TOYOS: When the City Commission --  
11 because it says here, "No building permits issued."

12 MR. STEFFENS: Or else it will be during  
13 zoning in progress.

14 CHAIRWOMAN MORENO: I thought you  
15 (inaudible).

16 MR. STEFFENS: No, if they're in  
17 progress --

18 MR. SIEMON: That's just not right.

19 CHAIRWOMAN MORENO: Well, it does say,  
20 "During the period of time that the Planning & Zoning  
21 Board and the City Commission are considering a  
22 moratorium ordinance, no permits or development  
23 orders of any kind shall be issued if the issuance  
24 would result in the nonconformance or unlawful use of  
25 the subject property should the moratorium be

1 enacted."

2 MR. SIEMON: This line on the left is just  
3 incorrect.

4 MR. TOYOS: Okay.

5 MS. KEON: Where does it come in now?

6 MR. SIEMON: It's when the moratorium is  
7 adopted.

8 MS. KEON: Right.

9 CHAIRWOMAN MORENO: Yes, but then, if that's  
10 true, Charlie, then it's inconsistent with 3-705A.

11 MR. RIEL: Right. You should just delete  
12 that. I think you should just delete that  
13 reference.

14 MR. AIZENSTAT: There's usually a window, a  
15 30-day window or so forth that's set, isn't there?

16 MR. RIEL: Or there might be certain types  
17 of permits that can be issued, and others cannot,  
18 so --

19 MR. STEFFENS: Well, a permit that's in  
20 process should be able to be issued. I mean, if I  
21 have drawings in and they're in the process of  
22 permitting --

23 MR. RIEL: Yes.

24 MR. STEFFENS: -- that shouldn't be stopped.

25 MS. LUBIN: Well --

1 CHAIRWOMAN MORENO: A and B seem to me to be  
2 the same thing --

3 MS. LUBIN: I have a question.

4 MR. KORGE: Yeah.

5 CHAIRWOMAN MORENO: -- but then C seems to  
6 say the freeze starts when you adopt the zoning in  
7 progress resolution.

8 MS. LUBIN: I just have a quick question,  
9 more than a --

10 When do you consider it in progress, after  
11 it's been to the Board of Architects for preliminary  
12 approval or after the working drawings have been  
13 submitted to the Building & Zoning Board -- the  
14 Building & Zoning Department? Because it makes a  
15 difference. Once you've been to the Board of  
16 Architects, does that start the process? I mean,  
17 that's something -- that's a legal determination, I  
18 guess.

19 MR. STEFFENS: We should determine the  
20 beginning of the process of permitting, and once  
21 they've gone through the beginning of the process of  
22 permitting, then you shouldn't be able to stop it  
23 during the processing of permitting.

24 MS. LUBIN: I think it needs to be resolved,  
25 though, when is that?

1 MR. STEFFENS: I would say the final Board  
2 of Architects review --

3 MS. LUBIN: I don't know the answer to that.  
4 I'm just bringing it up.

5 MR. STEFFENS: -- if you ask me, but --

6 MR. KORGE: I'm confused. If there's a  
7 zoning in progress resolution, once the resolution is  
8 adopted, at that point, do we halt the permitting?

9 CHAIRWOMAN MORENO: That's what this says.

10 MR. SIEMON: That's what this says, and that  
11 was not my understanding and --

12 MS. KEON: Maybe it's if they're not  
13 accepted.

14 CHAIRWOMAN MORENO: Good thing you saw that.

15 MR. TOYOS: It's a very important --

16 MR. KORGE: It doesn't actually say that,  
17 either.

18 CHAIRWOMAN MORENO: Yes.

19 MR. KORGE: It just says when they're  
20 considering the moratorium ordinance. It should  
21 say --

22 CHAIRWOMAN MORENO: No, look at C. Look  
23 at C.

24 MS. KEON: Right.

25 MR. TOYOS: Yes, that's where -- C1 is --

1                   MR. STEFFENS: So that should say a freeze  
2 on new permit applications. That's probably how it  
3 should read.

4                   MR. SIEMON: Yeah. I'm going to have to ask  
5 you -- Wendy worked on this with Liz, and both of  
6 them are not here, and what I've described to you was  
7 my understanding and it's what my briefing package  
8 shows, but that's not what the text says, and I have  
9 some serious reservations about this, because there's  
10 a case that says you can't impose a moratorium unless  
11 you go through the Land Development Regulation  
12 requirements.

13                   CHAIRWOMAN MORENO: Let's defer this one.  
14 Do I have a motion to defer?

15                   And thank you very much for bringing that to  
16 our attention, sir. Do you have something else?

17                   MR. TOYOS: Yeah. I know it's getting a  
18 little bit late, but getting back, because that point  
19 is going to be a little bit, how do you call it --  
20 Mr. Lubin touched upon it, and basically, at what  
21 point do we establish -- because let's say I purchase  
22 a property, okay, with the intentions of building a  
23 small project, and at what point after I purchase  
24 this property, made the investment to get it to the  
25 DRC, okay, drawn up plans, which you have to do to

1 get to the DRC, done -- how do you call it, the many  
2 requirements for that -- at what point do you say,  
3 well, you know what, let's throw that out and, you  
4 know, not be able to obtain that building permit on  
5 that project. You know what I mean? It's just that  
6 there's a lot of time, there's --

7 MR. KORGE: Money.

8 MR. TOYOS: -- money invested in doing  
9 something like that.

10 CHAIRWOMAN MORENO: Well, it certainly  
11 can't be when you purchase the property.

12 MR. TOYOS: No, no, definitely.

13 CHAIRWOMAN MORENO: Okay. So what are you  
14 suggesting?

15 MR. TOYOS: No, because someone could sit on  
16 it, but --

17 CHAIRWOMAN MORENO: For years.

18 MR. TOYOS: For years. But let's say, you  
19 know, when you get to the DRC, when, you know, we  
20 start doing the work. Already, months of drawings  
21 have gone into -- you know, into play, but at the  
22 DRC, which is the initial --

23 MR. KORGE: Submission?

24 MR. TOYOS: -- submission, you know, which  
25 establishes -- you know, I mean, you start going

1 through the whole process. You already have plans  
2 done, you have studies done. Do you know what I  
3 mean? You've gone -- Here's where it all begins.

4 You know, I mean, shouldn't that be counted?

5 CHAIRWOMAN MORENO: Would it be a  
6 determination of completeness, Charlie?

7 MR. SIEMON: Yes, ma'am. Under this Code,  
8 that's what it would be.

9 CHAIRWOMAN MORENO: So, if they've gotten a  
10 determination of completeness, then they cannot be  
11 stopped.

12 MR. SIEMON: That's --

13 CHAIRWOMAN MORENO: Before that, they can be  
14 stopped.

15 MR. STEFFENS: But the determination of  
16 completeness is --

17 CHAIRWOMAN MORENO: Right before Development  
18 Review Committee.

19 MS. KEON: Right.

20 MR. STEFFENS: What about for  
21 single-family?

22 MR. SIEMON: It still has a determination of  
23 completeness.

24 MR. STEFFENS: For single-family?

25 MS. KEON: Uh-huh.

1 MR. STEFFENS: Are you sure?

2 MR. SIEMON: All applications, I believe,  
3 are --

4 CHAIRWOMAN MORENO: That's what he's put in  
5 here, all applications.

6 MS. KEON: All applications.

7 MR. SIEMON: Are subject to a determination  
8 of completeness.

9 MR. RIEL: Otherwise, you can't review it.

10 MS. KEON: Otherwise, yeah.

11 CHAIRWOMAN MORENO: Or else you don't start  
12 the review. So that would be the point at which we  
13 would say --

14 MR. STEFFENS: Do single-family residences  
15 go to the Development Review Committee?

16 MR. RIEL: No.

17 MR. STEFFENS: I've never done that for a  
18 single family residence.

19 MS. LUBIN: I have a point -- I have a  
20 question on that, if you're passing that.

21 Part of my responsibility at the Development  
22 Review Committee is to issue historic significance  
23 determinations on whether or not a property can be  
24 demolished, so --

25 CHAIRWOMAN MORENO: You're before.

1 According to this flow chart we just adopted, going  
2 to you is before the determination of completeness.

3 MS. LUBIN: So, if I determine that it's  
4 historically significant and it should not be  
5 demolished, then it's not going to --

6 MR. AIZENSTAT: Go forward.

7 MS. LUBIN: -- hold up anything? I mean,  
8 then, even if this gentleman has purchased a  
9 property, and then I'm saying that it can't be  
10 demolished, he doesn't have any type of vested rights  
11 because they consider it completed?

12 CHAIRWOMAN MORENO: No. They go to you --  
13 According to this flow chart --

14 MS. KEON: It hasn't been completed.

15 MS. LUBIN: Okay.

16 CHAIRWOMAN MORENO: According to this flow  
17 chart, they go to you before they can get the  
18 determination of completeness.

19 MS. LUBIN: Okay. Okay, so they take that  
20 determination to the DRC. Yeah. I just wanted to  
21 check.

22 MS. KEON: Yes.

23 MR. STEFFENS: So who does the determination  
24 of completeness for a single-family home?

25 MR. RIEL: My assumption is, the Building &

1 Zoning Department.

2 MR. STEFFENS: Do they know what they're  
3 doing? I mean, I've never -- I mean, do they know  
4 that they're doing this?

5 MR. RIEL: I don't want to answer that.

6 MR. STEFFENS: Let me rephrase that. Do  
7 they know that they're doing that now?

8 CHAIRWOMAN MORENO: The Development Review  
9 official makes that determination.

10 MR. STEFFENS: I've never taken a house  
11 before the Development Review Committee.

12 CHAIRWOMAN MORENO: It's not the Development  
13 Review Committee.

14 MR. RIEL: No, it's not the  
15 Development Review Committee.

16 MR. STEFFENS: Yeah, but who's doing the  
17 certifying that it's complete? Because, you know,  
18 you just submit your drawings to the Board of  
19 Architects and -- I mean, there's no --

20 MR. RIEL: Well, I'm assuming that it comes  
21 through --

22 MR. STEFFENS: There's no process.

23 MR. RIEL: It comes through, you know, as  
24 you submit an application to the Building & Zoning  
25 Department --

1 MR. STEFFENS: Right.

2 MR. RIEL: -- who is the vehicle or the  
3 secretary that presents the information to the Board  
4 of Architects. So they look at it to make sure that  
5 all the information, the appropriate plans and fees  
6 and all that is paid, and I'm sure they have a  
7 checklist, and if they satisfy that, and it's ready  
8 to go -- in other words, if they haven't paid their  
9 fees, I'm sure they're not going to the Board of  
10 Architects, so it's, in turn, not complete and they  
11 don't schedule it until that time.

12 MR. KORGE: So scheduling with the Board of  
13 Architects is a certification of --

14 MR. RIEL: I would assume that's the way it  
15 is, yes.

16 MR. STEFFENS: Okay. So, then, at that  
17 point, your rights are vested, or we haven't  
18 determined that yet?

19 CHAIRWOMAN MORENO: Okay, the --

20 MR. RIEL: We haven't determined.

21 CHAIRWOMAN MORENO: -- thing we have added  
22 here, the provision that we've added with the  
23 determination of completeness, is, they need to  
24 certify that it is complete. The Development Review  
25 official is going to say the application is

1 complete.

2 (Thereupon, Mr. Korge left the Commission  
3 Chambers.)

4 MS. KEON: Can we ensure --

5 MR. STEFFENS: Just by accepting it, does  
6 that --

7 MS. KEON: No, by certifying that it is.  
8 There must be some -- Can we ensure that there is a  
9 certification process on all applications for --

10 MR. RIEL: We'll check.

11 MR. STEFFENS: Because there's no official  
12 certification of any kind of single-family work. I  
13 mean, you submit your drawings --

14 MR. RIEL: I can't answer that, because, I  
15 mean, I know in the Planning Department, we give an  
16 application completion letter, sufficiency letter,  
17 and we give a project review completion letter, so --

18 MS. KEON: Okay, but you'll --

19 MR. RIEL: We'll check it.

20 MS. KEON: You'll check to make sure that  
21 there is a certification --

22 MR. RIEL: We'll check it, because  
23 obviously --

24 CHAIRWOMAN MORENO: You need to provide that  
25 a determination of completeness will be issued.

1 MR. RIEL: Issued, right.

2 CHAIRWOMAN MORENO: Yes.

3 MS. KEON: Right.

4 CHAIRWOMAN MORENO: Okay? Anything else?

5 MR. TOYOS: No. Thank you very much. I  
6 appreciate it.

7 CHAIRWOMAN MORENO: Thank you.

8 MS. KEON: Thank you.

9 CHAIRWOMAN MORENO: Okay, we're deferring  
10 Moratorium. Do I hear a motion?

11 MR. TEIN: Motion to defer this section.

12 MR. AIZENSTAT: Second.

13 CHAIRWOMAN MORENO: Second. Let's call the  
14 roll.

15 MS. MENENDEZ-DURAN: Eibi Aizenstat?

16 MR. AIZENSTAT: Yes.

17 MS. MENENDEZ-DURAN: Pat Keon?

18 MS. KEON: Yes.

19 MS. MENENDEZ-DURAN: Tom Korge?  
20 Michael Tein?

21 MR. TEIN: Yes.

22 MS. MENENDEZ-DURAN: Michael Steffens?

23 MR. STEFFENS: Yes.

24 MS. MENENDEZ-DURAN: Cristina Moreno?

25 CHAIRWOMAN MORENO: Yes.

1 MR. RIEL: Madam Chair, could I request that  
2 we jump to Division 11, Historic Preservation?  
3 That's why we have Ms. Lubin here.

4 CHAIRWOMAN MORENO: I was just going to say  
5 that, so Dona can leave.

6 MS. LUBIN: Thank you.

7 CHAIRWOMAN MORENO: Can we do that, Mr.  
8 Siemon?

9 MR. SIEMON: Yes, absolutely.

10 CHAIRWOMAN MORENO: Okay.

11 MS. KEON: So we did appeals, we deferred,  
12 and moratorium, we need to defer.

13 MR. STEFFENS: Boy, the sections between 8  
14 and 11 are really small.

15 CHAIRWOMAN MORENO: We have issues on  
16 two-page sections.

17 MR. SIEMON: Historic Preservation. There  
18 are -- in terms of substance, there are, in our  
19 opinion, no significant changes between the existing  
20 text. It's just reformatting and reorganization.  
21 There are some procedural changes in which, for  
22 example, a determination by the -- an administrative  
23 determination is no longer appealable to the Board of  
24 Adjustment, but is instead appealable to the Historic  
25 Preservation Board. It doesn't make any sense to us

1 to have that specific field go to the board of  
2 variance. It ought to go to the Historic  
3 Preservation Board.

4 But other than that, the tax abatement  
5 provisions have been moved out of the land  
6 development regulations -- they're not a land  
7 development regulation -- into the rest of the Code,  
8 and I don't think there's any other substantive  
9 change.

10 (Thereupon, Mr. Korge returned.)

11 MR. STEFFENS: What are they appealing?

12 MR. SIEMON: Huh?

13 MR. STEFFENS: What is the -- The appeal is  
14 of a Staff --

15 MR. SIEMON: Of a determination she makes --

16 MR. STEFFENS: Of a Staff decision.

17 MR. SIEMON: She makes several  
18 determinations, a certificate of appropriateness or  
19 whatever, and then that would be --

20 MS. LUBIN: Right. If I make a  
21 determination, and the applicant isn't happy with it,  
22 it should be appealed to the Preservation Board, not  
23 to the Board of Adjustment.

24 MR. STEFFENS: Okay.

25 MS. LUBIN: I think that's really the only

1 major change.

2 MR. STEFFENS: Did you look at this flow  
3 chart, Dona?

4 MS. LUBIN: I've looked at everything in  
5 this. Is there something wrong?

6 MR. STEFFENS: Well, I don't know. It  
7 has the diamond in the middle, designation  
8 recommendation.

9 (Simultaneous inaudible voices)

10 MR. STEFFENS: If no, it says, "Applicant  
11 May Present Proposal to the Historic Preservation  
12 Board," which is a public hearing, isn't it?

13 MS. LUBIN: Yes.

14 MR. STEFFENS: And then, after the public  
15 hearing, it goes to "Designation Recommended." At  
16 the public hearing, the designation may be  
17 recommended.

18 Then it goes, if yes, over to "Staff  
19 Schedules Public Hearing." So didn't they just go  
20 through a public hearing to get to the yes?

21 MR. SIEMON: Right here.

22 MR. STEFFENS: I mean, would it be  
23 designated after that? Where it says if no, an  
24 applicant presents it to the Historic Preservation  
25 Board. At that point, wouldn't it be designated?

1 MS. LUBIN: I think what they're talking  
2 about there is if an applicant submits a proposal to  
3 Staff that a property be designated as historic --

4 MR. STEFFENS: Right.

5 MS. LUBIN: -- then Staff says --

6 MR. STEFFENS: No.

7 MS. LUBIN: -- it doesn't fit  
8 the criteria --

9 MR. STEFFENS: Right.

10 MS. LUBIN: -- there is recourse, taking it  
11 to the Preservation Board.

12 MR. STEFFENS: Right.

13 MS. LUBIN: The board then can direct  
14 Staff to --

15 MR. SIEMON: Initiate the process.

16 MS. LUBIN: To initiate the process, and  
17 then it goes -- because -- so this --

18 MR. STEFFENS: So that's the --

19 MS. LUBIN: So when I answered you it's a  
20 public hearing, it's not. That would be them saying,  
21 "You know what? We think this meets the minimum  
22 criteria."

23 MR. STEFFENS: But it is at a public  
24 hearing?

25 MR. SIEMON: Public meeting.

1 MS. LUBIN: It would be at the Historic  
2 Preservation Board, but not a public hearing to  
3 designate the property.

4 MR. STEFFENS: But it's not approval of the  
5 designation, it's the approval of --

6 MR. SIEMON: To initiate the process.

7 MR. STEFFENS: To initiate the process.

8 MS. LUBIN: To initiate the process of  
9 designation. So then you go forward and you notify  
10 the neighbors and all that. And that came up with  
11 Merrick Park, the designation of Merrick Park, so I  
12 wanted an applicant to have recourse to take it  
13 someplace other than just ending with Staff's, you  
14 know, "No." That was what that was about. So that  
15 would be a public hearing.

16 MR. SIEMON: Right, but there is -- "if  
17 no" is -- should be between design not recommended --

18 MR. STEFFENS: Right.

19 MS. LUBIN: Right.

20 MR. SIEMON: -- and the designation --

21 MS. LUBIN: That's right.

22 MR. SIEMON: -- recommendation.

23 MS. KEON: What is this, "No Development  
24 Permits are Issued"? Why is that over there? I  
25 mean, I would think that they wouldn't be issued

1 until everything is done. Why is it like just there,  
2 that little side bar?

3 MS. LUBIN: As it is now, if there is a  
4 pending application for a designation, we flag the  
5 Building & Zoning property file for that.

6 MS. KEON: Right.

7 MS. LUBIN: And they do not issue permits  
8 until the designation is in place, so that any  
9 alterations to the property can be reviewed by the  
10 Preservation Board.

11 MS. KEON: Okay. So, really, this little  
12 box should go all the way down. I mean, it should  
13 just -- it should be the whole thing, right, and not  
14 just the Historic Board public hearing?

15 MR. KORGE: When do you first flag it?

16 MS. LUBIN: When we get the application in.

17 MR. KORGE: So it would be when "Submit  
18 Proposal for Historic Designation," the very first  
19 box?

20 MS. KEON: Right. It seems that it would be  
21 for this entire process.

22 MS. LUBIN: That's right. It should go all  
23 the way down to "Property Designated."

24 MR. SIEMON: You're correct.

25 MS. LUBIN: You're right.

1 MS. KEON: And it should start here at the  
2 top, right?

3 MR. SIEMON: No.

4 MS. KEON: "Submit Proposal for Historic  
5 Designation"?

6 MS. LUBIN: It should be when the --

7 MR. SIEMON: When Staff schedules the public  
8 hearing is when the --

9 MS. KEON: When it's flagged?

10 MR. SIEMON: When it's flagged.

11 MS. LUBIN: When it's flagged.

12 MS. KEON: Okay, but then it goes --

13 MR. AIZENSTAT: Not the application.

14 MR. SIEMON: No.

15 MS. KEON: Okay, and then it goes all the  
16 way down here until after --

17 MR. SIEMON: That's correct, after -- until  
18 designation.

19 MS. KEON: Okay.

20 MR. KORGE: To the end.

21 MS. LUBIN: You have to have when it's  
22 noticed. We have 10 days prior to the public  
23 hearing, we flag the Building --

24 MR. STEFFENS: Where does that line -- does  
25 that line move up?

1 MS. LUBIN: So when we've noticed it --

2 MS. KEON: No, it goes down, all the way  
3 until after --

4 MR. STEFFENS: It doesn't move up?

5 MR. KORGE: No.

6 MS. KEON: She said no. It's when they --  
7 she said they flag it when they --

8 MS. LUBIN: We flag it when the public  
9 notice --

10 MR. SIEMON: Well, that's scheduled. It  
11 says scheduled.

12 MS. LUBIN: When we schedule it. So, you  
13 know, 10 days prior to the Board, when we send out  
14 the notice, we put it in the paper and do all that,  
15 we also flag the Building Department file.

16 MS. KEON: Okay.

17 MR. STEFFENS: This is for historic  
18 preservation designation. Now, if a building came to  
19 you for demolition that you thought might be  
20 historic, you're saying it's flagged so that nothing  
21 would happen?

22 MR. KORGE: It should be flagged where the  
23 designation is recommended, shouldn't it, before the  
24 scheduling of a public hearing? Once you've  
25 recommended that it be preserved, there should be no

1 building permits issued.

2 MS. LUBIN: That doesn't happen now. I  
3 mean --

4 MR. SIEMON: It's the practice --

5 MR. KORGE: We need to change that, don't  
6 we?

7 MS. LUBIN: I mean, if there's a  
8 significance application that's in, we do not flag  
9 the property now, I mean.

10 MR. STEFFENS: But it still can't be --

11 MS. LUBIN: It can be altered. It cannot be  
12 demolished.

13 MS. STEFFENS: When you say altered --

14 MS. LUBIN: I don't look at any of the  
15 alterations to the buildings.

16 MR. STEFFENS: But --

17 MR. AIZENSTAT: Say that again.

18 MR. STEFFENS: It could be altered where an  
19 addition is put onto it?

20 MS. LUBIN: I'm talking about a nonhistoric  
21 property. If a property is not designated --

22 MR. STEFFENS: But you --

23 MS. LUBIN: -- and you want to alter that  
24 property, I don't see it.

25 MR. STEFFENS: But you review all --

1 MS. LUBIN: You could alter it beyond the  
2 historic integrity. You could destroy the historic  
3 integrity.

4 MR. STEFFENS: But you review all  
5 demolition?

6 MS. LUBIN: Complete demolitions.

7 MR. STEFFENS: Complete demo, not all  
8 demolition.

9 MS. LUBIN: Just complete demolitions of  
10 property. If you want to demolish the entire  
11 property, or the building that's on the property,  
12 then I would have to approve it.

13 MR. STEFFENS: So, theoretically, I could --

14 MS. LUBIN: Yes.

15 MR. STEFFENS: -- tear down 89 percent of  
16 the building --

17 MS. LUBIN: That's correct.

18 MR. STEFFENS: -- and you'd never see it?

19 MS. LUBIN: That's right.

20 MR. AIZENSTAT: Shouldn't that change?

21 MS. LUBIN: You know, I don't know how to  
22 change it, but that is a loophole. A person could  
23 alter a building that's historically significant and  
24 then apply for a demolition permit. I mean, that  
25 could happen, because I don't look at the

1 alterations.

2 MR. STEFFENS: But they could apply for an  
3 alteration --

4 MS. LUBIN: That's right.

5 MR. STEFFENS: -- that demolishes --

6 MS. LUBIN: The historic integrity.

7 MR. STEFFENS: -- almost all of --

8 MS. LUBIN: You're absolutely right. But I  
9 can't look at all the alterations.

10 MR. KORGE: You could be required to look at  
11 all alterations on property of a certain age or  
12 greater, for example, which would narrow the field  
13 quite a bit. That's one way to approach it.

14 MS. LUBIN: Right. Right.

15 MR. KORGE: And you would then come to us  
16 and tell us, "We think anything that was built before  
17 this date," you know, 1939, I don't know, whatever  
18 the date is, "that that should first come to us for  
19 preliminary review."

20 MS. LUBIN: That would prevent that.

21 MR. KORGE: If that's what you would  
22 recommend --

23 MS. LUBIN: I would have to look at the  
24 numbers of properties that go forward to the Board of  
25 Architects before I would, in any way, be able to

1 recommend that my Staff could look at all the  
2 alterations, because there are like 60 to 80 Board of  
3 Architects cases a week, and I just can't imagine my  
4 little department being able to look at the  
5 alterations. I would love to be able to do that, but  
6 I just don't --

7 MR. KORGE: Well, are there criteria that  
8 you would like to set that would trigger an earlier  
9 review, so that we don't end up with something like  
10 maybe happened on Miami Beach, that people complained  
11 about, where a building that probably should have  
12 been preserved was knocked down because there was  
13 no preliminary review?

14 MS. LUBIN: That's very upsetting, right.  
15 That was actually a complete demolition, so that  
16 would be prevented in this case, but an alteration to  
17 that property wouldn't be.

18 MR. KORGE: Yeah, but if you just leave two  
19 walls standing, it's, you know --

20 MS. LUBIN: I agree with you, and --

21 CHAIRWOMAN MORENO: What about if we give  
22 the Board of Architects the ability to recommend  
23 Historic Preservation review?

24 MS. LUBIN: Oh. That's not a bad idea.

25 MR. STEFFENS: Board of Architects and the

1 City Architect.

2 MS. LUBIN: That would be good --

3 MR. STEFFENS: So if they were to see  
4 something coming through --

5 MS. LUBIN: -- because they would catch them  
6 when the alteration is coming through, and the Board  
7 of Architects would be knowledgeable in order to  
8 catch that.

9 MR. STEFFENS: Yeah, they would see  
10 something coming through and say, "Wait a minute -- "

11 MS. LUBIN: That's a good idea. Oh, you're  
12 so good.

13 MR. SIEMON: Well, we're talking about --

14 MS. LUBIN: Is that a concern?

15 MR. SIEMON: We're talking about properties  
16 that are eligible --

17 MS. LUBIN: Right.

18 MR. SIEMON: -- for designation.

19 MS. LUBIN: Right.

20 MR. KORGE: Right.

21 MR. STEFFENS: Anything more than 50 years  
22 old is eligible.

23 CHAIRWOMAN MORENO: Right.

24 MR. STEFFENS: Well --

25 MS. LUBIN: Or, if you see something like an

1 Alfred Browning Parker that they're --

2 MR. STEFFENS: Exactly.

3 MS. LUBIN: -- destroying the historic --

4 MR. STEFFENS: Less than 50 years old.

5 MS. LUBIN: And I know the Board of  
6 Architects would recognize something like that and  
7 want to do something.

8 MR. SIEMON: But we're going to have to  
9 define that in some reasonable fashion, because --

10 MS. LUBIN: Well, it would be the criteria  
11 for designation of properties, to become a local  
12 historic landmark.

13 CHAIRWOMAN MORENO: I mean, if the Board of  
14 Architects reasonably considers that a property could  
15 qualify for the -- under that criteria, they'll  
16 recommend it to the Historic Preservation Officer for  
17 review.

18 MS. LUBIN: For review. That would be  
19 wonderful. Very good idea.

20 MR. KORGE: But we still haven't resolved,  
21 in my mind, at least, when the development permitting  
22 would stop during the process. Shouldn't it stop  
23 when there's a designation recommended, not after a  
24 designation is recommended?

25 MS. LUBIN: I think it should stop when

1 there is a -- when it's scheduled, so it would be  
2 when the agenda goes out to the Historic Preservation  
3 Board.

4 MR. KORGE: When it's scheduled for public  
5 hearing?

6 MS. LUBIN: I think so.

7 MR. KORGE: Not when a designation is  
8 recommended? So if someone recommends --

9 MS. LUBIN: Sometimes we get -- I just don't  
10 want to hold up a property. Sometimes we get --  
11 normally, we turn it around in a month, or two  
12 months, our research.

13 MR. KORGE: But we're holding them up,  
14 because someone with authority to recommend a  
15 designation, other than the property owner, who's not  
16 going to knock it down if he wants it designated --

17 MS. LUBIN: Right.

18 MR. KORGE: -- has decided that this needs  
19 to be reviewed.

20 MS. LUBIN: So, once an application is filed  
21 with the Department? You could do that.

22 MS. KEON: I agree with you, that if they  
23 determine that it should be -- that, yes, there's a  
24 determination that it should be designated, at that  
25 point --

1 CHAIRWOMAN MORENO: The building permit's  
2 got to stop. The permitting stops.

3 MS. KEON: -- that that's when you should  
4 stop the permitting, not when they do a  
5 cursory review. You'll have people waiting in line  
6 forever. I mean, I think that's an unreasonable  
7 burden you place on property owners.

8 MS. LUBIN: Sometimes our research takes a  
9 while --

10 MS. KEON: Yeah.

11 MS. LUBIN: -- like on districts and things,  
12 and there's maybe an application for a historic  
13 district and it will take us four months, five months  
14 to do that. I'm not -- or more. I'm not --

15 MS. KEON: Yeah.

16 MS. LUBIN: -- comfortable holding up  
17 property owners -- I don't know the answer to that  
18 question.

19 MS. KEON: I don't think it's right.

20 MR. TEIN: As a --

21 MR. KORGE: So it's when you make the  
22 decision that it should go forward, that's when you  
23 want it to do it?

24 MS. LUBIN: I'm more comfortable doing that.

25 CHAIRWOMAN MORENO: When Staff recommends --

1 when Staff schedules a public hearing, at that stage?

2 MS. LUBIN: I think so. And, you know, if  
3 it's a property that is, you know, so significant, we  
4 turn it around.

5 CHAIRWOMAN MORENO: Right.

6 MR. TEIN: I want to ask a question about  
7 the historic district part of this division.

8 In our meeting that we had last month, we  
9 addressed the issue of these houses that are larger  
10 than the proportion of the rest of the neighborhood.

11 MS. LUBIN: Right.

12 MR. TEIN: Rather than using the euphemisms  
13 that everyone sanctions --

14 MS. LUBIN: Right.

15 MR. TEIN: -- or some of us sanction. There  
16 was a -- there was an issue raised during that  
17 discussion as to whether a possible solution to the  
18 McMansion/monster home issue was the application of  
19 the historic district provisions of the Code, and my  
20 question is, from -- in your opinion, is the historic  
21 district provisions -- are those provisions a  
22 possible place that we might be able to find a  
23 workable solution to this issue, or do you think it's  
24 just not applicable to that problem?

25 MS. LUBIN: No, I think it is certainly a

1 part of the solution, because if an area qualifies as  
2 a historic district, there are two types of  
3 properties within that area. There are contributing  
4 properties that are the historic homes, and then  
5 there are those buildings that are within that  
6 district that aren't historic but are built later or  
7 whatever, and those are the buildings that are able  
8 to be demolished, they're able to be new homes,  
9 and --

10 MR. TEIN: No later, you said?

11 MS. LUBIN: They are able to be new homes --

12 MR. AIZENSTAT: Built later.

13 MR. TEIN: Built later.

14 MS. LUBIN: -- and -- or just additions to  
15 those types of homes, and if it's in a historic  
16 district, those types of alterations of new homes are  
17 reviewed by the Historic Preservation Board, in  
18 addition to the Board of Architects, so it becomes a  
19 public hearing.

20 And so we have applications now for areas of  
21 the City, the neighbors have gotten together and  
22 asked for historic districts, so that there is a  
23 public review of the new single-family homes that are  
24 going within that area. So I think it's a good  
25 start, because then the neighbors can come to a

1 public hearing, they can look at what's going into  
2 the neighborhoods, and it's another layer of review.

3 CHAIRWOMAN MORENO: But --

4 MR. STEFFENS: And voice objections if they  
5 have objections.

6 MS. KEON: But --

7 MS. LUBIN: Pardon me?

8 MS. KEON: But when you say --

9 MR. STEFFENS: And voice objections.

10 MS. LUBIN: They can voice objections and  
11 work with the Board.

12 CHAIRWOMAN MORENO: Okay, let's say that all  
13 the houses in the area are -- in your historic area,  
14 are, you know, one-story houses. Could you say to  
15 somebody, "You can't build a two-story house,"  
16 because it's not consistent with a historic area?

17 MS. LUBIN: I don't think you can. My view  
18 on that is, I don't believe you can. I know that  
19 that was brought up at a recent meeting that I went  
20 to on legal aspects of historic preservation, and  
21 there are some historic preservation boards  
22 throughout the country that are saying that. I think  
23 it's a design issue, and if there are single-family  
24 homes and someone wants to build a two-story home,  
25 they're able to design that so that it doesn't impact

1 the one-story homes.

2 MS. KEON: Right.

3 MS. LUBIN: You know, put the two-story  
4 addition back -- I mean, there are ways so that they  
5 can have the square footage that's allowed, but it  
6 still doesn't impact negatively the neighborhood.

7 MS. KEON: But do you have the tools within  
8 this Code now to be able to affect the design of  
9 those homes that would be going into those historic  
10 districts?

11 MS. LUBIN: Yes.

12 MS. KEON: You do?

13 MS. LUBIN: Yes.

14 MS. KEON: Okay. So all then -- really,  
15 what would be necessary in addressing some of this  
16 issue of these homes that are huge is including the  
17 review by Historic Preservation for --

18 MS. LUBIN: Well, it would have to be able  
19 to be within a district.

20 MS. KEON: Right, within a district.

21 MS. LUBIN: It would have to be a designated  
22 district. And the districts, there's a rule of thumb  
23 that's not in this Code, which I've discussed with  
24 other preservation officers about how -- what's the  
25 percentage of historic homes within a district, and

1 normally it's greater than 50 percent. I mean, you  
2 have to have more historic fabric than nonhistoric  
3 fabric to have a district.

4 MR. KORGE: You wouldn't be designating it  
5 just to address oversized homes.

6 MS. LUBIN: No, not at all.

7 MR. KORGE: Right.

8 MS. LUBIN: No, not at all.

9 MS. KEON: It's to preserve the integrity  
10 and quality of the neighborhood.

11 MS. LUBIN: And that wouldn't be  
12 appropriate. But if they're -- for instance, Santa  
13 Maria Street has an application in to become a  
14 historic district, on the whole street, and we're  
15 looking at Country Club Prado, Alhambra, Obispo. So  
16 those are the areas that we're looking at now.

17 CHAIRWOMAN MORENO: And are all those  
18 owner-presented, or some of those are Staff-  
19 initiated?

20 MS. LUBIN: Most of them are Staff-  
21 initiated. Alhambra, Country Club Prado, Obispo are  
22 generated by Staff. Santa Maria Street is a  
23 application that's in our office. The others have  
24 been researched by consultants, so we have the  
25 documentation in place. The Santa Maria Street, we

1 need to do the research.

2 MR. TEIN: What I'm wondering is if -- My  
3 perception is that this is a problem that's something  
4 that is being discussed a lot and is of great concern  
5 to a lot of people on both sides of the issue.

6 MS. LUBIN: Right.

7 MR. TEIN: Given that this particular  
8 division of this Article 3 is one that could possibly  
9 address it, could possibly be a solution that folks  
10 on both sides of this issue in this community might  
11 be satisfied with, is this division, Division 11 of  
12 Article 3, worth further study, in light of the  
13 oversized homes issue that's presently facing our  
14 community?

15 MS. LUBIN: You mean, as far as the review  
16 that the board would be able to --

17 MR. TEIN: Well, what I'm interested in is,  
18 we were -- last time we were here, some temporary  
19 regulations were proposed. They didn't get past this  
20 Board, for a variety of reasons, including the fact  
21 that we got them less than 24 hours before we were  
22 asked to pass on them, but -- and regardless, it was  
23 felt that maybe that measure and that way of  
24 addressing it, at least I personally felt, without  
25 further notice and an opportunity for others to be

1 heard, probably shouldn't be in front of us -- we  
2 probably shouldn't make the decision in that way,  
3 because it just affects too many folks in the  
4 community.

5           And I'm just wondering that, before we pass  
6 on this particular division, since it's basically,  
7 for the most part, in the same form that it was in  
8 the present Code --

9           MS. LUBIN: Uh-huh.

10           MR. TEIN: -- if this is indeed, the  
11 historic district part -- if this is indeed a  
12 possible solution to this problem that is so much  
13 affecting the community right now, should we look at  
14 this particular division, Division 11, in the context  
15 of, well, should this be studied further? Should we  
16 have some type of a study done on this, or some type  
17 of an additional review, by you all or by whomever,  
18 so that we can look at Article 11 as a possible  
19 solution to the oversized homes issue? I don't  
20 know. I'm asking you what you think.

21           CHAIRWOMAN MORENO: Excuse me. One thing,  
22 Michael, you should know that this ordinance, even  
23 though it's the existing ordinance, was the subject  
24 of very intensive review when it was recently  
25 adopted. It's not one of the old things we have in

1 the Code.

2 MR. TEIN: When was it?

3 MR. RIEL: A year and a half ago, about 18  
4 months ago. We have one of -- In comparison to other  
5 local governments across the United States, this is  
6 probably one of the more stronger historic  
7 preservation ordinances.

8 MR. TEIN: I hear you, and that's not --

9 MR. RIEL: I think I understand what you're  
10 getting at. I think, yeah, we can do that, but is it  
11 going to solve the solution? This only deals with  
12 those properties that are in historic areas. This  
13 does not deal with a property that is outside that  
14 boundary, and drawing that historic boundary, as Dona  
15 has said, it's difficult to draw that line.

16 MS. LUBIN: But I would say that I think  
17 that the tools to do what you're saying are already  
18 in this Code.

19 MR. RIEL: Are in already, that's what I was  
20 going to say.

21 MR. STEFFENS: The tools are in here.

22 MS. LUBIN: I really believe the tools are  
23 there. What we don't have is a survey of the City.  
24 I mean, we're working on it. We're working, you  
25 know, little by little, getting all of the City

1 surveyed, and it's more easily done by consultants,  
2 but they do master site file forms. It's a State  
3 form that they can do to individual properties. I  
4 would like to see that done on every property in the  
5 City, so that we can recognize where the historically  
6 significant properties are, and then be able to pick  
7 the boundaries. We only have the City from Coral Way  
8 north surveyed.

9 MR. TEIN: I'm just --

10 MS. LUBIN: So it's difficult for me to  
11 figure out where the districts are. I can't see the  
12 patterns.

13 MR. TEIN: Right, and --

14 CHAIRWOMAN MORENO: But I think the answer  
15 to your question is that if she was able to designate  
16 a district that's historic, she would have the tools  
17 to address the problem you're facing.

18 MS. LUBIN: I believe I already have the  
19 tools.

20 CHAIRWOMAN MORENO: You don't need to do  
21 anything else to this. It's already there, if it can  
22 be designated as a historic district. That's the  
23 difficulty.

24 MS. LUBIN: I think so.

25 MR. STEFFENS: We already have historic

1 districts that are well protected.

2 MS. LUBIN: That's right. We even went back  
3 and strengthened the ones that were there before.  
4 North and South Greenway, the Country Club District,  
5 when that was put into place, in the eighties, they  
6 said that the noncontributing properties would not  
7 come before the Historic Preservation Board. We  
8 recently changed that. So anything on North and  
9 South Greenway, historic or not, comes to my board on  
10 major alterations, and also, MacFarlane wanted their  
11 boundaries to be enlarged, and we did that. So we're  
12 working towards it. It takes a long time. It takes  
13 longer than what I would want.

14 MR. TEIN: So the issue, then, is the tools  
15 are here, if you can make it into the threshold of  
16 what the Code defines as a historic district.

17 MS. LUBIN: Right.

18 MR. TEIN: But if you can't, then the  
19 historic district provisions are not going to help  
20 anybody --

21 MS. LUBIN: That's right.

22 MR. TEIN: -- who wants to, let's say,  
23 protect their neighborhood against development of --  
24 whatever you want to call them -- oversized homes?

25 MS. LUBIN: That's right.

1 MR. STEFFENS: If it's not a historic  
2 district --

3 MR. TEIN: The provisions wouldn't be  
4 helpful.

5 MR. STEFFENS: -- you can't protect it.

6 MS. LUBIN: Yeah, and I don't think you can  
7 change them to get them to be helpful, in that  
8 situation.

9 CHAIRWOMAN MORENO: Okay. I think we're  
10 ready to move on this division, except for, I need  
11 someone to clarify the changes we're making on the  
12 flow chart.

13 MR. STEFFENS: Is the other flow chart  
14 correct, also, the certificate of appropriateness?

15 CHAIRWOMAN MORENO: Okay, well, let's start  
16 with this one. Let's correct it so we all know what  
17 we're voting on, and then we'll go to the next one.

18 MR. SIEMON: The -- if you look at the  
19 center of the page, between Lines 28 and 29 --

20 CHAIRWOMAN MORENO: Uh-huh.

21 MR. SIEMON: -- it says, "Staff Schedules  
22 Public Hearing."

23 CHAIRWOMAN MORENO: Uh-huh.

24 MR. SIEMON: That's actually when notice is  
25 given of the public hearing.

1 MR. KORGE: Notice of public hearing.

2 MR. SIEMON: And on the left-hand side is,  
3 "No Development Permits are Issued." That line  
4 should be extended from Line 39 to Line 52, and  
5 should come in "Property Designated."

6 MS. LUBIN: Right.

7 MR. SIEMON: On the left.

8 CHAIRWOMAN MORENO: Okay.

9 MR. SIEMON: And then on the right, under  
10 "Designation Recommended," "If no" should be placed  
11 against the long vertical arrow that runs down to  
12 "Property Not Designated."

13 CHAIRWOMAN MORENO: Now, let's look at the  
14 other chart.

15 You're want to talk again, right? Okay.

16 Why don't I give you a chance to look at  
17 that calmly and let the gentleman speak again.

18 MR. TOYOS: I do apologize. I know it's  
19 late, but there's one little -- one point I need to  
20 see if we could get clarified.

21 Under Section 3-1114, "Undue economic  
22 hardship," exactly how do you define -- because I see  
23 here certain requirements, including annual debt  
24 service, real estate taxes, the amount paid for the  
25 property. But what is undue economic hardship, when

1 it comes to a property under this division?

2 MS. KEON: There's a typo there, also.

3 CHAIRWOMAN MORENO: I think that's a  
4 discretionary matter for the board to determine,  
5 based on the information that's being provided,  
6 whether there is undue economic hardship.

7 MR. SIEMON: That's a term which has its  
8 origins in several different sources, but it is -- in  
9 this State, has generally been construed to mean  
10 there is no economically beneficial use of the  
11 property possible under the regulations as applied.  
12 It's a fairly rigid standard, because most of the  
13 case law comes under the variance category.

14 CHAIRWOMAN MORENO: So if it's -- if it is  
15 less valuable, that's not enough.

16 MR. SIEMON: That's not enough.

17 CHAIRWOMAN MORENO: It's just if it renders  
18 it valueless.

19 MR. SIEMON: (Nods head).

20 MR. KORGE: Do we need to state that  
21 explicitly?

22 MR. SIEMON: I would not recommend that we  
23 try to define that.

24 MS. KEON: Can you repair -- can you correct  
25 the typo there?

1 MR. SIEMON: Which, which?

2 MS. KEON: On Line 17. You have "under  
3 economic hardship," instead of undue economic  
4 hardship.

5 MR. SIEMON: Under?

6 MS. KEON: Yeah. Just correct your typo.

7 MR. SIEMON: Spell Check is not much help  
8 when it's a different word.

9 MS. KEON: Not when it's spelled correctly,  
10 no. It's a word.

11 CHAIRWOMAN MORENO: Thank you very much.

12 Are we okay with that flow chart?

13 MS. LUBIN: I think so.

14 CHAIRWOMAN MORENO: Okay.

15 MS. LUBIN: Is there something that -- Is  
16 there something that you think is wrong in that?

17 MR. STEFFENS: No.

18 MS. LUBIN: Oh, okay.

19 MR. SIEMON: She just wants to check.

20 MS. LUBIN: Okay.

21 MR. STEFFENS: A standard certificate of  
22 appropriateness is issued without the board's review?

23 MS. LUBIN: That's right.

24 CHAIRWOMAN MORENO: Okay, motion on Division

25 11 --

1 MR. KORGE: I move to --

2 CHAIRWOMAN MORENO: -- subject to the  
3 changes that Mr. Siemon has proposed?

4 MR. KORGE: I'll move to approve Division 11  
5 of Article 3, subject to the changes to the chart  
6 shown in Section 3-1102, on Page 2 of 16.

7 MR. STEFFENS: And where will we reference  
8 the architectural board being able to refer this  
9 back? That would occur in a different section?

10 MS. LUBIN: I'll tell you, I think that's a  
11 great idea.

12 MS. KEON: Yeah. Where do we include that,  
13 though? Where do we put it?

14 MS. LUBIN: I'm not sure if that would be  
15 included under Preservation or the duties of the  
16 Board of Architects.

17 MS. KEON: Probably under the duties of the  
18 Board of Architects.

19 MR. RIEL: We'll look at the appropriate  
20 location and make sure it's --

21 MS. LUBIN: But we need to remember to put  
22 that in. That's really important.

23 MR. RIEL: I've got it written here, include  
24 text that allows Board of Architects --

25 MR. KORGE: I'll include that in the motion,

1 that the Board of Architects will have the authority  
2 to --

3 MR. RIEL: To recommend an alteration  
4 proceed to the Historic Preservation Board, if they  
5 deem necessary.

6 MR. AIZENSTAT: That will be placed  
7 appropriately.

8 MS. LUBIN: Good job. Thank you very much.

9 MR. STEFFENS: Second that.

10 CHAIRWOMAN MORENO: Second?

11 MS. KEON: If they deem necessary or if the  
12 site qualifies -- may qualify.

13 MR. RIEL: Deem necessary.

14 MR. SIEMON: Well, if the Board -- Let me  
15 make sure I understand. If the Board of Architects  
16 looks at an alteration permit and determines that  
17 this ought to be considered as if it were a  
18 demolition permit --

19 MS. KEON: No, I think it's if they look --

20 MR. SIEMON: Subject to her --

21 MS. LUBIN: Or that -- I would say that it  
22 alters the historic integrity of a property that  
23 could qualify --

24 MR. SIEMON: Right.

25 MS. LUBIN: -- for historic designation.

1                   CHAIRWOMAN MORENO: But it's not just  
2 because it's a lot. It could be an addition, and no  
3 demolition.

4                   MR. SIEMON: Right.

5                   MR. KORGE: Well, they're going to have  
6 authority --

7                   MR. SIEMON: It's a change.

8                   MR. KORGE: -- to recommend -- to recommend  
9 designation for historic --

10                  MS. LUBIN: Or recommend that it be  
11 reviewed --

12                  MR. AIZENSTAT: The review process.

13                  MS. LUBIN: Recommend that it's reviewed by  
14 the landmark officer so that it can come into my  
15 department and we can look at it and say, you know,  
16 "What a fabulous home. These are the advantages of  
17 historic preservation."

18                  MR. KORGE: So you want them to recommend  
19 it to the landmark officer?

20                  MS. LUBIN: Yes.

21                  MR. SIEMON: But that's what you do with  
22 demolition.

23                  MS. LUBIN: Right. I talk to them.

24                  MS. KEON: And you want to do that for any  
25 permit --

1 MS. LUBIN: Alteration.

2 MS. KEON: Any alteration.

3 MR. SIEMON: Any alteration.

4 MS. LUBIN: That's to a historically  
5 significant property.

6 MR. STEFFENS: Well, any alteration that the  
7 Board of Architects --

8 MR. SIEMON: Wait a minute. Start --

9 MR. STEFFENS: -- deems might be  
10 appropriate.

11 MS. LUBIN: Based on the Board of  
12 Architects -- the Board of Architects will know.

13 MR. STEFFENS: Yeah.

14 MS. KEON: Okay, but you have to have the  
15 language that makes it clear.

16 MR. SIEMON: Unfortunately, I've got to  
17 write it down.

18 MS. KEON: Yeah, he's got to write it down.

19 MR. KORGE: Well, you'll write that down,  
20 but that's going to be -- probably not even going to  
21 be here.

22 MR. SIEMON: Eligible?

23 MS. LUBIN: Yes.

24 MR. SIEMON: Designation-eligible  
25 properties?

1 MS. LUBIN: Yes.

2 MR. SIEMON: So an alteration permit for a  
3 designation-eligible property which goes before the  
4 Board of Architects, if they determine that it should  
5 be considered for designation --

6 MS. LUBIN: That's right.

7 MR. SIEMON: -- that it is then treated,  
8 from that point on, as if it were an application for  
9 demolition.

10 MS. LUBIN: Is that what we want to say?

11 MR. RIEL: I know what he wants to say, but  
12 I don't know if that's the right terminology.

13 MR. SIEMON: It's the effect.

14 MR. RIEL: The effect is that the HPO will  
15 review it --

16 MS. LUBIN: Right.

17 MR. RIEL: -- through the same process that  
18 they do as a demolition.

19 MS. LUBIN: Right.

20 MR. SIEMON: Right, and if she gives  
21 notice, the application is suspended. That's the --

22 MS. LUBIN: That's right.

23 MR. SIEMON: -- critical part.

24 MS. LUBIN: That's right, and that's already  
25 in place.

1 MR. SIEMON: And that's why I say --

2 MS. LUBIN: That's right, okay.

3 MR. SIEMON: -- as if it were --

4 MS. LUBIN: I understand.

5 MR. SIEMON: -- a demolition.

6 MR. RIEL: The same process.

7 MR. SIEMON: As a trigger.

8 MR. RIEL: The process.

9 MR. SIEMON: Just adding the second trigger

10 for the same process.

11 MS. LUBIN: I agree with you.

12 MS. KEON: Right.

13 MR. SIEMON: Okay.

14 MS. LUBIN: That's great.

15 MR. SIEMON: I think we understand that.

16 MS. LUBIN: That's really great, because

17 that's been a problem.

18 CHAIRWOMAN MORENO: Okay. Do we have a

19 second for Tom's motion?

20 MR. AIZENSTAT: Second.

21 CHAIRWOMAN MORENO: Eibi?

22 MR. STEFFENS: I second.

23 CHAIRWOMAN MORENO: Okay.

24 MS. MENENDEZ-DURAN: Pat Keon?

25 CHAIRWOMAN MORENO: Pat?

1 MS. KEON: Oh, yes.

2 MS. MENENDEZ-DURAN: Tom Korge?

3 MR. KORGE: Yes.

4 MS. MENENDEZ-DURAN: Michael Tein?

5 MR. TEIN: Yes.

6 MS. MENENDEZ-DURAN: Michael Steffens?

7 MR. STEFFENS: Yes.

8 MS. MENENDEZ-DURAN: Eibi Aizenstat?

9 MR. AIZENSTAT: Yes.

10 MS. MENENDEZ-DURAN: Cristina Moreno?

11 CHAIRWOMAN MORENO: Yes.

12 MS. LUBIN: Thank you.

13 CHAIRWOMAN MORENO: Thank you very much.

14 MR. AIZENSTAT: Thank you for staying late.

15 MS. LUBIN: My pleasure. It's my job.

16 CHAIRWOMAN MORENO: But you got a good idea  
17 out of staying late.

18 MS. LUBIN: I know. It was great. It was  
19 worth it.

20 MR. SIEMON: It was worth it.

21 We come back to variances. This provision  
22 is largely the process you have now. There was some  
23 discussion about changing the hardship criteria.  
24 They were not changed. It's basically reformatting,  
25 editing, but the class of the amount and type of

1 flexibility that's available under the variance is  
2 the same as it was under the old Code, but the  
3 process has just been clarified and simplified, but  
4 basically, the standard variance language has  
5 sustained itself.

6 CHAIRWOMAN MORENO: I think what we  
7 discussed, at one point, was addressing areas as  
8 conditional uses that now are the subject of variance  
9 requests, and we will do that elsewhere.

10 MR. SIEMON: That's right, and there are a  
11 number of things that have been granted as a variance  
12 that really didn't involve an undue economic  
13 hardship, and those items we've been trying to  
14 identify and make that flexibility available as a  
15 minor or major conditional use.

16 CHAIRWOMAN MORENO: Okay. Do I have a  
17 motion on the variance?

18 MR. TEIN: Motion to approve this division.

19 MR. KORGE: I'll second that.

20 CHAIRWOMAN MORENO: Call the roll, please.

21 MS. MENENDEZ-DURAN: Tom Korge?

22 MR. KORGE: Yes.

23 MS. MENENDEZ-DURAN: Michael Tein?

24 MR. TEIN: Yes.

25 MS. MENENDEZ-DURAN: Michael Steffens?

1 MR. STEFFENS: Yes.

2 MS. MENENDEZ-DURAN: Eibi Aizenstat?

3 MR. AIZENSTAT: Yes.

4 MS. MENENDEZ-DURAN: Pat Keon?

5 MS. KEON: Yes.

6 MS. MENENDEZ-DURAN: Cristina Moreno?

7 CHAIRWOMAN MORENO: Yes.

8 Division 9.

9 MR. SIEMON: The modifications to the  
10 existing subdivision provisions involve updating it  
11 to bring it into compliance with the County's Code,  
12 the requirements that we're required to comply with,  
13 and some minor adjustments as to a denial of a  
14 preliminary -- of the tentative plat --

15 MR. RIEL: The optional review.

16 MR. SIEMON: Right, the optional review of a  
17 tentative plat by the City Commission, "Where the  
18 applicant desires to obtain an expression from the  
19 City Commission on the tentative plat as recommended  
20 by the Planning & Zoning Board before proceeding to  
21 final plat, the applicant shall submit a written  
22 request, " and this is to -- if there is an approval  
23 which has conditions that are unacceptable or the  
24 developer is concerned about, he needs to find out  
25 whether the Commission would sustain them or not.

1 Because the tentative plat doesn't go to the  
2 Commission, he has the option to be able to go and  
3 find out whether they are going to sustain those  
4 provisions or not.

5 MR. RIEL: We do not have those provisions  
6 in the Code right now, so that --

7 MR. KORGE: So where do you go for the -- to  
8 find that out, again?

9 MR. RIEL: This Board.

10 MR. SIEMON: The City Commission.

11 MR. RIEL: This Board.

12 MR. SIEMON: The final plat is approved by  
13 the City Commission.

14 MR. KORGE: Right.

15 MR. SIEMON: The tentative plat is approved  
16 by you. But he's going to go out and do things --

17 MR. KORGE: Right, I understand.

18 MR. SIEMON: -- in reliance, and if there  
19 are conditions that you've applied to a tentative  
20 plat, and he wants to know about whether or not the  
21 Commission is willing to reconsider or overturn the  
22 decision you've made, he may do so.

23 Right now, you're just stuck with whatever  
24 P & Z says. You have no recourse to that. And this  
25 is to provide an alternative for them to go -- not to

1 go all the way to final plat and bet that they're  
2 going to get approval which is inconsistent with your  
3 recommendation on the tentative.

4 MR. KORGE: Got you. How do they do that in  
5 the County? Do you know?

6 MR. SIEMON: I think it's the way your Code  
7 used to be: They don't.

8 MR. KORGE: Then you've just got to take --  
9 if you don't like the conditions --

10 MR. SIEMON: I want to take that back.  
11 There may be an actual appeal of the tentative plat  
12 in the County.

13 MR. RIEL: I don't know.

14 MR. SIEMON: But denial or with conditions.

15 MR. KORGE: To the Commission?

16 MR. SIEMON: I just can't -- I can't tell  
17 you.

18 MS. KEON: The Commission, the County  
19 Commission approves plats.

20 MR. SIEMON: Final plats, but the tentative  
21 plats --

22 MR. KORGE: They don't approve tentative  
23 plats.

24 MS. KEON: No, they don't approve tentative  
25 plats.

1           MR. SIEMON: But do they hear an appeal  
2 from a denial or conditional approval?

3           MS. KEON: Yeah, I don't know.

4           MR. SIEMON: I can't remember.

5           MS. KEON: I don't remember.

6           MR. SIEMON: I started to say no, but I'm  
7 not sure that I recall, so -- I don't know. We can  
8 find out.

9           MR. KORGE: I don't know that it really  
10 matters.

11           MR. SIEMON: This is a recommendation that's  
12 come through working with the Staff, that it's  
13 appropriate.

14           And I think that's really all there is.

15           CHAIRWOMAN MORENO: The only question I had  
16 is, on the variance from subdivision requirements --

17           MR. SIEMON: Yes.

18           CHAIRWOMAN MORENO: -- I assume that that's  
19 like a waiver of plat?

20           MR. SIEMON: Well, it is deviations from the  
21 requirements of the subdivision code, and the  
22 standards are enumerated on Page 4 of 4.

23           CHAIRWOMAN MORENO: But you're imposing a  
24 standard of undue hardship.

25           MR. SIEMON: Yes.

1           CHAIRWOMAN MORENO: So -- which would be  
2 hard for me. I mean, the way that you described  
3 undue hardship, I don't see how that could ever be  
4 met by asking that it not be platted. It's obviously  
5 a question of time and money, but it doesn't render  
6 the property valueless. I mean, is that the intent?

7           MR. SIEMON: That is what the Code provides,  
8 and we've not made a determination or had any  
9 recommendation to reassess that.

10          CHAIRWOMAN MORENO: Eric, do you do  
11 platting?

12          MR. RIEL: Yes.

13          CHAIRWOMAN MORENO: And are there conditions  
14 upon which people are allowed to proceed without  
15 platting?

16          MR. RIEL: Yes, there are, depending on how  
17 many lots they want to separate it into.

18          CHAIRWOMAN MORENO: Yeah, and then with an  
19 undue hardship standard, you're probably doing it  
20 wrong.

21          MR. RIEL: We --

22          CHAIRWOMAN MORENO: See, the standards for  
23 review that you set out, which I think are correct,  
24 are not undue hardship type standards.

25          MR. SIEMON: The subject matters of the

1 streets -- the standards that would be -- that you'd  
2 be seeking relief from have to do with the  
3 characteristics of streets, alleys, easement  
4 dimensions, blocks, lot size, public sites, open  
5 spaces, and public and private infrastructure,  
6 utility easements, construction standards,  
7 improvement bonds, certificates of insurance, and  
8 there's some -- a couple of supplemental residential  
9 standards that are required, and most of those are  
10 technical standards that probably should apply except  
11 in truly exceptional circumstances. I mean, there's  
12 some times when --

13 CHAIRWOMAN MORENO: But what he's telling us  
14 is, he's doing it and it's not being done on -- and  
15 the criteria that you're giving here -- See, my  
16 problem is, when I read undue hardship and then I  
17 read the standards for review, they don't match up.

18 So, if I'm going to give the relief based on  
19 these standards, it's not an undue hardship  
20 standard.

21 MR. KORGE: I'm sorry, there's undue  
22 hardship in the standards for review, Paragraph 4,  
23 C4. Is that what you're looking at?

24 CHAIRWOMAN MORENO: I'm looking at -- no --

25 MR. RIEL: To my knowledge, we've not had a

1 variance, so we've only had -- I've been here six  
2 years. We've only had two plats, and actually, one  
3 of them is on your next agenda. So, you know,  
4 they're far and few between. But to my knowledge, I  
5 don't ever recall --

6 CHAIRWOMAN MORENO: Somebody asking for a  
7 waiver of plat or a relief from the platting  
8 requirements?

9 MR. RIEL: No.

10 CHAIRWOMAN MORENO: Okay, then let's live  
11 with it.

12 MR. KORGE: Where were you looking at undue  
13 hardship?

14 CHAIRWOMAN MORENO: Here. It says -- here,  
15 as an initial condition, it says under hardship.

16 MR. KORGE: Well, it's right here, too.

17 CHAIRWOMAN MORENO: Yeah. But a lot of  
18 these other ones, you know, lands -- that special  
19 conditions do not result from the actions -- a  
20 granting will not confer any special privilege -- but  
21 if it doesn't come up, it's not worth discussing.

22 Let's -- Do I have a motion to approve it as  
23 is?

24 MR. STEFFENS: Is "recordation" a word?

25 MR. SIEMON: Yes.

1 MR. RIEL: Yes. Oh, yes.

2 MR. SIEMON: It's not an English word --

3 CHAIRWOMAN MORENO: But it's a legal word.

4 MR. SIEMON: -- but it's a statutory word.

5 MR. STEFFENS: I'll move to approve.

6 MR. KORGE: I'll second.

7 CHAIRWOMAN MORENO: Call the roll, please.

8 MS. MENENDEZ-DURAN: Michael Tein?

9 MR. TEIN: Yes.

10 MS. MENENDEZ-DURAN: Michael Steffens?

11 MR. STEFFENS: Yes.

12 MS. MENENDEZ-DURAN: Eibi Aizenstat?

13 MR. AIZENSTAT: Yes.

14 MS. MENENDEZ-DURAN: Pat Keon?

15 MS. KEON: Yes.

16 MS. MENENDEZ-DURAN: Tom Korge?

17 MR. KORGE: Yes.

18 MS. MENENDEZ-DURAN: Cristina Moreno?

19 CHAIRWOMAN MORENO: Yes.

20 MR. SIEMON: 10 is TDRs, which we explained

21 earlier, we are not addressing tonight, because

22 there's more substance to work on, potential receiver

23 site areas.

24 We've just done Historic Preservation, and

25 that leads us to Abandonment and Vacation of Non-fee

1 Interests, and I want to -- we're still working on  
2 this provision, and I'd like to ask you all to defer  
3 this.

4 MR. KORGE: I'll move to --

5 MR. SIEMON: The City Attorney and I are  
6 trying to divide this into two elements, one that  
7 addresses planning issues, which would come here, the  
8 other which is ownership issues, which would stay  
9 with the City Administration.

10 MR. KORGE: I'll move to defer it.

11 MR. STEFFENS: What would ownership issues  
12 be?

13 MR. SIEMON: Land that's potentially used  
14 for other purposes, whether it will affect utilities,  
15 those sorts of things. I mean, the City is an owner  
16 of interests in real property and the City Manager  
17 and public utilities, et cetera, are the custodians  
18 of that.

19 When the original decision was made, it was  
20 to consolidate everything into this Code, and then  
21 Liz and I recognized that some of those provisions  
22 really ought to be in the City Code, not in the LDR,  
23 so it can be amended through the ordinary process.

24 (Thereupon, Mr. Aizenstat left the  
25 Commission Chambers.)

1 CHAIRWOMAN MORENO: Okay, so we have a  
2 motion --

3 MR. KORGE: Uh-huh.

4 CHAIRWOMAN MORENO: -- by Mr. Korge.

5 MS. KEON: I'll second it.

6 CHAIRWOMAN MORENO: Okay. Call the roll,  
7 please.

8 MS. MENENDEZ-DURAN: Michael Steffens?

9 MR. STEFFENS: Yes.

10 MS. MENENDEZ-DURAN: Eibi Aizenstat?

11 Pat Keon?

12 MS. KEON: Yes.

13 MS. MENENDEZ-DURAN: Tom Korge?

14 MR. KORGE: Yes.

15 MS. MENENDEZ-DURAN: Michael Tein?

16 MR. TEIN: Yes.

17 MS. MENENDEZ-DURAN: Cristina Moreno?

18 CHAIRWOMAN MORENO: Yes.

19 MR. SIEMON: On the concurrency provisions,  
20 we -- the concurrency provisions have been relocated  
21 from Chapter 7.5 of the City Code into the Land  
22 Development Regulations. They are -- Concurrency is  
23 a land development regulation and we think that's  
24 appropriate.

25 We also -- other than just incorporating the

1 text of the language, the City has a manual that  
2 contains many of the standards which are applied, and  
3 we believe if they're going to be standards that are  
4 applied, they ought to be in the Code, so we've  
5 incorporated these here.

6 The Building & Zoning Department is, has  
7 been, all during our project, working on an update of  
8 their concurrency provisions, and so we've adopted  
9 them as they are, with the two modifications I've  
10 told you, awaiting the output of their ongoing study  
11 of the concurrency provisions of the City.

12 MR. KORGE: Does that mean they're going to  
13 come back with a whole host of changes to this?

14 MR. SIEMON: We don't know whether they are  
15 or not.

16 MR. RIEL: I would suspect --

17 MR. KORGE: Should we defer this?

18 MR. RIEL: I would suspect, no, we won't  
19 have it in time for the adoption of the Zoning Code.  
20 So we would recommend you adopt these provisions, and  
21 at a future date -- because that is a fairly hefty  
22 project that they're undertaking.

23 MR. KORGE: Right.

24 MR. RIEL: And we had to do it as part of  
25 the Comprehensive Plan, as well.

1 MR. SIEMON: And --

2 MR. KORGE: Will you explain what changes  
3 have been made between the existing and this draft?

4 MR. SIEMON: Well, we took the existing text  
5 out of 7.5 and we put it in the LDR.

6 MR. KORGE: Right.

7 MR. SIEMON: As we did with everything else,  
8 we reformatted and harmonized the language. Then,  
9 there were some provisions in the concurrency  
10 manual --

11 MR. KORGE: Right.

12 MR. SIEMON: -- that we believe are  
13 regulatory standards that are being applied and  
14 should be incorporated, not in a manual that's  
15 prepared by somebody and isn't approved by anybody,  
16 but ought to be a part of the Code, and so we have  
17 incorporated those existing rules into this Code,  
18 with the understanding that Building & Zoning is  
19 currently looking at this, and as you probably know,  
20 the Legislature is currently looking at this, and  
21 they radically changed this provision.

22 MR. KORGE: I'm sorry. I thought you  
23 suggested that there were a couple of changes to the  
24 existing rules, in whatever form, that are  
25 incorporated here. No?

1 MR. SIEMON: No, we didn't change -- we just  
2 pulled some of the manual standards that we thought  
3 ought to be in the Code, into the Code. I meant to  
4 say, we expect that there will be some changes coming  
5 out of the study, but we do not expect them to be  
6 here during the horizon of this project.

7 CHAIRWOMAN MORENO: So we need to adopt  
8 something to go with.

9 MR. SIEMON: We need to.

10 CHAIRWOMAN MORENO: Okay.

11 MR. KORGE: I'll move to approve the  
12 existing standards that we have now.

13 CHAIRWOMAN MORENO: Second?

14 MR. TEIN: I second the motion.

15 CHAIRWOMAN MORENO: Call the roll, please.

16 MS. MENENDEZ-DURAN: Eibi Aizenstat?

17 Pat Keon?

18 MS. KEON: Yes.

19 MS. MENENDEZ-DURAN: Tom Korge?

20 MR. KORGE: Yes.

21 MS. MENENDEZ-DURAN: Michael Tein?

22 MR. TEIN: Yes.

23 MS. MENENDEZ-DURAN: Michael Steffens?

24 MR. STEFFENS: Yes.

25 MS. MENENDEZ-DURAN: Cristina Moreno?

1                   CHAIRWOMAN MORENO: Yes.

2                   MR. SIEMON: The provisions of Article 3 are  
3 largely new to your Code. They are the practice that  
4 has been followed when you want to get an amendment  
5 to the text of the regulations or a change of the  
6 official map. The rules just weren't written down,  
7 and what we have done is codified both State law  
8 requirements and your practice here, and set them out  
9 in the Code. And we have made it clear that there  
10 are applicant-initiated district boundary changes and  
11 text amendments. We have called out the differing  
12 procedures that the State law now requires and just  
13 organized the process.

14                   I would tell you that this is what the law  
15 requires and is the practice you follow. It's just  
16 never been in the Code. So, if you're an applicant  
17 and you want to know, "How can I get a district  
18 boundary change," or if I wanted to propose a text  
19 amendment, you'd have to come ask somebody.

20                   MR. RIEL: I think the same holds true for  
21 Division 14, 15 and 16. That's what Charlie is  
22 saying, basically. These are all dictated by  
23 statutes, and we're just basically putting the text  
24 in our Code.

25                   MR. STEFFENS: So this is a zoning district

1 boundary change?

2 MR. SIEMON: Yes, or a text amendment.

3 MR. RIEL: Text and/or map.

4 MR. SIEMON: Text and/or map.

5 (Thereupon, Mr. Aizenstat returned.)

6 MR. RIEL: Likewise, Division 15 is  
7 Comprehensive Land Use Plan, text and/or map. 16 is  
8 Developments of Regional Impact.

9 CHAIRWOMAN MORENO: So what you're basically  
10 saying to us is, these three divisions, 14, 15 and  
11 16, incorporate the requirements of the law and the  
12 practice that we have been following and gives that a  
13 form that is legally proper.

14 MR. SIEMON: Correct.

15 CHAIRWOMAN MORENO: Do I have a motion on  
16 all three of these divisions?

17 MR. KORGE: I'll move to approve all three  
18 of these divisions.

19 MR. TEIN: I second that.

20 CHAIRWOMAN MORENO: Let's call the roll.

21 MS. MENENDEZ-DURAN: Tom Korge?

22 MR. KORGE: Yes.

23 MS. MENENDEZ-DURAN: Michael Tein?

24 MR. TEIN: Yes.

25 MS. MENENDEZ-DURAN: Michael Steffens?

1 MR. STEFFENS: Yes.

2 MS. MENENDEZ-DURAN: Eibi Aizenstat?

3 MR. AIZENSTAT: Yes.

4 MS. MENENDEZ-DURAN: Pat Keon?

5 MS. KEON: Yes.

6 MS. MENENDEZ-DURAN: Cristina Moreno?

7 CHAIRWOMAN MORENO: Yes.

8 MS. KEON: I would only ask that you go back  
9 and look at these flow charts carefully, because I  
10 can't read them. Or this one, I'm sorry, on Page 1  
11 of 4. I can't read them.

12 MR. RIEL: Division 15, yeah.

13 MS. KEON: They're too blurry.

14 MR. RIEL: Yes.

15 CHAIRWOMAN MORENO: Yes, it's not readable.

16 Okay, Division 17.

17 MR. SIEMON: Division 17 is a provision that  
18 we have recommended to the City Attorney that you  
19 officially recognize that there are circumstances  
20 where, as a result of the application of your  
21 regulations, a property owner believes that he or she  
22 has been inordinately burdened and is entitled to  
23 relief under the Harris Act, and granting that relief  
24 often means that it complied with all your  
25 requirements but it had an inordinate burden, and if

1 the City Commission determines that relief should be  
2 granted, you need to have a process to be able to  
3 give them that, even -- give them that relief, even  
4 though it may not comply strictly with the  
5 requirements of the law.

6           And what motivated this, in our experience,  
7 is we represented a community in this county in which  
8 a longstanding battle over property was finally --  
9 ended up with a Harris Act claim that was recognized  
10 as problematic. Everybody was happy except a  
11 competing hotel. The way they chose to give them the  
12 right to do it was to grant a variance, and the hotel  
13 brought a challenge and the variance was overturned  
14 because it was not -- undue economic hardship was  
15 less -- was a greater burden than the Harris Act  
16 burden.

17           So we've recommended that, while I hope it  
18 will never be used, but that you protect your ability  
19 for the City Commission to adopt a settlement decree  
20 that allows the relief contemplated in the Harris Act  
21 to be granted. We think State law allows that, but  
22 in the case we represented, the court found and said,  
23 "Where in the Code does it say that you have this  
24 provision to grant this relief, pursuant to the  
25 Harris Act?"

1           And so that's what we've recommended, and  
2           this has been through and reviewed by Liz, and we  
3           hope you'll never use it, but we recommend that in  
4           case you find yourself in that circumstance, you  
5           don't be in the box that we were in that case.

6           CHAIRWOMAN MORENO: Okay. This is a way for  
7           the City to try to minimize any liability?

8           MR. SIEMON: To make a decision to settle a  
9           case that results in a deviation from some provision  
10          of the Code because strict application had an undue  
11          burden but maybe not an undue economic hardship, and  
12          to --

13          We think -- we thought, before the court  
14          ruled, that the City Commission always had the  
15          sovereign authority to settle lawsuits in the best  
16          interest of the community, but under the Growth  
17          Management Act, the court found that there are  
18          procedures, and in specific, we were asked by the  
19          court during appellate argument, "Where does it say  
20          in the Code that you can do this?"

21          CHAIRWOMAN MORENO: Well, let's say it.  
22          Okay, motion to approve?

23          MR. KORGE: I'll move to approve this.

24          MR. TEIN: Second.

25          MS. MENENDEZ-DURAN: Michael Tein?

1 MR. TEIN: Yes.

2 MS. MENENDEZ-DURAN: Michael Steffens?

3 MR. STEFFENS: Yes.

4 MS. MENENDEZ-DURAN: Eibi Aizenstat?

5 MR. AIZENSTAT: Yes.

6 MS. MENENDEZ-DURAN: Pat Keon?

7 MS. KEON: Yes.

8 MS. MENENDEZ-DURAN: Tom Korge?

9 MR. KORGE: Yes.

10 MS. MENENDEZ-DURAN: Cristina Moreno?

11 CHAIRWOMAN MORENO: Yes.

12 MR. STEFFENS: From just listening to the  
13 lawyers.

14 CHAIRWOMAN MORENO: Division 18.

15 MR. SIEMON: 18 is, you have an exhaustion  
16 of administrative remedies provision which is based  
17 on giving -- requiring an applicant who thinks their  
18 rights have been harmed in another class to go  
19 through a relief process.

20 What we have recommended is a process that's  
21 now in place in most local zoning ordinances around  
22 the state, which is a vested rights determination.  
23 If someone believes they have a legitimate claim to  
24 vested rights because of a prior approval, prior  
25 reliance, et cetera, we strongly recommend to local

1 governments that you have a procedure for evaluating  
2 that, and if you don't grant them relief, then they  
3 can go to court, but it's much more efficient and  
4 effective, and our experience is, when the court  
5 looks at a decision that you make about vested  
6 rights, as opposed to just looking at it de novo,  
7 they're more likely to defer to the judgment of the  
8 local government, and so this is another of these  
9 prophylactic means where there is a circumstance  
10 where a review indicates that this probably is a  
11 vested right, then why not work it out at the local  
12 level, instead of forcing litigation.

13 MR. KORGE: Well, now, this sets the  
14 standards. Are these the standards that we've always  
15 applied?

16 MR. SIEMON: You've not -- You've applied  
17 them very inconsistently, but this is the law that  
18 controls, and is the basis for a determination under  
19 Florida law.

20 MR. KORGE: Okay.

21 MR. SIEMON: And I will tell you that --

22 MR. KORGE: So if we're not -- Excuse me for  
23 interrupting. If we're not applying these standards,  
24 we're making a mistake?

25 MR. SIEMON: That's correct.

1           MR. KORGE:  And so, by setting forth the  
2 standards --

3           MR. SIEMON:  In our view.

4           MR. KORGE:  -- setting forth the standards  
5 in our Code, we're assuring ourselves that we're less  
6 likely ever to make that mistake, and the courts are  
7 more likely to defer to us, because we've elicited or  
8 explained in detail the standards that we're  
9 applying, and we're going through the process of  
10 doing so.

11           MR. SIEMON:  And because the vested rights  
12 doctrine under Florida law is an equitable doctrine,  
13 one of the things the court -- and the classic  
14 statement is, you can't ask the developer under the  
15 welcome mat and then pull it out from underneath  
16 him.  It's basically a system of unfairness.

17           Our view is, a court that looks at a local  
18 government that has this kind of process starts off  
19 with the assumption that this local government is  
20 concerned about fairness.

21           MR. KORGE:  I move to approve these.

22           CHAIRWOMAN MORENO:  Second?

23           MR. STEFFENS:  Aren't we saying here that,  
24 then -- Aren't we sort of codifying vested rights?

25           MR. KORGE:  We're codifying the law, the

1 existing law.

2 So I think what Charlie is saying is that  
3 this is what we're supposed to do, under the law, to  
4 avoid a taking, that we have to pay for the vested  
5 rights that we've denied, so when we -- when we --

6 MR. STEFFENS: But isn't this then saying,  
7 okay, we've given vested rights, therefore, you  
8 can --

9 MR. RIEL: No, the law requires a process,  
10 and basically, we don't have a process written down.  
11 That's what it comes down to.

12 MR. STEFFENS: But isn't it --

13 CHAIRWOMAN MORENO: This doesn't create  
14 vested rights. You have vested rights, and this  
15 establishes how to determine if you have them or  
16 not.

17 MR. AIZENSTAT: How has it been handled in  
18 the past?

19 MR. STEFFENS: Yeah.

20 MR. SIEMON: On an ad hoc basis.

21 MR. RIEL: We don't have procedures. We  
22 don't have anything in writing, so it's --

23 MR. STEFFENS: But, in the past, isn't it on  
24 the burden of the other person to prove that he has  
25 vested rights?

1 MR. SIEMON: Yes.

2 MR. STEFFENS: Aren't you here saying,  
3 "Under these conditions, you do have vested rights"?

4 MR. SIEMON: If it is demonstrated that all  
5 the following are satisfied. The City still makes  
6 the decision as to whether they've carried their  
7 burden of proof, and all we've done is incorporate  
8 the standards which are, in effect, in the law.

9 MR. RIEL: If you read the purpose, it says  
10 "those who allege they have vested rights."

11 MR. SIEMON: There's also --

12 MR. STEFFENS: But if this wasn't even here,  
13 then they'd have to go through a greater process to  
14 allege they had vested rights.

15 MR. RIEL: We don't have a process.

16 MR. SIEMON: There are a number of --

17 MR. AIZENSTAT: So what happened? I mean,  
18 how did you go through the process?

19 MR. SIEMON: The City Attorney, basically --

20 MR. RIEL: The City Attorney, basically.

21 MR. SIEMON: -- said we're in trouble on  
22 this one and let's find a way out of it.

23 CHAIRWOMAN MORENO: We're better off having  
24 a formal procedure.

25 MR. SIEMON: There are a number of

1 advantages that --

2 CHAIRWOMAN MORENO: Including that it says  
3 it's two years.

4 MR. SIEMON: Yeah. There's some very subtle  
5 advantages in one making a determination yourself.  
6 You get to judge the facts. When the court looks  
7 over your shoulder, they're not going to substitute  
8 your judgment if the facts -- in fact, if the  
9 facts --

10 MR. KORGE: Yeah, but they may have a  
11 different standard of review.

12 MR. SIEMON: If there are facts -- if your  
13 facts -- if there are facts in the record to support  
14 your determination, that is the end of the inquiry,  
15 in the judicial review, as opposed to looking to find  
16 what the manifest weight of the evidence is, is what  
17 it would be if it's a de novo provision. So there  
18 are some substantive advantages, I believe, to the  
19 City making that determination.

20 Of course, there are some subtle -- because  
21 you look good, you've done fair -- and by the way,  
22 you often do find a way to resolve problems that are  
23 problematic and avoid complications. But we've been  
24 cautious all along. The City Attorney hired us, in  
25 part, because we deal with these transitions, and

1 they've been made more difficult through the Harris  
2 Act. So we're making sure you have the tools, as  
3 many tools as possible, in this Code, to deal with  
4 those circumstances that may put the City at risk.  
5 That's what it is, simple as that.

6 MR. STEFFENS: So, in determining this  
7 pathway to whether or not they have these vested  
8 interests, are we making this pathway as difficult as  
9 we can, through our little subtleties?

10 MR. SIEMON: I believe we are not creating  
11 any rights that do not exist on those facts today or  
12 otherwise exist and that we have put ourselves in a  
13 procedural and potentially substantive posture that's  
14 better, because there may be a more limited scope of  
15 judicial review.

16 CHAIRWOMAN MORENO: Okay.

17 MR. SIEMON: By the way, the courts like  
18 things that they don't have to get into the dirty  
19 details of. They like to just review your decision,  
20 to see if it was a good one.

21 MR. STEFFENS: I just want to make sure that  
22 we make it at least as difficult as the courts would  
23 make it.

24 MR. SIEMON: I think that you have, under  
25 this, the opportunity to be as rigorous as it's

1 possible to be.

2 CHAIRWOMAN MORENO: Okay. Motion was made  
3 by Tom. Do I have a second?

4 MR. TEIN: Second.

5 CHAIRWOMAN MORENO: Call the roll.

6 MS. MENENDEZ-DURAN: Michael Steffens?

7 MR. STEFFENS: Yes.

8 MS. MENENDEZ-DURAN: Eibi Aizenstat?

9 MR. AIZENSTAT: Yes.

10 MS. MENENDEZ-DURAN: Pat Keon?

11 MS. KEON: Yes.

12 MS. MENENDEZ-DURAN: Tom Korge?

13 MR. KORGE: Yes.

14 MS. MENENDEZ-DURAN: Michael Tein?

15 MR. TEIN: Yes.

16 MS. MENENDEZ-DURAN: Cristina Moreno?

17 CHAIRWOMAN MORENO: Yes.

18 MR. SIEMON: I'm going to have to get a

19 little help from Eric, but I think Development

20 Agreements is verbatim from your existing Code.

21 MR. RIEL: Yes. Actually, about a year or

22 two, we did -- the City Attorney did bring forth a

23 Development Agreement provisions, within the Code,

24 and this just puts those in the Land Development

25 Regulations. In other words, it was an ordinance

1 adopted about two years ago.

2 CHAIRWOMAN MORENO: I remember that, so I've  
3 been on this Board for a while now.

4 MR. SIEMON: And we did review them and are  
5 comfortable with what the existing Code was.

6 MR. KORGE: I move to approve this --

7 MR. TEIN: Second.

8 MR. KORGE: -- Division 19, as well.

9 CHAIRWOMAN MORENO: Seconded by Mr. Tein.

10 Call the roll.

11 MS. MENENDEZ-DURAN: Eibi Aizenstat?

12 MR. AIZENSTAT: Yes.

13 MS. MENENDEZ-DURAN: Pat Keon?

14 MS. KEON: Yes.

15 MS. MENENDEZ-DURAN: Tom Korge?

16 MR. KORGE: Yes.

17 MS. MENENDEZ-DURAN: Michael Tein?

18 MR. TEIN: Yes.

19 MS. MENENDEZ-DURAN: Michael Steffens?

20 MR. STEFFENS: Yes.

21 MS. MENENDEZ-DURAN: Cristina Moreno?

22 CHAIRWOMAN MORENO: Yes.

23 Article 6.

24 MR. SIEMON: Article 6 is a short provision,  
25 Nonconformities, and what we have done is reorganized

1 the language and made it very clear, the distinction  
2 between a nonconforming structure and a nonconforming  
3 use.

4 We have also taken the nonconforming sign  
5 provisions out of the sign chapter and put them in  
6 the nonconformities. It's the only nonconformity  
7 treatment that wasn't in the nonconformity section.

8 MR. KORGE: You didn't change that, though?

9 MR. SIEMON: We didn't change it. Just, we  
10 brought it in.

11 The abandonment provision has been changed  
12 from one year to six months. There is a presumption  
13 created by the text of the Code that if a use is  
14 abandoned or a structure is abandoned for a year,  
15 that the nonconforming status is abandoned. That has  
16 been reduced to six months in this Code, at the  
17 recommendation of the administration.

18 MR. STEFFENS: That's Section 6 --

19 MR. RIEL: 6-205.

20 MR. AIZENSTAT: Would you use that, for  
21 example, in a space in the commercial district that  
22 had a tenant that was allowed to be, let's say, a  
23 restaurant or a cafeteria, but it did not conform, so  
24 if the person doesn't rent that space again for six  
25 months, or rents it on the eighth month, then they

1       lose the ability to have that business?

2                   MR. SIEMON:  If it's now no longer  
3       permitted.

4                   MR. AIZENSTAT:  And why did you feel that  
5       you needed to drop it, you know, from one year to six  
6       months?

7                   MR. SIEMON:  Part of the discussion was that  
8       there are a number of problematic nonconforming uses  
9       in this community, and that if the law would allow a  
10      six-month abandonment, which would then force future  
11      use to be conforming, that that was a desirable  
12      thing, because they are problematic in the  
13      neighborhoods they're in, and --

14                  MR. KORGE:  There's a reason they're  
15      nonconforming, and that's that they're not wanted.

16                  MR. SIEMON:  And these are really  
17      nonconforming --

18                  MR. KORGE:  Right.

19                  MR. SIEMON:  -- activities.

20                  MR. AIZENSTAT:  Now, what would happen if,  
21      let's say, the landlord of that specific property  
22      would come back and pull the license with the City,  
23      in other words, renew it, but still not open their  
24      business?

25                  MR. SIEMON:  Well, the --

1           MR. AIZENSTAT:  And they've gone, they've  
2 renewed it, they've paid the fee.  Technically, they  
3 have a license.  Are they mandatory to open their  
4 doors?

5           MR. RIEL:  No.

6           MR. AIZENSTAT:  So, then, wouldn't they be  
7 skirting the issue?

8           MR. RIEL:  They could, yes.

9           MR. AIZENSTAT:  So doesn't it show, sort of,  
10 like the City is just interested in the applicable  
11 fees and the money, and not really taking care of the  
12 problem?

13          MR. KORGE:  Well, the licensing isn't the  
14 use, is it?

15          MR. RIEL:  The use is --

16          MR. AIZENSTAT:  Well, they have to have a --

17          MR. RIEL:  A certificate of use, right.

18          MR. AIZENSTAT:  And that certificate of use  
19 that the tenant needs is renewable, remember, every  
20 year.  If a tenant goes ahead and vacates the  
21 property, they don't renew that certificate of use.

22          MR. SIEMON:  I'm going to disagree with  
23 Eric.  The standard is whether the property is being  
24 used.

25          MR. KORGE:  Yeah.

1                   CHAIRWOMAN MORENO: Right. I thought that,  
2 too.

3                   MR. AIZENSTAT: The standard is whether the  
4 property is used, okay.

5                   MR. KORGE: Not if they have a license to  
6 use.

7                   MR. SIEMON: If I have a restaurant and I'm  
8 operating that as a use, and I close the restaurant  
9 and I hold my licenses, I'm not using the space as a  
10 restaurant, I'm just holding on to that license, I'm  
11 using it for vacant purposes, and the -- remember,  
12 we're not saying you can't use it for any use. We're  
13 saying that the Land Development Code today does not  
14 allow a restaurant in this district.

15                   MR. AIZENSTAT: Correct.

16                   MR. SIEMON: You have a nonconforming use.  
17 As long as you maintain and operate it, we're going  
18 to allow you to do it, and you can do certain things  
19 under this Code, as we propose it, to even make it a  
20 lawfully conforming use by mitigating the negative  
21 adverse impacts of it. But if you abandon it, you  
22 make that choice, you give up those rights, and there  
23 are case law, the United States Supreme Courts in  
24 Clark versus the United States, that say, if you have  
25 rights that are protected under special circumstances

1 and you don't conserve them, take the steps necessary  
2 to protect those rights, the government can eliminate  
3 them.

4 And so we believe that six months is a very  
5 short abandonment period, but given the active  
6 environment you are in, the high property values, the  
7 demand for all kinds of space, we think that it's not  
8 unreasonable, and with the discussions with the City  
9 Administration and the City Attorney, that's what has  
10 been recommended.

11 CHAIRWOMAN MORENO: When -- Let's take,  
12 again, the restaurant example. A restaurant  
13 vacates. I want to operate a restaurant there, and I  
14 start actively remodeling, but don't open for eight  
15 months.

16 MR. RIEL: Right.

17 CHAIRWOMAN MORENO: Have I abandoned the  
18 use?

19 MR. SIEMON: No. If you have a building  
20 permit and you're actively improving for restaurant  
21 purpose, you're using it for that. It's the passive  
22 holding of a hotel -- of a liquor license, for  
23 example, that would not qualify, in my opinion.

24 MR. KORGE: Excuse me, but isn't there a --  
25 I seem to remember a 50 percent rule, where if you --

1 CHAIRWOMAN MORENO: It's further back.

2 That's structures, 6-302.

3 MR. SIEMON: That's the structure.

4 MR. KORGE: Only for structure, not for  
5 renovations, interior renovations?

6 MR. SIEMON: Right.

7 MR. KORGE: Okay.

8 MR. RIEL: Charlie, let me ask you a  
9 question. Do we define what discontinued is, then,  
10 to make sure we're clear on that?

11 MR. AIZENSTAT: Exactly.

12 MR. SIEMON: It's unlikely that it would be  
13 discontinuance. It would be abandonment if --

14 MR. RIEL: Whatever the word is, we  
15 should --

16 CHAIRWOMAN MORENO: See, I like the idea of  
17 using the word abandoned, instead of discontinued,  
18 because, to me, abandoned more clearly states you're  
19 no longer using it, whereas discontinued could be for  
20 purposes of remodeling, which is how I read it.

21 MR. AIZENSTAT: Correct.

22 CHAIRWOMAN MORENO: When you say abandoned,  
23 you're not doing anything to actively pursue that  
24 use.

25 MR. SIEMON: Well, I can tell you the reason

1 we didn't do that, but I think we can solve the  
2 problem. The term abandon is used in this Code to --  
3 directly to address vacation of rights-of-way, and so  
4 they didn't use it. But I think your term -- I'm  
5 comfortable that we either need to define it or use  
6 abandonment as a term of art.

7 CHAIRWOMAN MORENO: Okay.

8 MR. AIZENSTAT: Now, how does this also  
9 pertain, for example, to a home that is currently  
10 being used, let's say, as a duplex, but that zone  
11 pertains to a single-family district today? How does  
12 it affect -- particularly with remodeling, do you  
13 have to keep a certain amount or percentage of the  
14 walls or something and so forth, to be able to  
15 maintain it as a duplex?

16 MR. RIEL: It's 50 percent.

17 MR. SIEMON: There are provisions --  
18 extension or expansion. Ordinary maintenance of the  
19 same facility is not subject to this.

20 MR. AIZENSTAT: Correct.

21 MR. SIEMON: It's just, if you want to  
22 expand it or enlarge it, there are standards that  
23 control when you can do that. If it's destroyed by  
24 50 percent or more, you can't rebuild it, the  
25 structure, in its nonconforming fashion.

1           Now, let me just add something to this. We  
2     have included, in Section 6-206, a provision which  
3     does not exist in your current Code, and that is,  
4     there are nonconforming uses out there who, if  
5     someone wishes -- currently, under the Code, you have  
6     a restaurant, for example, no longer permitted;  
7     there's some negative externalities that could be  
8     mitigated, but they can't even get a permit to do it,  
9     because they can't expand or enlarge and it might  
10    require that. Section 6-206 would allow them to  
11    become a lawfully conforming use by complying, in  
12    effect, to the maximum extent practicable, with all  
13    the provisions of the Code. Everything you can meet,  
14    you meet, and the result will be improved conditions  
15    for adjacent property owners.

16           So we've imposed a more restrictive set of  
17    regulations in regard to maintaining their existing  
18    condition, but at the same time, provided an  
19    opportunity for them to improve the compliance, and  
20    so, if it was a restaurant, they could close the  
21    outside performance area, or they could retrofit the  
22    exhaust system, so --

23           CHAIRWOMAN MORENO: I read this as  
24    mandatory.

25           MR. RIEL: Right. Charlie -- I had a long

1 discussion with Wendy. What this does, basically, it  
2 says within 24 months of the adoption of the Zoning  
3 Code, those properties that are considered  
4 nonconforming have to, to the maximum extent  
5 practical, adhere to the perimeter buffer, sanitation  
6 and standards for nighttime uses.

7 MR. KORGE: But it doesn't make them  
8 conforming.

9 MR. RIEL: No, it doesn't make them  
10 conforming.

11 MR. SIEMON: It doesn't make them  
12 conforming.

13 CHAIRWOMAN MORENO: It just makes them meet  
14 those --

15 MR. RIEL: It just makes them --

16 MR. AIZENSTAT: Who determines that, what is  
17 the maximum that they really can do? The property  
18 owner can tell you --

19 MR. RIEL: The Development Review official.

20 MR. AIZENSTAT: -- it's not feasible to do  
21 that, and the City can say it is feasible to do that.

22 MR. RIEL: That would either be the  
23 Building & Zoning Department or the Planning  
24 Department.

25 MR. STEFFENS: Yeah, I think that's --

1           MR. SIEMON:  If the City says it's feasible  
2 and they say no, they're not going to get the  
3 approval.

4           MR. RIEL:  Right.

5           MR. STEFFENS:  That's a huge burden for  
6 restaurants --

7           MR. RIEL:  It is.

8           MR. STEFFENS:  -- especially all the little  
9 restaurants on Giralda.

10          MR. RIEL:  It is.

11          MR. STEFFENS:  Meeting the sanitation  
12 requirements.

13          MS. KEON:  Do we want to do that?

14          MR. AIZENSTAT:  When you say the  
15 sanitation --

16          MR. RIEL:  It is something --

17          MR. SIEMON:  This is for uses.  This is for  
18 uses.

19          MR. RIEL:  Uses, right.

20          MR. SIEMON:  If the use is nonconforming.  
21 If they are noncompliant with health standards and  
22 other things, that's not what this addresses.

23          MR. STEFFENS:  So it's not going to address  
24 the fact that right now we would require individual  
25 air condition/trash rooms for restaurants, and now

1 they have gang --

2 MR. SIEMON: That's a nonconforming  
3 structure, not a nonconforming use. We're talking  
4 about a use that is no longer permitted in the  
5 district, and those provisions apply.

6 MR. KORGE: If there's a disagreement  
7 between the Staff and the owner, the owner can  
8 appeal?

9 MR. RIEL: Yes.

10 MR. AIZENSTAT: What's the process?

11 MR. SIEMON: The --

12 MR. RIEL: It would be a decision of the  
13 Development Review official, so --

14 MR. AIZENSTAT: Do we have that outlined?

15 MR. SIEMON: No, it's a final decision, as  
16 it's drafted.

17 MR. AIZENSTAT: It's a final decision?

18 MR. RIEL: As drafted.

19 To kind of give you some background, this  
20 provision, Section 6-206, is something the City  
21 Commission directed Staff to include, with specific  
22 reference to restaurants that are adjacent to  
23 single-family areas.

24 MR. KORGE: I like that. I'm just  
25 questioning whether we should have a right to appeal.

1 MR. RIEL: Right of appeal?

2 MR. KORGE: Yeah.

3 MR. RIEL: That would probably --

4 MR. AIZENSTAT: And if it is so, then who do  
5 you go to?

6 MR. RIEL: Well, if the Development Review  
7 official is making a decision -- how do we appeal  
8 DROs? To appeal the City officials -- it says Board  
9 of Adjustment.

10 MR. SIEMON: The only one we have is P & Z.

11 You have variance decisions, I mean,  
12 interpretations --

13 MR. AIZENSTAT: That would have to be the  
14 Board of Adjustment.

15 MR. SIEMON: -- and then you have minor  
16 conditional uses, which are DROs. You could make  
17 this -- One way of doing this would just be to make  
18 the nonconforming determination a minor or major  
19 conditional use, and that would be subject to the  
20 normal process.

21 MR. AIZENSTAT: Eric doesn't seem to like  
22 that.

23 MR. RIEL: No, I don't.

24 MR. SIEMON: No. They want to use it -- I  
25 won't say that.

1 MS. KEON: They have a plan.

2 CHAIRWOMAN MORENO: Okay, first of all, I  
3 think you need to say, of the two periods, which one  
4 governs. Is it within 24 months after adoption of  
5 these regulations --

6 MR. RIEL: Right.

7 CHAIRWOMAN MORENO: -- or is it within 12  
8 months? Is it the shorter?

9 MR. RIEL: Whichever occurs first.  
10 Whichever occurs first.

11 MR. SIEMON: It's 24 months after the  
12 adoption of records -- the regulations, or within 12  
13 months of a change in ownership, whichever comes  
14 first.

15 MR. KORGE: Whichever comes first?

16 MR. RIEL: Right, whichever comes first.

17 MR. KORGE: Why?

18 MR. SIEMON: If a new purchaser acquires  
19 one of these problematic nonconforming uses, they  
20 should buy with the understanding that they're going  
21 to have to improve it.

22 MR. KORGE: Well, then, why not 12 months  
23 for everybody?

24 MR. STEFFENS: What if they buy --

25 MR. KORGE: If they didn't --

1 MR. STEFFENS: -- one month before the 24  
2 months is up?

3 MS. KEON: Well, because one is affecting  
4 the current property owner and one is affecting a new  
5 property owner.

6 MR. AIZENSTAT: Michael has a good point.

7 MR. STEFFENS: Yeah, but the new property  
8 owner might -- the old property owner might say, "I  
9 need to get rid of this, I don't want to do this  
10 stuff."

11 CHAIRWOMAN MORENO: Yeah.

12 MR. STEFFENS: He sells it at the 23rd  
13 month. The new guy has a month to fix the problems,  
14 instead of 12 months like somebody else.

15 MR. AIZENSTAT: Does he have a month, or  
16 does the clock start again for a year?

17 MR. KORGE: I would have thought that the  
18 reason for 24 months is for everybody to get up and  
19 running under these new provisions, and so you'd give  
20 24 months to everybody, regardless of the date of  
21 acquisition, and if something is later acquired  
22 that's a nonconforming use, after the 24 months, you  
23 give them 12 months, if it hasn't already been done.

24 CHAIRWOMAN MORENO: What happens if you  
25 don't do this?

1           MR. AIZENSTAT: They could just sell it to  
2 their aunt or uncle, to get another 12 months, and  
3 then sell it again in the eleventh month.

4           MR. KORGE: Shouldn't it be just 12 months  
5 for everybody? I don't understand why there would be  
6 24 months for some and not for others. I understand  
7 that some people currently own it and other people  
8 may be acquiring it, but if they acquire it, why  
9 wouldn't they have the same amount of time as the  
10 current owner?

11           MR. SIEMON: Well, the thinking is as  
12 follows. If I own a restaurant and you impose a  
13 regulation requiring me to come into compliance, my  
14 circumstances are such that I may not be able to do  
15 it in 12 months. It may take me -- So a 24-month  
16 period was allowed them.

17           If someone new comes in to buy the business,  
18 we have a set of regulations that are intended to  
19 eliminate the negative adverse characteristics of  
20 this use, and that new owner, who's coming in  
21 voluntarily, he's not somebody who owns something  
22 that was subject to an old set of regulations and now  
23 has a new set. He's coming in under a new set of  
24 regulations, buying a piece of property that doesn't  
25 comply, and our view, in working this out, was that

1 it was not unreasonable to impose a one-year period  
2 to bring it in compliance, because the new owner  
3 is --

4 MR. STEFFENS: From the date of that  
5 purchase.

6 MR. SIEMON: From the date of his purchase.

7 MR. STEFFENS: So he could buy in the 23rd  
8 month, and he has a year.

9 MR. KORGE: No.

10 MR. SIEMON: No. If he buys in the 23rd  
11 month, he's got a month. You buy what you buy.

12 MR. KORGE: But you really are --

13 MR. RIEL: Right, I mean --

14 MR. STEFFENS: Well, what if you -- I mean,  
15 what if you buy an ongoing business? You're not  
16 buying an empty restaurant that you're going to start  
17 a restaurant in, you're buying an ongoing business,  
18 and all of a sudden you have to fix this problem in a  
19 month. Then --

20 MR. KORGE: Well, you --

21 CHAIRWOMAN MORENO: You buy with knowledge  
22 of it.

23 MR. KORGE: You know it's coming.

24 MR. SIEMON: Yeah.

25 MR. RIEL: Basically, just --

1 MR. STEFFENS: Well, there might not be --  
2 you might not physically be able to --

3 CHAIRWOMAN MORENO: What relief --

4 MR. STEFFENS: Or you could either be -- you  
5 could either be --

6 MR. KORGE: But, Michael, that's a problem  
7 of the prior owner, because he can't sell his  
8 business if he hasn't fixed the problem by then.

9 CHAIRWOMAN MORENO: Yeah.

10 MR. KORGE: You're going to say, "I'm not  
11 going to buy it until you fix the problem." It will  
12 delay the closing.

13 MR. SIEMON: We're forcing him to make a  
14 decision. I'm either going to bring it into  
15 compliance or I'm going to sell it to somebody.

16 CHAIRWOMAN MORENO: What happens if they  
17 don't comply?

18 MR. SIEMON: It becomes an unlawful use.

19 MR. AIZENSTAT: So you revoke the license?

20 MR. SIEMON: They can no longer maintain the  
21 use.

22 MR. AIZENSTAT: What happens if there is --  
23 if something happens and they need an extension of  
24 time? Is there a provision or a vehicle for that?

25 MR. SIEMON: There is no provision for an

1 extension of time.

2 MR. STEFFENS: And are all the people that  
3 these -- that 6-206 would apply to in the City going  
4 to be notified?

5 MR. RIEL: I'm sorry?

6 MR. STEFFENS: Are all the people that  
7 6-206 would apply to in the City going to be  
8 notified?

9 MR. RIEL: That's a good question.

10 MR. AIZENSTAT: They should be.

11 MR. RIEL: Yeah, we're going to have to,  
12 because basically what this says is, within 24  
13 months, everybody has to comply.

14 MR. STEFFENS: Yeah.

15 MR. RIEL: That's what it comes down to.

16 MR. KORGE: So you're going to have to  
17 catalog every nonconforming use to which this  
18 applies and --

19 MR. RIEL: I think --

20 MR. KORGE: -- send them a written notice.

21 MR. RIEL: I think this issue is going to --  
22 This came from the Commission. This is going to  
23 require some more discussion at the Commission level  
24 and --

25 MR. STEFFENS: Are you going to notify them

1 of our meetings?

2 MR. RIEL: I can tell you, I've already been  
3 contacted by some individuals that understand this,  
4 and they do have some concerns of this specific  
5 section, 6-206.

6 You know, perhaps we may need to look at  
7 only those properties that adjoin residential  
8 properties, if that's the issue, and, you know, a  
9 property in the middle of the Central Business  
10 District, although it might have mixed use, and  
11 residential adjacent or close to it -- you know, I  
12 think this is --

13 MR. AIZENSTAT: It just seems to me like  
14 it's not complete yet, to -- for me, once again, I'm  
15 sorry to say, to take a vote on Article 6, if you've  
16 got that pending.

17 CHAIRWOMAN MORENO: Well, and the other one  
18 that I think we should also look at is 6-302. That's  
19 your 50 percent rule, and -- I'm not suggesting this,  
20 I'm just saying we should think about it. If we're  
21 going to try and do something about the oversized  
22 residences, you've got to give some relief to people  
23 who have existing oversized residences in the event  
24 of a hurricane or something like that.

25 MR. AIZENSTAT: Or a natural disaster.

1                   CHAIRWOMAN MORENO: A period to rebuild  
2 without having, you know, to now come back and lose  
3 two bedrooms.

4                   MR. STEFFENS: But who now has oversized  
5 structures?

6                   CHAIRWOMAN MORENO: No, they don't right  
7 now, but if we adopt regulations like those that  
8 Dennis proposed, all Cocoplum is going to be  
9 oversized.

10                  MR. KORGE: That needs to be addressed if  
11 and when those regulations are adopted, and not here.

12                  MR. RIEL: That's what I would suggest.

13                  CHAIRWOMAN MORENO: But it's going to be --  
14 it's going to impact -- you have to resolve this  
15 section if you're going to think about that in  
16 any reasonable way.

17                  MR. KORGE: It has to be resolved when you  
18 think about it. You can't resolve it now. We don't  
19 know what they're going to decide. I don't think  
20 it's appropriate.

21                  MR. SIEMON: Dennis's most recent proposal  
22 includes a provision that addresses that subject  
23 matter. It will come -- We haven't been asked to  
24 take a position as to whether it's an appropriate  
25 one, but --

1 MR. STEFFENS: In 6-202 --

2 MR. SIEMON: Yep.

3 MR. STEFFENS: -- what does extension mean?

4 MR. SIEMON: In the context of bulk  
5 regulations, if you extend the building into the side  
6 yard --

7 MR. STEFFENS: Extension means expand?

8 MR. SIEMON: Well, it's relative to a bulk  
9 regulation, that is, you extend the side yard, you  
10 extend the building into the side yard.

11 MR. STEFFENS: So you make something more  
12 nonconforming?

13 MR. AIZENSTAT: Make it bigger, enlarge it?

14 MR. STEFFENS: Is an extension an  
15 enlargement or an expansion, or is there a difference  
16 between extending and expanding?

17 MR. SIEMON: As this is drafted, there is no  
18 difference.

19 MR. STEFFENS: There is no difference. So  
20 extension means to increase the size?

21 MR. AIZENSTAT: What if you have a  
22 nonconforming restaurant that wants to put more  
23 seats? How do you define that, under expansion?

24 CHAIRWOMAN MORENO: I don't think it -- I  
25 don't think that would qualify, because it says that

1 increasing the level of activity --

2 MR. AIZENSTAT: Correct.

3 CHAIRWOMAN MORENO: -- would not be an  
4 extension or an expansion.

5 MR. AIZENSTAT: But wouldn't that be worse  
6 for the neighborhood? If what you're trying to do is  
7 take all -- as an example, the restaurant that's in a  
8 nonconforming --

9 CHAIRWOMAN MORENO: It seems to me that if  
10 you're talking about uses and not structures, the  
11 issue should be an increase of level of activity, not  
12 necessarily size, or both.

13 MR. AIZENSTAT: Or both.

14 CHAIRWOMAN MORENO: Uh-huh.

15 MR. KORGE: What is an increase in the level  
16 of activity, more patrons?

17 CHAIRWOMAN MORENO: That's just what he's  
18 saying.

19 MR. AIZENSTAT: Well, that's what I'm  
20 saying.

21 MR. SIEMON: You've got a hundred seats in  
22 your restaurant. You reconfigure it to be 150.

23 MR. AIZENSTAT: Exactly.

24 MR. SIEMON: As long as you don't change the  
25 size of the structure, that is permitted.

1 MR. AIZENSTAT: It's saying that's allowed.

2 That kind of defeats the purpose.

3 MR. STEFFENS: If 6-202 didn't have the  
4 word expansion in it, and it just said, a  
5 nonconforming use shall not be extended, going back  
6 to Eibi's question about the duplex, if you have a  
7 duplex in a single-family area, can you put an  
8 addition on a duplex in a single-family area?

9 CHAIRWOMAN MORENO: No. That would be --

10 MR. KORGE: Clearly not.

11 MR. AIZENSTAT: Can you get a permit to  
12 renovate it?

13 MR. STEFFENS: No, because I don't think  
14 extend means expand. Extend, to me, deals more with  
15 something like time, rather than space.

16 MR. KORGE: Right, but expansion is in  
17 there, too. When you say --

18 MR. STEFFENS: No, I'm saying if you take  
19 expanded out of there, if expansion wasn't in 6-202,  
20 if it was just extension, a nonconforming use shall  
21 not be extended by an increase, would you be allowed  
22 to put an addition on a duplex?

23 MR. SIEMON: No.

24 MR. STEFFENS: Because?

25 MR. SIEMON: It's nonconforming.

1           MR. STEFFENS: But where would it say that  
2 you can't do that?

3           MR. SIEMON: The only increase in the  
4 intensity of the activity that's permitted is if it  
5 is an expansion into space which was designed or  
6 arranged for that particular purpose. So that, for  
7 example, in the model earlier about the restaurant,  
8 let's say you had a restaurant and lounge, and now  
9 you took out the lounge and proposed to expand the  
10 restaurant. You could not do that. If you had  
11 provisions that had been designed for the restaurant  
12 in the building, that had been used or designed to be  
13 a restaurant, they had, you know, lights and booths  
14 and that sort of stuff, you could expand into that,  
15 even though you may have not been using the section  
16 actively. But this -- these sets of regulations,  
17 which we started from what you have, are not  
18 permissive nonconforming provisions.

19           MR. STEFFENS: I'm not talking about what we  
20 have here and what we're trying to achieve here. I'm  
21 saying, if this was worded differently, because I  
22 think it's worded differently in the current Code. I  
23 don't think expanded is in the current Code. I think  
24 it just says extended, and when I read extend, I  
25 don't read space, I read time.

1 CHAIRWOMAN MORENO: I don't. I think extend  
2 is also space.

3 MR. KORGE: Me, either.

4 CHAIRWOMAN MORENO: You extend a building  
5 over the lot.

6 MR. KORGE: And I wouldn't read this to mean  
7 time, because --

8 CHAIRWOMAN MORENO: It can't. It can't mean  
9 time.

10 MR. KORGE: -- it doesn't make any sense.

11 MR. SIEMON: Actually --

12 MR. STEFFENS: That's why I --

13 MR. SIEMON: Actually, the change that we  
14 proposed was to add to the word extended, which is in  
15 your existing Code, the word expansion.

16 MR. STEFFENS: Expand, right, because the  
17 existing Code doesn't say expand. It just says  
18 extend.

19 MR. SIEMON: Right.

20 MR. STEFFENS: And when you're extending a  
21 use, you know, it doesn't read like you're making a  
22 use bigger. It means like you're continuing the use  
23 longer than it should be used.

24 MR. SIEMON: That's -- that's not the -- I  
25 don't believe that's the meaning of the language, and

1 that's certainly not the intention. The whole  
2 provision is intended to say, "Notwithstanding that  
3 it is not permitted, you may continue to use it."

4 MR. KORGE: Right.

5 MR. SIEMON: And extend, traditionally, in  
6 the nonconforming, means extending the  
7 nonconformity. For example, if I have a building  
8 that's 40 feet deep and it has a 10-foot provision  
9 that is now violative of the setback requirement, I  
10 can expand it, but I can't extend it all the way out  
11 to where my nonconformity is. And so it's not  
12 intended and is not normally used in the zoning  
13 context as a time reference, but a space reference.

14 But, you know, we should write it so that it  
15 is clear as possible what we intend.

16 MR. STEFFENS: So any extension -- I mean,  
17 if the building meets all the Zoning Code  
18 requirements of setbacks, et cetera, et cetera, and  
19 any addition to that building still meets all the  
20 requirements of setbacks, et cetera, et cetera,  
21 you're still extending --

22 MR. SIEMON: The use.

23 MR. STEFFENS: -- a use.

24 MR. SIEMON: It's not the structure, it's  
25 the use that you're expanding, and it's just the

1 intensity of the use, and if you've got a building  
2 that's a nonconforming restaurant and you still have  
3 adequate building setback or whatever to build more  
4 space, because it's not a permitted use, it doesn't  
5 make a lot of sense to allow it to get worse.

6 CHAIRWOMAN MORENO: To get bigger.

7 MR. SIEMON: And the only exception from  
8 that, which is in your existing Code, is if you have  
9 space in the building that was designed -- planned  
10 and designed and constructed for that particular use,  
11 but hadn't been occupied previously, that you could  
12 expand into that, and I'm sure that was a response to  
13 somebody that had an extra dining room that wasn't  
14 being used or something, in some use.

15 CHAIRWOMAN MORENO: What happens if you've  
16 got a building and you're using half the building for  
17 a restaurant and the other half is a gallery, an art  
18 gallery, and the art gallery goes away. Can the  
19 restaurant go into the art gallery?

20 MR. SIEMON: No, not unless the art gallery  
21 had booths and lights and wiring and all the things  
22 that it takes to run a restaurant.

23 CHAIRWOMAN MORENO: It would have to be  
24 certified for the restaurant.

25 MR. SIEMON: It has to be designated for

1 the -- it has to be designed and constructed for the  
2 use for which --

3 CHAIRWOMAN MORENO: So the only thing you  
4 could really do is, if you have a restaurant and you  
5 had a little -- like you said, a lounge area or an  
6 office area, you could get rid of it, or you could  
7 make your kitchen smaller, because all of that would  
8 be covered by the restaurant license?

9 MR. SIEMON: That's the -- and again, the  
10 only change that we've brought is expansion to this.

11 MR. AIZENSTAT: By the same token, if you  
12 use the example of a restaurant, a nonconforming  
13 restaurant might be because it doesn't have enough  
14 parking spaces, for example.

15 MR. SIEMON: No, this is a nonconforming  
16 use, not a nonconforming structure.

17 MR. AIZENSTAT: But if it is a nonconforming  
18 use, and within it, it still does not have enough  
19 parking spaces, let's just assume, and you go ahead  
20 but you have the building as part of the restaurant  
21 that you never used, or you had storage there, or  
22 whatever it was, and you put more tables; at that  
23 point you would be required, if I'm not mistaken, to  
24 have more parking, but yet you don't have the  
25 availability to have more parking within that

1 property. How does that fall within --

2 MR. SIEMON: You simply can't use it for  
3 that use.

4 MR. AIZENSTAT: You can't add the seats?

5 MR. SIEMON: You can't -- The whole concept  
6 is, you have a nonconformity.

7 MR. AIZENSTAT: Right.

8 MR. SIEMON: It is inconsistent with the  
9 current public policy as to how the land should be  
10 used. We'll let you continue to operate it, but you  
11 can't make it worse.

12 MR. AIZENSTAT: But my understanding --

13 MR. SIEMON: You can't add more restaurant  
14 facilities --

15 CHAIRWOMAN MORENO: What I don't like is  
16 increasing the level of activity.

17 MR. SIEMON: -- and not add some additional  
18 parking.

19 MR. AIZENSTAT: But to increase the level of  
20 activity in a restaurant, you would increase the  
21 seating --

22 MR. SIEMON: Well --

23 MR. AIZENSTAT: So it's a little --

24 MR. SIEMON: I'm not defending this. It's  
25 in your existing Code, and it was a prior public

1 policy decision that was made, where you had space  
2 which had been planned, designed and constructed for  
3 the use, and the fact that it had not been used for  
4 six months or something, for whatever reason, you  
5 could still expand into that, because it was  
6 designed, intended for and constructed for the  
7 purpose of that.

8           You don't have to do that. That was a prior  
9 public policy decision, and we simply incorporated  
10 it, and I would agree that there's some inconsistency  
11 here. If this is a strict nonconforming provision,  
12 that's an exception to that, and it's an exception  
13 that doesn't make a whole lot of sense.

14           MR. AIZENSTAT: Well, that's why I'm  
15 wondering if now is the time to correct that  
16 loophole.

17           CHAIRWOMAN MORENO: I agree with that. I  
18 mean, that -- to me, this also says, for example, you  
19 could take, you know, a restaurant that's a sit-down  
20 restaurant and then convert it into a sandwich and  
21 take-out place and increase the level of activity,  
22 and that's permitted.

23           MR. SIEMON: Yes, ma'am.

24           CHAIRWOMAN MORENO: So --

25           MR. SIEMON: And that may have been the

1 origin of it. I just don't know.

2 CHAIRWOMAN MORENO: I would suggest that  
3 that be studied further.

4 MR. AIZENSTAT: Yeah.

5 CHAIRWOMAN MORENO: I mean, that would be my  
6 personal opinion.

7 MR. KORGE: Maybe we should come back with  
8 this next time, because we also -- we'd like to -- I  
9 personally would like to see some right of appeal on  
10 this upgrading of nonconforming use under Section  
11 6.206, because I'm just not really comfortable with,  
12 you know, one particular employee of the City having  
13 the final say on something that may, you know,  
14 materially affect somebody's pocketbook.

15 MS. KEON: Their livelihood.

16 MR. KORGE: Yeah, their livelihood. So I  
17 think, really, that -- I mean, just out of fairness,  
18 that needs to get some further review if there's a  
19 dispute over the decision.

20 CHAIRWOMAN MORENO: And we wanted to see  
21 different language on 205, so --

22 MR. AIZENSTAT: Just one other example.  
23 Going back to the duplex, if I have a duplex, I have  
24 plenty of land and I have a duplex, again, in an area  
25 that's single-family, in that duplex that I own I

1 want to do a pool, because I don't have a pool. Am I  
2 allowed to go to the Building Department and get a  
3 permit to do a pool?

4 CHAIRWOMAN MORENO: That's a good question.

5 MR. STEFFENS: You're increasing your  
6 activity.

7 MR. AIZENSTAT: Right.

8 MR. TEIN: I have a motion to defer  
9 consideration of Section 6 until next time.

10 MR. AIZENSTAT: But it's just something -- I  
11 just use that as an example, so when you do look  
12 at --

13 MR. SIEMON: I just -- Let me make sure I  
14 understand. Your hypothetical is that it's a duplex  
15 in a single-family district. It's not permitted.  
16 It's a nonconforming use. Is it also a nonconforming  
17 structure? Because if it's a nonconforming  
18 structure --

19 MR. STEFFENS: It's a conforming structure.

20 MR. AIZENSTAT: It's a conforming structure.

21 MR. SIEMON: If it's a conforming structure,  
22 I believe that the conforming structure, as long as  
23 the pool is within all the required setbacks, which  
24 is a permitted accessory use in that district, would  
25 not be prohibited by this Code.

1           MR. AIZENSTAT:  But you're increasing the  
2 activity.  That's okay?

3           MR. SIEMON:  Not in a building designed for  
4 this use.

5           MR. STEFFENS:  So a permitted accessory use  
6 would also be a detached garage with a maid's room  
7 attached?

8           MR. SIEMON:  Whatever it is.  I mean, if a  
9 pool is permitted in the district for one house,  
10 there's no reason -- I mean, there's no apparent  
11 reason why it should be excluded, but I mean, it's --  
12 Let me -- I mean, I don't have -- I'm perfectly  
13 willing to accept the deferral of this, and we know  
14 that it requires that there will be further  
15 consideration of some of the aggressive components of  
16 it, but if there's -- I'm not sure I understand,  
17 other than cleaning up and changing the language of  
18 abandonment, to make sure what we're saying, and --  
19 but do I understand that there's some interest in  
20 allowing a nonconforming use to expand in intensity  
21 of use?

22           MR. AIZENSTAT:  No, I don't think it's so  
23 much that as it is to clean up and to be more defined  
24 as to --

25           MR. SIEMON:  Okay.

1           MR. AIZENSTAT: -- how to go about it, what  
2 can be done. It just sounded to me -- Certain items  
3 are very ambiguous. They're not clearly defined.

4           MR. SIEMON: I do want to, before we close  
5 on that, if I can, just point out Division 6, which  
6 is an optional provision which is available to a  
7 property owner who has a nonconforming status, either  
8 a structure or building, which allows him to improve  
9 it and terminate his nonconforming status. So there  
10 is one that's mandatory for certain properties and  
11 certain conditions, and then they have the option  
12 under this draft of the Code to seek relief from  
13 nonconforming status, and if that's granted, if it  
14 becomes a conforming, then they have additional  
15 flexibility to do many of these things we're talking  
16 about, and that's the objective.

17           I didn't give this -- I don't think I gave  
18 my nonconforming speech to us, but I mean,  
19 nonconformities was invented at the dawn of zoning,  
20 and it was assumed, if you read any of the old  
21 literature, that they would go away in a couple of  
22 years. Of course, it had absolutely the opposite  
23 effect. They became monopolies --

24           MR. AIZENSTAT: It's forever.

25           MR. SIEMON: -- and they live forever, and

1 so many, many codes, yours included, are now 80 years  
2 old and you're still living with that fixture, and  
3 they are the eyesores in town and the problem in  
4 town.

5 MR. AIZENSTAT: That's correct.

6 MR. KORGE: Well, speaking of that, Section  
7 6.302 concerns, you know, conforming when a structure  
8 is destroyed to an extent exceeding 50 percent of its  
9 replacement cost.

10 Well, what if the house or other  
11 nonconforming structure is renovated, it's not  
12 destroyed, and we reach a certain level? Is that the  
13 reason why we see houses that they keep three walls  
14 up, so that they can avoid conforming?

15 MR. SIEMON: Well, I don't know which of  
16 those -- what those provisions are. In my  
17 experience, that kind of situation is usually  
18 avoiding the elevation requirements of FEMA, and it's  
19 playing with the same 50 percent rule but the reason  
20 that really motivates it is to maintain eligibility  
21 for flood insurance without elevating.

22 MR. KORGE: The 50 percent rule.

23 MR. SIEMON: Yeah. It's the same 50 percent  
24 rule.

25 MS. KEON: I think it's also for setbacks

1 and everything.

2 MR. SIEMON: And of course, it's the  
3 biggest joke in the world, because all you do is do  
4 50 percent this year and 50 percent next year and 50  
5 percent the year after.

6 MR. KORGE: I guess what I mean -- what I'm  
7 asking is, if we're really concerned about forcing  
8 nonconforming structures eventually to conform,  
9 should we rethink this in terms of renovations?

10 MR. SIEMON: I don't think we are. I think  
11 that the perspective on nonconforming structures are  
12 that they are physical improvements and their  
13 principal value goes away if they're destroyed.

14 The nonconforming use in a shopping center  
15 of a restaurant, the structure is still there, has  
16 its value. It may not be as high a value, but --

17 MR. KORGE: I'm sorry, I misspoke. I was  
18 talking about nonconforming structures, not  
19 nonconforming uses.

20 So, if the nonconforming structure is  
21 renovated substantially, why don't we force them to  
22 conform at some point?

23 MR. STEFFENS: We do.

24 MR. KORGE: Well, this says if it's  
25 destroyed.

1 CHAIRWOMAN MORENO: That's just if it's  
2 destroyed.

3 MR. STEFFENS: No, the Building Code --  
4 Well, the Building Code says if it's a nonconforming  
5 structure -- any structure that's renovated over 50  
6 percent of its value needs to be brought up to  
7 current Code.

8 MR. AIZENSTAT: If it's destroyed.

9 MR. KORGE: The Building Code.

10 MR. STEFFENS: The Building Code says that.

11 MR. KORGE: But that's not the Zoning Code.

12 MR. STEFFENS: Yeah, but that would cause a  
13 nonconforming structure --

14 MR. SIEMON: You need to read 6-303 in  
15 conjunction --

16 MR. STEFFENS: Yeah, but that would cause a  
17 nonconforming structure to be brought up to --

18 MR. SIEMON: You're not very generous.

19 MS. KEON: In the provision --

20 MR. KORGE: But we're never forcing -- if  
21 we've got this problem with -- I don't know, it just  
22 seems like we're --

23 MR. STEFFENS: The Building Code forces it.

24 MR. KORGE: It does?

25 MR. STEFFENS: The Building Code -- If you

1 renovate a building more than 50 percent, you need to  
2 bring everything up to Code.

3 CHAIRWOMAN MORENO: Yes. I know that that's  
4 true.

5 MR. KORGE: Okay, but not --

6 MR. STEFFENS: So that would apply to the  
7 zoning.

8 MR. KORGE: Then you have the Building  
9 Code --

10 MR. STEFFENS: That would apply to zoning,  
11 that would apply to structural, that would apply to  
12 parking, that would apply to electrical, that would  
13 apply to --

14 MR. KORGE: So it's not just up to the  
15 Building Code, it's up to all the Code.

16 MR. STEFFENS: It's everything.

17 MR. KORGE: Okay. Well, then, that answers  
18 my question.

19 MR. SIEMON: And under this Code, there are  
20 very limited opportunities for expanding a  
21 nonconforming structure.

22 MR. AIZENSTAT: Which is the intent.

23 MR. SIEMON: Different from uses.

24 MR. AIZENSTAT: Correct.

25 MR. STEFFENS: A nonconforming structure,

1 you can do an addition up to 25 percent.

2 MR. AIZENSTAT: Not under this.

3 MR. STEFFENS: Well, under the Building  
4 Code.

5 MR. SIEMON: Under the Building Code, you  
6 can, but not under your Land Development  
7 Regulations.

8 MR. AIZENSTAT: So the idea is really to do  
9 away with all the structures that are unsightly.

10 MR. SIEMON: Well, it's -- they can maintain  
11 them --

12 MR. AIZENSTAT: Right.

13 MR. SIEMON: -- but there's no encouragement  
14 to do so.

15 MR. AIZENSTAT: Exactly.

16 MR. SIEMON: But they still are subject to  
17 the provisions of Division 6. That's a new provision  
18 which was not previously included. So that's how you  
19 would deal with that nonconforming structure.

20 MR. AIZENSTAT: So I guess where we're at  
21 right now is that we are going to defer --

22 MR. RIEL: Let me ask you a question. Did  
23 you want to defer the entire article or just Division  
24 2?

25 MR. KORGE: Oh, I see.

1 MR. SIEMON: Well, signs, we didn't change.

2 MR. KORGE: Well, let's go through this.  
3 Maybe we can resolve this. Section 6-202, is the  
4 change that we wanted to make the deletion of the  
5 second clause, "but an increase in the level of  
6 activity," et cetera?

7 CHAIRWOMAN MORENO: I don't know that we  
8 decided that. What I requested was that it be  
9 reviewed and a recommendation be made to us as to  
10 whether that was appropriate.

11 MR. RIEL: My suggestion is that we defer  
12 Division 2 entirely, because I think we need to work  
13 on Section 6-206 some more, as well.

14 MR. KORGE: Okay.

15 MR. AIZENSTAT: Agreed.

16 MR. KORGE: Well, then, I'll move to approve  
17 Article 6, all divisions except Division 2.

18 CHAIRWOMAN MORENO: And 6.

19 MR. SIEMON: 2 and 6.

20 MR. KORGE: And 6? I thought we were happy  
21 with 6.

22 MR. AIZENSTAT: No.

23 CHAIRWOMAN MORENO: Oh, no, I'm sorry. No.  
24 I misspoke. It's 206 that I'm worried about. It's  
25 all of Division 2.

1 MR. KORGE: All of Division 2.

2 MR. SIEMON: It's all of 2 that you have  
3 concerns about. No, I'm happy with 6. I'm happy  
4 with 6.

5 MR. KORGE: Yeah.

6 MS. KEON: Under the termination of status  
7 as a nonconformity --

8 MR. SIEMON: Yeah.

9 MS. KEON: That's Division 6.

10 MR. SIEMON: Yes, ma'am.

11 MS. KEON: That first line, 33, are you  
12 missing a word there, "deemed to be in conformity  
13 with these"? I think you left out "with."

14 MR. SIEMON: Pursuant to these regulations.

15 MR. TEIN: You're also missing an article  
16 number on Line 50, in Section 6-206.

17 MS. KEON: Yeah.

18 MR. SIEMON: 206.

19 MR. TEIN: Page 1 of 5, Line 50.

20 MR. SIEMON: Section 206 -- 6-206, A?

21 MR. TEIN: Yeah.

22 CHAIRWOMAN MORENO: Yeah.

23 MR. KORGE: The number on the article.

24 MR. TEIN: The record says Article --

25 MR. SIEMON: Oh, article blank.

1 MR. TEIN: Yeah.

2 MR. SIEMON: That's pretty cool. 5. Sorry.

3 CHAIRWOMAN MORENO: Okay. So we are -- the  
4 motion, Tom, again?

5 MR. KORGE: Is to approve Article 6, all  
6 divisions of Article 6, except Division 2.

7 CHAIRWOMAN MORENO: Do we have a second?

8 MR. SIEMON: Can I ask -- oh, I guess we're  
9 not adopting 2.

10 CHAIRWOMAN MORENO: We're not adopting 2.

11 MR. SIEMON: Okay.

12 MR. KORGE: We'll defer 2.

13 MR. TEIN: I second the motion.

14 CHAIRWOMAN MORENO: Okay. Call the roll,  
15 please.

16 MS. MENENDEZ-DURAN: Pat Keon?

17 MS. KEON: Yes.

18 MS. MENENDEZ-DURAN: Tom Korge?

19 MR. KORGE: Yes.

20 MS. MENENDEZ-DURAN: Michael Tein?

21 MR. TEIN: Yes.

22 MS. MENENDEZ-DURAN: Michael Steffens?

23 MR. STEFFENS: Yes.

24 MS. MENENDEZ-DURAN: Eibi Aizenstat?

25 MR. AIZENSTAT: Yes.

1 MS. MENENDEZ-DURAN: Cristina Moreno?  
2 CHAIRWOMAN MORENO: Yes.  
3 MR. KORGE: And then I move to defer Article  
4 6, Division 2.  
5 MR. TEIN: Second.  
6 CHAIRWOMAN MORENO: Call the roll.  
7 MS. MENENDEZ-DURAN: Michael Tein?  
8 MR. TEIN: Yes.  
9 MS. MENENDEZ-DURAN: Michael Steffens?  
10 MR. STEFFENS: Yes.  
11 MS. MENENDEZ-DURAN: Eibi Aizenstat?  
12 MR. AIZENSTAT: Yes.  
13 MS. MENENDEZ-DURAN: Pat Keon?  
14 MS. KEON: Yes.  
15 MS. MENENDEZ-DURAN: Tom Korge?  
16 MR. KORGE: Yes.  
17 MS. MENENDEZ-DURAN: Cristina Moreno?  
18 CHAIRWOMAN MORENO: Yes.  
19 MR. SIEMON: I just would ask an indulgence  
20 of one question. We talked about the appeal from  
21 Staff. My instincts would be to send that to the  
22 Commission. You're really talking about a judgment  
23 of sort of fairness and equity --  
24 CHAIRWOMAN MORENO: Yes.  
25 MR. SIEMON: -- not a technical one, and I

1 just wonder if that's something --

2 MR. AIZENSTAT: Yeah.

3 MR. SIEMON: Okay, I got it.

4 CHAIRWOMAN MORENO: I agree. And I would  
5 like a motion to defer the rest of these agenda items  
6 for our next meeting.

7 MR. RIEL: Madam Chair, if I could make a  
8 comment. We do have an advertised public hearing on  
9 the EAR item, the scoping session, which we deferred  
10 at the last meeting.

11 MR. AIZENSTAT: On the what, I'm sorry?

12 MR. RIEL: On Item Number 4, City of Coral  
13 Gables Comprehensive Land Use Plan Evaluation, report  
14 and scoping session. We did advertise it. We did  
15 notice it, although there's no one here.

16 CHAIRWOMAN MORENO: Can you just --

17 MR. STEFFENS: There might be someone here.

18 CHAIRWOMAN MORENO: Can I continue it?

19 MR. RIEL: If you would indulge us for five  
20 minutes, because this -- this is a -- the  
21 Comprehensive Land Use Plan process is a long  
22 process, and this is one of the first steps in moving  
23 forward, and we're actually going to the Commission  
24 with the same agenda item.

25 MR. KORGE: We've already given some

1 comments on this, haven't we?

2 MR. RIEL: Yes, you have. Just, basically,  
3 if you could open up the public hearing, Richard will  
4 make some very brief comments and then --

5 CHAIRWOMAN MORENO: Okay, let's open up the  
6 public hearing.

7 MR. RIEL: Richard --

8 CHAIRWOMAN MORENO: My brain is asleep,  
9 so you're not getting my brain.

10 MR. CANNONE: I'll be extremely brief. I  
11 actually wanted to enter two things in the record,  
12 one being the notice of public hearing. And the  
13 second, I did receive some written comments. I just  
14 wanted to enter those into the record and pass those  
15 out, as well. There were some individuals that  
16 attended tonight. They could not sit through, so I  
17 asked them to submit their comments in writing, which  
18 they said they would.

19 CHAIRWOMAN MORENO: Okay.

20 MR. CANNONE: Otherwise, I would be happy --  
21 I think the issues are in front of you. We did  
22 update that somewhat and we made reference in the  
23 Staff Report of the comments that were made at the  
24 last meeting. If there are any other issues, we'd be  
25 glad to take notes of those and formulate that.

1           MR. RIEL: Basically, if you recall, we're  
2 required to identify three to five issues that we're  
3 going to look at in the Comprehensive Plan.

4           What I'm going to hand out to you is  
5 Richard's PowerPoint, which basically is a summary  
6 form. We're just required to identify three to five  
7 issues. We've identified those. We know what they  
8 are, obviously, through going through the Zoning Code  
9 Rewrite process. It's just a matter of, we have to  
10 open it up to the public to secure input, as well as  
11 the Board's input.

12           So we would ask, if you have any issues,  
13 that if you could e-mail them to us, we'll include  
14 them in the record, then. We also will be having a  
15 scoping session with other agencies, which is the  
16 Florida Department of Transportation, Miami-Dade  
17 Water & Sewer, and other agencies, and that's in the  
18 next week or two. So this is kind of the first step  
19 in the process.

20           MR. KORGE: Does this come back to us at  
21 all?

22           MR. RIEL: The EAR will come back to you,  
23 yes. It will come back to you in September or  
24 October of this year. This is basically just a  
25 session to allow the exchange of information and the

1 opportunity for people to understand it. We have a  
2 web site set up with this information on it. As  
3 Richard said, we do have some comments. Typically,  
4 when --

5 CHAIRWOMAN MORENO: What about parking,  
6 Eric?

7 MR. RIEL: Parking, in terms of an issue  
8 being --

9 CHAIRWOMAN MORENO: Yeah.

10 MR. RIEL: In terms of the total number of  
11 spaces or intrusion in the neighborhoods or --

12 CHAIRWOMAN MORENO: In terms of addressing  
13 the required parking per use.

14 MR. RIEL: That's a Zoning Code issue, which  
15 will be discussed on, I believe, May 18th.

16 CHAIRWOMAN MORENO: Okay. So that doesn't  
17 have to be --

18 MR. RIEL: Yeah, that's not -- We're dealing  
19 with the Comprehensive Plan, which deals with goals,  
20 objectives and policies. They are generalized  
21 statements that detail the future growth of the  
22 City. The Zoning Code is those implemented tools  
23 which deal with the parking requirements and other  
24 such --

25 MR. KORGE: In the mitigation of traffic

1 impacts, intergovernmental coordination, I noted  
2 before, when this came up, but I don't see it in  
3 here, you know, that the City needs to continue to  
4 better coordinate with the Metro Transit Authority.

5 MR. RIEL: Right. Actually, we have in the  
6 memorandum that we put in front of you, on Page 2, at  
7 the March 9th meeting, to coordinate trolley,  
8 regional transportation system and other  
9 municipalities. We did -- it's in here.

10 MR. KORGE: Okay, it's in there?

11 MR. RIEL: Yeah, we do have it.

12 MR. KORGE: Thank you.

13 MR. RIEL: We will include it. We will  
14 include it.

15 That's all Staff has, unless you have --  
16 like I said, if you have any other issues that you'd  
17 like us to look into, we'd be happy to, but as I  
18 said, we pretty much know what the issues are.

19 CHAIRWOMAN MORENO: Okay, we're closing the  
20 public hearing on the EAR Scoping Meeting. Do we  
21 need to take any vote?

22 MR. RIEL: No.

23 CHAIRWOMAN MORENO: Okay, and then --

24 MR. RIEL: The other items, you can defer.

25 CHAIRWOMAN MORENO: We're going to defer the

1 rest of the items, right?

2 MR. RIEL: I just have your packets for the  
3 next meeting, next Wednesday.

4 MR. AIZENSTAT: You don't want to deliver  
5 them, huh?

6 MR. RIEL: I'm delivering them right now.

7 MS. KEON: Okay.

8 MR. RIEL: That's all we have.

9 CHAIRWOMAN MORENO: I close the meeting? I  
10 lost my agenda. I lost everything. I don't function  
11 well this late.

12 MS. KEON: No, me neither.

13 MR. STEFFENS: Move to adjourn?

14 CHAIRWOMAN MORENO: Please.

15 MR. TEIN: Second.

16 CHAIRWOMAN MORENO: I don't think we need to  
17 call the roll. All ayes. Thank you, gentlemen --  
18 and another lady. Okay.

19 MR. TEIN: Have a good night, everybody.

20 (Thereupon, the hearing was adjourned at  
21 10:50 p.m.)

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

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

DATED this 20th day of April, 2005.

JOAN L. BAILEY, RDR

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

