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COMMUNITY ZONING APPEALS BOARD - 14
SOUTH DADE GOVERNMENT CENTER - ROOM 203
10710 S.W. 211 STREET, MIAMI
WEDNESDAY, SEPTEMBER 25, 2002, AT 6:00 P.M.

ITEM

JANIS H. BARROW, ET AL
(02-11)

Members of Council

CHARLIE McGAREY, Chairperson
WILBUR BELL, Vice-Chair
CURTIS LAWRENCE
DON JONES
MABEL DIJKSTRA

COUNTY ATTORNEY'S OFFICE

Ron Bernstein, Assistant County Attorney

STAFF

Judith Rawls, Zoning Evaluator
Donna Jacobi, Zoning Specialist
Juan Rodriguez, Public Works

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SPEAKER & PAGE NUMBER

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CHAIRMAN MCGAREY: 3, 6-7, 9-15, 18-19, 21-27, 29, 31-32, 34-36, 39-46.

COUNCILWOMAN WADE: 6-7.

COUNCILWOMAN DIJKSTRA: 10-11, 37, 42.

COUNCILMAN LAWRENCE: 12-13, 20-21, 24, 36-43, 45-46.

COUNCILMAN JONES: 35-36, 42.

COUNCILMAN BELL: 39-42.

STAFF

DONNA JACOBI: 3-6, 8-11, 22-23, 36, 43-45.

RON BERNSTEIN: 6-7, 11, 13-14, 21-23, 37-41.

JUDITH RAWLS: 10, 12, 37, 39-42, 45.

ON BEHALF OF THE APPLICANT

JANIS H. BARROW: 7-13, 23, 43.

GARY DUFEEK: 14-21, 23-27, 32-35, 43.

SUPPORTERS

--

OBJECTORS

MICHAEL HATCHER: 27-29.

SIDNEY ROBINSON: 29-31.

KAREN ESTY: 31-32.

1 *****
2 CHAIRMAN MCGAREY: Donna, you want to
3 hear the disclaimer statements.

4 MS. JACOBI: In accordance with the
5 Code of Miami-Dade County, all items to be
6 heard today have been legally advertised in
7 the newspaper, notices have been mailed and
8 the properties have been posted.
9 Additional copies of the agenda are
10 available here at the meeting. Items will
11 be called up to be heard by agenda number
12 and name of the applicant.

13 The record of the hearing on each
14 application will include the records of the
15 Department of Planning and Zoning. All
16 these items are physically present today,
17 available to all interested parties and
18 available to all Members of the Board who
19 examine items from the record during the
20 hearing. Parties have the right of
21 cross-examination.

22 In Miami-Dade County versus Omnipoint
23 Holdings, Inc., Case Number 3D01-2347,
24 Florida Third DCA 2002, the Third District
25 court of appeal has held invalid the

1 standards for non-use variances, special
2 exceptions, unusual uses, new uses
3 requiring a public hearing and
4 modifications of conditions and covenants.

5 The County Attorney's Office is
6 seeking review of the decision in the
7 Florida Supreme Court as well as the stay
8 of the decision's effect. While the case
9 is pending, the decision is in effect and
10 is binding on all parties.

11 Its impact is to suspend consideration
12 of zoning application for most special
13 exceptions, unusual uses, non-use variances
14 and modifications of conditions and
15 covenants.

16 In the interim, county staff have
17 developed and proposed to the Board certain
18 ordinances that would provide interim
19 standards for limited categories of
20 application. If these standards are
21 enacted, certain applications may be able
22 to proceed to hearing. However, absent by
23 reversal by the courts or enactments of
24 revised regulations pending, applications
25 will not be able to proceed to the hearing

1 until disposition of the pending
2 litigation.

3 This statement, along with the fact
4 that all witnesses have been sworn, should
5 be included in any transcript of all or any
6 part of these proceedings.

7 In addition, the following departments
8 have representatives present at the meeting
9 to answer any questions: The Department of
10 Public Works, the Department of Planning
11 and Zoning and the County Attorney's
12 Office.

13 All exhibits used in presentation
14 before the Board become public record and
15 will not be returned unless an identical
16 letter size copy is submitted for the file.

17 Any person making impertinent or
18 slandorous remarks or who becomes
19 boisterous while addressing the Community
20 Zoning Appeals Board shall be barred from
21 further audience before the Community
22 Zoning Appeals Board by the presiding
23 officer unless permission to continue or
24 again address the Board be granted by the
25 majority vote of the Board members

1 present.

2 The number of filed protests and
3 waivers on each application will be read
4 into the record at the time of hearing as
5 each application is read. Those items not
6 heard prior to the ending time for this
7 meeting will be deferred to the next
8 available zoning meeting date for this
9 Board.

10 CHAIRMAN MCGAREY: Thank you. Call
11 the first item, please.

12 MS. JACOBI: Item Number B, Janis H.
13 Barrow, et al, Number 02-4-CZ14-1/02-11 and
14 there are zero protests and zero waivers.

15 COUNCILWOMAN WADE: Mr. Chair.

16 CHAIRMAN MCGAREY: Yes, ma'am,
17 Councilperson Wade.

18 COUNCILWOMAN WADE: I have a personal
19 relationship with this applicant and I
20 would like to excuse myself from this
21 application.

22 CHAIRMAN MCGAREY: All right, Mr.
23 Bernstein.

24 MR. BERNSTEIN: I think --

25 COUNCILWOMAN WADE: I just want to

1 avoid the appearance of any impropriety.

2 MR. BERNSTEIN: Perfectly appropriate.

3 CHAIRMAN McGAREY: All right.

4 Are there any objectors to Item B,
5 Janis H. Barrow, et al? Okay, you'll have
6 the opportunity to speak.

7 Will everybody stand who wishes to
8 speak this evening and raise your right
9 hand as the court reporter swears you in.

10 (Swearing in)

11 CHAIRMAN McGAREY: Yes, ma'am, name
12 and address, for the record.

13 MS. BARROW: Good evening, I'm Janis
14 Barrow. I reside at 26025 Southwest 194
15 Avenue. I'm here on my behalf for my
16 residence and the residence of Michael
17 Causley at 26145 Southwest 194 Avenue.
18 We're requesting a variance from five acres
19 to two-and-a-half acres.

20 The area is completely surrounded by
21 two-and-a-half and one-and-a-quarter acres
22 and we're the only ones in the whole square
23 block from Coconut Palm to Plummer that are
24 in -- that have the five acres. Our
25 properties both have frontage on 194 and

1 193.

2 We feel that this is in the scope of
3 the Master Plan since we're surrounded on
4 three sides by two-and-a-half and
5 one-and-a-quarter acres. This is the
6 property here.

7 MS. JACOBI: Janis, you have to take
8 the microphone with you.

9 Do you want to help her?

10 MS. BARROW: Oh, thank you.

11 This is the question property here,
12 right here, the two that are in yellow.
13 All of these are acre-and-a-quarter or even
14 less. There's some that's less than an
15 acre-and-a-quarter. These are
16 two-and-a-half, an acre a quarter right
17 here, all of these are and the adjoining
18 properties here all are. This piece over
19 here happens to be an old plat with 25 foot
20 lots, if I'm not mistaken, but all of the
21 blue is two-and-a-half, one-and-a-quarter
22 and some are even less than an acre that
23 are platted out. This has .79. This is
24 1.3, but this is the surrounding area.

25 And this is the parcel in question.

1 It has frontage on 194, which is where the
2 residences face, and this is 193, which is
3 the rear of the property.

4 CHAIRMAN McGAREY: Okay. I guess you
5 are aware that staff differs with your
6 opinion --

7 MS. BARROW: I realize that.

8 CHAIRMAN McGAREY: -- as far as
9 meeting the three-sided criteria and I
10 think we need to stay aware of the word
11 abutting as compared to the word nearby.

12 Staff, before we even go any farther,
13 I'm sure that we may be hearing something
14 about certain pieces either being
15 grandfathered or certain deeds not being
16 recorded on surrounding properties.

17 In your -- in your research downtown,
18 you know, in your analysis and your
19 recommendation and also in your -- on our
20 Page 17 shows just smaller stuff,
21 two-and-a-half or smaller only abutting on
22 one-and-a-half sides and not on three
23 sides.

24 MS. JACOBI: It doesn't have to be
25 smaller, just smaller or equal.

1 CHAIRMAN MCGAREY: Smaller or equal
2 to what they're requesting?

3 MS. RAWLS: Right.

4 CHAIRMAN MCGAREY: And what I'm
5 looking at on the plat that you've -- the
6 folio and plat that you've supplied with
7 us, is it -- abutting smaller or equal to
8 the request is abutting on one-and-a-half
9 sides, so --

10 MS. JACOBI: Where do you see that it
11 isn't?

12 CHAIRMAN MCGAREY: Well, what I'm
13 seeing from what we have on our Page 17 in
14 our packet, it does not meet the
15 three-sided rule, but according to the
16 applicant's presentation, it does meet the
17 three-sided rule.

18 MS. BARROW: You should have a copy of
19 this. I made copies for all the plat.

20 COUNCILWOMAN DIJKSTRA: We don't have
21 it.

22 MS. BARROW: You don't have it?

23 MS. RAWLS: To the north and to the
24 south, it would be equal.

25 MS. BARROW: I have some. Would you

1 like to see a smaller one?

2 MS. JACOBI: These are equal.

3 COUNCILWOMAN DIJKSTRA: Yeah.

4 MS. JACOBI: This is equal. These are
5 smaller. These are smaller.

6 MR. BERNSTEIN: For the record, could
7 you just say to the north, to the south.

8 MS. JACOBI: To the north they're
9 equal. To the --

10 CHAIRMAN MCGAREY: All right, to the
11 north -- I'm looking where it says 260
12 Street.

13 COUNCILWOMAN DIJKSTRA: Yeah.

14 MS. JACOBI: Pardon me?

15 CHAIRMAN MCGAREY: On the north where
16 it says 260 Street, those two pieces up
17 there, what size are those?

18 MS. BARROW: I have -- you want one of
19 these? I have them smaller, if it will
20 help you.

21 CHAIRMAN MCGAREY: Well, but that's --
22 okay, that's the stuff that you've
23 produced, not staff.

24 MS. BARROW: Well, it came off -- no,
25 this came off the county. This came off of

1 county records. This came off of county
2 records with these folio numbers and
3 everything. It came Off the county.

4 CHAIRMAN McGAREY: What I don't
5 understand, why you, the applicant, and
6 staff differ on this.

7 MS. RAWLS: The Department believes
8 each parcel, the northern parcel and the
9 southern parcel, has to stand on its own.

10 CHAIRMAN McGAREY: Oh, okay.

11 MS. RAWLS: So the northern portion --
12 parcel --

13 CHAIRMAN McGAREY: 'Cause it's split.
14 It's two parcels.

15 MS. RAWLS: It's two parcels,
16 correct. That's the Department's opinion.

17 CHAIRMAN McGAREY: Okay.

18 COUNCILMAN LAWRENCE: Mr. Chairman.

19 CHAIRMAN McGAREY: Mr. Lawrence.

20 COUNCILMAN LAWRENCE: Are there any
21 structures on any of these pieces that
22 are -- that are under size that are around
23 you? Are there any houses on them?

24 MS. BARROW: Yes, there's houses.

25 COUNCILMAN LAWRENCE: There's houses

1 on all of them?

2 MS. BARROW: There's houses here.
3 There's houses here. All of these are
4 homes. There's a house here that faces the
5 street behind and there's houses all around
6 me. I'm surrounded with houses. There's a
7 house on two-and-a-half acres here. These
8 on 2.1, not quite two-and-a-half, but
9 2.07. There's a home here on 1.76 and
10 there's a house that comes back through
11 here and these have homes on here.

12 CHAIRMAN MCGAREY: Mr. Bernstein, Ms.
13 Barrow, use the microphone.

14 MS. BARROW: Oh, I'm sorry.

15 CHAIRMAN MCGAREY: Mr. Bernstein, this
16 is a Master Plan issue according to staff
17 and I know that you've kind of cautioned us
18 before when it comes to inconsistency with
19 the CDMP and also, you know, violating the
20 compatibility issue and the land use
21 element.

22 MR. BERNSTEIN: You have the CDMP to
23 deal with and you also have the new
24 ordinance to deal with.

25 CHAIRMAN MCGAREY: Oh, that's right.

1 MR. BERNSTEIN: Which is the alternate
2 site development option for single-family
3 and duplex dwellings.

4 You have both the CDMP to deal with
5 and the alternate site -- Alternative Site
6 Development Option for single-family and
7 Duplex Dwelling's ordinance to deal with.

8 And if you find, as staff has said,
9 that this applicant's property does not
10 satisfy the requirements under the CDMP and
11 under this ordinance, then you cannot pass
12 this application. If you find as a factual
13 matter, that it does comply, then you can
14 pass it.

15 CHAIRMAN McGAREY: All right, well,
16 there's more language in this in addition
17 to just the three-sided rule, in this new
18 ordinance that we have, that we have not
19 had the opportunity to really digest.

20 So the way it sits, so, staff, their
21 recommendation is, what, approval of
22 request two and denial of the first request
23 as far as splitting the lots?

24 MR. DUFEEK: Mr. McGarey, could I
25 address this issue?

1 CHAIRMAN MCGAREY: Yes, name and
2 address, for the record.

3 MR. DUFEK: My name is Gary Dufek. I
4 reside at 20285 Southwest 177 Avenue.

5 For clarification purposes, what the
6 county staff is referring to, and I'd like
7 to go ahead and read it for you, is the
8 CDMP states very clearly, it says creation
9 of new parcels smaller than five acres for
10 residential use may be approved in the
11 agricultural area only if the immediate
12 area surrounding the subject property" --
13 the subject property. The key is the
14 subject property.

15 The subject property, the subject of
16 this public hearing, is a 10-acre piece of
17 property. That is the subject property.

18 "If immediately surrounding the
19 subject property on three or more sides is
20 predominantly parcelized in similar
21 manner."

22 Once again, the subject property is a
23 10-acre piece of property. It doesn't make
24 any difference how many ownerships it's in.
25 If the subject property is in 10 acres,

1 that is what is part of this public
2 hearing, is 10 acres and that is the
3 subject property and that is the reason why
4 it meets the three-sided rule.

5 Now, the County Attorney, if I am
6 wrong -- I've been doing this over 30 years
7 and I know the way we've done it.

8 Now when you go to the new code -- the
9 new code that was also just recently
10 approved, let me get that here, the
11 wording -- the wording on that is that if
12 the proposed alternative development
13 involves the creation of new parcels are
14 smaller than five acres, gross acres in an
15 area designated agriculture in the CDMP,
16 the abutting parcels are predominantly
17 parcelized in a manner similar to the
18 proposed alternative development on three
19 to more sides of the parcel proposed for
20 alternative development.

21 This is the parcel, the 10-acre piece
22 of the parcel proposed for alternative
23 development and the division of the parcel
24 proposed for the alternative development
25 will not precipitate additional land

1 division in the area. The size and
2 dimensions of each lot -- et cetera, et
3 cetera.

4 What you're dealing with here -- what
5 we're dealing with right here is we're
6 dealing with the subject property is a
7 10-acre piece of property. Basically the
8 10-acre piece of property is three
9 different parcels. There's three parcels,
10 but the subject property is 10 acres.

11 The 10 acres meets the three-sided
12 rule: Two, two-and-half, approximately
13 two-and-a-half acre pieces on the north
14 side. A Two-and-a-half and
15 two-acre-and-a-quarter on the east side and
16 I believe acre-and-a-half, acre-and-a-third
17 and a two-and-a-half on the south side.
18 That's the three-sided rule.

19 Under the -- under the criteria that
20 the planning department is trying to impose
21 on this, it would be virtually impossible
22 to ever subdivide a piece of property
23 because you wouldn't be using the word
24 three or more sides. It would have to be
25 surrounded on all four sides by similar

1 size parcel to be able to qualify.

2 Actually, it could never be on more
3 than three sided, because when you've got
4 two parcels -- say if you got two parcels
5 here, you would have to have this side,
6 this side and this side at two-and-a-half
7 acres to be able to split this one, so it
8 can never be four, because when you take
9 this one and you try the three-sided rule,
10 you can't use this one and -- you follow
11 what I'm saying?

12 So the code specifically states three
13 or more sides. There would never be more
14 than three sides that could be considered
15 because one of the other sides is the
16 parcel that you're trying to make of it.
17 That's the reason why the code very
18 specifically states the subject property --

19 CHAIRMAN McGAREY: All right.

20 MR. DUFEK: -- has to be surrounded on
21 three --

22 CHAIRMAN McGAREY: Let me ask you
23 something, Mr. Dufek. I understand your
24 argument, okay, the subject parcel, no
25 matter how big it is.

1 MR. DUFEK: Uh-huh.

2 CHAIRMAN McGAREY: Okay, and you
3 stated that this parcel, which basically
4 has three folios on it.

5 MR. DUFEK: That's correct.

6 CHAIRMAN McGAREY: And more than one
7 owner.

8 MR. DUFEK: That's correct.

9 CHAIRMAN McGAREY: All grouped
10 together to put this application forward.

11 MR. DUFEK: That's correct.

12 CHAIRMAN McGAREY: Now, what's to keep
13 a bunch of other people in the Redland
14 grouping together and doing the same thing
15 and maybe coming in with 100-acre stretch
16 that consist of maybe a dozen owners just
17 reaching enough so they can meet the
18 three-sided criteria? Do you understand
19 what I'm saying?

20 MR. DUFEK: I understand what you're
21 saying.

22 CHAIRMAN McGAREY: There has to be a
23 safeguard somewhere.

24 MR. DUFEK: To tell you the truth, in
25 fact, you can take a look at the rest of

1 this section here, the rest of this
2 section and the only other parcel -- and,
3 in fact I looked at it very carefully today
4 using that argument, the only other parcel
5 in this entire section that would meet the
6 criteria to be able to do the three-sided
7 rule using the subject property would be
8 this 10-acre piece right up here.

9 CHAIRMAN MCGAREY: Okay, you did your
10 work on that one square mile of land, but
11 we've got, what, 45 square miles out there
12 to work with, you know.

13 MR. DUFEEK: Oh, yes.

14 CHAIRMAN MCGAREY: So there's other
15 stuff, there's other sleepers out there and
16 we know that.

17 MR. DUFEEK: Uh-huh.

18 CHAIRMAN MCGAREY: And I remember we
19 had a discussion about this a few years ago
20 with Bonanza Ranch, tried to hook a bunch
21 of stuff together on the east side.

22 MR. DUFEEK: Well, we had a discussion
23 on this when I filed an application for --
24 what is it?

25 COUNCILMAN LAWRENCE: I think he's

1 ready to give an opinion here.

2 MR. DUFEK: Mrs. Brooks. And this is
3 the first time the County's criteria of
4 splitting the subject property into parcels
5 to come up with a three-sided rule was used
6 used and that's the first time I
7 encountered this one. I'm very familiar
8 with it. And if you remember, I prevailed
9 on that hearing.

10 CHAIRMAN MCGAREY: All right, Mr.
11 Bernstein and staff, did you have some
12 comments?

13 MR. BERNSTEIN: This is what I'm
14 hearing, subject to correction by staff.

15 If you consider the subject property
16 as being half of this 10-acre site, in
17 other words, if you take the position that
18 the applicant only owns one-half of this
19 10-acre parcel and, therefore, you should
20 only consider that five-acre parcel when
21 looking at how the contiguous properties
22 have been treated, then she doesn't meet
23 the standard.

24 However, if you look at this as a
25 10-acre parcel, despite the fact that

1 there's different ownership for the north
2 half and the south half, it's a combined
3 application and my understanding is that
4 combined applications have been allowed in
5 the past.

6 If you look at the application as a
7 10-acre parcel, then the gentleman is
8 correct and it meets the three-sided
9 criteria.

10 So I guess what it comes down to is,
11 if you choose to view this as a 10-acre
12 parcel, then you could find that the
13 criteria are met and you could approve this
14 application.

15 If you choose to treat it as a
16 five-acre parcel only, because this
17 applicant only controls five acres, then I
18 think even if the applicant would concede
19 it doesn't meet the criteria, correct?

20 CHAIRMAN MCGAREY: We've got two
21 separate parcels, two five-acre parcels
22 that are joined.

23 MS. JACOBI: Correct.

24 CHAIRMAN MCGAREY: But still separate
25 and three folios. In other words, three

1 owners that have joined also.

2 MS. JACOBI: No, two.

3 MS. BARROW: Two.

4 MS. JACOBI: She just has two folios.

5 MS. BARROW: I have two folios on my
6 property, two owners.

7 MR. BERNSTEIN: Two owners.

8 MS. BARROW: Two owners.

9 MR. DUFEK: There's two owners.

10 Mrs. Barrow's property, when she purchased
11 it, was a five-acre piece.

12 MS. BARROW: No, it was already split.

13 MR. DUFEK: It was a five-acre piece,
14 but it was already split into two different
15 parcels. Apparently when they built the
16 house -- and she doesn't know this for a
17 fact. Apparently when she built the house,
18 the county or somebody told her that you
19 needed to split that parcel off.

20 MS. BARROW: The owners who built the
21 home.

22 MR. DUFEK: The owners who built the
23 home. For what reason, we have no idea.

24 MS. BARROW: I have no idea.

25 MR. DUFEK: And that's the reason why

1 her five acres is split up into two
2 separate parcels.

3 CHAIRMAN MCGAREY: All right, Mr.
4 Lawrence.

5 COUNCILMAN LAWRENCE: No, my
6 suggestion is to go on with the application
7 and hear from the objectors, because we're
8 not getting anywhere, you going one on one
9 with her.

10 CHAIRMAN MCGAREY: Right. Okay.

11 MR. DUFEEK: I'd like to continue also.

12 CHAIRMAN MCGAREY: Go ahead and finish
13 your presentation.

14 MR. DUFEEK: Besides the key being the
15 subject property, subject parcel here, the
16 other concerns that we have is that Public
17 Works -- and I don't know if Public Works
18 has a representative here tonight.

19 Okay, Public Works has stated in their
20 recommendation, of course, that they have
21 no objection to the application, but that
22 this nonexistent road right here between
23 these two properties, between Ms. Barrow's
24 property and the two, two-and-a-half acres
25 properties north of her has to be vacated.

1 And my suggestion to you is the fact
2 that this road is nonexistent. When I
3 search back on the records, I see that the
4 road was dedicated back in 1965. Part of
5 it was dedicated in '65 and part of it was
6 dedicated in '73 when the three houses were
7 built on these two properties here. And
8 it's never been used. As a matter of fact,
9 it is completely fenced in by both
10 properties.

11 CHAIRMAN McGAREY: All right, what
12 you're arguing right now is your Request
13 Number 2.

14 MR. DUFEEK: That's correct.

15 CHAIRMAN McGAREY: As far as moving
16 the sheds and the carport.

17 MR. DUFEEK: That's correct.

18 CHAIRMAN McGAREY: That has nothing to
19 do -- okay, all right.

20 MR. DUFEEK: And like I say, my
21 suggestion is that they maintain these
22 properties, it's my idea they should have
23 been returned -- the right-of-way should
24 have been returned after the county in over
25 30 some years has not used it, there

1 should be some provision after a while that
2 the property be returned to the people,
3 but be it as it may, the dedication still
4 exist there, but they're being used by both
5 property owners on both sides of the
6 theoretical road.

7 So my suggestion is that the
8 structures here be allowed to be maintained
9 in the right-of-way. Like I say, it's also
10 fenced. It's also fenced. Half of it is
11 fenced on this side. Half of it is fenced
12 on this side. So if they've got to remove
13 the shed, then they almost certainly have
14 to remove the fence. That means you're
15 going to have 25 to 50 foot strip in
16 between two properties that nobody is going
17 to maintain and that's ridiculous.

18 CHAIRMAN MCGAREY: I understand your
19 argument.

20 MR. DUFEK: So like I say, my
21 suggestion is that portion not be
22 enforced.

23 The third issue that I wanted to bring
24 up before you is the fact that both of
25 these parcels currently have agriculture

1 use on the property. And if you choose to
2 grant the subdivision of these properties,
3 I would hope that you would also grant the
4 continued agricultural use on the
5 property. Thank you.

6 CHAIRMAN MCGAREY: Thank you.

7 Objectors, please, yes, sir, name and
8 address, for the record.

9 MR. HATCHER: For the record, my name
10 is Mike Hatcher. My address is 25145
11 Southwest 144 Avenue.

12 And I'm here today to object to the
13 first part and after hearing their
14 presentation, I'm a little even more
15 confused than I was before, but I want to
16 beseege this Board to be very careful with
17 this issue.

18 And as the Chair has pointed out, we
19 could be headed down a slippery slope. If
20 indeed the three-side rule is in effect, we
21 don't have a problem, but if we can have --
22 if we can have unity of applications to
23 defeat that, I think we may be opening
24 Pandora's box.

25 From looking at the plat book, I see

1 that there's a lot of two-and-a-half, there
2 are five's, and five's and five's. You
3 know, like they said, mostly
4 two-and-a-halves in that neighborhood.

5 But whatever decision is made, I want
6 to beg you to predicate it on the fact that
7 Pandora's box is not opened, that we can
8 have other applicants come in and unify
9 the property.

10 Because, clearly, if Mr. Causley's
11 property wasn't included, that's a
12 five-acre piece onto the south and I think
13 there's a 1.2 and a 3. -- I guess it's like
14 a 3.85 that currently have unity of title,
15 which when you go back and do the research,
16 these properties back in 1972, '73 were one
17 property that were owned by a Francisco
18 Anluis and for whatever reason that owner
19 decided to divide those properties. So I
20 don't know why or how that even was allowed
21 to happen post '73. But, anyway, this
22 could open a real problem for them.

23 I'm a policy guy. I believe that if
24 we have these tools, and this is an area
25 outside the urban development boundary,

1 that very wise people back in the 70's
2 decided that we were going to have one
3 house per five acres. That we were going
4 to have these rules. These rules were in
5 place. So I say that we don't give up any
6 of the tools that we have, so I ask this
7 Board to be very judicious in their
8 decision. Thank you.

9 CHAIRMAN MCGAREY: All right, thank
10 you, sir.

11 Next objector, please. Yes, sir, name
12 and address, for the record.

13 MR. ROBINSON: Sidney Robinson. I'm
14 speaking on behalf of the Redland Citizen
15 Association, Box 4245, Princeton.

16 I'd like to read into the record the
17 letter from the Board of Directors at the
18 RCA.

19 "We reviewed the above application.
20 While we understand the reasons for the
21 applicant's variance request, it is
22 impossible to ignore the negative and
23 piecemeal procedures -- precedence this
24 application provides for.

25 "We agree with the staff analysis and

1 evaluation of the County Planning and
2 Zoning Department and ask that you deny
3 this zoning application.

4 "Dividing the present five-acre tract
5 does not meet the long established criteria
6 of the Code and it would ignore the
7 consistent policy adhered to in the past by
8 Community Council 14.

9 "The immediate area surrounding the
10 subject properties is not similarly
11 parcelized nor do the subject sites comply
12 with the three-sided rule established in
13 the CDMP.

14 "Based upon this criteria, there is no
15 doubt that this application is both
16 inconsistent and incompatible with the
17 CDMP.

18 "The RCA respectfully requests that
19 you deny this application and it's contrary
20 to the public interest and its lack of
21 compliment -- compliance with the
22 appropriate portions of the CDMP land use
23 element. Thank you for consideration,
24 Jeff Knights, President of the RCA."

25 And if I may, I speak for myself. I

1 live at 23515 Southwest 162 Avenue.

2 I'm friends with the applicant and
3 respect her very much, so -- but we have to
4 recognize the policy set by the CDMP. If
5 not, it would set a precedent and there are
6 others who are watching, that are watching
7 now to see what the outcome of your
8 decision is. Thank you.

9 CHAIRMAN MCGAREY: All right, thank
10 you, sir.

11 Next objector, please. Name and
12 address, for the record.

13 MS. ESTY: Karen Esty, 14445 Southwest
14 200 Street.

15 Board Members -- and maybe staff can
16 help me on this, but I was always under the
17 assumption, and that's probably wrong to
18 do, that you needed unity of title. There
19 should be unity of title in order to even
20 present such an application. I may be
21 wrong.

22 And then also I have -- I have no idea
23 if anything like this has happened before.
24 Then that way it was already setting
25 precedence, especially outside the UDB.

1 I've never heard of three people getting
2 together and making a 10-acre parcel and
3 then coming asking to just divide it up
4 again.

5 And as just said prior by the last two
6 speakers, this really goes against our
7 Master Plan, so I ask this Board to
8 carefully look at everything that's going
9 on here. Thank you.

10 CHAIRMAN MCGAREY: Thank you.

11 Any other objectors? Seeing none,
12 rebuttal.

13 MR. DUFEEK: Speaking of a precedent
14 that was set I believe by this Board, I
15 don't have all the particulars, but
16 approximately two years ago I believe it
17 was, there was a gentleman that came before
18 this Board, a gentleman by the name of
19 Brent Probinsky. If I'm not mistaken, he
20 had a 10-acre piece of property that was
21 split into two five-acre pieces and he got
22 approval on his to subdivide his into
23 two-and-a-half-acre parcels.

24 The real key, as far as I can see
25 here, is the definition of subject property

1 and I would appreciate the County Attorney
2 stating what the definition of subject
3 property is. The subject property is the
4 property that is the subject of this public
5 hearing.

6 And it does not make -- and the County
7 Attorney can attest to the fact that they
8 have applications all the time that come
9 before boards, whether it be the Zoning
10 Appeals Board or being able to come before
11 the County Commission, that is in multiple
12 ownership and that is the subject property.
13 And I think that's what has to be used here
14 as the criteria, because that's what is
15 always been used as a criteria, the subject
16 property.

17 And that's why the Code is very
18 specific, it says the subject property and
19 the subject property is the subject to this
20 public hearing, not each individual parcel.

21 Or -- now, a year and half ago when I
22 had an application that was a six-acre
23 parcel that came before this Board, the
24 subject property was a six-and-a-half-acre
25 piece of property and the County at that

1 time was improperly using the code
2 referenced by taking each individual
3 three-acre parcel that I was trying to
4 create and was applying the three-sided
5 rule to it. That was wrong also, because
6 the subject property was a six-acre piece
7 of property.

8 Now here the subject property is a
9 10-acre piece of property and that other
10 property, like I say, a year and a half
11 ago, was in March I believe it was 2000,
12 and that property was a six-acre piece all
13 under one ownership and they -- the County
14 at that time -- and like I said, I didn't
15 bring it with me tonight, but the County at
16 that time used the three-sided rule on each
17 parcel and you saw the fallacy in that and
18 you granted approval for that application.

19 Right here you've got a 10-acre parcel
20 which is the subject property and it has to
21 be applied -- the code has to be applied to
22 the subject property.

23 CHAIRMAN MCGAREY: That six-acre
24 property you're making reference to, as I
25 remember, it was under one ownership?

1 MR. DUFEK: That's correct.

2 CHAIRMAN MCGAREY: And the Brent
3 Probinsky 10-acre parcel was also under one
4 ownership?

5 MR. DUFEK: That's right, but if you
6 remember I believe on the Brent Probinsky
7 application and also on the application
8 for -- I can't remember the first name.
9 The last name was Brooks. But on both of
10 those applications, if I'm not mistaken --
11 and in fact I know on my application the
12 County recommended denial on it because
13 they were taking each individual parcel and
14 trying to apply the three-sided rule to it
15 and that was incorrect because it was not
16 the subject property. The subject property
17 was the entire application. Thank you.

18 CHAIRMAN MCGAREY: All right, thank
19 you.

20 Any questions from the Board to the
21 presenters to the applicant?

22 MR. JONES: Mr. Chairman, I have a
23 question of staff.

24 CHAIRMAN MCGAREY: Mr. Jones.

25 COUNCILMAN JONES: Staff, why -- why

1 did you put us in a position of having to
2 rule on whether this is one piece or two
3 pieces when you could have just had it as
4 two applications, two five acres?

5 MS. JACOBI: I'm the one that
6 originally told Ms. Barrow to file it as
7 one application because it would have saved
8 her money and they were adjacent property
9 owners. That's all. It was my idea.

10 CHAIRMAN MCGAREY: All right, any
11 other questions of staff?

12 Public hearing is closed.

13 Any comments from Board members?

14 Motion?

15 COUNCILMAN LAWRENCE: I would like
16 to -- looking at what we're dealing with
17 your piece of property and what is
18 surrounding it, and I'm talking about the
19 entire 10-acre piece of property, and I
20 think it would be grossly unfair to deny
21 this application given, you know, the
22 division of the properties around it. I
23 don't see this as setting a precedent. We
24 have done this before. I don't know why
25 this particular piece is raising so much

1 ire this evening, but we have done this
2 before.

3 And I would -- if I'm in order, I
4 would like to offer a motion that we go
5 with -- that we go with staff
6 recommendation. Hold it one minute.

7 COUNCILWOMAN DIJKSTRA: Request Number
8 2.

9 COUNCILMAN LAWRENCE: That we -- that
10 we deny Number 2 and grant Request 1, if
11 I'm not mistaken, if that's what the --

12 MS. RAWLS: No, we recommend the
13 opposite.

14 COUNCILWOMAN DIJKSTRA: Opposite.

15 COUNCILMAN LAWRENCE: Well, my motion
16 is to grant Request 1 and deny Request 2.

17 MR. BERNSTEIN: Mr. Lawrence, forgive
18 me, but I think what you're saying is, that
19 you're moving this application for
20 approval?

21 COUNCILMAN LAWRENCE: Yeah.

22 MR. BERNSTEIN: Because staff
23 recommended against -- against applicant
24 Request Number 1?

25 COUNCILMAN LAWRENCE: Right, which was

1 the division --

2 MR. BERNSTEIN: But you're not
3 convinced of that. You believe that -- you
4 want to treat this as a 10-acre parcel.

5 COUNCILMAN LAWRENCE: As a 10-acre
6 parcel.

7 MR. BERNSTEIN: And in so doing,
8 you're making a finding -- you're proposing
9 a finding of fact that in treating it as a
10 10-acre parcel, it meets the three-sided
11 rule?

12 COUNCILMAN LAWRENCE: That is correct.

13 MR. BERNSTEIN: But, in addition, the
14 Department recommended in favor of Request
15 Number 2 and I don't think you're
16 quarreling with that.

17 So, in essence, your motion is for
18 approval of the application.

19 COUNCILMAN LAWRENCE: My motion is for
20 approval of the application, yes.

21 MR. BERNSTEIN: Thank you.

22 MR. LAWRENCE: And the division of the
23 two five-acre parcels. And I'm looking at
24 both pieces as the subject property.

25 MR. BERNSTEIN: Right. And you're

1 moving approval of Request 1 and 2?

2 COUNCILMAN LAWRENCE: I'm moving for
3 Request 1 -- yeah, Request 1 and 2.

4 MR. BERNSTEIN: Yes, thank you, sir.

5 COUNCILMAN LAWRENCE: All right.

6 CHAIRMAN McGAREY: All right, there's
7 a motion on the four -- on the floor for
8 approval of both Requests Number 1 and 2.
9 Is there a second?

10 COUNCILMAN BELL: Second.

11 CHAIRMAN McGAREY: Seconded by
12 Councilman Bell.

13 Staff, roll call, please.

14 MS. RAWLS: Mr. Chair?

15 CHAIRMAN McGAREY: Discussion.

16 MS. RAWLS: Mr. Chair?

17 CHAIRMAN McGAREY: Yes.

18 MS. RAWLS: Could we request that Mr.
19 Lawrence reword that so it would be
20 approval of the Alternative Site
21 Development Option request, which is what
22 they are now called, alternative site
23 plan -- alternative site development
24 options.

25 COUNCILMAN BELL: That would give

1 her -- that would give her what she wants?

2 MS. RAWLS: That would give her what
3 she wants.

4 COUNCILMAN LAWRENCE: All right, so
5 you're saying the motion should be for
6 approval of the --

7 MS. RAWLS: The Alternative Site --

8 COUNCILMAN LAWRENCE: The Alternative
9 site Option?

10 MS. RAWLS: Development Options 1 and
11 2.

12 COUNCILMAN LAWRENCE: One and 2.

13 MR. BERNSTEIN: Motion for approval of
14 Request 1 and 2. And with respect to
15 Number 1, the motion is based on
16 consideration of the Alternative Site
17 Development Option.

18 COUNCILMAN BELL: Okay.

19 CHAIRMAN MCGAREY: It's based on --

20 COUNCILMAN BELL: Based on the new
21 ruling, new guidelines.

22 CHAIRMAN MCGAREY: All right, the
23 wording is correct?

24 MS. RAWLS: And that would also be
25 with the conditions?

1 COUNCILMAN LAWRENCE: With conditions,
2 right.

3 MS. RAWLS: Thank you.

4 CHAIRMAN McGAREY: There's a motion
5 and a second on the floor.

6 MR. BERNSTEIN: Okay, then both --
7 excuse me, I'm being corrected, that both
8 requests would be based on the Alternative
9 Site Development Option.

10 COUNCILMAN LAWRENCE: Okay, I stand
11 corrected.

12 MS. RAWLS: Thank you.

13 MR. BERNSTEIN: Remember, this is our
14 first time through this, so I hope
15 everybody understands. We're taking baby
16 steps, but we're trying to do the right
17 thing.

18 COUNCILMAN BELL: Okay, let's go.

19 CHAIRMAN McGAREY: All right, staff,
20 roll call vote.

21 THE CLERK: The motion is to approve
22 the Alternative Site Development Option 1
23 and 2.

24 Mr. Ballinger?

25 CHAIRMAN McGAREY: He's absent.

1 THE CLERK: Mr. Bell?
2 COUNCILMAN BELL: Yes.
3 MS. RAWLS: That was with conditions.
4 THE CLERK: With conditions.
5 COUNCILMAN LAWRENCE: Correct.
6 THE CLERK: Ms. Dijkstra?
7 COUNCILWOMAN DIJKSTRA: Yes.
8 THE CLERK: Mr. Jones?
9 COUNCILMAN JONES: No.
10 THE CLERK: Mr. Lawrence?
11 COUNCILMAN LAWRENCE: Yes.
12 THE CLERK: Mr. McGarey?
13 CHAIRMAN MCGAREY: No.
14 THE CLERK: I'm sorry, can we re-do
15 the roll, please. I'm sorry, go ahead.
16 Mr. Bell?
17 COUNCILMAN BELL: Yes.
18 THE CLERK: Ms. Dijkstra?
19 COUNCILWOMAN DIJKSTRA: Yes.
20 THE CLERK: Mr. Jones?
21 COUNCILMAN JONES: No.
22 THE CLERK: Mr. Lawrence?
23 COUNCILMAN LAWRENCE: Yes.
24 THE CLERK: Mr. McGarey?
25 CHAIRMAN MCGAREY: No.

1 THE CLERK: Motion approved two to
2 three -- three to two.

3 MR. DUFEK: For a point of
4 clarification, is this with continued
5 agricultural use on the property?

6 COUNCILMAN LAWRENCE: Yes.

7 MS. JACOBI: The zoning would not
8 change. The taxing will be up to the tax
9 assessor's office.

10 MR. DUFEK: Okay, thank you very much.

11 MS. BARROW: Thank you.

12 CHAIRMAN MCGAREY: Mr. Bernstein,
13 before we go on to the next application or
14 actually staff, I just want to ask your
15 opinion on something, all right?

16 If I came forward with an application,
17 and I lived in the Redland outside the UDB,
18 and I grouped a bunch of my neighbors
19 together, let's say seven or eight of them

20 (Councilman Ballinger entering the
21 room.)

22 CHAIRMAN MCGAREY: And put together
23 100-acre piece, called the subject parcel,
24 all right, how strongly would staff
25 recommend to the applicant they would have

1 to split those up and they can't come in
2 with all those pieces bundled up together
3 in order to meet the three-sided criteria?

4 MS. JACOBI: If you look at Item
5 Number E, it is called H.D. Cross Trust, et
6 al, that means and others and I do believe
7 Item Number D is two separate owners. And
8 you'll look at the agendas, most of your
9 applications are made up of multiple
10 owners. As long as the property is
11 contiguous, they can join together in an
12 application.

13 CHAIRMAN MCGAREY: What if they own
14 other contiguous property next --

15 MS. JACOBI: As long as it's just
16 listed as contiguous property, it doesn't
17 matter. They don't have to join in all
18 their property for an application.

19 We have that quite often too.
20 Lennar -- we have lots of their
21 applications that just part of their
22 property is an application.

23 CHAIRMAN MCGAREY: So I could own with
24 a bunch of other people, let's say, bundle
25 a hundred acres together and come forward

1 to meet the three-sided rule?

2 MS. JACOBI: I do believe there's a
3 landscape company that is going to be
4 having hearings come up where --

5 MS. RAWLS: We can't bring other
6 people --

7 MS. JACOBI: I didn't say his name.

8 COUNCILMAN LAWRENCE: I really --

9 CHAIRMAN MCGAREY: All right, let's go
10 forward. Next item.

11 COUNCILMAN LAWRENCE: I think we're
12 reading too much into this, Charlie. I
13 think you're really underestimating the
14 intelligence of this Board. When -- yeah,
15 I mean, we're dealing with 10 acres here.
16 Somebody comes here with a hundred acres
17 or a big parcel, I think we're intelligent
18 enough to know what's happening in a
19 situation like that and deal with it
20 accordingly.

21 CHAIRMAN MCGAREY: Well, where do we
22 draw the line? How many ownerships and how
23 many bundled parcels?

24 COUNCILMAN LAWRENCE: It is up to the
25 seven people here to use their better

1 judgment in cases like that, but I just
2 think you're reading --

3 CHAIRMAN MCGAREY: I think we set a
4 precedent tonight, to tell you the truth.

5 COUNCILMAN LAWRENCE: We've done it
6 before.

7 CHAIRMAN MCGAREY: And I think it's
8 going to come back and bite us. I really
9 do.

10 COUNCILMAN LAWRENCE: I'd like to see
11 it.

12 CHAIRMAN MCGAREY: And I'll be the
13 first to remind us when it happens.

14 (Thereupon, the proceedings on Item
15 Number 02-11, Janis H. Barrow, et al., were
16 concluded.)

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CERTIFIED OF REGISTERED PROFESSIONAL REPORTER

STATE OF FLORIDA:

SS:

COUNTY OF DADE:

I, LORENA RAMOS, do hereby certify that
Item 02-11, Janis H. Barrow, et al,
was heard before Community Zoning Appeals
Board 14 on the 25th day of September 2002;
and that the foregoing pages, numbered from 1
to 46, inclusive, constitute a true and
correct transcription of my shorthand report
of the proceedings.

WITNESS my hand and official seal in the
City of Miami, County of Dade, State of
Florida, this 2nd day of October 2002.

Lorena Ramos

LORENA RAMOS, COURT REPORTER

