

THE OJUS HOMEOWNERS ASSOCIATION, INC.

APPEAL

OF COMMUNITY ZONING APPEALS BOARD #2

APPROVAL OF BMS OJUS L.L.C.

REQUEST TO CHANGE ZONING

FROM

**RU-3M MINIMUM APARTMENT HOUSE DISTRICT & IU-1, INDUSTRIAL
LIGHT MANUFACTURING DISTRICT, TO IU-1, INDUSTRIAL LIGHT
MANUFACTURING DISTRICT**

**Received by the Clerk
for the record.**

FEB 24 2005

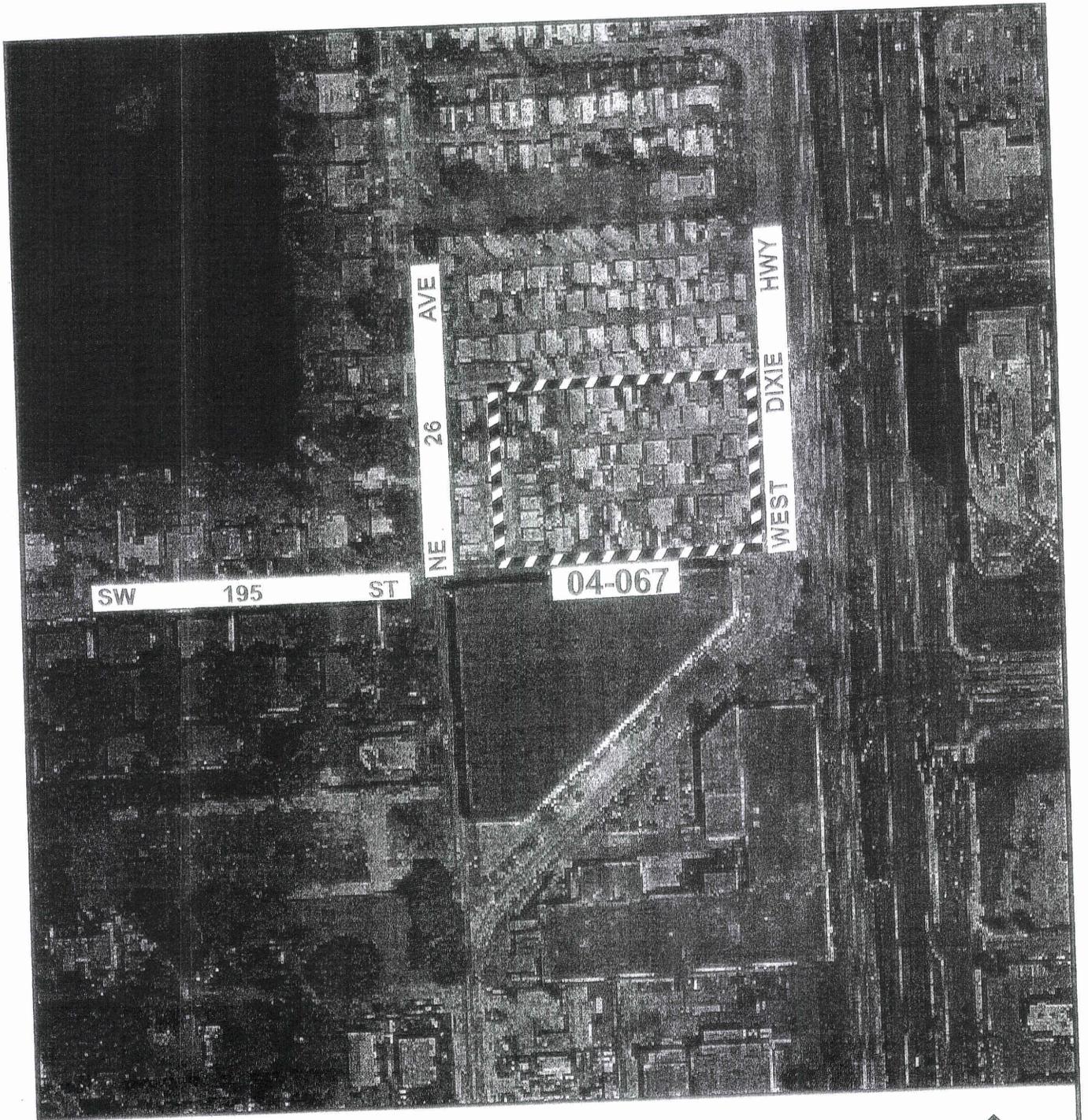
Item B

Exhibit A

Appl. (04-10-CZ2-2/04-62)

**APPLICANT: BMS OJUS L.L.C.
SECTION: 03-52-42
COMMISSION DISTRICT: 4**

**PH: Z04-067(04-10-CZ2-2)
DATE: February 24, 2005
ITEM NO.: 2**

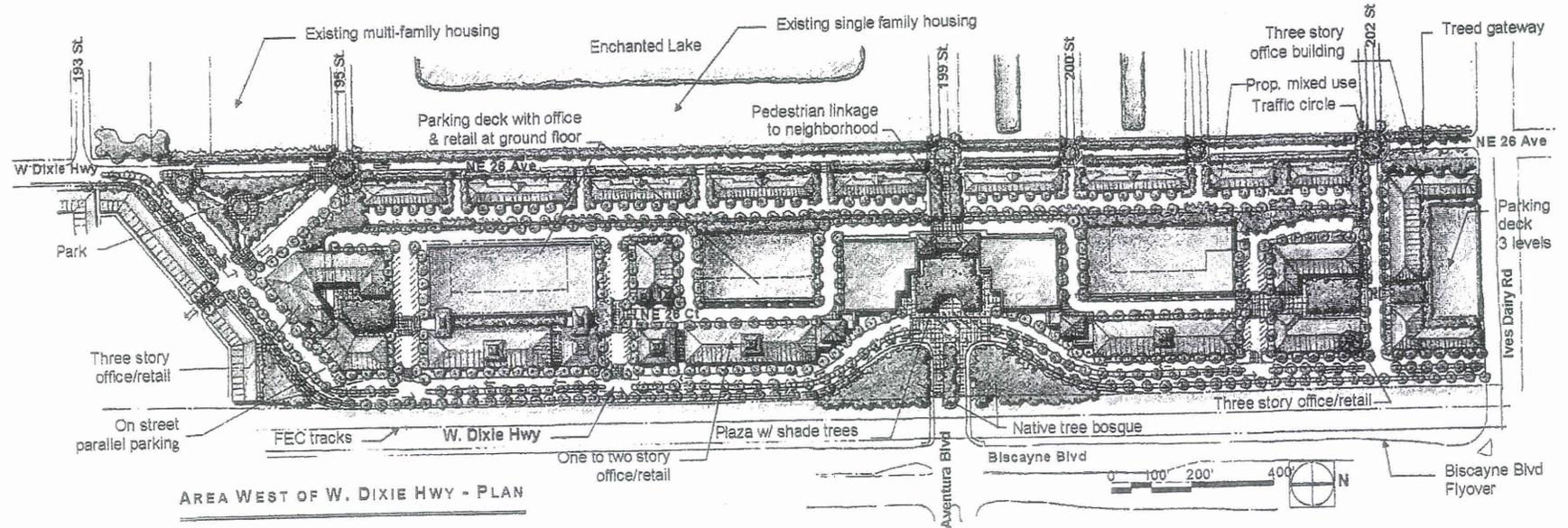


MIAMI-DADE COUNTY
AERIAL

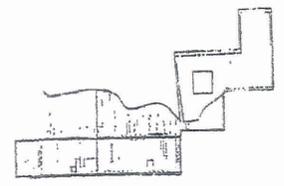
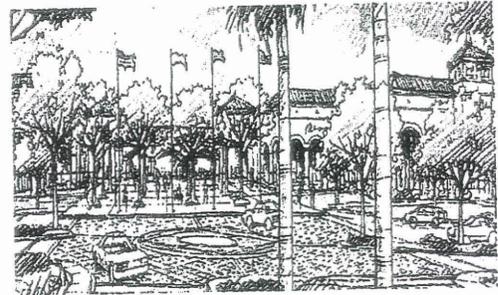
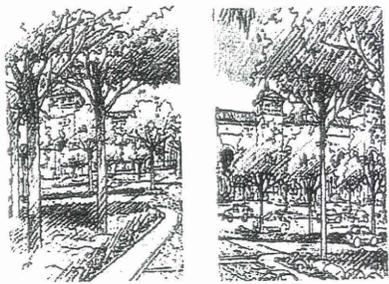
Section: 03 Township: 52 Range: 42
Process Number: 04-067
Applicant: TRINITY PROPERTY OF AVENTURA
District Number: 04
Zoning Board: C02
Drafter ID: ERIC
Scale: NTS

SCALE
0 NTS M


 SUBJECT PROPERTY



AREA WEST OF W. DIXIE HWY - PLAN



NORTH DISTRICT

LOOKING WEST ON WEST DIXIE HWY AND 199TH ST - DETAILS

APPEAL OF APPLICATION OF BMS-OJUS LLC

BOARD OF COUNTY COMMISSIONERS

PH: Z 04-067 FEBRUARY 24, 2005

Submitted by:

Law Offices of Howard F. Scott, P.A.

Howard F. Scott, Esq.

For The

OJUS Homeowners Association, Inc., Appellant

On behalf of the Ojus Homeowners Association, Inc. this Memorandum is filed to oppose the Applicant's request for a zoning change to IU-1 as incompatible with neighboring development. Neighboring development meaning specifically the residences and townhomes located to the west of the proposed site, contrary to the wishes of the community, contrary to the initial recommendation of the Department of Planning and Zoning and completely inconsistent in fact, intent and spirit with the Ojus Charrette Master Plan.

By way of background, the area here in question is known as OJUS. A map of the OJUS focus area is in your notebook just prior to Tab 1 of the Exhibits. The OJUS focus area contains many lakes, rivers, parks and forested areas. It is bordered on the south by Greynolds Park on the west by the Oleta River and on the east by Biscayne Boulevard. It is divided into 3 separate districts the south, central and north district. The OJUS Charrette originated on July 21, 1998 when County Commission petitioned the County Manager to commence a study on the Ojus area. In January 1999, a steering committee was established by the Miami-Dade County Department of Planning and Zoning to begin the study. After almost two years, and thousands of man hours of study and work, the Ojus Charrette Report was issued setting forth a "Master Plan" for development of the Ojus. The Master Plan was a cooperative effort by professional architects, landscape architects, marketing and economic planners, designers and engineers with the added input of local historians. The Master Plan, as stated in the Charrette, was "the result of collaboration among many entities and individuals, including the Miami-Dade Board of County Commissioners; Northeast Community Council (2); Miami-Dade County Departments of Planning and Zoning, Parks and Recreation, Police, Team Metro, Miami Dade Public Schools, South Florida Regional Planning Council, area chambers of commerce, business and homeowners associations, Friends of the Oleta River, and most importantly, the people who live study, work and shop in Ojus". The final 88-page "Ojus Charrette Report" was prepared by The Miami-Dade County Department of Planning and

Zoning, Marlin Engineers, Traffic Engineers, Albert R. Perez Associates, P.A. Landscape Architects and Planners, and Judson and Partners, Architects, Planners and Interior Designers.

The purpose of the Master Plan of the Ojus Charrette was to “guide development and redevelopment in a manner that protects and enhances the unique characteristics of Ojus”, to “protect the environmental treasures of Ojus” (Enchanted Lake, Oleta River, Greynolds Park, etc.) and to “preserve the historic character” of the Ojus community.

The community completed its work on the Master Plan in August of 2002 but it was not until February 3, 2004 that the Charrette was presented to and accepted by the County Commission.

Exhibit II at Tab 2 of the notebooks contains copies of certain pages of the OJUS Charrette. On Page 2 of Exhibit II the Master Plan provides that “buildings should be tall enough to create a sense of enclosure and urban character. Mixed use, retail and office uses should be limited to 3 stories on Main Street from Miami Gardens Drive to N.E. 102nd Street. Mixed use, office with retail on the ground floor should allow 3 stories only.” On Page 3 of Exhibit II the Charrette further provides that “the West Dixie retail corridor should be extended to connect to the commercial center proposed for the area of what is now the Mobile Home Park. The street profile should be similar to West Dixie or Main Street. Meaning mixed use office with retail on the ground floor 3 stories only.” This is the exact location where the applicant proposes to put his 6 ½ story high self-storage warehouse. On Page 11 of Exhibit II of the Charrette the general intent and spirit of the Charrette is clearly evidenced. It states there that residents described OJUS as “a sanctuary where they are sheltered from the more urban development of Aventura and North Miami Beach. There is a feeling that in OJUS residents have access to the best of both worlds”. “When asked to rank from 1-5 the highest priority for preservation, one of the top three priorities was preserving historic design characteristics and the eclectic nature of the small businesses along West Dixie Highway and insuring new development conforms to the historic character of the community”.

In its Recommendations, Staff noted that the Applicant has attempted to conform to the general intent of the Charrette by moving the building forward, relocating parking areas to the side and adding esthetic treatments to the façade. Such attempts to conform with the general intent do not succeed as this 6 ½ story high, 105,000 square foot (nearly football field sized monolithic) warehouse violates both the specific intent and recommendation of the Charrette to limit height to three stories and the general intent of the Charrette to preserve the historic design characteristics and the eclectic nature of the small businesses along West Dixie Highway and insure new development conforms to the historic character of the community”. Furthermore, staff noted that the Applicant submitted submitted line-of-sight documentation indicating the townhouse project proposed for the RU-3M zone property to the west of the proposed warehouse site will “buffer” the view of the self storage warehouse from the existing single family residences to the west. The Master Plan of the OJUS Charrette proposed townhouses on 26th Avenue to buffer the view of the proposed 3 story business and office development to go behind it. These proposed townhouses, while they may have buffered a 3 story business and office development from certain locations in front of the five or six homes to the west on Enchanted Lake, will not buffer these homes from a 6 ½ story, 105,000 square foot nearly football field sized monolithic self storage warehouse. And, of course, the Applicant offered no covenant that these townhouses would ever be built.

The OJUS Charrette constitutes a neighborhood study or plan, originating as it did from a Petition from the County Commission to the County Manager to commence a study on the OJUS area and having evolved to being finally accepted by the Board of County Commissioners on February 3, 2004 in Resolution R167-04 which resolution directed county staff to be guided by the OJUS Charrette Report Plan and Recommendations in the application of the Code of Miami Dade County.

Paragraph F of the Department's recommendation also provides that the "Board shall hear and grant or deny applications for district boundary changes taking into consideration that same must be consistent with the CDMP with applicable area or neighborhood studies or plans and would serve a public benefit. While there is some public benefit to having extra storage space available, the detriment that accompanies that benefit must also be considered. This warehouse will be operating 6:00 a.m. to 10:00 p.m. seven (7) days a week, renting trucks, selling moving supplies, operating a commercial meeting center and available to both commercial and individual storage renters. Those are burdens enough to outweigh the benefit of providing storage space in this particular location. An even greater detriment far outweighing the public benefit from this building is the effect that this building will have on the implementation of the Master Plan of the OJUS Charrette. This 6 ½ story, 105,000 square foot nearly football field sized monolithic self storage warehouse building is so incompatible and out of scale with the Master Plan of the Charrette for 3 story business and office buildings that it will have a negative and perhaps fatal impact on the implementation of our community's plan for our community.

Paragraph F of the Department's recommendation also notes that the requested boundary change must be consistent with the CDMP, with applicable area or neighborhood studies or plans also serve a public benefit

It is clear that this proposed 6 ½ story high warehouse structure and the zoning change that would permit it, are not consistent with the Master Plan of the OJUS Charrette which provides for 3 story mixed use retail and office. Even if the "use" proposed by the Applicant, that is, a self storage warehouse or service facility could be found to be consistent with the Charrette's recommendation for mixed use retail and office, the 6 ½ story height of the structure is clearly inconsistent with the Charrette. And, the overall immense scale of this 6 ½ story high,

105,000 square foot, nearly football field size building is also clearly inconsistent with the envisioned results of the Charrete's recommendations as illustrated in the Report.

The Charrette's recommendations for mixed use retail and office is consistent with the business and office land use designation obtained by this Applicant on the north ½ of its property and by another applicant (LIMOCH,LLC) at the November 5, 2003 CDMP meeting of the County Commission. The IU-1 zoning requested by the Applicant for the south ½ of its property should be denied and the Applicant granted the same BU-2 zoning requested by the Applicant for the north ½ of its property to promote development consistent with the Master Plan of the Charrette.

Staff noted in its analysis that development located in an IU-1 zoning district may not exceed a height greater than the width of the right-of-way abutting the property, but that does not mean the height of any development has to be the maximum height permitted. Should the Commission determine to grant the Applicant's request for IU-1 zoning, the Commission should do so with a restriction on height that conforms with the equivalent height of the 3 story business and office development proposed in the Charrette.

On behalf of the OJUS Homeowners Association, Inc and those other members of the OJUS community who have voiced their support for the Master Plan of the Ojus Charrette, it is respectfully requested that the County Commission deny this district boundary change or if it determines not to do so, grant the requested zoning change with a height restriction of 3 stories not to exceed 35 feet.

Table of Contents

1

2

3

4

5

6

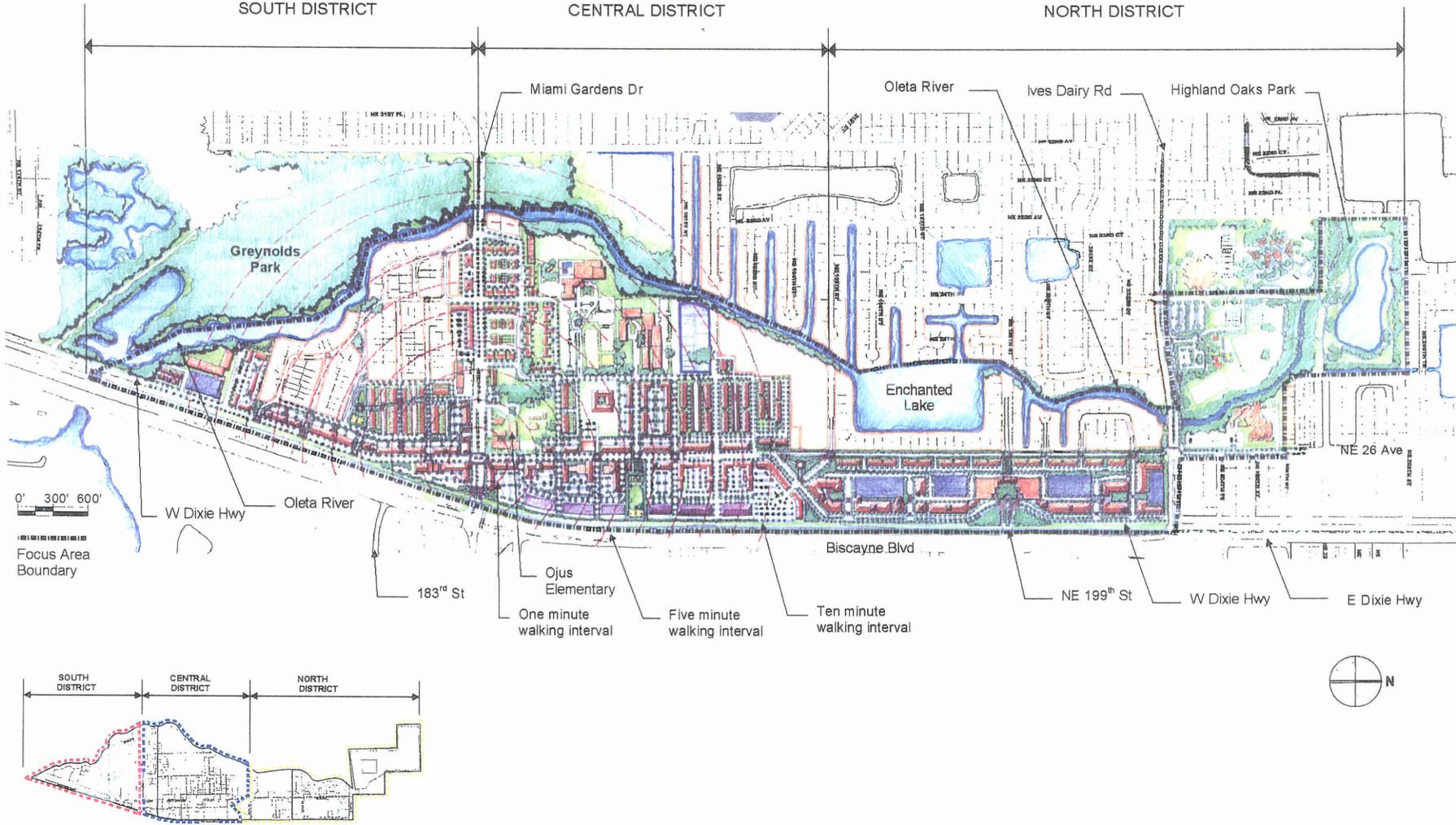
7

8

9

10





OJUS FOCUS AREA

MEMORANDUM
OBJECTIONS TO APPLICATION OF BMS-OJUS, LLC
BOARD OF COUNTY COMMISSIONERS
PH: Z 04-067 FEBRUARY 24, 2005

HISTORY:

On November 5, 2003 the County Commission was presented with two distinct plans for the development of the Sun Haven Trailer Park property across from the Enchanted Lake neighborhood of our Ojus community.

One plan, providing for redesignation of the property as business and office and calling for the construction on the property of three story business and office buildings, was developed over a two plus year period by our Ojus community through the efforts of many entities and individuals, including the Miami-Dade County Departments of Planning and Zoning, Parks and Recreation, Police, Team Metro, Miami Dade Public Schools, South Florida Regional Planning Council, area chambers of commerce, business and homeowners associations, Friends of the Oleta River, and the people who lived and worked in Ojus.

One plan, providing for redesignation of the property as partly industrial and the construction on the property of a five story self-storage warehouse building, was developed by a Miami investor with an option to purchase the property.

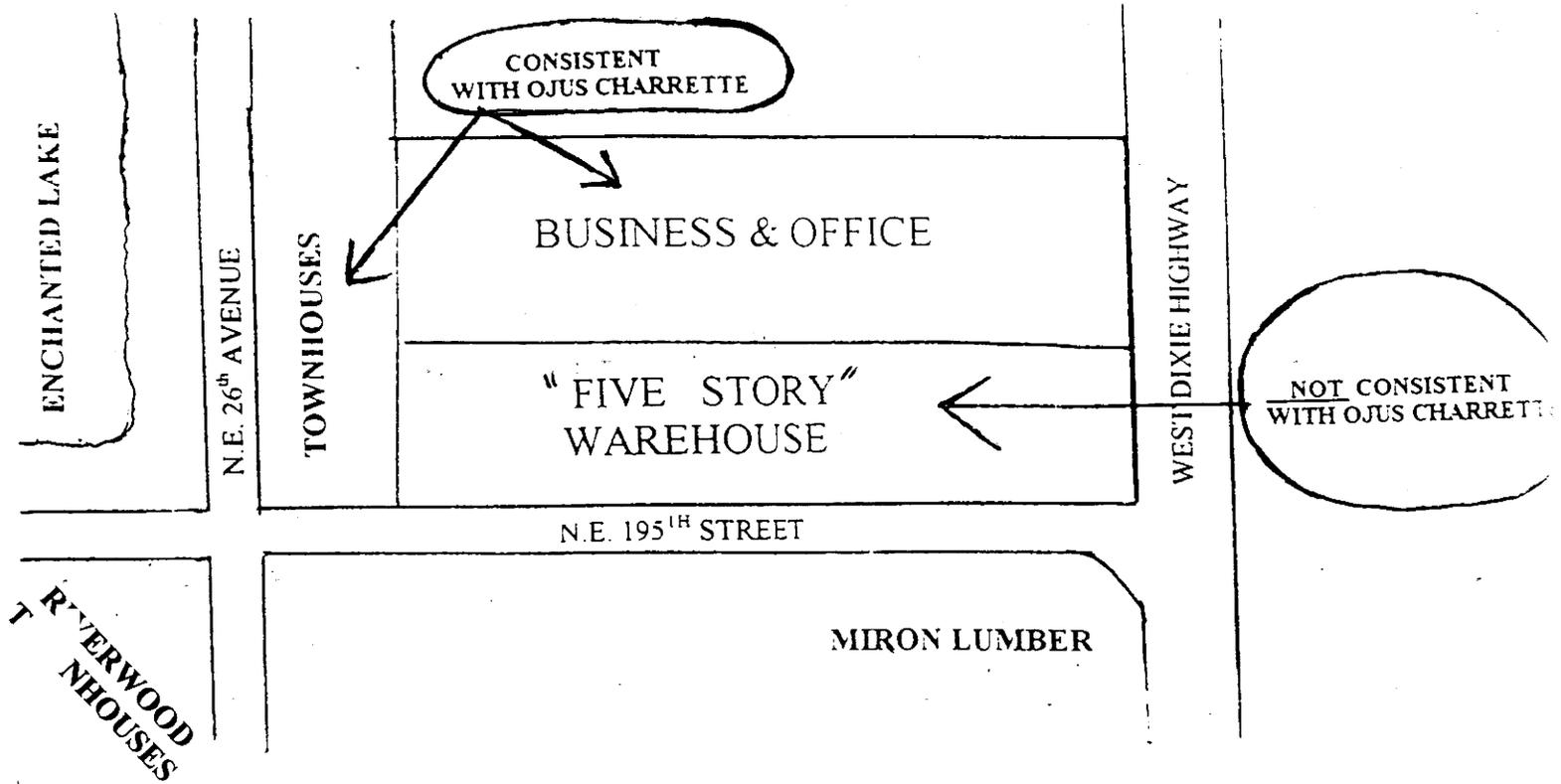
THE "MIAMI INVESTOR"

The Blue Green Commercial Corporation is a corporation formed by a Miami investor to build and operate a "five story" self-storage warehouse. This "five story" self-storage warehouse, in fact, however, will be **64.9** feet high, which is the equivalent of a **six and ½ story high building**. Susan Fried was the lobbyist retained by the Miami investor and Bercow & Radel was the law firm representing the Miami investor. This Miami investor wanted to build his self-storage warehouse on half of the property where the Sun Haven Trailer Park currently sits (on the north side of N.E. 195th Street across from Miron Lumber and between N.E. 26th Avenue and West Dixie Highway) and build business/office buildings on the other half. The Miami investor acquired an option from the owner of the Sun Haven Trailer Park to purchase the land where the trailer park is located **if** he was able to change the land use designation of the property to industrial, which would allow him to build the warehouse.

This self-storage warehouse, if built, will be **approximately ¾ ths the size of a football field, twice the height of the adjacent Miron Lumber building**, and brightly lit all night for both security and advertising purposes. This immense, mammoth warehouse, as the largest and tallest building in our Ojus community will thus be our "signature building", the building by which our community will be characterized, and **the building which will, by its presence, dictate the nature of future development in our community.**

Through his corporation, the Miami investor, after acquiring the option, filed an application with Miami-Dade County to have the land use of the Sun Haven Trailer Park property redesignated as partly industrial, so he could build his warehouse.

The Miami investor designated part of the property as business/office and left an 80 foot wide strip of land bordering on 26th Avenue as residential property on which he proposed that townhouses would be built compatible with the homes across the street on Enchanted Lake.



THE ISSUE HERE IS NOT :

Whether the Sun Haven Trailer Park should be torn down and the property on which it sits redeveloped. With all due regard to the people who make their home there, the trailer park is no longer the best or even an appropriate use, in this area, for the property on which it sits.

THE ISSUE IS:

Whether the Sun Haven Trailer Park property should be redeveloped with three story business/office buildings behind a strip of townhomes on 26th Avenue in accordance with (i) the vision and Master Plan of the Ojus Charrette, (ii) as recommended by the Miami-Dade County Department of Planning and Zoning, and (iii) as desired by the Ojus Community

OR

Whether the Sun Haven Trailer Park property should be redeveloped with a six and one-half story high self-storage warehouse behind a strip of townhomes on 26th Avenue, in accordance with the "vision" of a Miami investor.

THE APPROVAL PROCESS:

On September 3, 2003 the Miami investor's application (**See Exhibit I**) was presented to the Northeast Community Council. The Miami-Dade County Department of Planning and Zoning recommended the Council deny the request for an industrial use designation for the Sun Haven Trailer Park property as incompatible with the neighborhood and deny the request for approval of only an 80 foot wide strip of land for townhouses (80 feet being too small to construct townhouses).

Notwithstanding that the requested industrial land use designation was inconsistent with the Master Plan of the Ojus Charrette and against the recommendation of the Miami-Dade County Department of Planning and Zoning, and contrary to the wishes of those citizens in attendance, the Community Council approved the Miami investor's application by a vote of 5 to 2.

**Ken Friedman, William Koppel, Adrienne Promoff,
Peggy Stroker and Julia Robinson** Voted - To Approve.

Charles Baron and Reynold Stein Voted - To Disapprove.

On October 20, 2003 the application was next presented to the Planning Advisory Board. Again, notwithstanding the requested industrial land use was inconsistent with the Master Plan of the Ojus Charrette, incompatible with and adverse to the best interests of the neighborhood, against the recommendation of the Miami-Dade County Department of Planning and Zoning and against the opposition of area homeowners and residents expressed in letters addressed to Commissioner Sally Heyman (copies of which were presented to the Board) the Planning Advisory Board approved the Miami investor's application, after first objecting that the 80 foot wide strip of land left for townhouses by the Miami investor was inadequate and requiring the widening of the strip by almost 50% to 115 feet.

On November 5, 2003 the application was presented to the County Commission for approval.

THE OJUS CHARRETTE

(All underlined quotes are direct quotes from The Ojus Charrette)

What is a charrette? A charrette is "an intensive creative seminar in which a team of consultants concentrates on specific issues with citizens and presents solutions to the communities concerns." On July 21, 1998 the County Commission petitioned the County Manager to commence a study on the Ojus area. In January 1999, a steering committee was established by the Miami-Dade County Department of Planning and Zoning to begin the study. After almost two years, and thousands of man hours of study and work, the Ojus Charrette Report setting forth a "Master Plan" for development of the Ojus area was finally completed on May 18, 2001. The Master Plan was a cooperative effort by professional architects, landscape architects, marketing and economic planners, designers and engineers with the added input of local historians. The Master Plan, as stated in the Charrette, was "the result of collaboration among many entities and individuals, including the Miami-Dade Board of County Commissioners; Northeast Community Council (2); Miami-Dade County Departments of Planning and Zoning, Parks and Recreation, Police, Team Metro, Miami Dade Public Schools, South Florida Regional Planning Council, area chambers of commerce, business and homeowners associations, Friends of the Oleta River, and most importantly, the people who live study, work and shop in Ojus." The final 88 page "Ojus Charrette Report" was prepared by The Miami-Dade County

Department of Planning and Zoning, Marlin Engineers, Traffic Engineers, Albert R. Perez Associates, P.A. Landscape Architects and Planners, and Judson and Partners, Architects, Planners and Interior Designers.

The purpose of the Master Plan of the Ojus Charrette was to “guide development and redevelopment in a manner that protects and enhances the unique characteristics of Ojus”, to “protect the environmental treasures of Ojus” (Enchanted Lake, Oleta River, Greynolds Park, etc.) and to “preserve the historic character” of the Ojus community. The attached **Exhibit II** sets forth quotes from the Ojus Charrette Report regarding its purpose and intent. Included in these and stated as among the highest priorities were: **(EXHIBIT II, Page 11)**

“Preserving the historic design characteristics and the eclectic nature of the small businesses along West Dixie Highway”; and

“Ensuring new development conforms to the historic character of the community.”

The Charrette specifically provided for a **3 story limit** on development in the North and Central District: **(EXHIBIT II, Pages 2 & 3)**

“Buildings should be tall enough to create a sense of enclosure and urban character. Mixed-Use retail and office uses should be limited to 3 stories on Main Street, from Miami Gardens Drive to N.E. 192nd Street. Mixed-Use office with retail on the ground floor should allow **3 stories only**.”

“The West Dixie retail corridor should be extended to connect the commercial center proposed for the area of what is now the mobile home park. The street profile should be similar to West Dixie or Main Street” **(EXHIBIT II, Page 23)**

THE MASTER PLAN:

The Master Plan of the Ojus Charrette divided our Ojus community into three distinct districts: The North District, Central District and South District. The North District and the Central District are the two areas involved in this controversy. The Sun Haven Trailer Park property is in the North District. **Exhibit III** shows the proposed makeup of the North, Central and South Districts.

The North District This is the area beginning at NE. 195th Street and proceeding north to Ives Dairy Road with N.E. 26th Avenue on the west and West Dixie Highway on the east. **For this North District area**, the Master Plan of the Ojus Charrette proposes two story townhouses on the east side of 26th Ave. to maintain the residential character of the Enchanted Lake neighborhood and proposes commercial/retail development, **limited to a three story height**, behind these townhouses going back to West Dixie Highway. The Charrette excludes all industry from the North District. **(See Exhibit II quotes and attached Exhibit III from Page 29 of the OCR)**

The Central District This is the area from N.E. 195th Street south to Miami Gardens Drive. **For this Central District area**, the Master Plan of the Ojus Charrette proposes commercial, /retail and light industry along the FEC railroad track in the area east of West Dixie Highway and mixed use commercial/retail and residential development west of West Dixie Highway. The Central District is the **only** area in Ojus where the Charrette locates industrial property. **(See attached Exhibit III from Page 29 of the OCR)**

The citizens of our community understand that not every recommendation of the Master Plan set forth in The Ojus Charrette is one that can be implemented right away. Certain recommendations may not even be susceptible to implementation in the future. **Many of the recommendations, however, including and most importantly the recommendations for the North District at issue here, could be easily implemented for the betterment of our entire community** These recommendations of the Master Plan, and the intent behind these recommendations dealing with the type and height of buildings to be constructed in the North District are clear and easily complied with.

During the entire application process, it was continually noted by the Miami investor's representatives that the final Ojus Charrette Report had never been "formally adopted" by the County Commission. While at the time of the County Commission meeting it had in fact been nearly three years since The Report was completed, and the County Commission had yet to "formally adopt" the Report, the value and importance of the Report and the Master Plan set forth in the Report, both as the product of so much effort by so many organizations, government agencies, professional planners, designers, and members of the Ojus community, and as an expression of the will and desire of the people of Ojus remained undiminished. Its' easily adoptable and implementable recommendations, formally adopted or not, especially deserved the respect and deference of our elected representatives.

And of course, it goes without saying that, while at the time of the County Commission meeting the "vision" of the Ojus Charrette Report had not yet been "formally adopted" by the County Commission, the "vision" of the Miami investor to construct a six and one-half story high self storage warehouse building also had not been "formally adopted" by the County Commission.

With the above in mind, at the County Commission meeting on November 5, 2003, when the Miami investor's application came up for consideration, before the Miami investor's attorneys presented his application, and thus without knowing what statements and representations his attorneys were going to make, the Ojus residents who were present to oppose the application were required by the Commission to speak in opposition to the Miami investor's as yet unmade statements and representations. After the opposing residents spoke, two "residents" appearing for the Miami investor spoke. The Miami investor's attorneys then made their presentation, after which the Commission closed the "public hearing" without affording the Ojus residents opposing the warehouse any opportunity to respond to the statements and representations made by the Miami investor's attorneys and experts.

Following is a recap of what transpired at the Commission Meeting.
All "BOLDED" quotes are direct quotes from the taped record of the County Commission meeting.

Mort Byer (President of the Ojus Homeowners Association) and Lorraine Byer of Enchanted Lake and Howard Scott, a resident of Riverwood were the Ojus residents who spoke in opposition to the Miami investor's application. Two Ojus residents then spoke in favor of the Miami investor's application for an industrial land use designation to place his self-storage warehouse on the Sun Haven Trailer Park property. (The Commission did not inquire of any of the speakers if they had any dealings or relationship to or with the Miami investor.)

The first speaker in favor of the warehouse was Mr. Alan Singer, a resident of Riverwood.

Mr. Singer, referring to the Miami investor's application to place a self-storage warehouse on the Sun Haven Trailer Park property advised the Commission that "**my immediate neighbors and friends that I have in the development are most eager to see this go forward**". Mr. Singer, after pointing out to the Commission the Ojus Charrette "**was never adopted**" addressed the traffic issue and,

demonstrating his familiarity with the Miami investor's plans, (which had not yet been presented to the Commission) advised the Commission that **“to ease traffic problems from the proposed townhouses there will be no ingress or egress off of 26th Ave. but rather a roadway off of 195th Street has been proposed for townhouse owners”**. Mr. Singer also noted that he **“sat in front on 3 separate days, different hours of the day at their existing building on Biscayne Boulevard and you could count the traffic on the fingers of one hand going in and out of there.”**

After discussing the traffic impact of the Miami investor's plans to build a six and one-half story high self-storage warehouse across from the Enchanted Lake neighborhood homes (instead of three story business/office buildings as proposed by the Ojus Charrette), open 7 days a week from 6:00 AM to 10:00 P.M, renting space to commercial enterprises as well as individuals, operating a car rental and truck rental business, selling moving supplies and operating a conference center on premises, Mr. Singer stated

“Here's a developer that is sensitive to the neighborhoods' needs.”

The second speaker in favor of the self storage warehouse was Mr. Thomas Baker, a resident living in the South District of Ojus. Mr. Baker advised the Commission that: (CDMP@11:11:00)

“I've checked over the project. This project will definitely be a major asset to the area. We've done traffic studies. We've looked at this project before.”

Mr. Baker had indeed looked at the project before.

On August 2, 2000, in the case of Baker v. Metropolitan Dade County, 774 So.2d 14, the Third District Court of Appeal ruled on the appeal of a lawsuit brought by Mr. Thomas Baker and other Ojus residents against Metropolitan Dade County and BMS Management Company to prevent BMS Management Company from constructing a self storage warehouse on vacant property on West Dixie Highway next to the Greynolds Park Club Condominium and behind Mr. Baker's Ojus home. (See **Exhibit IV**). The BMS Management Company site is just 14 blocks south on West Dixie Highway from the Sun Haven Trailer Park site where the Miami investor, through his Blue Green Commercial Corporation now wants to build - a self storage warehouse.

BMS Management Company” and the “Blue Green Commercial Corporation” have the same Brown family members as officers and directors. Victor Brown, David Brown and Steven Brown are officers and directors of BMS Management Company. Steven Brown serves alone as officer and director of Blue Green Commercial Corp. (See **Exhibit V**) Both corporations are represented by Mr. Jeffrey Bercow, Esq. and his firm.

Following Mr. Thomas Baker, the Miami investor's attorney, Mr. Jeffrey Bercow, presented the formal application on behalf of the Miami investor. Mr. Bercow, in discussing the application for the industrial land use designation, stated **“the land use itself is, we believe, consistent with the Ojus Charrette document”**. (CDMP@11:18:04) This general representation is one made by Mr. Bercow throughout the process before the Community Council, PAB and County Commission as well as publicly. (See **Exhibit VI** from the Miami Herald Neighbors). Following the presentation by Mr. Bercow, Mr. Michael Larkin (from Mr. Bercow's office) and two “expert witnesses” retained by the Miami investor spoke on behalf of the Miami investor's application.

Following a summary by Mr. Bercow, Commissioner Heyman made a motion to approve the application including the industrial land use designation change for part of the Sun Haven Trailer Park

property from residential to industrial to permit the Miami investor to build his self-storage warehouse.

The County Commission, deferring to Commissioner Heyman's endorsement and support, voted on and approved her motion to adopt the Miami investor's "vision" for our community.

THE QUESTION IS:

On what basis could the "vision" of a single Miami investor to build a six and one half story high, $\frac{3}{4}$ s of a football field size self-storage warehouse prevail over the Master Plan of the Ojus Charrette providing for three story business and office buildings, a plan that was "the result of collaboration among many entities and individuals, including the Miami-Dade Board of County Commissioners; Northeast Community Council (2); Miami-Dade County Departments of Planning and Zoning, Parks and Recreation, Police, Team Metro, Miami Dade Public Schools, South Florida Regional Planning Council, area chambers of commerce, business and homeowners associations, Friends of the Oleta River, and most importantly, the people who live study, work and shop in Ojus"? and,

On what basis could the "vision" of a single Miami investor to build a six and one half story high, $\frac{3}{4}$ s of a football field size, self-storage warehouse prevail against the opposition of the professional planners and staff of the Miami-Dade County Department of Planning and Zoning ?

On what basis could the "vision" of a single Miami investor with an option to buy a piece of property in our community prevail against the wishes and the best interests of the people who make up our community?

Were there compelling reasons to subordinate the efforts and recommendations of so many to the wishes of one investor with an option to buy a piece of property in our community and an intention to use it in as profitable a manner as possible without regard to the consequences to our community or we who call it our home?

Here are the reasons given by the Miami investor's attorneys:

1. Mr. Bercow stated Miami Dade County **"needs more industrial land" and "this will add additional industrial land to the county's inventory."**

First, it should be noted, that even if the Sun Haven Trailer Park property was redesignated as industrial use land, it would not "add additional industrial use land to the County's inventory" because the Miami investor was going to immediately use the property for his own self-storage warehouse. "Inventory" is something that is available to the general public, such as merchandise in a store. If someone special orders a suit, or a car, or a boat, when that item comes in it is not added to or considered part of inventory. It is held separate for the party who special ordered it. Just as the industrial land use "special ordered" here by the Miami investor was for him alone and not part of or being added to the county's inventory.

Second, even assuming there is a need for more industrial use land, that alone does not automatically make every other piece of land an appropriate candidate to be made into industrial land. There should be persuasive reasons present to justify changing the use of any specific piece of land to industrial use.

In this case, there were no good reasons to change the Sun Haven site to industrial use.

2. Mr. Bercow stated the five story self-storage warehouse would **“act as a transition area between the Miron lumber yard to the South, and the area to the South of Miron all of which is industrial and office”** and would **“act as a transition to the rest of trailer park row to the north of us which in all likelihood is going to be redesignated to office and business.”**

A 6 ½ story high industrial building, built in an area meant to have 3 story business/office buildings and outside of an existing industrial area is first and foremost an expansion (as Commissioner Heyman noted in later remarks) of the existing limited light industrial area of the Central District into the proposed business/office area of the North District. (Notwithstanding Mr. Bercow’s characterization, it should be noted that the area south of Miron Lumber is primarily composed of commercial stores on West Dixie Highway with light industrial shops located behind them along the railroad track.) (See Exhibit II quotes)

And, the fact that if this warehouse is built on the Sun Haven property it might then be described as a “transition” to the Miron lumber building and the industrial buildings in part of the area to the south, is not a reason that justifies building the warehouse, or any other industrial building, on that location in the North District. For example, if you could justify constructing a building on Parcel A just because it might act as a “transition” to another building on nearby Parcel B, then you would be justified in building a five story sewage plant on Biscayne Boulevard in the new upscale Biscayne Landing development on the basis it would serve as a “transition” to the two story sewage plant already on Biscayne Boulevard. And then you could justify building a seven story sewage plant in the middle of the Biscayne Landing development because it would serve as a transition to the five story sewage plant on Biscayne Boulevard.

The fact the warehouse may be characterized as being a “transition” to other buildings is valueless as a reason to justify constructing it in the proposed location.

Or, more simply stated, who would ever want a new incompatible, overwhelmingly monumental industrial development in their backyard because it would serve as a transition to an old, unsightly industrial development in their neighbor’s backyard.?

3. Mr. Bercow stated that the key issue to be considered was the transportation impact on the area of any development and such impact would be much less for a warehouse than for other types of businesses. (It should be noted that merely because Mr. Bercow, on behalf of his client, stated “traffic” was the key issue doesn’t mean that traffic really is the key issue. It just happens to be the only issue wherein the warehouse presents the possibility of a lesser negative impact on the neighborhood than other possible types of enterprises that might operate on the property.)

Mr. Bercow then introduced a “transportation expert” who advised the County Commission on behalf of the Miami investor, that a warehouse had an average transportation impact per day of **2.5 trips per 1,000 sq. ft.** while an office building had **11.5 trips per 1,000 sq. ft.** and other business uses had even more trips per 1,000 sq. ft.

Contrary to Mr. Bercow’s assertion, however, traffic is not the key issue of any proposed development consistent with the Ojus Charrette Master Plan. The traffic impact from redevelopment of the entire area between N.E. 195th Street and Ives Dairy Road between N.E. 26th Ave. and West Dixie Highway was considered in the development of the Master Plan of the Ojus Charrette. (Marlin Engineers, Traffic Engineers participated in preparing the Ojus Charrette.) Since

the Master Plan found the traffic burden of the proposed three story business/office buildings acceptable, the fact the proposed self-storage warehouse might bring less traffic to the neighborhood than the uses proposed by the Charrette, while if true, might be a “plus”, it is not a big plus in the sense the warehouse is going to save us from a traffic nightmare we would otherwise be having, because, we would not be having it.

And, of course, there are substantial negatives to the warehouse omitted from mention by the “traffic expert”:

The proposed warehouse will be approximately 3/4ths the size of a football field, twice as high as Miron Lumber, (six and ½ stories high) and lit all night. It will have **105,000** square feet, a size likely to be as much as three or four times as large as any two or three story office building. The “traffic expert” did not note this size or the effect of this disparity in size between the proposed warehouse and the other types of possible businesses when he discussed the actual traffic impact of the warehouse. (Multiply 2.5 trips per 1000 sq. ft. times 107 to get the warehouse’s real traffic impact)

The warehouse will also be operating from **6:00** in the morning until **10:00** at night, long before most business and office operations would have opened and long after most business and office operations would likely have closed. And, the warehouse will be open every day, including Saturdays and Sundays, (for the convenience of the Miami investor’s customers and the profit of the Miami investor). And, the warehouse will be running a truck rental operation on site. And the warehouse will be selling moving supplies. And the warehouse will be available to commercial as well as individual users. And the warehouse will be operating a meeting center.

The traffic expert also did not point out that, unlike the Miami investor’s other warehouses on **Biscayne Boulevard, Bird Road** and on the **79th Street Causeway** (See attached photographs 1-6), which are all major arterial 6 to 7 lane boulevards, the Miami investor’s proposed warehouse for the North District would be located on a limited access and limited exit two lane neighborhood road. (See attached photographs 7-10) You cannot turn south onto West Dixie Highway from Ives Dairy Road when headed east and when headed north you cannot turn east off of West Dixie Highway on to Ives Dairy Road. You can only get to the warehouse from the north if you are already on West Dixie Highway north of Ives Dairy Road and heading south

It was also noted by Mr. Bercow in support of the Miami investor’s application, that to the east of the Sun Haven property, east of the 30 foot high tree hedge on Biscayne Boulevard and east of Biscayne Boulevard itself, in the City of Aventura, there is a 10 story office building. This office building in Aventura, however, is outside the everyday awareness of the people in Ojus and has no impact on our community.

The negative impact of a mammoth 6 1/2 story high, virtually football field size warehouse stuck in the middle of and looming over our community **will be felt**, however, 24 hours a day, 7 days a week, 52 weeks a year.

Mr. Michael Larkin, from Mr. Bercow’s office, was next to address the County Commission on behalf of the Miami investor. Mr. Larkin advised the Commission that a meeting was held with the neighbors of the proposed project and the neighbors expressed the same general fears all neighbors did when a new project was proposed for their area but that there was no site plan yet proposed for the project to be discussed. In fact, however, the neighbors did not express the same “general fears” all neighbors express. The neighbors expressed clear and precise opposition to the industrial land

use change request and the proposed warehouse, as is clear from (i) opposition to the land use change presented at each step of the process, (ii) formation of the Ojus Homeowners Association to oppose the request, and (iii) homeowner and resident letters in opposition to the request sent to Commissioner Heyman, copies of which were provided to the PAB. Mr. Larkin stated to the County Commission that **“with regard to the uses of our application area, they are commercial and therefore consistent with the (Ojus Charrette).Report”** (CDMP@11:28:22) This statement, while accurate with respect to two of the Miami investor’s three proposed uses (the townhouse and business/office uses) **was not accurate as to the Miami investor’s third proposed use, the self-storage warehouse.** The Miami investor’s request for an industrial land use designation to build his six and one-half story high self-storage warehouse in the North District was totally inconsistent with the Master Plan of the Ojus Charrette calling for 3 story business and office development. (See Exhibit I, II and Exhibit III)

Mr. Larkin further stated **“We have tried our best to be consistent with the Ojus Charrette report by excluding the western 115 ft.” along 26th Avenue.**” (CDMP@ 11:27:38) Mr. Larkin, again speaking in general terms, characterized the Miami investor’s application as an attempt “to be consistent with the Ojus Charrette” and supported that characterization by reference in specific terms to one of the two uses that is consistent with the Ojus Charrette. The Miami investor’s 6 and ½ story high self-storage warehouse, which is totally inconsistent with the Ojus Charrette and the history and character of our Ojus community, was never offered as support for Mr. Larkin’s characterization of the Miami investor’s application as “consistent” with the Charrette, as it clearly offers convincing evidence of just the opposite, that the Miami investor has not “tried his best to be consistent with the Ojus Charrette” and his application was in fact, incompatible with the Charrette. (It should also be remembered the reason the Miami investor’s application leaves a 115 foot strip of land on 26th Ave. is not because he wanted to but because the PAB required him to do so.)

The purpose of the 115 foot strip on 26th Ave. is for the construction of townhouses compatible with the neighborhood homes on Enchanted Lake across the street as provided by the Master Plan of the Ojus Charrette. Common sense suggests, however, it may be difficult to find someone with \$200,000 to \$300,000 to spend on a home who would actually buy a townhouse for that amount of money with a six ½ story self-storage warehouse building looming over the back yard, renting to both commercial enterprises and individuals, running a truck rental operation on site, and open from 6:00 A.M. to 10:00 P.M., seven days a week. I suspect no one reading this would buy one of those townhouses and I suspect no one reading this knows anyone else who would buy such a townhouse at that price. (And, of course, the Miami investor did not promise or “covenant” to actually build them.)

Mr. Larkin also advised the Commission that, if the Commission would approve the Miami investor’s application for an industrial land use designation allowing him to build the self-storage warehouse which the Miami investor wanted to build, the Miami investor would covenant not to build a commercial chicken hatchery, brewery, bottling plant, or other buildings which he did not want to build. Or, stated another way, (forgive the hyperbole) the Miami investor promised the Commission that if it granted his request for an industrial land use designation, he promised (“covenanted”) he would only ruin our neighborhood with a six and one-half story tall self storage warehouse building and would not ruin it with a commercial chicken hatchery, bottling plant or other such use.

Mr. Larkin then introduced an “economic expert” to respond to the headline in the first Ojus Sentinel (a neighborhood newsletter) that stated ‘The Value of Your Homes is About to

Substantially Decline” as a result of the construction of the proposed self-storage warehouse in the neighborhood.

The “economic expert” advised the County Commission he had done a “land value analysis” on **“units that are adjacent to or directly across the street from three other self serve storage facilities that the applicant owns”** and that he had **“looked at house sales in those areas before those facilities were built and the price after those facilities were built that in 84 of 85 cases prices had gone up throughout that period”** The “economic expert” did not, however, indicate how many years were in the period it took for the value of properties near these warehouses to increase. Nor did the “economic expert” offer any analysis of the effect on values resulting from the fact these other warehouses were constructed on already established major boulevards with multi-story high rise buildings already in place, unlike the proposed two lane West Dixie Highway location . Nor did the “economic expert” offer any comparison of the size of such increases relative to increases experienced by homes in nearby, distant or similar neighborhoods with and without warehouses, or for that matter, any other details. Nor did the “economic expert” indicate that the homes in question were constructed and occupied long before the warehouses were constructed . (Commissioner Morales pointed out to just say property values increased over an indeterminate period of time did not say much of anything, as property values have increased pretty much everywhere over time

Mr. Bercow then returned to the podium and addressed the comments made by Mr. and Mrs. Byer and Howard Scott. Mr. Bercow first advised the Commission that:

“You have to know, they speak only for themselves, they don’t speak for any association in the area. According to the Secretary of State, there is no Ojus Homeowner’s Association.”

This statement by Mr. Bercow was incorrect. Mr. Byer is President of the Ojus Homeowners Association and spoke on behalf of the Association. The Ojus Homeowner’s Association was formed and operating soon after the September 3, 2003 Community Council meeting. (The Association did not elect to incorporate until October when it filed for incorporation on October 22, 2003, and became effective October 31, 2003) (See Exhibit VII).

Mr. Bercow next addressed the homeowner letters (See Exhibit VIII) which Mr. Scott collected and sent to Commissioner Heyman opposing the industrial land use designation and opposing the opening of access from West Dixie Highway to Biscayne Boulevard. In attempting to discredit these letters Mr. Bercow advised the Commission that:

“Those petitions were procured on at least two misstatements of fact one of which was that we were going to have a neon lighted warehouse which was completely incorrect and also that both application #1 and #2 were proposing the cut at 199th street in other words proposing opening the access from Biscayne Boulevard to West Dixie Highway. That is not what we are proposing.”

“We don’t care one way or another whether that happens. We have never proposed that access. I think that was deliberately inserted into Mr. Scott’s flyer and petitions in order to scare the neighbors and to get them to sign along with him.”

(It should be noted the Miami investor did not among his many “covenants” offer to covenant not to seek opening of access to Biscayne Boulevard from West Dixie Highway.)

These characterizations and statements by Mr. Bercow were, to use his characterization, “misstatements of fact”.

As was specifically noted in the November 4, 2003 cover letter to Commissioner Heyman (see **Exhibit VIII**) the letters submitted to Commissioner Heyman did not limit opposition to the Miami investor’s application.

The letters advised Commissioner Heyman of her constituent’s opposition to any industrial land use designation, thus putting her on notice of the communities’ opposition to such designation and any type of enterprise that such a designation would permit in our community whether it be a commercial chicken hatchery, bottling plant or six and one half story high, virtually football field size self storage warehouse - with or without a neon light on it.

The letters also did not oppose the Miami investor’s application to put up a warehouse on the basis of any belief he wanted to open access to Biscayne Boulevard. The letters advised Commissioner Heyman of her constituents’ opposition to the opening of access from West Dixe Highway to Biscayne Boulevard **independently** of whether the Miami investor was proposing it or not. Because of Commissioner Heyman’s prior efforts and anticipated future efforts to open access to Biscayne Boulevard, opposition to the opening of such access was specifically included in the letters without regard to whether such access was being sought by the Miami investor or might be sought by anyone else.

Following Mr. Bercow’s comments, and notwithstanding the hearing was a “public hearing”, the hearing was closed to the public, the “public” being given no opportunity to respond to Mr. Bercow’s representations, the representations of Mr. Larkin or the representations any of the “experts” or “residents” appearing on behalf of the Miami investor.

At the conclusion of the Miami investor’s presentation, while expressing concern about the expansion of the industrial area in the Enchanted Lake neighborhood Commissioner Heyman stated: (CDMP@11:39:43)

“a great concern I had for the existing residents the single family homes in Enchanted Lake and the surrounding area, the consequences of allowing an industrial area or supporting one and expanding it was of great concern but when you look at the definition as proposed here light industrial and also what was proposed in the Charrette it went hand in hand with what was”

Notwithstanding this expression of concern, Commissioner Heyman nonetheless endorsed the proposed warehouse and made a motion to approve the land use change for the Sun Haven Trailer Park property to industrial as requested by the Miami investor. In support of her motion, Commissioner Heyman advised the Commission the Miami investor’s request for an industrial land use designation for the Sun Haven Trailer Park property was consistent with the Master Plan of the Ojus Charrette report, stating (CDMP@11:39:22)

“both on Page 38 and Page 40 of the Charrette, the proposed vision, it has light industry and it is part of the Master Plan proposal, the vision of the Ojus Charrette, it is central to this area, it is in the area of dialogue here today.”

and

(CDMP11:43:11)

“the light industrial use that was proposed consistent with the Charrette.”

Page 38 and Page 40 of the Charrette, however, cited by Commissioner Heyman to support her endorsement of the Miami investor’s application and her motion to approve the Miami investor’s requested industrial land use designation, **do not apply to the Sun Haven Trailer Park property.**

Page 38 and Page 40 of the Charrette apply to and provide for light industry in the Central District.

The Charrette, as noted above in Exhibit III, Page 29, and as shown in **Exhibit IX provides for no industry in the North District** where the Sun Haven Trailer Park property is located.

NO BASIS FOR APPROVAL

It seems clear the reasons given by the Miami investor to be granted an industrial land use designation to build his self-storage warehouse have little or no substance. They are in effect not “reasons” but only excuses on which to hang the hat of approval.

(i) The “transition” argument is totally lacking in substance. Just because a glue factory in your neighborhood would serve as a “transition” to a glue factory in another neighborhood is not a reason to put a glue factory in your neighborhood.

(ii) The “inventory” argument is totally lacking in substance. Designating the Sun Haven Trailer Park property as “industrial” did not add to the available inventory of industrial land in the community because the property was never “available”. Designating the Sun Haven Trailer Park property as industrial land use property was just filling the Miami investor’s “special order.”

(iii) The “lesser traffic impact” argument has some substance, but not as much as the Miami investor attempted to suggest as is evident when one considers the 107,000 square feet size of the proposed warehouse and the trips per square foot. And, when the negative effect on the community and neighborhood of the commercial activities to be carried on by and at the warehouse, the 6:00 A.M to 10:00 P.M. hours of operation, seven days a week, the location of the warehouse on a two lane limited access and egress neighborhood street and the sheer immensity of a six and ½ story high self storage warehouse building ¾ths the size of a football field looming over the neighborhood 24 hours a day, 7 days a week, 52 weeks a year is considered, the possible traffic benefit pales in comparison. .

(iv) The Miami investor’s offer of a covenant not to build a brewery, commercial chicken hatchery or other buildings he did not want to build and had no intention or desire to build had no value and should not have been given any as consideration for being granted an industrial land use designation so he could build the self storage warehouse he did want to build and stated from the beginning of the process he intended to build.

Or, as noted above, a promise by the Miami investor that if he were allowed to ruin our neighborhood with a warehouse, he would not ruin it with a commercial chicken hatchery, bottling plant or other such building is not a compelling reason to allow a warehouse.

(v) The testimony of the Miami investor's "financial expert" that property values of houses adjacent to the Miami investor's other warehouses have increased over some indeterminate period, with no consideration or substantive analysis of the myriad variables existing between the different sites and their possible effects on values, may suffice as expert testimony before boards and agencies but doesn't pass muster in the court of common sense. In the court of common sense where you present someone with the choice of buying one of two identical new townhouses, one in front of a six and ½ story high warehouse building and one not, and ask if they would pay the same money for each one, the answer is **NO**.

And, the answer is the same for the neighborhood homes in our community whose value will be materially and negatively effected by construction of this mammoth, totally incompatible warehouse. The current value of our neighborhood homes will decrease, and the appreciation potential of our neighborhood homes will be impaired, while the value of the Miami investor's property is increased.

(vi) And, it must be remembered that throughout the entire approval process, the Miami investor represented that his "application", the application these reasons were offered in support of, was consistent with the Ojus Charrette, when it was clearly not consistent.

REASONS FOR DENIAL

Whatever support the above reasons might provide for granting the Miami investor's requested industrial land use designation, it pales to irrelevance when weighed against the reasons for denying the request.

(i). The vision of the Miami investor to build a six and ½ story high self storage warehouse was clearly inconsistent and incompatible with the residential and three story business/office use proposed for the North District by the Ojus Charrette, the community's vision of how it wants the area to develop.

(ii) A six and ½ story high self storage warehouse was contrary to the recommendation of the Miami-Dade County Department of Planning and Zoning, the impartial "experts" representing the citizens of this community, a fifty plus person, multi-million dollar department of professional planners, which determined the self storage warehouse to be **incompatible** with the area.

(iii). A six and ½ story high self storage warehouse was and is contrary to the wishes and completely adverse to the economic and quality of life issues of the homeowners and residents with significant roots, ties, interest and investment in the neighborhood as expressed in letters to Commissioner Heyman opposing the requested industrial land use designation and the uses it would permit.

(iv). A six and ½ story high self storage warehouse is completely out of scale and totally incompatible with the proposed location on a two lane limited access, limited egress neighborhood road as is clearly evident from the fact similar but even smaller such warehouses are located on six and seven lane divided major arterial boulevards..

(v). A six and ½ story high self storage warehouse will gut the vision of the Ojus Charrette by influencing, if not dictating, the character and types of structures other developers will want or be willing to construct next to it, especially if, as appears to be the case, it will be the first building constructed in the area, thus making a statement to the larger community our area is an industrial class area.

(vi). Finally, while redevelopment of the unsightly Sun Haven Trailer Park property is a desirable goal, it can be accomplished with the neighborhood friendly and compatible development proposed by the Charrette and desired by the community, the same type of development which the developer will be placing on that half of his property north of his proposed six and ½ story high self storage warehouse.

At the November 5, 2003 Commission meeting, another developer's application was considered for a land use designation change to "business and office" in the same area (N.E. 197th Street) as the Miami investor's. This developer's (LIMOCH LLC) plans were to build three story business and office structures consistent with the Ojus Charrette, demonstrating such development is financially feasible and disproving any assertion that the cost of the area property requires other more intense uses such as the warehouse. The cost of the property is determined by the use to which it can be put.

Application Number	Applicant/Representative Location (Acres) REQUESTED CHANGE TO THE CDMP LAND USE PLAN MAP	Recommendations for... •DISPOSITION •TRANSMITAL
3	Williams Island Country Club, Ltd. / Clifford A. Schulman, Esq., and Mario J. Garcia-Serra,, Esq. Between NE 2 and NE 10 Avenues, south of NE 199 Street, northeast of Snake Creek Canal and northwest of I-95 (142 Acres) FROM: PARKS AND RECREATION TO: LOW DENSITY RESIDENTIAL (2.5 to 6 DU/Ac.) Standard Amendment	•ADOPT WITH CHANGE (only 1/2 of site to Low- Medium Density Residential) •TRANSMIT

Application No. 1

Location: Begin 100 feet east of NE 26 Avenue to West Dixie Highway and lying north of theoretical NE 197 Street (1.888 Acres)

Requested Small-Scale Amendment to the Land Use Plan Map:

From: "Low-Medium Density Residential" (5 to 13 DU/ Gross Ac.)"

To: "Business and Office"

Recommendation: ADOPT WITH CHANGE (as Small-Scale Amendment) by deleting the west 24 feet and by extending the "Business and Office" redesignation to the north approximately 300 feet to theoretical NE 198 Street and to the south approximately 200 feet to the northern boundary of Application No. 2 (6.15 total acres with change).

Principal Reasons for Recommendation:

- Both the Northeast Community Council and the Planning Advisory Board have recommended to the Board of County Commissioners acceptance of the Ojus Charrette Report, which is the vision for the Ojus Area that was developed with the participation of residents and business people in the area. One of the recommendations in this report for the northern portion of Ojus is a mixed-use development for the entire area bounded by West Dixie Highway, NE 202 Street, NE 26 Avenue and NE 195 Street. Currently, the development in this area consists primarily of small mobile home parks and scattered commercial development along West Dixie Highway. The commercial component of the mixed-use area would be oriented towards West Dixie Highway and the residential component would be facing on NE 26 Avenue. Single-family homes in good condition are located on the west side of NE 26 Avenue. The concept for the commercial center locates the retail activities on the ground floor and retail and office uses on the upper floor. On-street parking areas or three-story garages with retail uses and offices on the ground floor are suggested to provide the required parking. A gateway connecting this mixed-use development and West Dixie Highway to Biscayne Boulevard and the

Aventura Mall area is proposed to be located at theoretical NE 199 Street. This gateway was temporarily opened during the construction of the Biscayne Boulevard flyover.

While the Department agrees with the request for redesignation on the Land Use Plan (LUP) map to "Business and Office" for the property which is currently occupied by Coe's Mobile Home Park and the B'Nai Sephardim-Sharre Shalom Synagogue, the Department is recommending two changes to the application as submitted to facilitate the proposal for mixed-use development in the Ojus Charrette Report. The western boundary of the application area should be moved an additional 24 feet to the east to accommodate a service road for the residential development facing NE 26 Avenue and should remain designated as Low-Medium Density Residential (5 to 13 DU/ Gross Ac.).

In addition, the properties both north and south of the application site should be redesignated from "Low-Medium Density Residential" (5 to 13 DU/ Gross Ac.) to "Business and Office" on the LUP map except for the western 124 feet, which is recommended to remain with the designation of Low-Medium Density Residential. On March 16, 1999, the Board of County Commissioners approved Application No. 1 in the April 1998 Amendment Cycle, which resulted in the redesignation of a 16.3-acre parcel from "Low-Medium Density Residential" to "Business and Office" on the LUP map. The 1998 application site extended as far south as theoretical NE 198 Street and is situated approximately 300 feet north of the current application site. Currently, the property located between the two application sites is occupied by the Chaparral Motel, a small strip shopping center (Landmark Plaza) and the Landmark Mobile Home Court. The Department is also recommending redesignation for the area between Applications No. 1 and 2 to "Business and Office." This property, which is south of the application No. 1 site and with about 200 feet frontage on West Dixie Highway, is currently occupied by the Dixie Mobile Home Court.

2. This site is generally more suitable for a commercial use than a residential use. The Florida East Coast Railroad line, a frequently utilized rail line, is located just east of the site between West Dixie Highway and Biscayne Boulevard. Noise from the trains would be more compatible with commercial development than with residential development.
3. The site is located near the proposed Northeast Rapid Transit Corridor. Mixed-use development would be compatible with a rapid transit corridor.

Application No. 2

(BMS)

Location: Begin 80 feet east of NE 26 Avenue to West Dixie Highway lying north of NE 195 Street (2.90 Acres)

Requested Small-Scale Amendment to the Land Use Plan Map:
From: "Low-Medium Density Residential" (5 to 13 DU/ Gross Ac.)

To: "Industrial and Office"

Recommendation: ADOPT WITH CHANGE (as Small-Scale Amendment) by changing the designation to "Business and Office" and by excluding the west 24 feet of the application site (2.58 total acres with change).

Principal Reasons for Recommendation:

1. As fully stated in principal reason one for Application No. 1, the Ojus Charrette Report recommends a mixed-use development for the entire area bounded by West Dixie Highway, NE 202 Street, NE 26 Avenue and NE 195 Street. The area suggested for mixed-use development includes the application site. The commercial component of the mixed-use area would be oriented towards West Dixie Highway and the residential component would be facing on NE 26 Avenue. Single-family homes in good condition are located on the west side of NE 26 Avenue. The concept for the commercial center locates the retail activities on the ground floor and retail and office uses on the upper floor. On-street parking areas or three-story garages with retail uses and offices on the ground floor are suggested to provide the required parking.

Mark Waine

The Department is recommending two changes to the application as submitted to facilitate the proposal for mixed-use development that is included in the Ojus Charrette Report. The property, which is currently occupied by the Sun Haven Trailer Park, should be redesignated for "Business and Office" use on the Land Use Plan map (instead of the proposal for "Industrial and Office" in the application). This redesignation is not only more compatible with the recommendation for this area in the Ojus Charrette Report; it is also compatible with the building supply business, Miron Home Center, located south of the application site. In addition, the western boundary of the application area should be moved an additional 44 feet to the east to accommodate a service road for the residential development facing NE 26 Avenue.

2. This site is generally more suitable for a commercial use than a residential use. The Florida East Coast Railroad line, a frequently utilized rail line, is located just east of the site between West Dixie Highway and Biscayne Boulevard. Noise from the trains would be more compatible with commercial development than with residential development.
3. The site is located near the proposed Northeast Rapid Transit Corridor. Mixed-use development would be compatible with a rapid transit corridor.

Application No. 3

Location: Between NE 2 and NE 10 Avenues, south of NE 199 Street (Ives Dairy Road), northeast of Snake Creek Canal and northwest of I-95 (142 Acres)

Requested Amendment to the Land Use Plan Map:

From: "Parks and Recreation"

To: "Low Density Residential (2.5 to 6 DU/Gross Ac.)"

- Promote car-pooling and use of public transportation.
- Promote a shuttle service to link entire study area and expand the individual radius of activity without relying in the automobile.
- A continuous bikeway (5') is proposed for both sides of W Dixie Hwy as well as parallel parking to protect pedestrians and slow down traffic.
- Shade trees are to be planted at every two cars under-planted with native drought tolerant plant material.
- Sidewalks should be provided throughout the entire area to encourage pedestrian activity.
- Safe pedestrian crosswalks are proposed at about 300' o.c. where pedestrian areas are enlarged to minimize crossing distances coupled with textured paving to encourage traffic calming
- Improve and expand the existing infrastructure level of service to meet the Master Plan proposed requirements. This is especially important in the sanitary sewer service category.
- Evaluate existing storm service for potential river contamination at the various outfalls along the Oleta River and improve monitoring and maintenance of the existing drainage structures. Expand system capacity if required to meet the Master Plan proposed requirements. This should involve DERM and Miami-Dade Public Works Department.
- Promote water conservation by means of low-volume irrigation systems, native plant material planting, and xeriscaping techniques.

HOUSING - NORTH DISTRICT

The Master plan proposes two story townhouses or garden apartments along the eastside of NE 26th Avenue, (the site of the mobile home park). This land use would reinforce 26th Avenue as a residential street, allowing existing single-family residential units to face their residential counterparts. This housing type would permit a density that is more economically viable and respond to the group consensus of mixed-use for this property. Behind the town homes proposed for this area, commercial-retail development is suggested as the appropriate land use.

HOUSING - CENTRAL DISTRICT

The master plan proposes townhouses, garden apartments, or two story condominiums, in response to the amount of underutilized lots and duplex zoning. At the southern edge of the central district, along Miami Gardens Drive the plan calls for single family zero lot line (mews housing) similar to those in the Dutch Village in Coral Gables. This is in response to the projected market demand for upscale single-family housing.

HOUSING - SOUTH DISTRICT

The Master Plan proposes townhouses or zero-lot line single-family units for the South District, in response to the following:

- Vacant and underutilized lots
- Duplex zoning
- Market demand
- Existing single family character
- Size of the district and existing street grid.

Both the Central and the South Districts lend themselves to residential infill redevelopment because of the existing zoning, the existence of vacant and or underutilized lots and the demand for housing within the area. The housing types that seem appropriate for these areas are townhouses, single family zero lot line, and/or garden apartments. All architectural styles would be Mission Style, Commercial Masonry Vernacular or Minimal Traditional, consistent with the history and character of Ojus. Acknowledging history and enhancing neighborhoods through urban design and new construction sensitive to historical styles will help the area celebrate its past. Facade improvements should be encouraged for the existing housing stock within these two districts, as should a swale restoration program and a tree canopy enhancement program.

COMMERCIAL / RETAIL

The Master Plan proposes several changes along the commercial corridors of West Dixie Highway and Miami Gardens Drive. The proposed changes are intended to create a livelier environment. The goal is to develop a Main Street atmosphere on West Dixie Highway, while creating a pedestrian friendly street along Miami Gardens Drive.

- Buildings should be built with their property lines facing Main Street and with on-street parking
- Off Street parking lots must be located in the rear of the building.
- Buildings should be tall enough to create a sense of enclosure and urban character. Mixed-Use retail and office uses should be limited to 3 stories on Main Street, from Miami Gardens Drive, to NE 102nd Street. Mixed-Use office with retail on the ground floor should allow 3 stories only..
- Sidewalks should be wider, 6' minimum, and shaded with trees in combination with awnings or arcades incorporated into the building design.
- Buildings should have simple architectural styles and details that conform to one of the established historical characteristics and the adopted Urban Design Guidelines.
- Buildings that have apparent historic significance, such as "Berky's", should be assessed and designated in accordance with the state of Florida and Miami-Dade County requirements.
- Active storefronts, windows, and doors should face sidewalks. Blank walls should be avoided. The character of walls lining the street can entice or repel a pedestrian from continuing to walk down a street. Solid or blank walls fronting Main Street should be limited to 20%.

3
STORY
LIMIT

3 STORY
LIMIT
NORTH OF
N.E. 195th

- A vertical mixture of uses including retail, office and residential should be allowed. Having a variety of uses within walking distance encourages trips to be made on foot or on a bicycle rather than an automobile.
- Warehouses should orient light industry to the rear of the lot facing the railroad.
- The West Dixie retail corridor should be extended to connect to the commercial center proposed for the area of what is now the mobile home park. The street profile should be similar to West Dixie or Main Street.
- Pedestrian improvements should be implemented to assist in crossing Miami Gardens Drive and West Dixie Highway in order to improve access to both commercial, residential and civic buildings in the area. For example, increased width of sidewalks at intersection crossings to allow more space for pedestrian traffic, improved definition of crossings, and clear separation of vehicular turning,
- Facade improvements and renovations should be encouraged in conformance with one of the historic characteristics and the Urban Design Guidelines.

The following recommendations are made to accomplish specific improvements along West Dixie Highway and Miami Gardens Drive:

- The first suggestion is the creation of an overlay-zoning district for the area. Such a district will encourage the mixture of uses combining residential, office, hotel, restaurant, theatre, and retail while promoting an environment more conducive to pedestrian traffic in keeping with the historic character of the community;
- Joint advertising and marketing by local merchants;
- Strict code regulating signage and graphics.
- The improvement of shop window displays through the use of exhibits and display guidelines; and
- Programming recurring events and activities on West Dixie Highway Main Street.

The small town charm, which still exists in Ojus, should be utilized as a marketing tool to attract non-residents. The fact that Ojus is a place where residents know one another and many business owners reside within the community should be capitalized upon. The eclectic nature of the commercial corridor should be retained with a return to the 'old Florida' charm that sets Ojus apart from other communities within Miami-Dade County. Returning pedestrian orientation to the community is a significant step towards retaining and enhancing this charm.

TRAFFIC AND TRANSPORTATION

Congestion, fast moving traffic and cut through vehicular circulation in the residential areas were among the most salient issues concerning the citizens. Although the solving of these issues is generally broader than the scope of this study, several actions are proposed to alleviate these concerns.

- Place parking lots at the back of buildings to help diminish sidewalk interruptions and enhance pedestrian safety.

- Provide parallel parking along all streets coupled with shade trees, wider sidewalks and pedestrian crosswalks a 300' o.c. will increase safety and pedestrian movement.
- Place building fronts with minimum setbacks from the sidewalk coupled with covered arcades or awnings to mitigate the natural elements and encourage pedestrian exploration.
- Provide a comprehensive network of bikeways to allow for alternative transportation modes.
- Develop a shuttle loop system, one internally to the study area and one connecting to Aventura to the east. This will help create a synergistic effect between the east and the west sides of Biscayne Blvd. and discourage the use of automobile. The frequency of service should be no more than 20 minutes. Electric non-polluting noiseless vehicles should be utilized with stops placed at 600' intervals so that a pedestrian is never more than two minutes away from a stop.
- Work with various schools and centers of worship to establish where the everyday vehicular trips are generated from, so that perhaps assembly pick up stations for a tram like or mini bus could be distributed away from the Ojus area and thus help in decreasing the number of vehicles coming to the area at peak use time. It is our understanding that about half the student population at Ojus elementary come from the Aventura area.
- Provide an additional pick-up/drop-off area at the NW quadrant of the proposed expanded campus for Ojus Elementary coupled with the opening of NE 188th St to improve traffic access and flow.
- Provide a comprehensive street lighting program to increase safety and promote pedestrian and bicycle movement.
- Synchronize traffic lights during peak flow periods to improve traffic flow at the arterials, improve safety, discourage cut through and allow sufficient time for safe pedestrian crossings.
- Encourage car-pooling and the use of public transportation.
- A comprehensive mutually reinforcing region wide public transportation system needs to be vigorously pursued to further alleviate the existing traffic conditions. Adopt traffic modification measures and traffic calming devices to improve safety and livability of the project area. Traffic calming needs to be used in a comprehensive manner to ensure that the "problem" is not transferred elsewhere in the community. The concept is to modify undesirable traffic patterns, such as speed and volume and to channel the traffic to the arterials, away from residential areas or pedestrian oriented enclaves. Following are general guidelines for traffic calming:

- Establish the need for traffic calming based on established traffic standards by monitoring the areas in question for volume, speed, and traffic pattern movement.
- Minimize street closures; use these only as a last recourse.
- Try using signage and signalization such as prohibiting certain turns during certain periods of the day and monitor results.
- If traffic calming devices are used they need to be monitored in place for a period of 90/120 days to establish the before and after efficacy of the device.

III. PRELIMINARY MEETINGS

Prior to the Charrette, the consultants held various meetings with the Ojus Steering Committee and Metro-Dade Planning and Zoning Department. Additionally, tours of the Oleta River and the Ojus neighborhood were conducted with concerned citizens and representatives of the Miami-Dade County Planning and Zoning Department.

On Thursday, August 31, 2000, meetings were convened with various stakeholders within the community, including religious and institutional leaders, business owners, landowners, policy makers, and area residents to determine what they felt were the important features of Ojus. Participants recognized the presence of two prominent Miami-Dade County Parks, the Oleta River, and the rich history of the community coupled with the presence of diverse religious, cultural and educational institutions. These factors establish environmental, recreational, and cultural assets unparalleled anywhere else in south Florida. Participants agreed the essence of Ojus consisted of:

- The natural environment provided by the Oleta River, Greynolds and Highland Oaks Parks and the existing tree canopy
- The small town flair that exists in both the residential areas and the commercial corridor along West Dixie Highway

Residents described Ojus as a sanctuary where they are sheltered from the more urban development of Aventura and North Miami Beach; there is a feeling that, in Ojus residents have access to the best of both worlds. Participants of the meeting were asked to complete a brief three-question survey about their community to serve as a critical guide for the planning of the vision. Below are a summary of the opinions expressed and a sample of the questionnaire.

When asked to rank from one to five the highest priority for preservation, survey responses emphasized the natural environment and the desire to preserve the remaining historic character in the area. Specifically:

- Enhancing and preserving the existing tree canopy
- Preserving and cleaning up of the River and neighboring parks
- Preserving the historic design characteristics and the eclectic nature of the small businesses along West Dixie Highway

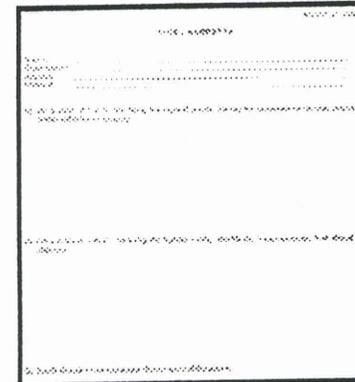
Among the highest priorities for change were:

- Traffic slowdown/reduce traffic
- The construction of bikeways and sidewalks
- Ensuring new development conforms to the historic character of the community
- Reducing the number of renters, absentee owners and industrial uses

- Enhancing of existing landscaping throughout the community and along the railroad tracks
- Enhancing the existing tree canopy and River maintenance
- Implementing uniform sewer and transit service throughout Ojus
- Improving unsightly signs and billboards

The third question dealt with their suggestions to implement the changes desired in the community. Participants suggested some of these changes could be facilitated through the following strategies:

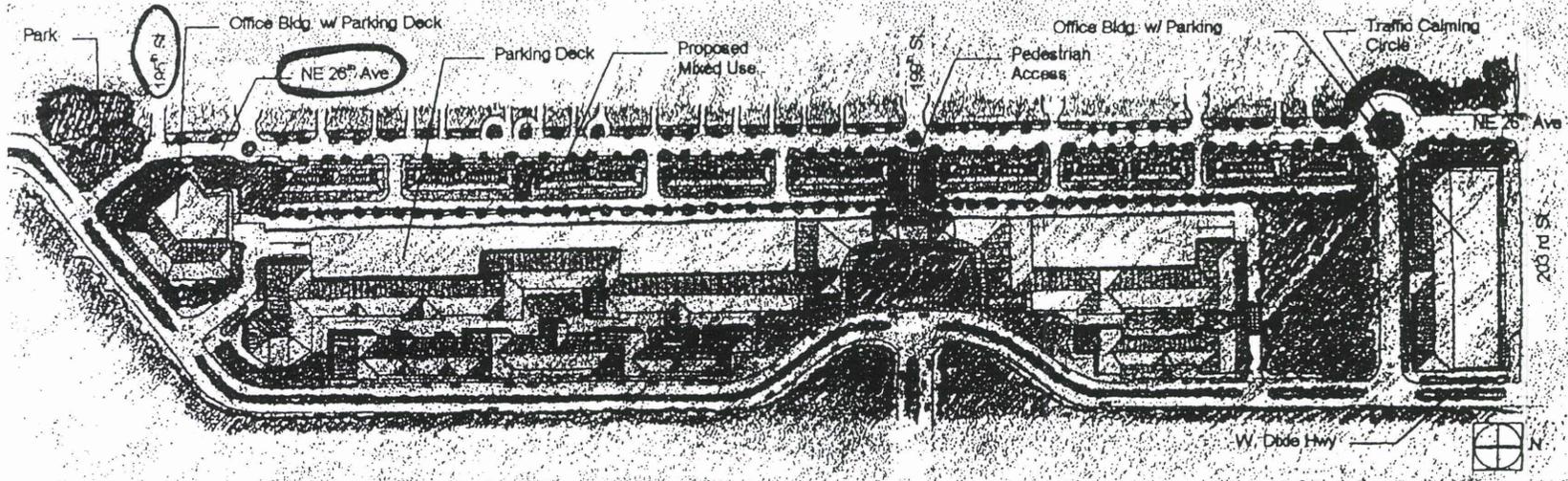
- The creation of parking behind shops and along the FEC railroad tracks
- The creation of a shuttle service to and from Aventura to help manage automobile traffic
- The promotion of existing and new businesses to strengthen West Dixie Highway as a commercial center, a main street
- The institution of a neighborhood development association to lobby government and organize the community



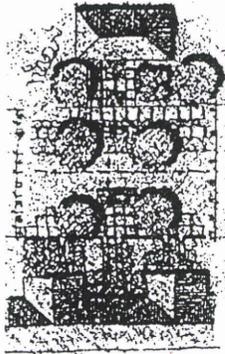
At the meeting residents were asked to take photographs of their likes and dislikes about their surroundings in Ojus. The images showing the conditions residents value most in the area were of the Oleta River, Greynolds Park, tree lined streets, lush landscaping and traditional architectural styles. The photographs depicting negative visual conditions showed unsightly vacant lots, chaotic graphics and billboards, predominance of vehicular traffic and wide vehicular lanes, unsightly parking areas, unkept residential and commercial properties, lack of tree canopy, poor maintenance along the FEC right of way and the absence of sidewalks in many areas.

**PROPOSAL FOR AREA NORTH OF 195TH STREET
 TOWNHOUSES ON 26TH AVE. 3-STORY COMMERCIAL ON DIXIE HIGHWAY
 NO 6 ½ STORY HIGH SELF STORAGE WAREHOUSE BUILDING**

STUDIO WEEK SKETCHES



COMMERCIAL / MIXED USE AREA AT 199TH AND W. DIXIE HWY - PLAN



RESIDENTIAL STREETSCAPE AT NE 26TH AVE.



TWO STORY TOWNHOUSES OR GARDEN APARTMENTS AT NE 26TH AVE

OJUS FOCUS AREA - PROPOSED LAND USES

THIS IS PAGE 29
OF THE
OJUS CHARRETTE REPORT

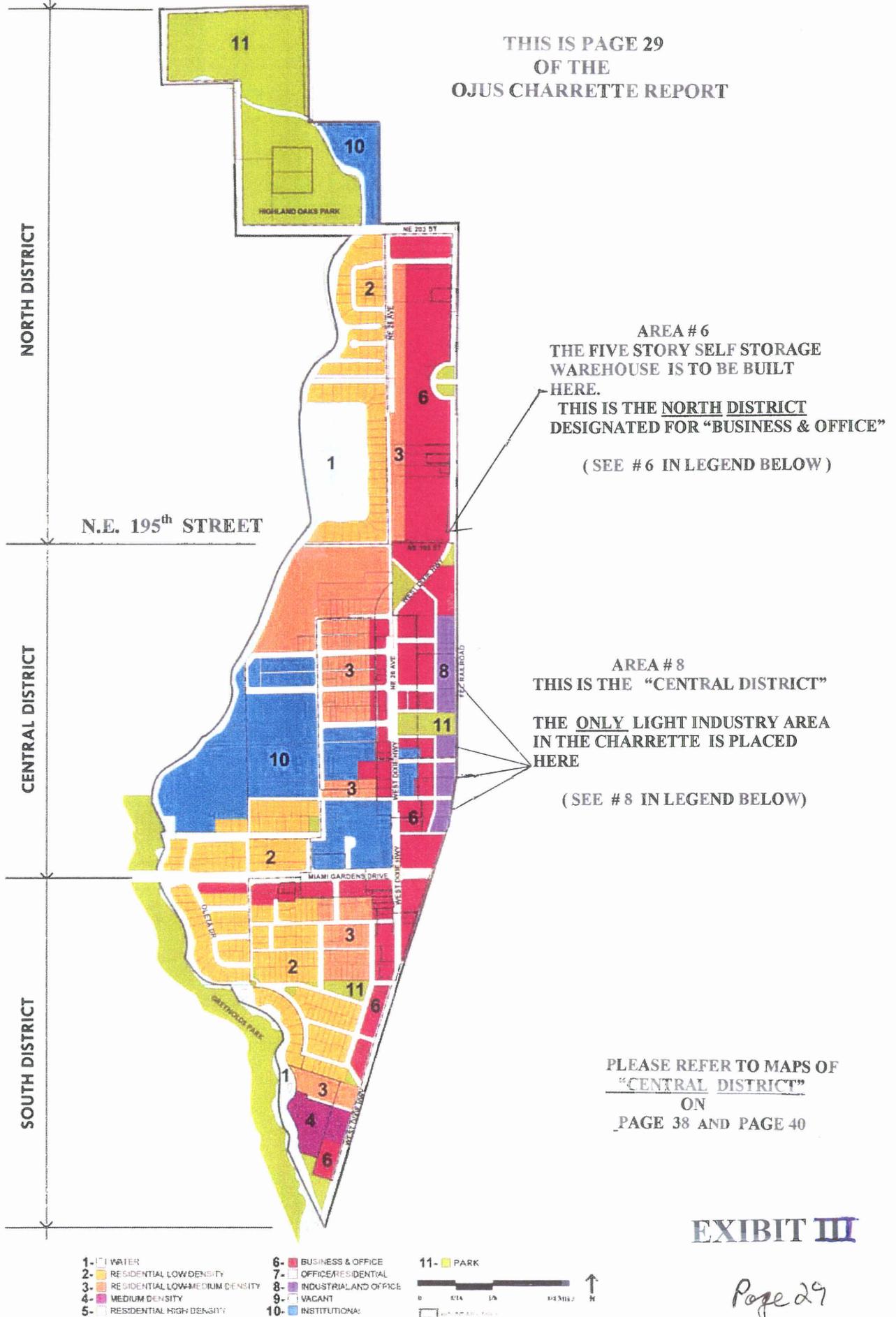


EXHIBIT III

involved and may or may not be compensable.

The property owners also direct our attention to *Benerofe v. State Road Dep't*, 217 So.2d 838 (Fla.1969) cited with approval and quoted in *Tessler*:

"[W]e agree that even when the fee of a street or highway is in a city or a public highway agency, the abutting owners have easements of access, light, and air from the street or highway appurtenant to their land, and *unreasonable interference* therewith *may* constitute a taking ... requiring compensation therefor."
[e.s.]

Tessler, at 848; *Benerofe*, at 839.

[5] Both *Tessler* and *Benerofe* instruct us that the agency controlling the street may in fact interfere with easements of light, air, and view without its constituting a taking so long as the interference is reasonable. In applying this holding of *Tessler* and *Benerofe* to the instant case, the "interference," i.e., the elevation of the lanes is not a taking of light, air, or view (or visibility). Reducing the traffic distress at this intersection by elevated lanes is certainly within the discretion of the DOT and is well within the bounds of reason.

We find as a matter of law⁶ that the closing of the southern Biscayne Boulevard exit, when considering the remaining access to the property, is not a substantial loss of access.⁷ We also conclude that there has been no taking of light, air, and view (or visibility). As a result we reverse the trial court's order and remand with instructions to enter judgment for the

6. See *Weaver Oil Co. v. City of Tallahassee*, 647 So.2d at 822 where the supreme court concluded as a matter of law that there was no taking under the facts there involved.

7. Compare the instant facts to those of *Tessler*:

"As part of a bridge construction and road widening project, the county planned to construct a retaining wall directly in front of the respondents' property, which would block all access to and visibility of the respondents' place of business from Palmetto

State Department of Transportation on the inverse condemnation claim. Having concluded that there is no taking and thus no basis for inverse condemnation, we deny the various appellees' requests for attorney's fees.⁸

Reversed and remanded.



Thomas BAKER, Aino Baron, Charles Baron and Hammocks Properties, Inc., Petitioners,

v.

METROPOLITAN DADE COUNTY, a/k/a Miami-Dade County, a political subdivision of the State Of Florida, Smithsonian Investments, Inc., and BMS Management Company, Respondents.

No. 3D00-1118.

District Court of Appeal of Florida,
Third District.

Aug. 2, 2000.

Rehearing Denied Jan. 3, 2001.

After county zoning appeals board granted application for special exception, unusual use, and non-use variances, the Circuit Court Appellate Division, Dade County, Eugene J. Fierro, Michael B. Cha-

Park Road.... The wall will extend to a point approximately twenty feet east of the property. Consequently, the respondents and their customers will only be able to reach the property from Palmetto Park Road by an indirect winding route of some 600 yards through a primarily residential neighborhood."

Tessler, at 847.

8. See *Department of Transp. v. Gefen*, 636 So.2d 1345 (Fla.1994).

vies, and Maynard A. Gross, JJ., upheld county board resolution. Objectors petitioned for writ of certiorari. The District Court of Appeal, Fletcher, J., held that: (1) county board could not approve application inconsistent with county's comprehensive plan on ground of fundamental fairness, and (2) parking lot that would serve commercial use would be commercial.

Petition granted and decision quashed.

1. Zoning and Planning ⇄745.1

District Court of Appeal's review of the Circuit Court's decision on appeal of decision by Zoning Appeals Board is limited to determining whether the Circuit Court afforded due process and correctly applied the correct law.

2. Zoning and Planning ⇄489, 490

Applicant seeking special exceptions and unusual uses needs only demonstrate to decision-making body that its proposal is consistent with county's land use plan, that uses are specifically authorized as special exceptions and unusual uses in zoning district, and that requests meet with applicable zoning code standards of review; if this is accomplished, then application must be granted unless opposition carries its burden, which is to demonstrate that applicant's requests do not meet standards and are in fact adverse to public interest.

3. Zoning and Planning ⇄378.1, 489

All actions taken in regard to development orders, not just special exceptions and unusual uses, shall be consistent with local government's land use plan; it is in all cases the applicant's task to demonstrate such plan consistency. West's F.S.A. § 163.3194(1)(a).

4. Declaratory Judgment ⇄209

Zoning and Planning ⇄565, 568, 642

Ordinarily, if aggrieved or adversely affected party undertakes to challenge development order as being inconsistent with land use plan, time limits of statutory pro-

cedure to bring challenge preclude judicial challenges by certiorari review as a practical matter and as a legal matter, and correct action for such challenges is ordinarily one for declaratory and injunctive relief, with a trial de novo. West's F.S.A. § 163.3215.

5. Zoning and Planning ⇄562

Objectors challenging development order as being inconsistent with county's comprehensive plan did not have to follow statutory procedure by filing verified complaint with county to seek ruling on plan consistency, as county knew it was plan inconsistent and had so pronounced it, and thus, it would serve no purpose to require county to rule on verified complaint regarding consistency. West's F.S.A. § 163.3215.

6. Zoning and Planning ⇄381.5

County board did not have the authority to reject residential plan designation on two lots and approve application for commercial development order despite inconsistency with county's comprehensive plan on ground of fundamental fairness; only court had authority to make fundamental fairness determination. West's F.S.A. § 163.3194(4)(a).

7. Constitutional Law ⇄70.1(12)

Separation of powers is violated by authorizing quasi-judicial boards to direct which planning designation will apply to property, which is a legislative function.

8. Municipal Corporations ⇄111(2)

State general law prevails over local ordinances.

9. Zoning and Planning ⇄280

Parking proposed to be located on residential lot was commercial parking, serving commercial self-storage facility on neighboring lot, and thus was not a permitted unusual use under county code which allowed only noncommercial parking as an unusual use, as self-storage use could not survive if it had no parking for people

who wished to use it, and thus parking was critical to the self-storage operation.

10. Zoning and Planning ⇌280

Parking lots which serve commercial uses are themselves commercial, whether the customer pays for the parking at the parking lot or elsewhere or whether the parking cost is absorbed by the owner or tenants of the commercial structure and the customer lays out no cash for parking on the lot.

Charles M. Baron, North Miami Beach, for petitioners.

Bercow & Radell and Jeffrey Bercow, Miami, and Deborah L. Martohue, Miami; Geller, Geller, Beskin, Shienvold, Fisher & Garfinkel and Peggy Fisher (Hollywood); Robert A. Ginsburg, County Attorney and Craig H. Collier, Assistant County Attorney, for respondents.

Before GERSTEN, FLETCHER, and SORONDO, JJ.

FLETCHER, Judge.

Thomas Baker, Aino Baron, Charles Baron, and Hammocks Properties, Inc. [objectors] have petitioned for a writ of certiorari, seeking the quashal of a decision of the appellate division of the circuit court, upholding resolution no. CZAB2-3-99 of the Miami-Dade County Community Zoning Appeals Board 2. The county board's resolution granted an application by the respondent property owners for a special exception, an unusual use, and several non-use variances on the subject property. We grant the petition and quash the circuit court's decision.

[1] Our review is limited to determining whether the circuit court afforded due process and correctly applied the correct law.¹ *Jesus Fellowship, Inc. v. Miami-*

1. This second element of review is also expressed as whether the essential requirements of the law have been observed. See *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla.2000).

Dade County, 752 So.2d 708 (Fla. 3d DCA 2000); *Maturo v. City of Coral Gables*, 619 So.2d 455 (Fla. 3d DCA 1993); *Herrera v. City of Miami*, 600 So.2d 561 (Fla. 3d DCA), review denied, 613 So.2d 2 (Fla. 1992). From our review we conclude that the circuit court failed to apply the correct law as to several issues.

The property subject to the application consists of four adjacent lots forming a rectangle. Lot one (approximately seven-tenths of an acre) is zoned for a number of commercial uses,² but does not automatically allow the desired use (a self-storage facility), for which use a special exception is required. Lots two and three, zoned for residential use,³ together total approximately one and one-half acres. Lot four is zoned for residential use also, but is a part of the Oleta River and the river's mangrove fringe. The existence of the river and its mangroves precedes by far (in geologic terms) the platting and zoning of lot four, which lot all parties agree is protected from development. As to the county's comprehensive development master plan, it designates lot one as business and office, and lots two, three, and four as low-medium density residential.

In its efforts to develop a self-storage facility on lot one (the only commercially plan-designated and zoned lot) the property owners applied to the county for a special exception therefor. In order to increase the size of the requested facility beyond that which could be built on lot one alone, a site plan was submitted which includes the use of residentially plan-designated and zoned lots two and three in conjunction with commercial lot one. Specifically, the site plan calls for lots two and three to be used for the required parking and landscaped open space, for a self-stor-

2. The county's BU-2 zoning category.

3. The county's RU-3M zoning category.

age facility of the size proposed on lot one.⁴

In order to accomplish this over-size commercial enterprise it was necessary for the property owner to receive the county board's approval, at a public hearing, of numerous requests:

- (1) a special exception to permit a self-storage facility;
- (2) six variances:⁵ to lot coverage, floor area ratio, parking, setback, lot boundary wall, and subdivision street requirements;
- (3) an unusual use to permit the parking to be located in a zone [RU-3M, residential] more restrictive than the use [BU-2, commercial] it serves.⁶

The county board, against the objectors' protests, approved the requests. Our reasoning follows, whereby we have concluded that the circuit court failed to apply the correct law.

[2, 3] As we observed in *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So.2d at 709:

"An applicant seeking special exceptions and unusual uses needs only demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized as special exceptions and unusual uses in the zoning district; and that the requests meet with the applicable zoning code stan-

dards of review. If this is accomplished, then the application must be granted unless the opposition carries its burden, which is to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest."

See also *First Baptist Church of Perrine v. Miami-Dade County*, 768 So.2d 1114 (Fla. 3d DCA 2000). Thus, when an applicant seeks approval of a special exception or an unusual use, the applicant's first concern is its proposal's consistency with the local government's land use plan.⁷

[4] It is plan consistency that we will first address. The property owners, however, argue that the objectors are precluded from raising the plan's inconsistency by certiorari review. Ordinarily, it is true, if an aggrieved or adversely affected party undertakes to challenge a development order as being inconsistent with the land use plan, the sole method available is that provided by section 163.3215, Florida Statutes (1999). This section provides that an action for injunctive or other relief challenging the plan consistency of a development order cannot be brought until the complaining party has filed a verified complaint with the local government, thus providing an opportunity to eliminate without litigation any plan inconsistency. If the local government fails to correct an inconsistency, then the aggrieved party is free to file its court action. The time limits of

4. Lot four, of course, will remain as part of the Oleta River.
5. Designated as *non-use* variances, thus distinguishing them from use variances. Non-use variances, unlike use variances, do not require a showing of a legal hardship according to the county code. See § 33-311(A)(4)(a) and (b), Miami-Dade County Code. The constitutionality of granting non-use variances without a showing of legal hardship has not been raised.
6. This language was used in the county staff's (department of planning and zoning) recommendation to the county board, as well as in that board's decision (resolution no. CZAB2-3-99). It is, however, inaccurate. Section

33-13, Miami-Dade County Code, which in subsection (e) identifies the allowable types of unusual uses, lists "... parking (*non-commercial* parking in zones more restrictive than in which the use it serves is located) ..."[e.s.] This will be discussed *infra*.

7. Of course, all actions taken in regard to development orders, not just special exceptions and unusual uses, "shall be consistent with such plan ..." § 163.3194(1)(a), Fla. Stat. (1999). It is in all cases the applicant's task to demonstrate such plan consistency. *Village of Key Biscayne v. Tesauros Holdings, Inc.*, 761 So.2d 397 (Fla. 3d DCA 2000); *Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987), *review denied*, 529 So.2d 694 (Fla. 1988).



Florida Profit

BLUE GREEN COMMERCIAL CORP.

PRINCIPAL ADDRESS
 201 S. BISCAYNE BLVD.
 1600 MIAMI CENTE
 MIAMI FL 33131 US
 Changed 05/09/2003

MAILING ADDRESS
 201 S. BISCAYNE BLVD.
 1600 MIAMI CENTE
 MIAMI FL 33131 US
 Changed 05/09/2003

EXHIBIT V

Document Number
 P03000043107

FEI Number
 NONE

Date Filed
 04/17/2003

State
 FL

Status
 ACTIVE

Effective Date
 NONE

Registered Agent

Name & Address
CORPORATION COMPANY OF MIAMI 201 S. BISCAYNE BLVD. 1600 MIAMI CENTE MIAMI FL 33131
Name Changed: 05/09/2003
Address Changed: 05/09/2003

Officer/Director Detail

Name & Address	Title
BROWN, STEVEN 201 S. BISCAYNE BLVD., 1600 MIAMI CENTER MIAMI FL 33131 US	D/P

Corporations Online

Florida Profit

BMS MANAGEMENT COMPANY, INC.

PRINCIPAL ADDRESS

5901 SW 74TH ST
205
SOUTH MIAMI FL 33143 US
Changed 05/01/1996

MAILING ADDRESS

5901 SW 74TH ST
205
SOUTH MIAMI FL 33143 US
Changed 05/01/1996

Document Number
P95000012959

FEI Number
650565061

Date Filed
02/15/1995

State
FL

Status
ACTIVE

Effective Date
NONE

Registered Agent

Name & Address
BROWN, VICTOR 5901 SW 74TH ST #205 SO. MIAMI FL 33143
Address Changed: 03/06/1999

Officer/Director Detail

Name & Address	Title
BROWN, VICTOR 5901 SW 74TH ST #205 SOUTH MIAMI FL	P
BROWN, DAVID 5901 SW 74 STREET, #205	VP

MIAMI FL 33143	
BROWN, STEVEN 5901 SW 74 STREET, #205	S
MIAMI FL 33143	

Annual Reports

Report Year	Filed Date
2001	05/21/2001
2002	01/22/2002
2003	04/30/2003

[Previous Filing](#)

[Return to List](#)

[Next Filing](#)

No Events
No Name History Information

Document Images

Listed below are the images available for this filing.

04/30/2003 -- ANN REP/UNIFORM BUS REP
01/22/2002 -- ANN REP/UNIFORM BUS REP
05/21/2001 -- ANN REP/UNIFORM BUS REP
01/14/2000 -- ANN REP/UNIFORM BUS REP
03/06/1999 -- ANNUAL REPORT
03/04/1998 -- ANNUAL REPORT
03/07/1997 -- ANNUAL REPORT
05/01/1996 -- 1996 ANNUAL REPORT

THIS IS NOT OFFICIAL RECORD; SEE DOCUMENTS IF QUESTION OR CONFLICT

Corporations Inquiry

Corporations Help

NORTHEAST MIAMI-DADE

Neighbors fume over zoning change request

Residents are angry that a five-story warehouse and other commercial uses could be built in the Ojus area.

BY CARLI TEPROFF
cteproff@herald.com

When business owners, residents and county administrators in the Ojus area completed a charrette to craft a vision for long-term development in 2001, they thought their input would have an impact on all future development.

But now some are fuming over requests by two companies to change zoning for parcels they own from low-medium density residential to allow for office, industrial and business uses. Those requests face their final hurdle Wednesday at a meeting of the Miami-Dade County Commission.

The parcels, located in the area from Northeast 195th Street north to approximately 199th Street, and between Northeast 26th Avenue and West Dixie Highway, are owned by Limoch Inc. and Blue Green Commercial Corp.

Among the announced intentions for the Blue Green site is a five-story warehouse that has become the focal point of the opposition.

The requests for the zoning change has already been approved by the Northeast Community Council 2 and the Miami-Dade County Planning Advisory Board.

The community council approved it 5-2, with one of the dissenting votes coming from Charles Baron.

"I don't understand why we went through the whole process of completing the charrette report if we weren't going to listen to it," Baron said.

Baron and other residents in the unincorporated area just west of Aventura believe that the request is not consistent with the findings of the 2001 Ojus Charrette, which design-

nated the area for mixed-use — residential and commercial.

"I represent the Ojus area and I have to listen to what the residents of the area want," Baron said. "Nobody wants a five-story building in their backyard."

Community council member Ken Friedman said he approved the recommendation based on the fact that it is not a site application, but only changes the land use.

"I am in favor of having a better use for that land," he said. "This is at such an early stage of the game. All this means is that if the county approves it then they can put in a site application."

The Planning and Zoning advisory board approved the request based on some compromises, including a 115-foot "buffer zone" of town houses on the Northeast 26th Avenue side of the property.

Howard Scott, a resident of the planned community of Riverwood, is a vocal critic of the change.

"I have collected over 60 letters from residents who don't want to see this happen," he said. "The commission shouldn't approve a land use for the benefit of one person to the economic detriment of so many residents."

If the County Commission approves, then the companies must submit site plan applications that have to be reviewed by the Planning and Zoning Board.

"We have told people that we intend on building a five-story storage warehouse so that we aren't pulling the wool over anyone's eyes," said Jeff Ber-cow, the attorney representing Blue Green. "We feel that our plans are consistent with the charette."

Wednesday's meeting of the commission begins at 9:30 a.m. at the Stephen P. Clark Center, 111 NW First St., Miami.

EXHIBIT VI



Corporations Online

Florida Non Profit

OJUS HOMEOWNERS ASSOCIATION, INC.

PRINCIPAL ADDRESS
10800 BISCAYNE BLVD
SUITE 610
MIAMI FL 33161

EXHIBIT VII

MAILING ADDRESS
10800 BISCAYNE BLVD
SUITE 610
MIAMI FL 33161

Document Number
N03000009677

FEI Number
NONE

Date Filed
11/03/2003

State
FL

Status
ACTIVE

Effective Date
10/31/2003

Registered Agent

Name & Address
SCOTT, HOWARD F 10800 BISCAYNE BLVD SUITE 610 MIAMI FL 33161

Officer/Director Detail

Name & Address	Title
BYER, MORTON 2560 NE 199TH ST MIAMI FL 33180	D
BYER, LORRAINE 2560 NE 199TH ST MIAMI FL 33180	D
SCOTT, HOWARD F 10800 BISCAYNE BLVD SUITE 610	D

HOWARD F. SCOTT

10800 BISCAYNE BOULEVARD ♦ SUITE 610 ♦ MIAMI, FLORIDA 33161 ♦ PHONE (305) 892-4554 ♦ FAX (305) 892-4580

November 4, 2003

Commissioner Sally A. Heyman
111 N.W. 1st Street, Suite 220
Miami, Florida 33128

Re: Proposed Changes to the Miami-Dade County
Comprehensive Master Development Plan

Dear Commissioner Heyman

I am writing to inform you of my opposition and the opposition of my fellow Ojus residents to the amendments to the CDMP requested by the The Limoch LLC and the Blue Green Commercial Corp

The Limoch LLC has filed an application which is essentially compatible with and acceptable to our area to amend the CDMP by having property it owns in our neighborhood redesignated from low medium density residential to business & office except for a 100 foot strip of its property facing N.E. 26th Ave. Limoch proposes to construct three story commercial buildings on West Dixie Highway and townhouses on the 100 foot strip on 26th Ave. to maintain the residential character of 26th Ave. Current business structures just north on West Dixie Highway in a residential area similar to our neighborhood (but without being on an Enchanted Lake) are one story office and commercial buildings compatible with a residential neighborhood. The existing homes on the west side of 26th Ave. surround Enchanted Lake, are in the \$300,000 to \$400,000 range and have been steadily increasing in value. The Department of Planning recommended a minimum of 124 feet remain as low-medium density residential as the proposed 90 foot wide strip, after accounting for the necessary front and rear setbacks and automotive access and egress is not large enough to actually construct neighborhood compatible townhouses.

The residents of this area believe that 3 story buildings are too tall for the area, but depending on design and landscaping, are open minded about their construction which may prove to be compatible. The recommendation of the Department of Planning and Zoning should definitely be followed, however, allowing a 124 foot wide strip of residential property to remain which would permit the construction of townhouses compatible in value with the Enchanted Lake homes they will be facing.

The Blue Green Commercial Corp has filed an application to amend the CDMP by having property in our neighborhood redesignated from low medium density residential to industrial for half of its property and office for the other half except for an 80 foot strip of its property facing N.E. 26th Ave. The Blue Green Commercial Corp intends to use the requested industrial designation to construct a 5 story high warehouse larger than a football field. It also proposes the construction of townhouses on the 80 foot strip on 26th Ave. (With front and rear setback requirements, however, an 80 foot strip is inadequate to construct a townhouse compatible with the neighborhood, so the 80 foot strip was enlarged to 115 feet by the Planning Advisory Board).

EXHIBIT VIII

1 of 3

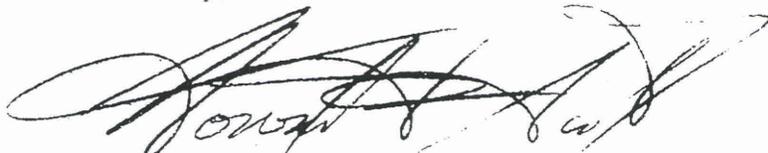
This requested change by to an industrial designation for half of the Applicants property should be denied as recommended by the Department of Planning and Zoning. The Applicant should be granted its requested office designation for all of its property.

Construction of a five story warehouse as proposed by the Applicant would be an egregious affront to the entire Ojus community. A five story warehouse is contrary to the recommendations of the Ojus Charrette, contrary to the wishes of the residents of Ojus, contrary to the recommendation of the Department of Planning and Zoning, and by its presence will cause substantial economic harm to the residents of the Ojus community by changing the character of our neighborhood and thus diminishing the value of our homes. Against these compelling reasons to deny the requested industrial classification is the stark absence of even one reason, let alone even one equally compelling reason to grant the requested industrial classification.

Enclosed you will find over 60 letters from residents of the Ojus community clearly stating their opposition to the requested industrial designation. Their opposition to opening access to Biscayne Boulevard is also clearly stated. As attested to at the PAB meeting by Mrs. Morton Byer, at a meeting at her home called by the Applicants it was stated that access to Biscayne Boulevard would be sought. After the PAB meeting I was told access was not being sought. Whether or not such access is being sought by these Applicants has no bearing on the community's opposition to the industrial classification. And, no bearing on the community's continuing opposition to opening access to Biscayne Boulevard.

Commissioner Heyman in spite of the compelling reasons to deny the requested industrial designation and the absence of any compelling reasons to approve it and contrary to the wishes of the Ojus community, the Community Council and the PAB have favored the Blue Green Commercial Corp and recommended approval of the requested industrial designation. On behalf of those whose letters accompany this letter and the rest of our Ojus community I respectfully request your help and assistance in opposing and preventing the requested industrial change to the CDMP and the harm it will do to our community.

Sincerely,



Howard F. Scott, Ojus Resident

EXHIBIT VIII

October _____, 2003

Commissioner Sally A. Heyman
N.W. 1st Street, Suite 220
Miami, Florida 33128

Re: Proposed Changes to the Miami-Dade County
Comprehensive Master Development Plan

Dear Commissioner Heyman:

The Limoch LLC and the Blue Green Commercial Corp. have filed applications to amend the CMDP by having property in our neighborhood redesignated from low medium density residential to business & office and, unimaginably, industrial. (The Blue Green Commercial Corp. intends to use the requested industrial designation to construct a five story, 55 foot high, neon-lighted warehouse on its property.) The applications are for property in the area which begins at N.E. 195th Street (by Miron Lumber) north to approximately N.E. 199th Street and between N.E. 26th Avenue and West Dixie Highway.

The Blue Green Commercial Corp. and the Limoch LLC also propose opening access to Biscayne Boulevard from West Dixie Highway to further increase the value of their property and the profit they will realize from it.

I am writing to tell you of **(i) my opposition to the request for an industrial designation of any part of the area in question, (ii) my opposition to redesignating as commercial any more than one half of the property from West Dixie Highway west to N.E. 26th Ave, and (iii) my opposition to creating any access to Biscayne Boulevard from West Dixie Highway.** All of these requests serve only to enrich the applicants at the expense and to the detriment of those people living in the area and with no benefit to the community.

I respectfully request your help and assistance in opposing and preventing the requested changes to the CDMP. These requested changes will substantially decrease the value of our homes as the overwhelming presence of a 5 story neon lighted warehouse looms over the neighborhood 24 hours a day, 7 days a week, 52 weeks a year. Our homes will suffer even greater loss of value if access to Biscayne Boulevard is opened as the influx of thousands of cars, SUVs and other vehicles, from 10:00 A.M. when the Aventura Mall opens to 10:00 P.M. when the Mall closes, going to the proposed warehouse, businesses and commercial enterprises, as well as those just trying to find a way around the congestion and gridlock of the intersections at Miami Gardens Drive and Biscayne Boulevard and Ives Dairy Road and Biscayne Boulevard, overwhelms our neighborhood, makes our neighborhood streets impassable, threatens the safety of our children and the children attending Ojus Elementary School, the Hillel Community Day School and the Jewish Community Center and impairs the quality of our everyday life. The applicants' interest in maximizing their profits on their investment surely cannot be more important than preserving the value of our homes, the quality of our life and the safety of our children and the children attending our neighborhood schools.

Please let me know you will be there for our neighborhood and community and oppose these requests..

19452 NE 26 ave #31

Miami, ^{Address} FL 33180

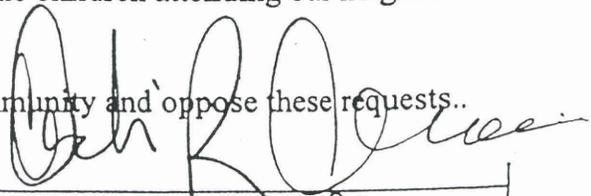
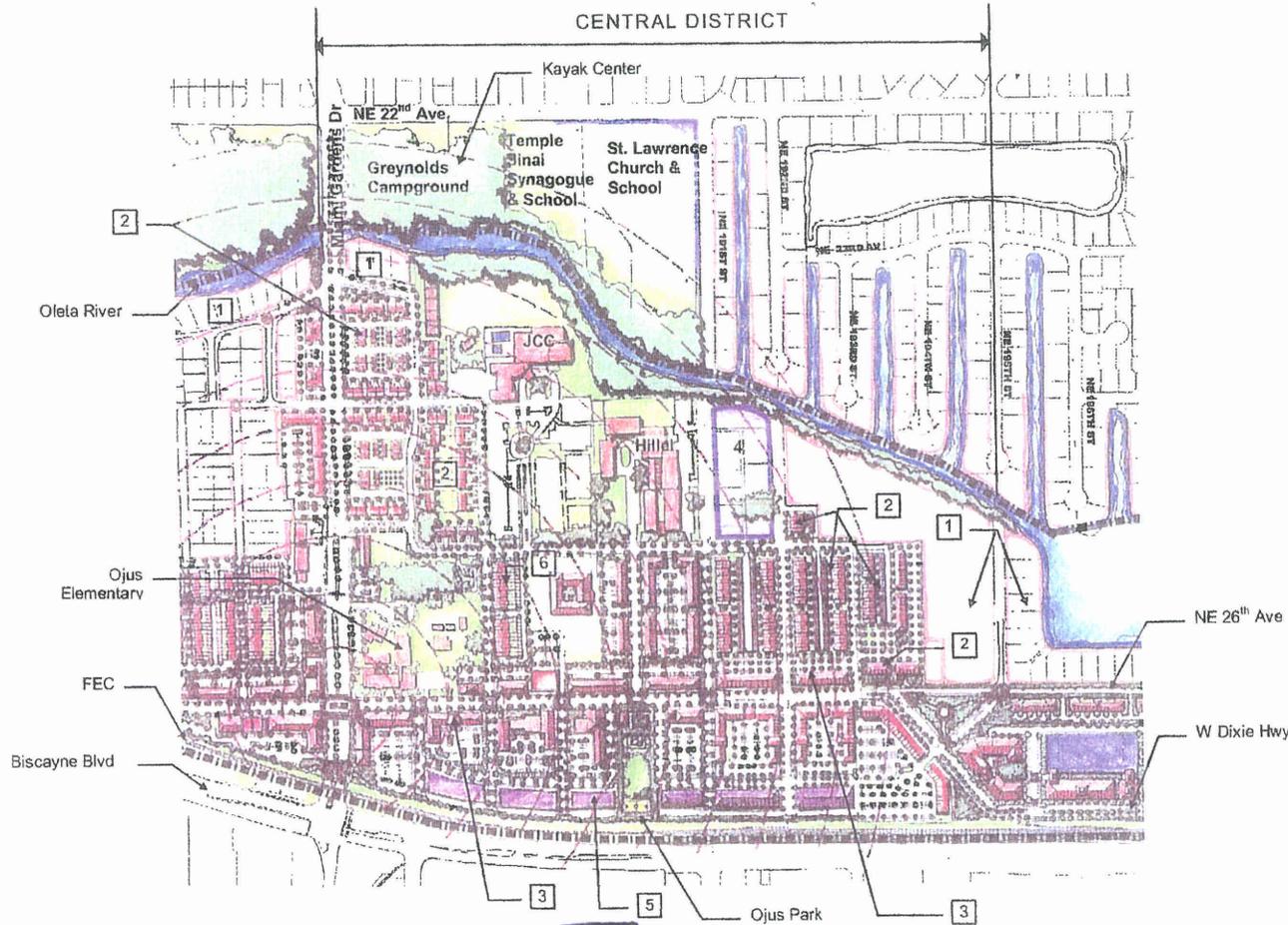

Signature
Claudia R. Carrea
Print Name

EXHIBIT VIII

3 of 3

**PROPOSED MASTER PLAN
CENTRAL DISTRICT**



1. Existing housing to remain
2. Proposed housing
3. Proposed commercial
4. Proposed civic / Educational
5. Light industrial / Showrooms
6. Existing Nursing Home to remain

District Data

On-site parking provided

Industrial:	130,000 sf	163 spaces
Office:	91,000 sf	273 spaces
Retail:	261,000 sf	991 spaces
Total at grade:		1,427 spaces
Total on-street:		300 spaces

Housing

Mews:	64 units	128 cars
Townhomes:	198 units	400 cars
Garden apartments:	56 units	141 cars

Parks: 2.3 acres

0' 300' 600'



Focus Area Boundary

A Vision for the Ojus Area

38

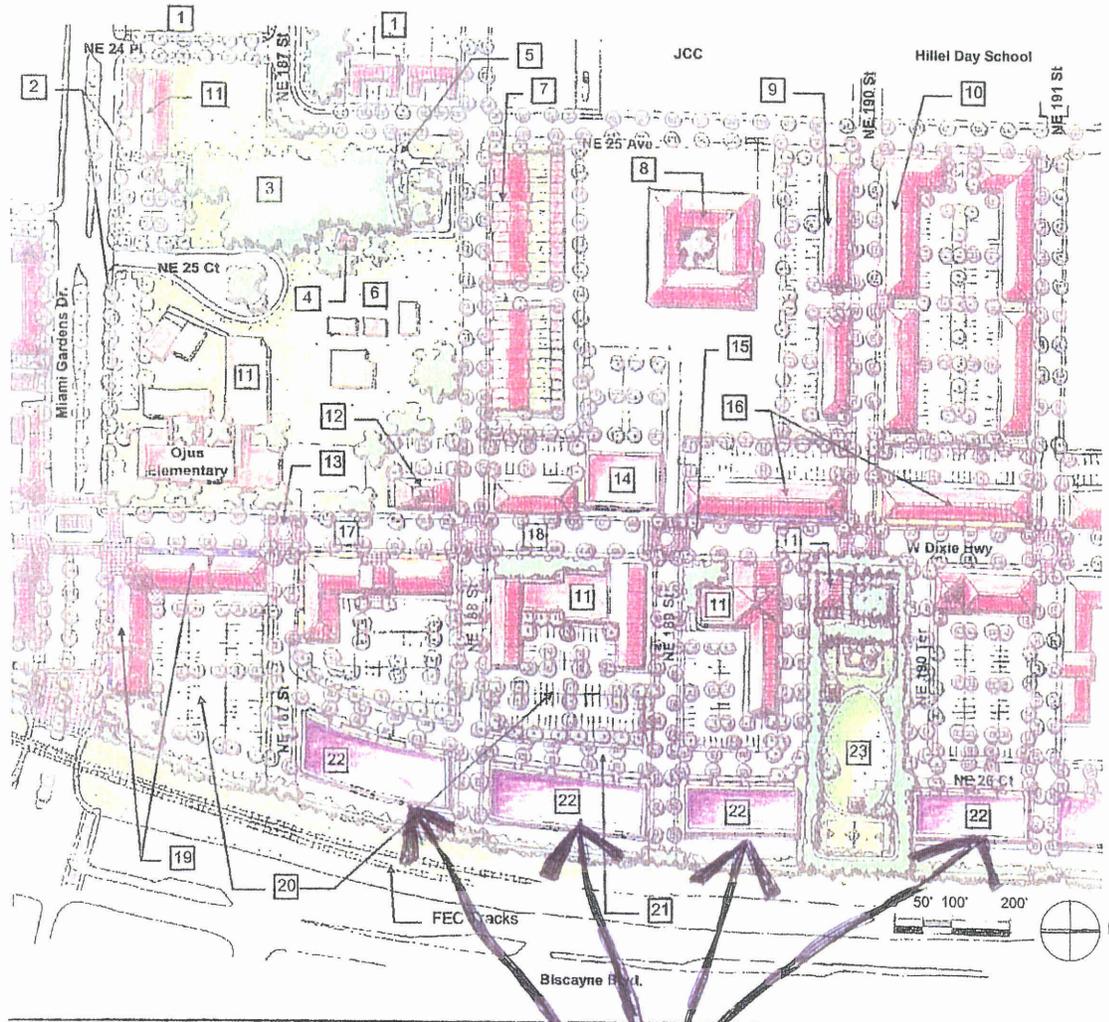


THE ONLY LIGHT INDUSTRIAL IN THE CHARRETTE IS IN THE CENTRAL DISTRICT SOUTH OF 192ND STREET.

EXHIBIT IX

Page 38

MASTER PLAN PROPOSAL
CENTRAL DISTRICT DETAIL



1. Proposed "Mews Housing"
2. Work with church and school to provide shade trees to properly screen parking areas from Miami Gardens Drive
3. Preserve existing trees
4. Preserve historic house and use it to provide exhibits on history and environment of the area
5. Proposed drop-off for elementary school
6. Enlarged Elementary School parcel
7. Proposed townhouses
8. Nursing home to remain
9. Proposed health related offices
10. Proposed garden apartments
11. Existing civil/public building to remain
12. Neighborhood public library
13. Textured paving and enlarged pedestrian area to diminish crossing distance, enhance safety and provide traffic calming
14. Existing commercial to remain
15. Shuttle stop at 600' o.c. maximum
16. Enlarged mixed-use commercial parcels (140' - 150') to allow for minimum building setback at sidewalk and parking in the back
17. Continuous parallel parking with shade trees to enhance pedestrian safety and comfort
18. Bikeway at both sides of street, see Plan & Section of Commercial Area along W. Dixie Hwy
19. Proposed mixed use commercial
20. Possible future development of parking deck (2 to 3 levels, maximum 36' high) with retail/commercial at ground level
21. N E 26 Ct is intended to alleviate traffic from W. Dixie Hwy and provide N/S connectivity
22. Light industrial, showroom, office parcels
23. Ojus Park becomes a stronger focal point, serves as a terminus for NE 26th Ct. The parking in the front is removed and a treed plaza becomes the window to W. Dixie Hwy. The refurbished park building and covered terrace remain, and parking is provided all around the park for convenience and visual surveillance of the space. Two shelters, a playground and a multi-purpose court are rearranged around a central open lawn area surrounded by a walkway with benches and shade trees. It is anticipated that restaurants and retail will develop facing the park



A Vision for the Ojus Area

EXHIBIT IX

Page 40

THE ONLY LIGHT INDUSTRY IN THE CHARRETTE IS IN THE CENTRAL DISTRICT SOUTH OF 192ND STREET.

**FIVE STORY WAREHOUSE ON 79TH STREET CAUSEWAY
SIX LANE DIVIDED MAJOR BOULEVARD WITH PRE-EXISTING HIGH RISES**



**FOUR STORY WAREHOUSE ON BISCAYNE BOULEVARD
FIVE LANE MAJOR BOULEVARD WITH PRE-EXISTING HIGH RISES**



**FOUR STORY WAREHOUSE ON BIRD ROAD
SIX LANE MAJOR DIVIDED BOULEVARD WITH PRE-EXISTING HIGH RISES**



TWO LANE WEST DIXIE HIGHWAY THROUGH OJUS



**TWO LANE WEST DIXIE HIGHWAY AT LOCATION
OF PROPOSED WAREHOUSE**



**ENCHANTED LAKE NEIGHBORHOOD
DUE WEST OF PROPOSED 6 ½ STORY WAREHOUSE**

