City of Coral Gables
Local Planning Agency (LPA)/Planning and Zoning Board Meeting
Wednesday, February 13, 2013
Coral Gables City Commission Chambers
405 Biltmore Way, Coral Gables, Florida

MEMBERS	J9	F13	M13	A10	M8	J12	J10	A14	S11	O9	APPOINTMENT
	'13	'13	'13	'13	'13	'13	'13	'13	'13	'13	
Eibi Aizenstat – Chair	P	P									City Manager Patrick Salerno
Robert Behar	P	P									Commissioner Rafael Cabrera, Jr.
Jeffrey Flanagan – Vice Chair	P	P									Commissioner Maria Anderson
Julio Grabiel	P	P									Mayor Jim Cason
Pat Keon	P	P									Planning and Zoning Board
Vince Lago	P	E									Commissioner Frank C. Quesada
Javier Salman	E	E									Vice Mayor William H. Kerdyk, Jr.

DRAFT

P = Present
E = Excused
C = Meeting Cancelled

City Staff and Consultants:
Eric Riel, Jr., City Planner
Walter Carlson, Asst. City Planner
Scot Bolyard, Principal Planner
Ramon Trias, Planning and Zoning Director
Craig E. Leen, City Attorney
Jane Tompkins, Development Services Director
Martha Salazar-Blanco, Zoning Official
Dona Spain, Historic Preservation Officer
Cynthia Birdsill, Economic Sustainability Director

Court Reporter:
Joan Bailey

Attachment: 02 13 13 Planning and Zoning Board Meeting Verbatim Minutes

CITY OF CORAL GABLES
LOCAL PLANNING AGENCY (LPA)/
PLANNING AND ZONING BOARD MEETING
VERBATIM TRANSCRIPT
CORAL GABLES CITY HALL
405 BILTMORE WAY, COMMISSION CHAMBERS
CORAL GABLES, FLORIDA
WEDNESDAY, FEBRUARY 13, 2013, COMMENCING AT 6:06 P.M.

Board Members Present:
Eibi Aizenstat, Chairperson
Robert Behar
Jeffrey Flanagan, Vice Chairperson
Julio Grabiel
Pat Keon

City Staff and Consultants:

Eric Riel, Jr., City Planner
Walter Carlson, Assistant Planning Director
Craig E. Leen, City Attorney
Scot Bolyard, Principal Planner
Jane Tompkins, Development Services Director
Ramon Trias, Building & Zoning Director
Dona Spain, Historic Preservation Officer
Martha Salazar-Blanco, Zoning Official
Cynthia Birdsill, Economic Sustainability Director

THEREUPON:
The following proceedings were had:
CHAIRMAN AIZENSTAT: Okay, let's go ahead and get the meeting started, please. If you'll do the roll call.
MR. BOLYARD: Mr. Robert Behar?
MR. BEHAR: Here.
MR. BOLYARD: Jeffrey Flanagan?
MR. FLANAGAN: Here.
MR. BOLYARD: Julio Grabiel?
MR. GRABIEL: Here.
MR. BOLYARD: Pat Keon?
MS. KEON: Here.
MR. BOLYARD: Vince Lago?
Javier Salman?
Eibi Aizenstat?
CHAIRMAN AIZENSTAT: Here.
Okay. Let's look at the minutes. Is there a motion for the approval of the minutes?
MR. BEHAR: Motion to approve.
CHAIRMAN AIZENSTAT: Is there a second?
MR. GRABIEL: Second.
MR. BOLYARD: Jeffrey Flanagan?
MR. FLANAGAN: Yes.
MR. BOLYARD: Julio Grabiel?

MR. GRABIEL: Yes.
MR. BOLYARD: Pat Keon?
MS. KEON: Yes.
MR. BOLYARD: Eibi Aizenstat?
CHAIRMAN AIZENSTAT: Yes.
MR. BOLYARD: Oh, sorry. Robert Behar?
MR. BEHAR: That's okay. Yes.
CHAIRMAN AIZENSTAT: Okay, Craig, on the first item that we have, which is the zoning text amendments, do you want me to read the entire -- all the items that we have here, or can we just put that on record as per what is on our agenda?
MR. LEEN: Well, let me see the ordinance. As a technical matter, you know, if this were before the Commission, the ordinance should be read in its entirety. I think here, though, it's fine to just say that it's part of the agenda and that you're incorporating that into your statement.
So, for the public, all of the changes to the -- the proposed changes to the Zoning Code are listed in the agenda.
CHAIRMAN AIZENSTAT: Correct.
MR. LEEN: And that should be sufficient.

So I would just read -- In fact, I can read it for you, if you'd like.
CHAIRMAN AIZENSTAT: Please. That would be so much easier.
MR. BEHAR: Can I ask you a question before? We have, I guess, 18 items, correct?
MR. LEEN: Yes.
MR. BEHAR: Are we going to do -- Are we going to vote on them individually or this means that we're going to vote on it as an entirety?
MR. LEEN: Well, you can do either. If, for example, there's part of it that you do not want to recommend, you should take that out, and you may want to -- the motion may want to exclude those provisions and have a separate vote. But you can vote on all of them together.
MR. BEHAR: Okay, thank you.
MR. LEEN: So it's an Ordinance of the City Commission of Coral Gables, Florida, providing for various text amendments to the City of Coral Gables Official Zoning Code, adopted via Ordinance Number 2007-01, as follows. There's then a list of different proposed text

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amendments, which is in the agenda, and it's providing for severability, repealer, codification and an effective date.

CHAIRMAN AIZENSTAT: Thank you very much, Mr. City Attorney.

Eric, are you going to be doing the --

MR. RIEL: Yes.

Just as some background, every year City Staff collectively gets together, and what we do is, we have a listing of Zoning Code amendments. They basically come from Public Works, Public Service, Planning and Zoning, the City Attorney's Office, as well as the Parking Department.

Last time we did a number of amendments was in December of 2011, so we kind of do them every year, and we bring them to you collectively.

This evening, I'm going to go through the 18 items and give you a brief summary of each one of those. If you reference in the binder, they're tabbed by 1 through 18, and what I would ask the Board is, after -- if you have any questions after each one, provide those questions at that time, so we can move through

each of the 18. We've done that in the past and that seems to work very well.

Dona Spain is here, from Historic, to go through the Historic amendments. Martha Salazar-Blanco is also here, as a major part of these come from Zoning. So, if there's any questions, I might ask them that they assist.

So, with that, I'm going to go ahead. Oh, let me just note that the Board of Architects has reviewed each of the amendments in entirety, and they did recommend approval of all the amendments. The Historic Preservation Board did review the four amendments that they have regarding Historic Preservation, and they also did recommend unanimous approval, as well.

So, with that, what I'll do is, I'll start with Number 1. Number 1 is basically a clarification of the lot and building facing requirements. Right now, those requirements are in the Appendix A, which is the site-specific standards. What we did was, we removed those from Appendix A and actually put them in the front portion of the Zoning Code. One of the major changes that we made in terms of the content were basically two things. Now

when there's a discrepancy, it's required to go to the Board of Adjustment for review. We felt that was not conducive, so we brought that internal, and basically a City official or Development Review official will be making that determination in terms of the facing of lots. So that results in reduced cost to the applicant and they don't need to go through a lengthy process.

In addition, what we've also done is add some criteria, that they have to satisfy one of three criteria, and there's very general criteria, but at least there's some basis for a recommendation. There are cases we've had in the past where we have had discrepancies, where basically you haven't looked at the design of a building and it's just the Code said, you know, it had to face this certain direction, and it wasn't really conducive to what was happening along that street front, or that street frontage.

So we have identified some lots -- Walter, if you can just show them briefly -- where we've had some -- I don't want to say confusion, but, you know, they're -- and I

don't want to call them problem lots, either, but lots that have required, you know, further review because of the strict interpretation of the Code. Basically, they're the lots that are on the corners.

CHAIRMAN AIZENSTAT: Is the camera able to pick that up?

MR. RIEL: Probably not. We can put it on the stand. Basically, the lots facing the remainder of the block are irregular lots that are shown in the yellow, and they're for the most part in the northern part of the City, the older section of the City.

And then this is an illustration -- There are specific streets that are required to be facing the major thoroughfares, basically Country Club Prado. That's where we want those streets. So we didn't change the content, regarding in terms of the requirements of those facings. So basically it's updating of the Code, moving it from one section to the other and providing criteria.

MR. GRABIEL: Can we ask questions as we go along?

MR. RIEL: Yeah, as we go along, if you

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could, because that would be -- I think we can get through it faster.

MR. GRABIEL: If the property owner does not like the determination of the Staff, what is the process?

MR. RIEL: That decision's appealable. I'm not sure where it goes, but any decision made by a Development Review official is appealable. I believe it goes to the Commission.

MR. LEEN: Which particular one are you talking about?

MR. RIEL: Just any type of a decision of the Development Review official, if they make a decision.

MR. LEEN: Well, a number of them go, actually, to the Board of Adjustment and the Historic Preservation Board.

MR. RIEL: It goes to the Board of Adjustment first and then the --

MR. LEEN: If it turns on the nature of -- If it's an interpretation of the Zoning Code --

MR. GRABIEL: So there's an appeal process?

MR. LEEN: Oh, yes.

MR. GRABIEL: Okay.

MR. LEEN: And then it would go, usually,

to the Commission at that point.

CHAIRMAN AIZENSTAT: Any other questions?

MR. FLANAGAN: Yeah.

MR. RIEL: Okay, Number 2 --

CHAIRMAN AIZENSTAT: Wait a second. Jeff has --

MR. FLANAGAN: Sorry, Eric.

Subsection 3 -- Subsection 3-905, Subsection 3, the language used to say that except as provided otherwise in this section, all principal buildings on a corner lot shall face the following streets. I mean, I'm paraphrasing what it said. The new language omits the word corner. It now says, all principal buildings on a lot shall face the following streets. Is that an oversight? Is corner omitted for a reason? Is there something that happened to --

MR. RIEL: I think that's probably an oversight, so I'd suggest adding, on Page 1, Amendment Number 1, Line 24, all principal buildings on a lot or corner lot shall face the following streets.

MR. FLANAGAN: Okay.

MR. RIEL: Thank you.

And moving on to Number 2, currently there's a $500 threshold requirement to submit a building permit for construction, and right now, the Florida Building Code leaves that discretion to the Building Official. So, to be consistent with that, Staff is suggesting that that threshold be removed and that new language be put in there, that the Building Official has that ability to make that determination.

CHAIRMAN AIZENSTAT: What does -- How do they determine it? What discretion do they use?

MR. RIEL: Well, I'm assuming the discretion would be that they would create an application that will have a threshold that's established by different types of permits.

MR. LEEN: If I may, Mr. Chair. This concern came up because we had a code enforcement matter, where an individual actually -- He had a door that he was going to replace for under $500, and under the Florida Building Code, he needed to go to the Building Official and at least get some sort of sign-off to do that.

MR. RIEL: Right.

MR. LEEN: However, under our Zoning Code, it was for under $500. So he mistakenly believed that he could rely on that and not get the approval of the official. Now, ultimately, it was my decision that because he relied on a Zoning Code provision, we essentially waived that fine, because he was relying on a duly enacted law, and I thought in that case it was reasonable. But we also decided, as part of that, that we would recommend to this Board and then ultimately to the Commission that that be taken out so that it would never happen again.

MR. BEHAR: So does that mean that anything, anything whatsoever on a property, has to get a permit?

MR. LEEN: It doesn't necessarily have to get a permit, but the Building Official has to know of it and waive it, or require the permit. You can't just do it on your own.

CHAIRMAN AIZENSTAT: For anything?

MR. LEEN: Well, anything that falls under the -- I mean, you're talking about like a basic repair? No. But if it's something that would require a permit, you can't, based on value, determine that you're not going to get

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1 the permit.
2 MR. FLANAGAN: But that's not how I read
3 this, and this is one of my big questions. As
4 I read it, by striking this, as a property
5 owner, you need to have or obtain an
6 affirmative action or decision of the Building
7 Official, one way or the other, whether or not
8 you need a permit. And so, at least with a
9 $500 threshold, you knew where you stood.
10 As I see it right now, if I'm going to go
11 paint a bedroom, I need to go to the Building
12 Official and say, "May I do this without a
13 permit?" So now I have to go and I have to
14 rely on or wait for some affirmative decision.
15 Now, I didn't know what the genesis was,
16 and I can definitely appreciate that. Maybe we
17 can insert some language that says we can leave
18 the $500 requirement and put something that
19 says maybe unless otherwise required by the
20 Florida Building Code, because I think the
21 installation of a new front door --
22 CHAIRMAN AIZENSTAT: Like by a hurricane
23 or --
24 MR. FLANAGAN: You would know better than I
25 would, that I think that triggers a

1 different -- that obviously triggers a
2 different review than if I'm going to -- I
3 don't know --
4 MR. LEEN: Yeah, you make a very good
5 point. So your concern is that someone will
6 read this and think any repair, any work they
7 do at all. That was not the intent.
8 MR. FLANAGAN: That's the way I read it.
9 MR. BEHAR: That's the way, yeah. Sorry.
10 MR. LEEN: No, the intent was -- because
11 before, it was just to remove the $500
12 threshold.
13 MR. BEHAR: Okay, but now, like I said
14 before, anything you're going to do, you have
15 to go through the Building Official, whether
16 it's like Jeff stated, you know, painting
17 a bedroom.
18 MR. LEEN: But I think the current state of
19 the law is that even if it's over $500, if it's
20 not the type of thing that requires a permit,
21 we don't require them to go to the Building
22 Official.
23 MR. RIEL: Right.
24 CHAIRMAN AIZENSTAT: Where does it define
25 the type of thing that requires --

1 MR. RIEL: Well, it could be on an
2 application. I mean, it could be on a
3 checklist that's provided by the Department.
4 So, I mean, there's a number of -- It's not --
5 In other words, it's not every person is going
6 to need to contact the Building Official. It
7 will be written down as a policy, you know,
8 that certain types of permits, for a value -- I
9 don't know, I just -- Those are just my
10 thoughts.
11 CHAIRMAN AIZENSTAT: When I read this, I
12 took a look at it and I said, "Well, what if
13 I've got to change my front door locks? What
14 if I've got to replace my key?" I saw it as, I
15 had to go to the Building Official to get a
16 waiver. And I don't think that's the intent of
17 what we would really like to do here.
18 MR. BEHAR: I mean, anything structural or
19 anything like a front door, I agree, should go
20 to the Building Official.
21 MR. GRABIEL: Life and safety.
22 MR. BEHAR: You know, absolutely. But
23 there has to be a provision somehow that you
24 have some possibility of doing something that
25 complies with under the 500 that is the

1 minimum, that does not require the approval --
2 the assertion of the Building Official.
3 MR. LEEN: I understand your point a
4 hundred percent. I just -- This has not been
5 interpreted that way in the past. But I can
6 see -- I can see why people might have viewed
7 this as a safe harbor, that they didn't have
8 to --
9 MR. FLANAGAN: Right.
10 MR. LEEN: So -- Well, let me -- Why don't
11 we move on, and I'll see if we can reword it.
12 MR. FLANAGAN: While we're on this one,
13 sorry, Paragraph 3, I know there's no changes
14 to it, but if you go down to Line 22 -- The
15 paragraph basically says the permit needs to be
16 applied for by a licensed contractor, or as an
17 owner, you can obtain the permit and supervise
18 the work, so long as it's going to be for your
19 own use and not intended for sale.
20 Now, I may begin to think what that was
21 intended for, you're not in the business of
22 rehabbing and flipping, or maybe, I don't know,
23 in the midst of having it listed for sale,
24 though I think even if it was listed, as the
25 owner, you should be able to do that. I just

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wasn't sure what the "not intended for sale" language meant, and if it wouldn't be wise to strike that.

CHAIRMAN AIZENSTAT: Pat, a question?

MS. KEON: No. I think it's only -- I think it's differentiating between as an owner-occupied building, like you're doing work on your home, your apartment, your space, that was owner-occupied, as opposed to a property that you may own but don't occupy. I think that's the differentiation here. Now, that may not be clear, because I think they're looking at if you own multiple properties and you're doing a lot of work on them, it would seem they want you to be a contractor, or licensed contractor of some sort. That's what it would appear from this language.

CHAIRMAN AIZENSTAT: Craig, what happens if I have my own home that I want to fix up and do it as by owner, which I want to actually put on the market to sell, but I want to go there and I want to pull the appropriate permits, I want to paint my own home, and so forth? The way that I'm reading it, and correct me if I'm wrong, is, I would not be able to put it up for

sale or sell it, or if that's my intention, then I'm not proceeding correctly, with our Code?

MR. LEEN: I would read this -- Well, I would want to know how our Building Official read it and how Zoning reads it, but I would read it to say that this applies in a situation where someone is not using the house, has bought it to essentially flip it, as was said.

CHAIRMAN AIZENSTAT: Do we have a Building Official here that can tell us, or somebody that can tell us how they would interpret it?

MR. LEEN: I think that that -- You'd have to be very careful to apply this provision to bar someone. It would have to be really clear that they were buying a number of houses. If they were living there at all, like someone who lives in a house with the intent to sell it, I think that that would not apply to them.

MR. FLANAGAN: Would not apply to them?

MR. LEEN: Would not apply to them. If I were asked, I would not interpret it that way. I would interpret it to mean people who are purchasing houses -- So, I mean, your concern would be if you were going to sell your house,

and you just want to make it nicer --

MR. FLANAGAN: Yeah.

MR. LEEN: -- but you live there --

MR. FLANAGAN: Right.

MR. LEEN: -- that should not bar that. And I agree with you, the wording is a little troubling. But it shouldn't. I wouldn't interpret it that way.

MR. FLANAGAN: But you have the word "and." It's use and occupancy -- for your own use and occupancy and not intended for sale. I just -- I think that language should be clarified.

CHAIRMAN AIZENSTAT: I mean, I'd just be -- I understand you --

MR. RIEL: Clarified or removed?

MR. FLANAGAN: Well, I don't know what the intent was.

MR. RIEL: And this probably dates back -- This was not redone as a part of the rewrite, so this language probably dates back to the early '90s, late '80s. That's my guess. Because we didn't really -- We didn't do anything in terms of -- The only thing we really discussed at the time of the Zoning Code rewrite was the $500 threshold.

CHAIRMAN AIZENSTAT: Craig, my concern is, let's -- you know, there's a new City Attorney, and he may interpret it a different way than the way you would interpret it, or somebody else. I would feel more comfortable if it's clear --

MS. KEON: Yeah.

CHAIRMAN AIZENSTAT: -- as to how it is, as opposed to leaving it up to the interpretation of a certain individual.

MR. LEEN: Well, you could ask Staff to prepare a revision. I could also -- You could also ask me to write an opinion, although that could be changed.

CHAIRMAN AIZENSTAT: The opinion could be changed.

Jeff, how would you feel about Staff writing a revision?

MR. FLANAGAN: I think that would be good. Maybe we should -- I hate the unintended consequences, but maybe we just strike it, because it says you can get a permit as an owner, for the single-family residence or duplex for your own use and occupancy.

CHAIRMAN AIZENSTAT: Correct.

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MS. KEON: I'm sure that at some point in the City, people were buying homes, they were maybe living in them while they were fixing them up to sell them, with the intent to fix them up and to sell them, and I don't know, but maybe the process went on too long, maybe -- and there tends -- there has been a tendency over the years to deal with those issues by inserting things in the Code to try and deal with it, with a practice that probably there's a better way to deal with, and so you end up with language in your Code that is ambiguous.

So I think it would be a very good thing to remove the ambiguity from the Code when you can and when it surfaces, because these are the times, for residents, when it is left to the interpretation of a Building Official and it is not a bright line.

MR. LEEN: No.

MS. KEON: So depending on who's looking at it can make a determination and could change between Building Officials. So I think it's a -- I think it's not a good thing for our Code. So if we would make the motion to -- How would we deal with that? How do we do that?

MR. LEEN: Well, Mr. Chair, you know, the matter is before you. You have the provision before you. It is at least somewhat related, in the sense that we're talking about -- or at least the Board is being asked to consider whether -- you know, how much authority, essentially, the Building Official should have to waive certain requirements and whether there should be a value requirement. I think this is sufficiently related, particularly as it's in the same provision, that you could just make the recommendation as part of this one. So you could do it that way.

CHAIRMAN AIZENSTAT: Would you like to make that recommendation?

MR. FLANAGAN: Yeah, I think we ought to strike the words, "and not intended for sale."

CHAIRMAN AIZENSTAT: Well, I don't know if you would have -- You may get into other issues if you strike that out.

MR. RIEL: May I make a suggestion? I mean, if that's the Board's wish, make that recommendation, and if Staff feels contrary, we'll do the research and prior to council --

CHAIRMAN AIZENSTAT: That's perfect.

MR. RIEL: -- or Commission review, if it's something that City Staff feels strongly about, we'll make that recommendation, then.

CHAIRMAN AIZENSTAT: That would be great. I don't think we need a motion for that, do we, for that recommendation, just if we're in agreement or not, or do you need a --

MR. LEEN: Well, are you -- This is going to go in front of the Commission.

MR. RIEL: Correct.

MR. BEHAR: Well, do you want to --

MR. LEEN: What I would do is -- I'd recommend doing it with the whole thing.

MR. RIEL: Collectively.

MR. LEEN: Let me rewrite this.

MR. BEHAR: Right, and then it comes back to us, or it's going straight to the Commission?

MR. LEEN: No, it come --

MR. BEHAR: It will come back to us?

MR. LEEN: Well, if we can't do it today, it will come back to you. If we can do it today --

CHAIRMAN AIZENSTAT: It's just a recommendation. So that's just one note that

we're doing right now.

MR. LEEN: Yeah. So that's going to be part of your recommendation on this matter.

CHAIRMAN AIZENSTAT: Will you keep track of that?

MR. LEEN: Yeah. No, I will.

MR. RIEL: I'll be writing them down, as well, yes.

CHAIRMAN AIZENSTAT: Okay, thank you.

MR. RIEL: Okay, Items Number 3, 4, 5 and 9 are Historic related, so Ms. Spain will be presenting those and answering any questions.

CHAIRMAN AIZENSTAT: 3, 4, 5 and 9 pertain to Historic?

MR. RIEL: Historic, yes.

MS. SPAIN: Good evening.

CHAIRMAN AIZENSTAT: Hi, Dona.

MS. SPAIN: For the record, Dona Spain, Historic Preservation Officer.

So Item Number 3, it's a little confusing, because the description of it says it's the removal of appeal provisions, but that's misleading, because we're actually taking out the sentence that says it's non-appealable, so --

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Ten years ago, in 2003, the City Commission passed an ordinance that required the Historic Preservation officer to sign off on any demolition permit, and that was because historically significant properties were being demolished. So there's a process. You can apply for a historic significance determination, and the intent -- Well, what happens is, you get a letter, if you're an owner, you get a letter saying it either is historically significant or it is not. If it is historically significant, there's this sentence of the Code that's in this letter that now says, "The determination of historic significance and eligibility for designation as a local historic landmark by the Historic Preservation Board," because these go to the Board, "is a non-final and non-appealable decision." Every time I send that in a letter, I get a call from an attorney, and they say, "What does that mean? It's non-final, but you can't appeal it?" It's --

CHAIRMAN AIZENSTAT: A double negative.

MS. SPAIN: So the reason that was put in there, and there was a reason, is because when

it goes to the Historic Preservation Board, the Board will then say, "You know, we believe that it's not historically significant and it can be torn down," or they direct the Historic Preservation Staff to do a designation report and come back.

And there was a case that went to the Commission on appeal, that the Historic Preservation Board said, "You know what, we think this is significant. Do a designation report." That was appealed to the City Commission, and the City Commission said, "They haven't even done the designation report. We're remanding it back to the Preservation Board." And so that sentence was put in there, but it's really confusing. And so the intent is to, once they determine -- once the preservation officer -- once I send that letter saying it's significant, and Craig and I worked on the language here, it will then go to the Historic Preservation Board within a certain number of days, and I believe then it can be appealed, because I honestly think any determination by Staff should be able to be appealed.

CHAIRMAN AIZENSTAT: Right.

MS. SPAIN: And then it's up to the Commission to remand it back. So the intent here is to allow for an appeal, not to eliminate the appeal.

CHAIRMAN AIZENSTAT: Now --

MS. SPAIN: I don't know if I've explained that well enough.

CHAIRMAN AIZENSTAT: Yes, you did. If I understand correctly, any property within the City of Coral Gables that wishes to be demolished, no matter what property it is, has to go through Historic Preservation --

MS. SPAIN: That's right.

CHAIRMAN AIZENSTAT: -- to obtain that letter?

MS. SPAIN: Regardless of the age. If it's five years old, I sign off on a demolition permit.

CHAIRMAN AIZENSTAT: Okay.

MS. SPAIN: And in the 10 years that we've been doing this, there have been a little over 700 historic significance determinations done, and of those, 44 -- I just calculated it out today, went through all the files. 44 of them

were deemed significant. So we don't save everything. But those we do save are historically significant.

CHAIRMAN AIZENSTAT: Is there another path that an individual can take to demolish a property, or they must go through the preservation --

MS. SPAIN: If they want to do a total demolition --

CHAIRMAN AIZENSTAT: Right.

MS. SPAIN: -- it goes to me.

MR. GRABIEL: If it's partial?

CHAIRMAN AIZENSTAT: If it's partial, what percent? What percent do they have to leave of that structure to avoid going to you?

MS. SPAIN: I don't know the answer to that question. I do know that there have been times that it's been so substantial that they've called me, they meaning the Building Department --

CHAIRMAN AIZENSTAT: They -- okay.

MS. SPAIN: -- has called me and said, "You know, you really need to look at this," because the intent is not to have something totally destroyed, so you can't leave up one

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wall and then not have it go to me.
CHAIRMAN AIZENSTAT: Now, what happens if I go to the City of Coral Gables and I want to do a partial demolition? I go ahead and do a 40 percent, and I leave 60 percent of the structure. I assume at that point it doesn't have to come to you?
MS. SPAIN: That's right.
CHAIRMAN AIZENSTAT: Then, afterwards, I let the house sit, or I live in it for X amount of years, and now I want to do the other 60 percent.
MS. SPAIN: That's right.
CHAIRMAN AIZENSTAT: Do I have to come to you at that point?
MS. SPAIN: No.
CHAIRMAN AIZENSTAT: So am I not circumventing the whole process?
MS. SPAIN: You are. Yes, you are.
CHAIRMAN AIZENSTAT: How do we close that loophole?
MS. SPAIN: I don't know. I don't know the answer to that. But that is a way to get around the Code.
CHAIRMAN AIZENSTAT: I mean, it's not

something that I know about, but it --
MS. SPAIN: And there are loopholes in the Preservation Ordinance. I mean, if you alter your residence, if it's historically significant and you do an alteration to it, and make it not historically significant, then, you know, that's another loophole, which is actually the intent of taking these that are significant right to the Board. That should close that one.
MR. LEEN: Well, the -- Mr. Chair, if I may, the Board could recommend that any even partial demolitions go through the Historic Preservation Officer.
MS. SPAIN: I'm happy to look at anything.
MR. LEEN: You know, one issue I would think with that, too, for your consideration, though, is that sometimes when you do a partial demolition, you destroy the historic nature of the property.
MS. SPAIN: That's right.
MR. LEEN: And so it will never then be -- So then if it later came to do the rest of the demolition, it may no longer qualify.
CHAIRMAN AIZENSTAT: I don't know if you

need to go for any partial demolition.
MR. BEHAR: I would not recommend -- I would not -- You don't have to do that. I mean, she's busy enough doing -- To get everything that goes through the City for demolition, partial demolition --
MS. SPAIN: And that was an interpretation, by the way, because the wording is, "no building permit for demolition of a non-designated building," and the interpretation is total demolition.
MS. KEON: I'm sorry, could you repeat that?
MS. SPAIN: How it reads is, no -- well, now, it reads, "no permit for demolition of a non-designated building shall be issued to the owner of a property without prior notification by the Building Official to the Historic Resources Department." The interpretation has been one hundred percent demolition, or close to it.
MS. KEON: But that's not --
MS. SPAIN: The majority of it.
MS. KEON: Is that the case? Is demolition a hundred percent or is demolition partial

demolition? Is it -- What does that mean, by demolition?
MR. LEEN: Well, that interpretation predates me. It's a reasonable interpretation, so I wouldn't change it, because a lot of people and residents have based decisions on that, and so I would be very careful to change that unless there was -- unless you wanted to or the Commission wanted to.
MS. SPAIN: It's actually worked really well so far, I have to say. It's been in -- We have very few appeals that have gone forward. It's been in place for 10 years. The Building Department is very good, calling me in very early in the process, hopefully, usually, to have me look at plans and we contact the owner, and it's been reasonably applied so far.
MS. KEON: Can I --
CHAIRMAN AIZENSTAT: Please.
MS. KEON: Craig, this is just more how the language --
MR. LEEN: Sure.
MS. KEON: -- how this is written. Why do you start -- Why do they start out with no building permit for demolition of whatever,

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whatever, instead of just stating that --
MS. SPAIN: Any building permit or improvement.
MS. KEON: Any building, you know, that all building permits for demolition of non-designated buildings shall, you know, go to the building -- the Historic Officer. I mean, why do you do all of this "no" instead of just a very clear --
MR. LEEN: I prefer what you just said, but this predates me, too. The "no" is the way that they -- is the way it's written.
MS. KEON: Well, I think it becomes wordy and it becomes -- I don't --
MS. SPAIN: It also has a negative connotation to it.
MS. KEON: It has a very negative connotation, instead of --
MS. SPAIN: I can see that.
MS. KEON: You know, it's not that we're punishing you, this is just that that's the way it -- I mean, this is the law.
MR. RIEL: You'll notice, that term appears a lot --
MS. KEON: I know.

MR. RIEL: -- on stuff that predated the rewrite, and when we came and we did the Historic Preservation, we didn't want to change that. I mean, you'll see a couple other section of the Code where it starts out with the word "no," and we did change a lot of them, but --
MS. KEON: Right. I think it makes it difficult when people are going and permitting, to make a checklist. It's like no permit will be given, no whatever, instead of, just make it a checklist and say, "This is what's required."
MS. SPAIN: They actually do have a checklist for demolition.
MS. KEON: Right, but it's --
MS. SPAIN: I don't disagree with you. I think that's a good suggestion.
MS. KEON: Right. I think it's a -- I don't know that that's for us --
CHAIRMAN AIZENSTAT: For us.
MS. KEON: -- tonight, at this moment, but I think in going through the Zoning Code, when you do text amendments or whatever, you know, I think that it would be a good thing to sit with the City Attorney and write language that is

affirmative and clear and as unambiguous as possible.
MR. LEEN: Well, you know, I don't even see why you would need the first sentence.
MS. SPAIN: I was going to say, the next sentence starts out, "All demolition permits for non-designated buildings and structures must be approved by the Historic Preservation Officer."
MS. KEON: You don't even need --
MS. SPAIN: So we can just eliminate that whole thing.
MS. KEON: But you had to have that "no" in there.
MS. SPAIN: We put it in. We need it.
MS. KEON: It has to be there.
CHAIRMAN AIZENSTAT: Is there any legal reason?
MR. LEEN: Well, I mean, the first sentence is more of a mandate to the Building Official, so -- or, pardon me, to whoever is issuing the permit, not to do it until you do these two things, but legally, there's no difference, because it's just required -- The demolition permit would not be effective, in a sense,

without meeting all these prerequisites, including being approved by the Historic Preservation Officer. So --
MS. SPAIN: Actually, I'm happy with elimination of the first sentence.
MR. LEEN: Legally, I see no difference between the two.
CHAIRMAN AIZENSTAT: So the City Attorney's opinion is that it is all right for us to strike that first sentence out at this juncture?
MS. KEON: Exactly.
MR. LEEN: The only -- The only thing that's in this first sentence at all, and it's based on the change, is written notification. So I guess if you remove the sentence, they could just send the permit to you or call you --
MS. SPAIN: That's all they do, Craig.
MR. LEEN: Okay, so you're saying they don't --
MS. SPAIN: That is the written notification, is the permit.
MR. LEEN: Okay, so --
MS. SPAIN: So, if you eliminate that, we

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get --
MR. LEEN: So you could eliminate the whole sentence. In fact, you probably should eliminate the whole sentence.
MS. SPAIN: Yeah, I think we should, because we don't get written notification, other than the permit.
CHAIRMAN AIZENSTAT: Is there --
MR. FLANAGAN: Sure.
MS. KEON: That's great.
CHAIRMAN AIZENSTAT: Go ahead, Jeff.
MR. FLANAGAN: What? Of what happens?
CHAIRMAN AIZENSTAT: Just -- Would you be in favor of eliminating that first sentence?
MR. FLANAGAN: That's fine with me.
CHAIRMAN AIZENSTAT: Pat? Obviously --
MS. KEON: Yeah.
CHAIRMAN AIZENSTAT: Okay, that will be part of our comments.
Jeff, do you have a --
Are you done with Section 3?
MS. SPAIN: Yes, I am.
CHAIRMAN AIZENSTAT: Do you have any comments?
MR. FLANAGAN: How long does it take you to

review and issue your -- make a determination of eligibility?
MS. SPAIN: We're fortunate in this City to have microfilm of almost every building built, and so we order the microfilm from the original permit on a building, and that may take two weeks. It's weird. Sometimes it takes only a few days, and sometimes it can take two weeks.
Once we get that, then we can turn it around in a day. So the lag time is getting the original microfilm, to see what the original building looked like.
CHAIRMAN AIZENSTAT: Is that in-house?
MS. SPAIN: They keep the microfilm in Tampa, and I think it's electronically able to be sent, but somehow there's a delay. I don't know.
CHAIRMAN AIZENSTAT: All right.
MR. FLANAGAN: I have one final question. If we're deleting the confusing provision about non-final and non-appealable, is there language elsewhere in the Code that makes it clear that the decision of the Preservation Board is, in fact, appealable, and how that process works?
MR. LEEN: Yes. There is a provision in 2,

Article 2, that talks about appeals from different boards.
MR. FLANAGAN: Okay.
MR. LEEN: And an appeal from this Board would be to the City Commission. So, yes. I would say, though, that, you know, we're hoping -- Part of the purpose of this is also to emphasize that this is a preliminary decision, so that you are going to get a hearing in 60 days. So you don't have to take an appeal of a preliminary determination. It creates no rights in the end, basically, so -- yes, the reason why it's good to allow the appeal, though, is, let's say there's an emergency and they need to appeal or they're going to seek an injunction in court. We still have an administrative remedy available. They could take the appeal, instead of -- If they have no remedy and they have to wait and it's going to cause them irreparable harm, they could go to court. So this does protect the City a little bit, to ensure that we can make the final decision, and not a court.
CHAIRMAN AIZENSTAT: Any other comments on Article 3?

MS. SPAIN: Okay, the Item Number 4 is undue economic hardship, and Craig may want to explain this, but it's been the City's position that the mere designation of a property as a local historic landmark does not create an undue economic hardship. And in the past, if a building is designated, we require a Certificate of Appropriateness to be applied for, for any alterations or demolition of that structure. And so this places the undue economic hardship portion of the Code with the Certificate of Appropriateness.
CHAIRMAN AIZENSTAT: Can you explain the Certificate of Appropriateness?
MS. SPAIN: That is -- That's actually a national term. It's used by the National Park Service. So any time there is a local preservation ordinance, if a property is designated as historic under a local ordinance, in order to alter that property, they file a Certificate of Appropriateness. There's two types. There's a Special Certificate of Appropriateness and a Standard Certificate of Appropriateness. The Special goes to the Historic Preservation Board, and the Standards

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1 are things like painting a house or some
2 alterations that can be administratively
3 approved. So it's just a form, a form filed by
4 the owner. We get a copy of the plans, and if
5 it's for demolition, it goes to the Historic
6 Preservation Board.
7 CHAIRMAN AIZENSTAT: And how do you
8 determine economic hardship?
9 MS. SPAIN: Well, there is a listing of
10 things that the applicant is required to
11 present to the Historic Preservation Board.
12 CHAIRMAN AIZENSTAT: In other words, the
13 Items 1 through 8?
14 MS. SPAIN: Yes.
15 MR. LEEN: The term -- If I may, Mr. Chair.
16 The term undue economic hardship has been
17 defined in our Code to basically be a taking,
18 so --
19 CHAIRMAN AIZENSTAT: To be a what?
20 MR. LEEN: A taking, a constitutional
21 taking. What that means is that if some
22 regulation is being applied by the Government
23 so that you're basically losing the beneficial
24 use of your land, to the point that the
25 Government really should have to pay you for

1 it, that -- now, that would be the traditional
2 definition of an undue economic hardship. The
3 language in the Code is quite strict in that
4 sense, because it actually says something very
5 similar to that.
6 However, the reason why we didn't want
7 that -- That can happen, and it's important
8 that every code have a provision that prevents
9 a taking from occurring, or else the City could
10 be financially liable for a lot of money, and
11 would be -- it could be violating the
12 Constitution.
13 Now, the problem with this particular
14 provision was, it was just sort of all by
15 itself in the Code.
16 MS. SPAIN: Right.
17 MR. LEEN: It didn't connect anything else,
18 and it just said in an instance where there's a
19 claim of undue economic hardship. Well, we had
20 a situation come up where we were seeking --
21 where there was a property that was up for
22 historic designation, and the attorney for that
23 property, the attorney for the property owner,
24 said, "Well, I want to make a claim of undue
25 economic hardship."

1 Well, as a general principle of historic
2 preservation law, the designation itself
3 doesn't cause the hardship, because our Code
4 still allows demolition of historic properties.
5 So, yes, I mean, it may make it less likely, in
6 the sense that obviously there's something
7 special about this property so it's been
8 designated, but it doesn't mean it's impossible
9 or can't be done. So, procedurally, you can
10 still, after the historic designation occurs --
11 and there's also some benefits, we've also
12 mentioned, when this comes up. There are
13 benefits to the historic designation, tax
14 benefits in particular, but -- So, anyway, so
15 the issue was that we just wanted to make it
16 clearer in the Code that the undue economic
17 hardship can be raised when you seek the
18 demolition permit. When you seek your remedy,
19 you're allowed to say, "Well, one reason I
20 need the undue -- " And it's one of the
21 factors that can be considered, "Well, one of
22 the reasons I need, as the property owner, this
23 demolition is that the way the property is set
24 up right now is, I'm losing all the beneficial
25 use of the land. I'm losing -- "

1 MR. BEHAR: Or the potential sale of land.
2 CHAIRMAN AIZENSTAT: Yeah, it would be more
3 the potential.
4 MR. BEHAR: Yeah, the potential, because
5 this --
6 MR. LEEN: With income-producing
7 properties, it can be the potential -- it can
8 be the income from the land, too.
9 MR. BEHAR: And this has to do with the
10 article that we read in the paper over the
11 weekend.
12 MR. LEEN: Yes.
13 MR. BEHAR: Okay, which, whether we agree
14 or not, it has a lot of merit to it, and is
15 this specifically going for something like
16 that, where they're claiming that because it
17 was Alfred Browning Parker, it has a value, and
18 therefore they would not be allowed to demolish
19 that structure. Right?
20 MR. LEEN: Yes. Well, this doesn't make a
21 substantive change to the Code. It's not
22 making it harder or easier to claim undue
23 economic hardship. It's just making it clear,
24 the procedural point.
25 MR. BEHAR: You cannot claim economic

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1 hardship.
2 MR. LEEN: Yeah, you can claim it, but only
3 when you seek the demolition, which is what
4 they did. Ultimately, in the case you're
5 mentioning, they followed that opinion and they
6 waited until later in the matter, until the
7 demolition came before the Historic
8 Preservation Board and the Commission --
9 MS. SPAIN: They did both, actually.
10 MR. LEEN: -- to raise the issue of
11 hardship.
12 MS. SPAIN: They appealed the designation
13 of that property. That went to the Commission,
14 and the Historic Preservation Board designation
15 was upheld, and then they later filed a
16 Certificate of Appropriateness for demolition.
17 That was also appealed to the City Commission.
18 So you can do both. You can appeal the
19 designation; you can appeal the denial of a
20 demolition permit.
21 MR. LEEN: And then they can go to court,
22 which they've indicated they may do, but in
23 their case, they're thinking of a Bert J.
24 Harris act. Or they can appeal the
25 Commission's decision and, you know, we'll have

1 to look at what our position will be, once they
2 do that, but that's -- So there are options.
3 CHAIRMAN AIZENSTAT: Jeff?
4 MR. FLANAGAN: You said -- and I'm
5 forgetting what you said. Even as written now,
6 you cannot claim undue economic hardship during
7 the designation process?
8 MR. LEEN: That has been the interpretation
9 of my office, based on the case law in this
10 area, which is that historic designation cannot
11 cause an undue economic hardship as a matter of
12 law, because you can seek -- If our historic
13 designation Code said that once it's
14 designated, it could never be demolished, that
15 would not be my opinion. Then the designation
16 itself would be preventing you from demolishing
17 the property. But our Code is set up, as most
18 are, that you can still demolish a property
19 even after a historic designation. That's
20 where the issue of -- "Well, why do you need to
21 demolish this property?" "Well, it's an undue
22 economic hardship." That's where it should
23 appropriately come up, in my opinion.
24 MS. SPAIN: And the appeal on the
25 designation is based on the merits of the

1 criteria. You know, "No, this is not a
2 significant -- "
3 MR. BEHAR: Well, currently, the Code
4 says that you cannot -- We're not modifying the
5 Code to address that now.
6 MR. LEEN: No.
7 MR. BEHAR: Currently, the Code says that
8 you cannot claim --
9 MR. LEEN: That has been the way it was
10 interpreted in this case and in other cases.
11 We just want to make it clear for future cases
12 that that's the City's -- the way the City
13 approaches this provision.
14 MR. BEHAR: I would hate to do something
15 now, with this, you know, coming on, that it
16 would change now --
17 MS. SPAIN: Right.
18 MR. BEHAR: -- before the final decision
19 ruling is done on that particular case.
20 MS. SPAIN: No, but that was actually the
21 decision on that case.
22 MR. LEEN: Well, the reason -- That's a
23 good point, but the reason why I don't think
24 you need to worry about it in this particular
25 case is that the applicant and the person who's

1 bringing the case actually agreed -- They
2 followed the opinion. So they're not going to
3 be -- They did raise an undue economic
4 hardship --
5 MS. SPAIN: Right.
6 MR. LEEN: -- the way that we've stated, so
7 they acquiesced, agreed to that process.
8 MR. BEHAR: Okay.
9 MR. LEEN: So -- and they have a right to
10 bring their claim, so -- and we're not
11 contesting that they have a right to bring the
12 claim.
13 MS. SPAIN: Right.
14 MR. LEEN: We're just contesting the
15 merits.
16 CHAIRMAN AIZENSTAT: When I take a look at
17 how -- or better said, the process that I have
18 to follow to prove hardship, for all property,
19 it states 1 through 8, and then for
20 income-producing property, it's 1 through 8
21 plus the additional three items, if I'm
22 correct?
23 MR. LEEN: Yes.
24 MS. SPAIN: Yes.
25 CHAIRMAN AIZENSTAT: Okay.

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1 MR. LEEN: And that comes from the
2 definition of undue economic hardship. For
3 income-producing properties, you can consider
4 what the effect to the value is, of the future
5 value, what you are producing from that
6 property.
7 CHAIRMAN AIZENSTAT: If I look at Number 8,
8 under Appraisal, it says two separate State of
9 Florida residential certified appraisers.
10 MS. SPAIN: Well, that's a very good point.
11 CHAIRMAN AIZENSTAT: So --
12 MS. SPAIN: Because if this is a commercial
13 property --
14 CHAIRMAN AIZENSTAT: It's a whole different
15 ball game.
16 MS. SPAIN: It's -- That's very good.
17 MR. LEEN: That's a good point.
18 CHAIRMAN AIZENSTAT: So you may want to
19 look at that. Now, also, feeding on that --
20 and I don't know how this would hamper or
21 not -- in today's environment, when you look at
22 commercial property or income-producing
23 property, appraisers today are actually
24 appraising low. I think if we look back during
25 the heydays or when times were good, appraisers

1 were appraising too high, and as a result, you
2 know, for whatever reason, I think a lot of
3 appraisals are coming in lower than
4 actually developers or other people are willing
5 to pay for the properties.
6 So is there -- is there a mechanism or a
7 way to even that out? Normally, I would say,
8 well, if I put up a property for sale and it's
9 listed in all the right places and I've got
10 offers that are coming in that are X percent
11 higher than what this appraisal is, what's the
12 true value of that property? How do you
13 determine that?
14 MR. LEEN: Well, my legal answer would be
15 that that's determined by the factfinder. So
16 they would consider both sides.
17 CHAIRMAN AIZENSTAT: That's considered by
18 what, I'm sorry?
19 MR. LEEN: By whoever is determining the
20 facts, so whoever is holding the hearing. In
21 this case, it would be the Historic
22 Preservation Board, and ultimately the
23 Commission. They would hear the evidence from
24 both sides.
25 CHAIRMAN AIZENSTAT: That's fine.

1 MR. LEEN: And hopefully --
2 CHAIRMAN AIZENSTAT: So they have that
3 option?
4 MR. LEEN: -- whoever is raising that
5 point -- Yes, they do.
6 CHAIRMAN AIZENSTAT: Okay. They don't have
7 to just only bring in two appraisals?
8 MS. SPAIN: Oh, I see what you mean. No,
9 they have that option.
10 CHAIRMAN AIZENSTAT: Okay.
11 MS. SPAIN: And the City has, in the past,
12 hired our own appraiser.
13 CHAIRMAN AIZENSTAT: Okay. That's what I
14 wanted to be clear.
15 MS. SPAIN: Yes.
16 MR. LEEN: And in that case, we're very
17 permissive. We've been very permissive in
18 what's allowed, so that the -- I said the
19 factfinder, but so that the Board or the
20 Commission could make the best determination.
21 MR. BEHAR: Let me ask a question. If you
22 have two appraisals and you have different
23 numbers, how do you come to a consensus, then?
24 MR. LEEN: What the Board would be
25 instructed or advised to do is to -- they would

1 cross-examine or ask questions to the two, and
2 then ultimately, if there's truly a difference,
3 they would have to make a credibility
4 determination and would support one or the
5 other.
6 CHAIRMAN AIZENSTAT: Is there a review
7 period, that at some point, as values change,
8 it gets reviewed or reanalyzed?
9 MR. LEEN: In terms of the undue economic
10 hardship?
11 CHAIRMAN AIZENSTAT: Yes.
12 MR. LEEN: Yes, they could seek another
13 certificate later, if there's been a change in
14 circumstances, so it's not barred by collateral
15 estoppel or res judicata. They could seek
16 another Certificate of Appropriateness and say
17 that now undue economic hardship exists,
18 because of this new regulation or because of
19 some change in circumstances. Yes, they could
20 seek it again, and it would have to be
21 reassessed.
22 CHAIRMAN AIZENSTAT: Robert, what's been
23 your experience, as an architect in the City?
24 MR. BEHAR: I have recently gone through,
25 or for the last year or so, dealing with

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similar, where we have two different appraisals and they're so far off that, you know, it depends who has commissioned that appraisal, and I'm dealing with an instance now that we are not coming to any room, and we hired appraisal and had a number, or my client had an appraisal, came in with a number, and the City had an appraisal and came in with a much bigger number, larger number, so -- and there's no resolution to that.

MR. LEEN: I would think that the Board, in those circumstances, as long as the appraisers explain why they reached a number, could go between the numbers. Usually, you can't go between the numbers unless there's competent substantial evidence --

MR. BEHAR: But then it should be something very clear, that defines the method of reaching a consensus, because if not, you're going to leave it open to two interpretations. One says too low, one says too high, and you're not going to find a resolution.

MR. LEEN: I understand. Generally, though -- You could advise that in the provision, but as a general matter, I would say

that they have the authority. As long as there is an explanation for why they've reached that and there's a way that you can say, "Well, I agree with these four reasons they gave, but not this one, and I think it affects the value this much," and you could point to evidence in the record that supports that, you're not bound to just whatever number is said by the party.

What happens, though, sometimes, is you get very little evidence. You'll get one appraiser who says five million, one appraiser who says one million, nothing about why, and then the Board goes with three million, and there's no reason. You have to have a reason. That's what the case law says. There has to be substantial competent evidence.

MR. BEHAR: Well, unfortunately, our experience has been different, and I think that we're creating more -- we're not creating, we have the problem and we have to find a resolution where it doesn't go through the whole process, the way it is today, and continues to drag on. There has to be a process where there's a resolution that's taken in a correct manner.

CHAIRMAN AIZENSTAT: You're talking from experience.

MR. BEHAR: Absolutely.

CHAIRMAN AIZENSTAT: Anybody else? Julio, have you ever had that experience?

MR. GRABIEL: I have not had that kind of a property.

MR. FLANAGAN: But, I mean, how does undue economic hardship get defined, at the end of the day?

MR. LEEN: It's defined to be basically the -- Do we have the definition? I can just read it. Do you have the Zoning Code?

MS. SPAIN: I don't have it with me, but do you have the Zoning Code, the definition, before you go?

I think we should take out the word residential.

MS. KEON: Yeah.

MS. SPAIN: Absolutely.

CHAIRMAN AIZENSTAT: That you have to do.

MS. KEON: Yeah.

MS. SPAIN: Absolutely. You have to take it out.

CHAIRMAN AIZENSTAT: It's a whole different

individual.

MS. SPAIN: Absolutely.

CHAIRMAN AIZENSTAT: It's a whole --

MS. SPAIN: Just a State of Florida certified appraiser.

MS. KEON: Yeah.

CHAIRMAN AIZENSTAT: But aren't the qualifications different? I'm not sure about this, but --

MS. SPAIN: I don't know.

CHAIRMAN AIZENSTAT: -- I wonder if the qualifications are different for a commercial appraiser, as opposed to a residential appraiser.

MS. SPAIN: I think so.

CHAIRMAN AIZENSTAT: And if that's the case, I don't know if we're doing the right thing by only eliminating the word residential.

MS. SPAIN: Well, don't they both have to be certified by the State of Florida, whether they're residential or commercial?

CHAIRMAN AIZENSTAT: Yes. No, a hundred percent. A hundred percent.

MR. LEEN: So the definition of undue economic hardship in the Zoning Code means, "an

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1 exceptional financial burden that would amount
2 to the taking of property without just
3 compensation or failure to achieve a feasible
4 economic return in the case of income-producing
5 properties."
6 So, basically, for non-income-producing
7 properties, it's a constitutional taking, which
8 means basically the Government is effectively
9 denying your use of the land; it's taking it
10 from you, based on a regulation. So, if the
11 property was completely unusable, let's say,
12 for example, there was a property, it was
13 basically abandoned, it had fallen into a great
14 state of disrepair, and there was nothing that
15 could be done to save that, and you made the
16 person keep it and you just would not let them
17 demolish it, so they couldn't live on that
18 property; that would constitute an undue
19 economic hardship, and you would have to allow
20 the demolition in those circumstances.
21 CHAIRMAN AIZENSTAT: But I'm sure in that
22 case, somebody would argue and say, "But you
23 can rehab this property back and make it
24 livable."
25 MR. LEEN: Potentially, and if you could

1 show that that was feasible, then it might not.
2 Then they're not denied -- It's only in
3 situations where they're effectively denied the
4 ability to live on the land, like -- Look, this
5 is a very extreme example. There are much more
6 reasonable ones, but if you said, "Oh, well,
7 we're not going to let you touch it, the
8 property, because it's an historic property,
9 even though no one can live in there," and
10 you're just making them maintain a very old
11 property that no one can live in, you can't do
12 that. You can't make them --
13 MS. SPAIN: Right.
14 MR. LEEN: -- keep the oldest house,
15 like -- let's say you're talking about the
16 oldest house in the United States, it was here.
17 You can't just make them keep that for the
18 benefit of the public.
19 MS. SPAIN: If it's not habitable. And
20 we've done that before.
21 MR. LEEN: It's not livable.
22 MS. SPAIN: We have -- not that, but we
23 have allowed properties to be demolished
24 because they're just not able to be saved. It
25 happened to two properties in the MacFarlane

1 Homestead Historic District, the wood frame
2 homes there. It was just impossible to save
3 it, and so it was unfortunate, but the City
4 allowed it to go down. It went to the Historic
5 Preservation Board, they agreed, and we allowed
6 it to be demolished.
7 MR. LEEN: In those circumstances, the
8 Government, if it wants to maintain the
9 property like that, it would essentially have
10 to buy it. That's really what the law says.
11 MR. FLANAGAN: But if I understand
12 correctly, you'll probably never get to an
13 undue economic hardship unless it's been
14 demolition by neglect, and at that point,
15 knowing the City of Coral Gables, no structure
16 is ever going to get to that condition so that
17 it would actually happen that way.
18 MR. LEEN: Well, I think that that's -- and
19 the Code Enforcement and Historic Preservation
20 would enforce it. If you caused the neglect,
21 though, you're going to have a very hard time
22 showing undue economic hardship. There is an
23 equitable component. You can't cause your home
24 undue economic hardship by neglect, at least
25 that would be my opinion that I would give.

1 MR. FLANAGAN: Right. I guess I'm just
2 seeing -- at that point, you'll never get to
3 undue economic hardship, because if you're
4 paying half attention to it, it will never get
5 to such a point of disrepair and decay where it
6 has fallen in on itself.
7 MS. SPAIN: That's right. That's why, if
8 you maintain the property, then you still have
9 a viable use of it.
10 CHAIRMAN AIZENSTAT: Any other comments?
11 Moving forward?
12 MS. SPAIN: Okay, are we taking out the
13 word residential?
14 CHAIRMAN AIZENSTAT: Yes, please.
15 MR. LEEN: Yes.
16 MS. SPAIN: Thank you.
17 Okay, so I go to 9 now?
18 CHAIRMAN AIZENSTAT: Yes, please.
19 MS. SPAIN: All right.
20 MR. RIEL: 5.
21 MS. SPAIN: 5?
22 CHAIRMAN AIZENSTAT: 5.
23 MS. SPAIN: Oh, 5. It's okay. 5 is just
24 cleaning up the section on variances.
25 CHAIRMAN AIZENSTAT: Any comments on 5 from

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1 anybody? No? Let's move forward to Number 9.
2 MS. SPAIN: Okay. Number 9 is the Cottage
3 Ordinance. This is an ordinance that was done
4 in the 1980s. The small homes in the northern
5 part of the City, on 50 by 100 foot lots, were
6 being demolished, and the City recognized --
7 The Planning Department recognized that they
8 were historically significant, and so they put
9 this Cottage Ordinance in place, and they went
10 from being tear-downs to being sought after,
11 mainly because of this ordinance, and it really
12 saved a bulk of the smaller homes in the North
13 Gables.
14 And what it does is, if you -- if the
15 property meets 12 out of these 19 criteria,
16 they can qualify as a cottage. It has to be, I
17 think, built before 1940. There's certain
18 criteria that's met. And if that's the case,
19 there are zoning incentives. They have a
20 reduced side setback for any addition that they
21 build. They have a larger footprint that they
22 can build. So it's a good thing to be a
23 cottage, and you're either a cottage or you're
24 not. It's -- you know.
25 But what has happened is that people have

1 gone and designated their homes as cottages.
2 They've done the addition, based on all the
3 zoning incentives, and then either they or the
4 next owner has come in and altered the property
5 and taken out the things that made them a
6 cottage. They've taken out the decorative
7 doorway surrounds, and so it becomes something
8 that isn't a cottage. The whole point of
9 saving these things was for these criteria.
10 And so there's a loophole that -- and honestly,
11 I don't think most of it was done
12 intentionally. I think the people that moved
13 in didn't realize that there was any zoning
14 incentives there, and the few that I've seen,
15 it was not the people that actually did the
16 work, it was a subsequent owner, and they have
17 done it with a permit. They've gone in to the
18 Board of Architects, they've taken out some of
19 the character-defining features of the homes,
20 and they've gotten a permit and they've gone
21 on. And I wanted to have some type of control
22 over that not happening, and the only thing
23 that we could think of, when we got together,
24 is to designate them as historic, because then
25 there's an extra layer of review for these

1 properties.
2 So that's what this is about. So, in order
3 to qualify for a cottage, everything else is in
4 place, but it needs to be designated as
5 historic. So, if they want the zoning
6 incentives to be a cottage and they want to
7 have the ability to do the bigger footprint and
8 the reduced side setbacks, they need to
9 designate the property as historic.
10 CHAIRMAN AIZENSTAT: That makes sense.
11 MR. RIEL: Okay, moving on to Number 6 --
12 CHAIRMAN AIZENSTAT: Any comments on --
13 MS. SPAIN: Any comments?
14 CHAIRMAN AIZENSTAT: -- Number 9?
15 No?
16 Thank you, Dona.
17 MS. SPAIN: Thank you very much.
18 MR. RIEL: Number 6 is basically a
19 clarification and a correction in the
20 inconsistencies of setbacks regarding surface
21 parking and parking garages from 20 to -- from
22 25 to 20 feet.
23 Okay, I'm going to continue.
24 Number 7. 7 -- Proposal Amendment 7
25 basically excludes the basement as a part of

1 the calculation of the total allowable gross
2 floor area for a single-family residence, and
3 we've also revised the definitions, to update
4 the definitions.
5 CHAIRMAN AIZENSTAT: Jeff, do you have a
6 question?
7 MR. FLANAGAN: Yeah. I think it's
8 just what I'll call a scrivener's error, Line
9 11. As it's being changed, the sentence
10 doesn't make any sense, because as changed, it
11 would say, "Habitable means an enclosed space,
12 daylighted and ventilated and protected from
13 the elements, located with reference to the
14 ground surface and of such ceiling height
15 subject to all applicable provisions of the
16 Florida Building Code."
17 When you say "with reference to the ground
18 surface and of such ceiling height subject to
19 provisions of the Florida Building Code,"
20 there's no reference to the ground surface of
21 what, of what such ceiling height, and I think
22 as it was previously drafted, it contained that
23 language and said, "With reference to the
24 ground surface and of such height as to comply
25 with the Florida Building Code." So I think

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the "as to comply with the," as is stricken through on Line 11, it needs to remain, so then it continues to say that habitable means enclosed space, daylighted, ventilated, protected from the elements, located with reference to the ground surface and of such ceiling height subject to -- no, I think you need to strike that, too. Strike "subject to all applicable provisions of the," so that you have enough such ceiling height as to comply with the Florida Building Code.

I think you need to strike the insertion, on Line 11, that says "subject to all applicable provisions of the," and then leave the "as to comply with the."

MR. RIEL: That's fine.

CHAIRMAN AIZENSTAT: Any other comments? That's fine.

MR. RIEL: And 8. Amendment Number 8, this is a clarification of the Mixed-Use District height regulations. There was some inconsistency in the language, so this is further clarification. This language was worked on with the City Attorney's Office and Planning and Zoning Division Staff.

CHAIRMAN AIZENSTAT: Any comments, questions? None?

MR. FLANAGAN: None.

MR. BEHAR: Wait, wait. It says --

CHAIRMAN AIZENSTAT: Robert?

MR. BEHAR: -- Commercial Districts. That includes the MXD?

MR. RIEL: This only includes the MXD.

MR. BEHAR: Only the MXD, okay.

MR. RIEL: Correct.

MR. FLANAGAN: On the height, we go from saying up to a maximum of -- let's just, as an example, up to a maximum of a hundred feet or limited to 45 feet, et cetera. Now the new language says up to and including 75 feet, up to and including a hundred. It says that in several places. Is there a reason why we -- What's the difference between up to and including --

MR. BEHAR: Because in my experience --

MR. FLANAGAN: -- versus limited to or a maximum of?

MR. BEHAR: Up to a hundred doesn't include a hundred. So this is, I mean, my guess, it's trying to tell you that a hundred --

MR. FLANAGAN: Is a hundred.

MR. BEHAR: -- is a hundred.

MR. FLANAGAN: So a maximum of a hundred feet doesn't mean a hundred feet?

MR. GRABIEL: You can build 99.9?

CHAIRMAN AIZENSTAT: Let me ask you --

MR. BEHAR: Maybe you can check that.

MR. RIEL: No, you're right, that's --

MS. KEON: Up to a hundred, but not a hundred. That's what it's saying.

MR. FLANAGAN: Okay.

CHAIRMAN AIZENSTAT: When it's saying up to a hundred feet --

MR. FLANAGAN: Seriously?

CHAIRMAN AIZENSTAT: -- that's the slab of the roof?

MR. RIEL: Yes. That's how high, yes, correct.

CHAIRMAN AIZENSTAT: And you're allowed to add other architectural elements.

MR. RIEL: Correct. In the Mixed-Use, it's 25 feet, correct.

CHAIRMAN AIZENSTAT: And where do you start calculating zero? Do you do it by base flood elevation?

MR. RIEL: The center line of the street. The center line of the adjacent streets.

CHAIRMAN AIZENSTAT: Center line of the street?

MR. RIEL: Yes.

CHAIRMAN AIZENSTAT: Not base flood?

MR. RIEL: No.

MR. BEHAR: Well --

CHAIRMAN AIZENSTAT: Is there a reason for that?

MR. BEHAR: Well, hold on.

MR. RIEL: That's the definition.

MR. BEHAR: If -- But if you -- I'm just going to -- If you have a requirement, let's say, by FEMA, because the street may be lower but you have to raise the finished floor, for whatever reason, you go from the street even though you may have to raise the finished floor three feet, you know?

MR. RIEL: I don't know.

MR. BEHAR: So the street doesn't matter, or is it the finished floor elevation, the finished -- yeah, the FEMA finished floor elevation?

MR. RIEL: Street. Established grade of

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the street. That's the definition.
MR. FLANAGAN: That should be changed.
MR. RIEL: That hasn't changed.
MR. BEHAR: I know, but just thinking about that now --
MR. RIEL: In terms of content, we're not changing anything in this, so understand, this is only to clarify the provisions.
CHAIRMAN AIZENSTAT: Okay.
Julio, do you have other comments?
MR. GRABIEL: No. I've always used the center line of the street, but this is a good point.
CHAIRMAN AIZENSTAT: Would it be appropriate at this juncture to bring that up and --
MR. RIEL: Well, Staff hasn't done an analysis on that, so we're not going to be able to comment, so -- I mean, what you have before this evening is suggested amendments --
CHAIRMAN AIZENSTAT: To the existing.
MR. RIEL: -- to the existing language. So you're getting into issues that are kind of how we would interpret other provisions of the Code. So, I mean, if that's something you want

us to look into, in the future, we certainly can do that, but that's not a part of the discussion this evening.
CHAIRMAN AIZENSTAT: Robert?
MR. BEHAR: I'm okay with that, yes.
MR. RIEL: Okay, let me move on to Number 10. 10 basically removes the ability to calculate a breezeway as a parking space, to meet the minimum parking requirements. This is something that has been interpreted in the past, and we just want to make sure that that doesn't happen again, so that's what this amendment is for.
MR. FLANAGAN: Is this going to create any legal non-conforming parcels or issues?
MR. RIEL: It will. It will, and those will be considered legal nonconforming.
MR. FLANAGAN: Okay.
CHAIRMAN AIZENSTAT: Didn't we, at one time, want to do away with --
MR. RIEL: What's happened is, they've designed breezeways that don't have a minimum dimension, and they say it's a parking space, and basically, what we're saying is, you can't count breezeways anymore.

CHAIRMAN AIZENSTAT: Okay. Any comments? Jeff?
MR. FLANAGAN: No.
CHAIRMAN AIZENSTAT: Okay.
MR. RIEL: Number 11. Number 11, currently the definition, pervious pavers or other similar pervious materials are permitted as landscape material. We've had the case where residential properties have put pavers through almost the entire front lot and to be considered a landscape material. So this change will remove that ability to cover the entire lot, and therefore they're subject to setbacks and obviously other Zoning Code requirements.
CHAIRMAN AIZENSTAT: Comments? Continue.
MR. RIEL: 12. Amendment 12 is -- basically provides for a minimum dimension for porte-cocheres and also clarifies interior clearance requirements for -- within a garage. Basically, it previously said no obstructions, but what we're doing is providing the opportunity for generally what is a parking space, 9 by 18 and a half.

MR. BEHAR: Okay, you're incorporating, under the porte-cochere, 12 feet. Is that a new dimension?
MR. RIEL: It's basically consistent with, you know --
CHAIRMAN AIZENSTAT: One car.
MR. RIEL: -- a one-car garage and the things above.
MR. BEHAR: Well, but in some cases -- and I've dealt with a house that is on Columbus Boulevard, that the porte-cochere was not 12 feet. Is that creating a -- like, you know legal non-conforming?
MR. RIEL: Well, if there are, yes. I mean, they'd be considered legal nonconforming until this is in effect, yes.
CHAIRMAN AIZENSTAT: But doesn't our Code provide for, when you do a home, either a garage or a porte-cochere?
MR. RIEL: Well, there wasn't a minimum dimension.
CHAIRMAN AIZENSTAT: No, no, I understand that. So it should be fitting that it should be the same dimension. I guess what I'm getting to, it should be --

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MR. RIEL: Correct.
CHAIRMAN AIZENSTAT: -- the same dimension as a garage.
MR. BEHAR: But that's for new construction.
CHAIRMAN AIZENSTAT: Correct.
MR. BEHAR: You can create a problem now with --
MR. RIEL: I mean, I don't know if it creates a problem, but it's consistent with what the other dimensions are. That's what we --
CHAIRMAN AIZENSTAT: See, I agree with that --
MR. RIEL: That's the standard.
CHAIRMAN AIZENSTAT: -- as to it being consistent. I think you have a non-conforming. Now, if they're going to tear down the structure and they want to go and build a new structure, then they have to conform to the 12 feet.
MR. BEHAR: Fine.
MR. FLANAGAN: If it gets damaged or demolished by probably, what, more than 50 percent, then you have to comply.

CHAIRMAN AIZENSTAT: Correct.
MR. BEHAR: What about if you don't have to, if you're on the setback and some --
CHAIRMAN AIZENSTAT: Then I wonder if you have to go before the -- I think you need a variance. I wonder if you have to go before the Board of Adjustments on that, as a hardship.
MR. BEHAR: But why do they have to go through that extra effort of a board, when --
CHAIRMAN AIZENSTAT: Well -- Craig?
MR. LEEN: You're saying that once the Code is changed and the building is destroyed and you're rebuilding it?
MR. BEHAR: Or it gets damaged and you have to put it back.
MR. LEEN: Well, I would have to interpret, you know, Article -- the article related to nonconformities, which do allow improvements to nonconformities, and it has that 50 percent type language. It would depend on how much of it was destroyed.
MR. FLANAGAN: But let's assume the porte-cochere was built, different dimensions than this, then damaged or demolished by more

than 50 percent, and you want to come back and rebuild it.
MR. LEEN: Well, I would want to hear from Zoning, as well, but I thought it was the building, the structure itself. It's not just the porte-cochere that's 50 percent.
CHAIRMAN AIZENSTAT: No, it's the structure, but don't you have to bring up to Code the rest of the structure, including the porte-cochere?
MR. LEEN: Well, I can tell you; wait one second.
MR. BEHAR: When it comes to new construction, it makes sense and it should be, I agree. But there's still instances that we may have an issue with.
CHAIRMAN AIZENSTAT: Craig, let me ask you a question. Let's say you have an existing condominium that is higher than what the Code provides or allows for today. Let's assume, for some reason, that condominium has a disaster or a problem. Can that condominium -- can those individuals get back their apartments? Can you build that back up?
MR. LEEN: I have to tell you, I would try

to interpret it to allow that, because they have a vested -- they have a property right, in that instance. So I would -- If we interpret it so that -- This is the type of example where you might have a taking. If you interpreted the Code to deny them their condominiums, so they completely lose them, we might have to pay for that. So I would view my authority to be to interpret it consistently with the Constitution so -- in that instance. But I'd have to write an opinion on that, and it would be just in that specific case, because we can always interpret the law to be consistent, because we're supposed to follow the constitutional laws of Florida, as well.
CHAIRMAN AIZENSTAT: Correct. Plus we want to be consistent.
MR. LEEN: Yes. But the answer to your question is, "a nonconforming structure or non-conforming portion of a structure that is destroyed to an extent exceeding 50 percent of its replacement cost at the time of its destruction shall not be reconstructed except in conformity with these regulations."
CHAIRMAN AIZENSTAT: So that means that

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porte-cochere could not exist the way it is.
MR. LEEN: "All residential structures located in a residential district may be reconstructed if destroyed to any extent, provided that such reconstruction does not increase the extent of the nonconformity existing prior to destruction."
CHAIRMAN AIZENSTAT: Okay.
MS. KEON: So you can rebuild back to what you had.
MR. LEEN: Yes.
CHAIRMAN AIZENSTAT: That's fine.
MR. BEHAR: Yes.
CHAIRMAN AIZENSTAT: Any other comments?
MR. GRABIEL: Eric, on the B, the minimum clearance of nine feet and 18 and a half, is so that if they build anything within that space, it still maintain those dimensions?
MR. RIEL: Correct.
MR. GRABIEL: Okay.
CHAIRMAN AIZENSTAT: Move on, please.
MR. RIEL: 13. 13 is an amendment to height of walls and fences. Basically, it provides a new provision that allows columns in connection with a fence may have a cap or

architectural feature as a part of the vertical extension of the column, a maximum of four inches. This was something that was requested by the Board of Architects as well as the City Architect.
CHAIRMAN AIZENSTAT: Okay.
MR. BEHAR: So you have -- You're allowed six feet now plus another four inches?
MR. RIEL: Correct, to put the cap. Or four feet with a cap, depending on whatever the minimum wall is.
CHAIRMAN AIZENSTAT: Okay.
MR. FLANAGAN: In Subsection C, it says walls confined completely within the U of a residence. What's the U?
MR. RIEL: I assume that's a U-shaped configuration of a duplex or residence, when it has that design.
MR. FLANAGAN: Oh, like an internal or interior courtyard?
MR. BEHAR: Yeah, like a little courtyard, you can --
MR. RIEL: A courtyard. Courtyard area.
MR. FLANAGAN: Okay. And G? I think we just need to add -- It says columns in

connection with a fence may include a cap. Up above, we're talking about a fence or wall, so I think we need the consistency, columns in connection with a fence or wall may include a cap, and then also at the very end of that sentence, up to a maximum of four inches above the max permitted fence or wall height.
MR. RIEL: Okay, good. That's not a problem.
MR. FLANAGAN: And then in B, which is an existing provision, it says, "Subject to prior approval of the City Manager, fences may be approved to be higher on certain roads or certain properties."
Is that proper to be the City Manager, or should that be with the Zoning Administrator or with the Building Official? I mean, it seems like it may make more sense -- I don't know who else approves it, but wouldn't it make more sense if it was with the Building Official?
MR. RIEL: I think that's just language that's left over. I mean, the City Manager or designee. We can put Development Review Official. That's standard language.
MS. KEON: I would change that to

Development Review Official.
MR. RIEL: DRO, okay.
MS. KEON: Yeah.
CHAIRMAN AIZENSTAT: Everybody okay with that?
MR. RIEL: Okay.
CHAIRMAN AIZENSTAT: We'd be on Number 14.
MR. RIEL: Number 14, the only change on 14, most of the other changes were not content, changing -- It is on Line 11. Right now, the way the provisions are written, a permanently installed generator is an auxiliary or accessory use. There's other setback requirements for auxiliary and accessory uses within the Code which are in conflict. So, this, by removing that language, clarifies that these are the setbacks, which is very specific in terms of permanently installed generators, so --
CHAIRMAN AIZENSTAT: Now, how does it work with an existing generator, as far as noise ordinance, Craig?
MR. LEEN: In terms of the noise ordinance?
CHAIRMAN AIZENSTAT: Yeah. In other words, do they have to come up to Code? Let's say

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there's homes that have older generators; they don't have new generators.

MR. LEEN: What you're saying, if they violate the loudness requirement, they're too noisy?

CHAIRMAN AIZENSTAT: Yes.

MR. LEEN: Well, let me pull up the Code, because I think that there may be a provision addressing that. One second. If it's okay, Mr. Chair, please, you know, feel free to proceed, and I'll --

MR. AIZENSTAT: We'll proceed.

MR. RIEL: And the only one other change that I noticed today, on Page 20, as well, Line 22, at the end, you'll notice, it says front yard setback. I think we should remove the word yard, because front yard setback is very restrictive, and that was not the intent. It was meant to be front setback.

CHAIRMAN AIZENSTAT: What line item?

MR. RIEL: Line 22, where we're suggesting they add the word yard.

MS. KEON: On 14.

MR. RIEL: On 14, yes.

MS. KEON: On Page 20?

MR. RIEL: Page 20, Line 22, I suggest removing, at the end of that sentence --

MS. KEON: Oh, yeah.

MR. RIEL: -- the word yard.

MS. KEON: Oh, okay, that sentence.

MR. FLANAGAN: Wait, remove the word yard?

MR. RIEL: Correct.

MS. KEON: Yeah.

MR. FLANAGAN: So no generator shall be allowed in the front setback?

MR. RIEL: Correct. That's what the intent was.

MR. BEHAR: Yeah, that's it.

MR. FLANAGAN: Well, I view it -- That actually runs contrary to what I was thinking. You have setbacks and you also have our front yard, which is going to be your front setback, probably, plus however many feet till you get to the front side of the house. In my mind, you don't want a generator in the front yard.

MR. BEHAR: Well, but if you have -- Let's say a setback is 25 feet, and you have 35 feet to the property line because your house was built 10 feet --

CHAIRMAN AIZENSTAT: Right.

MR. BEHAR: -- further back, and you do an enclosure --

CHAIRMAN AIZENSTAT: As long as it's not visible from the street.

MR. BEHAR: Would that not --

MR. FLANAGAN: Yeah, it has to be enclosed. The language says it can't be visible.

MR. BEHAR: Right, so --

CHAIRMAN AIZENSTAT: Right.

MR. BEHAR: -- if you have more than the required setback --

MR. GRABIEL: Then you can have it in the front.

MR. BEHAR: -- then you could do it.

MS. KEON: Right.

MR. BEHAR: As long as you conceal it, so --

MR. FLANAGAN: I think my mind set on all of this was, it talks about allowing generators in a side street setback, and I was thinking we should add some language that said you could use the side street setback only if the interior side and the rear yard weren't available, almost an attempt to keep it -- even though you have to shield it with shrubs --

you're trying to keep it away --

MR. BEHAR: Right.

MR. FLANAGAN: -- from visibility, and so in my mind set of the side, keeping it away from the side street, also keep it away from the front yard.

MS. KEON: Well --

CHAIRMAN AIZENSTAT: If you're able to.

MR. FLANAGAN: If you're able to.

If you've got no problem with it, then that's fine.

MR. BEHAR: No, I would agree with you, if you're able to do it, you don't want to put it in the front yard. But if you don't have a choice --

CHAIRMAN AIZENSTAT: Correct.

MR. FLANAGAN: If you have no choice --

CHAIRMAN AIZENSTAT: Right. If you have no choice and you conceal it, then you should be allowed to, but I understand.

MR. BEHAR: But I think that by removing front yard from here, they'll be adding additional language to --

MR. RIEL: That was not the intent, to put the word yard in there. That was a mistake on

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my part. The intent was to -- the way previous read, front setback, because this went through an extensive review, a number of years ago, and in terms of commenting on these regulations, outside of what we're suggesting here, I don't think we're able to do that this evening. Staff's recommending only the changes in the language on Number 11, and then kind of what I'll call the scrivener's errors on Line 22.

CHAIRMAN AIZENSTAT: So you would take his comments into --

MR. RIEL: We can certainly take his comments, and when we do future amendments to the generators -- because this went through an extensive review.

MR. BEHAR: I mean, I think that it becomes very lenient in the sense that interior side yard setbacks, you know, you could have less than the 20 percent of the total. You could go up to five feet. Is that not correct? You're allowed five feet minimum, whether the 20 percent is not part of it, right?

MR. RIEL: With the setback, you're talking about from a structure? I mean, it can vary.

MR. BEHAR: Because I think that -- I think

you're calling for a five -- you know, let's say a five feet --

MR. RIEL: Five foot, side.

MR. BEHAR: Permanently installed generators, now you're allowed five feet from the side set yard, where before you were not allowed to do that. You're striking out permanently installed, right?

MR. RIEL: No. The reason we're saying permanently installed standby is that just -- that only -- These whole provisions apply to permanently installed. So, rather than keep putting that term in, that's why we're removing that. This is permanently installed stand by generator provisions. That's all that applies. So instead of rewriting those five terms every sentence, we just removed the reference. That's why, if you look at Line 9, it says, herein referred to as generators.

Again, if the Board wants to -- you know, us to get into this, we'll have to do --

CHAIRMAN AIZENSTAT: A different --

MR. RIEL: And we'll need to get some very specific direction.

CHAIRMAN AIZENSTAT: Jeff? Robert?

MR. FLANAGAN: Well, Line -- Eric, we discussed Line 7 and Line 32. Line 7 uses the words county, state or federal regulations.

MR. RIEL: Okay.

MR. FLANAGAN: Line 32 uses county, state and federal requirements. I think there should be consistency between the two.

MR. RIEL: Okay.

CHAIRMAN AIZENSTAT: That's a good point.

MR. FLANAGAN: Pick one. Also, in that Subparagraph 4, it goes on to say -- Let me put it this way. In 1, 2 and 3, you say either no generator in the front setback or you provide a min. of 10 feet from the rear or five feet from the interior side. In the side street, the language gets awfully wordy, and I think you can just easily say that, effectively, no generator may be installed less than 15 feet from the side street property line. I think it's a combination of the added language plus the existing language. It just reads much easier if you track, essentially, the language from the other 1, 2 and 3. It doesn't change the wording -- or it doesn't change the intent, rather. I think it just reads a lot easier.

CHAIRMAN AIZENSTAT: Okay.

MR. FLANAGAN: Number 6, golf course setback, five feet from the perimeter property boundary of the golf course. I don't know what a perimeter property -- I mean, do we just say the property line?

MR. RIEL: I'm not sure about that. Perimeter property boundary? It's a golf course. Yeah, property line. That's fine.

MR. FLANAGAN: Okay. Then my last comment -- Well, back to the earlier comment. I would prefer to see somebody use the interior side or the rear yard before being allowed to use the front yard or the side street setback. I don't know how we memorialize that.

And then in Paragraph 14, the last sentence does not make any sense. "Maximum height of generators identified herein, may be in addition to applicable requirements with flood zone areas."

MR. RIEL: Essentially, the flood zone height plus the four feet is the permitted height.

MR. FLANAGAN: "Identified herein," comma, "may be in addition to applicable requirements

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with flood zone areas."
MR. RIEL: We can clarify -- We'll clarify that sentence.
MR. FLANAGAN: Okay. I mean, to me, a four foot high generator sitting on the ground is a four foot high generator, wherever it gets placed. Okay. That's all I've got.
CHAIRMAN AIZENSTAT: Any other comments on -- Craig?
MR. LEEN: I have a response to your question, Mr. Chairman.
CHAIRMAN AIZENSTAT: Please.
MR. LEEN: So presently, the proposed provision references Section 38-29 of the Code as to the noise level that's permitted. Now, interestingly, 38-29 of the City Code is still in the City Code, but it's an older version of our noise ordinance, and that really should be citing to 34-124, which has much more specific provisions related to noise. And the one I think would apply here would be 34-124, 13, which applies to air conditioner, electric motor or pool pump. There's nothing that says generator, so -- but this one says the use of an air conditioner, electric motor, pool pump

and/or similar equipment which creates a loud, excessive, unnecessary or unusual noise in connection with the operation of said equipment in any residential area, is prohibited, basically. There's nothing that specifically talks about a generator.
CHAIRMAN AIZENSTAT: So would you change the referenced Code?
MR. LEEN: I think you could put both. Both are -- One of them is in our Offenses section and one of them is in our Nuisances section. So you probably should reference both, and I would recommend to Staff and I would recommend to this Board that it reference both 38-29 and 34-124.
CHAIRMAN AIZENSTAT: In that section?
MR. LEEN: Yes.
CHAIRMAN AIZENSTAT: Okay.
Robert?
MR. BEHAR: Okay. What happens to a temporary generator? How does that get affected with this?
CHAIRMAN AIZENSTAT: Well, wait. Let's stay on the subject that we're talking about right now, with the reference to noise. Are we

in agreement to reference both sections?
All right, go ahead. Now go on to the temporary.
MR. BEHAR: How does this apply to the temporary, Craig?
MR. LEEN: As presently written and as being amended, it doesn't appear to allow temporary generators. I would want to refer to Zoning or Planning, whether -- Do we have another provision that you're aware of that allows for temporary generators?
MR. RIEL: I don't know.
MR. LEEN: So they're not allowed. It doesn't mean that they're enforced.
Now, you know, a lot of these are emergency situations, a hurricane, so I don't see Code going around enforcing it, but I guess if someone complained, it's conceivable they could seek to enforce the fact that that's not a permissible use. Probably, the way they would do it would be as a -- maybe as a noise violation. Now, I'm not saying that they should or that that's the practice in the City. I see a lot of generators out in those circumstances, and I've never heard of them

being told that they can't use one, but I've only been here two years.
MS. KEON: I didn't know -- It isn't permissible to have a portable generator, then?
MR. LEEN: It's not permitted in our Zoning Code. Now, you could make an argument that a permanent generator is more like a fixture in a house, and that should be covered by the Zoning Code, whereas maybe a temporary one would not.
MS. KEON: Right.
MR. LEEN: You could also make the argument that because it allows permanent ones, and doesn't allow temporary ones, that temporary ones aren't allowed. My interpretation would be, if it comes to me -- and of course, you may want to make this permanent -- I would generally, you know, advise Code Enforcement to allow people to have temporary generators during an emergency, unless it's causing some tremendous nuisance or a safety issue, and then they need to take action.
MS. KEON: But it may not be a -- but how do you define that emergency? It may not be an emergency such as a hurricane or whatever. It could be an emergency related to that

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1 particular family.
2 MR. LEEN: Losing power.
3 MS. KEON: Due to some electric power issue
4 within a home and a need of a resident within
5 that home, they may require that sort of thing.
6 So I don't -- I think that's -- So what you're
7 saying is that the Code doesn't prohibit -- it
8 doesn't prohibit temporary or portable
9 generators. It just says that --
10 MR. BEHAR: No, it doesn't enforce it, but
11 you're not allowed to have it. Right?
12 MS. KEON: No.
13 MR. LEEN: The Code doesn't -- The Code
14 allows -- The Code prefers and allows permanent
15 installed generators, and that's probably what
16 we would tell residents, "If you want a
17 generator, you should have one installed."
18 MS. KEON: Okay. But does it even speak to
19 portable? It doesn't even speak to --
20 MR. LEEN: That's what I'm being told.
21 MS. KEON: It's silent on the issue of --
22 MR. RIEL: I don't believe it does.
23 MR. LEEN: Now, our Code is generally
24 considered to be a Code where if it doesn't
25 permit something, it prohibits it, but, you

1 know, there are some rules of construction, and
2 we would have to look at the specific case.
3 MR. RIEL: And they're also -- during, you
4 know, hurricane events, there's emergency
5 ordinances put in place, which I'm assuming
6 would reference them --
7 MS. KEON: Right.
8 MR. RIEL: -- the allowance of emergency
9 generators, and does define those. My
10 experience is, most local governments have
11 those provisions in there.
12 MS. KEON: But I'm saying to you that there
13 may be or could be instances that in an
14 individual home, it may not be a declared
15 emergency, where someone's power is affected
16 and there may be an individual in that home
17 that is dependent on something to sustain
18 themselves, and they need a power source, and
19 so there is a portable generator that flips on
20 in the event that -- you know, I mean, there's
21 people that are brought home on respirators,
22 that live a very -- you know, some period of
23 time on respirators or some sorts of assist
24 that, you know, you may not have a built-in
25 generator, but you may have a portable

1 generator in, you know, the event that --
2 MR. RIEL: I don't know.
3 MS. KEON: So --
4 MR. RIEL: Let me -- Let Staff look at it
5 and we'll get back with you.
6 MR. LEEN: The issue -- The way the issue
7 would come up would be that you might have a
8 generator running all night. In the
9 circumstance you mentioned, maybe someone's out
10 of -- maybe it's really hot and it's to run the
11 air conditioner, or whatever it would be, but
12 they're running their generator and it's really
13 loud, and we get a complaint. And let's say
14 they are doing that for several days. Right
15 now, I would suspect that at some point Code
16 Enforcement would ticket them, because you're
17 supposed to have a permanent generator. You
18 shouldn't be running the -- You're making a lot
19 of noise at night with this temporary
20 generator. However, you know, maybe that's
21 something that should be addressed.
22 CHAIRMAN AIZENSTAT: How does the City view
23 that, or how does your office view that, with
24 generators, with temporary --
25 MS. SALAZAR-BLANCO: Good evening. For the

1 record, Martha Salazar-Blanco.
2 Generators, temporary. The temporary
3 generators is actually enforced by the
4 Electrical Official. He typically only reviews
5 and approves those type of generators during
6 hurricane or emergency activities in the City.
7 If there's power outages and people need an
8 emergency generator, they come to the
9 Electrical Official and then he reviews and
10 approves.
11 As far as Code Enforcement is concerned,
12 yes, we've had some issues where some people
13 have put their supposedly temporary generators
14 and they might say, "Well, it has wheels, so it
15 is a temporary generator."
16 So the Electrical Official will go out
17 there, look at the generator, and then they
18 come back to Zoning and he tells me, "You know
19 what, the hookup is not a temporary generator.
20 That's a permanent generator." So then Code
21 Enforcement gets involved, and then we start,
22 you know, working with the homeowner. But
23 basically, the Electrical Official is the one
24 that reviews those applications, and based on
25 the emergency or the request, it's on a

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case-by-case basis.
MS. KEON: But so, in practice, the City allows portable generators?
MS. SALAZAR-BLANCO: Based on a case-by-case basis.
MS. KEON: But the practice is that it is allowable.
MS. SALAZAR-BLANCO: Yes.
MR. LEEN: In an emergency --
MS. SALAZAR-BLANCO: And it doesn't come through Zoning. It goes through the Electrical Division.
MR. LEEN: But there are situations, though, where people don't go to Electrical and just hook up their temporary, and then they get complaints.
MS. SALAZAR-BLANCO: Yeah, and that would be a violation.
MR. LEEN: And then they get complaints.
MS. SALAZAR-BLANCO: Right.
MR. LEEN: And they get complaints.
MS. SALAZAR-BLANCO: That's correct.
MR. LEEN: And my understanding is that Electric only approves them in really emergency situations.

MS. SALAZAR-BLANCO: That's correct, or if there's a power outage and they want -- and they need a generator, they will go to the Electrical Official and they will request it, and that's up to him. He's the one that reviews those applications.
MR. LEEN: There's nothing in the Code, though, that discusses that.
MS. SALAZAR-BLANCO: Right. It's not in the Zoning Code, and in fact --
MS. KEON: So you have a policy and a practice that are in conflict.
MR. LEEN: Well, it would --
MS. SALAZAR-BLANCO: When this first came around, actually, I don't know if you recall, Eric, this -- it came before the Planning and Zoning Board and we discussed temporary generators, and it was decided that this was going to be decided by the Electrical Official, that it would not be conducive for Zoning or Building to review that, and so it was taken and stricken out.
MS. KEON: And I think that I was on the Board when that was discussed. I can vaguely remember it. But it wasn't dealt with as

either not allowing -- allowing or not allowing them. It was more the safety issue of the electrical hookup that was the issue, and not anything else.
MS. SALAZAR-BLANCO: Right.
MS. KEON: So it was dealt with as -- you know, because you didn't want them, you know, hooked up in such a way or sort of jury-rigged in such a way that it created, you know, a danger. So it wasn't -- so that really is an entirely different issue than this.
MS. SALAZAR-BLANCO: Than that.
MR. LEEN: And I understand what you're saying. There's not a specific prohibition on temporary generators.
MS. KEON: Right.
MR. LEEN: The Code -- so it's not even treated as a zoning issue, I guess, is what's being said.
MS. SALAZAR-BLANCO: That's it.
MS. KEON: Right.
MR. LEEN: So it's not viewed to be in violation of the Zoning Code. It would be preferable to have a provision that governed temporary generators.

MS. KEON: But what you had said is that if it isn't allowed, then it is not allowed.
MR. LEEN: As a zoning matter, but what Staff's telling you is, they don't even treat it as a zoning issue. They don't view it as subject to our Zoning Code, because there's a lot of things that people may have, bicycles or things like that, which they don't treat as zoning.
MS. KEON: Okay.
MR. LEEN: That's basically what they're saying.
MS. KEON: Well, then, I think it's very important that it be very clear to Enforcement that portable generators are not treated as a zoning issue. They are simply an electric -- I mean, it's the electrical component of them and how they're hooked up is the issue, so it's --
CHAIRMAN AIZENSTAT: Well, that's why the Electrical Official is --
MS. KEON: Right. But it's not treated as a zoning issue.
MS. SALAZAR-BLANCO: And the officers, the Code Enforcement officers, are aware of that, they really are, and if they see something

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that -- you know, they know their zones pretty well --

MS. KEON: Right.

MS. SALAZAR-BLANCO: -- and they drive and if they see something that they haven't seen for a while, they will go to the Electrical Official and ask if there is a permit or not.

MS. KEON: Okay, but it's dealt with as an electric issue. It's not dealt with as a zoning issue.

MS. SALAZAR-BLANCO: Right.

MS. KEON: Okay.

CHAIRMAN AIZENSTAT: Any other --

MR. BEHAR: Sorry.

MS. KEON: Oh, well.

MR. RIEL: Moving on, 15.

MS. KEON: Okay.

MR. RIEL: Amendment 15 is basically to allow fountains, reflecting pools, planters and flagpoles within the setback area, and that's pretty simple, in terms of what we're suggesting.

Amendment 16, what we did here is, we created a table, an accessory use, building and structure category table. These allowed

accessory uses were in each of the districts, so we removed them from each of the districts and put them into a simple table that's easily referenced. The stuff noted in yellow on this page are just inconsistencies that we identified by going through that practice.

CHAIRMAN AIZENSTAT: It's actually very good, that table.

MR. RIEL: And 17 is basically the same thing. We went through the Code again and just looked at the use table, and we did identify some errors and those are noted kind of in the underlining. There's only about four or five.

So that basically concludes Staff's presentation, and we recommend to the Board --

CHAIRMAN AIZENSTAT: Just -- No, what about 18? I think there's a typo.

MR. RIEL: 18? 18 is just the definitions that are in, actually, each of the -- When we discussed each of the separate amendments, I included those changes that you all have discussed. So 18 is just kind of putting them into one section.

CHAIRMAN AIZENSTAT: And Line 15, what's a forbs?

MR. RIEL: It's just -- it's basically, how you determine a green living material, a forb, yeah. I was asked that before, so --

MS. KEON: I never heard people -- A forb? Forbs.

MR. RIEL: So, again, Staff recommends the Board recommend approval, subject to the changes. The only remaining item was on Amendment Number 2 --

MR. LEEN: Yes.

MR. RIEL: -- that Mr. Leen was going to provide some language.

MR. LEEN: So I took a look at 3-207, A, 1, and I would note for the Board that it presently requires the $500 in value to be determined by the Building Official. So there is still a concept here that this involves the Building Official's decision whether a permit is required, and the Building Official is the one that makes the determination.

So I don't know if this would necessarily mean that someone who just wants to do any work under $500 doesn't have to go to the Building Official. I still think underlying this is the idea that if it's something that requires a

permit and it's under $500, you don't have to go to the Building Official, and that's our concern, but I see your concern. So what I would propose is that perhaps restore the $500 language and put something like this: "No person shall commence any construction, demolition, modification or renovation of a building, structure, awning or canopy that requires a permit under the Florida Building Code -- "

CHAIRMAN AIZENSTAT: Can you read that again, please?

MR. LEEN: "No person shall commence any construction, demolition, modification or renovation of a building, structure, awning or canopy" -- Probably it should be comma, "which would require a permit under the Florida Building Code," comma --

CHAIRMAN AIZENSTAT: Right.

MR. LEEN: -- and then I guess you could then restore the value, of which exceeds $500 in value.

MS. KEON: You know, that always bothers me. What if I want a really expensive door, and what if I really want a cheap door? Why,

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because I choose to have a very nice door, should I incur that cost when I could do the same thing that's cheaper. Or what if the locks I'm going to -- or the door handles that I'm going to put on my door happen to be hand-cast and of a certain whatever? Why should I have to then get a permit, when if I bought the whatever at Home Depot, off the shelf, I wouldn't have to?

MR. LEEN: Well, that's what we were trying to do, because --

MS. KEON: Right.

MR. LEEN: That was the goal, was because right now, a cheaper door, at least one resident -- and I think that this is an issue that's recurred --

MS. KEON: Yeah.

MR. LEEN: -- believed that they didn't have to seek the permit, even though it was something that required a permit.

MS. KEON: Right.

MR. LEEN: Because they thought, oh, it's under $500. So that was the goal. It's just hard to word it in a way that both allows anyone -- you know, everything under 500 to be

done except if a permit is required. It's sort of circular.

MR. BEHAR: We're concerned, let's say, with the structural integrity of the structure, right?

MR. LEEN: Yes.

MR. BEHAR: Maybe that -- maybe something like that, because you're right, I mean, a door --

MS. KEON: There's all models of doors.

MR. BEHAR: Right.

MR. LEEN: Well, like --

MS. KEON: You could have a hand-carved door. I mean, you can --

MR. LEEN: Well, I would -- to address your issue, I would say -- I would add, "that requires a permit under the Florida Building Code," comma, "without first obtaining a building permit, unless this requirement is waived by the Building Official," and I would keep it that way. But then something that's a mere repair, whether it's over 500 or not, you would not have to go to the Building Official, and that's not --

MS. KEON: But you wouldn't require a

permit for it, either.

MR. LEEN: Because there's no permit required.

MS. KEON: Correct.

MR. LEEN: But your concern was that by not putting, that requires a permit under the Florida Building Code, any work at all in a house, even one that doesn't require a permit, you'd have to go to the Building Official.

CHAIRMAN AIZENSTAT: Correct.

MR. BEHAR: Correct.

MR. LEEN: That was your concern.

MR. BEHAR: Yes.

MR. LEEN: So I would add, "that requires a permit under the Florida Building Code."

CHAIRMAN AIZENSTAT: That's what Jeff said.

MS. KEON: Right.

MR. LEEN: Yeah, which is what you said. I would add it right after canopy.

MS. KEON: And forget the dollar amount.

MR. LEEN: And remove the dollar amount.

MS. KEON: Yeah. I think you should strike the dollar amount. And what if I say I got it on sale, it's under 500.

MR. LEEN: Yes, so if I may, Mr. Chair,

I'll reread it.

"No person shall commence any construction, demolition, modification or renovation of a building, structure, awning or canopy that requires a permit under the Florida Building Code, comma, without first obtaining a building permit, unless this requirement is waived by the Building Official, pursuant to the Florida Building Code, except that the Building Official may not waive any required approvals by the Board of Architects."

MS. KEON: That's so wordy.

CHAIRMAN AIZENSTAT: Does that make sense, when you --

MS. KEON: No.

CHAIRMAN AIZENSTAT: Something there just didn't strike, when you said Florida Building Code again.

MR. FLANAGAN: Craig, you may be able to get it if you say -- sorry -- awning or canopy. I think you then said -- what?

MR. LEEN: That requires a permit under the Florida Building Code?

MR. FLANAGAN: Okay, yeah, "without first obtaining a building permit, unless a permit is

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1 not required by the Florida Building Code."
2 That may not work, either.
3 MR. LEEN: Well, you could put, "unless
4 this requirement is waived by the Building
5 Official," and eliminate "pursuant to the
6 Florida Building Code," because that's assumed.
7 MR. FLANAGAN: Correct.
8 MR. LEEN: You know, he can't waive
9 something that he doesn't --
10 CHAIRMAN AIZENSTAT: You're already putting
11 the Building Code above.
12 MR. LEEN: Yeah, you already had mentioned
13 it. I think it would be appropriate to remove
14 that, because he does have authority to waive
15 things under the Florida Building Code.
16 MS. KEON: He can waive things under the
17 Code?
18 MR. LEEN: Yes.
19 MS. KEON: Okay.
20 MR. LEEN: Certain permits.
21 CHAIRMAN AIZENSTAT: Is everybody clear on
22 that?
23 MR. RIEL: Yes.
24 MR. LEEN: So you're inserting Florida
25 Building Code above, and removing it after

1 Building Official.
2 MR. FLANAGAN: Okay.
3 MS. KEON: Can't you just say, a building
4 permit must be obtained before commencing
5 construction, da, da, da, unless waived by the
6 Building Official? Can't you just tell them
7 like what you have to do?
8 MR. LEEN: Oh, you mean for the whole
9 thing? Because you don't like the "no."
10 MS. KEON: I don't like -- I don't like all
11 those no's. I think they get in the way of
12 what you -- so it's like, what are you trying
13 to tell me? I mean, just that -- What you want
14 people to know is that a building permit must
15 be obtained --
16 CHAIRMAN AIZENSTAT: In this case, it kind
17 of makes sense to me.
18 MS. KEON: -- for construction, demolition,
19 modification or renovation of a building,
20 unless the requirement is waived by the
21 Building Official.
22 MR. BEHAR: You know, but look, for
23 example, I think that bringing back the Florida
24 Building Code or following the Building Code is
25 correct, because it defines what you could do.

1 MS. KEON: Okay, right.
2 MR. BEHAR: I don't think it has a dollar
3 value. And yet, you know, it may not require
4 that you go to the Building Official. Right?
5 MS. KEON: Well, I think it's just that a
6 permit is required in order to commence
7 construction --
8 MR. BEHAR: I think, Craig, you were going
9 in the right direction when it says, you know,
10 pursuant to the Florida Building Code.
11 MS. KEON: Right.
12 MR. BEHAR: And not necessarily the
13 Building Official has to --
14 MS. KEON: Right.
15 MR. BEHAR: -- to approve everything.
16 MR. LEEN: No, but the Building Official
17 would have to waive the requirement.
18 MS. KEON: Right.
19 MR. LEEN: I think that's required by the
20 Florida Building Code.
21 MS. KEON: Right.
22 MR. LEEN: The Building official or
23 designee has to --
24 MR. GRABIEL: Waive.
25 MR. LEEN: -- waive for things under $500.

1 CHAIRMAN AIZENSTAT: That is correct.
2 MR. LEEN: We could -- You could have us
3 reword this in a positive manner, if that's
4 what you're asking.
5 CHAIRMAN AIZENSTAT: Well, I think you're
6 understanding what the Board is asking.
7 MR. LEEN: Yes. No, we'll reword it. I'll
8 try to reword it so it doesn't start with no,
9 so it says instead that, where required by the
10 Florida Building Code, a permit must be
11 obtained before commencement of any
12 construction, just like you said --
13 CHAIRMAN AIZENSTAT: There you go.
14 MR. LEEN: -- unless this requirement is
15 waived.
16 CHAIRMAN AIZENSTAT: There's your language.
17 MR. LEEN: Okay, that's what we'll do.
18 CHAIRMAN AIZENSTAT: Okay.
19 MS. KEON: Yeah.
20 MR. RIEL: I'm going to quickly go through
21 the amendments that were suggested. I'm not
22 going to read Mr. Leen's language again. It's
23 in the record. We'll work on that language, as
24 well.
25 Amendment Number 2, Line 22, remove "and

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not intended for sale." Amendment Number 3, we're eliminating Lines 7 through 9, which is basically the first sentence. Number 4, we're removing the word "residential."

CHAIRMAN AIZENSTAT: Right.

MR. RIEL: Number 7, we're amending Line 11.

CHAIRMAN AIZENSTAT: And 6.

MR. RIEL: Number 13, we're including a reference to the noise provisions within the Zoning Code, as well as the City Code.

CHAIRMAN AIZENSTAT: Correct.

MR. RIEL: And again, they're on the record. Number 14 included numerous changes and the word changes by Mr. Flanagan. I have those on the record and I have those written down. And that basically summarizes the Board's recommendations.

MS. KEON: You said on Number 1, there was a change.

MR. RIEL: Number 1?

MS. KEON: I didn't hear you read 1.

MR. RIEL: Number 1, you're correct, I'm sorry. And adding "or corner lots" to Number 1.

MS. KEON: Yes.

MR. RIEL: Thank you.

So, if the Board could make a motion --

CHAIRMAN AIZENSTAT: Is there a motion? Would anybody like to make a motion?

MS. KEON: I'll make the motion.

MR. LEEN: Oh, there is a public hearing, although there's no one.

MS. KEON: Is there public?

CHAIRMAN AIZENSTAT: Is there?

MR. LEEN: I believe so. It's an ordinance change.

MR. RIEL: Nobody signed up to speak.

CHAIRMAN AIZENSTAT: Did anybody sign up to speak?

MR. RIEL: No. If you want, open the public hearing and close it.

CHAIRMAN AIZENSTAT: Let's go ahead and open it at this time. Would anybody from the public like to come up?

Having none and nobody signed up to speak, we're going to close it at this time.

Pat, would you like to make the motion?

MS. KEON: I'll make the motion to approve as amended.

MR. FLANAGAN: We're doing them all at once?

MR. RIEL: Yes.

CHAIRMAN AIZENSTAT: Yes, we should do them all at once.

MR. FLANAGAN: Can I ask that we back out Item 4?

CHAIRMAN AIZENSTAT: Back out Item 4?

MR. FLANAGAN: Yeah.

MS. KEON: Amendment 4?

MR. FLANAGAN: Tab 4. Can we vote on that separately?

CHAIRMAN AIZENSTAT: The Historic Preservation, about residential?

MR. FLANAGAN: Yeah.

CHAIRMAN AIZENSTAT: Why is that?

MR. FLANAGAN: I'm just not -- I'm not comfortable with it yet.

CHAIRMAN AIZENSTAT: Should we discuss Item Number 4 -- well, there's a motion. Is there a second on the motion?

Okay, nobody's made a second.

MR. FLANAGAN: I'll say -- well --

MS. KEON: Go ahead.

MR. FLANAGAN: Would you accept an

amendment to vote on Item Number 4 separately?

MS. KEON: Yeah, sure.

MR. BEHAR: I'll second the motion, then.

MR. FLANAGAN: Thank you.

CHAIRMAN AIZENSTAT: Having a first and second, call the roll. Any comments? No?

Call the roll, please.

MR. BOLYARD: Julio Grabiel?

MR. GRABIEL: Yes.

MR. BOLYARD: Pat Keon?

MS. KEON: Yes.

MR. BOLYARD: Robert Behar?

MR. BEHAR: Yes.

MR. BOLYARD: Jeffrey Flanagan?

MR. FLANAGAN: Yes.

MR. BOLYARD: Eibi Aizenstat?

CHAIRMAN AIZENSTAT: Yes.

Okay, Amendment Number 4. Jeff?

MS. KEON: Talk about it.

CHAIRMAN AIZENSTAT: Talk about it.

MR. FLANAGAN: There's enough language in there that I'm not comfortable. I'm not sure I understand it all and I'm not comfortable voting on it.

CHAIRMAN AIZENSTAT: What would you like to

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do?
MR. FLANAGAN: Well, I'm only -- If you guys are comfortable with it, then I'm --
CHAIRMAN AIZENSTAT: No, no, but please tell us what your concerns are. What are you not comfortable about?
MR. FLANAGAN: I'd rather take it and still review it some more. I guess I'm still not -- I know the undue economic hardship was there. I'm just -- I'm not comfortable with that. I want to go review that, in conjunction with the rest of the Zoning Code. It seems like the items that need to be submitted, while I understand the concept, some of it seems to get very personal.
CHAIRMAN AIZENSTAT: The requirements in order to qualify?
MR. FLANAGAN: Yeah. I mean -- and I know that's been there, but we're looking at it, and I'm going to look at the whole thing. It's just some of those seem to be extremely personal -- personal and confidential, and if you submit those, they become a public record, and I would have a hard time submitting my annual cash flow for two years and having that

become a public record.
CHAIRMAN AIZENSTAT: But technically, if you really think about it, the County Appraiser, once a year, sends out a form to all commercial properties, asking for the owners to submit, if they would like --
MR. FLANAGAN: If you want to --
CHAIRMAN AIZENSTAT: If you want to.
MR. FLANAGAN: -- contest the valuation, right.
CHAIRMAN AIZENSTAT: If you want to contest the valuation of a property, they ask you to submit your annual operating statement or your cash flow and so forth. It's up to the property owner to make the determination if they want to submit that information or not.
MR. FLANAGAN: But with the -- on this example, the tax appeal, you don't have to submit that if the --
CHAIRMAN AIZENSTAT: No, no, I'm not talking on the tax appeal.
MR. FLANAGAN: No, right, but you have -- With a tax appeal, if you submit it, they may then administratively grant your adjustment. The Property Appraiser may. If you go to the

Value Adjustment Board and attend the hearing, you'll need to provide some. You don't need to provide -- I think probably just a tax return. You can provide (inaudible) data. I mean, there's --
CHAIRMAN AIZENSTAT: Correct.
MR. FLANAGAN: And to me, this reads, you must provide all of this.
CHAIRMAN AIZENSTAT: Well, it says, as a minimum, the applicant shall provide, at the time of the application, the following information.
Dona, is it required that every single one of these items be provided, 1 through 8, for example, for residential property?
MS. SPAIN: I think, the way it's written now, it is. The way we're proposing it, it's a requirement. But the property owner is coming to us --
CHAIRMAN AIZENSTAT: Right.
MS. SPAIN: -- saying that there's an economic hardship, so --
CHAIRMAN AIZENSTAT: They're trying to prove it.
MS. SPAIN: -- it's their burden to prove

that they actually have one.
CHAIRMAN AIZENSTAT: Well, let's go through --
MR. LEEN: And, Mr. --
CHAIRMAN AIZENSTAT: Go ahead, Craig.
MR. LEEN: One concern to think about as you evaluate this is that what could happen, though, is if you don't -- You may eliminate a couple of these, but if you eliminated a lot of it, we may be in a situation where the Board is making a decision of undue economic hardship, without all the information, but then it goes to court, and all of this is discoverable. So, then when the Court looks at it, they're going to be looking at information that you never saw, and it may change the outcome and then the City may be held liable for a taking. So that's the -- So I would just keep that in mind as you, you know, determine what should be required.
CHAIRMAN AIZENSTAT: I mean, if we take -- Go ahead.
MS. KEON: It would strike me that the intent of this is to make it very difficult to claim undue economic hardship. It would intend

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to preserve what has been designated as historic. Is that the intent?

MS. SPAIN: Honestly, I think the intent is for the Board to make an informed decision, although I think it does make it difficult for them.

MS. KEON: I think it makes it very difficult, and that that is the intent.

MS. SPAIN: It could very well be.

MS. KEON: You know, if historic properties are significant enough, within this City, and that's the policy of the City, that historic properties are very important --

MS. SPAIN: That's right.

MS. KEON: -- within this City --

MS. SPAIN: That's right.

MS. KEON: -- then you will have a higher level to be able to --

MS. SPAIN: A bigger burden to approve it.

MS. KEON: -- demolish or to affect and do damage to them.

MR. FLANAGAN: Right.

MS. KEON: So it seems that it's a little tough, but I think it is consistent with the City's policy with regard to historic

preservation. And there is an appeal to this. I mean, there is an appeal process.

MS. SPAIN: Yes.

MS. KEON: So, I mean, I think it's just an enforcement, really, of a policy.

MR. FLANAGAN: Okay. I'm fine.

CHAIRMAN AIZENSTAT: You're okay?

MR. FLANAGAN: Yeah, I'll move it.

CHAIRMAN AIZENSTAT: So you're going to move Number 4, with what change? We're going to go ahead and --

MR. FLANAGAN: I think we're taking out residential?

MS. KEON: Take it out.

MR. RIEL: Take out the word residential.

MS. KEON: Right.

CHAIRMAN AIZENSTAT: Right.

MR. RIEL: That's what our previous discussion was.

CHAIRMAN AIZENSTAT: Any other change, other than that? Jeff?

MR. FLANAGAN: (Shakes head).

CHAIRMAN AIZENSTAT: Okay. Is there a second?

MS. KEON: I'll second it.

CHAIRMAN AIZENSTAT: We have a second. Let's open it up for public comment.

Having no public, we're going to go ahead and close the public comment. Is there any discussion?

Let's call the roll.

MR. BOLYARD: Pat Keon?

MS. KEON: Yes.

MR. BOLYARD: Robert Behar?

MR. BEHAR: Yes.

MR. BOLYARD: Jeffrey Flanagan?

MR. FLANAGAN: No.

MR. BOLYARD: Julio Grabiel?

MR. GRABIEL: Yes.

MR. BOLYARD: Eibi Aizenstat?

CHAIRMAN AIZENSTAT: Yes.

MR. RIEL: That concludes this item.

CHAIRMAN AIZENSTAT: Okay. Let me just find where I put the document.

The next item is an Ordinance of the City Commission of Coral Gables, Florida, amending the Code of the City of Coral Gables, Chapter 105, Building and Building Regulations, Section 105-28, Construction Staging Plans, to require City review and approval of decorative wrap and

signage placed construction fencing, providing for severability, repealer, codification, and an effective date.

MR. TRIAS: Mr. Chairman, on the January 9th meeting, we had a very extensive discussion about this ordinance. Staff has included all the changes that I believe you recommended in the text, and they're highlighted in yellow, and if you believe that there's anything missing, please let me know, but I believe that that takes care of most of the issues here on the ordinance here for review, and it will be forwarded to the Commission whenever you're ready.

MR. BEHAR: I have a question on 1F. You say no more than two streets.

MR. TRIAS: Yes.

MR. BEHAR: What about if a project has three streets, four streets?

MR. TRIAS: And that was the idea, to limit it to two streets, and that's a choice that deals with design.

MR. BEHAR: I don't remember us recommending two streets.

MR. FLANAGAN: No, I think I specifically

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1 brought up that if it has frontage on more than
2 two streets, you should be able to have the
3 continuation, for consistency purposes, on all
4 street frontage.
5 MR. BEHAR: I remember that to be --
6 MR. TRIAS: Okay, very good.
7 CHAIRMAN AIZENSTAT: As a wrap?
8 MR. BEHAR: Yes.
9 CHAIRMAN AIZENSTAT: Okay.
10 MR. FLANAGAN: It was clear as day.
11 MR. TRIAS: Any other things we missed?
12 CHAIRMAN AIZENSTAT: One of the --
13 MR. BEHAR: And then we also -- Hold on.
14 We also talked about, because -- a hundred
15 percent, not 75 percent of the length of the
16 frontage. I remember a hundred percent, and it
17 probably goes back -- I'm trying to look in the
18 minutes where that was reflected.
19 MR. TRIAS: Mr. Behar, I'm sure you said a
20 hundred percent and other people said other
21 things. If there's consensus on one hundred
22 percent, I'll be happy to change it.
23 CHAIRMAN AIZENSTAT: I actually remember
24 the hundred percent, also, that was on there,
25 so if we can go ahead and change that. I do

1 think, with the hundred percent, it would just
2 be better on it.
3 But if we're on that line with the hundred
4 percent, I would rather see all graphic, as
5 opposed to a percentage of green and graphic on
6 that, and I remember we had a discussion on
7 that. I don't know how the rest of the Board
8 feels on that.
9 MR. FLANAGAN: I think we had a long
10 discussion on it.
11 CHAIRMAN AIZENSTAT: Correct, and as far as
12 the graphic, we're looking at photos of project
13 interiors, you know, project features, if there
14 was any atriums, open space features, any
15 proposed streetscape. I think we had discussed
16 that.
17 MR. BEHAR: No, you're right. We did.
18 MR. TRIAS: Is the language not covering
19 that, in your view? I mean, I --
20 CHAIRMAN AIZENSTAT: I didn't see the
21 language covering that, very specifically.
22 MR. TRIAS: It doesn't say those very
23 words, but it does say, "which are defined as
24 graphics and text related to current and
25 approved projects for the site and images of

1 the City of Coral Gables."
2 At some point, we need to think in terms
3 of, do we have too much detail or could we keep
4 it in a fairly general sense. I would think,
5 in my reading, it does include that reading.
6 CHAIRMAN AIZENSTAT: I remember the
7 discussion we had is about Whole Foods, was
8 it --
9 MR. BEHAR: Epicure.
10 CHAIRMAN AIZENSTAT: Epicure, I'm sorry,
11 going in there, and people didn't really know
12 what was going in there and so forth. To me,
13 if you're doing graphics, you should display
14 the key features of that project. I would
15 actually encourage it even more so, so it makes
16 a nice presentation.
17 MR. GRABIEL: But do you think it denies
18 it? I don't think it -- No, it says graphics,
19 and then below, it says graphic illustrations.
20 CHAIRMAN AIZENSTAT: You don't want to
21 specify the type?
22 MR. TRIAS: I would not make any more
23 detail --
24 CHAIRMAN AIZENSTAT: Why?
25 MR. TRIAS: -- just because it's hard to

1 enforce, because then all of a sudden if it's
2 not specified, then it's not allowed.
3 CHAIRMAN AIZENSTAT: That's why I'd like to
4 clarify the language, for enforceability.
5 MR. TRIAS: Yeah.
6 CHAIRMAN AIZENSTAT: That's actually why.
7 MR. TRIAS: From a practical point of view
8 of enforcement, I think it's easier to enforce
9 this language than any more detailed language,
10 and I say that because if we have more detail,
11 then it implies that things that are not
12 specifically mentioned are not allowed, so --
13 CHAIRMAN AIZENSTAT: Craig, you're okay for
14 enforceability, the way it's written?
15 MR. LEEN: Which part, specifically?
16 CHAIRMAN AIZENSTAT: Go ahead and state
17 the --
18 MR. TRIAS: I believe the issue is whether
19 there's a need to define further the graphic --
20 MR. LEEN: No, I understand that, but which
21 part, which specifically? I mean, which
22 phrase?
23 MS. KEON: What page are you on? Is this
24 Attachment C and F?
25 CHAIRMAN AIZENSTAT: It's Attachment C,

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that's highlighted yellow.
MR. LEEN: Well, no, I'm reading Attachment C, but which part of this do you believe may need to be more specific?
CHAIRMAN AIZENSTAT: Hold on a second. Visual displays shall be -- Visual displays, architectural renderings, graphic illustrations, name and website of the proposed project. In other words, you're already going ahead and listing three of them, architectural renderings, graphic illustrations and the name of the website of the proposed project.
MR. LEEN: So, to me --
CHAIRMAN AIZENSTAT: You shouldn't have -- You shouldn't list other types of illustrations so we can clarify the language?
MR. LEEN: Well, I would view this to include --
MR. BEHAR: I mean, when I look at a graphic illustration, it's very generic.
MR. TRIAS: Yes, and --
CHAIRMAN AIZENSTAT: And that's why -- and you're okay enforcing it, if it's generic?
MR. TRIAS: Yes, I'm okay with that.
MR. BEHAR: I think, in that case, you're

right. I mean --
CHAIRMAN AIZENSTAT: Okay.
MR. BEHAR: -- it's up to the City Architect to --
MR. TRIAS: Exactly. There's a review process. There are professionals involved.
MR. BEHAR: So we would be changing 75 percent to a hundred percent, and not limit it to just two streets, but all streets.
MS. KEON: Right. So you have to change that whole sentence, then. The visual displays for public information can be, may be. They don't have to be a hundred percent. They may be a hundred percent. Is that right?
MR. BEHAR: Up to, yeah, up to a hundred percent.
MS. KEON: So they can be, are permissible up to --
MR. TRIAS: They could be less. They could be less.
MS. KEON: Right.
MR. BEHAR: Right.
MS. KEON: So you need to -- That whole sentence has to change.
CHAIRMAN AIZENSTAT: And we also discussed

about not allowing it in residential areas. I think we had a discussion about that. That's in the minutes. I just don't see anything of that in here, and --
MR. FLANAGAN: Right.
MR. LEEN: One other issue I see --
CHAIRMAN AIZENSTAT: It's on Page 53 -- on Page 14 of the minutes.
MR. TRIAS: Whatever you like, even if it was not mentioned --
CHAIRMAN AIZENSTAT: Well, it's just we discussed it, so --
MR. TRIAS: Yes, absolutely.
MR. LEEN: Mr. Chair, one issue I see in F, and I just --
CHAIRMAN AIZENSTAT: I'm sorry, I can't hear.
MR. LEEN: In F, pardon me, in this section, is at the end, it says, "as determined by the Development Services Department or the Code Enforcement Board," and upon reflection --
MR. RIEL: Craig, we can't hear.
CHAIRMAN AIZENSTAT: Wait, sorry.
MR. LEEN: Oh, I'm sorry. I'll wait.

CHAIRMAN AIZENSTAT: Okay, go ahead, please.
MR. LEEN: So, at the end, it says -- it's talking about when something is damaged or with graffiti, and it says, "as determined by the Development Services Department or the Code Enforcement Board." But upon reflection, there are instances where it might go to a special master. So I would suggest that you just say the Development Services Department, period.
MS. KEON: Okay.
MR. LEEN: Because obviously, if they do the citation, that would have to go to the Code Enforcement Board or the special master.
MR. TRIAS: Very good.
CHAIRMAN AIZENSTAT: And the other question is, how do you determine historic buildings?
MR. TRIAS: In the context of what would be appropriate, the review would have the City Architect or the Board of Architects reviewing the aesthetics, and in that discussion -- in that discussion, I would hope that they would have the judgment to make a choice about that.
CHAIRMAN AIZENSTAT: The reason I ask is, to me it's just not -- that's great, but it

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doesn't show me that that would be those individuals who would review that, because the way I read it, it could be even a project developer or somebody that goes ahead and says, you know, this is historic, or makes that determination. So I'm wondering if we should just be --

MR. BEHAR: No, I --

CHAIRMAN AIZENSTAT: Are we clear on that?

MR. BEHAR: I think -- Personally, I think it's clear.

CHAIRMAN AIZENSTAT: Okay.

MR. TRIAS: Okay.

MS. KEON: Okay, but you have to change that sentence, visual displays. There's no "shall." I mean, it's just -- The whole language -- That whole sentence has to be changed, just to allow for --

MR. TRIAS: To allow for the one hundred percent of the frontage --

MS. KEON: Yes.

MR. TRIAS: -- and the more than two streets.

MS. KEON: "Can be."

MR. BEHAR: All street frontages.

MR. TRIAS: Yeah, I understand that. Yeah.

MR. FLANAGAN: Do we change the shall to may? Visual displays may be placed along no more than a hundred percent?

MS. KEON: Yeah, that they can be. I mean, you're not requiring it.

CHAIRMAN AIZENSTAT: Well, wait a second. Yeah, but --

MS. KEON: Are you requiring that they are or are you allowing them to be?

MR. FLANAGAN: I think it's allowance.

MS. KEON: Yeah, you allow it, so can be or may be.

CHAIRMAN AIZENSTAT: But you're also using the word decorative wraps and visual displays. Should we be consistent and use the same?

MR. TRIAS: That's a very good point. Let me make sure that we are consistent.

CHAIRMAN AIZENSTAT: Just to be consistent on it.

MR. TRIAS: Yes.

CHAIRMAN AIZENSTAT: And also, when you go ahead and say for six months prior to occupancy, are you meaning for a Certificate of Occupancy? Do you mean -- you know, there's

two -- The tenant has to pull one and so does the building. Which one are you referring to?

MR. TRIAS: I was referring to the tenant, in my mind, but it's not saying that in the ordinance, if we should say that, if you believe so.

MR. BEHAR: I think a TCO for the building itself.

MS. KEON: The building.

CHAIRMAN AIZENSTAT: Right. I would just like to be clear on it.

MS. KEON: Yeah.

MR. BEHAR: Because a tenant may come later on, you know. We're -- I'll give you an example. We're going for a TCO on this building that, you know, you're illustrating, but the tenant is not starting his work for another --

MR. TRIAS: So your preference is for the TCO for the building?

MR. BEHAR: For the actual building.

MR. TRIAS: Prior -- six months prior. That's okay.

CHAIRMAN AIZENSTAT: As long as we're clear on it.

MR. TRIAS: All right.

MS. KEON: Right, because you would want that down and out of there.

MR. BEHAR: Right.

MR. FLANAGAN: Yeah, because then the fencing -- when the TCO is issued, the fencing is not --

CHAIRMAN AIZENSTAT: Then you want that to come down at that point.

MS. KEON: And out of there, yeah.

MR. TRIAS: Very good point. Very good point.

CHAIRMAN AIZENSTAT: And who would monitor that?

MR. TRIAS: Code Enforcement.

CHAIRMAN AIZENSTAT: Okay. So Staff -- so Code Enforcement is the one who would monitor that. Do we need to put that anywhere, or we don't need that in our --

I don't know. I just want you to be able to enforce it.

MR. TRIAS: I think it's --

MR. LEEN: Code Enforcement can enforce a violation of the City Code. If you wanted to make it doubly clear, you could put a provision

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saying that at the end, that this could be enforced by Code Enforcement, and put a fine, even, if you wanted.

CHAIRMAN AIZENSTAT: I mean, somebody -- I assume that somebody is going to be looking at it. I'd just like to know who it is.

MR. LEEN: We do have a general provision, though, allowing that any violation of the City Code can be cited as a Code violation.

CHAIRMAN AIZENSTAT: Then my next item is, what happens when you have a -- I think -- Let me backtrack. As part of our discussion last time, we were talking about projects, large projects that are staged in different phases and so forth. When it comes to that, how do we handle that? What happens if we have a large project in phases, and it takes years to complete that phase? Can they -- Can those wraps remain in place? Is there something that says, you know, up to a certain point, you need to remove the wrap, not remove the wrap --

MR. BEHAR: But -- you know, a very good point. A very good point, and the case in point is the Old Spanish Village.

MS. KEON: Yeah.

CHAIRMAN AIZENSTAT: Right.

MR. BEHAR: Okay, that's been there for the last five years, but look at it, also -- the project that is on 2222 Ponce de Leon, okay, that's been under construction for the last five years. I'd rather see a wrap there on a project that was like even stopped, than taking it down.

CHAIRMAN AIZENSTAT: But should that wrap -- A project that has been stopped or a failed project, should the wrap on that project be the old wrap that has been there for five years, that has faded, that has had the old project that's there, which is no longer viable?

MR. TRIAS: Right. Mr. Chairman, I think that we attempted to deal with that in two ways. One was to specifically say that the information had to be current and approved projects.

CHAIRMAN AIZENSTAT: Right, okay.

MR. TRIAS: So, if it's not current or not approved anymore, then it's no longer valid. And then the second aspect of that was that the actual wrap had to be clean and undamaged, and

therefore --

MR. BEHAR: And that's done through Code Enforcement.

MR. GRABIEL: Code Enforcement, yeah.

MR. BEHAR: Okay.

MR. TRIAS: Those are the two, the two ways.

CHAIRMAN AIZENSTAT: That's fine, as long as you have it. Anybody else have any comments?

MR. GRABIEL: Where are you going to insert the "not allowed in residential areas"?

MR. TRIAS: Yeah --

CHAIRMAN AIZENSTAT: We spoke about that, so you're going to go ahead --

MR. GRABIEL: I just wanted to know where he's going to --

MR. TRIAS: I think that's going to be a sentence by itself, another clause, I think.

CHAIRMAN AIZENSTAT: Okay.

MR. GRABIEL: That's clear.

MR. TRIAS: I'll check with the City Attorney to make sure that that's okay.

CHAIRMAN AIZENSTAT: Let me ask a question. Should, then, he make the corrections and come

back with the corrections, or how does the Board want to handle this?

MS. KEON: I won't be here.

CHAIRMAN AIZENSTAT: Robert? I mean, I'd just like to see these changes made, and that's why I bring that up.

MR. TRIAS: Mr. Chairman, I'm available to do it either way.

MR. BEHAR: Personally, after the second go-round, I think that --

CHAIRMAN AIZENSTAT: Okay.

MR. BEHAR: You know, I would hate to see it going to the Commission without incorporating those comments, but I would think by now, you know, it's a clear message that --

CHAIRMAN AIZENSTAT: Yeah. The minutes will show what --

MR. BEHAR: Yeah, what --

MR. TRIAS: Yes, and if you recall the process, you're just recommending to the Commission. In this case, it's not an amendment to the Zoning Code. So you're making a suggestion, because of the --

CHAIRMAN AIZENSTAT: Right, but we want those suggestions to be incorporated.

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MR. TRIAS: Right, exactly.
CHAIRMAN AIZENSTAT: Right.
MR. FLANAGAN: It's the same comments as the last meeting.
MR. TRIAS: Yes. There were a couple things that were missing, yeah.
MR. LEEN: Mr. Chair, it does sound like Staff is going to agree to them, so if they were -- I would suggest if they weren't going to agree or not include it, that it come back to you.
CHAIRMAN AIZENSTAT: Right, no, it doesn't --
MR. LEEN: But since they're agreeing --
CHAIRMAN AIZENSTAT: It doesn't need to come back.
MR. LEEN: Since they're agreeing --
CHAIRMAN AIZENSTAT: We ask that it be put in there.
MR. TRIAS: Okay, I'll be happy to make the amendments and then take it to the Commission with your recommendation, if you choose to do so.
CHAIRMAN AIZENSTAT: Any other comments? Is there -- Robert, do you have a comment?

MR. BEHAR: No. Let's finish this, because then I want to have another question.
CHAIRMAN AIZENSTAT: Okay, please.
MR. BEHAR: I'll make a motion to -- I guess to approve this.
MR. FLANAGAN: I'll second it.
CHAIRMAN AIZENSTAT: With --
MR. BEHAR: With the comments.
CHAIRMAN AIZENSTAT: With all the comments that we made.
MR. TRIAS: With all the comments.
MR. BEHAR: Yeah, with all the comments.
CHAIRMAN AIZENSTAT: Do we need to list those comments or --
MR. FLANAGAN: Yes, please.
CHAIRMAN AIZENSTAT: Okay. Go ahead and --
MR. BEHAR: Mr. Attorney?
CHAIRMAN AIZENSTAT: Jeff?
MR. FLANAGAN: I think we're saying visual displays -- in sub F, I think we're saying visual displays for public information may be placed --
CHAIRMAN AIZENSTAT: Okay.
MR. FLANAGAN: -- along one hundred percent.

CHAIRMAN AIZENSTAT: So we're changing it to one hundred.
MR. FLANAGAN: I thought so.
CHAIRMAN AIZENSTAT: Yes, yes. No, I'm saying.
MR. TRIAS: Yes, sir.
CHAIRMAN AIZENSTAT: We did. We did. We did.
MR. FLANAGAN: And I was, I'm sorry, not paying attention. On the length of the frontage on -- What was the language there?
MR. TRIAS: I'm just removing that on no more than two streets --
MR. BEHAR: On all street frontages.
MR. TRIAS: -- if that's okay.
MR. FLANAGAN: That works, and you're adding a section that says that it's not allowed in residential.
CHAIRMAN AIZENSTAT: Yes.
MR. BEHAR: Are you deleting the Code Enforcement Board?
MR. TRIAS: Yes, and also --
CHAIRMAN AIZENSTAT: Actually, only allowed in commercial and industrial.
MR. FLANAGAN: Right.

MR. TRIAS: And prior to that, just the TCO issue with the occupancy.
MR. FLANAGAN: Thank you.
MR. BEHAR: The TCO of the building.
MR. FLANAGAN: For six months prior to TCO of the building.
MR. BEHAR: Correct.
MR. TRIAS: Those are all comments that I have, unless I forgot something.
MR. BEHAR: I'm good with that.
MR. LEEN: Can I clarify one issue? Are you saying it's only commercial and industrial, or are you saying it's not in residential?
MS. KEON: It's not residential.
CHAIRMAN AIZENSTAT: It's not residential. I mean, mixed use -- You're using it in a mixed-use project.
MR. BEHAR: And that's a residential, right?
CHAIRMAN AIZENSTAT: That's residential.
MS. KEON: So that's --
CHAIRMAN AIZENSTAT: But are there --
MR. BEHAR: But single -- Can you do it like --
MS. KEON: Single-family.

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MR. BEHAR: Like single-family.
CHAIRMAN AIZENSTAT: Single-family.
MS. KEON: Single-family residential.
MR. GRABIEL: What about multi-family?
MR. BEHAR: Well, multi-family --
MR. RIEL: The best way to do it is to say commercial and industrial zoning districts.
CHAIRMAN AIZENSTAT: But what about the mixed --
MS. KEON: Well, what about the --
MR. RIEL: Mixed use is an overlay. So the underlying zoning is commercial and industrial, so --
MS. KEON: Oh, okay, good.
CHAIRMAN AIZENSTAT: That makes sense.
MR. LEEN: So, if I may, Mr. Chair, that would cover every possible scenario.
MR. RIEL: It wouldn't allow it in multi-family, single-family. It wouldn't allow them in S districts, which is basically like the country club, things of that sort.
MR. LEEN: What about university? What about university and special and commercial limited?
MR. RIEL: University would not be --

MR. TRIAS: Eric -- I mean, is your goal not to have it in single-family neighborhoods? Is that the goal?
MR. BEHAR: Exactly.
MR. TRIAS: That's the goal? Well, that's what we'll say, then.
MR. FLANAGAN: No, because I think a lot of the multi-family abut across a much narrower street than single-family.
MR. TRIAS: And that's what I'm saying, because --
MR. FLANAGAN: And then you've got some of the S districts that also, depending on where you are in the City -- I would say no. I think, as Eric had said, commercial industrial.
CHAIRMAN AIZENSTAT: If that's the underlying.
MR. TRIAS: My question was different. My question is, what is your goal? Is your goal not to have these kind of fences in residential areas that are single-family? Is that it, or is it something else?
CHAIRMAN AIZENSTAT: I'd rather ask you backwards the question, is there a reason that you see that we shouldn't do it only in

commercial and industrial, if those are the underlying districts?
MR. TRIAS: Yeah, and that's the thing. There may be some S districts. There may be some, let's say, high-rise residential use. I mean, it's --
CHAIRMAN AIZENSTAT: But isn't the underlying district then -- It's an overlay.
MS. KEON: No, but I think because of the proximity of some of those S districts and those things to residential districts, they should be included in with the single-family residential districts.
MR. BEHAR: Okay, then --
MS. KEON: That's why I think the commercial is right.
MR. BEHAR: With this project. Your MXD --
MR. TRIAS: Let me -- Would it be appropriate to have a fence like this on a multi-family structure, a large apartment building? Is that something that you would like to have or not have?
MR. BEHAR: I think you -- yes.
CHAIRMAN AIZENSTAT: Yeah.

MR. TRIAS: Right. I would think so. That's why the commercial may be a little bit limiting -- Let me -- Yeah.
CHAIRMAN AIZENSTAT: But aren't they overlay districts?
MR. RIEL: Well, there's -- I mean, there's multi-family zones that are across the street from single-family.
MR. FLANAGAN: And across a narrow street.
MR. BEHAR: Right.
MR. RIEL: Right, so --
CHAIRMAN AIZENSTAT: How do you handle that, then?
MR. TRIAS: Right, and that's the question. I want to understand exactly what you're thinking so we can craft the language more precisely. It appears to me that the concern is to keep it out of the single-family neighborhoods, mostly. We can probably deal with that, with zoning districts, and make it very clear. Let me work on some language, and if you want, we could come back and get back to you, if you --
CHAIRMAN AIZENSTAT: I don't --
MR. BEHAR: Huh?

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CHAIRMAN AIZENSTAT: Do you want? I would like to ask the Board. I mean, I don't see a need. I think he understands from the minutes --
MR. BEHAR: Do you feel comfortable?
MR. FLANAGAN: Do we have a meeting next month?
MR. RIEL: We have no items scheduled, but that doesn't mean something won't be scheduled, so --
MR. GRABIEL: I think as long as it's out of the single-family --
MR. BEHAR: That's the intent.
MR. GRABIEL: That's the intent.
MR. TRIAS: That's the way I hear the comments, yeah.
MR. FLANAGAN: Are you comfortable with commercial/industrial?
MR. BEHAR: No, but if it phases into family, in a case like this, with the project, you know -- The idea is not to be in the single-family neighborhood. I think you've got the idea correct.
MR. TRIAS: All right.
MR. BEHAR: You have it.

MR. TRIAS: I'll work on it.
MR. BEHAR: I think you have it.
CHAIRMAN AIZENSTAT: Okay, so we're also, to be clear -- Continue with the motion.
MR. BEHAR: I'll make a motion with all those --
CHAIRMAN AIZENSTAT: With all the recommendations?
MR. BEHAR: With the recommendations.
CHAIRMAN AIZENSTAT: What about what we talked about, the designated historic landmarks?
MR. TRIAS: Yeah, and the way we deal with that is through the City Architect review. If you want something else -- I think that --
CHAIRMAN AIZENSTAT: You'll clarify the language? You understand what we're saying?
MR. TRIAS: Yes. Yes, certainly, we'll do that.
CHAIRMAN AIZENSTAT: Okay, that's fine.
MR. GRABIEL: Second.
CHAIRMAN AIZENSTAT: There a second?
MR. GRABIEL: (Indicating).
CHAIRMAN AIZENSTAT: Having a second, we'll open it for public comment.

Having no public, we'll go ahead and close it.
MR. BOLYARD: Robert Behar?
MR. BEHAR: Yes.
MR. BOLYARD: Jeffrey Flanagan?
MR. FLANAGAN: Yes.
MR. BOLYARD: Julio Grabiel?
MR. GRABIEL: Yes.
MR. BOLYARD: Pat Keon?
MS. KEON: Yes.
MR. BOLYARD: Eibi Aizenstat?
CHAIRMAN AIZENSTAT: Yes.
MR. TRIAS: Thank you, Mr. Chairman.
MR. BEHAR: I have a question for you.
MR. TRIAS: Yes, sir.
MR. BEHAR: How do we deal -- How can we deal with, for example, in projects that need to advertise that it's not a for-sale project, for example, that it's a rental project? How is that dealt with, or how can we deal with that? Because we're having -- we're having problems with this project, where the project is about to open and out of 248 units, only nine units have been leased up, okay?
CHAIRMAN AIZENSTAT: Why?

MR. BEHAR: Because there's no advertising. People don't know that it's a product to be for leasing. How can we deal with that? Because we're finding that it's a big issue, a big problem.
MR. TRIAS: Okay.
MR. BEHAR: How can that be --
MR. TRIAS: But you're speaking of an issue unrelated to the fences?
MR. BEHAR: Unrelated.
MR. TRIAS: Unrelated?
MR. BEHAR: Yeah, but it does have to do, because it has to do with -- Is that something that could be put into the wrapping?
MR. TRIAS: Yeah, certainly we could think about that, and the issue is that the Zoning Code, as you know, is very strict on any kind of commercial speech, I mean, extremely strict, and that has been a choice for many, many years of the Commission. Now, if we want to change that, certainly we could think about it and make some recommendations, but that's just the nature of the Code, and it has served the City fairly well.
MR. BEHAR: Because I mean, I think

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ourselves and -- maybe it will come up again, it will come up again, and we need to make maybe another consideration to be able to allow it.

CHAIRMAN AIZENSTAT: Well, let me ask you a different question. If you're referring to the project that you're doing, that you had nine, has the developer contracted either a marketing company or --

MR. BEHAR: Yes.

CHAIRMAN AIZENSTAT: -- a brokerage service, you know, somebody to --

MR. BEHAR: And they're asking why can they not put, you know, signs that says this is --

MR. TRIAS: Mr. Chairman, if you want, we could certainly look at the Code and give you a presentation on what the existing regulations are --

CHAIRMAN AIZENSTAT: That's a different -- I think that's a different issue than what we have before us today.

MR. TRIAS: Yeah.

MR. BEHAR: Well, that's why I didn't bring it up until --

CHAIRMAN AIZENSTAT: But that would be a

recommendation.

MR. TRIAS: We'll be -- Yeah, we can give you some thoughts on what we have and --

CHAIRMAN AIZENSTAT: Please.

MR. TRIAS: Sure, no problem.

CHAIRMAN AIZENSTAT: Thank you.

MR. TRIAS: Thank you very much.

MR. RIEL: Okay, we have one remaining agenda item.

MR. BEHAR: Yep.

CHAIRMAN AIZENSTAT: We have one more?

MR. RIEL: It's the Art in Public Places Ordinance, and Ms. Birdsill will be presenting this one.

CHAIRMAN AIZENSTAT: Let me just read it into the record.

The last agenda item is an Ordinance of the City Commission of Coral Gables, Florida, providing for text amendments to the City of Coral Gables Official Zoning Code, Article 3, Development Review, Division 20, Art in Public Places, amending the Art in Public Places Code provisions in Article 8, Definitions, amending and creating new definitions, and providing for severability, repealer, codification, and an

effective date.

MS. BIRDSILL: Hi. For the record, I'm Cindy Birdsill. I'm the Economic Sustainability Director, and our department oversees the Art in Public Places program for the City.

The Art in Public Places program went into effect in 2010, so we've had a couple years now to start administrating it, and during that time, we also, in 2010, hired some professional art consultants, VIA Partnership and Todd Bressi, to help us put together a Public Art Master Plan and Guidelines that was required by the Code provision.

So the Commission adopted the guidelines on September 14th, 2010, in Resolution Number 2010-199.

As part of the scope of work, the consultants helped us go through the existing Code provision and made suggested changes. Many of these are really cleanup changes, to make sure defined terms are properly capitalized, that they're consistent throughout, and to sort of reorganize. There was some mixture of definitions and actionable

sections together, so we pulled those out, so definitions are separate from the other text.

In addition, since we've had some time to administer these issues, there have been some clarifications made for administrative purposes, to make it easier to administrate. For your information, the proposed changes went before the Cultural Development Board on April 25th, 2012, and it was passed unanimously, with certain changes that have been incorporated, and also went to the Historic Preservation Board on December 20th, 2012, and that Board also unanimously recommended the changes.

If you have any questions, I'd be happy to answer them.

CHAIRMAN AIZENSTAT: Questions, Robert?

MR. BEHAR: I do. Under Definitions, Project Value, Line Item Number 43, where it says Total --

MR. GRABIEL: What page are you?

MR. BEHAR: I don't know what page this is. Where it says Original Ordinance. I don't have a -- I don't see a page number.

MS. KEON: The original one?

CHAIRMAN AIZENSTAT: On the original?

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MR. BEHAR: Original.
CHAIRMAN AIZENSTAT: Attachment A?
MR. BEHAR: That's correct.
MS. KEON: Line 11?
MR. BEHAR: It says Aggregate Total Project Value, hard and soft construction and design costs.
MS. BIRDSILL: Right.
MR. BEHAR: Was that added, design costs?
MS. BIRDSILL: That's how we've been administrating it, and that's in the guidelines, so we are just making this consistent with how we're administering it.
MR. BEHAR: I think that it should be hard costs. When you start putting soft costs and design fees and all, I mean, hard costs -- you know, soft costs includes financing costs, you know, bank fees and all, and to put that into the project value, I think it becomes a burden on the developer. I think it should be limited to hard costs.
MS. KEON: Because soft costs could also be marketing.
MR. BEHAR: Yes.
CHAIRMAN AIZENSTAT: Soft costs is

everything.
MR. BEHAR: Everything.
MR. GRABIEL: I believe the County goes for hard costs only, and they've had a program in place for almost 40 years now.
MS. KEON: I'm looking for it.
MS. BIRDSILL: Yeah, actually, the guidelines that have been adopted by the Commission have said that the aggregate project value would be all hard and soft construction costs associated with a particular project.
MS. KEON: Well, I think we could recommend --
MR. FLANAGAN: You're saying that's the County's position?
MS. BIRDSILL: No, that's the City Commission, already adopted those guidelines.
MR. BEHAR: It says hard and soft costs, and you're adding here, and design costs.
MS. BIRDSILL: Right. Design costs are usually considered part of soft costs.
MR. BEHAR: Yeah. That's a --
MS. KEON: We can make a motion that it be limited to hard costs.
CHAIRMAN AIZENSTAT: What?

MS. KEON: I would limit it to hard costs.
CHAIRMAN AIZENSTAT: Limited, okay. I thought you said eliminated.
MR. BEHAR: I would agree with you there.
MS. KEON: Yeah, that it would be, aggregate project value means the total --
MS. BIRDSILL: The City Commission already accepted it.
MS. KEON: Means the hard costs.
MR. LEEN: They can recommend that.
MR. FLANAGAN: Well, if they already accepted it, then why are we looking at it?
MS. KEON: Well, because this is --
MS. BIRDSILL: Well, they adopted guidelines that --
MS. KEON: I mean, it's part of what is highlighted here.
MR. FLANAGAN: No, I know, I'm sorry. I just heard Ms. Birdsill tell the City Attorney that the City Commission has already approved it.
MS. BIRDSILL: They approved the definition in the guidelines as including all hard and soft construction costs.
MR. LEEN: Which definition are you

speaking to?
MS. BIRDSILL: The aggregate project value.
MR. LEEN: So then they would be -- You would be recommending a change to the present ordinance, which is what they're -- They are allowed to do that.
CHAIRMAN AIZENSTAT: When did they do this?
MS. BIRDSILL: They approved it in 2010.
MR. LEEN: You can recommend -- That's what you do. You can recommend a change to that, that's not recommended by Staff.
MR. FLANAGAN: Okay.
MS. KEON: Can we confirm what the County -- what the County does? Are we certain that it is --
MR. GRABIEL: Yeah, it's hard costs. I'm a trustee of the Art in Public Places for the County.
MS. KEON: Okay. All right.
MR. GRABIEL: And it's always hard costs.
CHAIRMAN AIZENSTAT: That's good.
MS. KEON: Well, I think it supports why you would want to do that, too.
MR. FLANAGAN: Is there -- We have taken out who appoints the Arts Advisory Panel?

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MS. BIRDSILL: Right, because that's handled in a different ordinance. There's a legislation that sets up how the Arts Advisory Panel is appointed, and so it wasn't necessary to include it in the Zoning Code.

MR. FLANAGAN: So that's already somewhere else in the City Code?

MS. BIRDSILL: Correct.

MR. FLANAGAN: How do they get appointed?

MS. BIRDSILL: The Cultural Development Board makes a recommendation to the City Commission, and the City Commission makes the final decision.

MR. FLANAGAN: This isn't my bailiwick, but we are also -- The panel members used to be professionals in the fields of art, art history, architecture or architectural history.

MS. BIRDSILL: That's all still required, but it's handled in a different --

MR. FLANAGAN: Well, you've got visual arts, art history, design, architecture, landscape architecture, or urban design?

MS. BIRDSILL: Right. That's all still part of it. That's just been moved to a different --

CHAIRMAN AIZENSTAT: You haven't changed it, it was just moved?

MS. BIRDSILL: Right.

MR. FLANAGAN: So the urban design -- the member panel that had somebody with urban design, that was a requirement somewhere else?

MS. BIRDSILL: Yeah, that the Arts Advisory Panel has to be a professional in one of those fields.

MR. FLANAGAN: I know, but what I'm getting at is, we've added the field of urban design, when it wasn't there before. I've got nothing against urban designers. I'm just trying to -- Again, I started with, it's not my bailiwick, but I'm wondering, is an urban designer somebody who has the experience in an Arts in Public Places program? And maybe I'd ask our resident expert on that one.

MR. GRABIEL: Again, I'm going on the County experience. The County actually does two things. The Commissioners never get involved in the art selection process. They are completely separate from that, to avoid any political influence, one way or the other. So they're completely separate. You know, this is

not the case here, but that's what it is. And then there's two panels. The trustees do not vote on art. That is left on the experts, which are made up of -- It's made up individually for each project, and then it does include artists, art experts, architects, and I don't think we've ever used a planner, but, you know, if it's the right planner, it could be. There's no -- but it has to be somebody that's involved in that field, and typically, it's one architect and the rest are art experts.

MS. BIRDSILL: Well, let me --

MR. FLANAGAN: So, then, you do it on a project-by-project basis, appoint different committees?

MS. BIRDSILL: That committee is done project by project. It's never the same -- It's not a permanent committee.

MR. FLANAGAN: Does that help to mix up what type of art or what's appropriate --

MR. GRABIEL: Absolutely.

MR. FLANAGAN: -- so you don't have some --

MR. GRABIEL: Yeah, because you can -- depending on the project, you want to bring the right experts to that project.

MR. FLANAGAN: That's interesting.

MR. GRABIEL: And we try to bring in, as often as possible, people from outside of the County so that there's experts from outside contributing to that.

MR. FLANAGAN: I like that.

CHAIRMAN AIZENSTAT: But here it's a permanent committee, correct?

MS. BIRDSILL: Correct.

MR. LEEN: Pardon me, Mr. Chair, can I ask one question?

CHAIRMAN AIZENSTAT: Yes, of course.

MR. LEEN: I apologize.

But when you said that the Commission approved guidelines making hard and soft costs --

MS. BIRDSILL: Uh-huh.

MR. LEEN: -- that's not this, though, because this is adding hard and soft.

MS. BIRDSILL: Right. We're amending the Zoning Code to match the guidelines that were adopted.

MR. LEEN: But when you say the guidelines that were adopted, you mean what exactly, what document?

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MR. LEEN: There was a document called Guidelines, that went to the Commission, that they adopted, that the art consultants had put together for us.

CHAIRMAN AIZENSTAT: And that was done by ordinance or resolution? Do you recall?

MS. BIRDSILL: I would have to go back and look. I think it might have been by resolution.

MR. LEEN: So --

MS. KEON: But this is different.

MR. LEEN: You know, generally, this is what will go in as the law --

MS. BIRDSILL: It's by resolution.

MR. LEEN: -- so you could recommend that it be changed. The Commission would ultimately -- by passing an ordinance changing it, it would effectively change the guidelines.

MS. KEON: Right, because also, further, on the second page, on 10 here, it lays out construction costs, and it includes all of these things that we are talking about.

I'm also -- In the County, is it also paid at the time of permit or is it paid at the time of --

MR. GRABIEL: I'm sorry?

MS. KEON: In the County, is the payment for the Art in Public Places paid at the time of permitting or at the time --

MR. GRABIEL: No, you have to put it in before, because you have to pay the artist. So the moment the project is funded, the right percentage goes to the Art in Public Places Trust, and that money is then administered by the Art in Public Places Trust, which then announces, makes recommendations, and starts paying the preliminary costs of the artist, and then the artist has to do their design before even the building is completed.

MR. BEHAR: That's with Government projects.

MR. GRABIEL: Yeah.

MR. BEHAR: Government funding.

This incorporates both Government and public -- I mean, private.

MS. KEON: Private, right.

MR. BEHAR: So it doesn't apply, in a private venture, to do that.

MS. KEON: Okay, but it's saying here that at the time that you are permitted, you have to

pay the portion of the costs or whatever the assessment is --

MR. BEHAR: Well, no.

MS. BIRDSILL: That's the option that the private developer has.

MR. BEHAR: The private has the option, either you pay or you could put in --

MS. KEON: Or you include it in your building. No, I understand. Okay. But if you are paying, you pay at the time of permitting?

MR. BEHAR: You have the option. Like Cindy said, you pay at the time of permitting or you have to work to incorporate it in the project.

MS. KEON: Into your project.

MS. BIRDSILL: Right, and then that approval process all has to be done before the permit is pulled, so the developer has to have the artist selected, they do a design that goes through all the Boards and through Commission.

CHAIRMAN AIZENSTAT: What do most developers do? Which process do they take?

MR. BEHAR: From my experience, it's -- Well, I shouldn't say, because we are -- on Phase 2, we're opting to pay it up front and

not have to do it -- incorporate it into the project. On Phase 1, in fact, we're incorporating it into the project, which went out and hired -- as Cindy said, hired an artist, and working on that to get it approved.

In our case, it's a little bit different, because we're -- the project started when we were coming to -- and that's something that I know it required to do it prior to commencement of the project. But, you know, maybe there's a -- maybe there's a flexibility on a private project that you could start the project and bring it in, you know, at some point before your TCO or something.

MS. BIRDSILL: I think that, you know, the art consultants advised against that. The particular project you're talking about was a unique situation, because the plans had been approved and --

MR. BEHAR: Before the --

MS. BIRDSILL: Before this, and so it's actually in its own unique situation.

MR. BEHAR: Okay.

MS. BIRDSILL: But, really, you want the art to be designed at the same time as the

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building, because you want it to work with it and --

MR. BEHAR: Okay.

MS. BIRDSILL: Yeah.

MR. BEHAR: That's fine.

CHAIRMAN AIZENSTAT: That makes sense. Any other comments?

MR. GRABIEL: I have a question on maintenance of the artwork.

MS. BIRDSILL: Sure.

MR. GRABIEL: Are there funds set aside for maintenance?

MS. BIRDSILL: Well, both of the funds, the Historic Art funds and the Art in Public Places funds, may be used towards maintenance, and also, it is the recommendation of our consultants that when we put together a project, we reserve about 10 percent for maintenance.

CHAIRMAN AIZENSTAT: 10 percent?

MS. BIRDSILL: Yeah.

MR. GRABIEL: That might be low, but --

MS. BIRDSILL: Yeah.

MR. GRABIEL: -- at least you have that.

MS. BIRDSILL: Right. And when it comes to

a private developer, the private developer is responsible for the maintenance. It remains their property and they maintain it.

CHAIRMAN AIZENSTAT: If not, it's the City's property.

MS. BIRDSILL: It's not the City's property, but there is a covenant that they cannot remove it and that they have to keep it maintained.

CHAIRMAN AIZENSTAT: No, what I'm saying is, if they contribute to the fund, then it's the City's --

MS. BIRDSILL: Yeah, if they contribute to the fund, then the City gets to decide what to do with the money.

CHAIRMAN AIZENSTAT: Exactly.

MS. BIRDSILL: And that's why we have the five-year Master Plan. We can put it towards the projects that we would like to be in more civic-oriented places.

CHAIRMAN AIZENSTAT: Any other comments?

MR. FLANAGAN: I'm just wondering if we have an inconsistency with defined -- where was I? Policies. It's right in the beginning, the second paragraph. It defines --

MR. GRABIEL: What line?

MR. FLANAGAN: Line 21. It talks about adding art to spaces visible to the public.

MS. BIRDSILL: Right.

MR. FLANAGAN: And then if you flip the page to Line 69, artwork must be created for placement in a public place or publicly accessible private space?

MS. BIRDSILL: Okay, I don't have the same numbers. Which -- For the line numbers, I'm not following it.

MR. FLANAGAN: Oh. Yours isn't the same? It's the paragraph titled Art in Public Places or Public Art. It means creations by artists -- There's a lot here.

MS. KEON: Yeah.

MS. BIRDSILL: Which -- Which attachment number has the line numbers?

MR. FLANAGAN: It's my Attachment A.

MS. BIRDSILL: Attachment A? Okay.

CHAIRMAN AIZENSTAT: I think there's another attachment that does not have the line item numbers.

MR. FLANAGAN: Yeah, there is.

MS. BIRDSILL: Right. Okay, so --

CHAIRMAN AIZENSTAT: And that's Attachment B, that does not.

MR. FLANAGAN: So Line 21, Cindy, on the first page --

MS. BIRDSILL: Line 21, okay.

MR. FLANAGAN: -- you've got spaces visible to the public.

MS. BIRDSILL: Yeah.

MR. FLANAGAN: Line 69 on the next page --

MS. BIRDSILL: Line 69.

MR. FLANAGAN: Public place or publicly accessible private space? I'm just --

MS. BIRDSILL: Right, right. So a publicly accessible private space, for example, in the project that Robert is working on, there is a vestibule that's very large, that is open to the public 24 hours a day, you know, seven days a week, but it is on their private property. But it's publicly -- The idea of the public art is, it has to be publicly accessible. It can't just be in a private lobby that's closed off.

CHAIRMAN AIZENSTAT: Okay.

MR. LEEN: Mr. Chair, I did look up the resolution adopting the guidelines, and it is a resolution, so -- But if your recommendation is

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1 passed by the Commission, it would require a
2 change to the guidelines and the resolution.
3 But that can be done by ordinance, so an
4 ordinance takes precedence.
5 MR. BEHAR: I would make the recommendation
6 to change that.
7 CHAIRMAN AIZENSTAT: Let's get through --
8 Any other -- Any other comments or questions?
9 No?
10 MR. FLANAGAN: It's beyond me.
11 CHAIRMAN AIZENSTAT: Jeff, any other
12 comments?
13 Robert?
14 MR. FLANAGAN: Is this urgent?
15 MS. BIRDSILL: No, there's not an urgency
16 to it.
17 CHAIRMAN AIZENSTAT: Did you say, "Is this
18 urgent?"
19 MR. FLANAGAN: Urgent.
20 The king of deferrals.
21 MR. GRABIEL: I would second a deferral.
22 MR. FLANAGAN: Why do I always have to make
23 these motions?
24 CHAIRMAN AIZENSTAT: Well, is there a
25 motion on the floor?

1 MR. FLANAGAN: Not yet.
2 MS. KEON: Can I ask you a question? How
3 did you arrive at the dollar amount of like
4 a -- that it would be a remodel, a hundred
5 thousand dollars? What --
6 MS. BIRDSILL: Well, the problem in
7 administration that Public Works has had is
8 that the way it is currently written, any
9 municipal project is subject to the one percent
10 that would go into the Historic Public Art
11 Fund, and so that means, you know, even if they
12 do a $20,000 little pump enclosure or
13 something, there's been arguments, well, is
14 that something that should be subject to this
15 or not, and then they're actually having to
16 budget everything they do with the one percent
17 towards the Historic Public Art Fund.
18 So, by putting in a threshold of a hundred
19 thousand, it at least eliminates the need to
20 try to administer a lot of the little tiny
21 things.
22 MS. KEON: Thank you.
23 CHAIRMAN AIZENSTAT: Okay. Julio?
24 MR. GRABIEL: I would move to defer this
25 item, if it's not an emergency situation, to

1 give us a little bit more time to -- It's a
2 very complex, even difficult-to-read document,
3 and I would prefer to just take a look at it
4 again, if that's possible.
5 MS. BIRDSILL: Sure.
6 CHAIRMAN AIZENSTAT: At the next meeting?
7 MR. GRABIEL: Yeah, at the next meeting.
8 MR. FLANAGAN: I'll second that.
9 CHAIRMAN AIZENSTAT: A continuance or
10 deferral?
11 MR. RIEL: Continuance.
12 Mr. GRABIEL: Continuance? Okay.
13 MR. LEEN: Well, if it's a continuance, it
14 doesn't have to be renoticed.
15 MS. KEON: It doesn't have to be noticed.
16 MR. RIEL: A continuance.
17 CHAIRMAN AIZENSTAT: Right. Let's do it.
18 So, can you state your motion again?
19 MR. GRABIEL: I make a motion to
20 continue -- for continuance of this item.
21 CHAIRMAN AIZENSTAT: Till the next meeting?
22 MR. GRABIEL: Till the next meeting.
23 CHAIRMAN AIZENSTAT: And --
24 MR. FLANAGAN: I second.
25 CHAIRMAN AIZENSTAT: Jeff seconds. Okay.

1 Public comment, I guess none. Close.
2 Call the roll. Any other comments? No?
3 Call the roll, please.
4 MR. BOLYARD: Jeffrey Flanagan?
5 MR. FLANAGAN: Yes.
6 MR. BOLYARD: Julio Grabiel?
7 MR. GRABIEL: Yes.
8 MR. BOLYARD: Pat Keon?
9 MS. KEON: Yes.
10 MR. BOLYARD: Robert Behar?
11 MR. BEHAR: Yes.
12 MR. BOLYARD: Eibi Aizenstat?
13 CHAIRMAN AIZENSTAT: Yes.
14 Okay, I think this concludes the meeting.
15 Anything else? No?
16 Thank you.
17 (Thereupon, the meeting was adjourned at
18 8:44 p.m.)
19
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1 CERTIFICATE
2
3 STATE OF FLORIDA:
4 SS.
5 COUNTY OF MIAMI-DADE:
6
7 I, JOAN L. BAILEY, Registered Diplomate
8 Reporter, Florida Professional Reporter, and a Notary
9 Public for the State of Florida at Large, do hereby
10 certify that I was authorized to and did
11 stenographically report the foregoing proceedings and
12 that the transcript is a true and complete record of my
13 stenographic notes.
14
15 DATED this 19th day of February, 2013.
16
17
18 (SIGNED COPY ON FILE)
19 _____
JOAN L. BAILEY, RDR, FPR
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21
Notary Commission Number EE 083192
22 Expiration June 14, 2015.
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